

[Cite as *State v. Rivers*, 2011-Ohio-1242.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95114

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GEORGE RIVERS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-459632

BEFORE: Cooney, J., Sweeney, P.J., and Rocco, J.

RELEASED AND JOURNALIZED: March 17, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, George Rivers (“Rivers”), appeals the trial court’s de novo sentencing and imposition of postrelease control. Finding no merit to the appeal, we affirm.

{¶ 2} In December 2004, Rivers was charged in a nine-count indictment. In the midst of his jury trial in March 2005, Rivers pled guilty to three counts: Count 1 charged failure to comply with an order or signal of a police officer; Count 2 charged felonious assault; and Count 8 charged

attempted aggravated vehicular assault while driving under suspension. The remaining six counts were nolle.

{¶ 3} Rivers was sentenced in March 2005 to one year in prison on Count 1, and three years on Count 2, to run consecutively. He was sentenced to six months on Count 8, to run concurrently, for a total of four years’ incarceration. The trial court also imposed “postrelease control * * * for the maximum time allowed for the above felony(s) under R.C. 2967.28.”¹

{¶ 4} In February 2010, one month prior to the expiration of Rivers’s four-year prison term, he was resentenced pursuant to *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958. At the de novo sentencing, the court imposed five years of postrelease control on Count 2.

{¶ 5} Rivers now appeals, raising one assignment of error, in which he argues that the trial court erred by not providing him with a “full” sentencing hearing.

{¶ 6} In *Singleton*, the Ohio Supreme Court held that “[f]or criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of

¹Rivers’s sentence ran consecutive to a sentence in an unrelated case, not part of the instant appeal. Thus, he was still in prison in 2010.

Ohio.” Id. at paragraph one of the syllabus. See, also, *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568; *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

{¶ 7} Rivers claims that at the beginning of his de novo sentencing hearing, the trial court stated, “I think I have to impose the original sentence” and that based on this statement, Rivers declined to address the court regarding mitigation of his sentence. Rivers also claims that his counsel was not afforded the opportunity to address the court. Thus, he claims he was denied a “full” sentencing hearing. We find his claims are without merit.

{¶ 8} The record shows that Rivers’s counsel was afforded the opportunity to address the court, and he did address the court. In addition, there is no evidence to support Rivers’s claim that he chose not to address the court based solely on the trial court’s statement.

{¶ 9} Moreover, a review of the transcript shows that the trial court’s comment about the “original sentence” has been taken out of context. The trial court’s entire comment, made to Rivers’s counsel, was:

“THE COURT: Well, I think I have to impose the original sentence, not impose postrelease control on those counts that have already expired.”

{¶ 10} At the time of the de novo sentencing hearing, sentences on two of Rivers’s three charges had already expired. The court’s comment confirmed

defense counsel’s argument that postrelease control should be imposed only on the single remaining charge of felonious assault, and not for the two previously expired charges.

{¶ 11} The trial court did not err when it reimposed the original term of incarceration, the minimum sentence for felonious assault, and included postrelease control. The de novo hearing had a single purpose, which was to properly impose postrelease control before the expiration of Rivers’s sentence, in accordance with the decisions of the Ohio Supreme Court. *Singleton* at paragraph one of the syllabus.

{¶ 12} Accordingly, Rivers’s sole of error is overruled.

Judgment 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.

COLLEEN CONWAY COONEY, JUDGE

JAMES J. SWEENEY, P.J., and
KENNETH A. ROCCO, J., CONCUR