

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

STATE OF OHIO,	:	APPEAL NOS. C-070793
		C-070794
Plaintiff-Appellee,	:	C-070795
		TRIAL NOS. B-0704999
vs.	:	B-0703378
		B-0201663
BERTRAM DOLE,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these consolidated appeals on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Defendant-appellant Bertram Dole appeals from three judgments of the trial court, the first two convicting him of three violations of a protection order, and the third imposing a four-year prison term for violating the conditions of post-release control for a prior rape conviction.

In 2002, following a plea of guilty to one count of a three-count indictment, Dole was convicted of rape. The trial court sentenced him to a five-year term of imprisonment. Dole was subject to post-release control. The night that Dole was released from prison in February 2007, he appeared on his wife's doorstep. His presence was unwelcome, and Mrs. Dole obtained an ex parte civil order of protection. After a hearing on March 1, 2007, the Hamilton County domestic relations court issued a final order of protection pursuant to R.C. 3113.31.

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

Eighteen days later, the Hamilton County Municipal Court convicted Dole of violating the protection order and sentenced him to 120 days in jail. While in jail, Dole placed three phone calls to Mrs. Dole on March 19, 2007. Dole was indicted for violating a protection order.² While awaiting trial, Dole mailed two letters to Mrs. Dole. Dole was then indicted for two additional counts of violating a protection order.³

The consolidated cases were tried to the trial court. Mrs. Dole and Dole's parole officer testified for the state. Dole testified in his own defense. The trial court found Dole guilty of each offense and ordered a presentence investigation and a court psychological evaluation. The trial court imposed 12-month sentences on each of the three protection-order violations and ordered them to be served consecutively. Because of these felony convictions, the court also determined that Dole had violated the terms of his post-release control for the 2002 rape conviction.⁴ The court imposed a four-year term of imprisonment, which was made consecutive to the protection-order sentences. The aggregate sentence was seven years in prison.

On appeal, Dole challenges the sufficiency of the evidence adduced to support his convictions for violating the protection order, in violation of R.C. 2919.27(A), felonies of the fifth degree.⁵ The statute provides that "[n]o person shall recklessly violate the terms of any * * * protection order issued * * * pursuant to section * * * 3113.31 of the Revised Code." Dole claims that because several boxes were unchecked on the final, March 1, 2007, protection order, including a box that had been checked on the ex parte order proscribing contact with the protected persons, the order did not prohibit him from phoning and writing to Mrs. Dole.

² Case number B-0703378 challenged in appeal number C-070794.

³ Case number B-0704999 challenged in appeal number C-070793.

⁴ Case number B-0201663 challenged in appeal number C-070795.

⁵ See R.C. 2919.27(B)(3).

This argument must fail. The final order did inform Dole that he “shall not abuse the protected persons named in this Order by * * * contacting * * * them.” Dole admitted writing letters to Mrs. Dole. And she testified that each of Dole’s contacts had terrified and disturbed her. The record also contains substantial, credible evidence from which the trial court could have reasonably concluded that the state had proved all elements of the charged crimes beyond a reasonable doubt, including that Dole violated a valid provision of a R.C. 3113.31 order by phoning and writing to Mrs. Dole.⁶ The second assignment of error is overruled.

In his first assignment, Dole asserts that the trial court erred in imposing the four-year term of imprisonment for violating the terms of his post-release control for his 2002 sentence for rape. While the trial court failed to notify him, at the original sentencing hearing, that a period of post-release control was part of his sentence,⁷ the assignment of error is, nonetheless, overruled. The omission occurred at a sentencing hearing conducted only moments after the trial court had concluded a plea colloquy with Dole. During that colloquy, the trial court personally addressed Dole and inquired whether he understood that his prison term included a five-year period of post-release control that would follow the completion of his prison term.⁸ Dole answered in the affirmative. Dole had adequate notice of the post-release control. And Dole’s guilty-plea form informed him that post-release control was a part of his sentence. Therefore, in 2007, the trial court had the authority to impose a prison term for violating post-release control when Dole was convicted of the new felonies for violating the protection order.

⁶ See *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, at ¶36; see, also, *State v. Waddy* (1991), 63 Ohio St.3d 424, 588 N.E.2d 819, certiorari denied (1992), 506 U.S. 921, 113 S.Ct. 338.

⁷ See R.C. 2929.19(B)(3).

⁸ See *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, paragraph one of the syllabus.

OHIO FIRST DISTRICT COURT OF APPEALS

The judgments of the trial court are affirmed.

Further, 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.

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

To the Clerk:

Enter upon the Journal of the Court on November 26, 2008
per order of the Court _____.
Presiding Judge