

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

State of Ohio

Court of Appeals No. H-08-037

Appellee

Trial Court No. CRI-2005-0491

v.

Dalia Garcia

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Dalia Garcia, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas reaffirming appellant's sentence in response to several pro se motions seeking early release. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Dalia Garcia, sets forth the following four assignments of error:

{¶ 3} "NO. 1. Whether, and when a trial court attempts resentencing under the provisions of: State v. Bezak, 868 N.E. 2d 961, it abuses its discretion thereby violating due process, when it fails to first vacate the underlying void sentence, in open court and in defendant's presence, before attempting to impose a new sentence.

{¶ 4} "NO. 2. Whether a trial court abuses its discretion thereby violating due process when it fails to comply with the mandatory provision of: Romito v. Maxwell (1967), 10 Ohio St. 2d 266, 267-68, when attempting to impose a new sentence under: State v. Bezak, 868 N.E. 2d 961.

{¶ 5} "NO. 3. Whether, and in light of the recent decision in: State v. Baker, 119 Ohio St. 3d 197, a trial court abuses its discretion thereby violating due process by failing to file and journalize its proposed judgment of conviction and sentence outside the 30-day time limitation of Crim. R. 32(C); and, Sup. R. 7(A).

{¶ 6} "NO. 4. Whether the unexplained and unreasonable delay in imposing sentence in this case divests the trial court of jurisdiction."

{¶ 7} The following undisputed facts are relevant to the issues raised on appeal. In 2005, appellant, along with her husband and brother, was indicted in connection to her participation in an illicit drug sale operation. Specifically, appellant was indicted on two counts of selling a controlled substance, in violation of R.C. 2925.03(A) (1), and one count of possession of a controlled substance, in violation of R.C. 2925.11(A).

{¶ 8} On November 1, 2005, the matter proceeded to jury trial. Appellant was found guilty on all counts. Appellant was sentenced to two, three-year terms and one,

eight-year term of incarceration, all terms to run concurrently. Timely notice of appeal was filed.

{¶ 9} On March 30, 2007, this court affirmed the judgment of the trial court. Appellant subsequently sought leave to appeal to the Supreme Court of Ohio. On October 15, 2007, the Supreme Court of Ohio denied appellant's request for leave to appeal, citing in support its finding that no substantive constitutional questions were at issue.

{¶ 10} On February 29, 2008, appellant filed a perplexing pro se pleading captioned, "PETITION FOR INQUIRY INTO CERTAIN PRACTICES." The content of this pleading reveals it to be an indirect attempt to reopen and relitigate appellant's concluded conviction and appeal. On April 2, 2008, appellant next filed a similarly perplexing pro se pleading captioned, "URGENT MOTION FOR DECLARITER," which was likewise prefaced upon the mistaken notion that appellant's case was not final and completed.

{¶ 11} The actual purpose behind appellant's post-appeal filings was unambiguously revealed during the subsequent hearing conducted in the trial court. On April 14, 2008, an oral hearing was conducted in an effort to discover the relief to which appellant felt entitled. Appellant was furnished an opportunity to explain to the court what precise relief she was seeking in her pending motions. Appellant unequivocally stated, "I've done 2 1/2 years in prison. I don't know why I'm here, I'm not going to give up. My children need me. I apologize to the Court. Aaron is still doing seven years.

Regardless I have no communications with him, and I just apologize to the Court. I want to go home to my babies." In response to this explanation by appellant, she was then directly asked by the court, "I get the impression you just want a chance to come back and address the Court potentially on a possibility of getting some kind of early release, is that correct?" Appellant replied, "Right. Right."

{¶ 12} The transcript of proceedings clearly establishes that appellant's motions were for purposes of requesting early release. Upon ascertaining the true nature of the motions, the record shows that the trial court clearly explained to appellant that due to the mandatory time required for her drug convictions, she was ineligible for judicial release.

{¶ 13} On November 3, 2008, the trial court issued its judgment entry pertaining to the April 14, 2008, motion hearing. While the trial court framed its entry as seeking compliance with *State v. Bezak*, 114 Ohio St.3d 94, a case extensively relied upon and cited by appellant in both her motions and appellate briefs, we find based upon our independent review and consideration that *Bezak* was not implicated in this case.

{¶ 14} *Bezak* held sentences to be void, requiring our court to remand for resentencing, in those precise and narrow instances where the trial court wholly failed to inform an offender at sentencing that he or she may be subject to postrelease control. By contrast, in the instant case, appellant was expressly informed of being subject to postrelease control at sentencing. The trial judge informed appellant that she faced a term of postrelease control that could range from three to five years.

{¶ 15} In its April 14, 2008 judgment entry, the trial court clarified, to appellant's favor, that the term of postrelease control was a mandatory three-year term rather than the potential five-year term. This was not a scenario in which the defendant was not informed at sentencing of being subject to postrelease control. As such, this case is materially distinguishable from *Bezak*. Appellant was owed no *Bezak* new sentencing hearing.

{¶ 16} The common premise underlying appellant's assignments of error challenging the April 14, 2008 judgment is that her case required a *Bezak* compliant new sentencing hearing and that the trial court failed to furnish her with such a hearing. Given our determination that *Bezak* is materially distinguishable from and not relevant to the instant case, appellant's assignments of error are not well-taken.

{¶ 17} Based upon the above determination, we must now review the record to ascertain whether the trial court abused its discretion in any way in its handling of appellant's pro se motions and oral hearing. Again, as conceded on the record by appellant herself, it was a motion for early release.

{¶ 18} It is black letter law that a trial court's conduct and handling of a motion hearing rests well within the purview of trial court discretion. Thus, it is reviewed pursuant to the abuse of discretion standard. An abuse of discretion connotes more than a mere error of law or judgment. It requires evidence to support a finding that the trial court's action was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 19} We have carefully reviewed and considered the record of evidence. The record shows that appellant timely appealed her conviction on three felony drug counts following jury trial. The record shows that this court affirmed the propriety of that judgment of conviction and the concurrent sentences comprising an eight-year term of incarceration. The record shows that the Supreme Court of Ohio declined leave to appeal and found it to not involve substantial constitutional issues. The record shows that appellant was clearly informed of being subject to postrelease control at sentencing so as not to trigger *Bezak*. The record shows that appellant verified to the court at her motion hearing and that she was seeking early release and that the trial court carefully and thoroughly explained to appellant that she was not eligible.

{¶ 20} We find nothing in the record showing that the trial court was unreasonable, arbitrary or unconscionable. We find nothing in the record demonstrating any manifest injustice to appellant.

{¶ 21} Wherefore, we find substantial justice has been done. The judgment of the Huron 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.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

John R. Willamowski, J.

CONCUR.

JUDGE

Judge John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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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