

[Cite as *State v. Early*, 2016-Ohio-2636.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103465

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DAVID E. EARLY

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-595379-A

BEFORE: Boyle, J., Jones, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: April 21, 2016

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, David Early, appeals his conviction and sentence. He contends that he was improperly convicted of a second-degree felony and, as such, he is entitled to a new sentencing hearing. The state concedes the error. After review, we agree. Accordingly, Early's single assignment of error is sustained, and Early's conviction and sentence are vacated. The trial court's judgment is reversed and remanded.

I. Procedural History and Factual Background

{¶2} In 2009, Early was convicted of unlawful sexual conduct with a minor or corruption of a minor in violation of R.C. 2907.04(A), which was a third-degree felony. Early was classified as a Tier II sex offender as a result of this conviction.

{¶3} In May 2015, Early was indicted on two counts, including Count 1, failure to verify his address in violation of R.C. 2950.06(F), and Count 2, failure to provide notice of change of address in violation of R.C. 2950.05(F)(1). Both counts contained a furthermore clause that Early had previously been convicted of failing to verify his current residence or address. The indictment indicated that Count 1 was a third-degree felony and Count 2 was a second-degree felony.

{¶4} In July 2015, Early pleaded guilty to an amended Count 2 for failure to provide notice of change of address in violation of R.C. 2950.05(F)(1) without the furthermore clause. The first count of the indictment was nolle. During the plea

hearing, the state indicated that the charge was a second-degree felony. The trial court also informed Early that he was pleading guilty to a second-degree felony, and told him of the possible maximum sentence that he could receive for a second-degree felony.

{¶5} In August 2015, the trial court sentenced Early to two years in prison for failing to provide notice of his change of address, stating that it was a second-degree felony, and ordered that the two years be served concurrent to Lake C.P. No. 09CR000470. The trial court further ordered: “Defendant to be released 11/01/2015 in 00470 for his PRC violation. Then Defendant will serve the balance of his sentence in this case.” The trial court further notified Early that he would be subject to five years of mandatory postrelease control upon his release from prison. It is from this judgment that Early appeals.

II. Standard of Review

{¶6} “[A]n appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002, citing R.C. 2953.08(G)(2).

III. R.C. 2950.99(A)(1)(a)(ii)

{¶7} Early contends that pursuant to R.C. 2950.99(A)(1)(a)(ii), he was improperly convicted of and sentenced for a second-degree felony. The state concedes the error, and we agree.

{¶8} R.C. 2950.99(A)(1)(a) provides in relevant part that when an offender violates R.C. 2950.05, which Early did here, the offender shall be punished as follows:

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

{¶9} In this case, Early was convicted of R.C. 2950.05(F)(1) for failing to provide notice of his change of address as a result of being classified as a Tier II sex offender in a previous case. In the previous case, Early was convicted of unlawful sexual conduct with a minor or corruption of a minor, which was a third-degree felony. Therefore, according to R.C. 2950.99(A)(1)(a)(ii), his conviction for failing to provide notice of change of address under R.C. 2950.05(F)(1) could only be a third-degree felony.

{¶10} Accordingly, the trial court erred when it sentenced Early to two years in prison for a second-degree felony.

{¶11} Early's single assignment of error is sustained. Early's conviction and sentence are vacated.

{¶12} Judgment reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the 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.

—
MARY J. BOYLE, JUDGE

LARRY A. JONES, SR., A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR