

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. 12-1325 and 2012-1441
Plaintiff - Appellee :
v. : On appeal from the
HENRY A. HOLDCROFT, : Wyandot County Court of
 : Appeals, Third Appellate
 : District Case No. 16-10-13
Defendant - Appellant. :

MERIT BRIEF OF APPELLEE STATE OF OHIO

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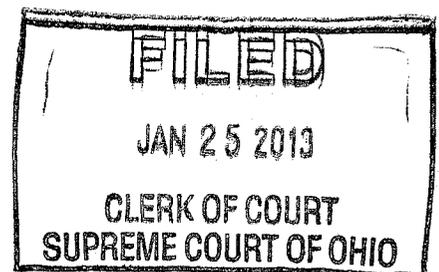
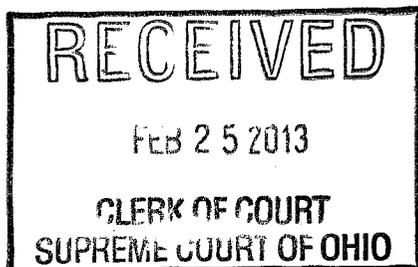


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Proposition of Law: A trial court has jurisdiction to sentence a defendant for the purpose of imposing mandatory postrelease control regarding a particular conviction, even if the defendant has served the stated prison term regarding that conviction, but has yet to serve the entirety of the aggregate prison sentence, when all of the convictions which led to the aggregate sentence resulted from a single indictment.

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STATEMENT OF THE CASE AND FACTS

Plaintiff - Appellee, the State of Ohio, accepts as properly set forth the Statement of the Case and Facts contained in the brief of Defendant - Appellant, Henry Allen Holdcroft (“Holdcroft”), with the following supplement:

The Third District Court of Appeals summarized the procedural history relevant to the now certified conflict question as follows:

{¶ 28} The relevant procedural history in this case is undisputed. On September 13, 1999, the trial court ordered that Holdcroft serve ten years on Count One, aggravated arson, and five years on Count Three, arson. The trial court further ordered that the term of imprisonment for Count Three be served consecutively to the term for Count One, for an aggregate term of fifteen years. The trial court resentenced Holdcroft to impose the proper terms of PRC in January of 2010,^[2] imposing five years of mandatory PRC for Count One and up to three years of discretionary PRC for Count Three. Thus, over ten years but less than fifteen years transpired between the time of the sentencing and the resentencing hearings.

^[2] The resentencing hearing was held on January 26, 2010, but the resentencing entry was not filed until February 2, 2010.

State v. Holdcroft, 3d District No. 16-10-13, 2012-Ohio-3066, 973 N.E.2d 334 at ¶ 28.

ARGUMENT

Certified Conflict Question: Does a trial court have jurisdiction to sentence a defendant for the purpose of imposing mandatory postrelease control regarding a particular conviction, when the defendant has served the stated prison term regarding that conviction, but has yet to serve the entirety of the aggregate prison sentence, when all of the convictions which led to the aggregate sentence resulted from a single indictment?

Proposition of Law: A trial court has jurisdiction to sentence a defendant for the purpose of imposing mandatory postrelease control regarding a particular conviction, even if the defendant has served the stated prison term regarding that conviction, but has yet to serve the entirety of the aggregate prison sentence, when all of the convictions which led to the aggregate sentence resulted from a single indictment.

I. Introduction

The issues presented by the certified-conflict question and the State's proposition of law are the same. The certified-conflict question should be answered in the affirmative. This Court should adopt the State's proposition of law. And the trial court's imposition of five years of mandatory postrelease control on Holdcroft should be affirmed.

Holdcroft asserts that the trial court lacked jurisdiction to impose the mandatory, five-year term of PRC for his aggravated arson conviction because, by the time of the resentencing hearing, he had already completed his ten-year-sentence on that conviction and was serving the remainder of his five-year-sentence for his arson conviction. In response, the State contends that, at the time of the resentencing hearing, Holdcroft was still serving his aggregate fifteen-year sentence in the case; and therefore, the trial court had jurisdiction to impose PRC on both convictions.

On September 13, 1999, the trial court ordered that Holdcroft serve ten years on Count One, aggravated arson, and five years on Count Three, arson. The trial court further ordered that the term of imprisonment for Count Three be served consecutively to the term for Count One, for an aggregate term of fifteen years. The trial court resentenced Holdcroft to impose the proper terms of PRC in January of 2010, imposing five years of mandatory PRC for Count One and up to three years of discretionary PRC for Count Three. Thus, over ten years but less than fifteen years transpired between the time of the sentencing and the resentencing hearings.

