

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-690 (C.P.C. No. 07CR-06-4519)
	:	
Chajoh A. Martin,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on April 19, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

*Shaw & Miller*, and *Mark J. Miller*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Chajoh A. Martin ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas, in which the court sentenced him on his guilty plea for robbery without specification, in violation of R.C. 2911.02, a felony of the second degree.

{¶2} On March 10, 2008, appellant entered a plea of guilty and was immediately sentenced to five years' imprisonment for the crime of robbery without specification. At the sentencing hearing, the trial court notified appellant that he would be subject to a

mandatory three-year term of postrelease control after his release from prison. However, the trial court failed to properly inform appellant that, if he violated postrelease control, he could be subject to imprisonment for up to one-half of his original sentence. In addition, the trial court failed to properly incorporate language regarding mandatory postrelease control in appellant's judgment entry.

{¶3} On September 18, 2009, appellant filed a motion for a de novo resentencing hearing pursuant to R.C. 2929.19(B)(3)(c) and (e), relying upon precedent set forth by the Supreme Court of Ohio in *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085; and *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250.

{¶4} On June 1, 2010, appellant appeared at the resentencing hearing via video conference and requested a continuance in order to prepare for mitigation. The trial court, over the state's objection, granted the continuance and rescheduled the hearing for June 28, 2010, in order to hold a formal resentencing hearing.

{¶5} On June 28, 2010, appellant, along with members of his family, appeared in person for the de novo resentencing hearing. However, the state argued that, pursuant to *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, a de novo hearing was improper because appellant received his original sentence after July 11, 2006, and, therefore, the trial court was limited to the corrective procedure set forth in R.C. 2929.191.

{¶6} After allowing testimony from appellant's sister, father and appellant himself, the trial court ultimately ruled that *Singleton* applied and refused to conduct a de novo resentencing hearing on the matter.

{¶7} On July 19, 2010, appellant filed a timely appeal raising one assignment of error for our consideration:

THE TRIAL COURT ERRED IN DENYING APPELLANT A DE NOVO RESENTENCING HEARING AFTER HE WAS IMPROPERLY NOTIFIED OF APPLICABLE POST-RELEASE CONTROL.

{¶8} R.C. 2967.28(B) mandates that:

Each sentence to a prison term \* \* \* for a felony of the second degree \* \* \* shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment.

Further, R.C. 2929.19(B)(3)(c) and (e) state in relevant part that, at the sentencing hearing, the trial court shall "[n]otify the offender that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison" and that "if the offender violates that supervision or a condition of postrelease control \* \* \* the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed on the offender." In addition, "the imposed postrelease-control sanctions are to be included in the judgment entry journalized by the court." *Singleton* at ¶11. In the present matter, the state does not dispute that the trial court failed to properly impose postrelease control and, therefore, it is not necessary for us to conduct a detailed analysis regarding the same.

{¶9} In *Singleton*, the Supreme Court of Ohio specifically addressed the proper application of R.C. 2929.191 in postrelease control resentencing hearings. R.C. 2929.191 provides "a statutory remedy to correct a failure to properly impose postrelease control." *Singleton* at ¶23. For certain offenders, "R.C. 2929.191 provides that trial courts may, after conducting a hearing with notice to the offender, the prosecuting attorney, and the Department of Rehabilitation and Correction, correct an original judgment of conviction by placing on the journal of the court a nunc pro tunc entry that includes [1] a

statement that the offender will be supervised under R.C. 2967.28 after the offender leaves prison and [2] that the parole board may impose a prison term of up to one-half of the stated prison term originally imposed if the offender violates postrelease control." *Id.*

{¶10} In addition, "[t]he hearing contemplated by R.C. 2929.191(C) and the correction contemplated by R.C. 2929.191(A) and (B) *pertain only to the flawed imposition of postrelease control.* R.C. 2929.191 does not address the remainder of an offender's sentence. Thus, the General Assembly appears to have intended to leave undisturbed the sanctions imposed upon the offender that are unaffected by the court's failure to properly impose postrelease control at the original sentencing." (Emphasis added.) *Id.* at ¶24.

{¶11} In determining when to apply R.C. 2929.191, the Supreme Court of Ohio held that:

[F]or sentences imposed prior to *July 11, 2006* [effective date of R.C. 2929.191], in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio. However, for criminal sentences imposed *on and after* July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall apply the procedures set forth in R.C. 2929.191.

*Singleton* at ¶1. (Emphasis added.)

