

[Cite as *State v. Paige*, 2016-Ohio-7615.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104109

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL T. PAIGE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART AND
VACATED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-598331-A

BEFORE: Blackmon, J., Jones, A.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: November 3, 2016

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Michael T. Paige (“Paige”) appeals his sentence and assigns the following error for our review:

The trial court erred in [imposing] a sentence, which included both a prison term and community control sanctions at the same time, and where the community control sanctions continued after the completion of the prison sentence, which also included additional confinement in CBCF [Community Based Correctional Facility].

{¶2} Having reviewed the record and pertinent law, we vacate Paige’s sentence imposed on the domestic violence count. The apposite facts follow.

{¶3} The Cuyahoga County Grand Jury indicted Paige on one count each of rape, abduction, and domestic violence. Paige pleaded guilty to an amended count of sexual battery and the abduction and domestic violence counts as indicted. The trial court also designated Paige as a Tier III sex offender. The trial court merged the sexual battery and abduction counts for purposes of sentencing; the state elected to proceed to sentencing on the sexual battery count.

{¶4} The trial court sentenced Paige to 42 months in prison for the sexual battery count and to five years of community control on the domestic violence count. The counts were ordered to run concurrently. The court ordered that upon release from prison for the sexual battery count Paige was to be “return[ed] to the county jail for assessment and transfer to CBCF.”

Sentence

{¶5} In his sole assigned error, Paige argues that the trial court erred by sentencing him to both a prison term and community control on the domestic violence count.

{¶6} Although Paige’s sentence for the sexual battery and domestic violence counts were run concurrently, the sentence for domestic violence, which carried the community control sanction, was longer than that for the sexual battery count, which imposed a prison term. The community control sanction was for five years and the prison term was for three-and-a-half years. As a result, Paige served part of his community control while serving time in prison.

{¶7} “The current felony sentencing statutes, contained primarily in R.C. 2929.11 to 2929.19, require a judge either to impose a prison term or impose community-control sanctions.” *State v. Baker*, 152 Ohio App.3d 138, 2002-Ohio- 7295, 787 N.E.2d 17, ¶ 12 (7th Dist.)_ Based on this, Ohio courts have held that, “the sentencing statute does not allow a trial court to impose both a prison sentence and community control for the same offense.” *State v. Jacobs*, 189 Ohio App.3d 283, 2010-Ohio-4010, 938 N.E.2d 79, ¶ 5 (8th Dist.); *See also State v. Street*, 8th Dist. Cuyahoga No. 85020, 2006-Ohio-21, ¶ 7. Instead, “the trial courts need to decide which sentence is most appropriate — prison or community control sanctions — and impose whichever option is deemed to be necessary.” *State v. Vlad*, 153 Ohio App.3d 74, 2003-Ohio-2930, 790 N.E.2d 1246, ¶ 16 (7th Dist.).

{¶8} Paige was ordered to serve a portion of the community control in prison and upon release was to be assessed and placed in a CBCF. Thus, the trial court, in fact, sentenced him to a split sentence on the domestic violence count, which is not permitted by statute. “The only sentence which a trial judge may impose is that provided by statute * * *.” *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, ¶ 12, citing *State v. Beasley*, 14 Ohio St.3d 74, 75, 471 N.E.2d 774 (1984), quoting *Colegrove v. Burns*, 175 Ohio St. 437, 438, 195 N.E.2d 811 (1964). “Judges have no inherent power to create sentences * * *.” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 22.

{¶9} R.C. 2929.15 does not authorize the sentence imposed by the trial court. R.C. 2929.15(A) only permits the imposition of both a prison and a community control sanction for a single offense when the offense is a third-or fourth-degree OVI. We do not have that situation here.

{¶10} We note that although Paige argues otherwise, this case is not similar to our case in *State v. Anderson*, 8th Dist. Cuyahoga No. 102427, 2015-Ohio-5136. In *Anderson*, this court held that the trial court was not authorized pursuant to the sentencing statutes to impose a community control sanction consecutive to a prison term.¹ Perhaps in an attempt to adhere to our holding in that case, the trial judge in the instant case, which was the same judge as in the *Anderson* case, ran the community control for the

¹This court recently confirmed the holding of this opinion in an en banc decision. *State v. Anderson*, 8th Dist. Cuyahoga No. 102427, 2016-Ohio-7044.

domestic violence count concurrent with the prison term. However, by making the community control sentence longer than that imposed for the sexual battery count, the trial court imposed a split sentence for the domestic violence count, which is prohibited. Accordingly, Paige's sole assigned error is sustained.

{¶11} Paige's convictions for sexual battery and abduction are affirmed. Paige's sentence on the domestic violence count is vacated.

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 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

LARRY A. JONES, SR., A.J., and
ANITA LASTER MAYS, J., CONCUR