

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

JAMES SCHROEDER,

Defendant-Appellant.

* S.C. No. 2016-0570
* On Appeal from the
* Lucas County Court
* of Appeals, Sixth Appellate
* District
* Court of Appeals
* Case No. L-14-1228
*

APPELLEE'S MEMORANDUM IN OPPOSITION TO JURISDICTION

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: Evy M. Jarrett, #0062485
Assistant County Prosecutor
Lucas County Prosecutor's Office
711 Adams St., 2nd Floor
Toledo, Ohio 43604-5659
Phone No: (419) 213-2001
Fax No: (419) 213-2011
ejarrett@co.lucas.oh.us

ON BEHALF OF PLAINTIFF-APPELLEE

Stephen P. Hardwick, #0062932
Assistant Public Defender
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215
Phone No: (614) 466-5394
Fax No: (614) 752-5167
stephen.hardwick@opd.ohio.gov

COUNSEL FOR DEFENDANT-APPELLANT

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WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Further review of this case is unnecessary because the trial court and the Sixth Appellate District correctly applied the relevant statutes governing postrelease control. Appellant received ample notice of his postrelease control obligations, and the judgment entry incorporated that notice in the sentencing entry by imposing post-release control pursuant to the applicable statutory provision. The statutes' purpose of notifying the defendant and actually imposing postrelease control was thus served.

Moreover, the Sixth District's decision was consistent with other decisions from the Court of Appeals, and this Court has previously refused review of those cases. See, e.g., *State v. Clark*, 2d Dist. No. 2012 CA 16, 2013-Ohio-299, ¶¶11, 40, 73, discretionary appeal not allowed, 135 Ohio St.3d 1449, 2013-Ohio-2062, 987 N.E.2d 704; *State v. Ball*, 5th Dist. No. 13-CA-17, 2013-Ohio-3443, ¶25, discretionary appeal not allowed, 137 Ohio St.3d 1442, 2013-Ohio-5678, 999 N.E.2d 696; *State v. Holloman*, 10th Dist. Franklin No. 11AP-454, 2011-Ohio-6138, discretionary appeal not allowed, 131 Ohio St.3d 1499, 2012-Ohio-1501, 964 N.E.2d 440.

Refusal to review such cases is appropriate. Appellant would have each judgment entry include a full and detailed description of the nature and duration of post-release control, as well as the consequences of violating the terms of postrelease control. But Ohio's statutes require "notice" of such information at the sentencing hearing without imposing a requirement that the information be reproduced in the sentencing entry itself. See R.C. 2929.19(B).

Moreover, the requirement advocated by appellant serves no practical purpose. The full information regarding postrelease control is no more necessary than a recitation in the judgment entry of the statute of which the defendant is convicted, or the statute stating the length of a permissible sentence for the offense, or the statutes setting forth the factors to be considered by the court in establishing the length of sentence.

The holding of the Sixth District was appropriate given Ohio's statutory scheme, this Court's prior precedents, and the practical considerations of encouraging a short, understandable sentencing entry. Further review of this case is therefore unnecessary.

STATEMENT OF THE CASE AND FACTS

Appellant James E. Schroeder entered a plea of no contest to two counts of sexual conduct with a minor in violation of R.C. 2907.04(A) and (B)(3), both third degree felonies. He executed a "Plea of No Contest" on the same date, which acknowledged that upon his release from prison under his felony sex offense convictions he would have 5 years of post-release control. By executing the "Plea of No Contest" Schroeder also acknowledged the penalties he could expect for violation of post release control.

At the sentencing hearing on September 26, 2007, Schroeder, his counsel and the trial judge executed a 3 page written document captioned "Notice Pursuant To R. C. 2929.19(B)(3)." By executing page 1 of the Notice, Schroeder acknowledged that his conviction for a felony sex offense would result in a mandatory period of postrelease control. On both page 1 and page 2, he acknowledged that he understood the consequences of a violation of post release control. On page 2, he also acknowledged that he had received a copy of the Notice, that he completely read it, and that he

understood all components of any sentence to be imposed by the court. Defense counsel signed and certified that he had discussed the Notice with defendant and that Schroeder, to counsel's best information and belief, had a full understanding of its contents. Schroeder and his counsel's signatures were also witnessed on page 2 by the trial court.

At the request of Schroeder's counsel, completion of his sentencing hearing was continued until October 1, 2007. On that day, he was sentenced to an aggregate prison term of 7 years. The October 2, 2007 sentencing entry states that: "Defendant given . . . post release control notice under R. C. 2929.19(B)(3) and R. C. 2967.28."

On May 6, 2014, Schroeder filed a "Motion to Vacate Post Release Control" claiming that the imposition of postrelease control was defective and therefore void, which, he argued, should result in his release from such supervision. The trial court denied the motion, reasoning that he had not provided a transcript of the September 26, 2007 hearing and that the written entry incorporated the postrelease control notification. The Sixth Appellate District affirmed, holding that a failure to provide the full transcript of the sentencing hearing "culminates in a presumption of the regularity of the proceedings at the sentencing hearing," but also finding that the existing "record of evidence demonstrates that appellant was explicitly and properly notified on multiple occasions that postrelease control could and would be imposed as a result of the proceeding against him." *State v. Schroeder*, 6th Dist. Lucas No. L-14-1228, 2016-Ohio-849, ¶12.

Appellant now seeks review, but the Sixth District's holding was consistent with Ohio's post-release control statutes.

ARGUMENT

- I. Verbal and detailed written notices of postrelease control may be incorporated into a sentencing entry by reference to the applicable statutory reference.**

This Court has previously held that the imposition of postrelease control consists of: (1) notification of post release control at the time of sentencing, and (2) incorporation of post release control in the sentencing entry. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶¶18-19. See also R.C. 2929.19(B). Notification and incorporation both occurred in this case.

- A. Schroeder was properly notified of postrelease control at his sentencing hearing.**

The written notifications and statements by the trial court indicate that Schroeder was notified of postrelease control in this case. And because Schroeder did not provide a copy of the transcript of his full sentencing hearing in the trial court, the Sixth District could properly presume that he was fully advised of his postrelease control obligation during that hearing. See, e.g., *State ex rel. Bardwell v. Cuyahoga County Bd. of Comm'rs*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, ¶¶14.

- B. The sentencing entry properly reflected imposition of postrelease control.**

The requirements of a sentencing entry are set forth in R.C. 2929.19(B), which imposes certain requirements on the trial court's sentencing hearing and certain requirements on the sentencing entry. First, the statute requires the trial court to "[i]mpose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term." R.C. 2929.19(B)(2)(a).

Likewise, the statute imposes notification requirements regarding post-release control.

The court must

(c) **Notify** the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person. ***

(d) **Notify** the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(2)(c) of this section***

(e) **Notify** the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(2)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender.***

R.C. 2929.19(B)(2) (emphasis added).

In sharp contrast to these notification provisions, the statute spells out the information which is required to be included in the judgment entry:

(b) In addition to any other information, **include in the sentencing entry** the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications***

R.C. 2929.19(B)(2) (emphasis added).

The statute could not be more clear: certain information must be included in the sentencing entry. However, that list of information does not include the length, the nature, or the consequences of a violation of postrelease control. Given the structure of

the statute, incorporation of the notification by reference to the applicable statutory provisions is appropriate.

This Court has previously recognized that sentencing entries are sufficient if they "afford notice to a reasonable person that the courts were authorizing post release control as part of each * * * sentence." *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶51. In this case, not only did appellant get notice of his postrelease control requirements, but the entry incorporated that notice in order to authorize the Adult Parole Authority to begin the term upon his release from prison.

CONCLUSION

Appellant has offered no authority from this Court for the proposition that not only must the trial court notify the defendant of the duration, nature, and consequences of a violation of postrelease control, but that all that information must be provided in full in the sentencing entry. And, of course, the Sixth District is not alone in holding that the notification may be incorporated into the judgment entry by reference to the appropriate statutes. Appellee therefore asks that the Court decline to exercise discretionary review of this case.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: 
Evy M. Jarrett, #0062485
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was sent via ordinary U.S. Mail this

16th day of May, 2016, to Counsel for Defendant-Appellant:

Stephen P. Hardwick, #0062932
Assistant Public Defender
250 E. Broad Street, Suite 1400
Columbus, Ohio 43215



Evy M. Jarrett, #0062485
Assistant Prosecuting Attorney