

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

State of Ohio

Court of Appeals Nos. L-12-1178
L-12-1257

Appellee

Trial Court No. CR0200603545

v.

Tyrone Johnson

DECISION AND JUDGMENT

Appellant

Decided: April 26, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Tyrone R. Johnson, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals orders of the Lucas County Court of Common Pleas, denying his motions for access to grand jury minutes and to vacate his sentence. Because appellant failed to articulate a particularized need for grand jury minutes, and his resentencing was proper, we affirm.

{¶ 2} Appellant, Tyrone R. Johnson, is serving two consecutive 20-year to life sentences for a 2006 Toledo double murder and a concurrent 10-year term for an associated aggravated robbery. His conviction and the denial of his first petition for postconviction relief were affirmed by this court. *State v. Johnson*, 6th Dist. Nos. L-07-1193, L-08-1230, 2009-Ohio-45.

{¶ 3} On April 24, 2012, appellant filed a motion requesting the minutes and a transcript of the proceedings of the grand jury that indicted him. Also included was a motion to vacate his sentence and for resentencing. The trial court granted a resentencing hearing, limited to the proper imposition of postrelease control associated with appellant's robbery conviction. The court denied access to records of the grand jury proceedings. Appellant immediately appealed; however, this court struck the portion of the appeal dealing with resentencing. The resentencing hearing had not yet occurred, making consideration of that issue not ripe for appeal. *State v. Johnson*, 6th Dist. No. L-12-1178 (Sept. 19, 2012). After the hearing, appellant filed a second appeal. We granted appellee's motion to consolidate these appeals.

{¶ 4} In his first brief, appellant sets forth a single assignment of error relative to the denial of the grand jury material:

- I. The defendant's due process rights were violated when the state to release [sic] the grand jury minutes, or showing that the exact essential facts were considered by the grand jury.

{¶ 5} In his second brief, appellant sets forth two assignments of error relating to the resentencing hearing:

[II.] The Sentence of the trial court is contrary to law because it failed to reflect any consideration of the purposes and principles of felony sentencing contained in Ohio Revised Code §2929.11 or the seriousness and recidivism factors of Ohio Revised Code §2929.12. The trial court committed abuse of discretion when it imposed consecutive sentences without adequate justification.

[III.] The trial judge violated the Appellant's right to due process when it sentenced the appellant to consecutive prison terms and erred by failing to conduct a proportionality review in determining consecutive sentences to be appropriate.

I. Grand Jury Material

{¶ 6} The general rule is that grand jury proceedings are secret. Crim.R. 6(E). Grand jurors, prosecutors, stenographers or the typist who transcribes recorded testimony may not disclose matters occurring during the proceedings except on order of the court. *Id.* The circumstances under which a court may issue such an order are limited to when the ends of justice require disclosure, "and there is a showing by the defense that a particularized need for disclosure exists which outweighs the need for secrecy." *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 41, quoting *State v. Greer*, 66 Ohio St.2d 139, 420 N.E.2d 982 (1981), paragraph two of the syllabus.

{¶ 7} Determining whether a particularized need exists is within the trial court's discretion. *Id.*, *Greer* at paragraph one of the syllabus. Matters decided within the court's discretion will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion is more than an error in judgment or a mistake of law, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 8} In this matter, the trial court found that appellant failed to demonstrate a particularized need for access to the grand jury materials. Affording appellant's arguments even the most generous reading, we must concur with the trial court. At best, appellant articulates a suspicion that something went awry. Such an amorphous assertion is simply insufficient to establish a particularized need. Accordingly, appellant's first assignment of error is not well-taken.

II. Resentencing

{¶ 9} Appellant's remaining assignments of error are premised on his misunderstanding of resentencing to impose postrelease control. Appellant believes that, because part of his sentence may be void, his entire sentence is void and issues from his original sentencing may be raised either again or for the first time. This is not the case.

{¶ 10} At his original sentencing hearing, appellant was not properly advised of the terms of postrelease control that would be applicable by virtue of his robbery conviction, should he ever be released from the two indeterminate life sentences that were imposed for the murders. A trial court's failure to advise an offender of such terms

voids that portion of the sentence. As such, that portion of the sentence is not subject to the rule of res judicata and may be reviewed at any time. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus.

{¶ 11} Res judicata, which bars consideration of matters that were, or could have been, raised on direct appeal, *see State v. Lott*, 97 Ohio St.3d 303, 2002-Ohio-6625, 779 N.E.2d 1011, ¶ 19, still applies to other parts of the sentence. *Fischer* at paragraph two of the syllabus. When a trial court holds a resentencing hearing in which a mandatory term of postrelease control is imposed, appeal is limited to those issues properly raised at the limited resentencing hearing. *Id.* at paragraph four of the syllabus.

{¶ 12} All of the matters of which appellant complains in his remaining two assignments of error relate to purported errors that were, or could have been, raised on direct appeal. Appellant makes no assertion of error regarding the imposition of postrelease control. Since this was the only proper subject of appeal, appellant's remaining assignments of error are not well-taken.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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, P.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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