[Cite as *State v. Collins*, 2025-Ohio-1230.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

STATE OF OHIO,	:	Case Nos. 23CA15
	:	23CA16
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT ENTRY
	:	
FLOYD COLLINS,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 04/01/2025**
	:	

APPEARANCES:

Benjamin E. Fickel, Logan, Ohio, for appellant.

Jennifer M. Graham, Hocking County Prosecuting Attorney, Logan, Ohio for appellee.

Wilkin, J.

{¶1} In this consolidated appeal, Floyd Collins ("Collins") appeals the judgments of the Hocking County Court of Common Pleas in which the trial court revoked judicial release and reimposed a prison term of three years (Case No. 21CR0034) and the trial court sentenced him after he pled guilty to attempted failure to register, in violation of R.C. 2950.04(E), 2923.02 and 2950.099(A)(1)(b)(ii) (Case No. 23CR0024). The trial court ordered that Collins' reimposed three-year prison term be served consecutively to his new conviction in Case No. 23CA0024, for a total aggregate term of six to seven and a half years in prison.

{¶2} After reviewing the parties' arguments, the record, and the applicable law, we find the sentences issued by the trial court are not contrary to law and therefore affirm the trial court's judgment of sentence in both Case No. 21CR0034 and

23CR0024; however, we remand the conviction in Case No. 23CR0024 for the limited purpose of issuing a nunc pro tunc entry consistent with this opinion.

BACKGROUND

{¶3} On March 12, 2021, a Hocking County Grand Jury returned an indictment in Case No. 21CR0034 charging Collins with failure to register, a first-degree felony in violation of R.C. 2950.04(E) and R.C. 2950.99(A)(1)(a)(ii). He subsequently entered a guilty plea to the charge and was sentenced on October 26, 2021. The trial court sentenced Collins to three to four and a half years and noted it would "consider judicial release after nine months." In addition, the court notified Collins at the hearing and in the sentencing entry that he would have mandatory post-release control for a minimum of two years, and a maximum of five years. The court notified Collins at the hearing that if he violated post-release control, he could be sent back to prison, and that if the violation were a new felony, the prison time would be consecutive to the new felony. While the entry includes post-release control notices, it does not indicate any sentences would be consecutive if Collins committed a new felony while on post-release control or judicial release, if granted in the future.

{¶4} On September 20, 2022, consistent with the plea agreement and prior statements of the court, Collins filed a motion for judicial release, which the court granted. According to the judicial release order referring to R.C. 2929.20, the trial court released Collins from prison, placed him on five years of community control, and reserved the right to reimpose a three-year sentence. While both the transcript and entry contain the requisite findings of judicial release in the instance of a first-degree

felony, the trial court did not mention that any possible future felony committed during a judicial release period could result in the imposition of consecutive sentences.

{¶5} Less than six months later on February 10, 2023 in Case No. 23CR0024, Collins was indicted with two counts: Count One: failure to provide notice of change of address, a first-degree felony, in violation of R.C. 2950.05(F)(1) and R.C. 2950.99(A)(1)(b)(ii) and Count Two: failure to register, a first-degree felony, in violation of R.C. 2950.041(E), and R.C. 2950.99(A)(1)(b)(ii). Shortly thereafter, on February 13, 2023, a "Statement of Violation of Community Control" was filed with the court in Case No. 21CR0034, alleging Collins had violated the terms of his judicial release, by being indicted in Case No. 23CR0024 for similar conduct, in addition to failing to report to his probation officer and failing to maintain sobriety.

{¶6} On August 23, 2023, Collins pled to an amended count one, attempted failure to report and also admitted the violation in Case No. 21CR0034. The trial court dismissed count two in Case No. 23CR0024. The court at that time reinstated Collins' three-year sentence on the original case, with 487 days of jail time credit. As to the sentence in Case No. 23CR0024, the trial court sentenced Collins to three to four and a half years in prison and ran that sentence consecutive to the reimposed three-year sentence in Case No. 21CR0034 for an aggregate sentence of six to seven and a half years. During the sentencing hearing and in the sentencing entry, the trial court made the necessary R.C. 2929.14(C)(2) findings regarding consecutive sentences. Collins appeals, asserting one assignment of error.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED ERROR WHEN IT ORDERED A CONSECUTIVE SENTENCE ON REVOCATION OF COMMUNITY CONTROL

BUT FAILED TO NOTIFY APPELLANT THAT A CONSECUTIVE SENTENCE ON REVOCATION OF COMMUNITY CONTROL WAS A POSSIBILITY.

