

[Cite as *In re J.S.*, 2010-Ohio-6199.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95365

IN RE: J.S.
(A Minor Child)

JUDGMENT:
REVERSED AND REMANDED

Appeal from the Cuyahoga County Court
of Common Pleas, Juvenile Division
Case No. DL-06104651

BEFORE: Sweeney, J., Kilbane, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: December 16, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Appellant, J.S.,¹ a minor, appeals the imposition of an adult prison term, asserting that it was a void sentence being unauthorized by law

¹ Appellant is referred to herein by his initials in accordance with this court's established policy regarding non-disclosure of identities in juvenile cases.

and for failure to properly impose postrelease control. For the reasons that follow, we remand to the trial court for resentencing.

{¶ 3} In 2006, the juvenile court adjudicated J.S. delinquent and guilty as to two counts of aggravated robbery, one count of kidnapping, and one count of rape and firearm specifications.

{¶ 4} The State sought a serious youthful offender (“SYO”) dispositional sentence pursuant to R.C. 2152.13. The trial court found J.S. to be a SYO. That designation appears to be based upon the court’s reference to the delinquency adjudications for acts that would constitute aggravated robbery and for this J.S. was committed to the Department of Youth Service (“DYS”) for a minimum of two years, maximum of his twenty-first birthday along with a three year consecutive term for a gun specification. The entry further provided that “[b]y agreement of parties the child shall serve a 5 year minimum commitment to the [DYS].” The State concedes that it is unclear from the journal entry which delinquent counts carry what portion of the penalties. The next component of the journal entry is designated “S.Y.O. sentencing” that provides that “Parties are in agreement to [an adult prison sentence of] a minimum nine (9) year prison sentence that be suspended and the child is to be committed to [DYS] for a total of (5) years[.]” However, the court then proceeded to order that the “child shall be sentenced as follows:”

and imposed indefinite sentences of three to ten years on each of the four counts of delinquency, i.e., two counts aggravated robbery, one count of kidnapping, and one count of rape. All terms to be served concurrently but consecutive to a three-year prison term for gun specification(s). Again, the order is unclear in that it provides that this three-year term be served “in addition to and shall be served consecutively with and prior to any other term of imprisonment ordered herein.” The order notified J.S. of postrelease control and that it was part of the sentence but did not explicitly state that J.S. would be subject to a mandatory five years of postrelease control upon release from prison.² The adult sentence was stayed on condition that J.S. successfully complete the juvenile portion of the sentence.

{¶ 5} Upon his commitment to DYS, J.S. committed another act constituting a first degree felony rape. The State moved to invoke the adult portion of his SYO sentence pursuant to R.C. 2152.14. The juvenile court held a hearing and by order dated April 8, 2008, the juvenile court ordered “the adult portion of the disposition ordered on January 3, 2007” into effect.

²The Deputy Clerk of the Juvenile Division of Common Pleas Court averred by affidavit that the recording of this dispositional hearing could not be located. Nonetheless, J.S. has not claimed that the court failed to advise him of the five year mandatory postrelease control aspect of his sentence personally in court.

A nunc pro tunc journal entry was issued on April 28, 2008 to add that “the child is to serve a total of nine (9) years in the adult prison system.”

{¶ 6} J.S. has appealed, raising various sentencing issues for our review. Because there are a number of inconsistencies within the SYO disposition journal entry along with sentences that are not authorized by law, we remand this matter for resentencing.

{¶ 7} Primarily we note that the SYO disposition was authorized by law pursuant to R.C. 2152.13(D)(2)(a)(iii); however, the parties agree that the entry is unclear as to what counts were being addressed in the juvenile portion of the sentence. Secondly, the adult portion of the sentence appears to impose an agreed sentence of nine years but also imposed indefinite sentences on each count, which are not authorized by law. See R.C. 2929.14(A)(1) (requiring the imposition of a definite sentence for felonies of the first degree). Where a sentence contains portions that are not authorized by law, the appropriate procedure to correct the error is a remand for sentencing de novo. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 14, 17, 35.

{¶ 8} Because a de novo disposition must be conducted, appellant’s remaining issues concerning the notification of postrelease control are moot and overruled. App.R.12(A)(1)(c).

{¶ 9} Appellant's assignment of error is sustained, and this matter is remanded for a de novo disposition.

{¶ 10} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee its costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR