

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-090827
		C-100038
Plaintiff-Appellee,	:	C-100227
		TRIAL NO. B-0903177
vs.	:	
GREG BARBER,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Greg Barber, appeals the judgments of the Hamilton County Court of Common Pleas convicting him of importuning, a felony of the fifth degree, and possessing cocaine, a felony of the fourth degree. He was convicted after a bench trial.

One evening, C.B. went to a friend’s home, where Barber was present. She was 14 years old at the time. Barber entered the room where C.B. and her friends were conversing. C.B. testified that Barber had exposed himself and masturbated and had stated that “he would pay us money to [have sex with] him”. C.B. also testified that Barber had “snorted” a white powder that he had identified as “coke.” C.B.’s friends took the stand and substantially corroborated her testimony. Barber stipulated that police “officers recovered \* \* \* cocaine,” and he also stipulated to the admissibility of a laboratory report identifying the tested substance as cocaine.

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Barber rested without presenting evidence, and defense counsel stated in his closing argument that Barber “conceded to the drugs.” The trial court found him guilty.

In its judgment entry, the trial court stated that Barber had entered guilty pleas to the offenses and that the conviction for cocaine possession was a felony of the fifth degree. The court sentenced Barber to six months’ incarceration for importuning and to 18 months’ incarceration for possessing cocaine. The court also provided that Barber could be subject to three years’ postrelease control. On November 23, 2009, Barber filed a notice of appeal under case number C-090827.

Despite Barber’s filing of the notice of appeal, the trial court attempted to amend its judgment, and it held resentencing hearings on December 29, 2009, and February 17, 2010. Barber filed notices of appeal with respect to the resulting judgments in the cases numbered C-100038 and C-100227. The three appeals were then consolidated.

In his first, second, and fourth assignments of error, Barber now argues that the convictions were based on insufficient evidence and were against the manifest weight of the evidence

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court “is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>2</sup> To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>3</sup>

---

<sup>2</sup> *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

<sup>3</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

The importuning statute, R.C. 2907.07(B), provides that “[n]o person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.” The statute governing possession of cocaine, R.C. 2925.11(A), states that “[n]o person shall knowingly obtain, possess, or use a controlled substance.”

In this case, the convictions were in accordance with the evidence. C.B. testified that Barber had offered her money to have sex with him, and her testimony was corroborated by three other witnesses. As for the cocaine conviction, there was testimony that Barber had ingested what he referred to as “coke,” and the laboratory report confirmed that the tested substance was cocaine.

Barber argues, though, that the drug conviction was erroneous because the state failed to prove that the tested substance had been in his possession. We find no merit in this argument. The state’s eyewitnesses testified that Barber had possessed a substance that he had identified as cocaine. And implicit in the stipulation “that officers recovered \* \* \* cocaine” was that the drug had been recovered from Barber. Accordingly, we overrule the first, second, and fourth assignments of error.

In his fifth, sixth, and seventh assignments of error, Barber argues that the trial court erred in resentencing him. He first argues that the trial court erred in imposing 18 months’ incarceration for possessing cocaine. Specifically, he contends that because the trial court’s original judgment entry listed the offense as a felony of the fifth degree, the maximum sentence was 12 months’ imprisonment.

We are not persuaded by this argument. It is evident from the record that the trial court had found Barber guilty of a fourth-degree felony and that the error in the original sentencing entry was a clerical mistake. For this reason, the maximum term of imprisonment remained 18 months despite the clerical error.

Nonetheless, the trial court did err in listing the offense as a fifth-degree felony. And in addition to the clerical error, there were other errors in the trial court's judgment. The trial court erred in stating that the postrelease-control period could be a maximum of three years; in fact there was a mandatory period of five years.<sup>4</sup> And the court erred in stating that Barber had entered guilty pleas to the offenses.

But there remains the question of whether the trial court had jurisdiction to amend its judgment entry. We hold that it did not. Once the appeal numbered C-090827 had been filed, the trial court was divested of jurisdiction over the case.<sup>5</sup> The subsequent entries appealed in the cases numbered C-100038 and C-100227 were therefore nullities. Accordingly, we sustain, in part, the fifth, sixth, and seventh assignments of error.

In his third, eighth, and ninth assignments of error, Barber contends that he was denied the effective assistance of trial counsel.

To establish ineffective assistance of counsel, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable performance and that prejudice arose from counsel's performance.<sup>6</sup>

Barber argues that counsel was ineffective in stipulating to the admission of the cocaine into evidence. We find no merit in this argument. There is nothing in the record to indicate that the stipulation was improper; counsel could have been provided evidence by the state that the laboratory report was accurate and that the drugs had been recovered from Barber.

Barber next argues that counsel was deficient in stating that the defense "conceded to the drugs." Once again, we find no merit in this argument. Barber's attorney required the state to prove, through eyewitness testimony, that Barber had

---

<sup>4</sup> See R.C. 2967.28(B)(1).

<sup>5</sup> See, e.g., *State v. Haught*, 9th Dist. No. 23265, 2007-Ohio-508, ¶7.

<sup>6</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

knowingly possessed what was later determined to be cocaine, and counsel challenged the sufficiency of the evidence to support the conviction with a Crim.R. 29 motion. Barber has failed to advance any plausible defense he might have offered and has therefore failed to show that the result of the trial would have been different absent counsel's comment.

Barber also argues that counsel was deficient in failing to object to the allegedly erroneous sentence for cocaine possession and in failing to object to the resentencing after the filing of the first notice of appeal. Having already addressed those issues, we need not decide these arguments on their merits. Therefore, we overrule the third, eighth, and ninth assignments of error.

The judgment in the case numbered C-090827 is affirmed with respect to the findings of guilt. But we vacate the sentences and remand the case to the trial court for resentencing and to allow the court to correct the clerical error with respect to the degree of the possession offense. Because there were no final appealable orders with respect to the cases numbered C-100038 and C-100227, we hereby dismiss those appeals.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on August 27, 2010  
per order of the Court \_\_\_\_\_.  
Presiding Judge