ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.
MICHAEL SCHECK

Relator-Appellant

Vs.

JUDGE CHRISTOPHER J. COLLIER

Respondent-Appellee

Case No. 10-1569

On Appeal From The Court Of Appeals for Medina County, Ninth Appellate District, Case No. 09-CA-0081-M

ON APPEAL FROM AN ORIGINAL ACTION IN MANDAMUS

AMENDED MERIT BRIEF

OF

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SUPREME COURT OF OHIO

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STATEMENT OF FACTS

On February 14, 2005, following a jury trial, Michael Scheck, herein Scheck, was found guilty of one count of rape and one count of kidnapping. On March 31, 2005, a sentencing entry was filed in which the trial court imposed five years for each offense and ordered those terms to be served concurrently. Significantly, the sentencing entry does not contain a proper term of post release control. The sentencing entry was also defective under Criminal Rule 32(C) because it did not reflect the manner of conviction.

On September 18, 2009, Scheck moved the trial court to conduct a de novo sentencing hearing and to correct the Criminal Rule 32(C) deficiency. Rather than conduct a de novo sentencing hearing, on October 9, 2009, the trial court issued a nunc pro tunc entry correcting the improper term of post release control but leaving in tact the Criminal Rule 32(C) deficiency.

Scheck sought a writ of mandamus to compel the trial court to hold a new sentencing hearing arguing that the issuing of a nunc pro tunc entry was an improper means of correcting the deficiency regarding post release control. Moreover, in the absence of a journal entry that complies with Criminal Rule 32(C), Scheck had no method to have the sentencing error regarding post release control reviewed and corrected.

On August 2, 2010, the Ninth District Court of Appeals dismissed the mandamus. This appeal now follows.

PROPOSITION OF LAW NO. I

WHEN A TRIAL COURT ISSUES A NUNC PRO TUNC SENTENCING ENTRY TO CORRECT AN IMPROPER TERM OF POST RELEASE CONTROL ON A SENTENCE IMPOSED PRIOR TO THE EFFECTIVE DATE OF R.C. 2929.191 AND THAT NUNC PRO TUNC SENTENCING ENTRY FAILS TO COMPLY WITH CRIMINAL RULE 32(C), MANDAMUS IS APPROPRIATE MANNER TO COMPEL CORRECTION OF THE SENTENCING ENTRY

SUPPORTING ARGUMENTS:

I. Standard of Review:

As correctly noted by the Ninth District Court of Appeals in this case:

> "[F]or a writ of mandamus to issue, a relator must demonstrate that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested action, and (3) relator has no plain and adequate legal remedy." (citation omitted)

(August 2, 2010 Journal Entry, Page 2)

The issue in this case is not overly complex. However, the Ninth District Court's denial of relief in mandamus could produce an unintended result in light of this Court's holding in State v. Singleton, 124 Ohio St.3d. 173, 920 N.E.2d. 958, 2009-Ohio-6434.

In Singleton, this Court was asked to determine the effects of the enactment of R.C. 2929.191. Id, at ¶1. (See Appendix for complete text of R.C. 2929.191). As acknowledged by this Court in Singleton; "[B]efore the enactment of R.C. 2929.191, no statutory remedy existed for the correction of a sentence that failed to properly impose post release control." Id. at ¶25.

In the absence of a statutory remedy, [this Court] recognized that a sentence that failed to properly impose a statutorily mandated period of posetrelease control was contrary to law when imposed." Id. at ¶25.

This Court further recognized that "R.C. 2929.191 purports to authorize application of the remedial procedure set forth therein to add postrelease control to sentences imposed before its effective date." Id at ¶26. That assertion was specifically rejected by the Singleton Court holding that "for sentences imposed prior to the effective date of [R.C. 2929.191], there is no existing judgment for a sentencing court to correct. H.B. 137 cannot retrospectively alter the character of sentencing entries issued prior to its effective date that were nullities at their inception." Id. at ¶26.

Thus, the Singleton Court concluded that "the de novo sentencing procedure detailed in the decisions of the Ohio Supreme Court is the appropriate method to correct a criminal sentence imposed prior to July 11, 2006, that lacks proper notification and imposition of post release control." Singleton, at ¶35.

The question in this case is thus two fold. First, whether the trial court erred in issuing a nunc pro tunc journal entry to correct an improper imposition of post release control, and second, whether Scheck had an adequate remedy at law available to him to have the nunc pro tunc sentencing entry reviewed.

A. Nunc Pro Tunc v. De Novo Sentencing Hearing:

In State v. Evans, 2010-Ohio-2514, decided June 7, 2010, the Ninth District Court of Appeals addressed the impact of this Court's decision in Singleton to a sentence imposed after July 11, 2006, the effective date of R.C. 2929.191.

In Evans, the Ninth Appellate District specifically applied the holding in Singleton that: "[f]or sentences imposed after July 11, 2006, the failure of the trial court to properly provide notification of post release control does not result in a void sentence. Evans at ¶7, quoting Singleton at ¶27.

More recently, in State v. Yeager, 2010-Ohio-3848, the Ninth District Court of Appeals specifically rejected a trial court's failure to conduct a de novo sentencing hearing to correct a sentence imposed prior to the effective date of R.C. 2929.191. Id at ¶13. In Yeager, the Ninth Appellate District was confronted with a sentence imposed on March 14, 2003, prior to the effective date of R.C. 2929.191.

The Yeager Court held: the March 14, 2003 sentencing entry did not contain the proper notification of post release control, "the trial court failed to provide Yeager with a de novo sentencing hearing and instead, merely informed him of post release control and issued a second entry to that effect." Id at ¶13.

Relying on this Court's decision in State v. Simpkins, 117 Ohio St.3d. 420, 2008-Ohio-1197, and their decision in

State v. Harris, 9th Dist. No. 24611, 2009-Ohio-6078, the Yeager court correctly determined the March 14, 2003 sentencing entry to be void and remanded to the trial court for a de novo sentencing hearing accordingly. Id. at ¶13 & 8.

When applied to the facts of this case, Scheck's 2005 sentencing entry was clearly void for failure to include an appropriate term of post release control. Moreover, because Scheck was originally sentence in 2005, well before the enactment of R.C. 2929.191, the trial court was required to hold a de novo sentencing hearing to impose a corrected sentence. See, Yeager, supra, quoting Simpkins.

The requirements for the granting of mandamus relief is (1) whether the relator has a clear legal right to the relief prayed for, (2) whether respondent is under a clear legal duty to perform the requested action, and (3) whether relator has no plain and adequate legal remedy. State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd. (1998) 81 Ohio St.3d. 173, 176.

As applied to this case, Scheck has a clear legal right to a de novo sentencing hearing as outlined in Yeager and Simpkins. Moreover, Respondent has a clear legal duty, pursuant to this Court's holding in Singleton, to conduct a de novo sentencing hearing. The only question remaining is whether Scheck had an adequate legal remedy available to him to challenge the trial court's nunc pro tunc correction to his original sentencing entry. Scheck respectfully submits that he did not.

B. Adequate Remedy:

This Court has held that " '[I]n order to decide whether an order issued by a trial court in a criminal proceeding is a reviewable final order, appellate courts should apply the definition of "final order" contained in R.C. 2505.02.' " State v Baker, 119 Ohio St.3d. 197, 2008-Ohio-3330, 893 N.E.2d. 163 at ¶6, quoting State v. Muncie, (2001), 91 Ohio St.3d. 440, 444, 746 N.E.2d. 1092, citing State ex rel. Leis v. Kraft (1984), 10 Ohio St.3d. 34, 36, 10 OBR 237, 460 N.E.2d. 1372.

R.C. 2505.02(B) states: "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following: (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment."

Criminal Rule 32(C) sets forth the requirements for a final appealable order in criminal cases. It states that "[a] judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence." Furthermore, "the Judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk. See State v. Ketterer, ___ N.E.2d. ___, 2010 WL 3362963 (Ohio), 2010-Ohio-3831, at ¶11.

In this case, as argued in Count Two of the Original Action in Mandamus, the October 9, 2009, nunc pro tunc sentencing entry does not set forth the manner of conviction.

In Baker, this Court emphasized that "a judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." Id. at ¶18. In so holding, this Court specifically noted that the trial court is "required to sign and journalize a document memorializing the sentence and the **manner of conviction**." Id. at ¶14, (bold added).

In this case, Scheck argued that the October 9, 2009, nunc pro tunc sentencing entry is not a final appealable order because it does not set forth the manner of conviction. The Ninth District Court of Appeals, however, erroneously mis-characterized the nature of the pleadings and limited their review to the Crim.R. 32(C) defect: ("Scheck seeks a writ of mandamus from this Court to order Judge Collier to hold a new sentencing hearing, ***, to correct the original entry's Crim.R. 32(C) deficiency."). 2010 Journal Entry, P.2.

