

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103747

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RAYMOND L. HALL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-90-249315-ZA

BEFORE: Blackmon, J., Kilbane, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: June 23, 2016

FOR APPELLANT

Raymond L. Hall, pro se
Inmate No. 223-137
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

By: Daniel T. Van
Assistant County Prosecutor
9th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Raymond L. Hall (“Hall”) appeals pro se from the trial court’s denial of his motion to enforce the sentencing journal entry and assigns the following error for our review:

I. The trial court erred to the prejudice of Defendant-Appellant when it refused to resolve the ambiguity in the sentencing journal entry to reflect the plea agreement at sentencing in violation of Appellant’s Fifth, Sixth, and Fourteenth Constitutional Amendment Rights.

{¶2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶3} On July 31, 1990, Hall pled guilty to attempted aggravated murder with a firearm specification. The same day, the court sentenced Hall to prison “on the firearm specifications for three (3) years followed by a minimum seven (7) years and maximum twenty-five (25) years for the attempted aggravated murder * * *.” Hall did not file a direct appeal.

{¶4} On May 19, 2014, Hall filed a motion to order the Bureau of Sentencing Computation (“the Bureau”) to enforce the sentence pronounced in the sentencing journal entry. In this motion, Hall argued that the Bureau increased his sentence by ordering that the three-year prison term for the firearm specification be served consecutive to his sentence for the underlying offense. According to Hall, as part of his guilty plea, he was told that he would be sentenced to “a total of seven to twenty-five years with the specification to run concurrent with the base count.”

{¶5} On October 13, 2015, the court denied Hall’s motion to enforce sentence, stating that the sentencing judge “used the term ‘followed by’ which, in this court’s mind, is synonymous with the term consecutive.” It is from this order that Hall appeals.

{¶6} Ohio courts have held that “ambiguities within a sentencing entry should be construed in the defendant’s favor.” *State v. Sheffey*, 8th Dist. Cuyahoga No. 98944, 2013-Ohio-2463, ¶ 34. Hall argues that his sentencing entry is ambiguous as to whether his three-year sentence for the firearm specification is to run concurrent or consecutive to his underlying prison term of 7-to-25 years. Hall’s sentencing entry states that he is to serve “three (3) years followed by a minimum seven (7) years and maximum twenty-five (25) years * * *.” Upon review, we do not find this to be ambiguous. Consecutive means “to follow in uninterrupted succession.” *Black’s Law Dictionary* 304 (6th Ed.1990).

{¶7} Furthermore, courts speak through their journal entries. *See State v. Williams*, 8th Dist. Cuyahoga No. 100042, 2014-Ohio-1618, ¶ 17. Hall argues that he was unable to provide the transcript from his 1990 sentencing hearing because those records are no longer available from the “court reporter’s office.” Hall submits an affidavit under App.R. 9(C) stating that, to the best of his recollection, his defense attorney and the prosecutor told him his three-year firearm specification sentence was to run concurrent to his sentence for attempted aggravated murder.

{¶8} Assuming for argument’s sake that Hall’s assertion is true, we nonetheless find that courts are mandated to run a firearm specification sentence consecutive to the sentence for the underlying offense. Former R.C. 2929.71(A)(2), which was in effect at the time Hall’s sentence was imposed, states as follows: “The three year term of actual incarceration imposed pursuant to * * * a specification charging [an offender] with having a firearm on or about his person or under his control while committing the felony * * * shall be served consecutively with and prior to * * * the indefinite term of imprisonment.”

{¶9} In *State v. Gaines*, 46 Ohio St.3d 65, 68, 545 N.E.2d 68 (1989), the Ohio Supreme Court noted that if an offender is convicted of possession of an operable firearm during the commission of a felony, the court is required to impose “an additional term of three years’ actual incarceration * * *.” See also *State v. Ervin*, 2d Dist. Champaign No. 2014-CA-23, 2015-Ohio-3688, ¶ 24 (“It is widely accepted that R.C. 2929.14(C)(1)(a) mandates a sentence imposed for a firearm specification to run consecutively to other prison sentences that were simultaneously imposed upon the offender”).

{¶10} Accordingly, the court had no authority to run Hall’s two sentences concurrently, and had it done so, the sentence would be void. “It is axiomatic that imposing a sentence outside the statutory range, contrary to the statute, is outside a court’s jurisdiction, thereby rendering the sentence void ab initio.” *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 29, fn.3.

{¶11} In summary, we find that the court unambiguously imposed consecutive sentences in the instant case. Furthermore, even assuming arguendo that an ambiguity existed, a concurrent sentence for a firearm specification would be contrary to law, and, thus, void. The trial court did not err in denying Hall’s motion to order enforcement of his sentence, and his sole assigned error is overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover of appellant its 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. 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.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM MCCORMACK, J., CONCUR