

**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

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

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INTRODUCTION AND SUMMARY

There is a consistent theme that runs throughout Appellee's merit brief. This theme rests on the incorrect premise that the post-release control ("PRC") notification requirements set forth in R.C. §2929.19(B)(2)(c), (d), and (e) are part of the sentence imposed by the trial court and therefore must be incorporated into the trial court's sentencing entry. However, a simple reading of R.C. §2929.19 reveals that the notifications set forth in §2929.19(B)(2)(c), (d), and (e) are merely notification requirements, and are not part of the sentence imposed by the trial court. R.C. §2929.19 clearly makes a distinction between *sentences imposed* and the *notifications* that a trial court is required to give to an offender at the sentencing hearing. Appellee's argument conflates the notification requirements with the actual sentence that is being imposed.

When an offender violates PRC, the sanction which is imposed upon him is not imposed by the trial court. Instead, these sanctions are imposed by the Adult Parole Authority ("APA"). So long as the offender is notified of these consequences at the time of sentencing, the APA has the authority to place an offender on PRC upon his release from prison. Since the consequences of violating PRC are not imposed as a part of the sentence, they are not required to be placed in the trial court's sentencing entry. Instead, 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 gives notice to the APA that the offender was notified of PRC at the sentencing hearing as required by R.C. §2929.19(B)(2)(c),(d), and (e).

LAW AND ARGUMENT

A. The post-release control notifications set forth in R.C. §2929.19(B)(2)(c),(d), and (e) do not govern the sentencing entry.

R.C. §2929.19 governs sentencing hearings in Ohio. The statute provides that if the trial court determines that a prison term is necessary, the trial court shall:

(a) *Impose* 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; (Emphasis added)

R.C. §2929.19(B)(2)(a).

The statute further provides that at the sentencing hearing, the trial court is required to “notify” a defendant of PRC when appropriate. These PRC notifications are governed by R.C. 2929.19(B)(2)(c),(d), and (e). In contrast with R.C. §2929.19(B)(2)(a), each one of these sections of the statute begin with the word “notify” in lieu of the word “impose.” It provides that the trial court shall:

(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. * * * (Emphasis added)

R.C. §2929.19(B).

In crafting this statute, the General Assembly specifically chose the word notify, instead of the word “impose” in regards to these PRC notifications. If the General Assembly had intended for these notifications to be part of the sentence, they could have used the word “impose” just as they did in R.C. §2929.19(B)(2)(a). They chose not to. The words “impose” and “notify” used throughout the statute are not interchangeable. Appellee’s argument conflates the two. As such, the notifications found in R.C. §2929.19(B)(2)(c),(d), and (e) are notifications that must be made at the hearing, and are not imposed as part of the sentence. In fact, R.C. 2929.19(B)(2)(e) provides that it is the parole board that “imposes” the additional prison term as part of the sentence if the offender violates. (“ . . . 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.” (Emphasis added))

Furthermore, as the Amicus Curiae from the Attorney General and the Franklin County Prosecutor’s Office correctly address in both of their Amicus Briefs, these notification requirements do not govern what must be in the trial court’s sentencing entry. If the General Assembly intended the consequences of violating PRC to be included in the sentencing entry, it easily could have drafted the statutes in such a way. They did not. As such, this Honorable Court has consistently recognized that the “main focus in interpreting the sentencing statutes regarding post-release 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 post-release 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 post-release control know at sentencing that their liberty could continue to be restrained after serving their initial sentences.”). As such, “when notification of post-release control [is] properly given at the sentencing hearing, the essential purpose of notice has been fulfilled * * *.” *Qualls*, at ¶ 24.

As the Franklin County Prosecutor points out in its Amicus Brief, the notifications concerning PRC are analogous to the notifications a trial court must give if an offender is placed on community control sanctions (“CCS”). See Brief of Amicus Curiae Franklin County Prosecuting Attorney Ron O’Brien at pp. 8-9. When a trial court imposes a term of CCS on an offender, the court must notify the offender of the various consequence of violating the terms of CCS, including that “a specific prison term that may be imposed as a sanction for the violation.” R.C. §2929.19(B)(4). Even if the sentencing entry does not include the notification of the prison term, it does not affect the validity of the sentence if proper notice was given at the sentencing hearing. *State v. Batty*, 4th Dist. Ross No. 13CA3398, 2014-Ohio-2826, ¶ 35. Similarly, since the PRC provisions in R.C. §2929.19(B)(2)(c), (d), and (e) are notifications statutes, so long as the offender is properly notified of the consequences of violating PRC at the sentencing hearing, the omission of these consequences from the judgment entry does not affect the validity of the sentence.

B. There is no separation of powers violation if the judgment entry omits the consequences of violating post-release control.

The Cuyahoga County Prosecutor’s Office is cognizant of the separation of powers concerns surrounding PRC. This Honorable Court has recognized that “unless a trial court includes post-release control 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 (“APA”) impose post-release control at its discretion is remedied by a trial court incorporating post-release 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 sentencing entry, “which thereby empowers the executive branch of government to exercise its discretion.” *Id.*, at ¶ 22.

The relevant sentencing statutes, in conjunction with this Honorable Court’s PRC precedent, suggest that in order to empower the APA with the authority to impose PRC as part of the sentence, 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 gives notice to the APA that the offender was notified of PRC pursuant to R.C. §2929.19(B)(2)(c),(d), and (e). Requiring the trial court to include additional language, such as a reiteration of the consequences of violating PRC, does nothing to further this end.

CONCLUSION

The consequences of violating PRC are not imposed by the trial court. Instead, these sanctions are imposed by the Adult Parole Authority upon an offender’s violation of PRC. So long as the offender is notified of these consequences at the time of sentencing, the Adult Parole Authority has the authority to place an offender on PRC upon his release from prison. Since the consequences of violating PRC are not imposed as a part of the sentence, they are not required to be placed in the trial court’s sentencing entry. Instead, 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 gives notice to the APA that the offender was notified of PRC pursuant to R.C. §2929.19(B)(2)(c),(d), and (e).

Respectfully Submitted,
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CERTIFICATE OF SERVICE

A copy of the foregoing reply amicus brief was filed this 1st day of August, 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. A copy of the foregoing reply amicus brief was mailed via U.S. Mail to:

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