

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1203

Appellee

Trial Court No. CR0199902618

v.

Scott J. Robinson

DECISION AND JUDGMENT

Appellant

Decided: May 13, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney,
for appellee.

Patricia Horner, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a nunc pro tunc judgment entry of the Lucas County Court of Common Pleas that resentenced appellant, attempting to correct its omission of the mandatory postrelease control language from appellant's original sentencing order.

For the reasons that follow, this matter is remanded to the trial court for resentencing in accordance with this decision.

{¶ 2} Appellant sets forth the following sole assignment of error:

{¶ 3} "The trial court abused its discretion in issuing a nunc pro tunc order."

{¶ 4} On March 7, 2000, appellant entered pleas of guilty to one count of aggravated murder with a firearm specification in violation of R.C. 2903.01(A) and 2941.145, and one count of aggravated burglary in violation of R.C. 2911.11(A)(2). Appellant was found guilty and on March 21, 2000, he was sentenced to life imprisonment with parole eligibility after 20 years on the murder conviction and five years for the aggravated burglary conviction. Appellant was informed at his sentencing hearing that he may qualify for postrelease control and the terms and conditions thereof were explained to him. However, appellant's sentencing order, filed March 23, 2000, did not include the postrelease control statutory language. Accordingly, on June 23, 2010, the trial court sua sponte issued a nunc pro tunc sentencing order which included references to the postrelease control sanctions in the Ohio Revised Code. The entry states: "Defendant given notice of appellate rights under R.C. 2953.08 and post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28." Appellant now asserts that the trial court erred by issuing a nunc pro tunc order to correct the omission of postrelease control notice and that his sentence and postrelease control obligations therefore are void. The state concedes that appellant is entitled to be resentenced.

{¶ 5} This court recently explained, following the Supreme Court of Ohio in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, that for those offenders who were sentenced prior to 2006 and whose sentence did not properly contain postrelease control language or the requisite statutory references, the sentence was 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.¹ *State v. Lee*, 6th Dist. No. L-09-1279, 2010-Ohio-1704.

{¶ 6} We therefore find that the trial court's nunc pro tunc entry was not adequate to remedy its failure to include the mandatory postrelease control language in the original sentencing order. Accordingly, appellant's sole assignment of error is well-taken.

{¶ 7} On consideration whereof, the nunc pro tunc judgment of the Lucas County Court of Common Pleas is reversed. This matter is remanded to the trial court for resentencing as to appellant's postrelease control sanctions in conformance with this judgment. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

JUDGMENT REVERSED.

¹In the case before us, appellant is still serving his sentence.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.