

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

In re J.A.

Court of Appeals No. L-12-1124

Trial Court No. JC09194065

DECISION AND JUDGMENT

Decided: March 8, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Thomas E. Puffenberger, Assistant Prosecuting Attorney, for appellee.

David H. Bodiker, Ohio Public Defender, and
Charlyn Bohland, Assistant State Public Defender, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶1} Appellant, J.A., appeals the judgment of the Lucas County Court of Common Pleas, Juvenile Division, adjudicating him delinquent, revoking his parole, and

committing him to the Ohio Department of Youth Services (“DYS”) for a minimum of 90 days. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶2} The facts pertinent to this appeal begin on May 12, 2009. On that date, appellant was charged with burglary, in violation of R.C. 2911.12(A)(2), a felony of the second degree if committed by an adult. Appellant was subsequently adjudicated delinquent by the juvenile court on July 29, 2009, and committed to DHS for a minimum period of one year pursuant to R.C. 2152.16(A)(1)(d). After four months, the juvenile court granted appellant judicial release from DHS to parole supervision.

{¶3} On May 10, 2011, appellant’s parole officer filed a motion to show cause with the juvenile court alleging that appellant violated the terms of his parole. Appellant subsequently admitted to the violation, at which point the juvenile court revoked his parole and committed him to DHS for a minimum period of 90 days. Upon release from DHS, appellant was once again placed on parole.

{¶4} On March 16, 2012, appellant’s parole officer filed another motion to show cause with the juvenile court, alleging for a second time that appellant had violated the terms of his parole. Appellant admitted to the violations and the court committed appellant to DHS for a minimum of 90 days. Appellant’s counsel did not object to the second 90-day commitment. However, on May 1, 2012, appellant filed a motion to vacate the judgment, in which he asserted that the second 90-day commitment was not

statutorily authorized. Three days later, he filed his appeal with this court. The juvenile court has since denied appellant's motion to vacate.

B. Assignments of Error

{¶5} On appeal, appellant assigns the following errors for our review:

ASSIGNMENT OF ERROR I: The juvenile court erred when it committed [appellant] to DYS for a minimum period of ninety days for a parole revocation, as only a thirty-day minimum DYS commitment is authorized by R.C. 5139.52(F).

ASSIGNMENT OF ERROR II: Trial counsel rendered ineffective assistance by failing to object to [appellant's] illegal parole revocation commitment, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

II. Analysis

A. Appellant's DYS Commitment

{¶6} In his first assignment of error, appellant argues that the juvenile court erroneously committed him to DYS for a period of 90 days when it was only authorized by statute to commit him to DYS for 30 days. Specifically, appellant argues that, when he was released from DYS following his 90-day sentence for his first parole violation, he was placed on supervised release and not judicial release. Thus, he contends that R.C.

5139.52, which governs violations of supervised release, applied, rather than R.C. 2152.22(E), which applies to violations of judicial release.

{¶7} As an initial matter, we note that appellant did not object to the juvenile court's imposition of a 90-day recommitment term. Therefore, we review the juvenile court's decision for plain error only. *In re L.B.B.*, 12th Dist. No. CA2012-01-011, 2012-Ohio-4641, ¶ 8, citing *In re J.B.*, 12th Dist. No. CA2004-09-226, 2005-Ohio-7029, ¶ 37; *In re T.K.*, 9th Dist. No. 26076, 2012-Ohio-906, ¶ 5. Crim.R. 52(B) provides: "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." For an error to affect a substantial right, it must affect the outcome of the trial. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240.

{¶8} Our resolution of appellant's first assignment of error depends upon whether appellant is currently under judicial release or supervised release. Notably, appellant acknowledges that his initial release from DYS following completion of the first four months of his prescribed one-year minimum term was pursuant to judicial release. However, he argues that his most recent release from DYS following his 90-day sentence for the first parole violation was pursuant to supervised release. We disagree.

{¶9} Concerning appellant's initial release from DYS, R.C. 2152.22(A) states, in relevant part, "[DYS] shall not release the child from a department facility * * * or order the child's release on supervised release prior to the expiration of the minimum period

specified by the court in division (A)(1) of section 2152.16 of the Revised Code * * *.”

In other words, DYS has no authority to grant supervised release to a juvenile delinquent prior to the expiration of the juvenile’s prescribed minimum term. Here, appellant’s prescribed minimum term was one year pursuant to R.C. 2152.16(A)(1)(d). Thus, when he was released from DYS after four months, his release could not have been pursuant to supervised release. Rather, he was released via judicial release under R.C.

