Supreme Court of Ohio Clerk of Court - Filed February 11, 2016 - Case No. 2016-0215

IN THE SUPREME COURT OF OHIO
2016

STATE OF OHIO, Plaintiff-Appellant, -vs- BRADLEY E. GRIMES, Defendant-Appellee	Case No. On Appeal from the Fifth District Court of Appeals, Muskingum County Court of Appeals Case No. CT2015-0026

MOTION TO STAY

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MOTION TO STAY

Plaintiff-appellant, the State of Ohio, requests that the Supreme Court of Ohio stay the decision of the Court of Appeals, Fifth Appellate District, entered in *State v. Grimes*, Court of Appeals No. CT2015-0026, on August 24, 2015, and maintained pursuant to Appellate Rule 26(A)(2) when the panel of appellate judges was unable to concur in a decision during their en banc consideration.

Appellee was sentenced in the Muskingum County Common Pleas Court to eighteen months for Robbery and Vandalism in August of 2011. He was placed on Post Release Control ("PRC") after being released from prison, and while on PRC he committed a new felony and was convicted of Unlawful Sexual Conduct with a Minor in January of 2014. The Common Pleas Court also imposed a judicial-sanction sentence for the time he had left on PRC.

He appealed, claiming that he was not notified of the consequences of violating PRC, and therefore, his PRC sanction is void because it was not imposed correctly. The Fifth District Court of Appeals reversed his PRC sentence, agreeing that the requisite language to impose PRC was not in the sentencing entry for his 2011 Robbery and Vandalism sentence. However, in *State v. Moore*, 2015-Ohio-3435, the Fifth District Court of Appeals found that the same language found in Appellee's case, was sufficient to impose valid PRC in *Moore*. Therefore, the State requested that the Fifth District hold an en banc consideration to resolve these inconsistent rulings.

The Fifth District held an en banc consideration consisting of the entire appellate panel, but ultimately was unable to concur in a decision. Without a clear decision, the original ruling of the panel in Appellee's case remains intact pursuant to App.R.

26(A)(2).

Before prematurely raising an intra-district conflict in an appeal to the Supreme Court of Ohio, the State waited for the decision of the en banc consideration. Appellate Rule 26(A)(2)(d) states that "[t]he decision of the en banc court shall become the decision of the court."

CONCLUSION

THEREFORE, the State asks that the Supreme Court of Ohio stay the decision of the Court of Appeals, Fifth District, until it has issued a final judgment by decision on the merits or declines to accept jurisdiction of the appeal.

Respectfully submitted,

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Muskingum County Prosecuting Attorney

/s Gerald Anderson

GERALD V. ANDERSON II 0092567
Assistant Prosecuting Attorney

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular US mail on this ____ day of February, 2016, to Kristopher A. Haines, at 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, Counsel for Defendant-Appellee.

/s Gerald Anderson

_____

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FILED
FIFTH DISTRICT
COURT OF APPEALS

AUG 24 2015

MUSKINGUM COUNTY, OHIO
TODD A. HICKLE, CLERK

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRADLEY E. GRIMES

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Craig R. Baldwin, J.

Case No. CT2015-0026

OPINION

(22/217-222)

CHARACTER OF PROCEEDING: Appeal from the Muskingum County Court of Common Pleas, Case No. CR2013-0198

JUDGMENT: Reversed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

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Hoffman, J.

{¶1} Defendant-appellant Bradley E. Grimes appeals the April 20, 2015 Journal Entry entered by the Muskingum County Court of Common Pleas, which denied his motion to vacate judicial sanction sentence. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE

{¶2} On August 15, 2011, Appellant was convicted of one count of robbery and one count of vandalism, and sentenced to an aggregate term of imprisonment of eighteen months in Case No. CR2011-0150. The trial court memorialized the convictions and sentence via Entry filed August 17, 2011. Appellant completed his prison term and was released on December 30, 2012. He was placed on post-release control for three years.

{¶3} On September 4, 2013, the Muskingum County Grand Jury indicted Appellant on two counts of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A), felonies of the fourth degree, in Case No. CR2013-0198. Appellant ultimately pled guilty to Count One of the Indictment. The State dismissed Count Two. Via Entry filed January 7, 2014, the trial court sentenced Appellant to a term of imprisonment of one year, and classified him as a Tier II sex offender. The trial court also imposed a judicial sanction sentence equal to the time remaining on Appellant's post-release control term. The trial court ordered the sentence be served consecutive to the one-year sentence in Case No. CR2013-0198.