The appellate court's majority held that the trial court had the authority to impose mandatory postrelease control on Holdcroft and concluded "Our holding here is not only consistent with the Ohio Revised Code and the applicable case law but is also consistent with public policy." *State v. Holdcroft*, 3d District No. 16-10-13, 2012-Ohio-3066, 973 N.E.2d 334 at ¶ 43.

The State incorporates herein by reference all of the arguments made and conclusions reached by the appellate court below.

II. **The words "prison term" and "sentence" mean the entire journalized sentence for all convictions (Counts) in a case, i.e. the aggregate sentence and, therefore, the trial court had jurisdiction to impose the mandatory five-year term of PRC on Holdcroft's aggravated arson conviction.**

The appellate court's majority properly framed the issue as follows:

[T]he issue concerns whether the words "prison term" and "sentence" used by the Ohio Supreme Court in *Bezak*, *Hernandez*, *Cruzado*, *Simpkins*, and *Bloomer* mean the prison term the trial court ordered for each conviction (Count) or whether these words refer to the entire term of imprisonment for all convictions (Counts) in the case, i.e. the aggregate sentence imposed for the entire case. If the words have the former meaning, the trial court was without jurisdiction to impose five years of mandatory PRC on Holdcroft's aggravated arson conviction (Count One) since

Holdcroft had already served his ten-year sentence on that conviction (Count). If the words have the latter meaning, the trial court had jurisdiction to impose the five years of mandatory PRC on Holdcroft's aggravated arson conviction (Count One) since Holdcroft was still incarcerated on his total aggregate sentence at the time of the resentencing hearing.

Holdcroft at ¶ 30.

And the appellate court's majority properly concluded:

For the reasons that follow, we conclude that **the words "prison term" and "sentence" as used by the Ohio Supreme Court in *Hernandez* and the cases that follow it mean the entire journalized sentence for all convictions (Counts) in the case, i.e. the aggregate sentence;** and therefore, the trial court sub judice had jurisdiction to impose the mandatory five-year term of PRC on Holdcroft's aggravated arson conviction (Count One).

Holdcroft at ¶ 30.

The appellate court conceded that the answer to the now certified question is not directly revealed by the Ohio Supreme Court's decisions in *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, and *State v. Simpkins*, 117 Ohio St.3d 420, 2008- Ohio-1197, 884 N.E.2d 568, because these cases can be distinguished.

In *Hernandez*, *Bezak*, and *Bloomer* the defendants were serving terms of imprisonment stemming from single-count indictments. 2006-Ohio-126, at ¶ 4; 2007-Ohio-3250, at ¶ 1; 2009-Ohio-2462, at ¶ 22. In *Cruzado* the defendant was sentenced on two counts from two separate indictments; the trial court ordered that the sentences be served concurrently; and, the defendant was resentenced prior to the expiration of the concurrent terms of imprisonment. 2006-Ohio-

5795, at ¶ 2, 8-9. And in *Simpkins*, the defendant was sentenced to three concurrent terms of imprisonment stemming from a single indictment, and the defendant was resentenced prior to the expiration of the concurrent terms of imprisonment. 2008-Ohio-1197, at ¶ 1-3. *Holdcroft* at ¶ 31.

To summarize, the appellate court further concluded:

