

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

STATE OF OHIO,	:	APPEAL NO. C-150463
	:	TRIAL NO. B-1001367
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
PERRIN BURSE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a jury trial in 2011, defendant-appellant Perrin Burse was convicted of five counts of theft. Those convictions were affirmed on direct appeal. *State v. Burse*, 1st Dist. Hamilton No. C-110196 (Aug. 31, 2012), *appeal not accepted*, 134 Ohio St.3d 1449, 2013-Ohio-347, 982 N.E.2d 728.

In 2015, Burse filed a motion for resentencing based upon the trial court's failure to properly notify him that he was subject to a mandatory period of postrelease control for one of the theft convictions, a felony of the second degree. In resentencing Burse, the court informed him of the mandatory nature of the sanction.

In his first assignment of error, Burse argues that the trial court failed to notify him of the consequences of violating postrelease control and of the length of confinement that could be imposed for a postrelease-control violation.

Pursuant to the postrelease-control statutes in effect when Burse was sentenced, the sentencing court was required to notify the offender, both at the sentencing hearing and in the judgment of conviction, of the length and discretionary or mandatory nature of postrelease control, of the consequences of violating postrelease control, and of the length of confinement that could be imposed for a violation of the sanction. *See* former R.C. 2929.14(F), 2929.19(B)(3) and 2967.28(B); *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. *See also State v. Williams*, 1st Dist. Hamilton No. C-081148, 2010-Ohio-1879, ¶ 20; *State v. Ingels*, 1st Dist. Hamilton Nos. C-140312, C-140313 and C-140328, 2015-Ohio-1621, ¶ 9.

Here, the sentencing court properly notified Burse at the sentencing hearing and in its judgment of conviction that he was subject to a mandatory three-year period of postrelease control. However, the court did not notify Burse at the sentencing hearing of the consequences of violating postrelease control or of the length of confinement that could be imposed for a violation of the sanction.

When a sentencing court fails to properly advise an offender about postrelease control, the court has violated its statutory duty, and the portion of the offender's sentence relating to postrelease control is void. *See Williams* at ¶ 20. Because the trial court failed to provide Burse with the proper postrelease-control notification, we sustain the first assignment of error and remand this cause for the trial court to apply the procedures outlined in R.C. 2929.191 to correct the postrelease-control-related sentencing errors. *See State v. Graham*, 1st Dist. Hamilton No. C-130375, 2014-Ohio-1024.

In his second assignment of error, Burse argues that the trial court erred by failing to notify him of his appellate rights pursuant to Crim.R. 32(B). Here, any error by the trial court in failing to notify Burse of his appellate rights was obviously harmless

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because the appeal was, in fact, taken. *See Cincinnati v. Montgomery*, 1st Dist. Hamilton No. C-74314, 1975 Ohio App. LEXIS 7621 (Apr. 21, 1975); *State v. D.H.*, 10th Dist. Franklin No. 15AP-525, 2015-Ohio-5281; *State v. Tunison*, 6th Dist. Wood No. WD-13-046, 2014-Ohio-2692; *State v. Davis*, 5th Dist. Muskingum No. CT2011-0033, 2012-Ohio-4922. Consequently, we overrule the second assignment of error.

This cause is remanded for the trial court to properly notify Burse about postrelease control in accordance with the procedures outlined in R.C. 2929.191. The trial court's judgment is affirmed in all other respects.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

FISCHER, P.J., HENDON and CUNNINGHAM, J.J.

To the clerk:

Enter upon the journal of the court on January 29, 2016
per order of the court _____.
Presiding Judge