[Cite as *State v. Mundy*, 2011-Ohio-1157.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO	C.A. No. 10CA0039-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
RAYMONT MUNDY	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 04-CR-0551

DECISION AND JOURNAL ENTRY

Dated: March 14, 2011

BELFANCE, Presiding Judge.

{¶1} Appellant, Raymont Mundy, appeals from the judgment the Medina County Court of Common Pleas, which sentenced him to thirteen years of incarceration followed by five years of mandatory postrelease control. For the reasons that follow, we affirm.

I.

{¶2} On January 7, 2005, a jury found Appellant Raymont Mundy guilty of one count of Felonious Assault of a Peace Officer; three counts of Felonious Assault; and one count of Trafficking in Drugs. Mr. Mundy was also found not guilty of one count of Felonious Assault of a Peace Officer. He was sentenced to a total of thirteen years of incarceration with up to five years of postrelease control. By statute, the period of postrelease control should have been mandatory rather than discretionary. R.C. 2967.28(B)(1).

{¶3} Mr. Mundy appealed his conviction on grounds unrelated to the postrelease control portion of his sentence and this Court affirmed. *State v. Mundy*, 9th Dist. No. 05CA0025-M, 2005-Ohio-6608, at ¶11. He later appealed from the trial court's denial of his motion for reconsideration and motion for resentencing, which we also affirmed. *State v. Mundy*, 9th Dist. No. 08CA0047-M, 2009-Ohio-1136, at ¶¶1-2.

{¶4} In March 2009, Mr. Mundy successfully moved to reopen his appeal based on the postrelease control error in his sentence. See *State v. Mundy*, 9th Dist. No. 08CA0047-M, 2009-Ohio-6373, at ¶2. This Court vacated the prior sentencing entry and remanded Mr. Mundy's case for resentencing. Id. at ¶8.

{¶5} On remand, the trial court sentenced Mr. Mundy again to thirteen years, as it had originally done, with five years of mandatory postrelease control. The court also discussed a license suspension for Mr. Mundy on the record, but noted that the time during which his license would have been suspended had since passed and gave him credit for the suspension. The license suspension was not mentioned in the court's sentencing entry.

{¶6} On appeal, Mr. Mundy presents four assignments of error.

II.

ASSIGNMENT OF ERROR I

"THE EVIDENCE IS INSUFFICIENT TO SUSTAIN A FINDING OF GUILT AND, AS A RESULT, THE FEDERAL CONSTITUTION AND THE OHIO CONSTITUTION REQUIRE THE CONVICTION TO BE REVERSED WITH PREJUDICE TO FURTHER PROSECUTION."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN ITS JURY INSTRUCTIONS ON 'DEADLY WEAPON.'"

{¶7} Mr. Mundy's first two assignments of error raise issues relating to the trial that resulted in his conviction. Recently, the Supreme Court of Ohio considered the following question: "is a direct appeal from a resentencing on a remand from an appeal finding that a sentence was void the 'first' direct appeal as of right because the first appeal was a 'nullity'?" *State v. Fischer*, Slip Opinion No. , 2010-Ohio-6238 at ¶ 32. Answering that question in the negative, the Supreme Court determined that having had the benefit of one direct appeal, the appellant could not raise any and all claims of error in a second successive appeal. Id. at ¶¶32-33. As in *Fischer*, Mr. Mundy has already had the benefit of a direct appeal and he may not raise any and all claims of error in a second, successive appeal. Rather, the scope of his current appeal is limited to issues arising at the resentencing hearing. Id. paragraph four of the syllabus.

{¶8} Mr. Mundy's first and second assignments of error are overruled.

ASSIGNMENT OF ERROR III

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN ITS SENTENCE OF MR. MUNDY AND THUS THE SENTENCE IS VOID."

{¶9} Mr. Mundy asserts two errors in his resentencing. First, he argues that the trial court erred in failing to request an updated presentencing investigation report ("PSI"). Pursuant to R.C. 2929.19(B)(1), "[a]t the sentencing hearing, the court, before imposing sentence, shall consider *** if one was prepared, the presentence investigation

report[.]" At the sentencing hearing, the court reviewed the PSI that had been prepared for the original sentencing hearing and discussed whether Mr. Mundy wished to request a new PSI. Counsel declined to have a new PSI prepared.

{¶10} Mr. Mundy now asserts that it is implicit in R.C. 2929.19(B)(1) that a PSI report must be updated on remand. Mr. Mundy has not provided any legal authority that would support this proposition. Furthermore, *Fischer* states that Mr. Mundy's sentencing hearing was limited to the proper imposition of postrelease control. *Fischer* at paragraph two of the syllabus. Hence, it was unnecessary for the trial court to consider a new PSI as it was not required to engage in de novo sentencing.

{¶11} Mr. Mundy further argues that because the court failed to include any reference to a driver's license suspension in the sentencing entry, he has once again been given a void sentence that requires remand and resentencing. Ohio law requires a license suspension of six months to five years be included in the sentence for the drug trafficking offense of which Mr. Mundy was convicted. R.C. 2925.03(D)(2), (G).

{¶12} We acknowledge that the Supreme Court of Ohio has stated that "[a]ny attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *State v. Beasley* (1984), 14 Ohio St.3d 74, 75. However, in *Fischer*, the Supreme Court of Ohio has suggested that the voidness doctrine that it has applied in the area of postrelease control is limited to a "narrow, discrete line of cases addressing the unique problems that have arisen in the application of that law and the underlying statute." *Fischer* at ¶31. Mr. Mundy does not cite any law supporting the extension of the postrelease control line of cases to the imposition of driver's license

suspensions. This Court has previously expressed its reticence to extend the void sentence doctrine beyond the parameters set by the Supreme Court of Ohio. *See State v. Culgan*, 9th Dist. App. No. 09CA0060-M, 2010-Ohio-2992, at ¶20 ("[T]he Ohio Supreme Court has applied its void-sentence analysis in limited circumstances. This Court will not extend its reach without clear direction from the Supreme Court."). We similarly decline to do so here.

{¶13} Mr. Mundy's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO SENTENCE MR. MUNDY WITHIN A REASONABLE TIME AND THUS HAS LOST JURISDICTION OVER THE CASE."

{¶14} Mr. Mundy cites Crim.R. 32 in support of his assertion that his right to a speedy trial was violated in this case. He argues that because his first sentence was void, he was incarcerated for six years before being given a valid sentence. This Court has previously determined that Crim.R. 32(A) does not apply in instances where a defendant must be resentenced due to a postrelease control error. *State v. Spears*, 9th Dist. No. 24953, 2010-Ohio-1965, at ¶¶19-20; *see also State ex rel. Cornail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671 (ordering trial court to issue new sentencing entry for defendant who requested correction of "illegal" sentence more than nine years after he was first sentenced). Mr. Mundy alleges no other delay beyond that arising out of his resentencing following a postrelease control error in his original sentence.

{¶15} Mr. Mundy's fourth assignment of error is overruled.

III.

CONCLUSION

{¶16} Mr. Mundy's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
DICKINSON, J.
CONCUR

APPEARANCES:

THOMAS J. MORRIS, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL P. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.