

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-14-1189

Appellee

Trial Court No. CR0200402835

v.

Kevin J. Smith

DECISION AND JUDGMENT

Appellant

Decided: March 13, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Ernest E. Bollinger, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Kevin Smith, appeals the judgment of the Lucas County Court of Common Pleas, denying his “Motion to Vacate Void Judicial Sanction.” We affirm.

A. Facts and Procedural Background

{¶ 2} In September 2002, appellant was indicted in case No. CR0200202786 on one count of escape in violation of R.C. 2921.34(A)(1) and (C)(2)(b). He subsequently entered a plea of no contest to the charge, and was eventually sentenced to one year in prison. During the plea colloquy, and again at sentencing, the trial court verbally addressed appellant's postrelease control obligations. Nonetheless, the trial court failed to include any mention of postrelease control in its sentencing entry.

{¶ 3} On November 4, 2004, appellant was sentenced to nine years in prison following his plea of guilty to one count of felonious assault and one count of robbery in case No. CR0200402835. By this time, appellant had already served his prison sentence in case No. CR0200202786 and was released from prison on postrelease control. Because appellant was on postrelease control at the time of his convictions, the trial court also ordered him to serve 919 days in prison in case No. CR0200202786 for violating the terms of his postrelease control. The court ordered appellant to serve the 919-day sentence consecutive to the nine-year sentence imposed in case No. CR0200402835.

{¶ 4} Almost ten years later, on May 23, 2014, appellant filed a motion to vacate his 919-day sentence from case No. CR0200202786, arguing that, because the trial court's sentencing entry failed to mention any postrelease control obligations, such obligations were void. Thus, appellant contended that he could not be ordered to serve a prison sentence for violating the terms of postrelease control. In response, the state conceded that postrelease control was improperly imposed in case No. CR0200202786.

Further, the state noted that the error could not be corrected since appellant had already served his original sentence in that case. However, the state agreed that the 919-day sentence should be vacated. Thereafter, on July 30, 2014, the trial court issued its decision, in which it agreed that the 919-day sentence was improperly imposed because appellant did not receive proper notice of postrelease control. Consequently, the trial court vacated the imposition of postrelease control in case No. CR0200202786 and issued a nunc pro tunc judgment entry removing any reference to the 919-day sentence. It is from this decision that appellant now appeals.

B. Assignment of Error

{¶ 5} On appeal, appellant assigns the following error for our review:

The trial court erred in sentencing defendant/appellant to serve 919 days in violation of post release control.

II. Analysis

{¶ 6} In his sole assignment of error, appellant argues that the trial court erred in sentencing him to serve 919 days for violating the terms of his postrelease control in case No. CR0200202786. Specifically, appellant appears to take issue with the fact that his release date from prison was extended by 11 months as a result of the trial court's 919-day sentence. However, appellant acknowledges in his appellate brief that he has already been released from prison and is now on postrelease control in case No. CR0200402835. Further, we note that the trial court has already provided him the relief he requests in this appeal; namely, the vacation of the 919-day sentence that stemmed from the trial court's

improper imposition of postrelease control in case No. CR0200202786. Indeed, appellant acknowledges that we “can do nothing about the extra 11 months [he] served in prison.”

{¶ 7} Since appellant has already been released from prison and has received the relief requested in his appellate brief, we find his arguments moot. *See State v. Ambriez*, 6th Dist. Lucas No. L-04-1382, 2005-Ohio-5877 (holding that appeal challenging trial court’s imposition of sentence is moot where the defendant has already completed his sentence and the relief sought can no longer be granted); *see also State v. Popov*, 1st Dist. Lawrence No. 10CA26, 2011-Ohio-372, ¶ 6 (“An appeal challenging only the length of a sentence becomes moot after the defendant has served the sentence.”). Accordingly, appellant’s sole assignment of error is not well-taken.

III. Conclusion

{¶ 8} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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