

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRAD LADD

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 2014 CA 00113

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 2009 CR 00200

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 15, 2015

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO  
PROSECUTING ATTORNEY  
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For Defendant-Appellant

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Wise, P. J.

{¶1}. Appellant Brad Ladd appeals the decision of the Court of Common Pleas, Stark County, which denied his pro se motion to vacate sentence. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

Common Pleas No. 2008-CR-2038

{¶2}. As a background, in December 2008, under a separate trial court case number, 2008-CR-2038, the Stark County Grand Jury indicted Appellant Ladd on one count of burglary (R.C. 2911.12(A)(3)). Following a jury trial, appellant was found guilty as charged. Via judgment entry filed February 26, 2009, the trial court sentenced appellant to five years in prison, plus one additional year for violating his post-release control.

{¶3}. Appellant thereupon filed a direct appeal to this Court, raising issues of ineffective assistance of counsel and manifest weight of the evidence. On September 14, 2009, we affirmed appellant's conviction and sentence. See *State v. Ladd*, 5th Dist. Stark No. 2009CA00073, 2009-Ohio-4853.

Common Pleas No. 2009-CR-0200

{¶4}. In February 20, 2009, under trial court case number 2009-CR-0200, the Stark County Grand Jury indicted Appellant Ladd on counts of kidnapping, felonious assault, and misdemeanor domestic violence. These charges stemmed from a November 2008 assault on a female victim, J.P., during which incident she was *inter alia* forced into and locked in the trunk of an automobile.

{¶5}. On June 22, 2009, Appellant Ladd entered pleas of guilty to the aforesaid charges. On June 26, 2009, the trial court sentenced appellant to a prison term of two

years, consecutive to his sentence under case number 2008-CR-2038, *supra*. Appellant was also given up to five years of "mandatory" post-release control.

{¶6}. Appellant did not file an appeal from his convictions and sentence in 2009-CR-0200.

{¶7}. On March 14, 2014, appellant filed a motion for judicial release, which the trial court denied.

{¶8}. On May 16, 2014, slightly less than five years after he was sentenced, appellant filed a "motion to vacate sentence as void," challenging his up to five-year sentence of community control.

{¶9}. On May 20, 2014, the trial court issued a judgment entry denying appellant's motion to vacate the sentence, even though that same day the court had scheduled the matter for a PRC video hearing for June 16, 2014 at 1:30 PM.

{¶10}. On June 16, 2014, the trial court conducted the video hearing.

{¶11}. On June 18, 2014, appellant filed a notice of appeal of a purported June 10, 2014 judgment entry, even though no such entry exists. However, appellant's corresponding docketing statement indicated the judgment entry appealed from was the trial court's May 20, 2014 denial of the motion to vacate sentence.

{¶12}. Nonetheless, on June 26, 2014, the trial court issued a resentencing entry based upon the aforesaid video hearing, therein ordering appellant to serve three years of post-release control.

{¶13}. Appellant now raises the following two Assignments of Error:

{¶14}. “I. TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO CHALLENGE THE TRIAL COURT'S IMPOSITION OF A FIVE-YEAR TERM OF POST-RELEASE CONTROL.

{¶15}. “II. TRIAL COURT ERREED [SIC] BY CONDUCTING A HEARING TO REMEDY ITS PREVIOUS FAILURE TO PROPERLY IMPOSE POST-RELEASE CONTROL, WITHOUT HAVING JURISDICTION TO DO SO.”

I.

{¶16}. In his First Assignment of Error, appellant maintains his trial counsel was ineffective regarding representation as to the court's original imposition of up to five years of post-release control in 2009-CR-0200.

{¶17}. Appellant's present challenge in this assigned error pertains to the trial court's original sentencing decision of June 26, 2009. We note appellant has neither complied with the thirty-day “notice of appeal” rule set forth in App.R. 4(A), nor has he sought leave to file a delayed appeal under App.R. 5(A), with respect to said judgment entry. As such, we find we are without jurisdiction to address the aforesaid challenge. *Accord State v. Edmond*, 5th Dist. Licking No. 06 CA 25, 2007-Ohio-555, ¶ 21.

{¶18}. Appellant's First Assignment of Error is therefore denied for want of appellate jurisdiction.

II.

{¶19}. In his Second Assignment of Error, appellant contends the trial court lacked jurisdiction in 2009-CR-0200 to conduct the video hearing and issue its resentencing decision due to his notice of appeal.

{¶20}. R.C. 2929.191 sets forth the mechanism for correcting a sentence that fails to properly impose post-release control. *State v. Davis*, 5th Dist. Richland No. 2010–CA–0100, 2011-Ohio-2308, ¶ 9. Where post-release control was not correctly imposed, the affected offender has the right to be present at a corrective hearing, but the court may permit the offender to appear at the hearing by video conferencing equipment under R.C. 2929.191(C). See *State v. Miller*, 5th Dist. Stark No. 2013CA00115, 2014-Ohio-18, ¶ 17.

{¶21}. Appellant's chief contentions are that the trial court (1) lacked jurisdiction to conduct the video hearing on June 16, 2014, just two days before he filed a notice of appeal on June 18, 2014 (effectively as to the May 20, 2014 judgment entry denying appellant's motion to vacate the sentence) and (2) lacked jurisdiction to issue its resentencing decision of June 26, 2014, which appellant labels a "nullity." See Appellant's Brief at 3.

{¶22}. We recognize that "[w]hen a case has been appealed, the trial court retains all jurisdiction not inconsistent with the court of appeals' jurisdiction to reverse, modify, or affirm the judgment." *Yee v. Erie County Sheriff's Department* (1990), 51 Ohio St.3d 43, 44, citing *In re Kurtzhalz* (1943), 141 Ohio St. 432, at paragraph two of the syllabus. But a divestment of jurisdiction "includes the trial court's ability to resentence a defendant to correct a sentencing error while his appeal is still pending." *State v. Dunning*, 12th Dist. Warren Nos. CA2013–05–048, CA2013–06–058, 2014-Ohio-253, ¶ 8, citing *State v. Triplett*, 4th Dist. Lawrence No. 11 CA3, 2011–Ohio–5431, ¶ 6.

{¶23}. Appellant's argument, however, has lost its focus by targeting events *after* the judgment entry under appeal. The subject of this appeal is supposed to be the May 20, 2014 denial of appellant's motion to vacate his 2009 sentence. The trial court has since that date chosen to further review appellant's request to vacate, at least as to the PRC aspects of the 2009 sentence, but that subsequent determination, issued June 26, 2014, is not presently before us on appeal. Appellant thus fails to develop in this assigned error a basis for reversing the trial court's decision of May 20, 2014.

{¶24}. Appellant's Second Assignment of Error is therefore overruled.

{¶25}. For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby affirmed.

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.

JWW/d 0601

