

[Cite as *State v. Hakeem*, 2010-Ohio-65.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92542

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

AHMAD HAKEEM

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-384414

BEFORE: Jones, J., Cooney, P.J., and Blackmon, J.

RELEASED: January 14, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building, Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Katherin Mullin
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Ahmad Hakeem (“Hakeem”), appeals his sentence. Finding no merit to the appeal, we affirm the judgment of the trial court.

{¶ 2} In 1999, Hakeem was charged with rape, attempted rape, and two counts of kidnapping in the sexual abuse of his sister and her friend, who were only nine years of age at the time of the incidents. All counts contained a sexually violent predator specification. Pursuant to a plea agreement, Hakeem pled guilty to rape and attempted rape and the remaining charges and specifications were nolle. The trial court sentenced Hakeem to nine years in prison, but failed to inform him at the sentencing hearing that he would be subject to a mandatory five-year period of postrelease control. Hakeem further stipulated to being classified as a sexual predator.

{¶ 3} In November 2008, the state moved for resentencing based on the Ohio Supreme Court’s decision in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. In *Simpkins*, the Ohio Supreme Court held that “[i]n cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void, and the state is entitled to a new sentencing hearing to have postrelease control imposed on the defendant unless the defendant has completed his sentence.” *Id.* at syllabus.

{¶ 4} The trial court in this case held a resentencing hearing a week before Hakeem was scheduled to be released from prison. At the hearing, the trial court imposed the same sentence as before and further informed Hakeem that he was subject to a mandatory term of five years of postrelease control.

{¶ 5} Hakeem appeals, raising one assignment of error for our review, in which he argues that he should not have been resentenced because the state did not challenge the failure to include postrelease control through a direct appeal following his first sentencing.

{¶ 6} Hakeem cites the Ohio Supreme Court's decision in *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, to propose that "after-the-fact" resentencing is an inappropriate means of imposing postrelease control upon sentences that did not originally contain the postrelease control notification and that have passed a proper appeals period. In *Hernandez*, the court granted a writ of habeas corpus to release a petitioner from prison after he had been sentenced to 160 days for violating the terms of his postrelease control. The Court held that since the trial court had not notified Hernandez about postrelease control at his sentencing hearing, the adult parole board had no authority to place him on postrelease control, and thus, he could not be punished for violating the conditions of his postrelease control. *Id.* at ¶18. And since Hernandez had already served his entire prison

sentence, he could not be resentenced to correct the trial court's failure to impose postrelease control. *Id.* at ¶29.

{¶ 7} But in *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, the Court expressly distinguished its holding in *Hernandez*, noting that because Cruzado's sentence had not yet been completed when he was resentenced, the trial court was authorized to correct the invalid sentence to include the appropriate, mandatory postrelease-control term. *Id.* at ¶28.

{¶ 8} In *Simpkins*, the Court distinguished its holding in *Hernandez*, finding that the defendant could be resentenced before he had fully served his sentence. *Id.* The Court stated that "[b]ecause a sentence that does not conform to statutory mandates requiring the imposition of postrelease control is a nullity and void, it must be vacated. The effect of vacating the sentence places the parties in the same position they would have been in had there been no sentence." *Id.* citing *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

{¶ 9} A trial court's jurisdiction over a criminal case is limited after it renders judgment, but it retains jurisdiction to correct a void sentence and is authorized to do so. *Cruzado* at ¶19. In fact, a court "has an obligation to do so when its error is apparent." *Simpkins*. Accordingly, the state's failure to appeal an illegal or void sentence does not negate the trial court's duty to impose sentences according to law or to resentence a defendant to correct a void sentence. *State v. Graves*, Cuyahoga App. No. 90080, 2008-Ohio-3037. Finally, R.C. 2929.191

authorizes a court to resentence an offender “at any time before the offender is released from imprisonment” and, therefore, is not limited to doing so only on direct appeal by the state. *Id.*

{¶ 10} In the case at bar, the trial court held the resentencing hearing prior to Hakeem’s release from prison. Moreover, the transcript of the resentencing hearing shows that the trial court held a de novo sentencing hearing and properly imposed postrelease control as part of Hakeem’s sentence.

{¶ 11} On appeal, Hakeem also argues that the resentencing violates his due process rights, rights against double jeopardy, and is barred by the doctrine of res judicata. But the Ohio Supreme Court has found that a de novo resentencing to include statutorily mandated periods of postrelease control does not offend the Double Jeopardy Clause, Due Process Clause, or the principles of res judicata. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254; *Simpkins*.

{¶ 12} Therefore, we find no error in the court’s resentencing Hakeem prior to his release from prison. Because Hakeem’s original sentence was void, resentencing was a proper remedy to correct the trial court’s original error of omission. See *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.

{¶ 13} The assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

COLLEEN CONWAY COONEY, P.J., and
PATRICIA A. BLACKMON, J., CONCUR