

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

State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 05CA28
 :
 v. :
 : DECISION AND JUDGMENT ENTRY
 Matthew W. Smith, :
 : **Released 1/18/06**
 Defendant-Appellant. :

APPEARANCES:

David H. Bodiker, Ohio Public Defender, Melissa M. Prendergast, Assistant Public Defender, Columbus, Ohio, for appellant.

P. Eugene Long, Pickaway County Prosecutor, Judy Wolford, Assistant Prosecutor, Circleville, Ohio, for appellee.

Harsha, P.J.

{¶1} The State and Appellant Matthew W. Smith, have taken an unusual approach and filed a "Joint Motion to Vacate Sentence and Remand for Resentencing," which we will construe as a joint brief addressing the merits. The motion asserts the prison sentence imposed upon Smith, consisting of two concurrent three-year terms violates R.C. 2921.331(D) because as a matter of law, the sentence must be served consecutively with any other prison term imposed upon the offender. We agree.

{¶2} Smith pleaded guilty to one count of driving under the influence of alcohol or drugs (R.C.

4511.19(A)(1)) and one count of failure to comply with the order or signal of a police officer (R.C. 2921.331(B)). The parties made a joint recommendation to the court to impose a three-year prison sentence. The trial court accepted the recommendation and sentenced Smith to two concurrent three-year prison terms.

{¶3} However, a prison term imposed for a violation of R.C. 2921.331(B) (failure to comply with the order or signal of a police officer) must be served consecutively to "any other prison term or mandatory prison term imposed upon the offender." R.C. 2921.331(D). Therefore, the trial court's current prison sentence does not comply with R.C. 2921.331(D). Accordingly, we sustain the parties' joint motion, reverse the judgment of the trial court, and remand this cause for further proceedings consistent with this opinion. We also commend counsel for their professional approach to this matter.

JUDGMENT REVERSED
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED AND CAUSE REMANDED and that the Appellant recover of Appellee 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 Pickaway County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Ohio Supreme Court an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Ohio Supreme Court in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Presiding 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.