

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24315

Appellee

v.

ANTHONY KIDD

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 05 03 0794

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} Anthony Kidd separately moved for resentencing and to modify his sentence, arguing that he should have received the same sentence for possessing crack cocaine as he had received for possessing and trafficking in powder cocaine. The trial court consolidated his motions and construed them as a petition for post-conviction relief, which it denied as successive. This Court vacates Mr. Kidd’s sentence and remands to the trial court for further proceedings because the trial court failed to include mandatory postrelease control in his sentence.

FACTS

{¶2} In 2007, Mr. Kidd pleaded guilty to possession of cocaine, possession of crack cocaine, and trafficking in cocaine. The trial court sentenced him to five years in prison for possession of crack cocaine and three years for the other offenses, to run concurrently with his

sentence for the crack cocaine. The sentencing journal entry states that Mr. Kidd “is ordered subject to post-release control to the exten[t] the parole board may determine, as provided by law.”

{¶3} Mr. Kidd appealed, but this Court dismissed his appeal because he did not pay the required deposit. The trial court denied Mr. Kidd’s first petition for post-conviction relief. Mr. Kidd then filed a pro se “Motion to Modify Sentence” and a “Motion for Resentencing.” After the trial court consolidated his motions, it recast them as a successive petition for post-conviction relief, which it denied. Mr. Kidd has appealed, assigning four errors.

VOID SENTENCE

{¶4} This Court cannot address Mr. Kidd’s assignments of error. The trial court’s sentence did not include a mandatory term of postrelease control. The Ohio Supreme Court’s “recent line of cases dealing with postrelease control has consistently held that sentences that fail to impose a mandatory term of postrelease control are void.” *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶8. A sentence that does not conform to statutory mandates requiring the imposition of postrelease control is void, and it must be vacated. *Id.* But see *State v. Holcomb*, 9th Dist.No. 24287, 2009-Ohio-____ (June 30, 2009) (Dickinson, P.J., concurring).

{¶5} The trial court failed to include a mandatory term of postrelease control in Mr. Kidd’s sentencing journal entry as required by Section 2967.28(B)(1) of the Ohio Revised Code. According to the Ohio Supreme Court, this makes his sentence void and it must be vacated. *Boswell*, 2009-Ohio-1577, at ¶8; *State v. Simpkins*, 117 Ohio St. 3d 420, 2008-Ohio-1197, at ¶22. Vacating the sentence places the parties in the same position they would have been in had the trial court not imposed a sentence. *Simpkins* at ¶22.

CONCLUSION

{¶6} The trial court failed to include mandatory postrelease control in Mr. Kidd's sentencing journal entry. Accordingly, his sentence is void and must be vacated. The judgment of the Summit County Common Pleas Court is vacated and this matter is remanded for further proceedings.

Judgment vacated and
cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellee.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

MARK H. LUDWIG, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and RICHARD S. KASAY, assistant prosecuting attorney, for appellee.