

[Cite as *State v. Taylor*, 2021-Ohio-585.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. 19CA24
 :
 vs. :
 :
 DARRYL D. TAYLOR, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Darryl D. Taylor, Caldwell, Ohio, pro se.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 2-17-21

ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court judgment that denied a “motion to vacate void judgment” filed by Darryl D. Taylor, defendant below and appellant herein.

Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

“THE COURT BELOW ERRED TO THE PREJUDICE OF THEE [SIC] APPELLANT IN FAILING TO VACATE CONVICTION ON COUNT ONE, AS IT WAS THE PRODUCT OF AN IMPERMISSIBLE CONSTRUCTIVE AMENDMENT OF THE COMPLAINT.”

SECOND ASSIGNMENT OF ERROR:

“THE COURT BELOW ERRED TO THE PREJUDICE OF THEE [SIC] APPELLANT IN FAILING TO VACATE AND CORRECT VOID SENTENCES IMPOSED ON COUNTS TWO, THREE & FOUR.”

THIRD ASSIGNMENT OF ERROR:

“THE COURT BELOW COMMITTED PREJUDICIAL ERROR IN FAILING TO CORRECT AN INCREASE IN PUNISHMENT THAT WAS CONTRARY TO LAW.”

{¶ 2} A jury found appellant guilty of: (1) drug trafficking in the presence of juveniles in violation of R.C. 2925.03(A)(1)(C)(1)(c), a second-degree felony, (2) two counts of drug trafficking in violation of R.C. 2925.03(A)(1)(C)(1)(c), third-degree felonies, and (3) one count of drug trafficking in violation of R.C. 2925.03(A)(2)(C)(1)(c), a third-degree felony. The trial court sentenced appellant to serve a total of 13 years in prison. On April 27, 2016, this court affirmed the trial court’s judgment in part, reversed in part, and remanded for limited resentencing.

{¶ 3} In particular, we affirmed appellant’s convictions, but concluded that the trial court failed to advise appellant of postrelease control at the sentencing hearing. *State v. Taylor*, 4th Dist. Lawrence No. 15CA12, 2016-Ohio-2781, ¶ 41, citing *State v. Fischer*¹, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 27-29, *State v. Triplett*, 4th Dist. Lawrence No. 10CA35, 2011-Ohio-4628, ¶ 4.

{¶ 4} On May 25, 2016, the trial court resented appellant to serve a 13-year prison term. On March 5, 2019, appellant filed a pro se “motion to vacate void judgment,” and argued that the

¹ Recently, the Supreme Court of Ohio determined that when a sentencing court has jurisdiction to act, sentencing errors in the imposition of postrelease control render a sentence voidable, not void. The sentence may be set aside, however, if successfully challenged on direct appeal. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248.

court must vacate “void portions of the judgment of conviction based upon lack of subject matter jurisdiction.” On September 19, 2019, the trial court overruled the motion.²

{¶ 5} Generally, appellate courts review decisions that grant or deny R.C. 2953.21 postconviction relief petitions under the abuse of discretion standard. *State v. Smith*, 4th Dist. Highland No. 19CA16, 2020-Ohio-116, citing *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 28. In *Gondor*, the Court recognized that the differences between a direct appeal and an appeal from a postconviction relief petition warrants different appellate review standards. *Gondor* at ¶ 53-54. The Court stated, “A postconviction claim is not an ordinary appeal: ‘A postconviction proceeding is not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment.’” *Id.* at ¶ 48, quoting *State v. Steffen*, 70 Ohio St.3d 399, 410, 639 N.E.2d 67 (1994). “A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable.” *State v. Knauff*, 4th Dist. Adams No. 13CA976, 2014-Ohio-308, ¶ 19, citing *Cullen v. State Farm Mut. Auto Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 19.

I.

{¶ 6} In his first assignment of error, appellant asserts that the trial court erred by failing to vacate his conviction on count one because, as he argues, it is the product of an impermissible constructive amendment of the complaint. Apparently, the state first filed a complaint in the municipal court that charged appellant with one count of trafficking in drugs in the presence of

² On November 12, 2019, appellant filed a pro se notice of appeal. This court issued a Magistrate’s Order to direct appellant to file a memorandum to address whether this court had jurisdiction because appellant filed the notice of appeal more than 30 days after the trial court entered judgment. Because the Clerk of Courts failed to note service of the entry on the docket, this court allowed the appeal to proceed.

juveniles, a second-degree felony. Later, a grand jury returned an indictment that charged appellant with four counts of trafficking in drugs. Appellant argues that because the initial complaint charged him under R.C. 2925.03(A)(2), but count one of the grand jury indictment charged him under R.C. 2925.03(A)(1), his conviction under count one is void and must be vacated. There is no merit to this argument.

{¶ 7} Indictments and complaints are charging instruments that serve different purposes. *State v. Allen*, 6th Dist. Lucas No. L-17-1225, 2018-Ohio-878, ¶ 12. A complaint is the basic charging instrument in all criminal proceedings in this state. *Id.* at ¶ 10; *State v. Hess*, 7th Dist. Jefferson No. 02 JE 36, 2003-Ohio-6721, ¶ 16. Pursuant to Crim.R. 3 and R.C. 2935.09, a complaint is a written statement of the essential facts that constitutes the offense charged. Prosecutors usually file complaints to quickly invoke municipal court jurisdiction. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 12. On the other hand, a grand jury issues an indictment after grand jurors convene and consider the alleged charges. Ohio Constitution, Article I, Section 10; R.C. 2939.20. An indictment specifies “in ordinary and concise language without technical averments or allegations not essential to be proved” that “the defendant has committed a public offense.” Crim.R. 7(B). An indictment is required to invoke the common pleas court’s jurisdiction. *Allen* at ¶ 12.

{¶ 8} We recognize that the procedural aspects of a criminal case can be somewhat confusing to a layperson. However, appellant cites no authority to support his claim that the state cannot first charge a defendant by complaint in the municipal court, then later charge and prosecute a defendant by indictment in the common pleas court. In fact, this activity is common-place in all Ohio courts. In the case sub judice, the grand jury indictment invoked the trial court’s subject matter jurisdiction

and appellee properly tried and convicted appellant on the charges set forth in the indictment. Obviously, the trial court did not abuse its discretion in deciding this matter.

{¶ 9} Accordingly, we overrule appellant’s first assignment of error.

II.

{¶ 10} In his second assignment of error, appellant asserts that the trial court erred by failing to vacate and correct void sentences imposed on counts two, three, and four. Specifically, appellant asserts that the trial court “substituted the statutory terms of months for that of years;” thus, his sentences should be vacated and reimposed. However, our review does not substantiate this claim. In each entry appellant references, the trial court sentenced appellant to serve a total prison term of 13 years.

{¶ 11} Accordingly, we overrule appellant’s second assignment of error.

III.

{¶ 12} In his third assignment of error, appellant asserts that the trial court failed to correct an increase in punishment contrary to law. Appellee points out, however, that appellant is mistaken. At the original sentencing, the trial court sentenced appellant to serve seven years in prison on count one, and two years each on counts two, three, and four, all to be served consecutively for a total prison term of 13 years. Although the first sentencing entry (May 14, 2015) incorrectly ordered appellant to serve count four concurrently, the second sentencing entry (June 2, 2015) corrected the mistake and specified that all counts must be served consecutively, once again for a total prison term of 13 years.

{¶ 13} As we explain above, on April 27, 2016 this court remanded the case to the trial court to impose postrelease control. *Taylor, supra*, at ¶ 10. Our review of the third sentencing entry

(May 25, 2016) reveals that the trial court sentenced appellant to the same term of imprisonment, 13 years, but, as this court mandated, also imposed a postrelease control term and specified the penalties for a postrelease control violation. Thus, contrary to appellant's assertions, the trial court did not increase appellant's term of imprisonment.

{¶ 14} Accordingly, we overrule appellant's third assignment of error and we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution.

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

Hess, J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.