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V. Criminal Law

B. Sentencing
Craig Albers

STATE v. CARLISLE

131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671 Decided December 22, 2011

I. Introduction

Before 2004, a trial court had plenary power over sentencing modification up until the time the offender was delivered to the institution to serve his or her sentence. [1] That authority however, has since been revoked, generally leaving trial courts with jurisdiction only prior to a final criminal sentence. [2] As a result, trial courts possess the considerable duty of adequately sentencing felons while understanding there is limited room for error. [3] That duty has only increased, considering "the rapidly rising cost of delivering even rudimentary health care--a cost states bear in full for those within their custody." [4] And with the financial crisis of 2008 only adding to the already strained state correctional budgets, trial courts need to make their valid final sentences count. [5]

In State v. Carlisle, [6] the Supreme Court of Ohio was presented with the question of whether a trial court had the authority to modify a final criminal sentence where the defendant claimed necessary modification resulting from significant deterioration of health after sentencing. [7] Relying heavily on the general rule from State ex rel. Cruzado v. Zaleski, [8] the court concluded that, absent statutory authority stating otherwise, a trial court ***1352** lacks the necessary jurisdiction to modify a final criminal sentence. [9] Consequently, the court affirmed the judgment of the court of appeals, albeit on different grounds, holding that the repeal of section 2929.51 of the Ohio Revised Code unambiguously withdrew the necessary statutory authority required for a trial court to modify a final criminal sentence. [10]

II. Statement of Facts and Procedural History

In June 2007, Jack Carlisle was found guilty by a jury of kidnapping, a felony of the first degree, and gross sexual imposition, a felony of the third degree. [11] For these convictions Carlisle was cumulatively sentenced on July 11, 2007, to a prison term of three years to be followed by five years postrelease control. [12] Further, "[o]n July 13, 2007, the clerk journalized the final, appealable order that reflected his sentence." [13] The execution of his prison sentence was additionally suspended pending appeal. [14]

Carlisle appealed his convictions ("Carlisle I"), but failed to raise any issue as to an improper sentence. [15] The Eight District Court of Appeals affirmed Carlisle's convictions and remanded the case back to the trial court for execution of sentence. [16] Thereafter on February 19, 2009, he filed a motion to have the trial court reconsider and modify his prior imposed sentence. [17] "Carlisle argued that the motion for resentencing was not about the crime committed, nor was it about justice or punishment; rather it was a plea to the court regarding his health." [18] He claimed his original sentence, because of numerous life-threatening illnesses and diminishing health, was nothing more than a death sentence. [19] Further, he advised the court that if he remained in the community, Medicare and his private insurance would continue to cover his treatments, but if he was incarcerated that coverage would cease, leaving the state to cover his treatments in full. [20]

After making these assertions, Carlisle claimed the trial court had the authority to make these sentence modifications because his sentence was ***1353** not yet "executed," i.e., he had not been taken to the institution to serve his sentence. [21] His motion posited, "'[T]his Court must ask itself whether Mr. Carlisle's punishment is worth the cost in light of his "expensive' medical treatment, including kidney dialysis three times a week[[,]" which alone would cost between $25,000 and $30,000 per month. [22] As such, Carlisle claimed his incarceration, given his infirmity and low likelihood of reoffending, would only impose an undue burden on the State. [23]

In opposition, the State, while taking note of Carlisle's associated medical costs, essentially argued that it was willing to bear those costs considering the seriousness of the convictions. [24] It cited to expert testimony from trial proffering evidence "that Carlisle had . . . potentially exaggerated the scope of his problems." [25] Further, the State argued that Carlisle's claimed medical impairments had not prevented him from committing his offenses and therefore, incarceration was the correct determination to be made. [26] The trial court, however, found Carlisle's position compelling and thereafter vacated his original sentence due to "change of circumstances," modifing his original sentence down to five years of community control. [27]

