

[Cite as *State v. Aleshire*, 2010-Ohio-4262.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

LONNY J. ALESHIRE, JR.

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 10-CA-17

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Common
Pleas Court, Case No. 05CR00060

JUDGMENT:

Reversed and remanded

DATE OF JUDGMENT ENTRY:

September 8, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Lonny J. Aleshire, Jr. appeals the February 4, 2010 Judgment Entry of the Licking County Court of Common Pleas, denying his Motion for Re-sentencing. The State of Ohio is plaintiff-appellee.

STATEMENT OF THE CASE¹

{¶2} Appellant previously plead guilty in 2005 to numerous charges involving sexual misconduct with two teenage girls. In 2006, Appellant filed a motion to withdraw his plea, which motion was denied by the trial court. Upon appeal, this Court affirmed.

{¶3} In 2009, Appellant filed a motion for new trial and an additional motion to withdraw his plea. The trial court denied the motion and Appellant again appealed to this Court (Case No. 09-CA-132).² While that appeal was pending, Appellant filed the Motion for Re-sentencing which is the subject of this appeal. Via Judgment Entry filed February 4, 2010, the trial court denied the motion for the stated reason it lacked jurisdiction.

{¶4} It is from that entry Appellant prosecutes this appeal, assigning as error:

{¶5} “I. THE TRIAL COURT ERRED IN FINDING IT LACKED JURISDICTION TO HEAR THE DEFENDANT’S MOTION FOR RE-SENTENCING.”

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{¶6} We begin by noting our agreement with the State’s assessment “...Aleshire’s case comes to this Court - once again – saddled with a nightmare of jurisdictional and prudential problems of Aleshire’s own creation.”

¹ A Statement of the Facts is unnecessary for our resolution of this appeal.

² This Court issued its decision in Case No. 09-CA-132 on June 7, 2010.

{¶17} We disagree with Appellant's claim the trial court had jurisdiction to rule on his motion for resentencing on February 4, 2010. Because his previous appeal to this Court remained pending and a ruling on the motion may have been inconsistent with this Court's yet announced decision, the trial court lacked jurisdiction. However, it was not for lack of subject matter jurisdiction; rather, its authority to exercise its jurisdiction was temporarily suspended pending our disposition of Appellant's prior appeal. During the pendency of that appeal, the trial court was without jurisdictional authority to rule on the motion. As such, we find it could not grant or deny the motion at the time it ruled on Appellant's motion.

{¶18} Because the trial court elected to exercise its jurisdiction by denying the motion during the pendency of the prior appeal, rather than staying its decision, we find the trial court erred in rendering its decision prematurely.

{¶19} The trial court's judgment is reversed and the matter remanded to the trial court for redetermination of Appellant's motion for re-sentencing.

By: Hoffman, J.

Gwin, P.J. and

Delaney, J. concur

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

LONNY J. ALESHIRE, JR.

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 10-CA-17

For the reason stated in our accompanying Opinion, the February 4, 2010 Judgment Entry of the Licking County Court of Common Pleas is reversed and the case is remanded to that court for further proceedings in accordance with our Opinion and the law. Costs waived.

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY