

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

STATE OF OHIO,	:	APPEAL NOS. C-081071
		C-081070
Plaintiff-Appellee,	:	TRIAL NOS. B-9801561
		B-0108492
vs.	:	
		<i>JUDGMENT ENTRY.</i>
DRUMOND EDWARDS,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Drumond Edwards has taken these appeals from the Hamilton County Common Pleas Court’s judgment overruling his “Request for Judicial Release/Motion to Modify Sentence.” Because we have no jurisdiction to entertain the appeals, we dismiss them.

In September 1998, in the case numbered B-9801561, Edwards was convicted of sexual battery and was sentenced to a year in prison. He did not appeal his conviction. In September 1999, he completed his one-year sentence, was released from prison, and was placed on postrelease control.²

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

² The record does not provide the details of Edwards’s postrelease control. But for a felony sex offense, R.C. 2967.28(B)(1) mandates a five-year period of postrelease control, unless that period is reduced by the parole board.

On April 5, 2002, in the case numbered B-0108492, Edwards was convicted of felonious assault and was sentenced to eight years in prison. The felonious assault violated a condition of the postrelease control imposed for his sexual-battery conviction.³ Thus, on April 26, 2002, the trial court sentenced Edwards to 858 days in prison for the postrelease-control violation and ordered that that sentence, imposed in the case numbered B-9801561, be served consecutively to the felonious-assault sentence imposed in the case numbered B-0108492.

Edwards separately appealed his felonious-assault conviction and his postrelease-control-violation conviction. We consolidated the appeals for argument and decision and affirmed the judgment entered in each case.⁴

In May 2008, in his felonious-assault case, but not in his sexual-battery/postrelease-control case, Edwards filed with the common pleas court a “Request for Judicial Release/Motion to Modify Sentence.” In his motion, Edwards sought judicial release from the eight-year sentence that he was then serving for felonious assault. He also asked the court to vacate the sentence to be served for his postrelease-control violation, on the ground that the sexual-battery sentence from which his postrelease-control violation had derived had been void for lack of postrelease-control notification. On September 26, 2008, the court placed of record in Edwards’s felonious-assault case, but not in his sexual-battery/postrelease-control case, an entry denying on its merits Edwards’s request for judicial release and overruling for lack of jurisdiction his motion to “[m]odify” the sentence imposed for his postrelease-control violation.

³ See R.C. 2967.28(D)(1).

⁴ See *State v. Edwards* (Feb. 26, 2003), 1st Dist. Nos. C-020590 and C-020287. In September 2003, we denied Edwards’s App.R. 26(B) application to reopen his appeal from his felonious-assault conviction.

From this entry, Edwards filed two notices of appeal. The appeal filed in his felonious-assault case (B-0108492) was assigned appeal number C-081070. The appeal filed in his sexual-battery/postrelease-control case (B-9801561) was assigned appeal number C-081071. We consolidated the appeals for briefing and decision.

Appeal No. C-081070

We note at the outset that neither R.C. 2505.02 et seq. nor R.C. 2953.08 provide a right to appeal the overruling of a motion for judicial release.⁵ We, therefore, have no jurisdiction to review the judgment from which Edwards appeals to the extent that it denies his request for judicial release from his felonious assault sentence. Accordingly, we dismiss the appeal numbered C-081070.

Appeal No. C-081071

Edwards's sole assignment of error in the appeal numbered C-081071 challenges the common pleas court's judgment to the extent that it overrules his motion to "[m]odify" the sentence imposed for his postrelease-control violation. We do not reach the merits of this challenge.

Edwards's sexual-battery sentence was void because the trial court failed to include in the sentencing entry a statement that Edwards would be subject to postrelease control upon his release from prison.⁶ Because Edwards had completed his sexual-battery sentence, the trial court lacked authority to cure the sentencing error by conducting a new sentencing hearing.⁷ And in the absence of a sentencing entry conforming to R.C. 2967.28(B), the parole board lacked authority to impose

⁵ See *State v. Hedgcoth*, 1st Dist. No. C-060190, 2007-Ohio-4462, discretionary appeal not allowed, 116 Ohio St.3d 1478, 2008-Ohio-153, 879 N.E.2d 785.

⁶ See R.C. 2967.28(B); *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus.

⁷ See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶6.

postrelease control,⁸ and the trial court lacked authority to punish a postrelease-control violation.⁹

In his motion to “[m]odify” his sentence, Edwards challenged the common pleas court’s authority to punish him, in the case numbered B-9801561, for violating the postrelease-control sanction imposed after he had completed his sexual-battery sentence. In the appeal numbered C-081071, filed in the case numbered B-9801561, he appealed the common pleas court’s judgment overruling the motion.

But neither the motion nor the court’s entry overruling the motion was filed in the case numbered B-9801561. Consequently, the record in the appeal numbered C-081071 does not reflect the entry from which Edwards appeals. Without a final judgment overruling Edwards’s motion to “[m]odify” his postrelease-control-violation sentence, we are without jurisdiction to review the matter.¹⁰ Accordingly, we dismiss the appeal numbered C-081071.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 10, 2009

per order of the Court _____
Presiding Judge

⁸ See *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 84 N.E.2d 301, ¶32.

⁹ See *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶71 (holding that, without a proper sentencing entry imposing postrelease control, the imposition of postrelease control cannot be enforced).

¹⁰ See Section3(B)(2), Article IV, Ohio Constitution.