

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2010-2158
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
JACK CARLISLE,	:	
	:	Court of Appeals Case
Defendant-Appellant.	:	No. 93266
	:	

**MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL
MICHAEL DEWINE IN SUPPORT OF APPELLEE STATE OF OHIO**

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INTRODUCTION

A jury convicted the appellant, Jack Carlisle, of kidnapping and gross sexual imposition in 2007, and the trial court sentenced him to a three-year prison term. The Eighth District affirmed the convictions in 2008, and this Court declined discretionary review.

The case should have ended here. In 2009, however, Carlisle attempted to restart the process. Before revocation of his appellate bond, Carlisle requested a reduction of the three-year prison sentence. The trial court accepted the invitation, vacated the prison term, and sentenced Carlisle to five years of community control. On appeal, the Eighth District reversed, finding that the trial court impermissibly deviated from its appellate mandate, which had ordered the court to execute Carlisle's original sentence.

The Eighth District reached the correct conclusion, but its discussion of the mandate rule was unnecessary. Because a final judgment had issued in this case, the trial court had no jurisdiction to revisit Carlisle's sentence.

This Court's decision in *State ex rel. Cruzado v. Zaleski*, 111 Ohio St. 353, 2006-Ohio-5795, illustrates that principle. The Court reaffirmed the blackletter rule that "trial courts lack authority to reconsider their own valid final judgments in criminal cases." *Id.* ¶ 18 (citation omitted). It then recognized only "two exceptions under which the trial court retains continuing jurisdiction" after entry of a final judgment—a trial court "is authorized to correct a void sentence" and "to correct clerical errors in judgments." *Id.* ¶ 19.

This case implicates neither exception—Carlisle has never claimed that his original sentence was void, or that his judgment entry contained a clerical error. The trial court therefore lost jurisdiction over Carlisle's case in 2007, when it entered a final judgment of conviction and sentence. The court had no authority in 2009 to revisit any aspect of that judgment, including the wisdom of Carlisle's three-year prison term.

Carlisle asserts otherwise: “A trial court has the authority and discretion . . . to modify a defendant’s sentence and impose a new one before execution of that sentence has commenced.” Br. at 8. Invoking a coterie of lower appellate decisions, he claims that trial courts have authority to revisit a criminal sentence at any point until “the defendant has been delivered to a penal institution of the executive branch.” *Id.* (citing *State v. Addison* (10th Dist. 1987), 40 Ohio App. 3d 7).

This argument contains a fatal flaw. Carlisle’s authorities rely on former R.C. 2929.51(A), which vested trial courts with jurisdiction to “suspend the sentence and place the defendant on probation” at any point “up to the time the defendant is delivered to the institution where he is to serve his sentence.” *Addison*, 40 Ohio App. 3d at 8. But the General Assembly repealed R.C. 2929.51 in 2004—and with it, the trial court’s statutory authority to modify a criminal sentence after final judgment.

Simply put, the trial court had no jurisdiction to revisit the final judgment from 2007 and, thus, no authority to entertain Carlisle’s motion for resentencing. The Court should therefore affirm the Eighth District’s judgment below.

STATEMENT OF AMICUS INTEREST

As Ohio’s chief law officer, R.C. 109.02, the Attorney General has a strong interest in the correct interpretation and application of Ohio’s criminal laws and procedures. Disputes about the force, effect, and finality of criminal judgments squarely implicate the Attorney General’s duties, powers, and interests. See *State ex rel. Cordray v. Marshall*, 123 Ohio St. 229, 2009-Ohio-4986, ¶¶ 14-23.

STATEMENT OF CASE AND FACTS

A jury convicted Carlisle in 2007 of kidnapping and gross sexual imposition of his six-year-old foster child, and the trial court sentenced him to a three-year prison term. The Eighth

District affirmed Carlisle’s convictions in 2008. See *State v. Carlisle* (8th Dist.), No. 90223, 2008-Ohio-3818. This Court then declined Carlisle’s request for discretionary jurisdiction over the case. See *State v. Carlisle*, 120 Ohio St. 3d 1508, 2009-Ohio-361.

Before the trial court remanded him into custody, Carlisle filed a motion to reconsider, urging the court to vacate his prison sentence and impose a term of community control. He argued that his deteriorating health—notably, his kidney disease, heart disease, and diabetes—merited a reduced punishment. Carlisle also observed that imprisonment would shift the cost of his medical treatments onto the State. See *State v. Carlisle* (8th Dist.), No. 93266, 2010-Ohio-3407, ¶ 3. Finding these arguments persuasive, the trial court vacated the three-year prison sentence and imposed a five-year term of supervised community control. *Id.* ¶ 8.

The Eighth District reversed. The court agreed with Carlisle that trial courts “retain[] the authority to modify the [criminal] sentence until the defendant is delivered to a penal institution to start serving a sentence.” *Id.* ¶ 12. The problem in this case, the Eighth District found, was its prior mandate. After rejecting Carlisle’s direct appeal in 2008, the appellate court “remanded” the case “to the trial court for execution of sentence.” *Id.* ¶ 20. Because “the letter and spirit of the mandate required the court to execute Carlisle’s sentence,” the trial court was obligated to “remand him to a penal institution.” *Id.* ¶ 21. “By modifying Carlisle’s sentence,” the Eighth District held, “the court . . . failed to obey [its] mandate.” *Id.*

Finding no “extraordinary circumstances” to excuse the trial court’s disobedience, the Eighth District reversed the trial court’s modification of Carlisle’s criminal sentence. *Id.* ¶ 47.

This Court accepted Carlisle’s request for discretionary jurisdiction.

ARGUMENT

Although the Attorney General agrees with the Eighth District’s analysis of the “mandate rule,” a threshold jurisdictional defect exists. See *Pratts v. Hurley*, 102 Ohio St. 3d 81, 2004-

Ohio-1980, ¶ 11 (subject matter jurisdiction “is a condition precedent to the court’s ability to hear the case”) (internal quotations and citation omitted).

After the trial court entered a final judgment of conviction and sentence for Carlisle in 2007, it lost jurisdiction over the case. The trial court therefore lacked authority to entertain Carlisle’s motion for resentencing in 2009.

Ohio Attorney General Michael DeWine’s Proposition of Law:

After entry of a final judgment in a criminal case, the court of common pleas lacks jurisdiction to reconsider or modify any portion of that judgment.

A. The trial court had no authority to revisit its final judgment from 2007.

In 2007, the trial court entered a final judgment in this criminal case. The court’s entry documented Carlisle’s two convictions, the manner of conviction, and the sentence. The trial court signed the entry, and the clerk entered it on the court’s journal. See Journal Entry, *State v. Carlisle* (Cuyahoga C.P. Jul. 13, 2007), No. CR-06-481858-A (attached as Ex. A). Because the judgment complied with Crim. R. 32(C), it was a final order under this Court’s precedents. See *State v. Baker*, 119 Ohio St. 3d 197, 2008-Ohio-3330, ¶ 18.

That final judgment divested the trial court of its jurisdiction over Carlisle’s case. This Court has said, time and again, that “trial courts lack authority to reconsider their own valid final judgments in criminal cases.” *State ex rel. Cruzado v. Zaleski*, 111 Ohio St. 353, 2006-Ohio-5795, ¶ 18 (quoting *State ex rel. White v. Junkin* (1997), 80 Ohio St. 3d 335, 338); accord *State ex rel. Hansen v. Reed* (1992), 63 Ohio St. 3d 597, 599.

Only “two exceptions [exist] under which the trial court retains continuing jurisdiction” after entry of a final judgment.¹ *Id.* ¶ 19. “First, a trial court is authorized to correct a void sentence.” *Id.* “[A] sentence is void” when “it does not contain a statutorily mandated term.”

¹ Of course, trial courts can reacquire jurisdiction if the appellate court vacates the final judgment and remands the case to the trial court for further proceedings.

Id. ¶ 20 (citation omitted). “Second, a trial court can correct clerical errors in judgments.” *Id.* ¶ 19. A clerical error “refers to a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment.” *Id.* (citation omitted).

Neither exception applies here. Carlisle’s original sentence was valid: The trial court had jurisdiction over the case and the parties in 2007, and its sentence (three years imprisonment followed by five years of post-release control) complied with all statutory requirements. Also, Carlisle has identified no clerical error in the trial court’s judgment entry.

The general rule therefore applies here: The trial court “lack[ed] authority to reconsider [its] own valid final judgment” from 2007. *Cruzado*, 2006-Ohio-5795, at ¶ 18 (citation omitted). The court should have dismissed Carlisle’s resentencing motion for want of jurisdiction.

B. Carlisle’s contrary authorities rely on a repealed statute.

Carlisle boldly adopts the opposite proposition—that trial courts have “authority and discretion . . . to modify a defendant’s sentence and impose a new one before execution of that sentence has commenced.” Br. at 8. Under his view, trial courts may modify a defendant’s sentence up to the point when “the defendant has been delivered to a penal institution of the executive branch.” *Id.*

To be sure, this was once the law of the State. Under former R.C. 2929.51(A), a trial court could “[a]t any time . . . before an offender is delivered into the custody of the institution in which he is to serve his sentence . . . suspend the sentence and place the offender on probation.”

But no longer. The General Assembly repealed R.C. 2929.51, effective January 1, 2004. See H.B. 490, § 2 (124th Gen. Assem. 2003). (“[E]xisting section[] . . . 2929.51 . . . of the Revised Code [is] hereby repealed.”). In doing so, the General Assembly withdrew the statutory jurisdiction of trial courts to modify final criminal judgments.

Carlisle's authorities all rely on this former provision. In *State v. Addison* (10th Dist. 1987), 40 Ohio App. 3d 7, 8, the Tenth District affirmed that under former "R.C. 2929.51(A) . . . at or after the time of sentencing for a felony up to the time the defendant is delivered to the institution where he is to serve his sentence, the court may suspend the sentence and place the defendant on probation." The Fifth District reached the same conclusion: "It is important to note that R.C. 2929.51 enumerates the powers of the court with respect to modifying sentences." *State v. Lambert* (5th Dist.), No. 03-CA-65, 2003-Ohio-6791, ¶ 15. Because these decisions rest on a now-repealed statute, their holdings are no longer valid.² And they provide no support for Carlisle's proposition.

At bottom, the General Assembly's repeal of R.C. 2929.51 returned the judiciary to the traditional bipartite system discussed above. Trial courts retain "general subject-matter jurisdiction" over pending criminal cases. *Jimison v. Wilson*, 106 Ohio St. 3d 342, 2005-Ohio-5143, ¶ 11. But once a final order is entered, the trial court loses jurisdiction over the case. Absent a remand from the appellate court, the trial court "has no authority to reconsider its own valid final judgment[] in [a] criminal case[]." *Hansen*, 63 Ohio St. 3d at 599.

Carlisle (like many other criminal defendants) is in poor health and is understandably apprehensive about incarceration. But that circumstance, while unfortunate, does not vest a trial court with subject matter jurisdiction where none exists. When the trial court here entered final judgment in 2007, it lost jurisdiction over Carlisle's criminal case—and its authority to revisit Carlisle's prison sentence.

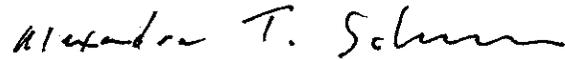
² Carlisle's other authorities (Br. at 8) blindly recite *Addison* and *Lambert*'s discussion of former R.C. 2929.51. See *State v. Plunkett* (2d Dist.), 186 Ohio App. 3d 408, 2009-Ohio-5307, ¶ 10; *State v. Evans* (4th Dist.), 161 Ohio App. 3d 24, 2005-Ohio-2337, ¶¶ 12-13; *State v. Cossack* (7th Dist.), No. 08-MA-161, 2009-Ohio-3327, ¶¶ 13-14; *State v. Gilmore* (8th Dist. 1995), No. 67575, 1995 Ohio App. Lexis 1418, at *4-5; *State v. Hundzsa* (11th Dist.), No. 2008-P-12, 2008-Ohio-4985, ¶ 25; *State v. Garretson* (12th Dist. 2000), 140 Ohio App. 3d 554, 558-59.

CONCLUSION

For these reasons, the Court should affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Michael DeWine was served by U.S. mail this 27th day of June, 2011, upon the following counsel:

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APPENDIX



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IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

2007 JUL 13 A 9 10

Case No: CR-06-481858-A

JACK CARLISLE
Defendant

GERALD E. FUERST
CLERK OF COURT

Judge: NANCY A FUERST

INDICT: 2907.02 RAPE /SVPS
2905.01 KIDNAPPING /SMS /SVPS
2907.05 GROSS SEXUAL IMPOSITION /SVPS

JOURNAL ENTRY

DEFENDANT IN COURT. COUNSEL MICHAEL CHESELKA PRESENT.
COURT REPORTER PRESENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(4) F1 WITH SEXUAL MOTIVATION SPECIFICATION 2941.147, SEXUAL VIOLENT PREDATOR SPECIFICATION UNDER COUNT(S) 2 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF GROSS SEXUAL IMPOSITION 2907.05 A(4) F3 WITH SEXUAL VIOLENT PREDATOR SPECIFICATION AS CHARGED IN COUNT(S) 3 OF THE INDICTMENT.

DEFENDANT ADDRESSES THE COURT, PROSECUTOR ADDRESSES THE COURT, VICTIM/REP ADDRESSES THE COURT.

THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 3 YEAR(S).

3 YEARS ON COUNT 2 AND 1 YEAR ON COUNT 3; COUNTS TO RUN CONCURRENTLY.

POST RELEASE CONTROL IS PART OF THIS PRISON SENTENCE FOR 5 YEARS FOR THE ABOVE FELONY(S) UNDER R.C.2967.28.

DEFENDANT TO RECEIVE JAIL TIME CREDIT FOR 278 DAY(S), TO DATE.

(5/13/06 TO 2/15/07)

EXECUTION OF SENTENCE STAYED PENDING APPEAL. DEFENDANT TO REMAIN ON \$50,000.00 CASH/SURETY BOND (CONDITIONED ON COURT SUPERVISED RELEASE AND ELECTRONIC HOME DETENTION, N.C.V.)

DEFENDANT ADVISED OF APPEAL RIGHTS.

DEFENDANT INDIGENT, COURT APPOINTS PUBLIC DEFENDER AS APPELLATE COUNSEL.

TRANSCRIPT AT STATE'S EXPENSE.

DEFENDANT IS TO PAY COURT COSTS.

DEFENDANT FOUND TO BE A SEXUALLY ORIENTED OFFENDER

07/10/2007

CPDMB 07/11/2007 12:46:44

N. Fuerst 7/11/07
Judge Signature Date



SENT
07/10/2007

Sheriff Signature [Signature] 7-16-07 Lorei + east