

SUPREME COURT OF OHIO

State ex rel. Gregley v. Friedman

145 Ohio St. 3d 279, 2014-Ohio-4796 (Ohio 2014) · No. 2014-0289 · Decided November 4, 2014

SUMMARY

The Supreme Court of Ohio affirmed the denial of Duane Gregley’s petition for a writ of procedendo seeking resentencing concerning postrelease control. The court held that the petition was barred by res judicata, was moot because the postrelease-control order had been vacated, and lacked merit because an error involving postrelease control does not render the entire sentence void.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, Chief Justice; Paul E. Pfeifer, Justice; Terrence O'Donnell, Justice; Evelyn Lundberg Stratton? No; Lanzinger, Justice; Kennedy, Justice; French, Justice; O'Neill, Justice
JURISDICTION	Ohio
DECIDED	November 4, 2014
DOCKET	2014-0289
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gregley appealed to the Supreme Court of Ohio from the Cuyahoga County Court of Appeals' denial of his second petition for a writ of procedendo.
STANDARD OF REVIEW	The Supreme Court reviewed the denial of the writ and the summary-judgment disposition de novo as legal issues, applying the requirements for procedendo and the doctrines of res judicata and mootness.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential
PARTIES	Duane Gregley v. Judge Stuart Friedman

TOPICS

[appellate procedure](#) [post-conviction relief](#) [mootness](#) [remedies](#) [criminal procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Gregley's second petition for a writ of procedendo was barred by res judicata after he had previously challenged the failure to impose and the later imposition of postrelease control.
2. Whether the procedendo action was moot after the trial court vacated the postrelease-control order.
3. Whether an error in imposing postrelease control rendered Gregley's entire sentence void or instead affected only the offending portion of the sentence.

HOLDINGS

1. Gregley's petition for a writ of procedendo was barred by res judicata because he had previously challenged both the failure to impose postrelease control and the later imposition of postrelease control through direct appeal and collateral proceedings.
2. The procedendo action was moot because the trial court had vacated the postrelease-control order after the court of appeals reversed it.
3. An error in imposing postrelease control does not render the entire sentence void; only the offending portion of the sentence is subject to review.

KEY QUOTATIONS

"We affirm the Cuyahoga County Court of Appeals' judgment denying a writ of procedendo to compel a trial judge to resentence appellant, Duane Gregley. The action is barred by res judicata and is moot, and appellant's arguments in favor of the writ are wrong on the merits." (2014-Ohio-4796, ¶ 1)

"However, we have rejected an argument that an entire sentence is void because of an error in imposing postrelease control, holding that only the offending portion of the sentence is subject to review." (2014-Ohio-4796, ¶ 13)

FACTUAL BACKGROUND

In 1998, Gregley was convicted of aggravated murder and other offenses and received consecutive sentences, including life without parole. Postrelease control was not specifically imposed at the sentencing hearing or in the sentencing entry. Years later, the trial court imposed postrelease control, but the court of appeals reversed because Gregley had completed the sentences for the offenses to which postrelease control had been assigned, and the trial court subsequently vacated the order. Gregley then sought procedendo to compel the trial judge to issue a final, appealable order, arguing that the original sentence was void because postrelease control had not been imposed.

PROCEDURAL HISTORY

Gregley was convicted and sentenced in 1998, and his convictions were affirmed on direct appeal. After he sought a writ of procedendo concerning postrelease control, the court of appeals granted summary judgment to

Judge Friedman, and the Supreme Court of Ohio dismissed Gregley's appeal. The trial court later imposed postrelease control, but the court of appeals reversed because Gregley had completed the relevant sentences; the trial court then vacated the postrelease-control order. Gregley filed a second procedendo action seeking an order requiring a final, appealable sentencing entry, but the court of appeals denied relief on res judicata grounds.

DISPOSITION

affirmed

CASES CITED

- State v. Gregley, 8th Dist. Cuyahoga No. 75032, 1999 WL 1204872 (Dec. 16, 1999)
- 88 Ohio St. 3d 1514, 728 N.E.2d 402 (2000)
- 8th Dist. Cuyahoga No. 75032, 2000 WL 1610106 (Oct. 18, 2000)
- State ex rel. Gregley v. Friedman, 8th Dist. Cuyahoga No. 96255, 2011-Ohio-2293, ¶ 11
- 130 Ohio St. 3d 1473, 2011-Ohio-6124, 957 N.E.2d 1166
- State v. Gregley, 8th Dist. Cuyahoga No. 97469, 2012-Ohio-3450, ¶ 12
- 134 Ohio St. 3d 1421, 2013-Ohio-158, 981 N.E.2d 886
- State ex rel. Carnail v. McCormick, 126 Ohio St. 3d 124, 2010-Ohio-2671, 931 N.E.2d 110
- State v. Fischer, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶¶ 38-39

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