

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO

CASE NO. 2016-0215

Plaintiff-Appellant

v.

Bradley E. Grimes

Defendant-Appellee

ON APPEAL FROM MUSKINGUM
COUNTY COURT OF APPEALS, FIFTH
APPELLATE DISTRICT

COURT OF APPEALS CASE NO.
CT2015-0026

BRIEF OF AMICUS CURIAE
CUYAHOGA COUNTY PROSECUTOR'S OFFICE
IN SUPPORT OF APPELLANT STATE OF OHIO

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**STATEMENT OF INTEREST OF AMICUS CURIAE OF THE CUYAHOGA COUNTY
PROSECUTOR'S OFFICE**

The Cuyahoga County Prosecutor's Office offers this amicus brief in support of the State of Ohio and urges this Court to reverse the decision of the Fifth District Court of Appeals in *State v. Grimes*, 5th Dist. Muskingum No. CT2015-0026, 2015-Ohio-3497, and to hold that a judgment entry that advises that post-release control has been imposed pursuant to R.C. §2967.28 is sufficient to confer upon the Adult Parole Authority the authority to impose a term of post-release control upon an offender upon release from prison.

The trial courts in Cuyahoga County look to the Eighth District Court of Appeals and this Honorable Court for guidance regarding this issue. Particularly: What must a trial court incorporate into its sentencing entry in order to validly impose a term of PRC onto an offender? Is it sufficient that the judgment entry mentions that PRC is imposed as part of the sentence? Or must the sentencing entry not only impose PRC, but also reiterate all the consequences that may occur upon a violation of PRC that it had already advised the offender on at sentencing?

Between the years 2010-2015, Cuyahoga County has committed 19,694 offenders to prison. Ohio Department of Rehabilitation and Correction, *DRC DataSource Reports – DRC Commitment Reports*, <http://www.drc.ohio.gov/web/Reports/reports12.asp> (accessed Apr. 26, 2016). In 2014, roughly 1,400 of these incarcerated offenders were violent offenders. In 2015, 1,378 violent offenders were incarcerated. The Cuyahoga County Prosecutor's Office, and the State of Ohio in general, have an overriding interest in ensuring that when these offenders are released from prison they are supervised by the Adult Parole Authority. The Eighth District's decisions in *Mace* and *Vicarro* have resulted in multiple violent offenders being let loose upon our society unsupervised.

As such, the Cuyahoga County Prosecutor's has an overriding interest in urging this Honorable Court to reverse the decision of the Fifth District Court of Appeals in *State v. Grimes*, 5th Dist. Muskingum No. CT2015-0026, 2015-Ohio-3497, and to hold that a judgment entry that advises that PRC has been imposed pursuant to R.C. §2967.28 is sufficient to confer upon the Adult Parole Authority the authority to impose a term of PRC upon an offender, upon the offender's release from prison.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae adopts and incorporates by reference the Statement of the Case and Statement of Facts as set forth by the Appellant, the State of Ohio, in its merit brief. Amicus also includes these additional facts regarding how this particular issue has affected the trial courts and the administration of justice in Cuyahoga County.

For years the Eighth District Court of Appeals had held that post-release control is validly imposed when a trial court's sentencing entry imposes post-release control and references the post-release control statute. *See State v. Hill*, 8th Dist. Cuyahoga No. 96923, 2012-Ohio-2306 (upholding a judgment entry that stated that post-release control was for the "maximum period allowed for [a second-degree felony] under R.C. 2967.28.") *See, also, State v. Smith*, 8th Dist. Cuyahoga No. 99428, 2013-Ohio-3154. Pursuant to this, a trial court was not required to repeat the specific period of time that an offender was subject to post-release control ("PRC"), nor place the consequences of violating post-release control in its sentencing entry. So long as the defendant was advised of the consequences of violating PRC on the record, the trial court was not required to repeat these advisements, word-for-word, in its sentencing entry. This interpretation is consistent with a number of other appellate courts in the state. *See State v. Clark*, 2nd Dist. Clark No. 2012 CA 16, 2013-Ohio-299 (holding that a citation to R.C. § 2967.28 in a journal entry is

sufficient for providing notice of the consequences for violating conditions of post-release control); *State v. Darks*, 10th Dist. Franklin No. 12 AP-578, 2013-Ohio-176, ¶ 13 (holding that post-release control is not void “where the sentencing entry does not contain verbatim recitation notifying appellant of the consequences of post-release control.”); *State v. Ball*, 5th Dist. Licking No. 13-CA-17, 2013-Ohio-3443; *State v. Murray*, 979 N.E.2d 831, 2012-Ohio-4996 (6th Dist.).

As a matter of course, relying on these cases, at the sentencing hearing trial courts in Cuyahoga County have advised offenders on the record that post-release control was part of their sentence, and advised them of the consequences of violating post-release control; the court would then journalize the notification in its sentencing entry by citing to R.C. §2967.28, notifying the offender that he would be placed on post-release control for the maximum period allowed for the offense which he was convicted. Since neither the specific length of post-release control, nor the consequences of violating post-release control were required to be incorporated into the court’s sentencing entries, trial courts would not place them there, since advisement of the consequences at the sentencing hearing itself was sufficient to comply with R.C. §2929.19(B).

Things took a strong turn with the Eighth District’s *en banc* decision in *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036. In *Mace*, the Eighth District held that the specific length of post-release control must be included in the sentencing entry for post-release control to be validly imposed. Prior to *Mace*, the Eighth District had also begun to require that the sentencing entry must also contain the consequences of violating post-release control. *State v. Viccaro*, 8th Dist. Cuyahoga No. 99816, 2013-Ohio-3437. Requiring these additional notes to be included into the sentencing entry has proved to be problematic regarding inmates that were placed on PRC well before the decisions in *Mace* and *Viccaro* were rendered; ultimately leading to a large number of violent offenders being released back into society unsupervised. Prior to *Mace*, most trial courts,

having relied on the Eighth District's prior precedent, did not incorporate the specific term of post-release control, nor the consequences of violating post-release control into their sentencing entries, since a notice of post-release control and a reference to R.C. §2967.28 was sufficient to give the Adult Parole authority the power to place an offender on PRC. *See Hill, supra*.

As could be expected, since *Mace* and *Viccaro* have been decided, multiple offenders relying on these cases have had their terms of post-release control terminated; forcing the Adult Parole Authority to release these often dangerous felons back into the community unsupervised. *See e.g. State v. Johnson*, 8th Dist. Cuyahoga No. 103225, 2016-Ohio-404 (terminating an offender from PRC that was convicted of attempted murder, aggravated burglary, and having weapons while under disability from post-release control); *State v. Lawson*, 8th Dist. Cuyahoga No. 100626, 2014-Ohio-3498 (terminating an offender convicted of Rape and Gross Sexual Imposition from post-release control, after the offender had reoffended by failing to provide a change of address); *State v. Pyne*, 8th Dist. Cuyahoga No. 100580, 2014-Ohio-3037 (terminating a sexual offender from PRC since the trial court's judgment entry did not contain a list of the consequences of violating PRC after offender failed to verify his address); *State v. Elliott*, 8th Dist. Cuyahoga No. 100404, 2014-Ohio-2062 (terminating an offender convicted of Aggravated Robbery from PRC); *State v. Mills*, 8th Dist. Cuyahoga No. 100417, 2014-Ohio-2188 (terminating an offender convicted of Aggravated Robbery with firearm specifications and drug trafficking from PRC); *State v. Middleton*, 8th Dist. Cuyahoga No. 99979, 2013-Ohio-5591 (terminating an offender convicted of Voluntary Manslaughter from PRC); *State v. Viccaro*, 8th Dist. Cuyahoga No. 99816, 2013-Ohio-3437 (terminating an offender convicted of Kidnapping and Aggravated Theft from PRC); *State v. Stowder*, 8th Dist. Cuyahoga No. 103156, 2015-Ohio-5270 (terminating an offender convicted of Robbery, two counts of Aggravated Robbery and two counts of Attempted

Murder from PRC); *State v. Bonner*, 8th Dist. Cuyahoga No. 103027, 2015-Ohio-5152 (terminating an offender convicted of four counts of rape, five counts of gross sexual imposition, eight counts of kidnapping, seven counts of importuning, and five counts of disseminating matter harmful to juveniles from PRC); *State v. Cooper*, 8th Dist. Cuyahoga No. 103066, 2015-Ohio-4505 (terminating an offender convicted of felony drug possession from PRC); *State v. Martin*, 8th Dist. Cuyahoga No. 102336, 2015-Ohio-2865 (terminating an offender convicted of Burglary and Escape from PRC); *State v. Chung*, 8th Dist. Cuyahoga No. 102092, 2015-Ohio-1959 (terminating an offender convicted of Aggravated Arson and Felonious Assault from PRC); *State v. Rodriguez*, 8th Dist. Cuyahoga No. 101832, 2015-Ohio-1835 (terminating an offender convicted of Aggravated Robbery from PRC); *State v. Bradford*, 8th Dist. Cuyahoga No. 102011, 2015-Ohio-1385 (terminating an offender convicted of Rape, Felonious Assault, and Domestic violence from PRC); *State v. Negron*, 8th Dist. Cuyahoga No. 100966, 2014-Ohio-5427. (upholding the dismissal of an Escape charge since the offender was not properly on post-release control).

These violent offenders were given notice that PRC may be imposed upon being released from prison, and of the consequences of violating PRC at the time of their sentencing hearing. Nonetheless, they were released back into the community, unsupervised, simply because the trial court did not make a word-for-word recitation of the notice in its sentencing entry.

LAW AND ARGUMENT

PROPOSITION OF LAW: PROPOSITION OF LAW: 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. The Adult Parole Authority has authority to impose a period of postrelease control upon a prisoner, so long as the trial court includes postrelease control as a part of its sentence.

In the State of Ohio, postrelease control (“PRC”) is governed by R.C. §2967.28. This section of the code provides for periods of PRC that an offender will be on following a prison term for certain offenses, sanctions, and the proceedings that occur upon a violation of PRC. R.C. §2967.28(D)(1) provides that prior to release from prison, the parole board has the authority to impose upon a prisoner “one or more postrelease control sanctions to apply during the prisoner’s period of post-release control.” Whether such a term of PRC is discretionary or mandatory is governed by R.C. §2967.28(B)/(C).

This Honorable Court has recognized that “unless a trial court includes PRC in its sentence, the Adult Parole Authority is without authority to impose it.” *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶ 19, citing *Woods v. Telb*, 89 Ohio St.3d 504, 2000-Ohio-171, 733 N.E.2d 1103. This Court reasoned that “because the separation-of-powers doctrine precludes the executive branch of government from impeding the judiciary’s ability to impose a sentence, the problem of having the Adult Parole Authority impose postrelease control at its discretion is remedied by a trial court incorporating postrelease control in its original sentence.” *Jordan*, at ¶ 19. As a result, if a trial court has decided to impose a prison term upon an offender, the trial court is required to notify the offender at the sentencing hearing of PRC and to incorporate PRC into its

sentencings entry, “which thereby empowers the executive branch of government to exercise its discretion.” *Id.*, at ¶ 22.

The question before this Court becomes: When is a trial court’s sentencing entry sufficient to empower the Adult Parole Authority to impose PRC upon a prisoner upon his release from prison? The relevant sentencing statutes, in conjunction with this Honorable Court’s PRC precedent, suggest that in order to empower the Adult Parole Authority with the authority to impose PRC, a trial court’s sentencing entry is sufficient if the language in the sentencing entry advises that PRC is a part of the sentence and references the relevant PRC statute. In doing so, this is sufficient to restrict the executive branch from impeding upon the judiciary’s ability to impose a sentence. Requiring the trial court to include additional language, such as a reiteration of the consequences of violating PRC, does nothing to further this end.

The Adult Parole Authority (“APA”) is cognizant of this separation of powers issue, as well as of the fact that once a sentence for an offense that carries PRC has been served, “the court can no longer correct sentencing errors and impose post-release control at resentencing.” *State v. Kalinowski*, 8th Dist. Cuyahoga No. 98922, 2013-Ohio-1453, ¶ 9, citing *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 18. As a result, the APA has established a system wherein 120-180 days prior to an offender’s expected release date, the APA reviews the offender’s journal entry to ensure that the trial court properly imposed PRC. If the APA determines that PRC was not properly imposed, it will contact the county prosecutor’s office from where the offender was convicted and advise the prosecutor or the judge that PRC had not been properly imposed. This system allows the State an opportunity to correct the sentencing entry, or to hold a new hearing to correctly impose PRC.

The metric the APA uses to review these judgment entries does not look to see if the judgment entry contains consequences of violating PRC. Instead, the APA looks to see if the judgment entry imposes PRC and references the relevant statute. It is only when the judgment entry does not contain these two components does the APA contact the state. As a result, the Cuyahoga County Prosecutor's Office has never been given notice of a large number of violent offenders that have been released from prison because the APA does not look to see if the consequences of violating PRC before contacting the prosecutor's office. Therefore, the Cuyahoga County Prosecutor's Office has not been given the opportunity to correct the thousands of judgment entries that no longer comport with the Eighth District's shifting interpretation of the PRC statutes.

B. A trial court's sentencing entry is sufficient to empower the Adult Parole Authority to impose a period of postrelease control if the language of the journal entry advises that postrelease control is part of the sentence and references the relevant postrelease control statute.

R.C. §2929.19 governs sentencing hearings in the state of Ohio. At the sentencing hearing, if the trial court determines that a prison term is necessary or required, it is required to notify the offender that he will be supervised during a period of PRC, if a period of PRC is mandatory. R.C. §2929.19(B)(2)(c). If PRC is discretionary, the trial court is required to notify the offender that a term of PRC *may be* imposed upon his release from prison. R.C. §2929.19(B)(2)(d). The trial court is also required at the sentencing hearing to notify the offender of the consequences that he would face if he violates PRC. R.C. §2929.19(B)(2)(e). This Honorable Court has recognized that the duty to notify the offender about PRC at the sentencing hearing "is the same as any other statutorily mandated term of a sentence." *Jordan*, at ¶ 26. As such, any failure to notify an offender at the sentencing hearing of PRC is an error. *Id.* However, there is nothing in R.C.

