

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25236

Appellee

v.

JASON D. WOODS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 07 08 2621 (A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 9, 2011

CARR, Presiding Judge.

{¶1} The Appellant, Jason Woods, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms, in part, and vacates, in part.

I.

{¶2} On August 13, 2007, the Summit County Grand Jury indicted Woods on nineteen counts of burglary in violation of R.C. 2911.12(A)(2), felonies of the second degree; one count of burglary in violation of R.C. 2911.12(A)(1), a felony of the second degree; and seven counts of receiving stolen property in violation of 2913.51, felonies of the fifth degree. At the time of his indictment, Woods was incarcerated in Nebraska.

{¶3} Woods was subsequently extradited and, on February 6, 2008, he pleaded not guilty to all charges pending against him in Summit County. The matter was scheduled for trial on July 15, 2008.

{¶4} On June 26, 2008, the State supplemented the indictment with an additional count of burglary in violation of R.C. 2911.12(A)(1), a felony of the second degree, and one count of theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree. On July 2, 2008, Woods pleaded not guilty to the charges contained in the supplemental indictment. The State supplemented the indictment a second time on July 10, 2008, with an additional nineteen counts of burglary in violation of R.C. 2911.12(A)(2), felonies of the second degree, and an additional count of burglary in violation of R.C. 2911.12(A)(1), a felony of the second degree. On July 15, 2008, Woods pleaded not guilty to the second set of supplemental charges.

{¶5} On September 18, 2008, Woods entered into a written plea agreement with the State. On September 22, 2008, the trial court found Woods guilty of one count of receiving stolen property and twelve counts of burglary. Woods appeared for a sentencing hearing on September 24, 2008. Subsequently, on September 29, 2008, the trial court issued a journal entry in which it sentenced Woods to a one-year prison term on the count of receiving stolen property and prison terms of eight years for each burglary count. The trial court ordered the prison terms on the burglary counts to be served concurrently and not consecutively with each other, but consecutively with the prison term for the count of receiving stolen property. The trial court also imposed a discretionary five-year term of post-release control.

{¶6} On December 9, 2009, Woods filed a motion for resentencing with the trial court. In his motion, Woods argued that his sentence was void. On January 11, 2010, Woods appeared before the trial court for resentencing and, on January 14, 2010, the trial court issued a new sentencing entry. Woods' sentence with respect to the prison terms was identical to the sentence he received in the September 29, 2008 sentencing entry. The trial court also imposed on Woods

a mandatory three-year term of post-release control. Woods filed a notice of appeal on February 5, 2010.

{¶7} On appeal, Woods raises three assignments of error.

II.

ASSIGNMENT OF ERROR I

“APPELLANT’S CONSECUTIVE AND MAXIMUM SENTENCES ARE CONTRARY TO LAW AND VIOLATIVE OF DUE PROCESS BECAUSE THE TRIAL COURT FAILED TO MAKE AND ARTICULATE THE FINDINGS AND REASONS NECESSARY TO JUSTIFY IT.”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT VIOLATED APPELLANT’S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW WHEN THE COURT FAILED TO ORDER THE BUREAU OF SENTENCE COMPUTATION OFFICE TO CREDIT THE APPELLANT WITH JAIL TIME CREDIT TO WHICH HE IS ENTITLED.”

ASSIGNMENT OF ERROR III

“APPELLANT[’] WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO.”

{¶8} In support of his first assignment of error, Woods argues the trial court’s sentencing entry fails to expressly state that it considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12, or use any similar language. Woods further argues the trial court failed to make any specific findings prior to imposing consecutive sentences. Woods also contends that the Supreme Court of Ohio’s decision in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, was essentially overruled by the decision of the United States Supreme Court in *Oregon v. Ice* (2009), 555 U.S. 160. In support of his second assignment of error, Woods argues that the trial court did not make the required factual finding as to the number of days of confinement that he was entitled to have toward his

sentence. Woods argues that because the sentencing entry is devoid of a discussion of jail time credit, his sentence must be vacated and the matter remanded to the trial court for resentencing. In his third assignment of error, Woods argues that he was denied effective assistance of counsel at the resentencing hearing. Woods argues that defense counsel's silence at the resentencing hearing forced Woods to advocate on his own behalf despite the fact that he had not waived his right to counsel. Woods argues that defense counsel's performance resulted in an unlawful sentence. We note that Woods does not argue that trial counsel's performance resulted in an error in the imposition of post-release control.

{¶9} The Supreme Court of Ohio recently decided *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238, in which it addressed several questions arising from a sentencing court's failure to impose post-release control as mandated by the Ohio General Assembly. The Supreme Court had previously held that "[w]hen a defendant is convicted of or pleads guilty to one or more offenses and post[-]release control is not properly included in a sentence for a particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense." *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, at syllabus. In *Fischer*, the Supreme Court specifically noted that its decision in *Bezak* left certain questions unanswered. *Fischer* at ¶18, 27. The Supreme Court in *Fischer* reaffirmed its position that "[a] sentence that does not include the statutorily mandated term of post[-]release control is void, is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or by collateral attack." *Fischer*, at paragraph one of the syllabus. The Supreme Court also modified a portion of the precedent established in *Bezak* by holding that "[t]he new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to proper imposition of post[-]release control." *Id.* at paragraph two of the syllabus. The Supreme

Court also concluded that while “the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” Id. at paragraph three of the syllabus. The Supreme Court further held that “[t]he scope of an appeal from a resentencing hearing in which a mandatory term of post[-]release control is imposed is limited to issues arising at the resentencing hearing.” Id. at paragraph four of the syllabus.

{¶10} In this case, the trial court sentenced Woods on September 29, 2008. R.C. 2967.28(B)(2) mandates that an offender convicted of a felony of the second degree that is not a felony sex offense is subject to a mandatory three-year term of post-release control. The September 29, 2008 sentencing entry indicated that Woods was subject to a discretionary five-year term of post-release control. Thus, the original sentencing entry contained an error in the imposition of post-release control. Woods did not timely appeal from the September 29, 2008 sentencing entry. Instead, Woods filed a pro se motion for resentencing with the trial court in which he argued that his sentence was void. Per *Fischer*, the scope of the new sentencing hearing to which Woods was entitled was limited to the proper imposition of post-release control. *Fischer*, at paragraph two of the syllabus. At the resentencing hearing, defense counsel stated on the record that, “[Woods] understands what is going to happen. [Woods] understands there is a variation on what the Court said about post-release control and that’s why we are here to fix it today.” Therefore, we conclude that this Court is unable to address the merits of Woods’ assignments of error, as they all stem from the trial court’s actions at the resentencing hearing that were unrelated to correcting the error in the imposition of post-release control. To the extent the trial court properly imposed a mandatory three-year period of post-release control upon Woods at the resentencing hearing, its judgment is affirmed. To the extent the trial court

conducted a de novo sentencing hearing and reissued a sentence to Woods, its judgment in that respect is vacated.

III.

{¶11} The judgment of the Summit County Court of Common Pleas is vacated to the extent the court exceeded its authority and resentenced Woods. The trial court's decision to properly impose a mandatory three-year period of post-release control to Woods' sentence is affirmed.

Judgment affirmed in part,
and 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.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.

MOORE, J.

CONCUR

APPEARANCES:

DAVID M. WATSON, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.