

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 08CA009447

Appellee/Cross-Appellant

v.

DANIEL D. OLAH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 99CR054266

Appellant/Cross-Appellee

DECISION AND JOURNAL ENTRY

Dated: July 27, 2009

BELFANCE, Judge

{¶1} Appellant/Cross-Appellee Daniel Olah appeals from the Lorain County Court of Common Pleas' judgment entry which followed Olah's resentencing. The State of Ohio has cross-appealed. For reasons set forth below, we vacate and remand for proceedings consistent with this opinion.

I.

{¶2} On August 25, 1999, Olah was indicted on two counts of rape, violations of R.C. 2907.02(A)(1)(b) and first-degree felonies, one count of attempted rape, a violation of R.C. 2923.02(A) and a second-degree felony, and one count of gross sexual imposition, a violation of R.C. 2907.05(A)(4) and a felony of the third degree.

{¶3} Olah waived his right to a jury trial and the matter proceeded to a bench trial on March 27, 2001. The trial court found Olah guilty of all counts. The trial court sentenced Olah to an aggregate term of eight years in prison. Olah was also adjudicated to be a habitual sexual

offender. On April 12, 2001, Olah filed a notice of appeal with this Court. On October 21, 2001, we affirmed Olah's convictions. See *State v. Olah*, 146 Ohio App.3d 586, 2001-Ohio-1641.

{¶4} In April 2008, Olah moved the trial court to issue a final appealable order; Olah alleged in his motion that the trial court's previous order was not final as it did not satisfy the requirements of Crim.R. 32(C). On May 13, 2008, Olah filed a motion for resentencing alleging that the trial court failed to include post-release control sanctions in its sentencing entry. On July 7, 2008, the trial court resentenced and reclassified Olah. In the trial court's journal entry it stated that it "further notified the defendant that post release control is mandatory in this case up to a maximum of 5 years * * *." Olah appeals, and the State cross-appeals, from the July 7, 2008 sentencing entry.

{¶5} Olah has raised six assignments of error. The State has raised one assignment of error in its cross-appeal. In addition, in Olah's cross-appellee brief, he raised an additional five assignments of error.

II.

{¶6} Although Olah has not raised the issue on appeal, this Court concludes that Olah's sentence must be vacated due to an error in the trial court's sentencing entry with respect to post-release control. Recently, in *State v. Holcomb*, 9th Dist. No. 24287, 2009-Ohio-3187, we examined the precedent of the Supreme Court of Ohio relative to void and voidable sentences. In *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, the Supreme Court of Ohio held that "[d]espite the lack of a *motion for resentencing*, we still must vacate the sentence and remand for a resentencing hearing in the trial court. Because the original sentence is actually considered a nullity, a court cannot ignore the sentence and instead must vacate it and order resentencing."

(Emphasis added.) Id. at ¶12. In the instant matter, Olah’s conviction included two counts of rape, both felonies of the first degree. R.C. 2967.28(B) requires that “[e]ach sentence to a prison term for a felony of the first degree, * * * shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment.” The term of post-release control for an offender convicted of a first-degree felony is a mandatory period of five years. R.C. 2967.28(B)(1).

{¶7} Pursuant to R.C. 2967.28(B)(1), Olah is subject to a five-year, mandatory period of post-release control. With respect to post-release control, the trial court’s judgment entry stated that it “further notified the defendant that post release control is mandatory in this case *up to a maximum of 5 years* * * *.” (Emphasis added.) The trial court’s entry mistakenly states that Olah could be subject to less than, but no more than, five years of post-release control instead of indicating that he in fact will be subject to the full term of five years. Because Olah’s sentence does not impose a mandatory term of five years of post-release control, we must vacate Olah’s sentence and remand this matter to the trial court for resentencing. *Boswell* at ¶12; *Holcomb* at ¶20.

III.

{¶8} In light of our determination that Olah’s sentence is void, we may not address the merits of his appeal. Instead, we vacate and remand this matter to the trial court for a new sentencing hearing. The judgment of the Lorain County Court of Common Pleas is vacated and remanded for proceedings consistent with this opinion.

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 Lorain, 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/Cross-Appellant.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
MOORE, P. J.
CONCUR

APPEARANCES:

JACK W. BRADLEY, Attorney at Law, for Appellant/Cross-Appellee.

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee/Cross-Appellant.