

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 08CA0070-M

Appellee

v.

DEANGELO T. MCCRANEY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 07CR0605

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 24, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Deangelo McCraney, appeals from the judgment of the Medina County Court of Common Pleas, which denied his motion to suppress. This Court vacates.

I

{¶2} On the afternoon of December 1, 2007, a juvenile, A.H., reported to the police that three older black males wearing “baggy pants” had stolen his money after pushing him off of his scooter and striking him in the chest. A.H. told officers that he had heard one of the men say that he wanted to go to the nearby Marathon gas station. When officers patrolled the area surrounding Marathon, they found three individuals who matched the description that A.H. had given. Police ultimately arrested McCraney, one of the three individuals, for his involvement in the incident.

{¶3} On December 11, 2007, a grand jury indicted McCraney on the following counts: (1) robbery, a second-degree felony, in violation of R.C. 2911.02(A)(2); and (2) robbery, a third-degree felony, in violation of R.C. 2911.02(A)(3). On January 17, 2008, McCraney filed a motion to suppress, arguing that officers had arrested him without probable cause. The trial court held a hearing and later denied McCraney’s motion on May 15, 2008. The matter proceeded to a jury trial, and the jury found McCraney guilty on both counts of robbery. The trial court identified McCraney’s convictions as allied offenses of similar import, and the State elected to proceed solely on McCraney’s conviction for second-degree robbery, in violation of R.C. 2911.02(A)(2). The trial court sentenced McCraney to three years in prison for that offense.

{¶4} McCraney now appeals from the trial court’s denial of his motion to suppress and raises a single assignment of error for our review.

II

Assignment of Error

“THE TRIAL COURT ERRED IN OVERRULING APPELLANT’S MOTION TO SUPPRESS[.]”

{¶5} In his sole assignment of error, McCraney argues that the trial court erred in denying his motion to suppress. We cannot reach the merits of McCraney’s arguments, however, because the record reflects that his sentence is void.

{¶6} Recently, the Supreme Court reiterated that:

“[N]o court has the authority to substitute a different sentence for that which is required by law. A sentence that does not comport with statutory requirements is contrary to law, and the trial judge is acting without authority in imposing it.” (Internal quotations and citations omitted.) *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, at ¶8.

The Court held that even though “neither party here is actually challenging the imposed sentence *** we still must vacate the sentence and remand for a resentencing hearing in the trial court.”

Id. at ¶12. “[A] court cannot ignore [a void] sentence and instead must vacate it and order resentencing.” Id.

{¶7} R.C. 2967.28(B) provides, in relevant part, that:

“Each sentence to a prison term for a felony of the *** second 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. *** Unless reduced by the parole board pursuant to division (D) of this section when authorized under that division, a period of post-release control required by this division for an offender shall be of one of the following periods:

“***

“(2) For a felony of the second degree that is not a felony sex offense, three years[.]”

“[I]n the absence of a proper sentencing entry imposing post[-]release control, the parole board’s imposition of post[-]release control cannot be enforced.” *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, at ¶71.

{¶8} McCraney was convicted of robbery, a second-degree felony for which he was subject to three years of mandatory post-release control. R.C. 2967.28(B). During his sentencing hearing, the trial court informed McCraney as follows:

“When you are released from prison, the State of Ohio has to put you under a mandatory term of three years post-release control.”

In its journal entry imposing sentence, however, the trial court indicated that:

“The Court has further notified [McCraney] that post release control is optional. The Court also informed [McCraney] that the post-release control could be for a term of up to three (3) years. As part of this sentence [McCraney] is ordered to serve any term of post-release control imposed by the Ohio Parole Board, and any prison term for any violation of that post-release control.”

Accordingly, the trial court improperly journalized that McCraney's period of post-release control was discretionary.

{¶9} “[W]hen sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about post[-]release control and is further required to incorporate that notice into its journal entry imposing sentence.” *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, at ¶17. If a trial court fails to properly notify an offender about post-release control, that offender's sentence is void and must be vacated pursuant to that determination. *State v. Jones*, 9th Dist. No. 24520, 2009-Ohio-3360, at ¶7. Because the trial court improperly journalized that McCraney is subject to a discretionary three-year period of post-release control instead of a mandatory three-year period, his sentence is void. As McCraney's sentence is void, this Court lacks jurisdiction to consider his assignment of error. *State v. Bedford*, 9th Dist. No. 24431, 2009-Ohio-3972, at ¶14.

III

{¶10} Because McCraney's sentence is void, this Court cannot address his assignment of error. McCraney's sentence is vacated, and the cause is remanded for the trial court to resentence him according to law.

Sentence 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 Medina, 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.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

DAVID C. SHELDON, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL HOPKINS, Assistant Prosecuting Attorney, for Appellee.