

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DONTAE L. BALL

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.
Hon. William B. Hoffman, J.
Hon. Earle E. Wise, Jr., J.

Case No. 18 CA 00009

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 12 CR 00554

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 21, 2018

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Wise, John, P. J.

{¶1} Defendant-Appellant Dontae Ball, aka Donte Ball, appeals the decision of the Licking County Court of Common Pleas, which denied his motion to correct his sentence. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} On or about October 21, 1999, Appellant Ball was sentenced *inter alia* to a thirteen-year prison term for aggravated robbery in the Franklin County Common Pleas Court, under case number 98 CR 2038. The sentence included a consecutive three-year weapons specification. The court's sentencing language in 98 CR 2038 related to post-release control stated in pertinent part: "After imposition of sentence the Court notified the Defendant orally and in writing [of] the applicable periods of post-release control"

{¶3} On direct appeal to the Tenth District Court of Appeals, appellant's conviction and sentence were affirmed. See *State v. Ball*, 10 Dist. Franklin No. 99–AP–1288, 2000 WL 1357928 ("*Ball I*").

{¶4} Appellant was released from prison on December 24, 2011, and he was placed on five years of post-release control.

{¶5} On October 19, 2012, appellant was indicted by the Licking County Grand Jury (case number 12-CR-00554) on three counts of felony trafficking in drugs, one count of felony possession of drugs and a misdemeanor offense of possession of drug paraphernalia. Forfeiture specifications accompanied the felony counts.

{¶6} On February 11, 2013, appellant filed a pleading in the Licking County Court of Common Pleas captioned as a "motion to dismiss post-release control sanctions." That pleading acknowledged that upon his release from prison on December 24, 2011, the

Adult Parole Authority had placed him on post-release control that included “several restraints on [his] freedom.” On February 13, 2013, appellant filed a supplement to his motion that included a certified copy of his sentencing entry in the Franklin County case.

{¶17} Appellant appeared before the Licking County Court of Common Pleas on February 26, 2013, under case number 12-CR-00554, and entered pleas of guilty to the charges and specifications contained in the indictment. The court imposed an aggregate sentence of six and one-half years in prison, including four years of imprisonment imposed as a collateral sanction for his violation of post-release control from the aforesaid Franklin County case.

{¶18} Appellant then filed a direct appeal to this Court. *See State v. Ball*, 5th Dist. Licking No. 13-CA-17, 2013-Ohio-3443 (“*Ball I*”). In his first assigned error therein, he contended that the imposition of a prison sentence in the case *sub judice* for violating his Franklin County post-release control was erroneous, arguing that the part of his Franklin County sentence that imposed post-release control was void because the Franklin County Court of Common Pleas had failed to adequately notify him of post release control in its 1999 judgment entry of sentencing. We rejected this argument, concluding that “*** the language in Ball’s 1999 sentencing entry, combined with the presumption of regularity with which we must accord the oral notification at Ball’s sentencing hearing, was sufficient to give appellant notice of the post release control sanction.” *Ball II* at ¶ 25. However, we then sustained appellant’s second assigned error, which challenged the length of the sentence for his PRC violation, and we directed the trial court to “*** reduce the sentence imposed for Ball’s violation of post release control in accordance with R.C. 2929.191(A)(1).” *Id.* at ¶ 31.

{¶9} Following our remand, the Licking County Court of Common Pleas (hereinafter “trial court”) resentenced appellant via a judgment entry issued on October 24, 2014 to two years and sixty-one days for violating his PRC sanction from Franklin County, consecutive to his aforementioned prison terms for trafficking and possession. A *nunc pro tunc* judgment entry was issued on November 6, 2014.

{¶10} On November 13, 2017, appellant, incarcerated at the Ross Correctional Institution, filed a *pro se* “motion to vacate administrative sanction” in the trial court. Appellant therein argued *inter alia* that the trial court, in sentencing him in 2013, had retroactively applied R.C. 2929.141 in violation of Article II, Section 28 of the Ohio Constitution.

{¶11} The trial court denied appellant’s motion to vacate administrative sanction on December 20, 2017. The record does not reflect any notices of appeal as to this judgment entry.