§2929.19(B)(c)/(d)/(e) that requires the trial court to incorporate a word-for-word recitation of these notifications into its sentencing entry.

This Court has consistently recognized that the “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, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 19, citing *Jordan, supra*, at ¶ 23 (recognizing that the “statutory duty” imposed is “to provide notice of postrelease control at the sentencing hearing.”); *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 26 (stressing the importance of notification); *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶ 52 (stating that the “preeminent purpose” of the statutes is “that offenders subject to postrelease control know at sentencing that their liberty could continue to be restrained after serving their initial sentences.”). As such, “when notification of postrelease control [is] properly given at the sentencing hearing, the essential purpose of notice has been fulfilled * * *.” *Qualls*, at ¶ 24. This court reasoned that “where notification was properly given at the sentencing hearing, there is no substantive prejudice to a defendant if the sentencing entry’s failure to mention postrelease control is remedied through a nunc pro tunc entry.” *Id.*, at ¶ 23.

This Court’s jurisprudence has made it clear, so long as a trial court notifies the offender of PRC and the consequences of violating PRC at the sentencing hearing, the notification purposes of R.C. §2929.19 (B)(2)(c)/(d)/(e) have been fulfilled. The purpose of the trial court incorporating PRC into its sentencing entry is not necessarily for the benefit of the defendant, since the defendant has been sufficiently notified of PRC at the sentencing hearing, but instead it is to empower the executive branch of the government, by and through the Adult Parole Authority, to exercise its discretion to impose a period of PRC upon a prisoner. The imposition of PRC in the sentencing

entry protects the separation-of-powers doctrine, by precluding the executive branch from impeding upon the judiciary's ability to impose a sentence. *See Jordan*, at ¶ 19; *Woods*, at 512-513. By simply incorporating into its sentencing entry that PRC is part of the sentence for a certain period of time, the journal entry sufficiently confers the authority to the APA to impose a term of PRC. Neither R.C. §2929.19(B)(2)(c)/(d)/(e) nor the separation-of-powers doctrine require the sentencing entry to contain anything more. The offender has already received sufficient notice at the hearing itself.

CONCLUSION

The Cuyahoga County Prosecutor's Officer urges this Court to reverse the decision of the Fifth District Court of Appeals in *State v. Grimes*, 5th Dist. Muskingum No. CT2015-0026, 2015-Ohio-3497, and to hold that a judgment entry that advises that post-release control has been imposed pursuant to R.C. §2967.28 is sufficient to confer upon the Adult Parole Authority the authority to impose a term of post-release control upon an offender upon release from prison.

This Honorable Court has made it clear that so long as a trial court notifies the offender of PRC and the consequences of violating PRC at the sentencing hearing, the notification purposes of R.C. §2929.19 (B)(2)(c)/(d)/(e) have been fulfilled. *Qualls, supra*, at ¶ 24. The purpose of incorporating the imposition of PRC in the trial court's judgment entry is to ensure that the executive branch is properly notified that PRC has been imposed. This notification protects the separation of powers, and ensures that the executive branch does not impede upon the judiciary's ability to impose a sentence. *See Jordan, supra*, at ¶ 19.

By simply incorporating into its sentencing entry that PRC is part of the sentence for a certain period of time, the journal entry sufficiently confers the authority to the APA to impose a term of PRC. Neither R.C. §2929.19 (B)(2)(c)/(d)/(e) or the separation-of-powers doctrine require

the sentencing entry to contain anything more. Requiring more does nothing to prevent the executive branch from impeding upon the judiciary's ability to impose a sentence.

It is for these reasons that this Honorable Court to reverse the decision of the Fifth District Court of Appeals in *State v. Grimes*, 5th Dist. Muskingum No. CT2015-0026, 2015-Ohio-3497, and to hold that a judgment entry that advises that post-release control has been imposed pursuant to R.C. §2967.28 is sufficient to confer upon the Adult Parole Authority the authority to impose a term of post-release control upon an offender upon release from prison.

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SERVICE

A copy of the foregoing amicus brief was filed this 23rd day of May, 2016 via the court's electronic filing system and was sent via electronic mail to: Counsel for the State of Ohio, Gerald Anderson at gvanderson@muskingumcounty.org, Counsel for Bradley Grimes, Stephen P. Hardwick at stephen.hardwick@opd.ohio.gov.

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