- (A) While the aforementioned cases do not directly answer the specific question presented here, they do provide the policy lens through which similar cases ought to be viewed. *Holdcroft* at ¶ 32.
- (B) Interpreting "prison term" and "sentence" used in the aforementioned cases as the aggregate sentence on all convictions in the case is also consistent with Ohio Revised Code Chapter 2929. *Holdcroft* at ¶ 33.
- (C) Interpreting the words "prison term" and "sentence" used in the aforementioned cases as the aggregate sentence imposed on all convictions (Counts) in the case is also consistent with R.C. 2929.191. *Holdcroft* at ¶ 34.
- (D) In reaching its decision in *Dresser*, the Eighth District stated that "other districts have also considered this issue and have concluded that it is the expiration of the prisoner's journalized sentence, rather than the offender's ultimate release from prison that is determinative of the trial court's authority to resentence." *Id.* at ¶ 11, citing *State v. Bristow*, 6th Dist. No. L-06-1230, 2007-Ohio-1864, 2007 WL 1160970; [973 N.E.2d 346] *State v. Turner*, 10th Dist. No. 06AP-491, 2007-Ohio-2187, 2007 WL 1329726; and *State v. Ferrell*, 1st Dist. No. C-070799, 2008-Ohio-5280, 2008 WL 4531845. Although the Eighth District correctly stated the general proposition of law from those cases, the appellate court failed to apply the proposition of law correctly in *Dresser*. *Holdcroft* at ¶ 38.
- (E) The Ninth District, on the other hand, has concluded that, for purposes of determining whether a trial court has jurisdiction to resentence an offender to properly impose PRC under *Hernandez* and its progeny, a "journalized sentence that includes consecutive sentences does not expire until the aggregate time of the consecutive sentences expires." *State v. Deskins*, 9th Dist. No. 10CA009875, 2011-Ohio-2605, 2011 WL 2120072, ¶ 19. *Holdcroft* at ¶ 39
- (F) To reach its decision, the Ninth District relied upon the Fifth District's decision in *State v. Tharp*, 5th Dist. No. 07-CA-9, 2008-Ohio-3995, 2008 WL 3133991. *Holdcroft* at ¶ 40

(G) While the trial court sub judge did specify that Holdcroft's ten-year aggravated arson sentence be served first, we do not think this fact, alone, sufficiently distinguishes our case from *Deskins* and *Tharp*, supra. *Holdcroft* at ¶ 41

(H) Our holding here is not only consistent with the Ohio Revised Code and the applicable case law but is also consistent with public policy. *Holdcroft* at ¶ 43

Each of the appellate court's conclusions (A) – (H) will be analyzed in greater detail below.

(A) The cases of *Hernandez*, *Bezak*, *Bloomer*, *Cruzado* and *Simpkins* provide the policy lens through which similar cases ought to be viewed. The appellate court's majority properly focused on the purpose of notifying an offender of his PRC obligations before his release from prison and before a violation of PRC could ever occur; explaining inter alia:

The Court in *Hernandez* explained that notifying an offender [973 N.E.2d 343] of his post-release control obligations after he has already served the term of imprisonment " would circumvent the objective behind R.C. 2929.14(F) and 2967.28 to notify defendants of the imposition of postrelease control at the time of their sentencing." 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, at ¶ 28. Significant to the Court's decision in *Hernandez* was the fact that the offender had already been released from his original term of imprisonment and had unknowingly violated his PRC. *Id.* at ¶ 5-6. *See also Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, at ¶ 17. ...

The Court in *Hernandez* observed that the purpose of R.C. 2929.19(B)(5), which requires that the trial court provide offenders sentenced to community control with notice of the possible consequences for violating their community control, is to provide offenders with the notice *before a violation* of their community control. 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, at ¶ 31, citing *Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837, at ¶ 33. Similarly, the purpose of R.C. 2929.19(B)(2)(c)-(e), formerly R.C. 2929.19(B)(3)(c)-(e), is to provide the offender with notice of the possible consequences if he violates the terms of post-release control *before a violation* of his post-release control has actually occurred. **Interpreting the terms " prison term" and " sentence" used in the aforementioned cases as the aggregate sentence on all convictions (Counts) in the case is consistent with the purpose behind R.C. 2929.19(B)(2)(c)-(e), because the offender would be notified about his PRC before his release from prison and, consequently, before a violation of PRC could ever occur.**

Holdcroft at ¶ 32 (emphasis added.)

(B) Interpreting "prison term" and "sentence" as the aggregate sentence on all convictions in the case is also consistent with Ohio Revised Code Chapter 2929. The appellate court's majority analyzed the words "prison term" and "sentence" and concluded that "throughout Chapter 2929, the words "prison term" and "sentence" can refer to multiple terms of imprisonment (sanctions under R.C. 2929.14) imposed by the sentencing court, i.e. the aggregate sentence." *Holdcroft* at ¶33. The appellate court reasoned inter alia:

For purposes of Chapter 2929, "prison term" includes " [a] stated prison term," and the "stated prison term" includes the "combination of all prison terms and mandatory prison terms imposed by the sentencing court." R.C. 2929.01(BB), (FF). Similarly, the term "sentence" includes the "*combination of sanctions* imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense." R.C. 2929.01(EE) (emphasis added). Possible "sanction[s]" include terms of imprisonment imposed under 2929.14. R.C. 2929.01(DD). Moreover, R.C. 2929.14(C)(6) provides that " [w]hen consecutive prison terms are imposed pursuant to * * * [R.C. 2929.14], the term to be served is the aggregate of all of the terms so imposed." *See also* Ohio Adm.Code § 5120-2-03.1 ("When consecutive stated prison terms are imposed, the term to be served is the aggregate of all of the stated prison terms so imposed."). ...