The State, not in agreement, appealed the modification ("Carlisle II"), "arguing that the trial court lacked jurisdiction to modify [Carlisle's] sentence after that sentence had been explicitly affirmed by the appellate court" in Carlisle I. [28] The appellate court agreed with Carlisle insofar as stating that a trial court had jurisdiction to modify a defendant's criminal sentence up until the time the sentence is executed by delivering the defendant to the institution to serve the sentence. [29] However, it held that in this case "the trial court lacked authority to modify Carlisle's sentence because his convictions had been affirmed on appeal" and on that basis was only authorized to execute the criminal sentence, not modify it. [30] As such, the trial court's sentence modification was vacated and Carlisle's original sentence was reinstated. [31]

***1354** Carlisle thereafter sought and was granted review from the Supreme Court of Ohio where he raised the question of whether, "[a]bsent statutory authority, a trial court is . . . empowered to modify a criminal sentence by reconsidering its own final judgment." [32]

III. Decision and Rationale

A. Majority Opinion by Chief Justice O'Connor

Justice O'Connor, writing for a unanimous court, affirmed the Eighth District Court of Appeals' decision in Carlisle II, but in doing so, found the appellate court relied on an incorrect legal analysis in reaching its conclusion. [33] Specifically, the court stated the applicable rule of law was not the mandate rule, as discussed in State ex rel. Special Prosecutors v. Judges, Court of Common Pleas, [34] but rather "the general rule that a trial court lacks authority to modify a final criminal judgment," as found in Zaleski. [35]

Chief Justice O'Connor explained that "[a] criminal sentence is final upon the issuance of a final order." [36] Here, that final order was issued on July 13, 2007--the date Carlisle's judgment of conviction was journalized. [37] As such, the trial court's purported sentence modification nearly two years later was an improper exercise of jurisdiction. [38] Further, "Carlisle's argument that a

sentence is not final until it is executed," failed according to Justice O'Connor, because "the case law that appears to support Carlisle's position . . . relies on now repealed statutes." [39] The problem was that some appellate courts "creat[ed] the illusion of compliance with [the general] rule in [Zaleski]" with incorrect case law reliance premised upon section 2929.51(A) of the Ohio Revised Code that has since been repealed. [40] And because "[t]he repeal of R.C. 2929.51(A) ***1355** unequivocally constituted a withdrawal of the authority provided under that section[,]" the court held that any reliance upon that section was impermissible. [41]

IV. Analysis

A. Introduction

In State v. Carlisle, the Supreme Court of Ohio labeled appellate court decisions as "unsound" where reliance was placed upon the premise that trial courts have the authority to modify a criminal sentence until the defendant has commenced serving that sentence. [42] The court held that the repeal of section 2929.51(A) of the Ohio Revised Code "unequivocally constituted a withdrawal" of authority from allowing trial courts to modify a final criminal sentence. [43] In light of the continued improper and inconsistent application of said repealed statute, the court's decision in Carlisle was proper. [44]

B. Common Law Similarities

Under former section 2929.51(A) of the Ohio Revised Code, now repealed, a trial court retained authority permitting sentencing modification provided the defendant had not yet been delivered to prison in execution of the original sentence. [45] At common law, much like the grant of authority under section 2929.51 of the Ohio Revised Code, "sentencing courts had enormous discretion to change sentences." [46] Common law courts had authority to reconsider prior imposed sentences that were later felt inappropriate, so long as the revision was done "during the term of court in which it was initially imposed." [47] An explanation of the policy reasons behind the common law discretionary system provides:

Occasions inevitably will occur where a conscientious judge, after reflection or upon receipt of new probation reports or other information, will feel that he has been too harsh or has failed to give weight to mitigating factors which properly he should have taken ***1356** into account. In such cases the interests of justice and sound judicial administration will be served by permitting the trial judge to reduce the sentence within a reasonable time. [48]

Thus, unlike current trial courts having jurisdiction over criminal sentencing only until the issuance of a final order, [49] common law courts and trial courts under former section 2929.51 of the Ohio Revised Code had "latitude to modify sentences because of new evidence or simply a change of heart." [50]

