

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101564

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL SKIPWORTH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-01-407903-ZA

BEFORE: Laster Mays, J., Jones, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: March 26, 2015

FOR APPELLANT

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Michael Skipworth, proceeding pro se, appeals from the trial court order that denied his “motion to correct an illegal sentence.” Skipworth presents a single assignment of error, claiming that the trial court “abused its discretion” in denying his motion.

{¶2} Because a review of the App.R. 9(A) record in conjunction with applicable decisions from both the Ohio Supreme Court and this court demonstrates that the trial court’s order was deficient in part, the order is affirmed but the case is remanded for the trial court to issue a nunc pro tunc entry to correct the omission in the sentencing entry. The trial court is instructed to properly include the consequences of a violation of postrelease control in the sentence pursuant to R.C. 2967.28 and 2929.191.

{¶3} On May 29, 2001, Skipworth was indicted in this case on 44 counts. He eventually pleaded guilty to four of the charges, viz., one count of child rape, two counts of pandering, and one count of endangering children. On October 26, 2001, the trial court sentenced Skipworth to serve a prison term that totaled 22 years. The journal entry reflects that the trial court notified Skipworth that postrelease control is a part of his prison sentence. As relevant to this appeal, the journal entry specifically states that “postrelease control is a part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.”

{¶4} This court subsequently dismissed Skipworth’s untimely appeal of his convictions; later, this court affirmed the trial court’s decision to deny Skipworth’s petition for postconviction relief. *State v. Skipworth*, 8th Dist. Cuyahoga No. 84450, 2005-Ohio-882, *discretionary appeal not allowed*, *State v. Skipworth*, 112 Ohio St.3d 1409, 2006-Ohio-6447, 858 N.E.2d 819.

{¶5} On May 8, 2014, Skipworth filed the motion at issue in this case, a “motion to correct an illegal sentence.” He asserted therein that his sentence was void because it did not

include the statutorily mandated term of postrelease control. As authority for his assertion, Skipworth cited *State v. Billiter*, 134 Ohio St.3d 103, 2012-Ohio-5144, 980 N.E.2d 960.

{¶6} On June 2, 2014, the trial court denied Skipworth's motion without opinion. Skipworth filed a timely appeal from the trial court's order without a sentencing transcript, and presents the following as his sole assignment of error: "The trial court abused its discretion when it refused to correct the Appellant's illegal and void sentence."

{¶7} Skipworth argues that the trial court abused its discretion when it denied his motion for resentencing pursuant to R.C. 2929.191. He argues that the trial court failed to properly impose postrelease control as part of his sentence, rendering his sentence illegal and void. This court finds some merit to his appeal and affirms that the trial court did not abuse its discretion when it denied appellant's motion for resentencing but remands for the trial court to issue a nunc pro tunc order to include the consequences of violating postrelease control.

{¶8} In *State v. McGee*, 8th Dist. Cuyahoga No. 101307, 2014-Ohio-5289, ¶ 11-12, this court recently observed:

The Ohio Supreme Court has clearly stated that "a trial court *must* provide statutorily compliant notification to a defendant regarding postrelease control *at the time of sentencing*, including notifying the defendant of the *details* of the postrelease control and the *consequences of violating* postrelease control." *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 18. The trial court *must also* set forth the postrelease notification *into the sentencing entry*. *Id.* "If the trial court properly notifies the defendant about postrelease control at the sentencing hearing and then inadvertently omits that notice from the sentencing entry, the omission can be corrected with a nunc pro tunc entry, and the defendant is not entitled to a new sentencing hearing." *State v. Dines*, 8th Dist. Cuyahoga No. 100647, 2014-Ohio-3143, ¶ 12, citing *Qualls* at ¶ 30.

(Emphasis added.)

{¶9} In *McGee*, the defendant failed to file a transcript of the sentencing hearing on appeal. This court agreed with the state that absent a transcript that this court must presume that

the trial court provided the required notification of postrelease control at the sentencing hearing. This court has repeatedly recognized that “when an appellant alleges a deficient postrelease control notification at the sentencing hearing, but fails to include in the record a transcript of the sentencing hearing, the reviewing court must presume the regularity and propriety of the hearing.” *State v. Williamson*, 8th Dist. Cuyahoga No. 99473, 2013-Ohio-3733, citing *State v. Dedonno*, 8th Dist. Cuyahoga No. 94732, 2010-Ohio-6361, ¶ 14; *see also State v. Falkenstein*, 8th Dist. Cuyahoga No. 96659, 2011-Ohio-5188, ¶ 3, fn. 1.

{¶10} Here, Skipworth did not file a transcript of the sentencing hearing. Therefore, we presume that the trial court properly advised him at sentencing of postrelease control, including the maximum term as well as the consequences for violating the provisions of postrelease control. But because the sentencing judgment entry failed to include the full advisement, we remand so that the trial court can issue a nunc pro tunc entry.

{¶11} Accordingly, applying *McGee* to the instant case, the trial court’s judgment is affirmed and the case is remanded for the trial court to issue a nunc pro tunc entry to correct the sentencing entry.

It is ordered that appellant and appellee share 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.

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

ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., P.J., and
SEAN C. GALLAGHER, J., CONCUR