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IN THE SUPREME COURT OF OHIO

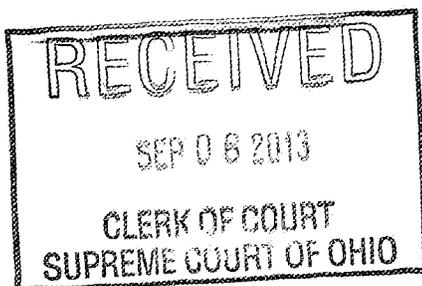
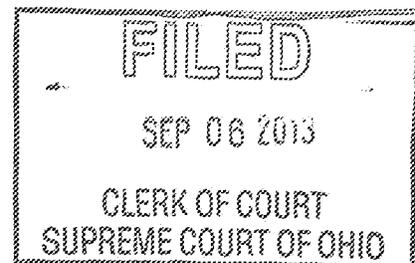
13-1431

STATE OF OHIO : On Appeal from the Cuyahoga County
Appellee, : Court of Appeals, Eighth Appellate
v. : District
ALEKSANDAR CVIJETINOVIC, :
Appellant : Court of Appeals Case No. 99316

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT ALEKSANDAR CVIJETINOVIC**

Aleksandar Cvijetinovic
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CERTIFICATE OF SERVICE

I certify that a copy of the Memorandum in Support of Jurisdiction of Appellant Aleksandar Cvijetinovic was sent by ordinary U.S. mail to counsel for Appellees, Timothy McGinty, Cuyahoga County Prosecutor, Kristen L. Sobieski and Joseph Ricotta, Assistant County Prosecutors, at the Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113, on this 29th day of August 2013.

A handwritten signature in cursive script that reads "Alex Cvijetinovic". The signature is written in black ink and is positioned above a horizontal line.

Aleksandar Cvijetinovic

Appellant, Pro Se

TABLE OF AUTHORITIES

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case is a case of public and great general interest because the lower court remanded the case for a nunc pro tunc entry to impose postrelease control – **after the sentence had expired.**

This Court has been very clear that notification regarding postrelease control must occur prior to defendant's release from prison. Most notably, with respect to nunc pro tunc entries, this Court stated that postrelease control cannot be imposed unless the sentencing entry is corrected before the defendant completes the prison term for the offense for which postrelease control was to be imposed. *State v. Qualls*, 967 N.E.2d 718, 131 Ohio St.3d 499 at paragraphs 16 and 24.

Although the lower court did cite *Qualls*, it ignored the condition that defendant must still be incarcerated for the offense for which postrelease control is to be imposed. The lower court's rationale was that because Defendant was advised concerning postrelease control at the 2003 sentencing hearing – while the term had yet to be completed, the omission from the journal entry can be corrected by nunc pro tunc now – even after he has served his sentence. Opinion at paragraph 10.

Furthermore, the notification that the lower court has remanded for journalization is defective. Although Defendant had multiple cases and sentences, postrelease control was not specifically imposed as to any count as required by R.C.2967.28(B). Moreover, he was not put on notice that he faces up to one-half of his original term as required by R.C.2929.19(B)(2)(c)-(e) Now, Defendant – and the Parole Board – are unaware of what count postrelease control is attached to, and how long, it at all, he can be imprisoned for in sanction violation time.

This case requires a simple remand with directions for the lower court to properly consider the effect of completion of Defendant's sentence on the authority for the court to order a nunc pro tunc entry.

STATEMENT OF THE CASE AND FACTS

On April 20, 2003, pursuant to a remand, the trial court resentenced Appellant in CR-368579 to a term of 3 years on firearm specifications as to each of counts 1 and 2 to run prior to and consecutively to 9 years on underlying charges in counts 1 and 2, counts to run concurrently with each other but consecutively to CR-368577, with credit for time served. At the same time, judgment was entered resentencing Appellant in CR-368577 to a term of 4 years to run consecutively to CR-368579 and concurrently with CR-368578, with credit for time served. Also on that day judgment was entered resentencing Appellant in CR-358578 to a term of 1 year on firearm specifications as to each of counts 1 and 2 to run prior to and consecutively to 6 years on underlying charges in counts 1 and 2, counts to run consecutively with each other, with credit for time served. (2003 Transcript pages 19-24)

