

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

State of Ohio

Court of Appeals No. H-10-010

Appellee

Trial Court No. CRI 2001 0328

v.

Thomas L. Larkins

DECISION AND JUDGMENT

Appellant

Decided: May 27, 2011

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

George C. Ford, Huron County Public Defender, and David J. Longo,
Chief Assistant, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Thomas Larkins, appeals from a judgment issued by the Huron County Court of Common Pleas, denying his motion to vacate a sentencing judgment entry which added a five-year term of postrelease control. Because we conclude that the resentencing judgment is void since the trial court was without jurisdiction to resentence appellant after he had already completed his sentence, we reverse.

{¶ 2} In 2001, a jury found appellant guilty of possession of cocaine and he was sentenced to an eight year mandatory prison term of incarceration, with jail time credit for 190 days. Appellant was not informed at sentencing or in the judgment entry that he would have five years of mandatory postrelease control. Appellant began serving his sentence on October 3, 2001. In 2002, appellant was indicted and pled guilty to escape. He was sentenced to a one year term of incarceration, to be served consecutive to the original eight year possession conviction sentence.

{¶ 3} In March 2010, the trial court brought appellant back to court for resentencing as to the cocaine possession charge, to correct its omission of the imposition of postrelease control in the original sentence. Appellant's counsel objected to the resentencing on the basis that appellant had already completed the drug possession sentence. The court allegedly relied on erroneous information from the prison officials, conducted the hearing, and reimposed the eight year term, but informed appellant that he would also be subject to a mandatory, five year postrelease control term. The corrected judgment entry was filed on March 29, 2010, and journalized on April 1, 2010.

{¶ 4} On April 1, 2010, appellant filed a pro se motion to vacate the resentencing judgment, arguing that it was void and contrary to law. The trial court denied the motion on May 10, 2010.

{¶ 5} Appellant now appeals from that judgment, arguing the following sole assignment of error:

{¶ 6} "The trial court erred to the prejudice of the defendant-appellant in denying his motion to vacate its judgment entry of (re)sentencing [sic], inasmuch as the judgment was void, because the re-sentencing [sic] hearing took place after appellant had completed his full prison sentence."

{¶ 7} We construe appellant's motion as a postconviction motion to vacate a void judgment. A motion to vacate a void judgment need not comply with the requirements of Civ.R. 60(B). *Dorsey v. Ford Motor Co.* (May 18, 2000), 8th Dist. No. 75636; *Ransome v. Lampman* (1995), 103 Ohio App.3d 8, 15. The authority to vacate a void judgment constitutes an inherent power possessed by the Ohio courts. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, paragraph four of the syllabus.

{¶ 8} Effective July 11, 2006, R.C. 2929.191 established a procedural remedy for trial courts to correct a sentence that fails to properly impose a term of postrelease control. However, that procedure does not apply to an offender who has already completed his sentence. See *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, ¶ 32 (parole board lacked authority to impose postrelease control where trial court failed to notify or resentence defendant prior to defendant's completion of sentence).

{¶ 9} After "an offender has served the prison term ordered by the trial court, he or she cannot be subject to resentencing in order to correct the trial court's failure to impose postrelease control at the original sentencing hearing." *State v. Marsh*, 8th Dist. No. 89281, 2007-Ohio-6491, ¶ 9, citing *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶ 18 (following *Hernandez*, trial court could not conduct resentencing for postrelease

control since defendant's term of imprisonment had been completed). See, also, *State v. Atkinson*, 8th Dist. No. 93855, 2010-Ohio-2783 (trial court erred in resentencing to impose postrelease control after defendant had served his sentence and prison term). Therefore, when a court fails to impose postrelease control and resentence an offender before he completes the stated term of imprisonment, under either Ohio caselaw or R.C. 2929.191, the offender must be discharged. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, ¶ 70. See, also, *State v. Arnold*, 189 Ohio App.3d 238, 2009-Ohio-3636 (expiration of prisoner's journalized sentence, not release from prison, determines trial court's authority to resentence); *State v. Bristow*, 6th Dist. No. L-06-1230, 2007-Ohio-1864 (postrelease control could not be added when term for assault had already expired).

{¶ 10} In this case, appellant's sentence for escape was not merely an extension of his sentence for possession of cocaine. We reject appellee's suggestion that because the escape sentence was mandatorily to be served consecutively to, i.e., after, the sentence for possession, that all of appellant's individual sentences became one long "aggregate" sentence. The term "aggregate" sentence is merely used to describe the total time an offender may be in prison when adding up multiple sentences. It is not pertinent to the issue in this case. Rather, each sentence had a finite duration, which is how the prison officials knew when to start appellant's term for the escape sentence.

{¶ 11} At the time the hearing to correct the possession charge sentence was conducted in March 2010, appellant had already completed the eight-year possession sentence in March 2009. As a result, the Huron County Court of Common Pleas had no

jurisdiction to resentence appellant and to impose postrelease control as to the cocaine possession conviction. Therefore, the judgment is void, and the trial court erred in denying appellant's motion to vacate.

{¶ 12} Accordingly, appellant's sole assignment of error is well-taken.

{¶ 13} The judgment of the Huron County Court of Common Pleas is reversed and the judgment imposing postrelease control is hereby vacated and the original sentencing judgment entry is reinstated. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

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

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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:
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