[Cite as *State v. Hagens*, 2009-Ohio-6526.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	CASE NOS. 09-MA-2
	)	09-MA-3
JASON HAGENS,	)	
	)	OPINION
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 07CR272, 07CR1399
JUDGMENT:	Reversed and Remanded
APPEARANCES: For Plaintiff-Appellee	Paul Gains Prosecutor Ralph M. Rivera Assistant Prosecutor 21 W. Boardman St., 6th Floor Youngstown, Ohio 44503-1426
For Defendant-Appellant	Attorney Gary L. VanBrocklin P.O. 3537 Youngstown, Ohio 44513-3537

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: December 7, 2009

[Cite as *State v. Hagens*, 2009-Ohio-6526.]
DONOFRIO, J.

{¶1} Defendant-appellant Jason Hagens appeals his 10-year prison sentence received in the Mahoning County Common Pleas Court following guilty pleas to fifteen (15) counts of arson and one (1) count of felonious assault. The sole issue is whether the trial court properly advised Hagens about post-release control.

{¶2} This appeal involves two separate criminal cases. In the first case, on March 1, 2007, a Mahoning County grand jury indicted Hagens on fifteen (15) counts of arson, in violation of R.C. 2909.03(A)(1)(B)(1)(2)(b), fourth-degree felonies, and one (1) count of aggravated arson, in violation of R.C. 2909.02(A)(1)(B)(1)(2), a first-degree felony. In the second case, on November 29, 2007, a Mahoning County grand jury indicted Hagens on one (1) count of felonious assault, in violation of R.C. 2903.11(A)(1)(D), a second-degree felony.

{¶3} Hagens initially pleaded not guilty to all of the charges in both cases and they proceeded to discovery and other pretrial matters. On October 10, 2008, Hagens and plaintiff-appellee, State of Ohio, reached a Crim.R. 11 plea agreement covering both cases. Hagens withdrew his previous not guilty pleas and pleaded guilty to fifteen (15) counts of arson and one (1) count of felonious assault in exchange for the state dismissing the aggravated arson count. On December 10, 2008, the trial court sentenced Hagens to four (4) years in prison for the felonious assault conviction and eighteen (18) months in prison for each of the fifteen (15) arson convictions. The court ordered that sentences on four (4) of the arson counts be served consecutively to each other and consecutive with the term imposed for the felonious assault conviction for an aggregate sentence of ten (10) years in prison. Hagens separately appealed both cases which were consolidated on appeal.

{¶4} Hagens' sole assignment of error states:

{¶5} "THE TRIAL COURT ERRED WHEN IT FAILED TO PROPERLY NOTIFY APPELLANT CONCERNING POST RELEASE CONTROL."

{¶6} Hagens argues that the trial court failed to properly advise him concerning postrelease control. According to Hagens, the trial court used discretionary language to advise him of postrelease control that is mandatory. The

state agrees that the trial court misinformed Hagens on postrelease control and urges remand for resentencing.

{¶7} Hagens pleaded guilty to second-degree felonious assault, which required the imposition of a mandatory three-year postrelease control period. R.C. 2967.28(B)(2). The trial court was required to notify him of the mandatory term of postrelease control.

{¶8} "[I]f a trial court has decided to impose a prison term upon a felony offender, it is duty-bound to notify that offender at the sentencing hearing about postrelease control and to incorporate postrelease control into its sentencing entry, which thereby empowers the executive branch of government to exercise its discretion." *State v. Jordan,* 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶22; R.C. 2929.19(B)(3)(c).

{¶9} If a trial court fails to notify an offender at the sentencing hearing of the mandatory term of postrelease control, the sentence is void and it must be vacated and remanded to the trial court for resentencing. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶16; *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568.

{¶10} At the sentencing hearing in these cases, the trial court relayed the following information concerning postrelease control to Hagens:

{¶11} "I'm obligated to tell you, Mr. Hagens, that upon completion of your sentence, in all likelihood you will be placed on a period of post-release control. It's a mandatory period of supervision on the felonious assault that could last up to five years. A violation on the felonious assault could bring an additional two year prison sentence. A violation on the arson counts could bring up to one half of the stated prison term that I have imposed, and if the violation was a new felony, any sentence on the felony must be served consecutively to any time on post-release control." The judgment entry of sentence for each of the cases contained the following language on postrelease control: "In addition, as part of this sentence, post release control may be imposed up to a maximum period of three (3) years."

{¶12} The language used at both the sentencing hearing and in the judgment entry does not adequately indicate that a three-year term of postrelease control was mandatory. Recently, in addressing the "up to three years" language, this court has stated that this statement indicates that the offender "may be subject to less than three years, possibly even no years, of postrelease control." *State v. Jones*, 7th Dist. No. 06MA17, 2009-Ohio-794, ¶12. Such an advisement does not sufficiently advise an offender of the mandatory nature or period of the postrelease control. Id. at ¶13, citing *State v. Osborne*, 116 Ohio St.3d 1228, 2008-Ohio-261, 880 N.E.2d 921, ¶2 and *State v. Osborne*, 8th Dist. No. 88453, 2007-Ohio-3267, ¶39. Consequently, it cannot be said that the advisements at the sentencing hearing and in the judgment entry in this case are definite statements on the mandatory nature and duration of the postrelease control; the advisements are inadequate.

{¶13} Accordingly, Hagens' sole assignment of error has merit.

{¶14} Based on the resolution of Hagens' sole assignment of error and the state's confession of error, the judgment of sentencing of the trial court is reversed and the matter remanded for resentencing.

Vukovich, P.J., concurs.

Waite, J., concurs.