

IN THE SUPREME COURT OF OHIO
2016

STATE OF OHIO,

Case No. 2016-0215

Plaintiff-Appellant

-vs-

On Appeal from the
Fifth District Court
of Appeals, Muskingum
County

BRADLEY E. GRIMES,

Court of Appeals

Defendant-Appellee

Case No. CT2015-0026

MERIT BRIEF OF PLAINTIFF-APPELLANT

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PROPOSITION OF LAW

Proposition of Law No. I: To impose valid post release control, the language in the sentencing entry may incorporate the advisements given during the sentencing hearing by referencing the post release control sections of the Ohio Revised Code and do not need to repeat what was said during the sentencing hearing.

STATEMENT OF THE CASE AND THE FACTS

Appellee, Bradley Grimes, was sentenced in the Muskingum County Court of Common Pleas to eighteen months for Robbery and Vandalism in August of 2011. He was placed on Post Release Control (“PRC”) after being released from prison, and while on PRC he committed a new felony and was convicted of Unlawful Sexual Conduct with a Minor in January of 2014. The Common Pleas Court also imposed a judicial-sanction sentence for the time he had left on PRC.

He filed a motion on April 16, 2015, to vacate judicial sanction sentence because he was not advised of the consequences for violating PRC, specifically, that he faced up to one half his original sentence if he violated PRC; he claimed this made his original PRC void. The motion was denied and he appealed to the Fifth District Court of Appeals.

The Muskingum County Court of Common Pleas advised Appellee of the consequences of violating PRC during the sentencing hearing and incorporated that advisement into its sentencing entry with the following language:

The Court further notified Defendant that “Post Release Control” is mandatory in this case for three (03) years as well as the consequences for violating conditions of post release control imposed by Parole Board under Revised Code §2967.28. The Defendant is ordered to serve as part of this sentence any term for violation of that post release control.

(Sentencing Entry from August 17, 2011).

The Fifth District Court of Appeals found that the language in the sentencing

entry was not sufficient to impose valid PRC and reversed his PRC sentence on August 24, 2015. *State v. Grimes*, 2015-Ohio-3497 (5th Dist.). However, just a few days prior to finding that Grimes's PRC was void, the Fifth District found that the same language was sufficient to impose PRC in *State v. Moore*, 2015-Ohio-3435 (5th Dist.). Therefore, on August 26, 2015, the State requested that the Fifth District hold an *en banc* consideration to resolve these inconsistent rulings. Also, the State requested an *en banc* consideration on *State v. Kepler*, 2015-Ohio-3291(5th Dist.), which was decided on August 14, 2015, just days prior to *Moore*, where PRC was found void with the same or similar language as contained in the *Moore* and *Grimes* sentencing entries.

The Fifth District held an *en banc* consideration consisting of the entire appellate panel, but ultimately was unable to concur in a decision. (*En Banc* Judgment Entry on January 11, 2016). Without a clear decision, the original ruling of the panel in Appellee's case remains intact pursuant to App.R. 26(A)(2). The appellate panel found the same in the *Kepler en banc* consideration. Therefore, the inconsistent rulings are still in effect and the Fifth District is now split on the issue.

The State filed a Notice of Appeal with the Supreme Court of Ohio on February 11, 2016. This Court accepted jurisdiction to hear this appeal on March 9, 2016.

ARGUMENT

Standard of Review:

De Novo review is the appropriate standard of review for questions of law and statutory interpretation. *See State v. Nichols*, 2009 Ohio App. LEXIS 2681, 22; and *State v. Sufronko*, 105 Ohio App. 3d 504, 506 (1995). Additionally, this case arises from conflicting decisions out of the Fifth Appellate District, wherein an appellate panel was unable to concur in a decision in an *en banc* consideration hearing. Under a *de novo* standard of review, this Court owes no deference to the lower court's decision and analysis.

Proposition of Law No. I:

Proposition of Law No. I: To impose valid post release control, the language in the sentencing entry may incorporate the advisements given during the sentencing hearing by referencing the post release control sections of the Ohio Revised Code and do not need to repeat what was said during the sentencing hearing.

a. **PRC Notification per R.C. §2929.19 Statute:**

The Ohio Revised Code ("R.C.") does not require that a trial court recite or include any specific language in the sentencing entry when imposing PRC on a defendant. Instead, the Ohio Revised Code says that the trial court only needs to notify the defendant of their supervision under the Adult Parole Board and also that any violation of PRC could result in additional time up to one half of the defendant's original sentence. R.C. §§2929.19(B)(2)(c) and (e). A further look at the Ohio Revised Code demonstrates that the legislature does not require, nor intended for a trial court to have any requirement to include that language in the sentencing entry.

R.C. §2929.19 deals with the sentencing hearing and what a trial court must do at the sentencing hearing. R.C. §2929.19(B)(2) says “[s]ubject to division (B)(3) of this section, if the sentencing court determines *at the sentencing hearing* that a prison term is necessary or required, the court shall do all of the following:” (Emphasis added). Then the statute goes on to list some of the things that the court shall do: notify defendants about their supervision under PRC, notify the defendants about the consequences of violating PRC, and list what information shall be included in the sentencing entry.

b. PRC Notification per Case Law:

The law on PRC notification has been developing over time, and the case law has supported the Ohio Revised Code. The standard on PRC notification has been that the sentencing hearing is where the court must notify the defendant about the consequences of violating PRC, and then that notification must be incorporated into the sentencing entry. *State v. Jordan*, 104 Ohio St.3d 21, 25 (2004) (“a trial court is required to notify the offender at the sentencing hearing about postrelease control and is further required to incorporate that notice into its journal entry imposing sentence”); *see also State v. Qualls*, 131 Ohio St.3d 499, 504 (2012) (“a trial court must incorporate into the sentencing entry the postrelease-control notice to reflect the notification that was given at the sentencing hearing”); *State v. Singleton*, 124 Ohio St. 3d 173, 177 (2009) (“because the separation-of-powers doctrine precludes the executive branch of government from impeding the judiciary’s imposition of a sentence, the Adult Parole Authority may impose postrelease-control sanctions only if a trial court incorporates postrelease control into its original sentence”); *Hernandez v. Kelly*, 108 Ohio St. 3d 395, 397 (2006) (“The trial court in Hernandez’s case committed error because it did not notify him at his sentencing hearing

that he would be subject to mandatory postrelease control and did not incorporate postrelease control into its sentencing entry”).

While the sentencing entry does not need to *repeat* what occurred in the hearing, it must correctly *reflect* what occurred. *State v. Qualls*, 131 Ohio St.3d 499, 506 (2012) (emphasis added).

Then came *Ketterer*, which has been interpreted by some lower courts to say that more than mere incorporation is required.

c. *State v. Ketterer*:

In *Ketterer*, a number of issues existed regarding the defendant’s resentencing, but specifically he claimed that he was not properly notified of PRC during his sentencing hearing and it was not incorporated into his sentencing entry. *State v. Ketterer*, 126 Ohio St. 3d 448, 460, 2010-Ohio-3831, 935 N.E.2d 9 (2010). The trial court in *Ketterer* issued a nunc pro tunc entry to correct the PRC omissions. This Court found that PRC was not properly imposed on *Ketterer* for a number of reasons. First, whether terms were mandatory or not and which counts PRC was imposed on was incorrect. Second, the trial court did not hold a hearing “before a nunc pro tunc entry [was] journalized to correct a sentence that fails to properly impose a term of postrelease control.” *State v. Ketterer*, 126 Ohio St. 3d 448, 463, 2010-Ohio-3831, 935 N.E.2d 9 (2010).

