

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

STATE OF OHIO,	:	APPEAL NO. C-210327
Plaintiff-Appellee,	:	TRIAL NO. B-2000608
vs.	:	<i>JUDGMENT ENTRY.</i>
MICHAEL CANDLER,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court’s accelerated calendar, 1st Dist Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On February 7, 2020, defendant-appellant Michael Candler was indicted on one count of possession of cocaine and one count of trafficking in cocaine, both first-degree felonies. On January 4, 2021, he pled guilty to one count of third-degree trafficking in cocaine. The defense and prosecution jointly recommended a prison sentence of 18 months. The trial court engaged Candler in a Crim.R. 11(C) plea colloquy, accepted his plea, and found him guilty. The court imposed the jointly recommended sentence.

Prior to accepting the plea, the trial court informed Candler that the Ohio Adult Parole Authority (“APA”) could, in its discretion, impose three years of postrelease control upon his release from prison. The court made the same advisement prior to imposing sentence. However, the sentencing entry stated that

Candler was subject to a mandatory five-year period of postrelease control. Candler did not appeal his conviction.

After Candler was released from prison and placed on postrelease control, the court became aware of the mistake in the sentencing entry. Soon thereafter, on May 17, 2021, Candler filed a “motion to compel for original charge sentence to the DRC.”

The trial court held a resentencing hearing on May 26, 2021, for the sole purpose of correcting the postrelease-control portion of Candler’s sentence. Candler clarified that the purpose of his motion was to request that he be released from postrelease control. Candler argued that the APA would not have placed him on postrelease control had his sentencing entry reflected the correct term of postrelease control.

The trial court denied Candler’s motion in an entry dated May 26, 2021. On May 28, 2021, Candler filed a notice of appeal of “the conviction in the Court of Common Pleas on May 26, 2021.” Candler was appointed counsel for purposes of appeal and his counsel filed a “no-error” (“*Anders*”) brief in accordance with 1st Dist. Loc.R. 16.2.

This court discussed the purpose of a no-error brief in *In re Booker*, 133 Ohio App.3d 387, 728 N.E.2d 405 (1st Dist.1990). The court stated:

When court-appointed appellate counsel’s “conscientious examination” of the record has led him to conclude that his client’s appeal is “wholly frivolous,” a conflict arises between an indigent’s right to “counsel who will vigorously and fairly advocate his rights on appeal” and “the ethical strictures upon counsel generally to advance on behalf of a client only those issues which such counsel honestly believes fairly debatable under the law.”

*Id.* at 390, quoting *Freels v. Hills*, 843 F.2d 958, 960-961 (6th Cir.1988). The United States Supreme Court sought to reconcile these conflicts in *Anders v. California*, 386 U.S. 738, 742, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The Court instructed that when such a conflict arises counsel must:

- (1) “advise” the reviewing court of his conclusion that the appeal is frivolous “and request permission to withdraw”;
- (2) submit with his request to withdraw “a brief referring to anything in the record that might arguably support the appeal”; and
- (3) furnish his client with a copy of the brief and afford the client “time \* \* \* to raise any points that he chooses.”

*Booker* at 390, quoting *Anders* at 744.

“The reviewing court must then undertake ‘a full examination of all the proceedings to decide whether the case is wholly frivolous.’ ” *Id.* If the court determines the appeal is wholly frivolous, it may proceed to a decision on the merits. *State v. Green*, 1st Dist. Hamilton No. C-170477, 2018-Ohio-2378, ¶ 3. However, if it concludes that “any legal points arguable on their merits and prejudicial to the defendant exist, we must ensure, prior to decision, that the indigent defendant receives the assistance of counsel to argue the appeal.” *Id.*, quoting *State v. Gilbert*, 1st Dist. Hamilton No. C-110382, 2012-Ohio-1366, ¶ 6.

Appellate counsel has advised the court that he believes the appeal to be frivolous and has requested that he be allowed to withdraw as counsel of record. Counsel stated that he independently reviewed the record and determined there are no nonfrivolous issues of arguable merit prejudicial to Candler that are supported by the record and that would reasonably form the basis for an appeal. Counsel stated that he attempted to contact Candler via regular mail at the address listed on the

notice of appeal and had not received any response from Candler. Therefore, the prerequisites of a no-error brief have been met and it is up to the court to conduct a full examination of the proceedings to decide whether Candler's appeal is wholly frivolous.

Candler pled guilty to third-degree trafficking in cocaine in violation of R.C. 2925.03(C)(4)(d). According to the version of R.C. 2967.28 in effect at the time of his sentence, Candler was subject to a three-year period of postrelease control at the discretion of the APA. *See* former R.C. 2967.28(C) (effective March 29, 2019).

The trial court, after becoming aware of the error in the sentencing entry, corrected the error to Candler's benefit. Candler's argument that the APA would not have imposed postrelease control had it known at the time of imposition that it was discretionary is speculative. Also, since Candler knew at the time he pled guilty and was sentenced that he could be placed on postrelease control, he cannot complain of the fact that he is now on postrelease control. *See State v. Wright*, 6th Dist. Sandusky No. S-09-023, 2010-Ohio-2620, ¶ 29 ("The trial court's imperfect advisement to appellant that she was subject to a discretionary period of postrelease control afforded her sufficient notice that such control might be imposed. Since appellant had notice that her sentence might include postrelease control, she cannot show prejudice as her plea was made with knowledge of that possibility").

After a thorough review of the record, we have not found any errors prejudicial to Candler and agree with counsel that no grounds exist to support a meritorious appeal. Therefore, we deny counsel's motion to withdraw from his representation of Candler, and affirm the judgment of the trial court. We hold that this appeal is frivolous under App.R. 23 and without "reasonable cause" under R.C.

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2505.35. But we refrain from taxing costs and expenses against Candler because he is indigent.

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

**BERGERON, P.J., CROUSE and WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on February 2, 2022,  
per order of the court \_\_\_\_\_.  
Presiding Judge