

[Cite as *State v. Thompson*, 2004-Ohio-4511.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 2003-CA-95

vs. : T.C. CASE NO. 96CR0469

KENNETH THOMPSON : (Criminal Appeal from
Common Pleas Court)

Defendant-Appellant :

.

O P I N I O N

Rendered on the 27th day of August, 2004.

.

Stephen A. Schumaker, Pros. Attorney; Stephen Collins, Asst.
Pros. Attorney, 50 East Columbia Street, Springfield, Ohio
45502, Atty. Reg. No. 0047502

Attorney for Plaintiff-Appellee

Kenneth Thompson, #339-301, Chillicothe Correctional
Institute, P.O. Box 5500, Chillicothe, Ohio 45601

Defendant-Appellant, Pro Se

.

GRADY, J.

{¶1} Defendant, Kenneth Thompson, appeals from an order
of the court of common pleas overruling Thompson's motion to
modify his sentence.

{¶2} In December of 1996, Thompson was convicted of
multiple felony offenses and was sentenced to serve a

2

twelve-year term of imprisonment. Thompson subsequently filed several motions to reduce his sentence, which were overruled. We affirmed Thompson's conviction and sentence on direct appeal. *State v. Thompson* (Oct. 22, 1999), Clark App. No. 98-CA-100.

{¶3} On November 19, 2003, Thompson filed another motion to modify his sentence. Thompson argued that the trial court erred when it imposed his sentence absent the particular statutory findings required by R.C. 2929.14 with respect to it and the pronouncement of those findings the court is now required to make. See *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. The trial court overruled the motion without comment. Thompson filed a timely notice of appeal from that order.

FIRST ASSIGNMENT OF ERROR

{¶4} "THE TRIAL COURT ABUSED IT [sic] DISCRETION WHEN IT GAVE NO FACTS OR FINDINGS OF [sic] CONCLUSIONS OF LAW TO SUPPORT THE OVERRULING OF APPELLANTS [sic] MOTION TO MODIFY HIS SENTENCE.

SECOND ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ABUSED IT [sic] DISCRETION WHEN [sic] NOT CONSIDERING DEFENDANTS [sic] MOTION TO MODIFY HIS SENTENCE."

{¶6} The judgment of conviction and sentence that the

trial court entered and journalized in December of 1996 was a final order that terminated the trial court's jurisdiction in the proceeding in which it was entered. The motion that Thompson filed in 2003 was insufficient to revive the court's jurisdiction to grant the relief it sought, a modification of his sentence, absent some specific basis in law.

{¶7} A court's jurisdiction to modify a sentence it has imposed may be invoked pursuant to R.C. 2929.51, which concerns sentences imposed for misdemeanor offenses. Thompson's offenses were felonies, for which no provision similar to R.C. 2929.51 exists.

{¶8} A court's jurisdiction to modify a sentence may also be revived by an App.R. 27 mandate of an appellate court requiring a trial court to impose a new sentence after a sentence has been vacated. Our prior review of Thompson's first appeal produced no such mandate.

{¶9} We conclude that the trial court lacked jurisdiction to grant the relief Thompson sought in the criminal proceeding that resulted in his conviction and sentence. The further question is whether his motion to modify his sentence invoked new jurisdiction the court is authorized by law to modify.

{¶10} Thompson argues that the trial court erred when it

denied his motion absent the hearing that R.C. 2953.41 requires when a petition for post-conviction relief authorized by that section is filed, unless the court finds that the petition presents no substantive grounds for relief. The court made no such findings. However, it was not required to.

{¶11} Thompson's application was not styled or fashioned as an R.C. 2953.41 petition, in either its form or substance. Neither did it address the time bar in R.C. 2953.21 applicable to any such petition Thompson could file. The trial court did not err when it overruled Thompson's motion as it did.

{¶12} Otherwise, if Thompson's motion sought to invoke the court's jurisdiction in a new proceeding, the relief it sought is barred by res judicata. The error alleged could have been raised in his prior appeal but was not. Thompson may not now raise it in either a new appellate proceeding or in a new proceeding in the trial court seeking relief from the effect of the error alleged. *Grava v. Parkman Twp.* (1995), 73 Ohio St. 3d 379.

{¶13} The assignments of error are overruled. The judgment from which the appeal is taken will be affirmed.

.

FAIN, P.J. and BROGAN, J., concur.

Copies mailed to:

Stephen Collins, Esq.
Kenneth Thompson
Hon. Gerald F. Lorig