Additionally, the Court addressed mistakes that even *Ketterer* did not raise. One such error was the nunc pro tunc entry regarding PRC:

The *nunc pro tunc entry* contains another error, which *Ketterer* does not raise. The *nunc pro tunc entry* does not state that *Ketterer* was informed

that if he violated his supervision or a condition of postrelease control, the parole board could impose a maximum prison term of up to one-half of the prison term originally imposed, which here is an aggregate 11 years. See R.C. 2929.19(B)(3)(e). Ketterer was correctly advised of this condition of postrelease control during the resentencing hearing.

However, the *nunc pro tunc* entry incorrectly states, "The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and *any prison term* for violation of that post release control." Thus, the *nunc pro tunc* entry should be amended to incorporate the correct language of this rule. See R.C. 2929.191(B)(1).

State v. Ketterer, 126 Ohio St.3d 448, 463 (2010) (emphasis in original and added).

Some courts have used *Ketterer* to support a claim that specific language is required in the sentencing entry in order to impose valid PRC. Thus, incorporation by reference to the Ohio Revised Code section has been found insufficient in these courts. The Fifth District split has arisen because of a case that adopted this approach.

d. The Fifth District: *Richard-Bey* and *Grimes*:

In the Fifth District Court of Appeals, *Ketterer* has been cited to support the position that specific language regarding the consequences of violating PRC is required in the sentencing entry. The first case to rely on *Ketterer* from the Fifth District is *State v. Richard-Bey*, 2014-Ohio-2923 (5th Dist.). *Richard-Bey* dealt with PRC and the term that was imposed, but like *Ketterer*, addressed an issue not originally raised regarding insufficient consequence language in the sentencing entry.

The case was decided in 2014, and it reads in pertinent part:

Appellant was not "informed that if he violated his supervision or a condition of post-release control, the parole board could impose a maximum prison term of up to one-half of the prison term originally imposed" pursuant to R.C. 2929.19(B)(3)(e) [now R.C. 2929.19(B)(2)(e)].

Id. at ¶17.

In *Grimes*, Defendant-Appellee conceded that he was properly notified of PRC at the sentencing hearing, but claimed that the sentencing entry did not contain the requisite language to impose valid PRC. His sentencing entry read:

The Court further notified the Defendant that “**Post Release Control**” is **mandatory** in this case for **three (03) years** as well as the consequences for violating conditions of post release control imposed by Parole Board under Revised Code §2967.28. The Defendant is ordered to serve as part of this sentence any term for violation of that post release control.

(Sentencing Entry from August 17, 2011) (emphasis in original).

The Fifth District relied on *Richard-Bey* and *Ketterer* in deciding the Defendant-Appellee’s case in *State v. Grimes*, 2015-Ohio-3497 (5th Dist.). The Fifth District found that the entry was silent as to the consequences of violating PRC, stating: “The trial court failed to inform Appellant if he violated his supervision or a condition of post-release control, the parole board could impose a maximum prison term of up to one-half of the prison term originally imposed.” *Id.* at ¶12.

e. Incorporation Not Duplication:

The appropriate standard for sentencing entries to impose valid PRC is incorporation, not duplication, of the notification of the sentencing hearing. Specific language used in the hearing need not be duplicated or repeated in the sentencing entry.

This Court has said “[b]ut our main focus in interpreting the sentencing statutes regarding postrelease control has always been on the notification itself and not on the sentencing entry.” *State v. Qualls*, 131 Ohio St.3d 499, 504 (2012); *citing State v. Jordan*, 104 Ohio St.3d 21, 27 (2004). Furthermore, this Court has ruled that in order to properly impose PRC, the trial court must notify the defendant of PRC, its supervision, and consequences for its violation at the sentencing hearing, and then the court must incorporate that notification in the sentencing entry. *Id.* at 24; *see also State v. Qualls*, 131 Ohio St.3d 499, 504 (2012); *State v. Singleton*, 124 Ohio St. 3d 173, 177 (2009); *Hernandez v. Kelly*, 108 Ohio St. 3d 395, 397 (2006).

