

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

STATE OF OHIO,	:	APPEAL NO. C-080354
	:	TRIAL NO. B-9805336
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
SARAH J. SCHMIDT,	:	
	:	
Defendant-Appellant.	:	

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

In 1998, defendant-appellant, Sarah J. Schmidt, entered guilty pleas to three counts of kidnapping and two counts of aggravated robbery, with gun specifications. At the sentencing hearing, the trial court incorrectly informed Schmidt that she could be subject to three years' post-release control instead of the statutorily mandated five-year term. The written plea form that Schmidt had signed included the correct post-release-control term for the offenses. Nonetheless, the sentencing entry itself omitted any term of post-release control.

In 2008, Schmidt filed a motion to withdraw her guilty plea on the basis that the trial court had failed to correctly inform her of the mandatory term of post-release control. The trial court overruled the motion and did not conduct a new sentencing hearing.

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

In her first assignment of error, Schmidt now argues that the omission of mens rea allegations in the indictment mandated the reversal of her convictions. In *State v. Colon (Colon I)*, the Supreme Court of Ohio held that the omission of a mens rea allegation in the indictment was a structural defect that rendered the conviction improper.² But in *State v. Colon (Colon II)*, the court held that the holding in *Colon I* was confined to its specific facts and was not to be applied retroactively.³ Accordingly, the *Colon I* holding does not apply to the case at bar, and we overrule the first assignment of error.

In the second assignment of error, Schmidt argues that the trial court erred in overruling her motion to withdraw her guilty pleas in light of the court's misstatements concerning post-release control during the Crim.R. 11 colloquy.

In *State v. Sarkozy*,⁴ the Supreme Court of Ohio held that a trial court's failure to inform a defendant of a mandatory term of post-release control constitutes a failure to comply with Crim.R. 11, and that a reviewing court must vacate the plea.

But this court has emphasized that the *Sarkozy* holding requires only substantial compliance.⁵ Accordingly, we have held that where the trial court had informed the defendant that he would be subject to post-release control and where the plea form had correctly stated the mandatory term, a misstatement about the term at the Crim.R. 11 hearing did not require vacation of the plea.⁶

In this case, the trial court informed Schmidt of the possibility of post-release control, and the written plea form accurately reflected the mandatory term. The trial

² 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917, syllabus.

³ 119 Ohio St.3d 204, 2008-Ohio-3749, 893 N.E.2d 169.

⁴ 117 Ohio St.3d 86, 2008-Ohio-509, 881 N.E.2d 1224, paragraph two of the syllabus.

⁵ See *State v. Alfarano*, 1st Dist. No. C-061030, 2008-Ohio-3476, ¶4.

⁶ *Id.* at ¶5.

court ensured that Schmidt had reviewed the form with her attorney and that she had understood its terms. Under *Alfarano*, the trial court substantially complied with Crim.R. 11. And while Schmidt suggests that there were other deficiencies in the colloquy, she did not specifically raise them in her motion to withdraw the pleas. We overrule the second assignment of error.

In the third and final assignment of error, Schmidt argues that the trial court erred in failing to resentence her. A sentence that fails to include a statutorily mandated term of post-release control is void, and the trial court must conduct a new sentencing hearing.⁷ Therefore, we sustain the third assignment of error.

We vacate the sentence and remand the cause for resentencing. In all other respects, we affirm the trial court's judgment.

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., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 26, 2008

per order of the Court _____.

Presiding Judge

⁷ *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, syllabus, certiorari denied (2008), ___ U.S. ___, ___ S.Ct. ___.