The arguments set forth in Scheck's mandamus was not ambiguous. The nunc pro tunc correction of Scheck's original sentencing entry was improper and de novo re-sentencing was required. The nunc pro tunc entry was used in this case to correct a sentencing journal entry that contained an improper imposition of post release control. More Specific, to correct a sentence imposed prior to the effective date of R.C. 2929.191, the very issue successfully argued in Yeager.

Moreover, because the nunc pro tunc entry does remain deficient under Crim.R. 32(C), Scheck could not file a direct appeal from that sentencing entry, pursuant to Baker.

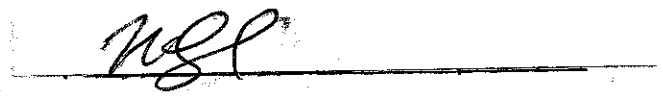
The October 9, 2009 nunc pro tunc sentencing entry is not a final appealable order. Further, issuing a corrected sentencing entry nunc pro tunc, to a sentence imposed prior to the effective date of 2929.191, renders that sentencing entry void. See, State v. Haskins, 2010-Ohio-4332, at ¶10.

Thus, Scheck had no adequate remedy through the normal course of law and the Ninth District Court of Appeals erroneously dismissed Scheck's writ of mandamus accordingly.

CONCLUSION

For all of the above reasons, Scheck requests this Court reverse the judgment of the Appellate Court in this case and remand for further proceeding consistent with the arguments presented herein.

Respectfully submitted



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This is to certify that a true and accurate copy of the foregoing Amended Merit Brief of Appellate Michael Scheck, has been sent, via regular U.S. mail, to the office of Counsel of Appellee, Dean Holman, Medina County Prosecutor, of 72 Public Square, Medina, Ohio 44256, on this 23 day of November, 2010.

By: _____

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APPENDIX

IN THE SUPREME COURT OF OHIO

Case No. 10-1569

STATE OF OHIO ex rel.
MICHAEL SCHECK

Relator-Appellant

vs.

JUDGE CHRISTOPHER J. COLLIER

Respondent-Appellee

On Appeal From The Court of Appeals for Medina County, Ninth Appellate District, Case No. 09-CA-0081-M

ON APPEAL FROM AN ORIGINAL ACTION IN MANDAMUS

NOTICE OF APPEAL

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SEP 07 2010
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APPENDIX

a

NOTICE

Michael Scheck, herein Appellant, respectfully gives notice of his intention to appeal the decision of the Ninth District Court of Appeals, entered on August 2, 2010, in Case Number 09-CA-0081-M, wherein the Appellate Court denied his Original Action in Mandamum.

Appellant submits that this case originated in the Appellate Court, involves felony convictions, and raises substantial constitutional questions regarding the proper manner of correcting a void sentence, final appealable orders and issues related to jurisdiction.

Respectfully submitted

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Notice of Appeal has been sent, via regular U.S. mail, to counsel for Appellee, DEAN HOLMAN, Medina County Prosecutor, at 72 Public Square Medina, Ohio 44256, on this 6th day of September, 2010.

By: _____

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COPY

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

FILED
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MEDINA COUNTY
CLERK OF COURTS

STATE OF OHIO ex rel. MICHAEL SCHECK

Relator

v.

JUDGE CHRISTOPHER J. COLLIER

Respondent

C.A. No. 09CA0081-M

JOURNAL ENTRY

Relator, Michael Scheck, filed a complaint seeking a Writ of Mandamus to order Respondent, Judge Christopher Collier of the Medina County Court of Common Pleas, to hold a new sentencing hearing, followed by issuing a new sentencing journal entry. Judge Collier moved to dismiss or, in the alternative, for summary judgment. For the following reasons, this Court dismisses the complaint.

Background

According to the complaint, Scheck was convicted of rape and kidnapping following a jury trial. The original sentencing entry did not reflect the means of conviction, stating that the trial court "finds that the defendant has been convicted of * * *" rape and kidnapping. The original entry also contained an improper postrelease control notification.

Scheck moved the trial court to correct the entry. In response, Judge Collier issued a nunc pro tunc entry. The nunc pro tunc entry restated everything included in the first entry, but it properly set forth the postrelease control sanction.