Holdcroft at ¶ 33 (emphasis added.)

(C) Interpreting the words "prison term" and "sentence" as the aggregate sentence imposed on all convictions (Counts) in this case is also consistent with R.C. 2929.191 and the language in R.C. 2929.191 must be interpreted in light of the history in which was enacted. In response to *Jordan* and *Hernandez*, the General Assembly enacted H.B. 137, which provided a mechanism for a court to correct an error in imposing PRC by placing upon the journal of the court an entry nunc pro tunc "**at any time before the offender is released from imprisonment under that term ...**" R.C.2929.191(A)(1) (emphasis added.)

The appellate court reasoned inter alia:

The General Assembly's purpose in enacting R.C. 2929.191 was, in part, " to reaffirm that, prior to [the statute's] effective date, an offender subject to post-release control sanctions was always subject to the post-release control sanctions after the offender's release from imprisonment without the need for any prior notification or warning * * *." (H.B. 137 Final Bill Analysis). ... In light of the foregoing, **we conclude that interpreting the words "prison term" and "sentence" as the aggregate sentence for all convictions (Counts) in the case better effectuates the legislative purpose of R.C. 2929.191 by ensuring that offenders are serving post-release control upon their release from prison as required under R.C. 2967.28(B).**

Holdcroft at ¶ 35 (emphasis added.)

The dissenting judge in *Holdcroft*, however, expressed his concern for the appellate court's failure to separately analyze the specific sentence imposed for each offense:

Second, and perhaps more importantly, beyond merely deviating from what I believe to be the sounder appellate approach of addressing each specific offense, conviction and sentence for each count in the indictment, I believe the position taken by the majority runs counter to fundamental sentencing principles in Ohio jurisprudence which *require* courts to separately analyze the *specific sentence imposed for each offense*.

Holdcroft at ¶ 51. The State concedes that it is difficult to distinguish the case of and language *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824 at ¶¶ 8-9, but notes the dissenting opinion therein.

(D) The Eighth District in *State v. Dresser*, 8th Dist. No. 92105, 2009-Ohio-2888, 2009 WL 1710757, ¶ 11, reversed on other grounds in *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671, 931 N.E.2d 110. has taken a different position on the issue. In *Dresser* the

Eighth District relied upon decisions from the Sixth, Tenth and First Districts, citing *State v. Bristow*, 6th Dist. No. L-06-1230, 2007-Ohio-1864, 2007 WL 1160970; *State v. Turner*, 10th Dist. No. 06AP-491, 2007-Ohio-2187, 2007 WL 1329726; and *State v. Ferrell*, 1st Dist. No. C-070799, 2008-Ohio-5280, 2008 WL 4531845. The facts of Dresser, however, are easily distinguishable from the facts in *Bristow*, *Turner*, and *Ferrell*. All of the defendants in those cases, unlike Dresser, were sentenced to consecutive sentences for convictions in *separate cases* stemming from *separate indictments*. *Bristow*, 2007-Ohio-1864, 2007 WL 1160970, at ¶ 2; *Turner*, 2007-Ohio-2187, 2007 WL 1329726, at ¶ 4; *Ferrell*, 2008-Ohio-5280, 2008 WL 4531845, at ¶ 1. In fact, the defendants' convictions in *Turner* and *Ferrell* were from different counties. 2007-Ohio-2187, 2007 WL 1329726, at ¶ 4, 2008-Ohio-5280, 2008 WL 4531845, at ¶ 1. *Holdcroft* at ¶ 38.

(E) The Ninth District in *State v. Deskins*, 9th Dist. No. 10CA009875, 2011-Ohio-2605, 2011 WL 2120072, has concluded that, for purposes of determining whether a trial court has jurisdiction to resentence an offender to properly impose PRC under *Hernandez* and its progeny, a "journalized sentence that includes consecutive sentences does not expire until the aggregate time of the consecutive sentences expires." *Deskins* at ¶ 19. Like *Holdcroft* herein, the defendant in *Deskins* argued that the trial court lacked jurisdiction to impose PRC on at least one of his convictions since he had already served seven years by the time of the resentencing hearing, but the Ninth District rejected this argument and found that the defendant's journalized sentence had not expired. *Id.* at ¶ 19. *Holdcroft* at ¶ 39.

