

[Cite as *State v. Greer*, 2010-Ohio-2995.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24608

Appellee

v.

PAUL W. GREER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 1985 02 0176

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2010

CARR, Judge.

{¶1} Appellant, Paul Greer, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In 1985, Greer was indicted on one count of aggravated murder in violation of R.C. 2903.01(A); one count of aggravated murder in violation of R.C. 2903.01(B), including a specification of aggravated circumstances pursuant to R.C. 2929.04 (the “death penalty specification”); and one count of aggravated robbery in violation of R.C. 2913.02. The jury found Greer guilty of all charges. At the conclusion of the penalty phase of the trial, the jury recommended the death penalty. At sentencing, the trial court merged the first count of aggravated murder into the second as an allied offense, adopted the jury’s recommendation, and sentenced Greer to death on the second count of aggravated murder, and to an indeterminate term of 15 to 25 years for aggravated robbery, with those terms to run consecutively.

{¶3} Greer appealed and this Court affirmed. *State v. Greer* (Mar. 4, 1987), 9th Dist. No. 12258, affirmed by *State v. Greer* (1988), 39 Ohio St.3d 236. This Court affirmed the trial court's denial of his petition for post-conviction relief. *State v. Greer* (Oct. 28, 1992), 9th Dist. No. 15217. A few years later, the Ohio Supreme Court lifted a stay of execution on Greer's sentence after determining that he had exhausted his state post-conviction appeals. *State v. Greer* (1996), 75 Ohio St.3d 1444. Greer sought federal habeas corpus relief, which was denied by the federal district court. The Sixth Circuit affirmed in large part, but reversed and remanded for an evidentiary hearing on the sole issue of the ineffective assistance of appellate counsel. *Greer v. Mitchell* (C.A.6, 2001), 264 F.3d 663.

{¶4} On September 6, 2002, Greer filed a successor petition to vacate or set aside his sentence in reliance on *Atkins v. Virginia* (2002), 536 U.S. 304, which holds that the execution of mentally retarded individuals violates the Eighth Amendment prohibition against cruel and unusual punishment. *Id.* at 321. After a hearing, the trial court found Greer to be mentally retarded and, therefore, "unsuitable" for the death penalty under the Eighth Amendment. The trial court directed the parties to file sentencing memoranda "outlining the relevant statute(s) in vogue at the time of the murder, the various penalties available to the court under the applicable laws, the options available to the court in rendering its sentence, and a recitation of those penalties preciously (sic) imposed that are unaffected by this court's decision."

{¶5} The parties filed separate sentencing memoranda, but due to errors by the clerk's office in copying those filings, neither memorandum is complete. On December 19, 2008, Greer filed a motion for the empanelling of a jury for purposes of conducting a mitigation hearing. The trial court denied the motion and proceeded to resentencing. The trial court asserted on the record that the parties agreed that it must apply the law as in effect in 1985, at the time of the

commission of the crimes. Neither party objected or disputed the court's assertion. The trial court then read into the record the statute, R.C. 2929.06, as it was in effect in 1985. After hearing the parties' arguments regarding sentencing, the trial court merged the first count of aggravated murder into the second count of aggravated murder (felony murder), imposed a sentence of life imprisonment with eligibility of parole after 30 years, and imposed a sentence of an indefinite term of 15 to 25 years for aggravated robbery, with the sentences to run consecutively. Greer filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE SENTENCING COURT ABUSED ITS[] DISCRETION BY ORDERING, WITHOUT SUFFICIENT EVIDENCE AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, THE IMPOSITION OF SENTENCE WITHOUT A FULL SENTENCING HEARING TO INCLUDE MITIGATION EVIDENCE PRESENTED BEFORE A JURY TO DETERMINE THE SENTENCE.”

{¶6} Greer argues that the trial court erred in his resentencing. This Court disagrees.

{¶7} Greer challenges his resentencing on various grounds. He argues that the current version of R.C. 2929.06, relating to resentencing after a sentence of death has been set aside, nullified, or vacated, is inapplicable to his case. Specifically, he argues that it violates the prohibition against ex post facto laws, creates disparate sentencing schemes, and violates due process by depriving him of a full and fair hearing before a jury.

{¶8} A review of the transcript of the resentencing hearing indicates that the trial court did not apply the current version of R.C. 2929.06. Rather, the trial court stated: “Keep in mind this is a 1985 offense, and that, as all the attorneys agree, we must use 1985 law.” Neither party objected. The trial court then read the version of R.C. 2929.06, as it was in effect in 1985, into the record. That provision stated:

“If the sentence of death that is imposed upon any offender is vacated upon appeal because the court of appeals or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, or is vacated pursuant to division (C) of section 2929.05 of the Revised Code, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall sentence the offender to life imprisonment with parole eligibility after serving twenty full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.” *Id.*

{¶9} Because the trial court did not apply the current version of R.C. 2929.06 when it resented Greer, his arguments regarding the constitutionality and applicability of the current version are not properly before this Court.

{¶10} Greer further argues that the trial court erred by denying his jury demand for purposes of his resentencing hearing. Assuming, without deciding, that the prior version of R.C. 2929.06 was applicable to this matter, that version made no provision for a recommendation by a jury as to the sentence to be imposed after the offender’s death penalty has been set aside, nullified, or vacated. Parenthetically, there is no such provision in the current version of the statute either. Greer cites no authority in support of his argument that he is entitled to a hearing before a jury upon resentencing pursuant to R.C. 2929.06. His reliance on *State v. Clinkscale*, 122 Ohio St.3d 351, 2009-Ohio-2746, is misplaced.

{¶11} *Clinkscale* involved the retrial of a defendant who had been charged with a capital offense. Because his sentencing after retrial constituted an initial sentencing and not a resentencing after the setting aside, nullification, or vacation of a sentence of death, the resentencing provisions of R.C. 2929.06 were not implicated. His argument that the trial court erred by denying his jury demand is not well taken.

{¶12} Greer further argues that he was entitled to support services of “investigators, mitigation specialists, mental health professionals and any other forensic expert reasonably necessary or appropriate for counsel to prepare a defense” during his resentencing. R.C. 2929.06 makes no provision for such support services for purposes of resentencing. Greer’s reliance on *Clinkscale* in this regard is again misplaced.

{¶13} Finally, Greer asserts in his assignment of error that his sentence is not supported by sufficient evidence and is against the manifest weight of the evidence. He fails, however, to develop this argument within the body of his brief as required by App.R. 16(A)(7). Nevertheless, upon due consideration, this Court concludes that the sentence was supported by sufficient evidence and was not against the manifest weight of the evidence.

{¶14} The trial court relied on Greer’s lack of remorse evidenced at the resentencing hearing by his continued assertion that he is innocent. The trial court further relied on the “profound and compelling” proof of Greer’s guilt as delineated in the appellate opinions, that “this was a cruel, vicious, multiple knife-wielding attack.” Given the established nature and circumstances of the offense, coupled with Greer’s utter lack of remorse, the imposition of a sentence of life imprisonment with eligibility for parole after 30 years is supported by sufficient evidence and is not against the manifest weight of the evidence.

{¶15} Greer’s assignment of error is overruled.

III.

{¶16} Greer’s assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Appellant.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
CONCURS

MOORE, J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

GEORGE C. PAPPAS, Attorney at Law, for Appellant.

JAMES A. JENKINS, Attorney at Law, for Appellant.

RONALD MARK CALDWELL, and KATHLEEN O. TATARSKY, Special Prosecuting Attorneys, for Appellee.