

[Cite as *State v. Roberts*, 2010-Ohio-4324.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-223
 : (C.P.C. No. 07CR12-8717)
 Michael L. Roberts, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 14, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Michael L. Roberts, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Michael L. Roberts ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas denying his motion to vacate his sentence. For the reasons that follow, we affirm.

{¶2} On December 6, 2007, appellant was indicted on two counts of robbery in violation of R.C. 2911.02. On January 30, 2008, appellant entered a plea of guilty to

one count of robbery, a third-degree felony, and a nolle prosequi was entered on the other count. In an entry filed on February 1, 2008, the trial court imposed five years of community control sanctions, and included a statement that if community control were ever to be revoked, appellant would be sentenced to a term of five years in prison. No appeal was filed from the trial court's sentence.

{¶3} On November 18, 2008, a probation officer filed a request for revocation of appellant's community control, alleging that appellant had violated a number of the terms of the community control. The trial court declined to revoke, and imposed additional conditions on appellant's community control, including successful completion of a community based correctional facility ("CBCF") program.

{¶4} On February 27, 2009, a probation officer filed a second request for revocation of community control, alleging as grounds that appellant had failed to successfully complete the CBCF program. The trial court again declined to revoke and instead reduced the period of community control to two years, stating that if appellant violated any of the conditions for community control within the next year, appellant would be required to serve a sentence of incarceration of "five years plus 12 months consecutive."

{¶5} On July 6, 2009, a probation officer filed a third request for revocation of community control, alleging that appellant violated a number of conditions for community control. On July 31, 2009, the trial court conducted a hearing, after which the court revoked appellant's community control and imposed a five-year sentence of imprisonment. We affirmed the trial court's decision. *State v. Roberts*, 10th Dist. No. 09AP-816, 2010-Ohio-1326.

{¶6} On January 14, 2010, while appellant's appeal of the trial court's decision revoking community control was still pending before us, appellant filed a pleading with the trial court entitled "MOTION TO VACATE A VOIDED SENTENCE." Appellant argued that he was entitled to have his sentence vacated on the grounds that, in its original sentencing entry, the trial court had imposed a sentence of community control without ordering a pre-sentence investigation as required by Crim.R. 32.2 and R.C. 2951.03. The state filed a memorandum contra, arguing that: (1) the motion constituted a petition seeking post-conviction relief, and did not meet the requirements for timely filing of such a petition; (2) appellant's claim was barred by the doctrine of res judicata; and (3) appellant's claim lacked merit, since the trial court had not ordered a pre-sentence investigation prior to sentencing appellant to a term of community control because appellant had requested that the trial court proceed immediately to sentencing after the guilty plea was entered.

{¶7} The trial court issued an entry denying appellant's motion without explanation. Appellant filed this appeal, asserting two assignments of error:

Proposition of Law Error One: Trial Court erred on February 1, 2008, when it imposed Community Control Sanctions before ordering a Pre-Sentence Investigation in pursuant to **R.C. §2951.03, and Crim. R. 32.2.**

Proposition of Law Error Two: Trial Court lacked subject matter jurisdiction to impose modifications and or imposed a prison term from revocation of a voided sentence *ab initio*.

{¶8} Appellant's assignments of error are interrelated, and will therefore be addressed together. Appellant essentially argues that the sentence imposed on him was void, and should therefore be vacated.

{¶9} Crim.R. 32.2 provides that "[i]n felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation." Similarly, R.C. 2951.03(A)(1) provides, in relevant part, that "[n]o person who has been convicted of or pleaded guilty to a felony shall be placed under a community control sanction until a written presentence investigation report has been considered by the court." Appellant argues that the trial court did not order a pre-sentence investigation before imposing the sentence of five years of community control, and that this failure renders his sentence void.

{¶10} A review of the record shows that there is no merit to appellant's contention that the trial court imposed community control without ordering or receiving a pre-sentence investigation report. The trial court's February 1, 2008 sentencing entry specifically states that "[t]he court ordered and received a pre-sentence investigation." Furthermore, at the January 30, 2008 sentencing hearing, the trial court stated, "I do have before me a short-form presentence report." (Tr. 14.)

{¶11} Consequently, the trial court did not err in denying appellant's motion seeking vacation of his sentence. Therefore, appellant's two assignments of error are overruled.

{¶12} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
