

**IN THE  
SUPREME COURT OF OHIO**

<b>STATE OF OHIO</b>	:	<b>NO. 2015-1137</b>
Plaintiff-Appellant	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
<b>DOMINIC JACKSON</b>	:	Court of Appeals Case Number C-140384
Defendant-Appellee	:	

<b>REPLY BRIEF OF PLAINTIFF-APPELLANT</b>
---

Joseph T. Deters (0012084P)  
Prosecuting Attorney

Scott M. Heenan (0075734P)  
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202  
(513) 946-3227  
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLANT, STATE OF OHIO

TIMOTHY BICKNELL  
Attorney At Law  
3268 Jefferson Ave.  
1st Floor  
Cincinnati, Ohio 45220  
(513) 919-9203

COUNSEL FOR DEFENDANT-APPELLEE, DOMINIC JACKSON

**Table of Contents**

	<b><u>Page</u></b>
Reply in Support of Proposition of Law .....	1
<u>Authority Presented:</u>	
R.C. 2929.19(B)(4) .....	1
Conclusion .....	2
Proof of Service .....	2

**Reply in Support of Proposition of Law**

In his brief, Dominic Jackson questions whether the defendant in *State v. Fraley* “would have had a right to allocution at the three community control violation hearings which were held after the trial court in that case failed to inform Fraley of the sentence to be imposed at the original sentencing hearing.” Appellee’s Merit Brief at 7-8. Under the State’s arguments, the answer to that inquiry is yes.

As noted in the State’s merit brief, when a trial court does not impose the specific prison term that will be imposed for a community control violation, then that portion of the sentence is void. It does not matter if the trial court failed to tell the defendant at the first, second, or twentieth community control violation. Until it tells the defendant the specific prison term that will be imposed for a community control violation the trial court is in violation of R.C. 2929.19(B)(4).

Courts cannot ignore legislative mandates regarding sentencing. And, under the void-voidable jurisprudence from this court, any attempt to ignore a legislative mandate, such as R.C. 2929.19(B)(4), renders that portion of the sentence void.

Since R.C. 2929.19(B)(4) involves imposing part of a defendant’s sentence, any defendants who were not told what prison term they would receive for a violation of community control have not been fully sentenced since part of their sentence is void. When that happens, they absolutely have a right of allocution. It is only after that sentence has been properly imposed that the right goes away.

This does not unfairly create two classes of defendants any more than *Fraley* unfairly created a separate class of defendants who cannot be sent to prison. Either a defendant has been fully sentenced or they have not. Any defendant who has not been sentenced in full has an absolute right of allocution; any defendant who has been sentenced in full does not.

**Conclusion**

When a portion of a defendant's sentence is void, then that defendant still has a right of allocution. Once that defendant has been fully sentenced, then that defendant's right of allocution is over.

In this matter, Jackson was fully sentenced when he was placed on community control and told what prison term he would receive for a community control violation. At his community control violation hearing, he did not have a right of allocution. The First District erred when it ruled otherwise.

This court should, therefore, reverse this matter and hold that the right of allocution does not apply to community control violation hearings.

Respectfully,

Joseph T. Deters, 0012084P  
Prosecuting Attorney

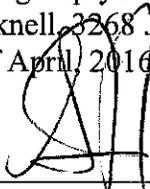


---

Scott M. Heenan, 0075734P  
Assistant Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202  
Phone: 946-3227  
Attorneys for Plaintiff-Appellant, State of Ohio

**Proof of Service**

I hereby certify that I have sent a copy of the foregoing Reply Brief of Plaintiff-Appellant, by United States mail, addressed to Timothy Bicknell, 2268 Jefferson Ave., 1st Floor, Cincinnati, Ohio 45202, counsel of record, this 7<sup>th</sup> day of April, 2016.



---

Scott M. Heenan, 0075734P  
Assistant Prosecuting Attorney