

[Cite as *State v. Pattson*, 2010-Ohio-5755.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23785
v.	:	T.C. NO. 1999CR4409/2
JURRAUN L. PATTSON	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 24th day of November, 2010.

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CANNON, J. (by assignment)

{¶ 1} Appellant, Jurraun L. Pattson, appeals the judgment of the Montgomery County Court of Common Pleas resentencing him on two counts of aggravated robbery. As Pattson was properly resentenced, we affirm the judgment of the trial court.

{¶ 2} Pattson was sentenced in 2001 for two counts of aggravated robbery, felonies of the first degree. The trial court sentenced Pattson to a ten-year term of imprisonment. In the sentencing entry, the trial court informed Pattson that, “following [his] release from prison, [he] will/may serve a period of post-release control under the supervision of the parole board.” Pattson did not directly appeal.

{¶ 3} In 2001, Pattson, acting pro se, moved the trial court to vacate his guilty plea, which was denied. Thereafter, in 2005 and 2007, Pattson, represented by the Montgomery County Public Defender’s Office, sought judicial release. Said motions were also denied.

{¶ 4} In November 2009, Pattson was resentenced, as the sentencing entry of 2001 did not inform him of the mandatory nature of postrelease control. The hearing was set for Friday, November 13, 2009. Pattson was due to be released from prison that following Monday.

{¶ 5} On November 13, 2009, Pattson appeared in open court and was represented by the Montgomery County Public Defender’s Office. At the hearing, the public defender asked for a continuance of the sentencing hearing, alleging he did not have adequate notice of the hearing. The public defender informed the court that he received the file that morning due to the medical emergency of the assigned public defender. The trial court denied counsel’s motion and conducted a de novo sentencing hearing. Pattson was informed both of the statutorily mandated five-year period of postrelease control following his release from prison, as well as the potential penalties for violating postrelease control sanctions.

{¶ 6} Pattson timely appeals to this court from his resentencing and asserts the

following two assignments of error:

{¶ 7} “[1.] The actions of the state operated to deprive the defendant of his right to counsel allowed by law.

{¶ 8} “[2.] The trial court erred in overruling defendant’s reasonable request to continue the sentencing hearing.”

{¶ 9} The Supreme Court of Ohio released its opinion in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, which addressed R.C. 2929.191, the statutory remedy to correct the trial court’s failure to properly impose postrelease control. The *Singleton* Court held:

{¶ 10} “[F]or sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio. However, for criminal sentences imposed on and after July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall apply the procedures set forth in R.C. 2929.191.” Id. at ¶1.

{¶ 11} In discussing the retroactive application of R.C. 2929.191, the *Singleton* Court, supra, at ¶25, stated:

{¶ 12} “Before the enactment of R.C. 2929.191, no statutory remedy existed for the correction of a sentence that failed to properly impose postrelease control. In the absence of a statutory remedy, we recognized that a sentence that failed to properly impose a statutorily mandated period of postrelease control was contrary to law when imposed. See [*State v.*] *Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶23; [*State v.*] *Bezak*, 114 Ohio St.3d 94,

2007-Ohio-3250, ¶13. When a sentence is a nullity, it is as though it never occurred. *Id.*, citing *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267. Accordingly, we directed trial courts to conduct a de novo sentencing.” (Parallel citations omitted.)

{¶ 13} Pattson’s sentencing entry failed to comply with the mandate of R.C. 2967.28(B)(3), which provides that every prison sentence for a felony of the first degree shall include a mandatory five-year period of postrelease control. As Pattson was sentenced in 2001, prior to the effective date of R.C. 2929.191, the trial court was required to conduct the de novo sentencing procedure set forth in *Singleton*, supra, at ¶26.

{¶ 14} Pattson argues that he was deprived of his Sixth Amendment right to the effective assistance of counsel, as he was resentenced only one business day prior to his release from prison. We find this argument without merit.

{¶ 15} “We review the alleged instances of ineffective assistance of trial counsel under the two prong analysis set forth in *Strickland v. Washington* (1984), 466 U.S. 668, and adopted by the Supreme Court of Ohio in *State v. Bradley* (1989), 42 Ohio St.3d 136. Pursuant to those cases, trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. *Strickland*, 466 U.S. at 688. To reverse a conviction based on ineffective assistance of counsel, it must be demonstrated that trial counsel’s conduct fell below an objective standard of reasonableness and that his errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. *Id.* Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel’s perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective

assistance of counsel.” (Internal and parallel citations omitted). *State v. Mitchell*, Montgomery App. No. 21957, 2008-Ohio-493, at ¶31.

{¶ 16} As demonstrated by the record, the trial court properly conducted a de novo sentencing hearing. Further, the record demonstrates that Pattson’s counsel made numerous objections on his behalf, including, inter alia, the constitutionality of R.C. 2929.191 and the calculation of Pattson’s jail-time credit. At the resentencing hearing, the trial court informed Pattson that it would not “effect [his] out date as it has been established by the Bureau of Sentence Calculation.” Consequently, Pattson was sentenced to the same term of imprisonment as imposed in 2001. The trial court informed Pattson that he was subject to a mandatory five-year period of postrelease control.

{¶ 17} Pattson has failed to point to any evidence in the record demonstrating any deficient performance by counsel. Pattson has further failed to demonstrate that there was a reasonable probability that granting a continuance of the hearing or appearance of other counsel would have resulted in a different outcome at sentencing. Ineffective assistance of counsel has not been demonstrated, and, therefore, this assigned error is without merit.

{¶ 18} Pattson also claims that the trial court erred in denying his motion to continue the resentencing hearing. Pattson maintains that by denying his motion to continue the resentencing hearing, he was denied meaningful assistance of counsel. This argument is not well-taken.

{¶ 19} The Supreme Court of Ohio has held that “[t]he grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an

abuse of discretion.” *State v. Unger* (1981), 67 Ohio St.2d 65, 67. An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, Clark App. No. 09-CA-54, 2010-Ohio-1900, at ¶62, quoting Black’s Law Dictionary (8 Ed.Rev.2004) 11. In determining whether a trial court abused its discretion when ruling on a motion for continuance, a reviewing court must weigh any potential prejudice to the defendant against the trial court’s “right to control its own docket and the public’s interest in the prompt and efficient dispatch of justice.” *State v. Unger*, 67 Ohio St.2d at 67.

{¶ 20} As noted, Pattson’s resentencing hearing was scheduled for November 13, 2009, prior to his release from prison. At the hearing, the trial court observed that the hearing was at the “eleventh hour” but overruled Pattson’s motion to continue, noting that, upon completion of his sentence, the trial court would lose jurisdiction to conduct a resentencing hearing to properly impose postrelease control. Although Pattson alleged that he was denied meaningful assistance of counsel, we have found this argument to be without merit.

{¶ 21} Pattson’s first and second assignments of error are without merit. The judgment of the Montgomery Court of Common Pleas is hereby affirmed.

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BROGAN, J. and GRADY, J., concur.

(Hon. Timothy P. Cannon, Eleventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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