{¶12} In *State v. Reed*, 10th Dist. No. 09AP-1164, 2010-Ohio-5819, this court considered the proper application of R.C. 2929.191 in accordance with *Singleton*. *Reed* was originally sentenced on January 24, 2001. At that time, the trial court failed to properly notify the appellant of postrelease control. On appeal, the appellant argued that the trial court erred by failing to conduct a de novo resentencing hearing. We agreed with

the appellant, holding that, pursuant to *Singleton*, R.C. 2929.191 "applies only to sentences imposed on or after July 11, 2006," and "[f]or sentences handed down prior to the effective date of R.C. 2929.191, those are to be reviewed under the prior line of cases holding that such sentences are void and require the court to engage in a de novo resentencing." *Reed* at ¶4, cf. *State v. Fischer* (Dec. 23, 2010), Sup. Ct. of Ohio No. 2009-0897, overruling *Bezak*. Therefore, because *Reed*'s original sentencing date was prior to July 11, 2006, the appellant, in *Reed*, was entitled to a de novo resentencing hearing.

{¶13} Here, in contrast to *Reed*, we have an original sentencing date of March 10, 2008. Therefore, as the original sentencing was after July 11, 2006, pursuant to *Singleton*, R.C. 2929.191 applies. Thus, we find the trial court properly denied appellant's request for a de novo hearing.

{¶14} Appellant contends that, because *Singleton* did not overrule the prior decisions of the Supreme Court of Ohio (*Jordan*, *Bezak* and *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197), appellant should be entitled to a de novo resentencing hearing, notwithstanding the fact that the trial court imposed appellant's original sentence after July 11, 2006. It should be noted, however, that, in those cases, the original sentencing hearings were all held prior to July 11, 2006, therefore rendering R.C. 2929.191 inapplicable. Furthermore, the Supreme Court of Ohio discussed each of these cases in *Singleton* and still expressly held that the remedial procedure set forth in R.C. 2929.191 applied to sentences after July 11, 2006. Appellant also suggests that, in *Singleton*, Justice Pfeifer's dissenting opinion should persuade this court to disregard the majority's ruling. Appellant directs this court to Justice Pfeifer's opinion that, because the

specific issue was not before the court, "the majority opinion's \* \* \* discussion of R.C. 2929.191's effect on sentences imposed after the statute's effective date are entirely dicta." *Id.* at ¶38. This court is bound by the majority decision in *Singleton*. Therefore, we decline to comment upon, or be persuaded, by appellant's argument in this regard.

{¶15} We also note that appellant's counsel recently appealed two matters to the Supreme Court of Ohio, both involving R.C. 2929.191, and the issue of postrelease control: *State v. Fuller*, 124 Ohio St.3d 543, 2010-Ohio-726, and *State v. Porter*, 124 Ohio St.3d 1237, 2010-Ohio-727.

{¶16} In *Fuller*, the appellant's original sentencing date was after July 11, 2006. At the sentencing hearing, the trial court failed to orally notify the appellant of postrelease control, but incorporated the notice into the sentencing entry. See *State v. Fuller* (Oct. 20, 2008), 12th Dist. No. CA2008-04-008. On February 25, 2008, the appellant filed a motion for a resentencing hearing, which, on March 11, 2008, the trial court denied. The Twelfth District Court of Appeals affirmed the trial court's decision on the basis of res judicata. The Supreme Court of Ohio reversed and remanded "on the authority of *State v. Singleton* \* \* \* to the extent that the court of appeals held that a hearing pursuant to R.C. 2929.191 was not required to correct appellant's sentence." *State v. Fuller*, 124 Ohio St.3d 543, 2010-Ohio-726, ¶1.

{¶17} In *Porter*, the appellant's original sentencing date was also after July 11, 2006. At the hearing, the trial court orally sentenced the appellant to a three-year term of postrelease control; however, the sentencing entry erroneously ordered a five-year term. Porter appealed, claiming that his "sentence is void, and the trial court must re-sentence him." *State v. Porter*, 4th Dist. No. 08CA26, 2009-Ohio-3112, ¶27. The Fourth District

Court of Appeals reversed and vacated, in part, for a partial resentencing only as to the term of postrelease control. *Id.* at ¶35. Porter appealed to the Supreme Court of Ohio arguing that the Fourth District should have declared his sentence void in its entirety and remanded the case back to the trial court for a de novo resentencing hearing. The Supreme Court of Ohio affirmed the Fourth District Court of Appeal's decision upon the authority set forth in *Singleton*. See *State v. Porter*, 124 Ohio St.3d 1237, 2010-Ohio-727, ¶2.

{¶18} The Supreme Court of Ohio has repeatedly spoken regarding the application of R.C. 2929.191, and this court is bound by the same. Therefore, based upon *Singleton*, we hold that the trial court properly applied R.C. 2929.191 because appellant's original sentencing date came after July 11, 2006 and, as such, the trial court did not err in denying appellant's request for a de novo hearing.

{¶19} Appellant's sole assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BROWN and FRENCH, JJ., concur.

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