

[Cite as *State v. Smith*, 2016-Ohio-45.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

AARON SMITH

Defendant-Appellant

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Appellate Case No. 2015-CA-17

Trial Court Case No. 2014-CR-515

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 8th day of January, 2016.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Aaron Smith, appeals from the sentence he received in the Clark County Court of Common Pleas after a jury found him guilty of trafficking in cocaine and possession of cocaine. Specifically, Smith contends the trial court erred by ordering him to serve his prison sentence at a specific correctional institution, claiming that such an order encroached on the jurisdiction and authority of the Department of Rehabilitation and Correction, and thus, violated the constitutional doctrine of separation of powers. We agree with Smith's claim; therefore, the Judgment Entry of Conviction/Warrant for Removal issued by the trial court will be modified as set forth in this opinion, and the judgment will be affirmed as modified.

{¶ 2} On August 4, 2014, Smith was indicted on one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and one count of possession of cocaine in violation of R.C. 2925.11(A). Smith pled not guilty to the charges and the matter proceeded to a jury trial on January 27, 2015. Following trial, the jury deliberated and found Smith guilty as charged in the indictment. At sentencing, the trial court merged the trafficking and possession offenses and sentenced Smith "to eighteen months in the Ohio State Penitentiary[.]" Disposition Trans. (Jan. 30, 2015), p. 5. Thereafter, the trial court issued a Judgment Entry of Conviction/Warrant for Removal stating that: "IT IS HEREBY ORDERED that the defendant be sentenced to eighteen (18) months in the Ohio State Penitentiary[.] * * * Defendant is ORDERED conveyed to the Ohio State Penitentiary, c/o the Orient Correctional Facility, Orient, Ohio." Judgment Entry of Conviction/Warrant for Removal (Feb. 2, 2015), Clark County Court of Common Pleas Case No. 14-CR-515, Docket No. 29, p. 1-2.

{¶ 3} Smith now appeals from his sentence, raising the following single assignment of error for review:

THE TRIAL COURT PREJUDICIALLY ERRED BY SENTENCING APPELLANT SMITH TO A SPECIFIC PRISON INSTITUTION IN VIOLATION OF OHIO LAW.

{¶ 4} Under his assignment of error, Smith contends the trial court is not permitted to explicitly order a defendant to serve his or her prison sentence at a specific correctional institution because such conduct encroaches on the authority and jurisdiction of the Ohio Department of Rehabilitation and Correction, a member of the executive branch of government, and therefore, violates the separation of powers doctrine. We agree.

{¶ 5} We addressed this same issue in *State v. Blanken*, 2d Dist. Clark No. 2012 CA 73, 2014-Ohio-5361. In *Blanken*, the trial court ordered the defendant to serve “three (3) years in the Ohio State Penitentiary[.]” *Id.* at ¶ 12. The defendant then appealed from the trial court’s sentencing order, claiming that it violated the separation of powers doctrine. *Id.* at ¶ 19. In holding that the trial court was not permitted to explicitly send the defendant to a specific correctional institution, we relied on the following passage from *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753:

“The first, and defining, principle of a free constitutional government is the separation of powers. *Evans v. State* (Del.2005), 872 A.2d 539, 543. In *Kilbourn v. Thompson* (1880), 103 U.S. 168, 190–191, 26 L.Ed. 377, the United States Supreme Court stated:

‘It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government,

whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.'

"As this court has observed with regard to our own state system of government:

'While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.' *S. Euclid v. Jemison* (1986), 28 Ohio St.3d 157, 158–159, 28 OBR 250, 503 N.E.2d 136. It 'represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches.' *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 114."

Blanken at ¶ 20, quoting *Bodyke* at ¶ 39-42.

{¶ 6} We also noted the following in *Blanken*:

Crim.R. 32(C) provides that a “judgment of conviction shall set forth the fact of conviction and the sentence.” R.C. 2929.14 sets forth the prison terms that a court may impose at sentencing for a felony, and R.C. 2929.01(AA) defines prison as “a residential facility used for the confinement of convicted felony offenders *that is under the control of the department of rehabilitation and correction* * * *.”

(Emphasis sic.) *Id.* at ¶ 21.

{¶ 7} Based on the foregoing principles, we modified the Judgment Entry of Conviction/Warrant for Removal to provide: “IT IS HEREBY ORDERED that the defendant be sentenced to three years in the Ohio Department of Rehabilitation and Correction. * * * Defendant is ORDERED conveyed to the Ohio Department of Rehabilitation and Correction, c/o the Correctional Reception Center, Orient, Ohio * * *.” *Blanken*, 2d Dist. Clark No. 2012 CA 73, 2014-Ohio-5361 at ¶ 21-22. We thereafter affirmed the judgment of the trial court as modified. *Id.* at ¶ 23.

{¶ 8} In following *Blanken*, we find the trial court erred in ordering Smith to serve his 18-month prison sentence at a specific correctional institution, i.e., the Ohio State Penitentiary. Therefore, we hereby modify the Judgment Entry of Conviction/Warrant for Removal in this case to provide as follows:

IT IS HEREBY ORDERED that the defendant be sentenced to 18 months in the Ohio Department of Rehabilitation and Correction.

* * *

Defendant is ORDERED conveyed to the Ohio Department of Rehabilitation and Correction, c/o the Correctional Reception Center, Orient, Ohio.

{¶ 9} Smith's sole assignment of error is sustained and the judgment of the trial court is affirmed as modified.

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FAIN, J. and HALL, J., concur.

Copies mailed to:

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