“Incorporate” is defined as “to unite or work into something already existent so as to form an indistinguishable whole.” Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/incorporate> (last accessed May 12, 2016). “Incorporate” does not mean “repeat” or “duplicate”.

And even the decision in *Ketterer* does not undermine an incorporation standard. *Ketterer* says, “the nunc pro tunc entry should be amended to *incorporate* the correct language of this rule. See R.C. 2929.191(B)(1).” *Ketterer*, 126 Ohio St.3d at 463 (Emphasis added). Furthermore, the decision in *Ketterer* was specifically talking about a nunc pro tunc entry and cited to R.C. §2929.191(B)(1), which also deals specifically with nunc pro tunc entries of sentences that were

imposed prior to July 11, 2006. Cases that are not dealing with nunc pro tunc entries on sentences prior to July 11, 2006, are governed by R.C. §2929.19(B)(2)(e), which does not specify that the “up to one-half the original sentence” language must be put in the sentencing entry.

Therefore, the difference between R.C. §2929.19(B)(2)(e) and R.C. §2929.191(B)(1) is dispositive in this case as R.C. §2929.19(B)(2)(e) does not require specific consequence language in the sentencing entry, but R.C. §2929.191(B)(1) reads:

If, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B) (2)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction *the statement 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 section 2929.19 of the Revised Code, 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 as part of the sentence a prison term of up to one-half of the stated prison term originally imposed upon the offender.

(Emphasis added). Therefore, in cases where the sentence occurred after July 11, 2006, R.C. §2929.191(B)(1) does not apply, these cases are distinguished from *Ketterer*, and *Ketterer* does not control.

Defendant-Appellee's PRC was imposed in 2011, he was provided proper notification during the sentencing hearing, and his case deals with a sentencing entry, not a nunc pro tunc entry.

Therefore, his PRC should not have been found void pursuant to *Ketterer*. Furthermore, the decision of *Richard-Bey* oversteps what *Ketterer* actually says, and breaches the standard of incorporation established by the Ohio Revised Code and by case law from this Court.

f. Legislative Intent:

A final look at the legislative intent of the General Assembly reinforces that *Ketterer*'s application has been overextended by the lower courts' use of it to alter or destroy the incorporation standard.

The cornerstone of statutory construction and interpretation is legislative intent. *See State v. Jordan*, 733 N.E.2d 601, 605 (2000). "But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation." *Sears v. Weimer*, 55 N.E.2d 413, 415 (1944) (citation omitted). "Where a statute is found to be subject to various interpretations, however, a court called upon to

interpret its provisions may invoke rules of statutory construction in order to arrive at the legislative intent.” *Meeks v. Papadopulos*, 404 N.E.2d 159, 162 (1980).

The General Assembly provides two rules of statutory interpretation to aid courts in their decisions. The first is to look at the common and technical usage of the words in the statute. R.C. §1.42. And the second is to determine the intent of the legislature by considering the object sought to be attained and the consequences of the interpretations proposed by the parties. R.C. §1.49; *See Symmes Twp. Bd. of Trs. v. Smyth*, 721 N.E.2d 1057 (2000).

The plain language in R.C. §2929.19(B)(2)(e) and R.C. §2929.191(B)(1) are distinctly different. The language regarding the consequences of violating PRC is required during the notification during a sentencing hearing under R.C. §2929.19(B)(2)(e), but under R.C. §2929.191(B)(1) the consequence language is required in the nunc pro tunc entry where a defendant was sentenced to PRC prior to July 11, 2006, and was not provided the proper hearing notification and entry incorporation.

Additionally, the object of the statutes is to notify offenders that violating PRC has consequences and they can receive up to one half their original sentence for violations. This is best achieved during a sentencing hearing, where the offender is personally present in the courtroom and can ask questions and receive individual-specific explanation if required. However, in a nunc pro tunc entry situation, the notification during the sentencing hearing was already insufficient, and so the entry must contain more of the notification with specific language.

