

[Cite as *State v. Stallworth*, 2009-Ohio-6080.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 24541

Appellee

v.

MICHAEL A. STALLWORTH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08-07-2256(B)

Appellant

DECISION AND JOURNAL ENTRY

Dated: November 18, 2009

Per Curiam.

{¶1} Appellant, Michael Stallworth, appeals the judgment of the Summit County Court of Common Pleas. This Court exercises its inherent power to vacate a void judgment and remands this case for a new sentencing hearing.

I.

{¶2} On July 24, 2008, Stallworth was indicted on one count of illegal manufacture of drugs in violation of R.C. 2925.04(A), a felony of the second degree; one count of possessing criminal tools in violation of R.C. 2923.24, a felony of the fifth degree; one count of having weapons while under disability in violation of R.C. 2923.13(A)(3), a felony of the third degree; and one count of possession of cocaine in violation of R.C. 2925.11(A)(C)(4), a felony of the fifth degree. The possession of cocaine charge contained a criminal forfeiture specification. After a jury trial, Stallworth was convicted of illegal manufacture of drugs, possessing criminal tools, and having weapons while under disability. Stallworth was acquitted of the possession of

cocaine charge and the trial court found that he was not subject to criminal forfeiture to the State. In the sentencing entry dated December 9, 2008, the trial court stated Stallworth, “may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for up to Three (3) years as determined by the Adult Parole Authority.”

{¶3} Stallworth appeals his convictions to this Court, raising three assignments of error.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION FOR ACQUITTAL AS TO THE CHARGES[.]”

ASSIGNMENT OF ERROR II

“APPELLANT’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

ASSIGNMENT OF ERROR III

“THE COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR WHEN IT ALLOWED PHOTOS OF APPELLANT TAKEN WHILE HE WAS IN PRISON INTO EVIDENCE, OVER THE OBJECTION OF APPELLANT’S COUNSEL.”

{¶4} Stallworth argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. Stallworth also contends that the trial court erred in permitting photographs of Stallworth while he was in prison into evidence over the objection of counsel. This Court declines to address Stallworth’s arguments on the merits as the journal entry is void.

{¶5} Stallworth’s conviction for illegal manufacture of drugs is a felony of the second degree. Pursuant to R.C. 2967.28(B), “[e]ach sentence to a prison term for a felony of the *** second degree *** shall include a requirement that the offender be subject to a period of post-

release control imposed by the parole board after the offender's release from imprisonment.” For a felony of the second degree that is not categorized as a felony sex offense, the period is three years. R.C. 2967.28(B)(2). Under R.C. 2929.14(F)(1), “[i]f a court imposes a prison term *** for a felony of the second degree *** it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment[.]” In addition, R.C. 2929.19(B)(3)(c) provides that, “if the sentencing court determines *** that a prison term is necessary or required, [it] shall *** [n]otify the offender that [he] will be supervised under section 2967.28 of the Revised Code after [he] leaves prison if [he] is being sentenced for a felony of the *** second degree[.]”

{¶6} In this case, the trial court's journal entry stated that Stallworth, “may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for up to Three (3) years as determined by the Adult Parole Authority.” Pursuant to R.C. 2967.28(B)(2), an offender who is convicted of a felony of the second degree that is not a sex offense is subject to a mandatory term of three years post-release control. Therefore, the trial court did not comport with statutory mandates in imposing post-release control on Stallworth.

{¶7} The Supreme Court of Ohio has held that a trial court's failure to properly impose a mandatory term of post-release control renders a sentence void. *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at syllabus. The Supreme Court's reasoning emanates from “the fundamental understanding that no court has the authority to substitute a different sentence for that which is required by law.” *Id.* at ¶20, citing *Colegrove v. Burns* (1964), 175 Ohio St. 437, 438. “Because a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void, it must be vacated.” *Simpkins* at ¶22. The Supreme

Court has recognized that if an offender's sentence is void, a reviewing court must vacate the sentence even if neither party has moved for resentencing. *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶12; *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶12. “[T]he effect of vacating the trial court’s original sentence is to place the parties in the same place as if there had been no sentence.” *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, at ¶13.

{¶8} In this case, the trial court’s journal entry erroneously states that Stallworth may be subject to less than a mandatory term of post-release control of three years. It follows that the judgment entry is void and must be vacated.

III.

{¶9} Because Stallworth’s sentence is void, this Court cannot address his assignments of error. This Court exercises its inherent power to vacate the journal entry and remands this matter to the trial court for a new sentencing hearing.

Judgment vacated,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

CLAIR E. DICKINSON
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

CARR, J.
DISSENTS, SAYING:

{¶10} I respectfully dissent for the reasons I articulated in *State v. King*, 9th Dist. No. 24675, 2009-Ohio-5158 (Carr, J., dissenting).

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.