

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

LARRY BROWN, SR.

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 09 CA 137

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2004 CR 922D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 11, 2010

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Appellant Larry Brown, Sr. appeals the denial of his motion for resentencing in the Richland County Court of Common Pleas, following his 2005 conviction and sentence for aggravated murder with a firearm specification and abuse of a corpse. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} On November 10, 2004, the Richland County Grand Jury indicted appellant on the aforementioned charges in connection with the death of Linda Singleton. The matter proceeded to a jury trial commencing on April 7, 2005.

{¶3} The jury ultimately found appellant guilty of one count of aggravated murder with a firearm specification and one count of abuse of a corpse. On April 18, 2005, appellant appeared before the trial court for sentencing. The trial court sentenced appellant to an aggregate term of incarceration of twenty-three and one-half years to life.

{¶4} Appellant filed a direct appeal to this Court, raising two Assignments of Error. We affirmed his conviction and sentence on June 23, 2006. See *State v. Brown*, Richland App.No. 05CA41, 2006-Ohio-3277.

{¶5} On October 15, 2009, appellant filed a “motion to correct void sentence and re-sentencing.” On October 26, 2009, the State filed a written response to the motion.

{¶6} On November 4, 2009, the court overruled appellant’s motion, finding the issues raised to be res judicata.

{¶17} Appellant filed a notice of appeal on November 20, 2009. He herein raises the following three Assignments of Error:

{¶18} “I. DEFENDANT-APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION, AMENDMENT 14, WHEN THE TRIAL COURT DENIED HIM THE RELIEF HE SOUGHT FROM A VOID JUDGMENT THAT DID NOT COMPLY WITH STATUTE 2945.75.

{¶19} “II. THE STATE COMMITTED PLAIN AND PREJUDICIAL ERROR WHEN IT FAILED TO FOLLOW THE MANDATE OF *STATE V. PELFREY* IN VIOLATION OF APPELLANT’S CONSTITUTIONAL RIGHT TO FUNDAMENTALLY FAIR PROCEEDINGS AND HIS RIGHTS TO BE SENTENCED IN COMPLIANCE WITH ALL STATUTES.

{¶10} “III. IF THE COURT FINDS THAT THERE ARE INFERIOR DEGREES OF AGGRAVATED MURDER, MURDER, AND INVOLUNTARY MANSLAUGHTER, THEN THE JUDGMENT OF APPELLANT IS VOID AND HE MUST BE REMANDED FOR RESENTENCING ACCORDING TO *STATE V. PELFREY*.”

I., II., III.

{¶11} In his First, Second, and Third Assignments of Error, which we will address together, appellant maintains the trial court erred in overruling his motion to correct a void sentence and/or motion for resentencing based on alleged flaws in the original verdict. We disagree.

{¶12} The statute at issue in this appeal is R.C. 2945.75(A)(2), which states as follows:

{¶13} “When the presence of one or more additional elements makes an offense one of more serious degree[,] *** [a] guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged.”

{¶14} In his motion of October 15, 2009, appellant contended that he was entitled to a new sentencing hearing based on the jury verdict’s alleged lack of compliance with R.C. 2945.75(A)(2). By analogy, appellant presently directs us to *State v. Bezak*, 114 Ohio St.3d 94, 868 N.E.2d 961, 2007-Ohio-3250, in which the Ohio Supreme Court held: “When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense.” *Id.*, at the syllabus. Similarly, in *State v. Simpkins*, 117 Ohio St.3d 420, 884 N.E.2d 568, 2008-Ohio-1197, the Ohio Supreme Court held that “in cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void, and the state is entitled to a new sentencing hearing to have postrelease control imposed on the defendant unless the defendant has completed his sentence.” *Id.* at ¶ 6, 884 N.E.2d 568.

{¶15} Appellant herein essentially urges that the rationale expressed in *Bezak* and *Simpkins*, which deal with the necessity of inclusion in certain sentences of statutory postrelease control notification, must be extended to cases where the verdict purportedly lacks compliance with R.C. 2945.75(A)(2), *supra*.

{¶16} We note the Ohio Supreme Court's body of law leading to *Bezak* and *Simpkins* has grown from a "narrow vein of cases," commencing with *State v. Beasley* (1984), 14 Ohio St.3d 74, 471 N.E.2d 774, in which the Court consistently held that "a sentence that does not contain a statutorily mandated term is a void sentence." See *Simpkins* at ¶14. The Court has set forth that generally "sentencing errors are not jurisdictional and do not necessarily render a judgment void," but that in some circumstances a court's failure to impose a sentence as required by law present an exception. *Id.* at ¶13.

{¶17} Appellant herein provides no authority indicating that the aforesaid exception, allowing certain sentencing errors to be raised as jurisdictional errors at any time by a convicted defendant, should be extended to alleged errors in the verdict under R.C. 2945.75(A)(2). Appellant urges application of the Ohio Supreme Court's decision regarding R.C. 2945.75 in *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, in which the Court held that " *** a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense." *Id.* at the syllabus. However, *Pelfrey* was a direct appeal from a conviction (albeit subsequent to an application to reopen appeal under App.R. 26(B)), not an appeal of a postconviction motion for resentencing, as in the case sub judice.

{¶18} Moreover, assuming arguendo that the "void judgment" rationale is applicable to some R.C. 2945.75 issues, appellant's argument fails. First, appellant was charged with murder (R.C. 2903.02) and aggravated murder (R.C. 2903.01), both

of which are unclassified felonies to which no degree of offense is attached. As the State notes, the term “aggravated” properly distinguishes the two offenses for consideration by the jury. Secondly, in regard to the abuse of a corpse charge, “[m]erely because there are different levels of offenses contained within one statute does not mean that the statute is subject to the language of R.C. 2945.75.” *State v. Reynolds*, Richland App.No. 09-CA-13, 2009-Ohio-3998, ¶ 40.

{¶19} We further note that appellant did not seek to present his motion for resentencing as an untimely petition for postconviction relief under R.C 2953.23(A)(1). Upon review, we find no basis to override the general rule in Ohio that a trial court has no authority to reconsider a final valid judgment in a criminal case. See, e.g., *State v. Moore*, Highland App.No. 03CA18, 2004-Ohio-3977.

{¶20} Accordingly, the trial court did not err in overruling appellant’s motion for resentencing.

{¶21} Appellant’s First, Second, and Third Assignments of Error are overruled.

{¶22} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Richland County, Ohio, is affirmed.

By: Wise, J.
Edwards, P. J., and
Delaney, J., concur.

/S/ JOHN W. WISE

/S/ JULIE A. EDWARDS

/S/ PATRICIA A. DELANEY

JUDGES

