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LORAIN COUNTY

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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

Date Nov. 1, 2019

Case No. 02CR061732

STATE OF OHIO
Plaintiff

Paul Griffin
Plaintiff's Attorney

VS

ANTHONY MURRAY
Defendant

Michael Camera
Defendant's Attorney

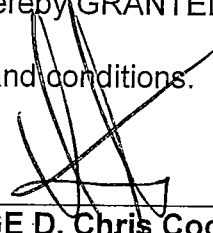
This matter is before the Court on Defendant's Motion For Judicial Release, filed on August 22, 2019; the State responded in opposition on September 13, 2019.

Hearing had on October 25, 2019, and November 1, 2019.

The Motion For Judicial Release is well-taken and hereby GRANTED.

See Judgment Entry and separate entry with terms and conditions.

IT IS SO ORDERED. No Record.



JUDGE D. Chris Cook

cc: Griffin, Asst. Pros. Atty.
Camera, Esq.
ODRC



LORAIN COUNTY COURT OF COMMON PLEAS
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JUDGMENT ENTRY
Hon. D. Chris Cook, Judge

Date Nov. 1, 2019

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Plaintiff's Attorney

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I. INTRODUCTION

This matter is before the Court on Defendant's Motion For Judicial Release, filed on August 22, 2019; the State responded in opposition on September 13, 2019.

Hearing had on October 25, 2019.

The Motion For Judicial Release is well-taken and hereby GRANTED.

II. PROCEDURAL HISTORY

On October 18, 2002, the Defendant, Anthony Murray ("Murray"), was arrested on a number of serious felony charges for abducting and robbing Charles "Giggy" Farris in the City of Elyria. Also charged with similar crimes was a co-defendant, James Byrd ("Byrd").

On December 10, 2002, Murray was indicted for aggravated robbery, robbery, kidnapping, aggravated burglary, and firearms specifications.

On August 14, 2003, after a five-day jury trial, Murray was convicted of aggravated robbery, robbery, and kidnapping, all with firearms specifications. He was sentenced to 23-years in prison and was delivered to LCI on August 15, 2003.

On September 23, 2004, Murray's convictions and sentence were confirmed on appeal by the Ninth District Court of Appeals. See: *State v. Murray*, 9th Dist., Lorain, No. 03CA008330, 2004-Ohio-4966.



After credit for his pre-trial incarceration, his 23-year prison term is set to expire on October 11, 2025. As such, Murray has served a little over 17-years of his 23-year sentence, or about 74%.

Until his recently filed motions¹, no activity has occurred in this case.

III. LAW AND ANALYSIS

STANDARD OF REVIEW

“R.C. 2929.20, Ohio's judicial-release statute, allows certain offenders to apply for early release from prison.” *State v. Ware*, 141 Ohio St.3d 160, 2014-Ohio-5201.

Ohio law provides that a prisoner cannot apply for judicial release until a period of time “after the expiration of all mandatory prison terms” in the stated prison sentence. R.C. 2929.20(C)(1), (2), (3), and (4). *Id.* at ¶ 11.

The Ohio Supreme Court has stated more than once that “It bears repeating that judicial release is a privilege, not an entitlement. ‘There is no constitutional or inherent right * * * to be conditionally released before the expiration of a valid sentence.’ * * * Courts have no inherent power to suspend execution of a sentence, and they must strictly construe statutes allowing such relief.” *Id.* at ¶ 12.

As for making specific findings, the Supreme Court has noted, “We hold that a trial court at sentencing is required to make judicial findings only for a downward departure pursuant to R.C. 2929.13(D) **or a judicial release** pursuant to 2929.20(H). When findings under . . . 2929.20(H) are missing from the appellate record, the appellate court shall remand the case to the sentencing court to state on the record the required findings . . .” *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855 at ¶ 36. (Emphasis added.)

R.C. 2929.20(J) carries a presumption that the Defendant’s motion “shall not be granted.”

R.C. 2929.20(J)(1) states:

A court shall not grant a judicial release under this section to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible

¹ A Motion For Judicial Release and a Motion To Set Aside Void Sentence, filed August 22, 2019, and August 28, 2019, respectively.



offender who committed an offense under Chapter 2925 or 3719 of the Revised Code and for whom there was a presumption under section 2929.13 of the Revised Code in favor of a prison term, unless the court, with reference to factors under section 2929.12 of the Revised Code, finds both of the following:

(a) That a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism;

(b) That a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense.

