

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

State of Ohio

Court of Appeals No. L-09-1327

Appellee

Trial Court No. CR0200902322

v.

Marquis C. Leach

DECISION AND JUDGMENT

Appellant

Decided: February 25, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jeffrey D. Lingo, Assistant Prosecuting Attorney, for appellee.

Ann M. Baronas, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the November 30, 2009 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Marquis C. Leach, after he pled no

contest to and was convicted by the court of violating R.C. 2921.331(B) and (C)(5)(a)(ii), failure to comply, and R.C. 2903.13(B), a lesser included offense of assault. Upon consideration of the assignment of error, we reverse the decision of the lower court.

Appellant asserts the following single assignment of error on appeal:

{¶ 2} "THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO A TERM OF INCARCERATION IN PRISON FOR A MISDEMEANOR CONVICTION."

{¶ 3} Appellant was sentenced to a term of three years as to the charge of failure to comply and six months as to the lesser included offense of assault in prison, which were to be served consecutively. Appellant contends that the trial court made an error of law by sentencing him to a term of imprisonment of six months when a misdemeanor is only punishable by a term of incarceration of up to 180 days in jail.

{¶ 4} Appellee does not respond to this argument, but instead contends that R.C. 2929.41(B) provides that when a defendant is convicted of both a felony and a misdemeanor, the sentences can be imposed to run consecutively.

{¶ 5} Upon consideration of appellant's assignment of error, we find it well-taken. R.C. 2929.22(A) provides that unless otherwise provided by law, the court may impose any sanction permitted under R.C. 2929.24 through R.C. 2929.28. R.C. 2929.24 (A)(1) provides that unless otherwise provided by law, the court shall impose a definite jail term of not more than 180 days for a misdemeanor of the first degree. Furthermore, R.C. 2929.34(C) provides that:

{¶ 6} "A person who is convicted of or pleads guilty to one or more misdemeanors and who is sentenced to a jail term or term of imprisonment pursuant to the conviction or convictions shall serve that term in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse or, if the misdemeanor or misdemeanors are not offenses of violence, in a minimum security jail."

{¶ 7} Thus, it is clear that the statute requires the term of incarceration for a misdemeanor cannot be ordered to be served in prison. Appellant's sole assignment of error is found well-taken.

{¶ 8} Having found that the trial court did commit error prejudicial to appellant and that substantial justice has not been done, the judgment of the Lucas County Court of Common Pleas is reversed. Pursuant to the authority granted to us by App.R. 12(B), we hereby render the judgment the trial court should have entered by modifying the trial court's judgment to provide that "defendant serve a term of 3 years as to count 1 in prison and 6 months as to count 2 in jail." Appellee is hereby 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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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