[Cite as *State v. Cutright*, 2009-Ohio-4163.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. RENA CUTRIGHT Appellant	C.A. No. 24466 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 2008-03-1023(B)

DECISION AND JOURNAL ENTRY

Dated: August 19, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Rena Cutright, appeals from her convictions in the Summit County Court of Common Pleas. This Court vacates.

I

{¶2} Cutright and two other individuals, Aaron Cutright and Joseph Molnar, were arrested after police executed a search of their home on Nesmith Lake Boulevard in Akron. Police searched the home after discovering the foregoing individuals' names on pharmaceutical pseudoephedrine logs and locating items indicative of methamphetamine manufacturing in their trash. The search of the Nesmith Lake Boulevard home uncovered numerous items, including rifles and handguns, loose cash, a video surveillance system that monitored the home, digital scales, Ziploc baggies containing methamphetamine, coffee filters containing pseudoephedrine, paint thinner, camping fuel, antifreeze, multiple beakers and mason jars, and ground up pseudoephedrine that was being kept in the freezer.

{¶3} On April 8, 2008, a grand jury indicted Cutright on the following counts: (1) illegal manufacturing of drugs, in violation of R.C. 2925.04(A); (2) illegal assembly or possession of chemicals for the manufacturing of drugs, in violation of R.C. 2925.041; (3) aggravated possession of drugs, in violation of R.C. 2925.11(A)(C)(1); (4) illegal use or possession of drug paraphernalia, in violation of R.C. 2925.14(C)(1); and (5) possessing criminal tools, in violation of R.C. 2923.24. The first three counts also included criminal forfeiture specifications, pursuant to R.C. 2941.1417. Before trial, the State dismissed the forfeiture specifications and the last count for possessing criminal tools. The matter proceeded to a jury trial on the remaining counts.[1] The jury found Cutright guilty on all counts, and the trial court sentenced her to a total of six years in prison and five years of post-release control.

{¶4} Cutright now appeals from her convictions and raises three assignments of error for us to review.

II

Assignment of Error Number One

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED DEFENDANT-APPELLANT CUTRIGHT'S MOTION FOR JUDGMENT OF ACQUITTAL UNDER CRIM.R. 29."

Assignment of Error Number Two

"DEFENDANT-APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

Assignment of Error Number Three

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING EVIDENCE OVER THE DEFENSE OBJECTION THAT THE STATE FAILED TO SHOW A PROPER CHAIN OF CUSTODY."

[1] Cutright's trial was consolidated with the trials of her two co-defendants, Aaron Cutright and Joseph Molnar.

{¶5} In her first and second assignments of error, Cutright argues that her convictions are based on insufficient evidence and are against the manifest weight of the evidence. In her third assignment of error, Cutright argues that the trial court erred by admitting evidence for which the State failed to demonstrate a proper chain of custody. We cannot reach the merits of Cutright's arguments, however, because the record reflects that her sentence is void.

{¶6} Recently, the Supreme Court reiterated that:

> "[N]o court has the authority to substitute a different sentence for that which is required by law. A sentence that does not comport with statutory requirements is contrary to law, and the trial judge is acting without authority in imposing it." (Internal quotations and citations omitted.) *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶8.

The Court held that even though "neither party here is actually challenging the imposed sentence *** we still must vacate the sentence and remand for a resentencing hearing in the trial court." Id. at ¶12. "[A] court cannot ignore [a void] sentence and instead must vacate it and order resentencing." Id.

{¶7} R.C. 2967.28(B) provides, in relevant part, that:

> "Each 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. *** Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:
>
> "***
>
> "(2) For a felony of the second degree that is not a felony sex offense, three years[.]"

"[I]n the absence of a proper sentencing entry imposing post[-]release control, the parole board's imposition of post[-]release control cannot be enforced." *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, at ¶71.

{¶8} Among her other convictions, Cutright was convicted of illegal manufacturing of drugs, a second degree felony in violation of R.C. 2925.04(A). Accordingly, she was subject to a statutorily mandated term of three years of post-release control. R.C. 2967.28(B)(2). At Cutright's sentencing hearing and in her sentencing entry, the trial court indicated that "[a]fter release from prison, [Cutright] is ordered to serve Five (5) years of post-release control." Because R.C. 2967.28(B)(2) mandates three years of post-release control for second-degree felonies, rather than five years, Cutright's sentence is contrary to law. *State v. Allen*, 6th Dist. No. S-09-004, 2009-Ohio-3799, at ¶32; *State v. Holloway*, 8th Dist. No. 91005, 2009-Ohio-35, at ¶35-37 (both concluding that sentences were void where trial courts informed defendants that they were subject to five years of post-release control rather than the applicable three years of post-release control). "[W]here a sentence is void because it does not contain a statutorily mandated term, the proper remedy is *** to resentence the defendant." *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶23.

{¶9} Because the trial court improperly informed Cutright that she is subject to five years of post-release control instead of three years, her sentence is void. As Cutright's sentence is void, this Court lacks jurisdiction to consider her assignments of error. *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶14.

III

{¶10} Because Cutright's sentence is void, this Court cannot address her assignments of error. Cutright's sentence is vacated, and the cause is remanded for the trial court to resentence her according to law.

Sentence 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.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

DONALD R. HICKS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.