{¶7} In his sole assignment of error Collins claims the trial court erred by ordering his reimposed sentence from judicial release to run consecutively to the new felony he committed while on judicial release. In so doing, Collins argues that when the trial court released him from prison, pursuant to a judicial release motion, it placed him on community control, and was, therefore, required to inform him at the time that he could be subject to consecutive sentences if he committed a new felony while out on judicial release.

{¶8} In response, the State emphasizes that Collins was notified when he was first sentenced in the earlier case that he would be subject to "post-release control" and if he committed a new felony while on post-release control he may have to serve any prison time from his new felony consecutively to any time he received for a violation of his post-release control. The State does not specifically address whether the trial court gave notice of consecutive sentences when it granted Collins judicial release. Instead, the State points out that Collins received extensive notice at the original sentencing hearing that he would receive consecutive sentences if he committed a new offense while on *post-release control.*

{¶9} Further, the State points out that prior to Collins entering a guilty plea in Case No. 23CR0024 and the revocation of his judicial release in Case No. 21CR0034, the record demonstrates Collins was aware he could – and likely would – be subject to consecutive sentences but nonetheless proceeded with entering a guilty plea. The State also explains the trial court made the requisite consecutive sentence findings

pursuant to R.C. 2929.14(C)(4) at the sentencing hearing and in the sentencing entry for both cases.

A. LAW

1. Standard of Review

{¶10} Generally, appellate review of felony sentences employs the standard of review set forth in R.C. 2953.08. *State v. Wright,* 2020-Ohio-5195, ¶ 5 (4th Dist.), citing *State v. Prater,* 2019-Ohio-2745, ¶ 11 (4th Dist.). R.C. 2953.08(G) provides, in pertinent part:

> (2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court. The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law.

State v. King, 2020-Ohio-1512, ¶ 7 (4th Dist.). Thus, an appellate court may vacate or modify a sentence only if the court concludes, by clear and convincing evidence, either the record does not support the trial court's findings under certain statutes, or the sentence is otherwise contrary to law. *Id.* citing *State v. Pierce,* 2018-Ohio-4458, ¶ 7 (4th Dist.), quoting *State v. Marcum*, 2016-Ohio-1002, ¶ 23.

{¶11} "Clear and convincing evidence is that measure or degree of proof * * * which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Marcum at* ¶ 22, quoting *Cross v. Ledford,* 161 Ohio St. 469 (1954), paragraph three of the syllabus. It is more than a mere preponderance of the evidence, but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases. *Id.* The statute does not require the trial court to support its findings by clear and convincing evidence; rather, the court of appeals must clearly and convincingly find that the record does not support the trial court's findings. *State v. Seymour,* 2024-Ohio-5186, ¶ 8 (4th Dist.), citing *State v. Spangler,* 2023-Ohio-2003, ¶ 17 (4th Dist.). " ' " 'In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review.' " ' " *Id.*, quoting *Spangler* at ¶ 17, quoting *Pierce* at ¶ 8 (4th Dist.), quoting *State v. Venes*, 2013-Ohio-1891, ¶ 20-21 (8th Dist.).

2. Judicial Release and Community Control.

{¶12} Addressing Collins' assignment of error necessitates reviewing the "judicial release" and "community control" statutes because they are two distinct legal concepts. "[T]he rules dealing with a violation of community control (R.C. 2929.15) should not be confused with the sections of the Revised Code regarding early judicial release (R.C. 2929.20) even though the language of R.C. 2929.20(I) [now K] contains the term 'community control' in reference to the status of an offender when granted early judicial release." *King* at ¶ 13, quoting *State v. Jones*, 2008-Ohio-2117, ¶ 12 (3rd Dist.) (Citations omitted). Even though "community control sanctions are imposed when judicial release is granted, judicial release is different from and not synonymous

with community control." *State v. Phipps*, 2021-Ohio-258, ¶ 18 (3rd Dist.), quoting *State v. Cox*, 2010-Ohio-3799, fn. 3 (3rd Dist.).

{¶13} "[P]ursuant to R.C. 2920.20, a trial court may grant judicial release upon the motion of an eligible offender who is *currently* serving a term of incarceration." (Emphasis original) *State v. Corder,* 2021-Ohio-2880, ¶ 24 (4th Dist.), quoting *Phipps* at ¶ 21. R.C. 2929.20(K) provides, in pertinent part:

> If the court grants a motion for judicial release under this section, the court shall order the release of the eligible offender, * * * shall place the offender under an appropriate community control sanction, under appropriate conditions, and under the supervision of the department of probation serving the court and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed on the eligible offender * * * as a result of the violation that is a new offense.