Therefore, the way that *Ketterer* has been interpreted to support Defendant-Appellee's claim that his PRC is void due solely to his sentencing entry undermines the legislative intent of the General Assembly and the incorporation standard established by case law from this Court.

CONCLUSION

THEREFORE, the State-Appellant respectfully requests that this Court find that the appropriate standard for PRC sentencing entries is incorporation of the notification from the sentencing hearing, and that specific language regarding the consequences of violating PRC is not required to impose valid PRC. Further, the State-Appellant requests that this Court reverse and remand this case back to the Fifth District Court of Appeals to rule consistent with this standard.

Respectfully submitted,
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Muskingum County Prosecuting Attorney

/s Gerald Anderson

GERALD V. ANERSON II 0092567
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular US mail on this ____ day of May, 2016, to Stephen P. Hardwick, at 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, Counsel for Defendant-Appellee.

/s Gerald Anderson

GERALD V. ANDERSON II 0092567
Assistant Prosecuting Attorney

APPENDIX

A

IN THE SUPREME COURT OF OHIO
2016

STATE OF OHIO,

Case No.

Plaintiff-Appellant,

-vs-

On Appeal from the
Fifth District Court
of Appeals, Muskingum
County

BRADLEY E. GRIMES,

Court of Appeals
Case No. CT2015-0026

Defendant-Appellee

NOTICE OF APPEAL

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NOTICE OF APPEAL OF PLAINTIFF-APPELLANT STATE OF OHIO

Plaintiff-appellant, the State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Muskingum County Court of Appeals, Fifth Appellate District, entered in *State v. Grimes*, Court of Appeals No. CT2015-0026, on August 24, 2015. Further, the State of Ohio, requested an en banc consideration on August 26, 2015, pursuant to Appellate Rule 26(A)(2), which was granted. The Fifth District filed an entry for their en banc consideration on January 11, 2016, wherein they stated “a majority of the full-time judges of the appellate district is unable to concur in a decision.”

The State of Ohio invokes the jurisdiction of the Supreme Court on the grounds that the case involves questions of public or great general interest as would warrant further review by this Court. Further, the case involves a felony and warrants the granting of leave to appeal.

Respectfully submitted,

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Muskingum County Prosecuting Attorney

/s Gerald Anderson

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Assistant Prosecuting Attorney

Counsel for Plaintiff-Appellant

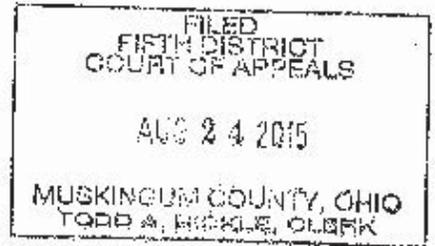
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular US mail on this ____ day of February, 2016, to Kristopher A. Haines, at 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, Counsel for Defendant-Appellee.

/s Gerald Anderson

GERALD V. ANDERSON II 0092567
Assistant Prosecuting Attorney

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT



STATE OF OHIO

Plaintiff-Appellee

-vs-

BRADLEY E. GRIMES

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Craig R. Baldwin, J.

B

Case No. CT2015-0026

OPINION

(22/217-222)

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Case No. CR2013-0198

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

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Hoffman, J.

{¶1} Defendant-appellant Bradley E. Grimes appeals the April 20, 2015 Journal Entry entered by the Muskingum County Court of Common Pleas, which denied his motion to vacate judicial sanction sentence. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE

{¶2} On August 15, 2011, Appellant was convicted of one count of robbery and one count of vandalism, and sentenced to an aggregate term of imprisonment of eighteen months in Case No. CR2011-0150. The trial court memorialized the convictions and sentence via Entry filed August 17, 2011. Appellant completed his prison term and was released on December 30, 2012. He was placed on post-release control for three years.

{¶3} On September 4, 2013, the Muskingum County Grand Jury indicted Appellant on two counts of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A), felonies of the fourth degree, in Case No. CR2013-0198. Appellant ultimately pled guilty to Count One of the Indictment. The State dismissed Count Two. Via Entry filed January 7, 2014, the trial court sentenced Appellant to a term of imprisonment of one year, and classified him as a Tier II sex offender. The trial court also imposed a judicial sanction sentence equal to the time remaining on Appellant's post-release control term. The trial court ordered the sentence be served consecutive to the one-year sentence in Case No. CR2013-0198.

{¶4} On April 16, 2015, Appellant filed a motion to vacate judicial-sanction sentence, asserting post-release control in Case No. CR2011-0150 was not properly

imposed; therefore, void. The State filed a memorandum contra. Appellant filed a reply. Via Journal Entry filed April 20, 2015, the trial court denied Appellant's motion.

{15} It is from that entry Appellant appeals, raising the following assignment of error:

{16} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MR. GRIME'S MOTION TO VACATE HIS VOID JUDICIAL-SANCTION SENTENCE."

{17} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part the following:

(E) Determination and judgment on appeal

The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form.

The decision may be by judgment entry in which case it will not be published in any form.

{18} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association*, 11 Ohio App.3d 158 (10th Dist.1983).

{19} This appeal shall be considered in accordance with the aforementioned rules.

{¶10} In his sole assignment of error, Appellant contends the trial court erred in denying his motion to vacate judicial sanction sentence as his post-release control in Case No. 2011CR-0150 was not properly imposed; therefore, was void. Specifically, Appellant submits the trial court failed to properly notify him about post-release control.

{¶11} The August 17, 2011 Entry in Case No. CR2-11-0150 provided:

The Court further notified [Appellant] that "**Post Release Control**" is **mandatory** in this case for three (03) years as well as the consequences for violating conditions of post release control imposed by Parole Board under Revised Code 2967.28. [Appellant] is ordered to serve as part of this sentence any term for violation of that post release control.

{¶12} Although the entry notified Appellant post-release control was mandatory for three years, the entry is silent as to the consequences of violating post-release control. The trial court failed to inform Appellant if he violated his supervision or a condition of post-release control, the parole board could impose a maximum prison term of up to one-half of the prison term originally imposed. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 77–79; *State v. Richard-Bey*, 5th Dist. App. Nos. CT2014–0012, CT2014–0013, 2014-Ohio-2923. A sentence is void if the court fails to follow the statutory mandates to impose post-release control. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085.

{¶13} We find the trial court erred in denying Appellant's motion to vacate judicial sanction sentence based upon the aforementioned case law.

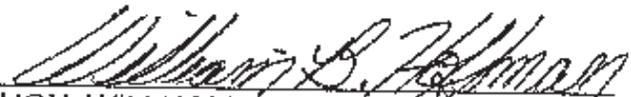
{¶14} Appellant's sole assignment of error is sustained.

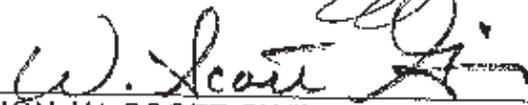
{¶15} The judgment of the Muskingum County Court of Common Pleas is reversed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur


HON. WILLIAM B. HOFFMAN


HON. W. SCOTT GWIN


HON. CRAIG R. BALDWIN

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS
AUG 24 2015
MUSKINGUM COUNTY, OHIO
TODD A. BUCKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