On that day, the court also informed Appellant that he would be subject to a term of 5 years of postrelease control, and that a violation thereof could result in his return to prison. The court did not state which case the term of post release control was imposed in connection with. Neither did the court explain that he could be returned for specifically up to one-half of his original term, or what term is the original term. (2003 Transcript page 24)

On May 13, 2011 the Ohio Department of Rehabilitation and Correction requested the court resentence the Appellant in compliance with *State v. Jordan* in regards to postrelease control. Five years post release control was added to appellant's sentence in case number CR-

368579, despite Appellant's protestations that he had already completed service of the sentence in that case. (2011 Transcript pages 7-12)

On November 27, 2012 the trial court heard Appellant's pro se motion to vacate post release control and denied it. A timely appeal was filed on December 21, 2012. Appellant's issue on appeal was that he had already completed the term in CR-368579 and the court was without the authority to impose postrelease control. The Court of Appeals decision eluded the issue by finding notification at the sentencing hearing in 2003 occurred while he was still serving CR-368579 and that a nunc pro tunc could be issued now after he has served that term to properly reflect that notification.

PROPOSITION OF LAW I

A COURT CANNOT INCLUDE POST RELEASE CONTROL BY NUNC PRO TUNC ENTRY AFTER THE TERM HAS EXPIRED AND THE IN COURT NOTIFICATION WAS INSUFFICIENT TO CONSTITUTE PROPER NOTICE.

The trial court's postrelease control notice given to appellant at the 2003 sentencing hearing did not comply with the statutory notification requirements. Appellant was not told that the parole board could impose a prison term as part of his sentence of up to one-half of the stated prison term originally imposed on him.

In *State v. Singleton*, 2009-Ohio-6434, 124 Ohio St.3d 173 the trial court "failed to notify Singleton that for a violation of postrelease control, the parole board could impose a prison term as part of his sentence of up to one-half of the stated prison term originally imposed on him." The Supreme Court found that such notification failed to properly impose postrelease control.

In the Court's judgment entry in the present case, the Court state that:

“After a thorough review of the entire record the [Court found] that the trial court advised Cvijetinovic that he was subject to a mandatory term of five years postrelease control at the 2003 sentencing hearing, but failed to include the condition in the sentencing journal entry.” The Court then determined that “This omission can be corrected nunc pro tunc. See *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, P14; *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, syllabus (“When a defendant is notified about postrelease control at the sentencing hearing, but notification is inadvertently omitted from the sentencing entry, the omission can be corrected with a nunc pro tunc entry and the defendant is not entitled to a new sentencing hearing.”); *State v. Murray*, 2012-Ohio-4996, 979 N.E.2d 831, P23 (6th Dist.) (nunc pro tunc correction of judgment on issue of postrelease control permissible even after offender served his sentence and released from prison) In 2003, Cvijetinovic’s 12-year sentence on the first degree felonies in CR-368579 had yet to be completed. Therefore, the advisement of five years of mandatory postrelease control was proper.”

The lower appellate court failed to recognize two principles set forth in *State v. Qualls Id.* Both apply in this case. Between the 15th and 16th paragraphs is the caption: “A Sentencing Entry that Contains No Reference to Postrelease Control **Must be Timely Corrected.**” (Emphasis added). In paragraph 16 the Supreme Court states the “we recognize two important principles that our post release control precedents have emphasized. One principle is that **unless a sentencing entry** that did not include notification of the imposition of postrelease control is **corrected before** the defendant completed the prison term for the offense for which postrelease control was to be imposed, postrelease control **cannot be imposed.**” (Emphasis added).

The trial court’s sentencing entry for Cvijetinovic is “a sentencing entry that did not include notification of the imposition of postrelease control.” Cvijetinovic has already completed his 12 year sentence before any nunc pro tunc correction can take place. The judgment entry states that the 12 year sentence had yet to be completed in 2003 when the sentence was imposed. However, the first principle of the Qualls case makes it clear that the time for issuing a nunc pro tunc correction is only while the sentence is still being served. Cvijetinovic has completed this 12

year sentence in CR-368579 before the post release control was wrongly imposed. The first principle set forth in *Qualls* would require that the entry be vacated.