Scheck then filed this action. He has petitioned for a writ of mandamus to order Judge Collier to conduct a new sentencing hearing, followed by a new sentencing entry.

APPENDIX

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Writ of Mandamus

"For a writ of mandamus to issue, a relator must demonstrate that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy." *State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 173, 176. Based on the facts alleged in the complaint, Scheck cannot demonstrate that he has a clear legal right to the relief requested or that Judge Collier has a clear legal duty to perform the requested act.

Scheck seeks a writ of mandamus from this Court to order Judge Collier to hold a new sentencing hearing, after which Judge Collier would issue a new sentencing entry, to correct the original entry's Crim.R. 32(C) deficiency. The Supreme Court has held that a defendant is not entitled to a new sentencing hearing to fix this problem. "The remedy for a failure to comply with Crim.R. 32(C) is a revised sentencing entry rather than a new hearing." *State ex rel. Alicea v. Krichbaum*, Slip Opinion No. 2010-Ohio-3234, ¶2. Scheck does not have a clear legal right to a new sentencing hearing. Judge Collier does not have a corresponding clear legal duty to provide Scheck with a new sentencing hearing. Accordingly, Scheck is not entitled to a writ of mandamus.

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Conclusion

The petition is dismissed. Costs taxed to Relator.

The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ.R. 58(B).

Judge

Concur:
Carr, J.
Belfance, J.

Baldwin's Ohio Revised Code Annotated Currentness
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2929. Penalties and Sentencing (Refs & Annos)
Felony Sentencing
2929.191 Correction to judgment of conviction; post-release supervision

(A)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(1) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

If, prior to the effective date of this section, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of section 2929.19 of the Revised Code and failed to notify the offender pursuant to that division that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include a statement to that effect in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison.

(2) If a court prepares and issues a correction to a judgment of conviction as described in division (A)(1) of this section before the offender is released from imprisonment under the prison term the court imposed prior to the effective date of this section, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(c) of section 2929.19 of the Revised Code or that the offender may be so supervised regarding a sentence including a prison term of a type described in division (B)(3)(d) of that section.

(B)(1) If, prior to the effective date of this section, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted in accordance with division (C) of this section, the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of section 2929.19 of the Revised Code, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 of the Revised Code the parole board may impose as part of the sentence a prison term of up to one-half of the stated prison term originally imposed upon the offender.

(2) If the court prepares and issues a correction to a judgment of conviction as described in division (B)(1) of this section before the offender is released from imprisonment under the term, the court shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction and shall provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, shall send a copy of the entry to the department of rehabilitation and correction for delivery to the offender. If the court sends a copy of the entry to the department, the department promptly shall deliver a copy of the entry to the offender. The court's placement upon the journal of the entry nunc pro tunc before the offender is released from imprisonment under the term shall be considered, and shall have the same effect, as if the court at the time of original sentencing had included the statement in the judgment of conviction entered on the journal and had notified the offender pursuant to division (B)(3)(e) of section 2929.19 of the Revised Code regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control.

(C) On and after the effective date of this section, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in division (A)(1) or (B)(1) of this

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section shall not issue the correction until after the court has conducted a hearing in accordance with this division. Before a court holds a hearing pursuant to this division, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and the department of rehabilitation and correction. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction.

CREDIT(S)

(2006 H 137, eff. 7-11-06)

UNCODIFIED LAW

2006 H 137, § 5: See Uncodified Law under RC 2929.14.

CROSS REFERENCES

Post-release control, 2967.28

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Baldwin's Ohio Revised Code Annotated Currentness

Title XXV. Courts--Appellate
Chapter 2505. Procedure on Appeal (Refs & Annos)
Final Order
2505.02 Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 516, eff. 12-30-04; 2004 S 80, eff. 4-7-05; 2004 S 187, eff. 9-13-04; 2004 H 292, eff. 9-2-04; 2004 H 342, eff. 9-1-04; 1998 H 394, eff. 7-22-98; 1986 H 412, eff. 3-17-87; 1953 H 1; GC 12223-2)

UNCODIFIED LAW

APPENDIX

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Baldwin's Ohio Revised Code Annotated Currentness

Rules of Criminal Procedure (Refs & Annos)

Crim R 32 Sentence

(A) Imposition of sentence

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

CREDIT(S)

(Adopted eff. 7-1-73; amended eff. 7-1-92, 7-1-98, 7-1-04, 7-1-09)

APPENDIX

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United States Code Annotated Currentness

Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX

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