

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellant

-vs-

MARK S. TURNBOW

Defendant-Appellee

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA00259

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2004CR1382

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 14, 2010

APPEARANCES:

For Plaintiff-Appellant

JOHN D. FERRERO
Prosecuting Attorney

By: KATHLEEN O. TATARSKY
Assistant Prosecuting Attorney
110 Central Plaza South
Suite 510
Canton, OH 44702-1413

For Defendant-Appellee

R. ANDREW KINDER
190 North Union Street
Suite 202
Akron, OH 44304

Farmer, J.

{¶1} On December 30, 2004, appellee, Mark Turnbow, was sentenced to an aggregate term of six years in prison. Via judgment entry, the trial court imposed three years of postrelease control as opposed to the mandated five years.

{¶2} On February 19, 2009, appellee filed a motion for relief from final judgment pursuant to Civ.R. 60(B), claiming his sentence was void because the trial court failed to notify him of postrelease control during the sentencing hearing as required by R.C. 2967.28. By judgment entry filed March 10, 2009, the trial court denied the motion. On July 8, 2009, the trial court conducted a resentencing hearing wherein the trial court notified appellee of postrelease control. The trial court also reduced appellee's sentence to an aggregate term of five years in prison. See Judgment Entry filed October 2, 2009.

{¶3} Appellant, the state of Ohio, filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN REDUCING APPELLEE'S ORIGINAL PRISON SENTENCE AT A R.C. 2929.191 NUNC PRO TUNC HEARING DESIGNED TO CORRECT A DEFECT IN POST-RELEASE CONTROL."

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{¶5} Appellant claims the trial court erred in reducing appellee's sentence upon resentencing. We disagree.

{¶6} On December 30, 2004, appellee was sentenced to an aggregate term of six years in prison. Upon motion filed by appellee, the trial court resentenced appellee

to include postrelease control instructions as mandated by R.C. 2967.28. In addition, the trial court reduced appellee's prison term as follows:

{¶7} "IT IS FURTHER ORDERED that the defendant shall serve a prison term of four (4) years on each count of Felonious Assault, 2 Cts.***as contained in counts two and three, and

{¶8} "IT IS FURTHER ORDERED that the defendant shall serve a prison term of one (1) year on the charge of Failure to Comply with an Order or Signal of a Police Officer, 1 Ct.***as contained in count four, and

{¶9} "IT IS FURTHER ORDERED that the defendant shall serve the sentences in counts one through three concurrently and the sentence in count four consecutive to counts one through three of a total prison term of five (5) years." See Judgment Entry filed October 2, 2009.

{¶10} Appellant argues the reduction in the prison sentence was error, as the trial court should have merely entered a nunc pro tunc judgment entry to correct the omission regarding postrelease control pursuant to R.C. 2929.191.

{¶11} In *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio 6434, the Supreme Court of Ohio held at ¶35, "[b]ased upon the foregoing, the de novo sentencing procedure detailed in the decisions of the Ohio Supreme Court is the appropriate method to correct a criminal sentence imposed prior to July 11, 2006, that lacks proper notification and imposition of postrelease control."

{¶12} Because the original sentence in this case was imposed prior to July 11, 2006, the resentencing was a de novo sentence and as such, the trial court could resentence appellee to any sentence within the statutory scheme. Pursuant to R.C.

2929.14(A)(1) and (3), the trial court resentenced appellee within the specified range for first and third degree felonies.

{¶13} Upon review, we find the trial court did not err in reducing appellee's sentence upon resentencing.

{¶14} The sole assignment of error is denied.

{¶15} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Edwards, P.J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

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