In paragraph 13 of the *Qualls* decision, the court said that “[W]hen a trial court **properly notified** a defendant of postrelease control at the sentencing hearing but the initial sentencing entry did not accurately reflect the details of the notification, the imperfect sentencing entry can be corrected through a nunc pro tunc entry.” (Emphasis added). Paragraph 18 of the *Qualls* decision states “Another important principle” that “[A] trial court must provide **statutorily compliant notification** to a defendant regarding postrelease control at the time of sentencing, including notifying the defendant of the details of the postrelease control and the consequences of violating postrelease control.” (Emphasis added).

The trial court did not provide **statutorily compliant notification** to Cvijetinovic of details of the postrelease control and the consequences of violating postrelease control. The trial court did not notify him that a violation of postrelease control could result in imposition of up to one-half of the prison term originally imposed by the court. In the case of *State v. Singleton*, 124 Ohio St.3d 173, (Ohio 2009), the Supreme Court found there was not proper notification where “the court failed to notify Singleton that for a violation of postrelease control, the parole board could impose a prison term as part of his sentence of up to one-half of the stated prison term originally imposed on him.” Based also on the second principle of the *Qualls* case, the nunc pro tunc entry should be vacated.

On June 13, 2013 the Seventh District Court of Appeals in a similar appeal, *State v. Bundy*, 2013-Ohio-2501, based on *Qualls, Id.*, remanded the case for the purpose of releasing the appellant from his term of postrelease control because appellant had already completed his

prison term. As in the present case, Bundy had not been properly notified of postrelease control in his sentencing journal entry. He had already completed his sentence. The Court of Appeals applied the principles set forth in *Qualls* and terminated Bundy's postrelease control.

Furthermore, Defendant was before the trial court on multiple cases numbers and degrees of felonies. Yet the court failed to indicate which case the postrelease control was imposed in connection with, as required by R.C.2967.28(B). As a result, even if Defendant was properly notified he faced up to one-half of his original term in sanction time, it is unclear which term the parole board could use as the original term since there are multiple cases and sentences involved.

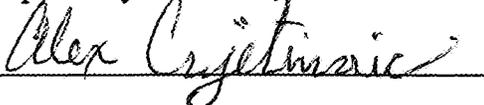
Late-and incorrect-notice is not sufficient to confer authority upon the Adult Parole Authority to impose post release control. *State v. Jordan*, 104 Ohio St.3d 21 at P17. Also see *Hernandez v. Kelly* 108 Ohio St.3d 395 at P32.

CONCLUSION

The postrelease control notification by the trial court did not comply with statutory requirements. The *Qualls* case requires that any nunc pro tunc correction be performed before a defendant's prison term is concluded. Appellant has completed his 12 year prison term and therefore should be released from his term of postrelease control.

Wherefore, it is respectfully requested that this Court accept jurisdiction over this case and order the postrelease control to be vacated.

Respectfully submitted,



Aleksandar Cvijetinovic, Pro Se

JUL 25 2013

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99316

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALEKSANDA CVIJETINOVIC

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-368579

BEFORE: Keough, J., Boyle, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: July 25, 2013



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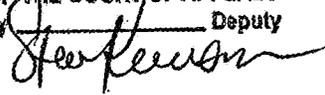
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FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 25 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Deputy



COPIES MAILED TO COURSEL FOR
ALL PARTIES. COSTS TAXED

KATHLEEN ANN KEOUGH, J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Defendant-appellant, Aleksanda Cvijetinovic, appeals the trial court's decision ordering a term of postrelease control to his sentence. For the reasons that follow, we remand the case to the trial court to enter a nunc pro tunc sentencing journal entry to reflect the imposition of postrelease control that was ordered at the 2003 resentencing hearing.

{¶3} In 1999, following a plea, Cvijetinovic was sentenced on three separate cases. In CR-368577, he was sentenced to "4 years consecutive to CR-368579, and concurrent to Case No. 368578 * * *." In CR-368578, he was ordered to serve a total prison term of 7 years — "6 years on each Counts 1 and 2, concurrent, with 1 year firearm specification on Count 1 to run consecutive and prior to Counts 1 and 2 * * *." And in CR-368579, he was ordered to serve a total of twelve years in prison — "9 years on each of counts 1 and 2 (concurrent) with 3 years on gun specification on Count 1 to run consecutive and prior to Counts 1 and 2 * * *."

{¶4} Cvijetinovic appealed his guilty pleas and sentence. In *State v. Cvijetinovic*, 8th Dist. Cuyahoga No. 81534, 2003-Ohio-536, this court upheld his guilty pleas, but found the trial court did not make the necessary findings to support consecutive sentences; thus, we reversed his sentences and remanded for resentencing.

{¶5} In 2003, the trial court conducted a resentencing hearing pursuant to this court's order. It also considered Cvijetinovic's motion to withdraw his guilty plea, which it ultimately denied. At resentencing, the trial court imposed the same aggregate prison sentence as previously ordered in 1999. The trial court again sentenced Cvijetinovic to four years in CR-368577, to run consecutive to CR-368579 and concurrent with CR-368578. In CR-368578, the court again sentenced Cvijetinovic to a total prison term of seven years — "1 year on firearm specifications as to each of Counts 1 and 2 to run prior to and consecutively to 6 years on underlying charges in Counts 1 and 2, counts to run concurrently with each other." Finally, in CR-368579, the court reimposed the 12 year sentence — "3 years on firearm specifications as to each of Counts 1 and 2 to run prior to and consecutively to 9 years on underlying charges in Counts 1 and 2, counts to run concurrently with each other but consecutively to CR-368577."

{¶6} The transcript reveals that at the end of the resentencing hearing the trial court advised Cvijetinovic that he would be subject to a mandatory term of

five years postrelease control; however, the trial court failed to include the order of postrelease control in the sentencing journal entries. Cvijetinovic again appealed, challenging the denial of his motion to withdraw his guilty pleas and his sentence. In *State v. Cvijetinovic*, 8th Dist. Cuyahoga No. 82894, 2003-Ohio-7071, this court affirmed the trial court's decision denying the motion to withdraw his guilty pleas and upheld his sentence.

{¶7} In 2011, the trial court received notification from the Ohio Department of Rehabilitation and Correction that postrelease control was not imposed on Cvijetinovic at the time of resentencing. Accordingly, the trial court conducted a video conference hearing on May 12, 2011, to order postrelease control. At the hearing, the trial court advised Cvijetinovic that he had served his sentences on both cases — CR-368577 and 368578 and therefore, postrelease control would be imposed only on CR-368579. Cvijetinovic contested that his 12-year sentence on CR-368579 was completed (including all mandatory time for firearm specifications), and he was now serving his remaining four-year sentence on CR-368577. The trial court disagreed, reasoning that Cvijetinovic's sentences were served based on the order of the case numbers — the lowest case number was served first. The court then advised Cvijetinovic that he was subject to five years mandatory postrelease control in CR-368579 because he was convicted of first-degree felonies. Cvijetinovic did not file a direct appeal regarding the imposition of postrelease control.

{¶8} In October 2012, Cvijetinovic moved to vacate the imposition of postrelease control, contending that (1) the trial court imposed a period of postrelease control on a sentence that was completed, and (2) he was not physically present in the courtroom for the hearing.

{¶9} The trial court denied his motion. Cvijetinovic now appeals contending in his sole assignment of error that the trial court erred and violated his constitutional rights by adding postrelease control to his sentence after his sentence had already been served. The state contends that Cvijetinovic's appeal is barred by res judicata or, in the alternative, that the imposition of postrelease control was proper.

{¶10} After a thorough review of the entire record, we find that the trial court advised Cvijetinovic that he was subject to a mandatory term of five years postrelease control at the 2003 sentencing hearing, but failed to include the condition in the sentencing journal entry. This omission can be corrected nunc pro tunc. See *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, ¶ 14; *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, syllabus ("When a defendant is notified about postrelease control at the sentencing hearing, but notification is inadvertently omitted from the sentencing entry, the omission can be corrected with a nunc pro tunc entry and the defendant is not entitled to a new sentencing hearing."); *State v. Murray*, 2012-Ohio-4996, 979 N.E.2d 831, ¶ 23 (6th Dist.) (nunc pro tunc correction of

judgment on issue of postrelease control permissible even after offender served his sentence and released from prison) In 2003, Cvijetinovic's 12-year sentence on the first degree felonies in CR-368579 had yet to be completed. Therefore, the advisement of five years of mandatory postrelease control was proper.

{¶11} Accordingly, Cvijetinovic's assignment of error is overruled. Judgment affirmed, but case remanded to the trial court to correct the 2003 sentencing journal entry by nunc pro tunc entry to reflect the imposition of the mandatory term of five years postrelease control on Case No. CR-368579.

It is ordered that the parties share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR