

[Cite as *State v. Easley*, 2011-Ohio-2867.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-352
 : (C.P.C. No. 00CR-1370)
 Vance A. Easley, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on June 14, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for
appellee.

Vance A. Easley, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Vance A. Easley, from a judgment of the Franklin County Court of Common Pleas denying appellant's "motion to dismiss all further proceedings."

{¶2} On March 6, 2000, appellant was indicted on one count of murder, with a firearm specification, and one count of having a weapon while under disability. A jury subsequently rendered a verdict finding appellant guilty of murder. The charge of having

a weapon while under disability ("WUD") was tried separately to the trial court, and the court found appellant guilty of that offense. The trial court sentenced appellant by judgment entry filed December 20, 2000.

{¶3} Appellant timely appealed his conviction, raising two assignments of error, i.e., that (1) the trial court erred in denying his motion for judgment of acquittal, and (2) that the trial court erred in failing to declare a mistrial based upon the state's withholding of exculpatory evidence. On December 11, 2001, this court overruled appellant's assignments of error and affirmed the judgment of the trial court. *State v. Easley*, 10th Dist. No. 01AP-31, 2001-Ohio-3976.

{¶4} On January 13, 2004, appellant filed a petition for post-conviction relief with the trial court, asserting ineffective assistance of trial counsel for failing to make a transcript of a tape-recorded police interview part of the trial record. The trial court dismissed the petition on the basis that it was untimely filed and because appellant failed to meet either prong of R.C. 2953.23(A)(1). Following an appeal, this court affirmed the judgment of the trial court. *State v. Easley*, 10th Dist. No. 04AP-290, 2004-Ohio-7200. On July 2, 2007, appellant filed a motion for new trial, asserting that the state engaged in misconduct at trial by withholding exculpatory material. By decision filed June 30, 2008, the trial court denied appellant's motion.

{¶5} On January 22, 2010, appellant filed a "motion for de novo sentencing hearing." In his accompanying memorandum, appellant argued that his 2000 sentence was void because the trial court incorrectly informed him that he would be subject to five years of post-release control for murder. On February 8, 2010, the state filed a memorandum contra appellant's motion, in which the state noted that appellant was

convicted of both murder and WUD; the state argued that the post-release control term in the trial court's sentencing entry was "clearly meant to apply to the WUD count, not the murder count."

{¶6} On March 5, 2010, appellant filed a "motion to dismiss all further proceedings" pursuant to Crim.R. 32(A), asserting that the trial court had been divested of jurisdiction to impose any sentence in this matter because of unreasonable delay in imposing a valid sentence. On March 25, 2010, the trial court filed a decision and entry denying appellant's motion to dismiss all further proceedings.

{¶7} On appeal, appellant sets forth the following single assignment of error for this court's review:

THE APPELLANT ASSERTS THAT THE UNREASONABLE AND UNJUSTIFIED DELAY FROM THE FINDING OF GUILT AND THE IMPOSITION OF SENTENCE CONSTITUTED AN UNNECESSARY DELAY AND THUS, VIOLATED HIS RIGHTS WHICH ARE GUARANTEED UNDER THE OHIO AND UNITED STATES CONSTITUTION.

{¶8} Under his single assignment of error, appellant argues that the trial court erred in denying his motion to dismiss all further proceedings, asserting that his 2000 sentence was void because the trial court failed to properly advise him of post-release control. Specifically, appellant argues that the sentencing worksheet he signed stated that he "will, may" have a period of post-release control for five years. Appellant maintains that his conviction for WUD, a felony of the fifth degree, does not carry a five-year post-release control term. Appellant cites Crim.R. 32(A) in support of his argument that the trial court's delay in re-sentencing him divested that court with jurisdiction to impose any sentence in this matter.

{¶9} With respect to a conviction of a fifth degree felony, the state acknowledges that an offender is subject to a period of post-release control of up to three years. See R.C. 2967.28(C). While the state disputes appellant's claim that his sentence is void, the state argues that, even assuming the sentence to be void (and thus necessitating resentencing), the trial court did not err in denying appellant's motion to dismiss all further proceedings for lack of jurisdiction under Crim.R. 32(A). We agree.

{¶10} Crim.R. 32(A) states in part that "[s]entence shall be imposed without unnecessary delay." Ohio appellate courts have held, however, that the obligation of a court to impose sentence without unnecessary delay under Crim.R. 32(A) "does not apply in instances where a defendant must be resentenced due to a postrelease control error." *State v. Mundy*, 9th Dist. No. 10CA0039-M, 2011-Ohio-1157, ¶14, citing *State v. Spears*, 9th Dist. No. 24953, 2010-Ohio-1965, ¶19-20. See also *State v. Feagan*, 5th Dist. No. 10CA46, 2011-Ohio-2025, ¶16 ("Criminal Rule 32(A) does not apply to defendants who must be resentenced due to a void original sentence"); *State v. Wright*, 8th Dist. No. 95096, 2011-Ohio-733, ¶8 ("the Crim.R. 32(A) requirement that '[s]entence shall be imposed without unnecessary delay' is not applicable to resentencings"). Rather, "[t]his logic, as it relates to Crim.R. 32(A), recognizes the distinction between a trial court refusing to sentence an offender and a trial court improperly sentencing an offender." *State v. Culgan*, 9th Dist. No. 09CA0060-M, 2010-Ohio-2992, ¶36, quoting *Spears* at ¶19. Further, "the Supreme Court of Ohio has held that a trial court retains continuing jurisdiction to correct a void sentence." *Id.*, citing *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, ¶19.

{¶11} In the present case, the record indicates that appellant filed a "motion for de novo sentencing hearing" on January 22, 2010. At the time of the instant appeal, however, the trial court had not ruled on that motion. Even assuming the trial court were to grant appellant's motion, that court would not be deprived of jurisdiction to re-sentence him, as "a trial court has the authority to correct a void sentence while the offender remains in prison." *State v. Smith*, 8th Dist. No. 94732, 2010-Ohio-6361, ¶17, citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. See also *State v. King*, 8th Dist. No. 95233, 2011-Ohio-1079, ¶11 (although defendant was re-sentenced nine years after original sentence because initial sentence failed to state that period of post-release control was mandatory, trial court "did not delay imposing original sentence" as "court had continuing jurisdiction to correct its error," and thus defendant could not show violation of Crim.R. 32(A)).

{¶12} Accordingly, the trial court in the instant case did not err in denying appellant's motion to dismiss all further proceedings on the basis of lack of jurisdiction. Based upon the foregoing, appellant's single assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