C. Comparison with Federal Law

A reflection to current federal law, however, indicates persuasive authority supporting the outcome reached in Carlisle as precedent consistent with posited concerns of said federal law. Currently, Federal Rule of Criminal Procedure 35(a) permits a sentencing court "[w]ithin 14 days after sentencing . . . [to] correct a sentence that resulted from arithmetical, technical, or other clear error." [51] In direct opposition to the common law approach, the Advisory Committee notes state that the Rule 35(a) "is not intended to afford the court the opportunity . . . simply to change its mind about the appropriateness of the sentence." [52] Reaching the fourteen-day limit for modification, the Advisory Committee notes indicate explicit rejection for a longer window "'believ[ing] such a change would inject into Rule 35 a degree of post-sentencing discretion which would raise doubts about the finality of determinate sentencing.'" [53] Rule 35(a) rather, was partially intended to provide "[a] shorter period of time . . . [to] reduce the likelihood of abuse of the rule by limiting its application to acknowledged and obvious errors in sentencing." [54]

Similarly, the Carlisle court precedent is consistent with two overarching themes from Federal Rule of Criminal Procedure 35(a), including: (1) disallowance of "mere changes of heart" [55] and (2) finality in sentencing. [56] First, trial courts after Carlisle have very limited authority to modify a final criminal sentence, much like the federal approach, which ***1357** "gives district court judges extremely narrow powers" permitting them to "change a sentence already imposed only in the context of 'clear error.'" [57] Second, Carlisle provides finality in sentencing by not permitting criminal sentence modification subsequent issuance of a final criminal order, similar to the federal approach that narrows sentencing courts modification authority after sentencing to a mere fourteen days. [58] Thus, Carlisle provides a stringent framework that trial courts must be mindful of when making determinations regarding criminal sentences.

D. Extraordinary Circumstances

There does appear to be an exception permitting a trial court to modify a sentence subsequent issuance of a final order. Only where "extraordinary circumstances" are present, "an inferior court [may have] discretion to disregard the mandate of a superior court in a prior appeal in the same case." [59] The difficulty in applying this standard however, is apparent considering "[t]he [court] has not defined the term 'extraordinary circumstances' in this instance." [60] The plain meaning of the phrase provides some guidance being "something exceptional in character, amount, extent, or degree." [61] When considering the trial court's labeling of Carlisle's medical expenses as "astronomical," [62] it may appear reasonable to find such a classification as amounting to "extraordinary circumstances."

However, the findings from Carlisle plainly demonstrate that the court was correct in not recognizing "extraordinary circumstances"--specifically, in light of the finding that the trial court "knew at the time it originally imposed sentence that Carlisle had been receiving dialysis" and that there was ""no evidence to prove a deterioration of his condition" subsequent the original trial court sentence. [63] These medical costs of incarceration are relevant when a trial court considers the imposition of a sentence, and were to be considered here, if at all, by the trial court when sentencing Carlisle. [64] Even if Carlisle were to claim the medical evidence was improperly excluded from consideration, the court has recognized repeatedly that ***1358** ""sentencing errors are an improper exercise of jurisdiction." [65] Although the involved medical expenses were labeled as "astronomical" subsequent the trial court's original sentence, that still was not sufficient for recognition of "extraordinary circumstances." As such, it can arguably be concluded that, because the court did not even mention extraordinary circumstances in their opinion, as was a basis for argument by both parties in their appellate briefs to the action, as well as the lower appellate court, the court rejected by implication the idea that extraordinary circumstances exist with any substantive lower court decision. [66] If the issue of ""extraordinary circumstances" was in any way relevant to the sentence modification, one could posit that the court would have at least discussed the issue. Being that they did not, such circumstances must have been viewed as entirely irrelevant.

E. Proper Method of Reexamination

Subsequent Carlisle, there still is a mechanism available for defendants to have their post-execution medical care considered in light of their prior imposed criminal sentence. This authority is found in section 2967.03 of the Ohio Revised Code, which permits medical release if the adult parole board concludes "there is reasonable ground to believe that . . . paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society." [67] In making such suitability determinations, the parole board must consider, among other relevant factors: (1) any recommendations made by the sentencing judge or defense counsel, before or after sentencing, (2) any physical examination reports, and (3) any other factors the board may find relevant. [68] Section 2967.03 of the Ohio Revised Code "plainly envisions that the cost of inmate care can become so burdensome that a medical release is advised." [69]

