

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

State of Ohio

Court of Appeals No. L-10-1151

Appellee

Trial Court No. CR0199902422

v.

Harold Raymond Laney

DECISION AND JUDGMENT

Appellant

Decided: January 14, 2011

* * * * *

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

Patricia Horner, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Harold Laney, appeals from the trial court's denial of his motion for declaratory judgment. For the reasons that follow, we reverse.

{¶ 2} In 2000, appellant was found guilty of voluntary manslaughter, in violation of R.C. 2903.03. He was sentenced to eight years in prison to be served consecutively

with any sentence he was currently serving. This court affirmed his conviction in *State v. Laney* (May 18, 2001), 6th Dist. No L-00-1086.

{¶ 3} On August 21, 2006, the trial court issued a nunc pro tunc judgment entry to correct appellant's sentence to reflect him being given notice of appellate rights and postrelease control.

{¶ 4} On May 3, 2007, appellant filed a "motion for resentencing." Appellant asked the court to run his voluntary manslaughter sentence concurrently with the seven year sentence he was already serving on an unrelated case. The trial court denied his motion.

{¶ 5} On February 9, 2010, appellant filed a "motion for declaratory judgment that sentence is void." Appellant sought an order from the trial court declaring his original sentence void pursuant to *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197. On April 29, 2010, the trial court, rather than declaring his original sentence void, affirmed his original sentence and noted that appellant had already served his prison term and is therefore, not subject to resentencing. Appellant now appeals setting forth the following assignment of error:

{¶ 6} "The trial court abused its discretion in denying Laney's motion for declaratory judgment."

{¶ 7} "When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void." *State v. Bezak*, 114 Ohio St.3d 94, syllabus,

reaffirmed in *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238. "The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment." *Bezak*, supra ¶ 12, citing *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268.

{¶ 8} "For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio." *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434. "The new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to proper imposition of postrelease control." *Fischer*, supra, paragraph two of the syllabus. However, "[o]nce an offender has served the prison term ordered by the trial court, he or she cannot be subject to resentencing in order to correct the trial court's failure to impose postrelease control at the original sentencing hearing." *State v. Marsh*, Cuyahoga App. No. 89281, 2007-Ohio-6491, ¶ 9, citing *Bezak* at ¶ 18.

{¶ 9} The record in this case shows that the trial court failed to properly impose postrelease control on appellant. The trial court also failed to conduct a new sentencing hearing to remedy the problem. Pursuant to our authority under App.R. 12(B) to render the judgment the trial court should have rendered, we hereby declare appellant's sentence imposing postrelease control in this case void. As appellant has already served his eight year prison term imposed by the trial court, he is not longer subject to resentencing in

order to correct the trial court's failure to impose postrelease control at his original sentencing hearing in case No. CR 99-2422. Appellant's sole assignment of error is well-taken.

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

JUDGMENT REVERSED.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.