

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25258

Appellee

v.

BASSAM HASSAN TALAFHAH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 07 11 3999

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 9, 2011

BELFANCE, Judge.

{¶1} Bassam Hassan Talafhah appeals from the twenty-one year sentence imposed by the Summit County Court of Common Pleas.

I.

{¶2} Mr. Talafhah was convicted on two counts of rape, one count of sexual battery, and one count of attempted rape. On March 12, 2008, the trial court sentenced him to seven years each on the two counts of rape and the attempted rape as well as four years on the sexual battery conviction. The sentences were to be served concurrently for a total of seven years.

{¶3} The trial court resentenced Mr. Talafhah on December 23, 2009, in order to advise him that he would be subject to postrelease control for five years after the completion of his prison sentence. In resentencing Mr. Talafhah, the court also altered the prison term in his sentence. It ordered that the three seven-year sentences each run consecutively rather than concurrently, thereby increasing the duration of Mr. Talafhah's prison sentence from seven to

twenty-one years. Mr. Talafhah now appeals from that judgment and argues that the trial court erred in imposing a substantially harsher sentence at his resentencing.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT DEPRIVED APPELLANT OF DUE PROCESS BY IMPOSING A SUBSTANTIALLY HARSHER SENTENCE AT RE-SENTENCING[.]”

{¶4} In *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, the Ohio Supreme Court held that when a “trial court fails to notify an offender that he may be subject to postrelease control at a sentencing hearing, as required by former R.C. 2929.19(B)(3), the sentence is void * * * [and t]he offender is entitled to a new sentencing hearing[.]” *Id.* at ¶16. The *Bezak* Court also concluded that the effect of determining that the sentence is void is ““as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.”” *Bezak* at ¶12, quoting *Romito v. Maxwell*, 10 Ohio St.2d 266, 267-268.

{¶5} The *Bezak* holding was recently modified by *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238. In *Fischer*, the Ohio Supreme Court clarified that “when a judge fails to impose statutorily mandated postrelease control as part of a defendant's sentence, that *part* of the sentence that is void and must be set aside.” (Emphasis sic). The Court further explained that the remainder of the sentence remains valid. *Id.* at ¶17. Consequently, “the new sentencing hearing to which an offender is entitled under *Bezak* is limited to proper imposition of postrelease control.” *Id.* at ¶29. In conducting a new sentencing hearing to remedy a postrelease control error, “only the offending portion of the sentence is subject to review and correction.” *Id.* at ¶27.

{¶6} In this case, the new sentencing hearing was necessitated by a postrelease control error in Mr. Talafhah's original sentence. The issue before this Court is whether the trial court could alter Mr. Talafhah's term of imprisonment when it conducted a sentencing hearing in order to properly impose postrelease control. We conclude that this appeal is controlled by *Fischer*. The new sentencing hearing should have been limited to notifying Mr. Talafhah of postrelease control and including it in his sentence. See *id.* at paragraph two of the syllabus. The trial court, however, went outside the limited scope of the resentencing hearing to review and alter the term of Mr. Talafhah's original sentence.

III.

{¶7} Mr. Talafhah's assignment of error is sustained. Because the trial court exceeded its authority when it attempted to resentence Mr. Talafhah on aspects of his sentence that were not void, we vacate those parts of the resentencing entry that addressed anything other than post-release control. Mr. Talafhah's original concurrent sentences remain valid, as does the portion of the appealed resentencing judgment that addresses postrelease control.

Judgment affirmed in part,
vacated in part.

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 Appellant.

EVE V. BELFANCE
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

JEFFREY N. JAMES, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and GRETA L. JOHNSON, Assistant Prosecuting Attorney, for Appellee.