***1359** This form of reexamination is just one method that states across the country are instituting when determining that "less is more when it comes to incarceration" in light of concerns over "current correctional costs and longterm worries over the future of the criminal justice system." [70] These concerns stem largely from "health care costs ris[ing] at unprecedented rates" for which "the state is constitutionally obliged to provide." [71] Such forms of reexamination can deliver substantial cost savings

as "the cost of providing medical care for seriously ill prisoners far exceeds the cost of housing healthier prisoners" even in the case of "indigent inmates, whose health care costs . . . will still be paid for with government dollars." [72]

Even though the concerns for substantial medical expenses may weigh heavily in a defendant's favor, concerns for the severity of the offense are also considered. [73] In light of the offense committed by Carlisle herein, the appellate court concluded "the state's desire to bear the cost of Carlisle's medical care in order to see him punished for his crime was reasonable." [74] There also existed an element of "fairness" in the appellate court's determination, as it stated "it is undeniably self-serving for Carlisle to seek to avoid a prison term on the basis that it would cost too much to incarcerate him." [75] It can most reasonable be concluded from this reasoning that although medical costs for inmates are relevant in sentencing determinations, that factor is not determinative, even where costs are classified as ""astronomical." [76]

V. Conclusion

Overall, the court reached the proper outcome when considering current case law, statutory authority, and the necessary fairness instituted in our court systems. To use a comparative illustration as a basis, like the enforcement of a validly executed contract where one party later believes there has been insufficient consideration, a valid final criminal sentence is not permitted to be modified simply because a sentencing judge has changed his mind after further contemplation regarding the circumstances surrounding the case. [77] With the decision in Carlisle, the court properly ***1360** settled uncertainty in Ohio case law and established precedent that will lead to certainty in trial court sentencing judgments.

Footnotes

1 See State v. Faircloth, Nos. 24395, 24396, 2011-Ohio-3727 ¶ 5 (Ohio App. 2nd Dist. 2011); see also Ohio Rev. Code Ann. § 2929.51 (repealed Jan. 1, 2004).

2 See State ex rel. Cruzado v. Zaleski, 111 Ohio St. 3d 353, 356, 2006-Ohio-5795 ¶ 18, 856 N.E.2d 263, 266 (2006) (quoting State ex rel. White v. Junkin, 80 Ohio St. 3d 335, 338, 686 N.E.2d 267, 269 (1997)); see generally State v. Lester, 130 Ohio St. 3d 303, 308, 2011-Ohio-5204 ¶ 14, 958 N.E.2d 142, 147-48 (2011) (holding that a judgment of conviction is final "when the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk.").

3 See generally Zaleski, 111 Ohio St. 3d at 356, 2006-Ohio-5795 ¶ 19, 856 N.E.2d at 266.

4 Cecelia Klingele, Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release, 52 Wm. & Mary L. Rev. 465, 469 (2010).

5 See generally id. at 470.

6 131 Ohio St. 3d 127, 2011-Ohio-6553, 961 N.E.2d 671 (2011).

7 See id. at 127-28, 2011-Ohio-6553 ¶¶ 1-4, 961 N.E.2d at 671-72.

8 111 Ohio St. 3d 353, 2006-Ohio-5795, 856 N.E.2d 263.

9 State v. Carlisle, 131 Ohio St. 3d at 129, 2011-Ohio-6553 ¶¶ 9-10, 961 N.E.2d at 673.

10 Id. at 131, 2011-Ohio-6553 ¶¶ 16-17, 961 N.E.2d at 674.

11 Id. at 127, 2011-Ohio-6553 ¶ 2, 961 N.E.2d at 671.

12 Id., 2011-Ohio-6553 ¶ 2, 961 N.E.2d at 671.

13 Id., 2011-Ohio-6553 ¶ 2, 961 N.E.2d at 671.

14 Carlisle, 131 Ohio St. 3d at 127, 2011-Ohio-6553 ¶ 2, 961 N.E.2d at 671.

15 Id., 2011-Ohio-6553 ¶ 3, 961 N.E.2d at 671 (citing State v. Carlise, No. 90223, 2008-Ohio-3818 (Ohio App. 8th Dist. 2008)).

16 Id., 2011-Ohio-6553 ¶ 3, 961 N.E.2d at 671-72.

17 Id. at 128, 2011-Ohio-6553 ¶ 4, 961 N.E.2d at 672.

18 Keith Arnold, Justices to Decide Whether Trial Court had Authority to Modify Appeals Court Ruling, Akron Legal News (Oct. 20, 2011), http:// www.akronlegalnews.com/editorial/1949.

19 State v. Carlisle, No. 92366, 2010-Ohio-3407 ¶ 3 (Ohio App. 8th Dist. 2010).

20 Arnold, supra note 18.

21 Carlisle, 131 Ohio St. 3d at 128, 2011-Ohio-6553 ¶ 4, 961 N.E.2d at 672.

22 Id. (alteration in original); see also Arnold, supra note 18.

23 Carlisle, No. 92366, 2010-Ohio-3407 ¶ 3.

24 Carlisle, 131 Ohio St. 3d at 128, 2011-Ohio-6553 ¶ 5, 961 N.E.2d at 672.

25 Carlisle, No. 92366, 2010-Ohio-3407 ¶ 4.

26 Carlisle, 131 Ohio St. 3d at 128, 2011-Ohio-6553 ¶ 5, 961 N.E.2d at 672.

27 Id., 2011-Ohio-6553 ¶ 6, 961 N.E.2d at 672.

28 Arnold, supra note 18.

29 Carlisle, 131 Ohio St. 3d at 128, 2011-Ohio-6553 ¶ 7, 961 N.E.2d at 672.

30 Id., 2011-Ohio-6553 ¶ 7, 961 N.E.2d at 672 (quoting State ex rel. Special Prosecutors v. Judges, Court of Common Pleas, 55 Ohio St. 2d 94, 97, 378 N.E.2d 162, 165 (1978) (finding a judgment from a reviewing court is "controlling upon the lower court as to all matters within the compass of the judgment.")).

31 Carlisle, No. 92366, 2010-Ohio-3407 ¶¶ 48-49.

32 Carlisle, 131 Ohio St. 3d at 127, 2011-Ohio-6553 ¶ 1, 961 N.E.2d at 671.

33 See id. at 129, 2011-Ohio-6553 ¶ 9, 961 N.E.2d at 673.

34 55 Ohio St. 2d 94, 378 N.E.2d 162.

35 Carlisle, 131 Ohio St. 3d at 129, 2011-Ohio-6553 ¶ 9, 961 N.E.2d at 673.

36 Id., 2011-Ohio-6553 ¶ 11, 961 N.E.2d at 673 (citing Junkin, 80 Ohio St. 3d 335, 686 N.E.2d 267; State v. Baker, 119 Ohio St. 3d 197, 2008-Ohio-3330, 893 N.E.2d 163 (2008), modified by Lester, 130 Ohio St. 3d 303, 2011-Ohio-5204, 958 N.E.2d 142, at syllabus).

37 Id., 2011-Ohio-6553 ¶ 12, 961 N.E.2d at 673.

38 Id. at 129-30, 2011-Ohio-6553 ¶ 12, 961 N.E.2d at 673 (citing Johnson v. Sacks, 173 Ohio St. 452, 454, 184 N.E.2d 96 (1962); Walker v. Maxwell, 1 Ohio St. 2d 136, 138, 205 N.E.2d 394 (1965); Majoros v. Collins, 64 Ohio St. 3d 442, 443, 596 N.E.2d 1038 (1992); State ex rel. Massie v. Rogers, 77 Ohio St. 3d 449, 450, 674 N.E.2d 138 (1997)).

39 Id. at 130, 2011-Ohio-6553 ¶ 13, 961 N.E.2d at 673 (citing State v. Addison, 40 Ohio App.3d 7, 530 N.E.2d 1335 (10th Dist. 1987)).

40 Carlisle, 131 Ohio St. 3d at 130-31, 2011-Ohio-6553 ¶ 15, 961 N.E.2d at 674 (citing Carlisle, No. 92366, 2010-Ohio-3407 ¶ 10).

41 Id. at 131, 2011-Ohio-6553 ¶¶ 15-16, 961 N.E.2d at 674.

42 Id. 130-31, 2011-Ohio-6553 ¶ 15, 961 N.E.2d at 674.

43 Id. at 131, 2011-Ohio-6553 ¶ 16, 961 N.E.2d at 674.

44 See id. at 130-31, 2011-Ohio-6553 ¶ 15, 961 N.E.2d at 674.

45 See Faircloth, Nos. 24395, 24396, 2011-Ohio-3727 ¶ 5; see also Ohio Rev. Code Ann. § 2929.51 (repealed Jan. 1, 2004).

46 Andrew P. Rittenberg, "Imposing" A Sentence Under Rule 35(C), 65 U. Chi. L. Rev. 285, 289 (1998).

47 Id.

48 Id. at 290 (quoting District Attorney v. Superior Court, 172 N.E.2d 245, 250-51 (Mass. 1961)).

49 See Carlisle, 131 Ohio St. 3d at 129, 2011-Ohio-6553 ¶¶ 9-11, 961 N.E.2d at 673.

50 Rittenberg, supra note 46, at 290.

51 Fed. R. Crim. P. 35(a).

52 Rittenberg, supra note 46, at 294 (quoting Fed. R. Crim. P. 35, 1991 Amendment, Advisory Committee's notes).

53 Id. ("In fact, the Committee considered, but rejected, a proposal to permit modification of a sentence within 120 days of sentencing based upon new factual information revealed since sentencing.").

54 Fed. R. Crim. P. 35, 1991 Amendment, Advisory Committee's notes.

55 See Rittenberg, supra note 46, at 287.

56 Id. at 290.

57 Id. at 287.

58 See Carlisle, 131 Ohio St. 3d at 131, 2011-Ohio-6553 ¶ 16, 961 N.E.2d at 674; Fed. R. Crim. P. 35(a).

59 Nolan v. Nolan, 11 Ohio St. 3d 1, 5, 462 N.E.2d 410, 414 (1984).

60 Carlisle, No. 92366, 2010-Ohio-3407 ¶ 23.

61 Id.

62 Id. at ¶ 7.

63 Id. at ¶ 28.

64 See Ohio Rev. Code § 2929.11(A) (West 2012) (providing that a felony sentence shall be determined "without imposing an unnecessary burden on state or local government resources.").

65 See Carlisle, 131 Ohio St. 3d at 129-30, 2011-Ohio-6553 ¶ 12, 961 N.E.2d at 673 (citing Johnson, 173 Ohio St. 452, 454, 184 N.E.2d 96; Walker, 1 Ohio St. 2d 136, 138, 205 N.E.2d 394; Majoros, 64 Ohio St. 3d 442, 443, 596 N.E.2d 1038; State ex rel. Massie, 77 Ohio St. 3d 449, 450, 674 N.E.2d 138).

66 See NASA v. Nelson, 131 S. Ct. 746, 756 n.10 (2011) (quoting Carducci v. Regan, 714 F. 2d 171, 177 (CADC 1983)) ("The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.").

67 Ohio Rev. Code § 2967.03 (West 2012); see also Carlisle, No. 92366, 2010-Ohio-3407 ¶ 43.

68 See Ohio Parole Board Handbook 7-8 (Sept. 1, 2011), available at http://www.drc.ohio.gov/web/paroleboardhandbook.pdf (citing Ohio Admin. Code 5120:1-1-07 (2011)).

69 Carlisle, No. 92366, 2010-Ohio-3407 ¶ 45.

70 Klingele, supra note 4, at 485-86.

71 Id. at 491-92.

72 Id. at 493.

73 See Carlisle, No. 92366, 2010-Ohio-3407 ¶ 41.

74 Id.

75 Id. at ¶ 32.

76 See id. at ¶ 7.

77 Andrew L. Johnson, Sentence Modification in Texas: The Plenary Power of a Trial Court to Alter Its Sentence After Pronouncement, 38 St. Mary's L.J. 317, 369 (2006).

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