IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio   Court of Appeals No. L-10-1006

　　　　Appellee   Trial Court No. CR0200002321

v.

Rojelio Sanchez, Jr.   **DECISION AND JUDGMENT**

　　　　Appellant   Decided: August 6, 2010

* * * * *

Julia Bates, Lucas County Prosecuting Attorney, and Frank Spryszak,
Assistant Prosecuting Attorney, for appellee.

Robert Searfoss III, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a sentencing judgment of the Lucas County Court of

Common Pleas which sentenced appellant to a total term of incarceration of 11 years for

his conviction of attempted murder with an accompanying firearm specification. For the

reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Rojelio Sanchez, Jr., sets forth the following sole assignment of error:

{¶ 3} "FIRST ASSIGNMENT OF ERROR: The trial court erred by reimposing Appellant's original sentence despite the fact that that [sic] original sentence was void, a nullity, and vacated by operation of law for want of proper imposition of mandatory post-release control."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. In the summer of 2000, appellant became entangled in a dispute with a man that originated in an incident at an area softball complex. On July 18, 2000, appellant contacted the man via telephone seeking an in-person confrontation regarding the matter. Appellant blatantly stated his desire to shoot the man in front of his children. The victim refused to meet with appellant and terminated the call.

{¶ 5} Despite the victim's attempt to diffuse the matter, approximately 15 minutes after the call ended, appellant appeared at the man's Oregon, Ohio residence. When the victim came outdoors, appellant shot him at close range. As the victim attempted to escape, appellant shot him a second time in the back. A third shot fired by appellant aimed at the victim missed and lodged in the victim's home. In the course of the subsequent police investigation into the incident, appellant conceded to an investigating detective that he had been the shooter.

{¶ 6} On August 7, 2000, appellant was indicted on one count of felonious assault with a firearm specification and one count of attempted murder with a firearm

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specification. On October 30, 2000, pursuant to a plea agreement, appellant pled no contest to attempted murder with a firearm specification in exchange for the dismissal of the remaining charges. A presentence investigation was conducted.

{¶ 7} On November 28, 2000, appellant was sentenced to an eight-year term of incarceration for the attempted murder count, with a consecutive three-year term of incarceration for the accompanying firearm specification, for an 11-year total term of incarceration. At sentencing, the trial court failed to notify appellant that upon release a mandatory term of postrelease control would be served.

{¶ 8} On November 18, 2009, appellant filed a motion for a new sentencing hearing on the procedural basis of the lack of postrelease control notification. This postrelease control notification omission voided that original sentence. It necessitated appellant's resentencing to enable the requisite notification of mandatory postrelease control.

{¶ 9} On December 8, 2009, appellant's resentencing hearing was conducted. Appellant was again sentenced to an eight-year term of incarceration on attempted murder, to again be served consecutively with a three-year term of incarceration for the accompanying firearm specification, for a total term of incarceration of 11 years. At resentencing, appellant was properly notified of mandatory postrelease control. Timely notice of appeal was filed.

{¶ 10} In his sole assignment of error, appellant asserts that the resentencing by the trial court was improper due to its imposition of a term of incarceration identical to

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the term imposed in his original sentencing. In support, appellant argues that the trial court improperly reimposed the original void sentence.

{¶ 11} It is well-established by controlling caselaw that in criminal cases in which one is convicted of an offense for which mandatory postrelease control is not incorporated at sentencing, a new sentencing hearing is required to correct that omission. *State v. Simpkins* (2008), 117 Ohio St.3d 420, 421. In the instant case, the crux of appellant's argument is that the trial court improperly failed to conduct a de novo resentencing due to its imposition at resentencing of a term of incarceration of the same duration as that which was imposed at the original sentencing.

{¶ 12} We have carefully reviewed and considered the record of evidence in this matter, paying particular attention to the resentencing transcript given its determinative impact upon this matter. The record clearly reflects that appellant's resentencing encompassed the trial court's review and consideration of various new materials not present at the original sentencing. The trial court reviewed and considered correspondence on appellant's behalf from appellant, correspondence from a minister on appellant's behalf, and from an organization that intends to employ appellant in a service and recidivism prevention capacity upon his release. In addition, the record reflects that appellant and his counsel were both heard in detail in mitigation. The record establishes that the court balanced these mitigating statements and considerations with the aggravating circumstances of the case.

{¶ 13} The record reflects that upon balancing these competing considerations, the court noted that appellant traveled to the home of an unarmed victim, shot him at close range in the chest, and shot the victim again in the back as he attempted to flee. The court proceeded to sentence appellant to an eight-year term of incarceration for attempted murder, with a consecutive three-year term of incarceration for the accompanying firearm specification. The court further notified appellant that upon release he would be subject to mandatory postrelease control.

{¶ 14} The record reflects that appellant filed for and received a resentencing hearing on the basis of the procedural omission of notification of mandatory postrelease control at the original sentencing. Significantly, the record shows that appellant incorrectly perceived this as an early release opportunity. At resentencing, appellant stated in relevant part, "I would hope for this opportunity to be released hopefully early. And I thought this motion here would afford me that opportunity. And I would ask that you would please consider my institutional record, letters of recommendation and things like that, Your Honor."

{¶ 15} The record in this matter demonstrates no deficiencies, breaches, or omissions at appellant's resentencing so as to operate to void that sentence. On the contrary, the record reflects that the trial court conducted a proper, de novo resentencing. Appellant's unsupported position that because the sentencing encompassed a term of incarceration of the same duration as the original sentence it is thereby likewise a void sentence is without merit.

{¶ 16} The original sentence was void due to a procedural omission rather than due to any impropriety in the substantive sentencing terms. The record shows no errors in the substantive terms or procedural handling of resentencing. We find appellant's assignment of error not well-taken.

{¶ 17} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.   _____
                                                              JUDGE
Thomas J. Osowik, P.J.

Keila D. Cosme, J.   JUDGE
CONCUR.

                                              _____
                                                              JUDGE