{¶4} On April 16, 2015, Appellant filed a motion to vacate judicial-sanction sentence, asserting post-release control in Case No. CR2011-0150 was not properly

imposed; therefore, void. The State filed a memorandum contra. Appellant filed a reply. Via Journal Entry filed April 20, 2015, the trial court denied Appellant's motion.

{¶5} It is from that entry Appellant appeals, raising the following assignment of error:

{¶6} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MR. GRIME'S MOTION TO VACATE HIS VOID JUDICIAL-SANCTION SENTENCE."

{¶7} Preliminarily, we note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part the following:

> **(E) Determination and judgment on appeal**
>
> The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.
>
> The decision may be by judgment entry in which case it will not be published in any form.

{¶8} One of the important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Association,* 11 Ohio App.3d 158 (10th Dist.1983).

{¶9} This appeal shall be considered in accordance with the aforementioned rules.

I

{¶10} In his sole assignment of error, Appellant contends the trial court erred in denying his motion to vacate judicial sanction sentence as his post-release control in Case No. 2011CR-0150 was not properly imposed; therefore, was void. Specifically, Appellant submits the trial court failed to properly notify him about post-release control.

{¶11} The August 17, 2011 Entry in Case No. CR2-11-0150 provided:

> The Court further notified [Appellant] that **"Post Release Control"** is **mandatory** in this case for **three (03) years** as well as the consequences for violating conditions of post release control imposed by Parole Board under Revised Code 2967.28. [Appellant] is ordered to serve as part of this sentence any term for violation of that post release control.

{¶12} Although the entry notified Appellant post-release control was mandatory for three years, the entry is silent as to the consequences of violating post-release control. The trial court failed to inform Appellant if he violated his supervision or a condition of post-release control, the parole board could impose a maximum prison term of up to one-half of the prison term originally imposed. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831,¶ 77–79; *State v. Richard-Bey*, 5th Dist. App. Nos. CT2014–0012, CT2014–0013, 2014-Ohio-2923. A sentence is void if the court fails to follow the statutory mandates to impose post-release control. *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085.

{¶13} We find the trial court erred in denying Appellant's motion to vacate judicial sanction sentence based upon the aforementioned case law.

{¶14} Appellant's sole assignment of error is sustained.

{¶15} The judgment of the Muskingum County Court of Common Pleas is reversed.

By: Hoffman, J.

Gwin, P.J. and

Baldwin, J. concur

HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

HON. CRAIG R. BALDWIN

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS
AUG 24 2015
MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
BRADLEY E. GRIMES	:	
Defendant-Appellant	:	Case No. CT2015-0026

For the reasons stated in our accompanying Opinion, the judgment of the Muskingum County Court of Common Pleas is reversed. Costs to Appellee.

HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

HON. CRAIG R. BALDWIN

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS

JAN 11 2016

MUSKINGUM COUNTY, OHIO
TODD A. HICKLE, CLERK

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
BRADLEY E. GRIMES	:	(22/468-470)
Defendant-Appellant	:	CASE NO. CT2015-0026

This matter came before the Court upon the State of Ohio's application for en banc consideration filed on August 26, 2015. Defendant filed a memorandum in opposition on August 31, 2015. The State of Ohio filed a reply on September 15, 2015.

In the above-captioned case, we found that, based upon the language contained in the trial court's sentencing entry, defendant's post-release control was void because the trial court's sentencing entry was silent as to the consequences of violating post-release control. The State of Ohio argues that the above-captioned decision is in conflict with our decision in *State v. Moore*, 5th Dist. Muskingum No. CT2015-0027, 2015-Ohio-3435, in which we found the same language in the sentencing entry, coupled with the presumption of regularity regarding the oral notification during the sentencing hearing, was sufficient to give the defendant notice of the post-release control sanction and thus the post-release control was valid.

Appellate Rule 26(A)(2) provides that, "upon a determination that two or more decisions of the court * * * are in conflict, a majority of the en banc court may order that

an appeal or other proceeding be considered en banc." Further, that en banc consideration will be ordered only when "necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed." *Id.* The en banc court consists of "all fulltime judges of the appellate district who have not recused themselves or otherwise been disqualified from the case." *Id.*

Upon review, we find that a conflict exists between the panel decision in this case and our decision in *State v. Moore*. Accordingly, we GRANT en banc consideration in this matter.

Thus, this Court convened an en banc conference in accordance with App.R. 26(A)(2) as to the conflict between the above-captioned case and *State v. Moore*.

However, a majority of the full-time judges of the appellate district is unable to concur in a decision.

Accordingly, pursuant to App.R. 26(A)(2), the decision of the original panel remains the decision in this case.

IT IS SO ORDERED.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

HON. JOHN W. WISE

HON. PATRICIA A. DELANEY

HON. CRAIG R. BALDWIN