

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.
100779

LOWER COURT NO.
CP CR-438520-A

-vs-

COMMON PLEAS COURT

DAVID MACE

Appellant

MOTION NO. 476939

Date 12/03/2014

Journal Entry

This matter comes before the court on the state's motion to certify a conflict in this case, *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-3040, and *State v. Murray*, 6th Dist. Lucas No. L-10-1059, 2012-Ohio-4996.

Upon review, we find the motion well taken.

Both *Mace* and *Murray* address the issue of postrelease control under the following circumstances: (1) the judgment entry of sentence does not state the specifics of the sanctions, rather, it provides that the sanctions are for the "maximum period of time under the law"; (2) the defendants have failed to make the sentencing transcript part of the appellate record; and (3) the issue of postrelease control was raised after the defendants had served the sentence for which the postrelease control sanctions were imposed.

In *Mace*, this court held that although we presume the regularity of the proceedings in the absence of a transcript, the defendant nonetheless could not be subject to postrelease control sanctions because the defendant had already served his sentence at the time the issue was raised regarding the notifications.

In *Murray*, the Sixth Appellate District presumed the regularity of the proceedings at sentencing, *i.e.*, that the defendant had been properly notified of postrelease control. The court further found that the sentencing judgment entry was "sufficient to give appellant notice of the post-release control sanction." *Id.* at ¶ 25.¹ Therefore, the court found that the defendant could be subject to postrelease control sanctions.

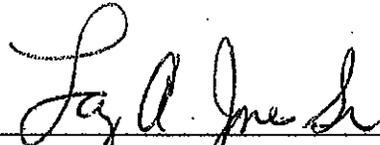
¹The Sixth Appellate District further stated that, even if a correction to the sentencing judgment entry needed to be made, such a correction is "permissible even after the offender has served his sentence and been released from prison." *Murray* at ¶ 23, citing *State v. Gann*, 12th Dist. Butler No. CA2010-07-153, 2011-Ohio-895, ¶ 24.

In light of the above, we certify the following issue for resolution:

Even in presuming the regularity of the sentencing hearing, *i.e.*, that the defendant was properly advised of postrelease control sanctions, can those sanctions be imposed when the judgment entry of sentence does not state the specifics of the sanctions, and the defendant has finished serving his or her prison term for the conviction under which the sanctions were imposed?

PATRICIA ANN BLACKMON, J. AND

EILEEN T. GALLAGHER, J., CONCUR.



LARRY A. JONES, SR.
PRESIDING JUDGE

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CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Reiman Deputy