If the court grants judicial release, it is bound by the "specific terms of incarceration imposed at the original sentencing hearing." *Corder* at ¶ 24. "This means the offender serves the remainder of the exact term of incarceration that has only been suspended by the grant of judicial release." *Id.,* quoting *State v. Abrams,* 2016-Ohio-5581, ¶ 14 (7th Dist.).

{¶14} In contrast, "[p]ursuant to R.C. 2929.15, a trial court may impose community control sanctions as part of an offender's original sentence." *Phipps* at ¶ 19. If a court imposes community control, it

> shall notify the offender that, if the conditions of the sanction are violated * * the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation * * *." R.C. 2929.19(B)(4). If the offender violates the conditions of community control and the trial court imposes a prison

> term, it "shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing * * *." R.C. 2929.15(B)(3).

Corder at ¶ 23. "The trial court can impose the previously specified prison term or a lesser one, but not a greater one." *Id.* citing *State v. Griffin*, 2017-Ohio-6877, ¶ 18 (4th Dist.) citing *State v. Brooks*, 2004-Ohio-4746, ¶ 22.

{¶15} The sentencing at a judicial release revocation hearing is "much more limited than the sentencing at a community control revocation hearing." *Corder* at ¶ 26. Even so, R.C. 2929.20(K), dealing with judicial release, specifically states "If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed on the eligible offender."

B. ANALYSIS

{¶16} In the instant case, the sentences were not contrary to law for several reasons. First, the trial court initially sentenced Collins to a three-to-four-and-a- half-year sentence at the outset of the initial case. It reserved three years specifically at the time it granted the judicial release. Those sentences are within the permissible range for a first-degree felony. The court also made the requisite findings at the judicial release hearing for first-degree felony judicial releases. Second, as noted above, R.C. 2929.20(K) grants the court discretion to sentence an offender to consecutive sentences if he commits a new felony while on judicial release. Finally, the trial court made the necessary R.C. 2929.14(A)(2) findings at the sentencing hearing when it issued the consecutive sentences and properly imposed post-release control.

{¶17} Collins argues that the trial court was obligated to notify him at the hearing on judicial release that he could possibly be sentenced to consecutive sentences if he committed a new offense while on judicial release. In so doing, he cites recent Ohio

Supreme Court precedent that addresses *community control*. *State v. Jones,* 2022-Ohio-4485. He claims that "[w]hen a court revokes community control, it may require that the reserved prison term be served consecutively to any other sentence then existing or then being imposed but only if at the time it imposed community control, it notified the offender that a consecutive sentence on revocation of community control was a possibility." *Id.* at ¶ *2. Jones* therefore makes clear that

> if an offender who is on community control is convicted and sentenced for a new offense, the revocation proceeding in the original case may not result in a prison sentence that runs consecutively to the new prison sentence if no mention of consecutive sentences were made as part of the original sentence for community control.

Id. The *Jones* court primarily reasons that sentences are presumed to be concurrent pursuant to R.C. 2929.41(A).

{¶18} However, the instant case is distinguishable from *Jones* because the judicial release statute specifically authorizes consecutive sentences upon a future violation, much like the post-release control statutes. *Jones* involved an offender whose initial sentence was placed on community control for endangering children in one county. She was only sentenced to prison on the original offense after her community control was revoked when she committed a new offense of robbery in another county. The trial court ran those sentences consecutively, despite her counsel's argument that it did not have authority to do so. The *Jones* court concluded that the only "sentence which a trial court may impose is that provided for by statute." *Id.* at ¶ 33. The court underscored this by stating, "[a] court has no power to substitute a different sentence for that provided for by statute or one that is either greater or lesser than that provided for by law." *Id.* citing *Colegrove v. Burns*, 175 Ohio St. 437,

438 (1964). The distinction, as discussed above, is that community control and judicial release statutes differ in certain ways, most notably in this instance, that the court *does have discretion* to impose consecutive sentences if a new offense is committed.

{¶19} It should also be noted here that "judicial release" not be confused with "post-release control." The State has argued that Collins had "ample notice he would be subject to post-release control prior to this conviction in case 21CR0034." In so doing, the State points out that Collins was also notified that "if he was convicted [of] another felony while on post-release control, that he may have to serve any prison time from his new felony consecutively to any time he received for a violation of his post-release control." However, even though an offender who has been placed on judicial release has been to prison and released, the post-release control statute (R.C. 2967.28) differs from the judicial release statute (R.C. 2929.20). R.C. 2967.01(N) defines "post-release control" as "a period of supervision by the adult parole authority after a prisoner's release from imprisonment, other than under a term of life imprisonment, that includes one or more post-release control sanctions imposed under section 2967.28 of the Revised Code."