(F) The Fifth District in *State v. Tharp*, 5th Dist. No. 07-CA-9, 2008-Ohio-3995, 2008 WL 3133991 has concluded that where a trial court on a single indictment, ordered that the term of imprisonment on each count be served consecutively, for an aggregate sentence, but did not specify which term was to be served first, the court did not lack jurisdiction to correct defendant's invalid sentence to include post release control because defendant's journalized sentence had not yet expired when he was resentenced. *Holdcroft* at ¶¶ 40-42.

(G) While the trial court sub judice did specify that Holdcroft's ten-year aggravated arson sentence be served first, this fact, alone does not sufficiently distinguish this case from *Deskins* and *Tharp*, supra. While the appellate court majority acknowledged that the Fifth District in *Tharp* relied upon this fact in part when it reached its decision, it also specifically noted that defendant's sentence arose from a single indictment.

The dissenting judge in *Holdcroft* expressed his concern for the appellate court's disregard of the specific terms of the trial court's judgment entry of sentence:

My first concern is that the majority decision disregards the specific terms of the judgment entry of sentence in this case, which, as even the majority concedes, clearly indicates that the ten year prison term for count one would be served prior to the remaining prison terms, and hence the sentence for count one would have been completed at the time the PRC issue regarding count one arose. I see no sound reason for disregarding the specific [973 N.E.2d 350] language of a trial court's own judgment entry of sentence in interpreting matters pertaining to that sentence.

Holdcroft at ¶ 50.

(H) The State's proposed proposition of law is not only consistent with the Ohio Revised Code and the applicable case law but is also consistent with public policy. According to the appellate court majority:

[O]ur conclusion here is consistent with the policy of notifying the offender of his PRC *prior to* a possible violation of the same. Moreover, our conclusion here ensures that offenders are actually serving their PRC— PRC, which was determined to be appropriate as a matter of public policy as evidenced in R.C. 2967.28. This strong public policy of ensuring that offenders are serving post-release control was further expressed when the General Assembly promptly passed of H.B. 137 (enacting R.C. 2929.191) in response to the Ohio Supreme Court's decisions in *Jordan* and *Hernandez*. The Ohio Supreme Court has also recognized this same public policy in its post-release control cases. *See Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, at ¶ 26 (" Although res judicata is an important doctrine, it is not so vital that it can override ' society's interest in enforcing the law, and in meting out the punishment the legislature has deemed just.' ") (quoting *State v. Beasley*, 14 Ohio St.3d 74, 75, 471 N.E.2d 774 (1984)); *Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at ¶ 21-23. Finally, our decision encourages multi-count indictments (a single case) rather than separate indictments (separate cases), which enhances judicial economy, diminishes inconvenience to witnesses, and minimizes the possibility of incongruous results for the defendant. *See* [973 N.E.2d 349] *State v. Schaim*, 65 Ohio St.3d 51, 58, 600 N.E.2d 661 (1992) (joinder under Crim.R. 8(A)).

Holdcroft at ¶ 43.

CONCLUSION

The trial court had jurisdiction to impose mandatory postrelease control against Holdcroft regarding his aggravated arson conviction. This Court should answer the certified-conflict question in the affirmative, deny Holdcroft's proposition of law, adopt the state's proposition of law, and affirm the judgment of the court of appeals.

Respectfully submitted,

OFFICE OF THE WYANDOT COUNTY
PROSECUTING ATTORNEY



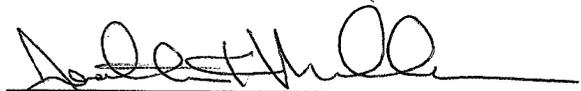
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I certify that a copy of the foregoing Merit Brief of Appellee State of Ohio was sent by regular U.S. Mail to Kristopher A. Haines, Counsel for Appellant Henry Allen Holdcroft, Office of the Ohio Public Defender, 250 East Broad Street – Suite 1400, Columbus, OH 43215, on the 22nd day of February 2013.



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IN THE SUPREME COURT OF OHIO

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Defendant - Appellant.	:	District Case No. 16-10-13

APPENDIX TO

MERIT BRIEF OF APPELLEE STATE OF OHIO

Ohio Rules

OHIO RULES OF CRIMINAL PROCEDURE

As amended through July 1, 2012

Rule 8. Joinder of Offenses and Defendants

(A) Joinder of offenses. Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(B) Joinder of defendants. Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

History. Effective: July 1, 1973.