

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

State of Ohio

Court of Appeals No. E-10-003

Appellee

Trial Court No. 2006-CR-398

v.

Cardell Beachum

DECISION AND JUDGMENT

Appellant

Decided: February 18, 2011

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Thomas M. Dusza, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas that denied appellant's postconviction motion for resentencing. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth a single assignment of error:

{¶ 3} "I. The trial court erred as a matter of law in [sic] when the trial court entered incorrect language with respect to appellant's post release control."

{¶ 4} The undisputed facts relevant to the issues raised on appeal are as follows. On July 13, 2006, appellant was indicted on one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(a), a felony of the fifth degree. (Case No. 2006-CR-398.) On September 14, 2006, as a result of a plea agreement, appellant pled guilty to the single count of possession of cocaine with an agreed sentence of 12 months. It was also agreed that the 12-month sentence would be served concurrently with the sentences imposed upon appellant in case No. 2006-CR-098: a one-year sentence for a conviction of one count of trafficking in cocaine (a third-degree felony) and a three-year sentence for a conviction of one count of preparation of crack cocaine for sale (a first-degree felony). Appellant was sentenced on September 14, 2006, and a sentencing entry was filed on September 21, 2006. On November 23, 2009, appellant filed a pro se "Motion for Sentencing" in case No. 2006-CR-398, in which he asserted that the trial court had failed to properly advise him as to postrelease control as it applied to him in that case. Finding that appellant had been properly advised as to postrelease control, the trial court denied appellant's motion by judgment entry filed December 24, 2009.

{¶ 5} This court notes that in his argument in support of his appeal, appellant states that he was convicted of a first-degree felony and was therefore required to receive a mandatory five years of postrelease control. However, contrary to appellant's assertion, in trial court case No. 2006-CR-398, which is the case brought before us on appeal, appellant received a one-year sentence for a fifth-degree felony. R.C. 2967.28(C) states that, for a conviction of a fifth-degree felony, an offender may be subject to a period of

postrelease control of up to three years after his release from imprisonment if the parole board determines that postrelease control is necessary for that offender. The record reflects that in the sentencing entry filed September 21, 2006, as well as a sentencing entry nunc pro tunc filed November 17, 2006, appellant was advised that he "may have up to three (3) years of Post Release Control" as a result of his conviction of a felony of the fifth degree in case No. 2006-CR-398.

{¶ 6} Additionally, this court notes that because appellant failed to file a transcript from the September 14, 2006 sentencing hearing, our decision herein is based on a review of the sentencing judgment entries cited above. Without the transcript, we must presume the regularity of the trial court proceedings and affirm the judgment. See *Lambert v. Lambert*, 11th Dist. No. 2004-P-0057, 2005-Ohio-2259, ¶ 29; see, also, *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 19-20.

{¶ 7} Based on the foregoing, we find that the trial court did not err by denying appellant's motion for sentencing and appellant's sole assignment of error is not well-taken.

{¶ 8} On consideration whereof, the judgment of the Erie County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.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>.