{¶20} In contrast, judicial release involves a court's decision to release an eligible offender early and impose community control sanctions according to R.C. 2929.20. *Phipps* at ¶ 18; *State v. McConnell*, 2001-Ohio-2129, (3rd Dist.). Thus, while the trial court imposes post-release control as part of the sentence and also notifies the offender, the parole board reviews the court's journal entries then determines the imposition and modification of post-release control sanctions based on the offender's behavior and other relevant factors. Adm.Code 5120:1-1-41, Standards for imposing,

modifying and reducing post-release control. *See State v. Hall*, 2017-Ohio-4376, ¶ 18, (11th Dist.).

{¶21} However, "judicial release" and "post-release" control are similar in that both statutes authorize a trial court to sentence an offender to consecutive sentences in the event of the commission of a new offense. This court has held that while preferred, a trial court is not statutorily or constitutionally required to notify an offender who is being sentenced at the initial sentencing hearing in the original case that a post-release control violation could be served consecutively to a prison term for a new crime. *State v. Mozingo,* 2016-Ohio-8292, ¶ 29 (4th Dist.). There is also no such requirement to notify an offender who is being released according to judicial release (where an original sentence is simply being reimposed) that a potential consequence is a consecutive sentence if he commits a new offense while on judicial release.

{¶22} For the reasons set forth above, we find Collins' sole assignment of error to have no merit and therefore overrule it. While we affirm the trial court's judgment in Case No. 23CR0024, we nevertheless sua sponte recognize clerical errors in the sentencing entry. At the plea and sentencing hearing in that case, the trial court and parties refer to the amended count one as an offense of "failure to register," and the plea form reflects this same offense. However, in the plea form and at the hearing, the trial court and parties refer to the wrong statutory designation for the offense. The proper statutory designation for "failure to register," in this instance, is R.C. 2950.04(E). The current entry filed on August 25, 2023 incorrectly refers to a different statute (R.C. 2950.05(F)(1)), which constitutes the offense of "failure to provide notice of change of address." In addition, the August 25, 2023 entry does correctly reflect what occurred at

the plea and sentencing hearing in that it states that count one was amended and also shows that Collins pled to a second-degree felony. However, the "attempted" designation, clearly set forth at the hearing, is omitted in the entry, though the entry does properly refer to the attempt statute (R.C. 2923.02).

{¶23} Crim.R. 36 provides, "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." "The purpose of a nunc pro tunc entry is to correct an omission in a prior judgment so as to enter upon the record judicial action actually taken, but erroneously omitted, from the record." *State v. Pence,* 2016-Ohio-2880, ¶ 12 (4th Dist.). "Such entries should not be made to show what a court might or should have decided, or intended to decide, but what it did actually decide." *Id.* citing *Leaseway Distribution Centers, Inc. v. Ohio Dept. of Adm. Serv*., 49 Ohio App.3d 99, 108, (10th Dist.1988); *Renz v. Renz*, 1992 WL 209500 (4th Dist. Aug. 26, 1992) "The power of the trial court to enter a judgment nunc pro tunc 'does not extend beyond the power to make the journal entry speak the truth' and can only be implemented to correct clerical errors." *State v. Armstrong*, 2017-Ohio-8801, ¶ 19 (11th Dist.), citing *McKay v. McKay*, 24 Ohio App.3d 74, 75 (11th Dist.1985).

{¶24} An entry needs to be prepared correcting the statutory designation of the offense and also including the word "attempt" in the title of the offense "failure to register," to reflect properly Collins' conviction.

CONCLUSION

{¶25} Accordingly, we affirm the trial court's judgment in Case No. 21CR0034. With respect to Case No. 23CR0024, we affirm the judgment of the trial court but remand the matter for the limited purpose of allowing the trial court to correct its clerical errors by issuing an appropriate nunc pro tunc entry.

Judgment Affirmed in Case No. 21CR0034.

Judgment Affirmed and Cause Remanded in Case No. 23CA0024.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IN HOCKING COUNTY COURT OF COMMON PLEAS CASE NUMBER 21CR0034 IS AFFIRMED AND THE JUDGMENT IN HOCKING COUNTY COURT OF COMMON PLEAS CASE NUMBER 23CA0024 IS AFFIRMED IN PART AND REVERSED IN PART AND THE CAUSE IS REMANDED FOR THE LIMITED PURPOSE OF ISSUING A NUNC PRO TUNC ENTRY. Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the HOCKING COUNTY COURT OF COMMON PLEAS to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J., and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.