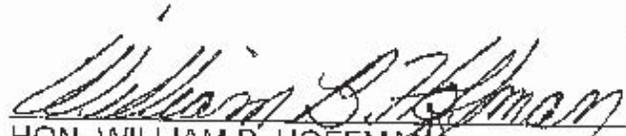
BRADLEY E. GRIMES

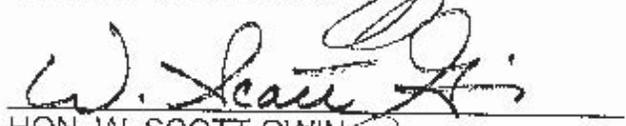
Defendant-Appellant

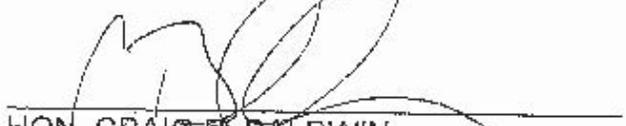
JUDGMENT ENTRY

Case No. CT2015-0026

For the reasons stated in our accompanying Opinion, the judgment of the Muskingum County Court of Common Pleas is reversed. Costs to Appellee.


HON. WILLIAM B. HOFFMAN


HON. W. SCOTT GWIN


HON. CRAIG R. BALDWIN

C

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS

JAN 11 2016

MUSKINGUM COUNTY, OHIO
TODD A. NICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRADLEY E. GRIMES

Defendant-Appellant

JUDGMENT ENTRY

(22/168-470)

CASE NO. CT2015-0026

This matter came before the Court upon the State of Ohio's application for en banc consideration filed on August 26, 2015. Defendant filed a memorandum in opposition on August 31, 2015. The State of Ohio filed a reply on September 15, 2015.

In the above-captioned case, we found that, based upon the language contained in the trial court's sentencing entry, defendant's post-release control was void because the trial court's sentencing entry was silent as to the consequences of violating post-release control. The State of Ohio argues that the above-captioned decision is in conflict with our decision in *State v. Moore*, 5th Dist. Muskingum No. CT2015-0027, 2015-Ohio-3435, in which we found the same language in the sentencing entry, coupled with the presumption of regularity regarding the oral notification during the sentencing hearing, was sufficient to give the defendant notice of the post-release control sanction and thus the post-release control was valid.

Appellate Rule 26(A)(2) provides that, "upon a determination that two or more decisions of the court * * * are in conflict, a majority of the en banc court may order that

an appeal or other proceeding be considered en banc." Further, that en banc consideration will be ordered only when "necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed." *Id.* The en banc court consists of "all fulltime judges of the appellate district who have not recused themselves or otherwise been disqualified from the case." *Id.*

Upon review, we find that a conflict exists between the panel decision in this case and our decision in *State v. Moore*. Accordingly, we GRANT en banc consideration in this matter.

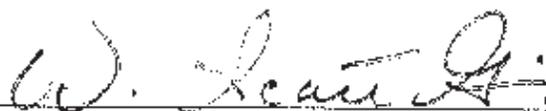
Thus, this Court convened an en banc conference in accordance with App.R. 26(A)(2) as to the conflict between the above-captioned case and *State v. Moore*.

However, a majority of the full-time judges of the appellate district is unable to concur in a decision.

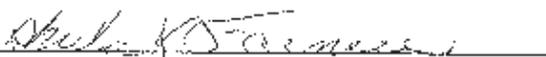
Muskingum County, Case No. CT2015-0026

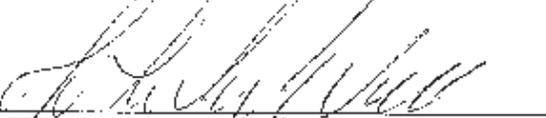
Accordingly, pursuant to App.R. 26(A)(2), the decision of the original panel remains the decision in this case.

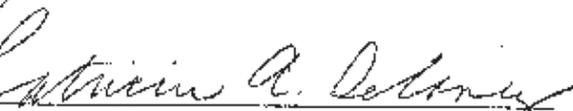
IT IS SO ORDERED.


HON. W. SCOTT GWIN


HON. WILLIAM B. HOFFMAN


HON. SHEILA G. FARMER


HON. JOHN W. WISE


HON. PATRICIA A. DELANEY


HON. CRAIG R. BALDWIN