

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060918
	:	TRIAL NO. B-9702199-A
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
VINCENT BAILEY,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

As part of a plea bargain, defendant-appellant, Vincent Bailey, pleaded guilty to two counts of aggravated robbery under R.C. 2911.01(A)(1), with accompanying firearm specifications. Under an agreed sentence, he received a total of 11 years' imprisonment. The court informed him at the plea hearing, but not during sentencing, that he would be subject to post-release control. The judgment entry did not contain any reference to post-release control.²

Shortly before Bailey's sentence was to expire, the trial court ordered him returned for resentencing. At the new sentencing hearing, the court informed him that, upon his release from prison, he would be subject to five years' post-release control. It also ordered him to serve 11 years' imprisonment, the same sentence it had originally imposed. The

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See former R.C. 2967.28.

court journalized a new sentencing entry that contained information about post-release control. This appeal followed.

Bailey presents two assignments of error for review. In his first assignment of error, he contends that the trial court lacked jurisdiction to resentence him. Bailey's original sentence was void because the court failed to follow the statutory requirement in former R.C. 2929.19(B)(3) to inform him about post-release control. Because he had not yet been released from prison, the trial court had jurisdiction to resentence him and to include notice that he was subject to a term of post-release control.³ Further, under newly enacted R.C. 2929.191, the trial court could properly return Bailey for a hearing, allow him to make a statement, and journalize a corrected entry to reflect that he was subject to post-release control.⁴

Bailey also argues that the doctrine of res judicata barred his resentencing because the state had failed to appeal the error. But res judicata does not bar correction of a void or invalid sentence.⁵ Consequently, we overrule Bailey's first assignment of error.

In his second assignment of error, Bailey contends that Am.Sub.H.B. No. 137, which contains the amendments to the post-release control statutes, is unconstitutional. First, he argues that it violates the separation-of-powers doctrine. We find no merit in this argument.

The determination of guilt and the imposition of sentence in a criminal matter lie solely within the province of the judiciary.⁶ Cases involving the imposition of post-release

³ *State ex rel. Cruzado v. Zelecki*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263; *State v. Bankhead*, 1st Dist. No. C-060480, 2007-Ohio-1314.

⁴ *State v. Staley*, 12th Dist. No. CA2006-10-045, 2007-Ohio-3154; *State v. Sharpless*, 11th Dist. No. 2006-P-0088, 2007-Ohio-1922; *Bankhead*, supra.

⁵ *Staley*, supra; *State v. Balderson*, 5th Dist. No. 2006-CA-00226, 2007-Ohio-2463; *Sharpless*, supra.

⁶ *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132, 2000-Ohio-116, 2000-Ohio-117, 2000-Ohio-119, 729 N.E.2d 359; *State v. Merideth*, 5th Dist. No. 06 CA 15, 2007-Ohio-176.

control do not implicate the separation-of-powers doctrine because the executive branch has no discretion over whether an offender is subject to statutorily mandated sanctions. Because the task of resentencing an offender due to a void sentence falls on the judicial branch, Bailey's resentencing did not violate the separation-of-powers doctrine.⁷

Bailey also argues that his resentencing violated the Ex Post Facto Clause of the United States Constitution. The Ex Post Facto Clause applies only to statutes that disadvantage the offender. Specifically, it implicates laws that change the punishment or inflict a greater punishment than did the law at the time the offender committed the crime.⁸ The correction of an invalid sentence to include notice of post-release control does not violate the offender's constitutional rights.⁹

Finally, Bailey contends that his resentencing violated the Ohio Constitution's prohibition against retroactive laws. This court has stated that the legislature specifically declared that the statutory amendments, including the enactment of R.C. 2929.191, are remedial, not substantive. Offenders are always subject to post-release control by operation of law without the need for any prior notification or warning. Further, the "clarifying, remedial amendments" apply to all convicted offenders described in R.C. 2929.191(A) "regardless of whether they were sentenced prior to, or are sentenced on or after, the effective date of this act."¹⁰ Thus, the legislature has explicitly provided that the statutes may be applied retroactively, and they have met the threshold test for retroactive application.¹¹

We went on to hold that the statutes are remedial and not substantive, and, therefore, may be applied retroactively to sentences imposed before July 11, 2006, the

⁷ *State v. Barnes*, 11th Dist. No. 2006-P-0089, 2007-Ohio-3362; *Merideth*, supra.

⁸ *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829; *Sharpless*, supra.

⁹ *Sharpless*, supra.

¹⁰ *Bankhead*, supra, quoting Section 5(B), Am.Sub.H.B. No. 137.

¹¹ *Bankhead*, supra.

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statutes' effective date.¹² The statutory amendments affect only the remedy provided, not the offender's substantive rights. They do not impose new burdens, duties, or obligations related to a past transaction, take away vested rights, or create new rights. The court merely gives the offender additional notice of a legal obligation that is tied to the original conviction before the offender begins post-release control. Nothing extends the duration of imprisonment or of post-release control beyond what was contemplated at the original sentencing.¹³

We cannot hold that the statutes in question are unconstitutional. Bailey's resentencing, at which he was notified of post-release control, did not violate his constitutional rights. We overrule his second assignment of error and affirm the trial court's judgment.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HILDEBRANDT and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on September 5, 2007

per order of the Court _____
Presiding Judge

¹² Id. Accord *Staley*, supra.

¹³ *Bankhead*, supra.