

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1060

Appellee

Trial Court No. CR-199802941

v.

Darek Lathan

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Darek Lathan, pro se.

* * * * *

HANDWORK, P.J.

{¶ 1} This case is before the court on appeal from the judgment of the Lucas County Court of Common Pleas which, on February 5, 2009, denied the pro se motion filed by appellant, Darek Lathan, which requested the trial court "to hold a video conference hearing so that the defendant may be properly given the notice of 'POST

RELEASE CONTROL.'" On February 5, 1999, a jury found appellant guilty of aggravated robbery with a firearm specification, in violation of R.C. 2911.01(A)(1) and 2941.145, a felony of the first degree, and robbery, in violation of R.C. 2911.02(A)(2), a felony of the second degree. On March 9, 1999, the trial court journalized appellant's sentence of five years in prison as to each count, to be served concurrently, with an additional three years incarceration to be served consecutively for the firearm specification.

{¶ 2} On appeal, appellant, pro se, raises the following assignments of error:

{¶ 3} "1. The trial court made error in not granting the motion to hold 're-sentencing' via video conference.

{¶ 4} "2. The trial court abused it's discretion by implying that it had informed appellant of post-release control in sentencing journal entry.

{¶ 5} "3. The trial court is violating the appellant's constitutional rights to due process by allowing appellant to be incarcerated on a 'void' sentence."

{¶ 6} For our consideration, we will consolidate appellant's arguments on appeal. Appellant appears to argue that he should be resentenced due to the trial court's failure to notify him that he would be subject to a period of postrelease control, as required by R.C. 2929.19(B)(3), or because his sentence was voided by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856.

{¶ 7} First, we find that appellant was properly notified pursuant to R.C. 2929.19(B)(3), as evidenced by the "notice" of postrelease control document signed by

appellant and journalized on March 8, 1999. Because he was duly informed, there is no need for the trial court to bring him back for resentencing regarding that matter.

{¶ 8} Second, to the extent that appellant asserts he is entitled to be resentenced pursuant to *Foster*, we find that *Foster* only applies to cases that were pending before the appellate court on "direct review" at the time of *Foster's* release on February 27, 2006. *Foster*, ¶ 104. A direct appeal from appellant's 1999 conviction was not pending before this court at the time of *Foster's* release. Therefore, appellant is not entitled to be resentenced pursuant to *Foster*.

{¶ 9} Accordingly, we find that the that the trial court did not abuse its discretion in denying appellant's motion for resentencing via video conference and, therefore, find appellant's assignments of error not well-taken. On consideration whereof, this court finds that the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James R. Sherck, J.

CONCUR.

JUDGE

Judge James R. Sherck, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.