COURT OF APPEALS STARK COUNTY, OHIO FIFTH APPELLATE DISTRICT

STATE OF OHIO JUDGES:

Hon. W. Scott Gwin, P. J. Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

-VS-

Case No. 2010 CA 00101

ROZELL WOODSON

Defendant-Appellant <u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common

Pleas, Case No. 2007 CR 00070(B)

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 21, 2011

APPEARANCES:

Canton, Ohio 44702-1413

For Plaintiff-Appellee For Defendant-Appellant

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Wise, J.

- **{¶1}** Appellant Rozell Woodson appeals from the decision of the Court of Common Pleas, Stark County, which addressed his post-conviction motion to vacate or set aside his sentence based on improper PRC notification. The relevant facts leading to this appeal are as follows.
- **{¶2}** In January 2007, the Stark County Grand Jury indicted appellant and a codefendant on one count of trafficking in cocaine, one count of possession of cocaine, and one count of having weapons under disability.
- **{¶3}** Before trial, appellant and the co-defendant filed motions to suppress. After an evidentiary hearing, the motions to suppress were overruled.
- {¶4} The co-defendant thereafter pled guilty. Appellant's case proceeded to a jury trial, resulting in a finding of guilty as charged. He was sentenced to ten years on each drug offense, to be served concurrently, and five years for having weapons under disability, to be served consecutive to the drug charges. Additionally, the court imposed the balance of appellant's post-release control time, two years and 144 days, to be served consecutive to the drug and weapons sentences. The sentencing entry stated that the trial court had advised appellant that post-release control was mandatory "up to a maximum of five (5) years."
- **{¶5}** Appellant filed a direct appeal, challenging the denial of his motion to suppress as his sole assigned error. On February 19, 2008, we affirmed the trial court's decision. See *State v. Woodson*, Stark App.No. 2007CA00051, 2008-Ohio-670. Appellant's attempts to further appeal his conviction were denied.

- **{¶6}** On January 4, 2010, appellant filed a motion to vacate or set aside his sentence based on an allegation of improper PRC notification. The trial court conducted a hearing on the motion on March 31, 2010. Appellant, via counsel, requested a full de novo resentencing hearing and objected to a limited PRC hearing. The trial court proceeded to advise appellant of his correct PRC obligations and essentially indicated it would take appellant's request for a de novo hearing under advisement.
- **{¶7}** On April 1, 2010, the trial court issued a judgment entry denying appellant's aforesaid request. On April 5, 2010, the trial court issued a judgment entry nunc pro tunc which corrected the PRC language in the 2007 sentencing entry.
- **{¶8}** Appellant filed a notice of appeal on May 3, 2010. He herein raises the following sole Assignment of Error:
- **{¶9}** "I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT A DE NOVO SENTENCING HEARING."
- **{¶10}** In his sole Assignment of Error, appellant maintains the trial court erred in declining to conduct a de novo sentencing hearing when correcting his PRC notification. We disagree.
- {¶11} R.C. 2929.191 sets forth the mechanism for correcting a sentence that fails to properly impose post-release control. Said provision applies prospectively to sentences entered on or after July 11, 2006. *State v. Pearson*, Montgomery App.No. 23974, 2011-Ohio-245, f.n. 3, citing *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, ¶¶ 35-36. See, also, *State v. Nesser*, Licking App.No. 10CA61, 2011-Ohio-94, f.n. 1; *State v. Samples*, Stark App.No. 2010CA00122, 2011-Ohio-179, ¶ 27.

{¶12} In the case sub judice, although appellant was clearly sentenced after July

11, 2006, he essentially contends that the Ohio Supreme Court's plurality Singleton

decision is dicta in this instance, as Singleton did not involve a post-7/11/06 sentence.

He adds his assessment that the only parts of Singleton to have the support of at least

four Justices are the two paragraphs of the syllabus and the portion of the lead opinion

that holds R.C. 2929.191 does not apply retroactively.

{¶13} However, as aptly recognized by the Second District Court of Appeals, the

Ohio Supreme Court has already extended the purported "dicta" of Singleton regarding

the procedures of R.C. 2929.191 to cases where the defendant had been sentenced on

or after July 11, 2006. See State v. Marriott, 189 Ohio App.3d 98, 937 N.E.2d 614,

2010-Ohio-3115, ¶ 56, citing State v. Fry, 125 Ohio St.3d 163, 926 N.E.2d 1239, 2010-

Ohio-1017, ¶ 214 and State v. Fuller, 124 Ohio St.3d 543, 925 N.E.2d 123, 2010-Ohio-

726.

{¶14} Accordingly, we hold appellant's PRC was properly corrected pursuant to

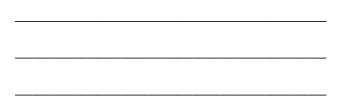
statute, and his sole Assignment of Error is therefore overruled.

{¶15} For the reasons stated in the foregoing opinion, the judgment of the Court

of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J. Gwin, P. J., and

Hoffman, J., concur.



JUDGES

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

SIAI	E OF	ОПІ	J				:					
	Plain	tiff-A	ppellee				:					
-vs-							:		JUD	GMENT ENTRY		
ROZE	ELL WOODSON						: :					
	Defendant-Appellant						:		Case	No. 2010 CA 00101		
	For	the	reasons	stated	in	our	acco	ompan	nying	Memorandum-Opinion,	the	
judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.												
	Costs	s ass	sessed to	appellar	nt.							
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