

SUPREME COURT OF OHIO

State v. Jordan, 104 Ohio St. 3d 21, 2004-Ohio-6085

817 N.E.2d 864 (Ohio 2004) · No. 2002-1888; 2003-0567 · Decided December 1, 2004

SUMMARY

The Ohio Supreme Court considers whether a trial court must notify a felony offender about postrelease control at the sentencing hearing when the notice is included in the sentencing entry. The court holds that both hearing notification and incorporation into the journal entry are required, and that failure to provide the hearing notification requires vacation of the sentence and remand for resentencing. The court also addresses the Fourth Amendment validity of the investigative stop and protective search in Lenorris Jordan's case.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	William M. O'Donnell, J.; Thomas J. Moyer, C.J.; Alice Robie Resnick, J.; Paul E. Pfeifer, J.; Evelyn Lundberg Stratton, J.; Maureen O'Connor, J.; Francis E. Sweeney, Sr., J.
JURISDICTION	Ohio
DECIDED	December 1, 2004
DOCKET	2002-1888; 2003-0567
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals concerning postrelease-control notification at felony sentencing and Jordan's challenge to the denial of his motion to suppress evidence obtained during an investigative stop and protective pat-down.
STANDARD OF REVIEW	The validity of an investigative stop and protective search is reviewed under the totality of the circumstances to determine whether the officers had reasonable suspicion. Sentencing questions involving statutory compliance are reviewed for whether the sentence is contrary to law.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Lenorris Jordan, Elven Finger v. State of Ohio

TOPICS

sentencing

criminal procedure

fourth amendment

search and seizure

suppression of evidence

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a felony sentencing court complies with R.C. 2929.19(B)(3) by including postrelease-control notification in the sentencing entry while failing to give the notification at the sentencing hearing.
2. Whether the proper remedy for that sentencing error is elimination of postrelease control or vacation of the sentence and remand for resentencing.
3. Whether the officers had reasonable suspicion sufficient to justify an investigative stop of Jordan under the Fourth Amendment and Section 14, Article I of the Ohio Constitution.
4. Whether the officer had reasonable suspicion that Jordan was armed and dangerous sufficient to justify a protective pat-down search.

HOLDINGS

1. When sentencing a felony offender to imprisonment, the trial court must notify the offender at the sentencing hearing about postrelease control and must also incorporate that notice into the sentencing entry. Inclusion of the notice only in the entry does not satisfy R.C. 2929.19(B)(3).
2. When the trial court fails to provide postrelease-control notification at the sentencing hearing but includes it in the sentencing entry, the sentence must be vacated and the matter remanded for resentencing; postrelease control is not simply eliminated from the sentence.
3. A failure to advise a defendant about postrelease control at the plea hearing may in some circumstances support vacating the plea, but it does not authorize an appellate court to modify or remove postrelease control from an otherwise unlawful sentence.
4. The officers had reasonable suspicion to conduct an investigative stop of Jordan because the partially corroborated anonymous tip, the high-drug-activity location, Jordan's apparent warning shout, and his companion's immediate flight, considered together, created reasonable suspicion of criminal activity.
5. The officer had reasonable suspicion that Jordan was armed and dangerous and was therefore justified in conducting a limited protective pat-down search.
6. Section 14, Article I of the Ohio Constitution did not provide greater protection under these circumstances, and the investigative stop and protective search were also valid under the Ohio Constitution.

KEY QUOTATIONS

“R.C. 2929.19 clearly prescribes what a trial judge must do and say at a felony sentencing hearing.” (at 25)

“Accordingly, when a trial court fails to notify an offender about postrelease control at the sentencing hearing but incorporates that notice into its journal entry imposing sentence, it fails to comply with the mandatory

provisions of R.C. 2929.19(B)(3)(c) and (d), and, therefore, the sentence must be vacated and the matter remanded to the trial court for resentencing.” (at 27)

“The circumstances described above, taken as a whole, created a reasonable suspicion that Jordan was engaged in illegal activity, and, therefore, the officers’ investigatory stop did not violate the Fourth Amendment.” (at 34)

“Considering the totality of the circumstances, we conclude that Officer Martinez was justified in conducting a limited pat-down search for weapons.” (at 36)

FACTUAL BACKGROUND

In both consolidated cases, the trial courts included postrelease control in the sentencing entries but failed to notify the offenders about postrelease control during the sentencing hearings. Jordan's case also arose from an anonymous report that a Black male was selling or using drugs on a Cleveland porch and had been driving a light-blue vehicle. Officers found Jordan and another man on the porch and a matching vehicle nearby; after Jordan shouted to his companion, the companion fled, and the officer conducted a pat-down based on the circumstances and his experience that persons involved in drug activity commonly carry weapons. The officer discovered and seized a crack pipe.

PROCEDURAL HISTORY

Finger was convicted by a Cuyahoga County jury of three counts of felonious assault. The trial court omitted postrelease-control notification at the sentencing hearing but included it in the sentencing entry; the court of appeals ordered the entry corrected to state that postrelease control was not part of the sentence. Jordan pleaded no contest to possession of cocaine after the trial court denied his suppression motion; the court of appeals affirmed the denial of suppression but remanded for resentencing because postrelease-control notification had not been given at the sentencing hearing. The Supreme Court of Ohio consolidated the matters to resolve the conflicting remedies.

DISPOSITION

other

REMAND INSTRUCTIONS

Finger's case is remanded to the trial court for resentencing consistent with the requirement that postrelease-control notification be given at the sentencing hearing and included in the sentencing entry. Jordan's judgment is affirmed; no remand is ordered in Jordan's case. Finger's cross-appeal is dismissed as improvidently accepted.

CASES CITED

- Kaine v. Marion Prison Warden, 88 Ohio St. 3d 454, 727 N.E.2d 907 (2000)
- Schenley v. Kauth, 160 Ohio St. 109, 51 O.O. 30, 113 N.E.2d 625 (1953)
- Indus. Comm. v. Musselli, 102 Ohio St. 10, 130 N.E. 32 (1921)
- State v. Martello, 97 Ohio St. 3d 398, 2002-Ohio-6661, 780 N.E.2d 250

- State v. Comer, 99 Ohio St. 3d 463, 2003-Ohio-4165, 793 N.E.2d 473
- State v. Brooks, 103 Ohio St. 3d 134, 2004-Ohio-4746, 814 N.E.2d 837
- Woods v. Telb, 89 Ohio St. 3d 504, 733 N.E.2d 1103 (2000)
- State v. Beasley, 14 Ohio St. 3d 74, 14 OBR 511, 471 N.E.2d 774 (1984)
- United States v. Cortez, 449 U.S. 411, 417-418 (1981)
- Alabama v. White, 496 U.S. 325, 329-330 (1990)
- Terry v. Ohio, 392 U.S. 1, 27, 29-30 (1968)
- Illinois v. Wardlow, 528 U.S. 119, 123-125 (2000)
- Maumee v. Weisner, 87 Ohio St. 3d 295, 300, 720 N.E.2d 507 (1999)
- Florida v. J.L., 529 U.S. 266, 268, 270-272 (2000)
- State v. Jason L., 129 N.M. 119, 2 P.3d 856 (2000)
- Brown v. Texas, 443 U.S. 47 (1979)
- Adams v. Williams, 407 U.S. 143 (1972)
- United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975)
- Florida v. Rodriguez, 469 U.S. 1, 6 (1984) (per curiam)
- United States v. Sokolow, 490 U.S. 1, 8-9 (1989)
- State v. Bobo, 37 Ohio St. 3d 177, 524 N.E.2d 489 (1988)
- State v. Robinette, 80 Ohio St. 3d 234, 238-239, 685 N.E.2d 762 (1997)
- State v. Brown, 99 Ohio St. 3d 323, 2003-Ohio-3931, 792 N.E.2d 175
- State v. Evans, 67 Ohio St. 3d 405, 413, 618 N.E.2d 162 (1993)
- Minnesota v. Dickerson, 508 U.S. 366 (1993)