

[Cite as *State v. Owens*, 2010-Ohio-6004.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL OWENS

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 09CA128

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Common
Pleas Court, Case No. 2002CR212D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 8, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JAMES J. MAYER, JR.
PROSECUTING ATTORNEY
RICHLAND COUNTY, OHIO

JAMES L. BLUNT, II
105 Sturges Avenue
Mansfield, Ohio 44903

By: KIRSTEN L. PSCHOLKA-GARTNER
Assistant Richland County Prosecutor
38 South Park Street
Mansfield, Ohio 44902

Hoffman, J.

{¶1} Defendant-appellant Michael Owens appeals the June 8, 2009 Amended Sentencing Entry entered by the Richland County Court of Common Pleas, which clarified a sentence originally imposed upon him in 2002. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On March 8, 2002, the Richland County Prosecutor filed a Bill of Information, charging Appellant with one count of aiding and abetting aggravated robbery and two counts of aiding and abetting burglary. Appellant appeared before the trial court for arraignment on March 11, 2002, and entered pleas of guilty to the charges. The trial court sentenced Appellant to six years imprisonment on the aiding and abetting robbery conviction, and four years on each of the aiding and abetting burglary convictions. The trial court ordered the sentences be served concurrently with each other, and concurrently with the sentences Appellant was serving in other cases. Relevant to this appeal is the sentence imposed in Case No. 02CR90, in which the trial court sentenced Appellant to four years for a conviction on one count of aggravated robbery as well as a mandatory, consecutive three year term on a firearm specification.

{¶3} On May 30, 2007, Appellant filed a Motion for Inquiry into Certain Practices of the Ohio Department of Rehabilitation and Correction. Therein, Appellant challenged ODRC's "interpretation" of the trial court's sentencing entries as imposing an aggregate sentence of nine years. The trial court issued a Judgment Entry clarifying the

¹ A Statement of the Facts underlying Appellant's conviction is not necessary to our disposition of this appeal.

sentence on August 7, 2007, finding ODRC's records conformed to the trial court's sentences. Thereafter, on March 13, 2008, Appellant filed a Motion for Leave to Withdraw Guilty Plea, which the trial court overruled via Judgment Entry filed August 1, 2008. Appellant filed a timely Notice of Appeal from the August 1, 2008 Judgment Entry. This Court dismissed the appeal for want of prosecution via Judgment Entry filed January 28, 2009.

{¶14} Appellant filed a Motion for Judicial Release on June 5, 2009, requesting a hearing. The State filed a memorandum in opposition thereto. The trial court issued an Amended Sentencing Entry on June 8, 2009, ordering the same sentence and again clarifying how the sentences were to be run. The trial court overruled Appellant's Motion for Judicial Release on July 21, 2009.

{¶15} On November 4, 2009, Appellant filed a Motion for Leave to File a Delayed Appeal, which this Court granted.

{¶16} It is from the June 8, 2009 Amended Sentencing Entry Appellant Appeals, raising the following assignment of error:

{¶17} "I. THE TRIAL COURT AND THE DEPARTMENT OF CORRECTIONS ERRED BY INTERPRETING ITS AGREGATE [SIC] SENTENCES TO BE FOR A TERM OF NINE YEARS AS OPPOSED TO A TERM OF SEVEN YEARS."²

² We note Appellant failed to appeal this issue when it was originally ruled upon on August 7, 2007. We also question whether the denial of a Motion for Judicial Release is a proper procedural vehicle to challenge decisions of the Ohio Department of Corrections.

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{¶8} In his sole assignment of error, Appellant maintains the trial court and the Ohio Department of Corrections erred in determining his aggregate sentences to be a total of nine years as opposed to a term of seven years. We disagree.

{¶9} In Richland County Common Pleas Court Case No. 2002-CR-090, Appellant was sentenced to an aggregate term of incarceration of seven years. The trial court imposed a four year sentence on count one, aggravated robbery, and a mandatory consecutive three year prison term on the attendant firearm specification. In Richland County Court of Common Pleas Case No. 2002-CR-212, Appellant was sentenced to a period of incarceration of six years on one count of aiding and abetting aggravated robbery, four years on each of two counts of aiding and abetting burglary. The trial court ordered the sentences be served concurrently for an aggregate prison term of six years. The trial court further ordered the sentence in Case No. 2002-CR-212 be served concurrently with the sentence imposed upon Appellant in Case Nos. 2002-CR-090 and 2002-CR-93.³

{¶10} The trial court issued a Judgment Entry Clarifying Sentence on August 7, 2007, indicating Appellant's sentence an aggregate term of imprisonment of nine years on the three cases. However, in a subsequent Amended Sentencing Entry filed in Case No. 2002-CR-0090, on June 8, 2009 the trial court indicated the sentence therein was to be served concurrently with the other cases, but consecutive to the gun specification for a total of seven years. June 8, 2009 Amended Sentencing Entry at 2. Based upon this language, Appellant argues he should only serve a total of seven years.

³ Case No. 2002-CR-093 is not relevant to the issues raised in this Appeal.

{¶11} R.C. 2929.14 provides:

{¶12} “(E)(1)(a) Subject to division (E)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, * * * the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.”

{¶13} Accordingly, Appellant is statutorily required to serve the 3 year term on the firearm specification in Case No. 2002CR090 consecutively to the sentences for the felony convictions in Case Nos. 2002CR090 and 2002CR212, which were ordered to run concurrently.

{¶14} Black's Law Dictionary defines concurrent sentences as “[t]wo or more terms of imprisonment, all or part of each term of which is served simultaneously and the prisoner is entitled to discharge at the expiration of the longest term specified.” Black's Law Dictionary (6 Ed.Rev.1990) 291. Further, the term “concurrent” is simply defined as “running together.” Id. The longest period specified by the trial court herein was the 6 year sentence on the aiding and abetting aggravated robbery charge in Case No. 2002CR212. As such, Appellant must serve the 3 year firearm specification in addition to the 6 year sentence, for a total of 9 years. We find the fact the trial court

indicated the sentence in Case No. 2002CR090 was to be served “concurrently with other cases but consecutive to the gun specification for a total of 7 years” is not dispositive of the length of Appellant’s sentence. Pursuant to the dictates of R.C. 2929.14, we find Appellant’s sentence is 9 years.

{¶15} Based upon the foregoing, Appellant’s sole assignment of error is overruled.

{¶16} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Farmer, J. concur

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin _____
HON. W. SCOTT GWIN

s/ Sheila G. Farmer _____
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL OWENS

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 09CA128

For the reasons stated in our accompanying Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER