

TWELFTH DISTRICT COURT OF APPEALS OF OHIO

State v. Ross

2023-Ohio-1421 (Ohio Ct. App. 2023) · No. CA2022-11-110 · Decided May 1, 2023

SUMMARY

The Twelfth District Court of Appeals of Ohio reviewed Toriano Christopher Ross Jr.'s sentence following his guilty plea to second-degree felony possession of cocaine. The court held that a discrepancy in the postrelease-control term stated in the judgment entry should be corrected by a nunc pro tunc entry, rejected challenges concerning postrelease-control supervision costs, and upheld the constitutionality of the Reagan Tokes Law. The judgment was affirmed in part, reversed in part, and remanded for the limited purpose of issuing the corrected entry.

CASE DETAILS

COURT	Twelfth District Court of Appeals of Ohio
WRITING FOR THE COURT	S. Powell, P.J.; M. Powell, J.; Byrne, J.
JURISDICTION	Ohio
DECIDED	May 1, 2023
DOCKET	CA2022-11-110
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ross appealed his felony sentence after pleading guilty to a reduced charge of second-degree felony possession of cocaine.
STANDARD OF REVIEW	Under Ohio Revised Code 2953.08(G)(2), an appellate court may modify or vacate a felony sentence only if clear and convincing evidence shows that the record does not support applicable statutory findings or that the sentence is otherwise contrary to law.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Toriano Christopher Ross, Jr. v. State of Ohio

TOPICS

- sentencing
- criminal procedure
- due process
- separation of powers
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure
- sentencing
- constitutional law

QUESTIONS PRESENTED

1. Whether the discrepancy between the minimum postrelease-control term announced at sentencing and the term stated in the judgment entry required resentencing or could be corrected by a nunc pro tunc entry.
2. Whether postrelease-control supervision costs could be included in the judgment entry when the trial court did not expressly impose them at the sentencing hearing.
3. Whether postrelease-control supervision costs are authorized by Ohio Revised Code 2929.18(A)(5)(a).
4. Whether the Reagan Tokes Law violates the constitutional rights to a jury trial and procedural due process or violates the separation-of-powers doctrine.

HOLDINGS

1. A discrepancy in the written judgment entry's postrelease-control term was a clerical error that did not make Ross's sentence contrary to law or require resentencing. The trial court could correct the error through a nunc pro tunc entry accurately reflecting the term announced at sentencing.
2. Postrelease-control supervision costs are not punishment and are not part of a defendant's sentence for purposes of the physical-presence requirement in Criminal Rule 43(A). Nevertheless, when such costs are imposed in the judgment entry without informing the defendant at sentencing, the defendant is deprived of the opportunity to request a waiver. In this case, remand was unnecessary because the trial court had already considered Ross's present and future ability to pay all financial obligations imposed.
3. Postrelease-control supervision costs are authorized under Ohio Revised Code 2929.18(A)(5)(a).
4. The Reagan Tokes Law does not violate an offender's constitutional right to a jury trial, the separation-of-powers doctrine, or procedural due process. The court therefore rejected Ross's constitutional challenges and reaffirmed its prior holdings unless and until the Ohio Supreme Court holds otherwise.

KEY QUOTATIONS

“A clerical error in a trial court's judgment of conviction entry does not render the sentence imposed upon the offender contrary to law, thus necessitating the offender be resentenced or have the offender appear for resentencing.” (¶ 7)

“Nevertheless, although technically not part of a defendant's "sentence," the General Assembly has expressly authorized trial courts to "sentence" a felony offender to pay postrelease control supervision costs associated with the offender's postrelease control term under R.C. 2929.18(A)(5)(a).” (¶ 9)

FACTUAL BACKGROUND

Ross was indicted for first-degree felony possession of cocaine and subsequently pleaded guilty to a reduced charge of second-degree felony possession of cocaine. The trial court imposed an indefinite four-to-six-year prison term and advised Ross at sentencing that mandatory postrelease control would last up to three years but for at least eighteen months. The written judgment entry instead stated that postrelease control was mandatory for up to three years but for at least one year, and it imposed postrelease-control supervision costs without expressly addressing those costs at the sentencing hearing.

PROCEDURAL HISTORY

A Butler County grand jury indicted Ross for first-degree felony possession of cocaine. Ross later pleaded guilty to the reduced charge of second-degree felony possession of cocaine. The Butler County Court of Common Pleas imposed an indefinite four-to-six-year prison term, court costs, and postrelease-control supervision costs. Ross appealed, challenging the sentence on three grounds. The appellate court overruled two arguments, sustained the argument concerning the clerical error in the postrelease-control term, and remanded for a nunc pro tunc entry.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Butler County Court of Common Pleas was ordered to issue a nunc pro tunc judgment of conviction entry correcting the minimum postrelease-control term so that the entry accurately reflected the term announced at sentencing. No resentencing was required.

CASES CITED

- State v. Simmons, 2021-Ohio-3563, ¶ 80
- State v. Richey, 2023-Ohio-336, ¶ 12
- State v. Harp, 2016-Ohio-4921, ¶ 7
- State v. Lopez-Cruz, 2023-Ohio-257, ¶ 8
- State v. Ahlers, 2016-Ohio-2890, ¶ 8
- State v. Wright, 2018-Ohio-1982, ¶ 48
- State v. Goodwin, 2017-Ohio-2712, ¶ 45
- State ex rel. Womack v. Marsh, 128 Ohio St. 3d 303, 2011-Ohio-229, ¶ 13
- State v. Davis, 159 Ohio St. 3d 31, 2020-Ohio-309, ¶ 7
- State v. Taylor, 163 Ohio St. 3d 508, 2020-Ohio-6786, ¶ 37
- State v. Patterson, 2021-Ohio-3959, ¶ 15
- State v. Murphy, 2021-Ohio-4541, ¶¶ 43-44
- State v. Yerkey, 2021-Ohio-3331, ¶ 41
- Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, 2003-Ohio-5849, ¶ 1
- State v. Rogers, 2021-Ohio-3282, ¶ 20
- State v. Suder, 2021-Ohio-465, ¶ 25
- State v. Bloodworth, 2022-Ohio-1899, ¶ 50
- State v. Blaylock, 2021-Ohio-2631, ¶ 7 n.1
- State v. Hacker, Ohio Supreme Court Case No. 2020-1496
- State v. Simmons, Ohio Supreme Court Case No. 2021-0532

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