

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

State of Ohio

Court of Appeals No. L-12-1198

Appellee

Trial Court No. CR0199405199A

v.

Frank B. Carnes

DECISION AND JUDGMENT

Appellant

Decided: March 22, 2013

* * * * *

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

Frank Carnes, pro se.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Frank Carnes, appeals the judgment of the Lucas County Court of Common Pleas, denying his “Motion to Direct the Ohio Department of Rehabilitation to Correct Original Sentence.” We affirm.

A. Facts and Procedural Background

{¶ 2} In March 1994, appellant entered an *Alford* plea to two counts of rape, felonies of the first degree—Counts 1 and 8—and two counts of gross sexual imposition, felonies of the third degree—Counts 15 and 22. The trial court’s April 26, 1994 sentencing entry states,

[T]he Court orders that the Defendant be committed to the Ohio Department of Rehabilitation and Correction for a period of not less than 10 Years nor more than 25 Years as to Count One and Count Eight and for a period of Two Years as to Count Fifteen and Count Twenty Two until released according to law. Sentence imposed as to Count One and Count Eight are to be served concurrently, one to the other, sentence imposed as to Count Fifteen and Count Twenty Two are to be served consecutively, one to the other, and to be served consecutively to Count One and Count Eight for a total incarceration of not less than 14 Years nor more than 25 Years.

{¶ 3} On January 13, 2012, appellant moved for an order directing the Ohio Department of Rehabilitation and Correction (“ODRC”) to correct his “out date” to reflect his original sentence of “not less than 14 Years *nor more than 25 Years.*” (Emphasis added.) Appellant calculated that his prison term should end January 13, 2019, whereas ODRC calculated his maximum sentence expiration date as November 1, 2021. The trial court denied appellant’s motion, finding that the sentencing court made a

clerical error in recording the total aggregate maximum term in the judgment entry as 25 years. The trial court supported this conclusion by noting that the sentencing court explicitly ordered the sentences to be served consecutively, and that it correctly computed appellant's minimum term as 14 years.

B. Assignment of Error

{¶ 4} Appellant raises a single assignment of error:

The trial court erred when it denied the appellant's motion to correct his sentence reflecting that he was sentenced to no less than fourteen (14) years but no more than twenty five (25) years. Thereby, violating the appellant's constitutional right to due process pursuant to the United States Constitution Fifth and Fourteenth Amendments, and Sections Ten and Sixteen, Article One and Ten of the Ohio Constitution.

II. Analysis

{¶ 5} In support of his assignment, appellant argues that the trial court's sentencing entry states that he is to serve "not less than 14 Years nor more than 25 Years." Although appellant correctly quotes the April 26, 1994 sentencing entry, we agree with the trial court that that entry contains a clerical error. "A clerical error or mistake refers to 'a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment.'" *State v. Miller*, 127 Ohio St.3d 407, 2010-Ohio-5705, 940 N.E.2d 924, ¶ 15, quoting *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 19.

{¶ 6} Here, the sentencing entry clearly reflects that appellant was sentenced to two two-year prison terms, which were to run consecutively to one another, and consecutively to the two concurrent terms of not less than 10 years nor more than 25 years. Thus, appellant was ordered to serve four years plus an additional 10 to 25 years, for a total minimum sentence of 14 years up to a maximum of 29 years. Therefore, the original sentencing entry contained a clerical mistake by stating that appellant was to serve not more than 25 years.

{¶ 7} Accordingly, the trial court did not err when it denied appellant's motion to correct his sentence to reflect that he was subject to a maximum term of 25 years.

{¶ 8} Appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 9} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. However, this matter is remanded to the trial court to correct the clerical mistake in the April 26, 1994 sentencing entry. *See* Crim.R. 36 ("Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.") Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed
and cause remanded.

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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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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