

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

State of Ohio

Court of Appeals No. L-10-1107
L-10-1106

Appellee

Trial Court No. CR0199607776
CR0201001132

v.

Raymend aka Raymond Lee Scott, Jr.

DECISION AND JUDGMENT

Appellant

Decided: February 8, 2013

* * * * *

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

Charles S. Rowell, Jr., for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶1} Appellant, Raymond Scott, appeals the judgment of the Lucas County Court of Common Pleas, resentencing him to five years in prison for a robbery he committed in 1997. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶2} On March 27, 1997, Scott pled guilty to robbery, a felony of the second degree. After accepting his plea, the trial court sentenced Scott to a five-year prison term. Notably, the court failed to inform Scott that he was subject to a mandatory three-year term of postrelease control. One year later, on May 18, 1998, the court granted Scott's motion for judicial release, and placed him on community control.

{¶3} While on community control, Scott was charged with aggravated robbery with a firearm specification. On July 25, 2001, after pleading no contest to the charges, Scott was sentenced to a five-year prison term for the aggravated robbery charge, and a mandatory three-year prison term for the firearms specification. The terms were ordered to be served consecutively. Additionally, the court determined that Scott violated the terms of his community control, and reinstated the five-year prison term from his 1997 robbery conviction. The court ordered that the five-year term from Scott's 1997 conviction be served consecutive to the sentence already imposed for the aggravated robbery charge. Once again, the court failed to notify Scott of his postrelease control obligations.

{¶4} On June 11, 2009, Scott filed a pro se "Motion for Sentencing" in which he argued that his sentences were void because they did not include mandatory postrelease control notifications. After the court granted several continuances on the motion for sentencing, counsel was appointed and a motion for resentencing was filed.

{¶5} On February 19, 2010, the trial court held a de novo sentencing hearing, at which it determined that postrelease control was improperly imposed in both the 1997 case and the 2001 case. The court concluded that the 2001 sentence was served prior to the 1997 sentence. Since the 2001 sentence had already been completed, the court decided that it lacked jurisdiction to alter that sentence. As to the 1997 sentence, the court noted that Scott had not yet completed the sentence, and was therefore subject to resentencing. Thus, the court resentenced Scott to a five-year prison term, with credit for 1,346 days as of that date. Additionally, the court notified Scott of his postrelease control obligations.

{¶6} Scott's timely appeal followed the court's resentencing.

B. Assignment of Error

{¶7} Scott's sole assignment of error is as follows:

AS OF FEBRUARY 19, 2010, THE TRIAL COURT LACKED JURISDICTION TO MODIFY THE SENTENCE PREVIOUSLY IMPOSED UPON THE APPELLANT IN CASE NO. CR96-7776 BECAUSE APPELLANT HAD SERVED THAT SENTENCE IN ITS ENTIRETY AND BECAUSE HE HAD ORIGINALLY BEEN SENTENCED PRIOR TO THE EFFECTIVE DATE OF R.C. 2929.191 AND IN CR01-1132 BECAUSE HE HAD ORIGINALLY BEEN SENTENCED PRIOR TO THE EFFECTIVE DATE OF R.C. 2929.191

II. Analysis

{¶8} In his sole assignment of error, Scott argues that the trial court lacked jurisdiction to modify the 1997 sentence because he had already completed the sentence at the time of the resentencing hearing. Additionally, he argues that the trial court lacked jurisdiction to modify the 1997 sentence and the 2001 sentence because the original sentence was imposed prior to the effective date of R.C. 2929.191.

{¶9} We note at the outset that Scott's argument regarding the 2001 sentence is without merit because the trial court did not modify the 2001 sentence. In fact, the court expressly acknowledged its lack of jurisdiction over that sentence during the resentencing hearing after concluding that the sentence had been completed.

{¶10} With regards to Scott's arguments concerning the 1997 sentence, we conclude that they are also without merit. First, Scott argues that the trial court lacked jurisdiction to modify the sentence because he already completed the sentence. At the resentencing hearing, the trial court determined that the 2001 sentence was served before the 1997 sentence. Although the trial court determined that the 2001 sentence had been served in full, it concluded that there was time remaining on Scott's 1997 sentence.

{¶11} In the resentencing hearing, Scott asked the trial court to conclude that the 2001 sentence had been served first. Now, on appeal, he argues that the 1997 sentence was served first, and thus, had been completed at the time of the resentencing. Under the

doctrine of invited error, “a party may not complain about an action taken by the court in accordance with the party’s own suggestion or request.” *Wolf-Sabatino v. Sabatino*, 10th Dist. No. 12AP-307, 2012-Ohio-6232, ¶ 18, citing *In re J.B.*, 10th Dist. No. 11AP-63, 2011-Ohio-3658, ¶ 10. Because Scott requested that the trial court determine that the 2001 sentence was served prior to the 1997 sentence, the doctrine of invited error applies and precludes Scott’s first argument.

{¶12} Second, Scott argues that the trial court lacked jurisdiction because R.C. 2929.191 does not apply retroactively to sentences before July 11, 2006, its effective date.

{¶13} Indeed, the Ohio Supreme Court held in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 26, that R.C. 2929.191 does not apply retrospectively, and “for criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, the de novo sentencing procedure detailed in decisions of the Supreme Court of Ohio should be followed to properly sentence an offender.” Because Scott was sentenced prior to July 11, 2006, he is correct in his assertion that R.C. 2929.191 does not provide the proper method for correcting postrelease control. Nevertheless, the resentencing hearing in this case complied with the de novo sentencing procedure detailed in decisions of the Supreme Court of Ohio.

{¶14} At the time *Singleton* was announced, the Ohio Supreme Court determined that failure to impose mandatory postrelease control rendered the entire sentence void,

and “[t]he trial court must resentence the offender as if there had been no original sentence.” *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 16.¹

That is exactly what happened in this case. Thus, it is clear that the resentencing hearing was authorized, not by R.C. 2929.191, but by the sentencing procedure outlined in *Bezak*. Therefore, we conclude that Scott’s arguments concerning the 1997 sentence are without merit. Accordingly, Scott’s sole assignment of error is not well-taken.

¹ However, one year after announcing *Singleton*, the Ohio Supreme Court limited *Bezak*, stating,

[W]e reaffirm the portion of the syllabus in *Bezak* that states “[w]hen a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void,” but with the added proviso that only the offending portion of the sentence is subject to review and correction.

* * *

Therefore, we hold that the new sentencing hearing to which an offender is entitled under *Bezak* is limited to proper imposition of postrelease control. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 27.

Although Scott was entitled to a new sentencing hearing under *Bezak*, *Fischer* limited the scope of the hearing to the issue of postrelease control. Here, the court conducted a de novo resentencing hearing, since *Fischer* had not been released at the time of the resentencing hearing. However, the court imposed the same sentence that was imposed in 1997, with the addition of postrelease control notifications. Thus, under either *Bezak* or *Fischer*, the hearing was properly conducted.

III. Conclusion

{¶15} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Scott 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.