2152.22(B)(1), which states, in relevant part, that “the court that commits a delinquent child to the department of youth services may grant *judicial release* of the child to court supervision under this division during the first half of the prescribed minimum term for which the child was committed to the department * * *.” (Emphasis added.)

{¶10} Although appellant acknowledges that he was initially released under judicial release, he argues that his release from DYS following the prescribed 90-day minimum sentence for the first parole violation was pursuant to supervised release, since it occurred after the prescribed minimum sentence. DYS derives its authority to grant supervised release to a juvenile under R.C. 2152.16(B)(1), which states: “Subject to division (B)(2) of this section, if a delinquent child is committed to the department of youth services under this section, the department may release the child at any time *after the minimum period specified by the court in division (A)(1) of this section ends.*”

(Emphasis added.) Notably, this section limits DYS’ authority to grant supervised release to instances where the juvenile has served the entire minimum period under R.C.

2152.16(A)(1). Since appellant was released on judicial release after completing only four months of his one-year minimum sentence, he had not completed the minimum sentence and, thus, could not be released pursuant to supervised release. The fact that he had served an intervening 90-day minimum sentence for violation of the terms and conditions of his parole has no bearing on whether he was on judicial release or supervised release. Indeed, the 90-day minimum sentence imposed as a consequence of his first parole violation was not a “minimum period specified by the court in [R.C. 2152.16(A)(1)].” Thus, supervised release does not apply.

{¶11} Having concluded that appellant remained on judicial release following his completion of the 90-day minimum sentence imposed as a result of his first parole violation, we now consider whether the second 90-day minimum sentence was proper. We hold that it was.

{¶12} R.C. 2152.22(E) states:

If a child is released under [judicial release] and the court of the county in which the child is placed has reason to believe that the child’s deportment is not in accordance with the conditions of the child’s judicial release, the court of the county in which the child is placed shall schedule a time for a hearing to determine whether the child violated any of the post-release conditions * * *.

If that court determines at the hearing that the child violated any of the post-release conditions, the court, if it determines that the violation was a serious violation, may order the child to be returned to the department for institutionalization, consistent with the original order of commitment of the child, or in any case may make any other disposition of the child authorized by law that the court considers proper. * * * If the court orders the child returned to a department institution, the child shall remain in institutional care for a minimum of three months * * *.

Here, appellant was recommitted to DYS for a minimum period of 90 days. Since we have determined that the violation for which appellant was recommitted was a violation of the conditions of his judicial release, R.C. 2152.22(E) authorizes the trial court to recommit appellant to DYS for 90 days, which we conclude is substantially the same as three months.

{¶13} Rather than applying R.C. 2152.22(E), appellant argues that the trial court should have applied R.C. 5139.52(F) when it sentenced him. Appellant's argument is misplaced, however, because R.C. 5139.52(F) expressly states: "This division does not apply regarding a child who is under a period of judicial release to department of youth services supervision. Division (E) of section 2152.22 of the Revised Code applies in relation to a child who is under a period of judicial release to department of youth services supervision."

{¶14} Having considered appellant's arguments, we conclude that the trial court did not commit plain error when it recommitted appellant to DYS for a minimum period of 90 days for his violation of the terms and conditions of judicial release. Accordingly, appellant's first assignment of error is not well-taken.

B. Ineffective Assistance of Counsel

{¶15} In his second assignment of error, appellant argues that he was deprived of effective assistance of counsel as required by the United States Constitution and the Ohio Constitution.

{¶16} To support a claim for ineffective assistance of counsel, appellant must satisfy the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). That is, appellant must show counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688, 694.

{¶17} Appellant argues that he was denied effective counsel because his attorney failed to object when the juvenile court committed him to DYS for a minimum of 90 days following his second parole violation. Appellant contends that he was prejudiced by his attorney's oversight because, had his attorney objected, he would have been committed for a minimum of 30 days instead of a minimum of 90 days.

{¶18} Ultimately, appellant’s argument presumes that the 90-day commitment period was erroneous because he was on supervised release. However, we have already concluded that appellant was on judicial release, not supervised release, at the time he was recommitted to DYS for 90 days. Thus, the juvenile court’s commitment of appellant to DYS for 90 days was proper. As a result, appellant was not prejudiced by his counsel’s failure to object to the 90-day commitment period.

{¶19} Accordingly, appellant’s second assignment of error is not well-taken.

III. Conclusion

{¶20} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs are hereby assessed to the appellant in accordance with 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

<p>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.</p>
