

[Cite as *State v. Bodiford*, 2010-Ohio-5923.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 10CA009770

Appellee

v.

GERALD BODIFORD

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 04CR064879

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 6, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Gerald Bodiford pleaded guilty to trafficking in cocaine, possession of cocaine, possession of criminal tools, and having weapons while under disability, and the trial court sentenced him to five years in prison. The expiration date for Mr. Bodiford’s prison sentence was January 21, 2010. In July 2009, the Ohio Department of Corrections sent Mr. Bodiford to a halfway house and, later, let him live with his father. Mr. Bodiford, however, remained on electronic monitoring. On January 13, 2010, the trial court held a resentencing hearing because it had not correctly imposed post-release control at Mr. Bodiford’s original sentencing. It resentenced him to five years in prison and to five years of post-release control. Mr. Bodiford has appealed, arguing that the trial court did not have the authority to resentence him because he had already been released from prison. We affirm because Mr. Bodiford had not been “released

from prison,” but merely transferred to a transitional control program under Section 2967.26 of the Ohio Revised Code.

RELEASE FROM PRISON

{¶2} Mr. Bodiford’s assignment of error is that the trial court incorrectly resentenced him to correct his void sentence. He has argued that the trial court did not have the power to resentence him because he had been released from prison.

{¶3} In *State v. Simpkins*, 117 Ohio St. 3d 420, 2008-Ohio-1197, the Ohio Supreme Court held that, “[i]n cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void, and the state is entitled to a new sentencing hearing to have postrelease control imposed on the defendant unless the defendant has completed his sentence.” *Id.* at syllabus. In *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, the Ohio Supreme Court also recognized that a trial court lacks authority to resentence an offender if the sentencing error was discovered “after the offender ha[s] been released from prison.” *Id.* at ¶15; see also *State v. Bloomer*, 122 Ohio St. 3d 200, 2009-Ohio-2462, at ¶70 (noting that a defendant can not be subjected to another sentencing hearing after he “has completed the prison term imposed in his original sentence”); *State v. Bezak*, 114 Ohio St. 3d 94, 2007-Ohio-3250, at ¶18 (concluding that defendant could not be resentenced because he had “already served the prison term ordered by the trial court.”).

{¶4} The State has argued that Mr. Bodiford had not completed his sentence or been released from prison at the time of the resentencing hearing, but was in a transitional control program. Under Section 2967.26(A) of the Ohio Revised Code, “[t]he department of rehabilitation and correction . . . may establish a transitional control program for the purpose of closely monitoring a prisoner’s adjustment to community supervision during the final one

hundred eighty days of the prisoner's confinement. If the department establishes a transitional control program under this division, the adult parole authority may transfer eligible prisoners to transitional control status under the program during the final one hundred eighty days of their confinement . . . and shall supervise each eligible prisoner so transferred in one or more community control sanctions. Each eligible prisoner who is transferred to transitional control status under the program shall be confined in a suitable facility that is licensed pursuant to division (C) of section 2967.14 of the Revised Code, or shall be confined in a residence the department has approved for this purpose and be monitored pursuant to an electronic monitoring device, as defined in section 2929.01 of the Revised Code."

{¶5} The State presented a letter from the Ohio Department of Rehabilitation and Correction to the Lorain County Prosecutor, dated May 20, 2009, indicating that Mr. Bodiford was eligible for its transitional control program. The letter indicated that, under the terms of the program, "[o]ffenders are placed in a licensed halfway house and then may be stepped down to electronic monitoring."

{¶6} Mr. Bodiford's lawyer told the trial court that, in July 2009, Mr. Bodiford was sent to the Oriana halfway house, but had since been released from the halfway house and was living with his father. He conceded that Mr. Bodiford was still attached to the ankle monitor that had been placed on him by the halfway house and was still under the supervision of the adult parole authority. Mr. Bodiford's transition from prison to a halfway house, followed by electronic monitoring, is consistent with a finding that he had been placed in the transitional control program described in the letter from the Ohio Department of Rehabilitation and Correction and the description of such programs under Section 2967.26(A) of the Ohio Revised Code.

{¶7} Just because Mr. Bodiford was placed in a transitional control program did not mean he was released from prison. Under Section 2967.26(A), a prisoner placed in transitional control program is “confined” to a halfway house or “confined” to an approved residence and is monitored electronically. Under Section 2967.26(F), “[i]f a prisoner is transferred to transitional control under this section, upon successful completion of the period of transitional control, the prisoner may be released on parole or under post-release control” Section 2967.26(F) clarifies that a prisoner who enters a transitional control program has not been “released” from prison the same as someone who has completed his sentence, he has merely been “transferred” to the transitional control program and is still considered “confined” to the halfway house or approved residence. R.C. 2967.26(A); see also R.C. 2929.01(BB) (defining “[p]rison term” to include “either of the following sanctions for an offender: (1) A stated prison term; (2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2967.26 . . . of the Revised Code.”).

{¶8} Because Mr. Bodiford was in a transitional control program and remained subject to electronic monitoring, he had not been released from prison or completed his prison term at the time of the resentencing hearing. The trial court, therefore, correctly concluded that it had authority to resentence him to properly impose post-release control.

CONCLUSION

{¶9} Because Mr. Bodiford had not been released from prison, the trial court correctly concluded that it could resentence him to correct his void sentence. The judgment of the Lorain County Common Pleas Court 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 Lorain, 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.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, attorney at law, for appellant.

DENNIS WILL, prosecuting attorney, and MARY R. SLANCZKA, assistant prosecuting attorney, for appellee.