In the case at bar, R.C. 2929.20(C)(5), mandates that,

If the aggregated nonmandatory prison term or terms is more than ten years, the eligible offender may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in division (C)(4) of this section.

Accordingly, the Defendant became eligible to apply for judicial release as of August 15, 2016, as he served his mandatory three-year firearm specification plus one-half of his nonmandatory, twenty-year sentence.²

DECISION

This Court notes at the outset that Murray was given the maximum penalty on the aggravated robbery charge and consecutive sentences on his other two charges, robbery and kidnapping, plus of course, three additional years for the firearm specification.

Clearly, it is not this Court's province to "second guess" Murray's original sentence as it was legally valid, Murray went to trial (as opposed to accepting responsibility *via* a plea), and his crimes were very serious and involved the use of a weapon. Nevertheless, by

² The State agreed at the hearing that as a matter of law, the Defendant was not precluded from applying for judicial release.



any metric or rational evaluation, Murray's sentence was harsh and encompasses almost one-third of his life expectancy.

The question thus becomes, distilled down to its essence, is the following – has Murray been rehabilitated sufficiently such that he has paid enough of his debt to society; he is no longer a threat to society; and have the R.C. 2929.20(J)(1) factors been satisfied?

I find that the answer is yes.

First, as noted *supra*, Murray has served 74% or almost three quarters of his sentence. Next, his institutional record, while far from exemplary, consists of mostly status or *de minimus* institutional violations such as being out of place, having "hooch," and possessing contraband such as CD's, cigarettes, etc.

Finally, this Court believes, after seeing, hearing, and evaluating Murray's demeanor, comments, and disposition at the hearing that he appears to be rehabilitated.

Accordingly, this Court finds, as a matter of law, that a sanction other than a prison term will adequately punish Murray and protect the public from future criminal violations because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism.

Moreover, a sanction other than a prison term will not demean the seriousness of the offense given that he has already served over 17-years in prison.

But that does not end the inquiry.

At the judicial release hearing, information was posited that Murray's co-defendant, Byrd, was convicted of an additional offense (aggravated burglary) and given a 28-year sentence consecutive to another case, Case No. 03CR062184, where he was given two-years for obstructing justice, for a total sentence of 30-years.

Yet, according to Murray, Byrd was re-sentenced and released early from prison. Given this allegation, this Court is compelled to review Bryd's sentence for purposes of reviewing proportionality.³

³ This Court is cognizant that the concept of proportionality is generally reserved, at least for purposes of appellate review, for death penalty cases. See: R.C. 2929.05 and *State v. Joseph*, 73 Ohio St.3d 450 (1995), at ¶ 20. Nevertheless, this Court can certainly consider proportionality of a co-defendant's sentence when determining whether or not to grant judicial release.



A review of Murray's co-defendant's case reveals the following:

Like Murray, Byrd was indicted on December 10, 2002, on Case No. 02CR061713 for his involvement in the October 17, 2002, abduction and robbery of Farris in Elyria, Ohio. Byrd was arrested on October 18, 2002 and similar to Murray, was charged with aggravated robbery, robbery, kidnapping, and firearm specifications; unlike Murray, however, *Byrd was also charged* with aggravated burglary with a firearm specification.

A few months later, also unlike Murray, Byrd was indicted on new felony charges of intimidation, attempted tampering with evidence, and obstructing justice for conduct relating to the original case involving Farris.⁴ This is Case No. 03CR062184.

Byrd's two cases were consolidated and Murray and Byrd were tried together. Byrd was convicted of all counts in the first case and obstructing justice in the second. As noted, Murray received a total sentence of 23-years in prison; Byrd received 30 (Byrd's first sentence.)

Byrd was delivered to LCI on the same day as Murray, August 15, 2003, to begin serving his sentence.

Byrd also appealed and his convictions were upheld; however, his case was remanded for resentencing due to that fact that the trial court failed to make the proper statutory findings required to impose consecutive sentences.⁵

On March 30, 2006, Byrd was resentenced (his second sentencing) and given the same 30-year prison sentence, this time with the proper statutory findings necessary to impose consecutive sentences and notice of post-release control.

On September 8, 2008, Byrd filed a motion for resentencing.

The matter was briefed, and on April 30, 2009, the court denied the motion for resentencing. Byrd appealed on May 4, 2009, but the appeal was dismissed on June 11, 2009.

But now the story gets strange.

On June 9, 2009, for reasons that are completely unclear, Byrd was brought back to this Court and sentenced ". . . after having plead guilty . . ."⁶ At this third "sentencing," Byrd

⁴ See Case No. 03CR062184.

⁵ See Case No. 03CA008332, 2006-Ohio-763.

⁶ Recall that Byrd did not plead guilty but was convicted after a jury trial.



was again given a total of 25 years on the four charges plus three-years for the firearm specification for a total sentence of 28 years on Case No. 02CR061713, plus two more for the obstructing justice charge on Case No. 03CR062184, for a total sentence of 30-years.

On July 8, 2009, Byrd appealed again.⁷ This appeal was dismissed on February 22, 2010.

And as before, for reasons that are wholly unclear, on April 16, 2010, Byrd was resentenced *yet again* on both cases (his *fourth* sentencing.)

In this entry, on Case No. 02CR061713, the Court correctly notes that Byrd was found guilty after jury trial, but this time, Byrd was resentenced to three-years on all four counts to be served as follows,

Counts 1 and 3 consecutively to one another and concurrently with Counts 2 and 4. Counts 2 and 4 shall be served consecutively. Aggregate stated prison term is 6 years. The sentence herein shall be served consecutively to the sentence issued in Case No. 03CR062184.

In Case No. 03CR062184, the Court resentenced Byrd from two-years to three-years and ran this three year term consecutive to Case No. 02CR061713 for a total aggregate term of nine-years, plus the three-year firearm specification – hence, Byrd's release from prison on June 9, 2015, after serving about 12 years (counting pre-trial detention).

Accordingly, at Byrd's fourth resentencing, without any rhyme or reason, and arguably without statutory authority, the Court reduced his sentence from 30-years in prison to 12.

So, here is what this Court is confronted with and why, in addition to all other factors, judicial release for Murray is appropriate – on October 17, 2002, Murray and Byrd abducted and robbed Farris. They were both arrested the next day, on October 18, 2002. They remained incarcerated until their jury trial where they were both found guilty and sentenced on August 14, 2003.

Both Murray and Byrd were convicted of aggravated robbery, robbery, and kidnapping – all with firearms specifications but in addition, Byrd was convicted of aggravated burglary. Moreover, Byrd *was also convicted* of obstructing justice.

⁷ See Case No. 09CA09622.



At their respective sentencing, Murray was given an aggregate sentence of 23-years in prison. Reflecting Byrd's additional convictions, and implicitly greater culpability, the Court imposed a 28-year term on him and added an additional two-years for the obstructing justice charge for a total term of 30-years.

Both Murray and Byrd took direct appeals – both of their multiple convictions were upheld, though Byrd was resentenced so that the Court could make the appropriate findings to impose consecutive sentences and post release control. That was done, and Byrd was resentenced to the same 30-years in prison.

Murray then filed nothing until this year when he filed to vacate his sentence (which was denied) and filed for judicial release (which will be granted.)

Byrd, however, filed numerous motions and appeals including motions for resentencing. Ultimately, for reasons that are entirely unclear, and without any plausible justification, Byrd was resentenced and his prison term was reduced from 30-years in prison to 12.

Regardless, Byrd was released in 2015 after serving about 12 years while Murray, who has now served 17 years, sits in prison.

How is this justice considering that Byrd committed two additional offenses and was originally given seven (7) years more than Murray but ended-up doing five (5) years less to date?

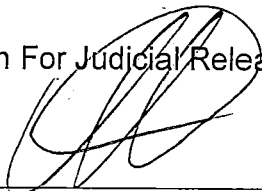
It is not.

Clearly, Byrd should have served at least as much time as Murray, if not more. That he served five-years less is unconscionable.

In any event, while judicial release for Murray will not right this wrong, it will at least ameliorate it.

IV. CONCLUSION

For the forgoing reasons, Defendant Murray's Motion For Judicial Release is well-taken and hereby GRANTED.



JUDGE D. Chris Cook