

[Cite as *State v. Reid*, 2009-Ohio-3835.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MICHAEL R. REID

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09-CA-5

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Common
Pleas Court, Case No. 03CR339

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 24, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

GREG MARX
Assistant Prosecuting Attorney
Fairfield County, Ohio
201 S. Broad St., Ste. 400
Lancaster, Ohio 43130

THOMAS R. ELWING
60 West Columbus Street
Pickerington, Ohio 43147

Hoffman, P.J.

{¶1} Defendant-appellant Michael R. Reid appeals the December 17, 2008 Re-sentencing Entry entered by the Fairfield County Court of Common Pleas, which added a three year period of post-release control to a sentence he was currently serving. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On November 14, 2003, the Fairfield County Grand Jury indicted Appellant on one count of felonious assault, in violation of R.C. 2903.11(A)(1). Appellant appeared before the trial court on February 6, 2004, and entered a plea of no contest to the charge. After the State presented a statement of the facts regarding the offense, the trial court accepted Appellant's plea and found him guilty. The trial court imposed a six year term of incarceration and ordered the sentence be served concurrently with a sentence imposed by the Vinton County Court of Common Pleas.

{¶3} On November 7, 2008, while Appellant was serving his prison term, the State filed a motion requesting a re-sentencing hearing pursuant to R.C. 2929.191, as Appellant's original sentence did not include post-release control as required by R.C. 2967.28. Appellant filed a motion to dismiss the State's motion, which the trial court overruled. The trial court conducted a re-sentencing hearing during which Appellant received the same sentence the trial court had originally imposed as well as a three year period of post-release control. The trial court memorialized the re-sentencing in an entry dated December 17, 2008.

¹ A Statement of the Facts underlying Appellant's conviction is not necessary to our disposition of this appeal; therefore, such shall not be included herein.

{¶14} It is from this entry Appellant appeals, raising the following assignments of error:

{¶15} “I. THE TRIAL COURT’S RESENTENCING OF APPELLANT TO A TERM OF POST-RELEASE CONTROL VIOLATED THE PRINCIPLES OF DOUBLE JEOPARDY, DUE PROCESS, AND *RES JUDICATA*.”

{¶16} “II. THE TRIAL COURT’S RESENTENCING OF APPELLANT TO A TERM OF POST-RELEASE CONTROL VIOLATED THE SEPARATION OF POWERS DOCTRINE.”

{¶17} “III. THE RESENTENCING PROCEDURE SPECIFIED IN R.C. 2929.191 IS VOID BECAUSE THE STATUTE WAS ENACTED IN VIOLATION OF THE ONE-SUBJECT RULE.”

I, II

{¶18} Because Appellant’s first and second assignments of error can be disposed of in the same manner, we shall address them together. In his first assignment of error, Appellant maintains the trial court’s re-sentencing violated his constitutional right against double jeopardy and his right to due process, and was barred by the doctrine of res judicata. In his second assignment of error, Appellant challenges the re-sentencing as a violation of the Separation of Powers Doctrine.

{¶19} The Ohio Supreme Court in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, rejected the identical arguments raised by Appellant in his first and second assignments of error. In accordance with *Simpkins*, we find the same to be without merit.

{¶10} Appellant’s first and second assignments of error are overruled.

III

{¶11} In his final assignment of error, Appellant asserts the re-sentencing procedure set forth in R.C. 2929.191 is void because the statute violates the one-subject rule as it combines two unrelated topics, to wit: the sealing of juvenile court records and post-release control.

{¶12} Recently, in *State v. Bloomer*, ___Ohio St.3d___, 2009-Ohio-2462, the Ohio Supreme Court addressed this argument. The *Bloomer* Court noted: “[W]hile H.B. 137 addresses two distinct topics-postrelease control and the sealing of juvenile delinquency records, those topics share a common relationship because they concern the rehabilitation and reintegration of offenders into society.” *Id.* at ¶53.

{¶13} The Court stated:

{¶14} “Although this court has previously characterized juvenile delinquency proceedings as civil in nature, * * * we have long recognized that such proceedings also possess inherently criminal aspects. * * * We have expressly acknowledged that juvenile delinquency proceedings, like criminal proceedings, involve the enforcement of criminal laws. * * * One of the overriding purposes of our juvenile justice system is the rehabilitation of offenders. * * * ‘Since its origin, the juvenile justice system has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society.’ * * * The provisions of H.B. 137 regarding the sealing of juvenile delinquency records promote these goals of rehabilitation and reintegration into society by permitting rehabilitated offenders to apply to have their records sealed so that they can leave their youthful offenses in the past. * * *

{¶15} “Although R.C. 2929.11(A) states that ‘[t]he overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender,’ the statute further provides that ‘[t]o achieve those purposes, the sentencing court shall consider the need for * * * rehabilitating the offender.’ * * * ‘postrelease control furthers the goal of successfully reintegrating offenders into society after their release from prison.’ * * * Thus, postrelease control and the sealing of juvenile records share a common relationship because both concern the rehabilitation of persons who have violated Ohio's criminal laws and their reintegration into society.

{¶16} “Because postrelease control and the sealing of juvenile delinquency records share this common relationship, the legislature's combination of these related topics into a single bill does not constitute a manifestly gross or fraudulent violation of the one-subject rule. Accordingly, we hold that H.B. 137 does not violate Section 15(D), Article II of the Ohio Constitution.” *Id.* at ¶54-56.

{¶17} In light of *Bloomer*, we find Appellant's third assignment of error to be without merit, and overrule the same.

{¶18} The judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
MICHAEL R. REID	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-5

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Fairfield County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS