

[Cite as *State v. Stafford*, 2016-Ohio-5635.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104276

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TERRY R. STAFFORD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-599390-A

BEFORE: Keough, P.J., Kilbane, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 1, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Terry Stafford, appeals from the trial court's journal entry of sentencing. Stafford contends that the trial court erred in imposing a no-contact order and a prison term for the same offense. Finding no merit to the appeal, we affirm.

I. Background

{¶2} A Cuyahoga County Grand Jury indicted Stafford in Case No. CR-15-599390 on five counts as follows: Count 1, drug trafficking in violation of R.C. 2925.03(A)(2); Count 2, drug possession in violation of R.C. 2925.11(A); Count 3, intimidation of a crime victim or witness in violation of R.C. 2921.04(B)(1); Count 4, identity fraud in violation of R.C. 2913.49(B)(1); and Count 5, identity fraud in violation of R.C. 2913.49(B)(2).

{¶3} The charges arose after CMHA officers arrested Stafford for possession of marijuana. In an attempt to avoid arrest on an outstanding warrant for probation violations, Stafford gave the officers a false name, naming his cousin. When the cousin and his wife subsequently confronted Stafford about his dishonesty, Stafford threatened the cousin's wife.

{¶4} After plea negotiations, Stafford pleaded guilty to Counts 1, 2, and 4 as indicted, and Count 3 as amended to attempted retaliation. Count 5 was nolle.

{¶5} At sentencing, the trial court merged Counts 1 and 2, and the state elected to proceed to sentencing on Count 1. The trial court sentenced Stafford to 12 months on Count 1; 18 months on Count 3, and 12 months on Count 4, to be served concurrently.

{¶6} The court then sentenced Stafford on two other cases involving probation violations. In Case No. CR-14-586530, the court found Stafford to be in violation of community control sanctions, terminated the sanctions, and sentenced him to 12 months incarceration. In Case No. CR-13-574149, the trial court found Stafford to be in violation of community control sanctions, and extended the sanctions until August 28, 2019.

{¶7} In response to the trial court's question regarding whether there was a no-contact order in any of the cases, the prosecutor informed the court that there was a no-contact order in this case with respect to the cousin's wife.¹ The judge then engaged in the following colloquy with Stafford:

THE COURT: That will remain in place. As part of your probation case, I'm going to impose a no-contact order with regard to the woman in that case. Do you understand that?

THE DEFENDANT: Yes, your Honor.

{¶8} This appeal followed.

II. Analysis

{¶9} In his single assignment of error, Stafford contends that the trial court erred in imposing a no-contact order with a prison sentence.

{¶10} In *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, the Ohio Supreme Court held that a trial court cannot impose a prison term and a no-contact order for the same felony offense. The court reasoned that a no-contact order

¹The docket reflects that the order was imposed as a condition of bond.

is a community control sanction, and for felony offenses, Ohio’s statutory scheme makes it clear that prison terms and community control sanctions are alternative sanctions. Thus, a court must impose *either* a community control sanction or a prison term for an offense, but cannot impose both.

{¶11} Stafford argues that this case must be remanded for resentencing and correction of the journal entry because the trial court impermissibly imposed both a prison term and a no-contact order. The state filed a notice of conceded error pursuant to Loc.App.R. 16(B), and likewise requests that this court remand for resentencing and correction of the journal entry due to the court’s imposition of a no-contact order and prison sentence.

{¶12} Upon review, we are unclear which “probation case” the trial court was referring to when it stated that the no-contact order would “remain in place” as part of Stafford’s “probation case.” The docket in Case No. CR-14-586530 reflects that the trial court imposed a no-contact order in 2014 as a condition of Stafford’s community control sanctions. Thus, in sentencing Stafford for his violations, the trial court could have continued the no-contact order if it had extended the community control sanctions in that case. However, the trial court terminated the community control sanctions and imposed a prison sentence.

{¶13} If the trial court’s statement that the no-contact order would “remain in place” as part of his “probation case” was intended to refer to Case No. CR-13-574149, in which the court extended Stafford’s community control sanctions until 2019, we note that

the docket in that case reflects that the trial court never imposed a no-contact order as part of the original community control sanctions, so there was no no-contact order to “remain in place.”

{¶14} In any event, the judge did not impose a no-contact order in this case, in which it imposed only a prison sentence and from which Stafford appeals. Furthermore, our review of the journal entries of sentencing demonstrates that *none of the journal entries of sentencing in the three cases for which the judge sentenced Stafford imposed a no-contact order.*

{¶15} It is axiomatic that a court speaks through its journal entry. *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 47. Accordingly, we find no error. The trial judge told Stafford that it was imposing a no-contact order as part of his “probation case,” which is not this case. The journal entry of sentencing in this case imposes a prison sentence, but does not impose an impermissible no-contact order.

{¶16} We note that Crim.R. 43 requires that “[t]he defendant shall be present at * * * every stage of trial, including * * * the imposition of sentence.” This court has found that a trial court may change the terms of a sentence at anytime before the sentence is journalized, provided the court conducts a hearing in the defendant’s presence as contemplated by Crim.R. 43(A). *State v. Jones*, 8th Dist. Cuyahoga No. 94408, 2011-Ohio-453, ¶ 14, citing *State v. Jones*, 10th Dist. Franklin No. 98AP-639, 1999 Ohio App. LEXIS 1248 (Mar. 18, 1999). However, when the trial court modifies in the defendant’s absence a sentence imposed in open court before journalizing the sentence, a

judgment entry reflecting the modification is invalid. *Id.* at ¶ 15. A variance between the sentence pronounced in open court and the sentence imposed by a court's judgment entry requires a remand for sentencing. *Id.*

{¶17} Here, the trial court told Stafford in open court that it was imposing a community control sanction on his "probation case." As discussed above, it is unclear which "probation case" the judge was referring to. Nevertheless, the journal entries of sentencing in those cases vary from what the judge announced in open court because they do not include a no-contact order. Stafford did not appeal from those cases, however; he appealed only from the journal entry of sentencing in Case No. CR-15-599390-A, in which we find no error. Accordingly, we need not address whether the variance between what was advised in open court and the journal entries of sentencing in Case Nos. CR-14-586530 and CR-13-574149 require resentencing.

{¶18} The assignment of error is overruled; the trial court's judgment is affirmed.

It is ordered that the parties share equally 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR