

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

State of Ohio

Court of Appeals No. L-14-1005

Appellee

Trial Court No. CR0201301939

v.

Thomas S. Miller

DECISION AND JUDGMENT

Appellant

Decided: February 13, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brad A. Smith, Assistant Prosecuting Attorney, for appellee.

Thomas S. Miller, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a December 23, 2013 judgment of the Lucas County Court of Common Pleas, which denied appellant’s post-conviction motion asserting that the one-year sentence imposed by the trial court pursuant to R.C. 2929.141 for a post release control violation was unlawful. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Pro se appellant, Thomas S. Miller, sets forth the following three assignments of error:

(1) The trial [c]t. [sic], abused it's [sic] discretion to the prejudice of the appellant via erroneously sentencing the appellant contra to and in excess of the applicable sentencing statutes and the applicable rules of court which govern the possible penalties which the appellant was subject to according to law.

(2) The appellee erred [sic] to the prejudice of the appellant by failing to adhere to Rule (3.8)(d), of the Ohio Supreme Ct., Rules of Professional Conduct by the appellee's failure to inform the sentencing trial [c]t. [sic], of the mitigating factors involved in the appellant's case regarding his Post-Release Control violation and that which [sic] would [n]egate and or reduce the penalty or sentence to be imposed by the trial [c]t. [sic]

(3) The appellant's sentence fails to comport with due process of the law due to an abuse of the trial [c]t's discretion constituting plain error.

{¶ 3} The following undisputed facts are relevant to this appeal. During the night of June 8, 2013, a man was observed on the roof of the Butz Welding Company commercial building in North Toledo and was reported to the Toledo Police Department. The company was not open or operating when the man was observed on the roof.

{¶ 4} Upon responding to the scene, investigating officers discovered appellant on the roof attempting to avoid detection. Officers observed and recovered a pair of cable cutters and vice grips located next to appellant. In conjunction with this, the investigating officers discovered that the electrical supply wires running between the electrical power transformer and the building had been severed. Notably, the severed copper wires from the public service power source of the business were recovered from beneath appellant.

{¶ 5} As a result of this investigation, appellant was indicted on one count of disrupting public service, a felony of the fourth degree, one count of breaking and entering, a felony of the fifth degree, and one count of possession of criminal tools, a felony of the fifth degree. The record reflects that appellant was on active post release control for prior felony convictions at the time of these events. The record further reflects that appellant has a considerable criminal history.

{¶ 6} On July 22, 2013, appellant pled guilty to one count of disrupting public service. In exchange, the remaining two felony charges were dismissed. On August 13, 2013, appellant was sentenced to a one-year term of incarceration on the new felony conviction, ordered to be served consecutively to a one-year term of incarceration for the post release control violation underlying this case.

{¶ 7} Appellant subsequently filed a post-conviction motion asserting that the one-year term of incarceration imposed for the post release control violation was unlawful based upon appellant's unsupported claim that R.C. 2929.141 requires credit be given for time already spent under post release control in sentencing for a violation of the post

release control. On December 23, 2013, the trial court denied appellant's motion. The trial court held in pertinent part, "The [c]ourt rejects [d]efendant's construction of the statute." The trial court further stated, "Although part of that calculation takes into account the amount of time a defendant has already spent under PRC, it does not suggest that a defendant receive credit for that time." This appeal ensued.

{¶ 8} In the first assignment of error, appellant asserts that the trial court unlawfully sentenced appellant on the post release control violation. In support, appellant maintains that the trial court erred, "by not [f]ully informing the appellant of the actual 'Minimum' period of time inwhich [sic] he would be incarcerated for the violation of his post-release control." We are not persuaded.

{¶ 9} R.C. 2929.141(A) (1) delineates the potential range of a term of incarceration that can be imposed for committing a new felony offense while under post release control. It establishes in relevant part, "The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony." In conjunction with this, the record in this matter shows that it was clearly conveyed to appellant that, "Defendant further notified that if the violation of post-release control conditions is a new felony, a defendant may be both returned to prison for the greater of one year or the time remaining on post release control, plus receive a prison term for the new felony."

{¶ 10} The record further reflects that in crafting the disputed sentence on the post release control violation, the trial court carefully considered appellant's extensive criminal history and past incarcerations and concluded that appellant was not amenable to community control.

{¶ 11} We find that the record is devoid of any indicia that the trial court erred in imposing a one-year term of incarceration upon appellant for the post release control violation by committing a new felony while on post release control. The record shows that the sentence is in conformity with R.C. 2929.141(A)(1). Wherefore, appellant's first assignment of error is found not well-taken.

{¶ 12} In appellant's second assignment of error, he alleges, without furnishing any evidentiary support, that the state failed to inform the trial court prior to the disputed sentencing of mitigating factors. Appellant fails to set forth any such purported factors. The record does not encompass any such information. Appellant's second assignment of error is devoid of evidentiary support. It is found not well-taken.

{¶ 13} In appellant's third assignment of error, he again disputes the propriety of the sentence imposed for the post release control violation. Appellant concludes, "It is to the understanding of the appellant, that it is inescapable that the trial Ct., [sic] clearly abused it's [sic] discretion."

{¶ 14} We again note that the record clearly establishes that the trial court correctly sentenced appellant pursuant to R.C. 2929.141(A)(1) for the post release control violation. We find appellant's third assignment of error not well-taken.

{¶ 15} Wherefore, we find that substantial justice has been done in this matter.

The judgment of the Lucas County Court of Common Pleas is hereby affirmed.

Appellant is hereby ordered to pay the costs of this appeal 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, 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:
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