

[Cite as *State v. Portis*, 2010-Ohio-5287.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 10CA0045
vs. : T.C. CASE NO. 07CR1063B
ZACKENE PORTIS : (Criminal Appeal from
Defendant-Appellant : Common Pleas Court)

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O P I N I O N

Rendered on the 29th day of October, 2010.

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GRADY, J.:

{¶ 1} Defendant, Zackene Portis, was convicted of complicity
to commit robbery, R.C. 2923.03(A)(2), 2911.02(A)(2), on a guilty
verdict returned by a jury. We affirmed Defendant's conviction
on direct appeal. *State v. Portis*, Clark App. No. 08CA0022,

2009-Ohio-1776.

{¶2} On March 8, 2010, Defendant filed a motion asking the trial court to vacate his conviction. Defendant argued that his conviction is void because the judgment of conviction fails to comply with Crim.R. 32(C), in that it does not set forth the manner of his conviction, a jury verdict. Defendant asked the trial court to enter a revised judgment of conviction correcting the omission.

The court overruled Defendant's motion on April 9, 2010, without explanation. Defendant appeals.

FIRST ASSIGNMENT OF ERROR

{¶3} "THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO VACATE APPELLANT'S JUDGMENT AND SENTENCE AND ENTER A VALID JUDGMENT AND SENTENCE WHICH COMPLIES WITH CRIMINAL RULE 32(C)."

{¶4} Crim.R. 32(C) provides, in pertinent part: "A judgment of conviction shall set forth the plea, the verdict, or findings, on which each conviction is based, and the sentence." The judgment of conviction the court journalized on March 20, 2008, states: "The court finds that the defendant has been convicted of Robbery" No mention is made of the manner of Defendant's conviction, the jury's guilty verdict.

{¶5} The State confesses error, and we agree that the trial court's failure to set forth the manner of the verdict fails to comply with Crim.R. 32(C). The error the court committed is not

subject to our review on the notice of appeal Defendant filed, however, because it likewise renders the trial court's judgment of conviction non-final, and therefore not appealable. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. The appropriate remedy is instead a motion filed in the trial court requesting a revised judgment of conviction. *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565. If the court refuses that request, an aggrieved party may seek to compel the trial court to proceed by filing an original action for a writ of mandamus or procedendo. *State ex rel. Alicea v. Krichbaum*, 126 Ohio St.3d 194, 2010-Ohio-3234.

{¶6} Defendant further argues that the judgment of conviction fails to comply with Crim.R. 32(C) because it fails to set forth the whole sentence the court imposed. The State's concession of error does not address this further issue.

{¶7} The court's judgment of conviction sets forth the following concerning the matter of post release control:

{¶8} "The Court has further notified the defendant that post release control is mandatory in this case for a period of three years, as well as the consequences for violating conditions of Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control."

{¶ 9} Post release control was an element of the sentence the court imposed. In order to comply with the statutory requirements, the court must notify a defendant of (1) the term of post release control that he is or may be required to serve and (2) that the penalty for a violation of post-release control is additional imprisonment for a term one-half the length of the Defendant's stated sentence.

{¶ 10} The court's judgment of conviction recites the term of Defendant's post release control but not the length of any additional term of incarceration resulting from a violation. That may properly be done by stating the actual length of that term in years and/or months, or by reference to the fact that a term of "one-half" the Defendant's stated sentence may be imposed. It is not sufficient, as the trial court did in the present case, to merely set forth the fact that the defendant was advised of "the consequences for violating" his post release control conditions. A proper pronouncement by the court is necessary in order to authorize the Parole Board to impose the additional term the court pronounces.

{¶ 11} The appeal will be dismissed, for the reasons discussed above, because the judgment of conviction from which the appeal was taken is not a final order or judgment. Because both parties are aggrieved by the flaws in the trial court's judgment of

conviction, either may ask the court to file a revised judgment of conviction proper in form, and either may seek relief through an original writ if the court denies that request. Our dismissal renders the second assignment of error moot.

DONOVAN, P.J., And BROGAN, J., concur.

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Hon. Douglas M. Rastatter