{¶12} On January 10, 2018, appellant, filed a *pro se* “motion to correct void sentence” in the trial court, arguing that the Franklin County Court of Common Pleas had failed in 1999 to properly “impose” a five-year mandatory period of PRC pursuant to former R.C. 2967.28(B)(1), thus rendering his sentence under 98-CR-2038 void.

{¶13} The trial court denied appellant’s motion to correct sentence on January 16, 2018.

{¶14} On February 12, 2018, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶15} “I. THE LICKING COUNTY TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE A SANCTION FOR VIOLATION OF A POST-RELEASE

CONTROL TERM THAT WAS NOT IMPOSED BY A FRANKLIN COUNTY TRIAL COURT. LICKING COUNTY'S TRIAL COURT'S PRC VIOLATION SANCTION OF 2 YEARS AND 61 DAYS IS VOID. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MR. BALL'S REQUEST TO CORRECT THIS VOID SENTENCE."

I.

{¶16} In his sole Assignment of Error, appellant contends the trial court erred in denying his motion to correct a "void sentence," *i.e.*, the trial court's sanction for violating his PRC from Franklin County. We disagree.

{¶17} When a trial court fails to properly impose statutorily-mandated post-release control as part of a defendant's sentence, the post-release control sanction is void, and it may be reviewed at any time, on direct appeal or by collateral attack. *State v. Macksyn*, 5th Dist. Stark No. 2017CA00158, 2017-Ohio-9120, ¶ 10, citing *State v. Holdcroft*, 137 Ohio St.3d 526, 2013–Ohio–5014, 1 N.E.3d 382, ¶ 7.

{¶18} The gist of appellant's present "void sentence" argument is that the Franklin County court failed to properly impose a five-year mandatory PRC sanction against him in 1999, pursuant to former R.C. 2967.28(B)(1), thus rendering any subsequent imposition of prison time for violating said sanction by the Licking County Court of Common Pleas void.

{¶19} However, we must herein balance the reviewability of PRC-based challenges against the law of the case doctrine. This doctrine provides that a decision of a reviewing court in a case remains the law of the case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. *U.S. Bank v. Detweiler*, 5th Dist. Stark No. 2011 CA00095, 2012–Ohio–73, ¶ 26, citing *Nolan*

v. Nolan (1984), 11 Ohio St.3d 1, 462 N.E.2d 410. This Court has rejected the proposition that the window of opportunity provided by the *Simpkins/Fischer/Billiter* “void sentence” line of holdings “*** was intended to continue *ad infinitum* via repetitive post-conviction challenges to his or her sentence.” *State v. Black*, 5th Dist. Richland No. 16 CA 4, 2016-Ohio-5612, ¶ 15. Although *Black* was addressing the question of the application of *res judicata*, we find this rationale should be extended to permit invocation of the law of the case doctrine in situations where, as here, a defendant previously has unsuccessfully raised a “void sentence” claim as part of his or her direct appeal.

{¶20} In the case *sub judice*, appellant recognizes that this Court in *Ball II* addressed the issue of Franklin County’s PRC notification and the subsequent sanction imposed by the trial court for violation thereof. However, appellant maintains that we never addressed in *Ball II* whether PRC was “actually imposed” in his original sentencing in Franklin County. Appellant’s Brief at 1. However, this does not dissuade us from herein applying the law of the case doctrine, based on our clear rejection of the application of the void sentence doctrine in *Ball II*.

{¶21} Appellant also points out that the trial court, in making its ruling of denial in the judgment entry under appeal, mistakenly read appellant’s January 10, 2018 motion to correct void sentence as being based on the “identical issue” as his November 13, 2017 motion to vacate administrative sanction, which appellant had instead based on a claim of unconstitutional retroactive application of R.C. 2929.141. However, under the circumstances we find no prejudicial error in this interpretation by the trial court.

{¶22} Accordingly, we hold the trial court did not err or abuse its discretion in denying appellant's motion to correct his sentence. Appellant's sole Assignment of Error is therefore overruled.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Licking County, Ohio, is hereby affirmed.

By: Wise, John, P. J.

Hoffman, J., and

Wise, Earle, J., concur.

JWW/d 0508