

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103601

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ISSA S. SAAH

DEFENDANT-APPELLANT

JUDGMENT:
VACATED IN PART AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-575994-A

BEFORE: Blackmon, J., Keough, P.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: April 21, 2016

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PATRICIA ANN BLACKMON, J.:

{¶1} In this accelerated appeal, Issa Saah (“Saah”) appeals the trial court’s denial of his motion to terminate postrelease control and assigns the following error for our review:

I. The trial court committed reversible error when it denied Issah Saah’s motion to vacate and terminate postrelease control.

{¶2} Having reviewed the record and pertinent law, we vacate the trial court’s imposition of postrelease control as being contrary to law. The apposite facts follow.

{¶3} On October 30, 2013, Saah pled guilty to various fifth-degree felonies in multiple cases. On December 2, 2013, the court sentenced Saah to an aggregate of nine months in prison. The sentencing journal entry states that “post release control is part of this prison sentence for up to 3 years for the above felony(s) under R.C. 2967.28.”

{¶4} On June 24, 2014, Saah was released from prison. On July 7, 2015, Saah filed what he captioned as a “Motion to Terminate Postrelease-Control Supervision” in relation to his conviction for attempted promoting prostitution in violation of R.C. 2907.22(A)(2). In this motion, Saah correctly argued that the imposition of three years of postrelease control for a violation of R.C. 2907.22(A)(2) is contrary to law and, thus, void. *See* R.C. 2967.28(B)(1) (“a period of post-release control required by this division for an offender shall be * * * for a felony sex offense, five years”). Saah then requested that the court vacate the postrelease control in the case at hand. The court denied Saah’s motion, and Saah filed this appeal.

{¶5} In its brief in opposition, the state concedes that the postrelease control imposed is contrary to law. However, the state argues that the trial court did not err in denying Saah’s motion to “terminate” his postrelease control, because the court cannot correct sentencing errors once the underlying prison term has been served. *See State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036. The state argues that the improper postrelease control should be vacated, which is precisely what Saah asked the court to do in his motion to “terminate.” The parties concede that Saah would remain under the supervision of the Adult Parole Authority for postrelease control and community control sanctions in other cases.

{¶6} We find that Saah’s postrelease control in the instant case is contrary to law and void. As the underlying prison term has been served, Saah may not be resentenced and is not subject to postrelease control in this case. *See State v. Douse*, 8th Dist. Cuyahoga No. 98249, 2013-Ohio-254, ¶ 14. Accordingly, pursuant to R.C. 2953.08(G), the postrelease control portion of the December 2, 2013 sentencing journal entry is vacated. Case remanded so the trial court can put forth an entry consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

PATRICIA ANN BLACKMON, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EILEEN A. GALLAGHER, J., CONCUR