

[Cite as *State v. Harris*, 2011-Ohio-482.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95010

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MAURICE A. HARRIS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-386147

BEFORE: Sweeney, J., Blackmon, P.J., and Gallagher, J.

RELEASED AND JOURNALIZED: February 3, 2011

ATTORNEY FOR APPELLANT

Iverson M. Jackson, Esq.
323 W. Lakeside Avenue
420 Lakeside Place
Cleveland, Ohio 44113-1009

ATTORNEYS FOR APPELLEE

William D. Mason, Esq.
Cuyahoga County Prosecutor
By: Thorin O. Freeman, Esq.
Assistant County Prosecutor
1200 Ontario Street
Cleveland, Ohio 44114

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant Maurice Harris (“defendant”) appeals his 19 year and six month prison sentence. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On April 20, 2000, defendant was convicted of felonious assault, endangering children, and domestic violence. On May 30, 2000, defendant was sentenced to 19 years and six months in prison. This court affirmed his convictions and sentence. See *State v. Harris* (June 1, 2001), Cuyahoga App. No. 78241.

{¶ 3} On November 6, 2009, defendant filed a pro se motion to vacate his sentence, arguing that his sentence was void for failure to impose postrelease control under *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961. On April 7, 2010, the court held a de novo resentencing hearing, and on April 14, 2010, the court imposed the same prison

sentence, including the proper imposition of postrelease control.

{¶ 4} Defendant appeals and raises one assignment of error for our review.

{¶ 5} “I. Pursuant to Crim.R. 32, the trial court lost jurisdiction to impose a sentence upon Appellant due to an unreasonable delay between Appellant’s April 20, 2000 guilty verdicts and the April 7, 2010 sentencing hearing and therefore said sentence is void.”

{¶ 6} Crim.R. 32(A) states that “[s]entence shall be imposed without unnecessary delay.” Defendant argues that the ten-year delay between conviction and sentence in his case is unreasonable under Crim.R. 32(A). However, defendant’s argument is misleading, because there was not a ten-year delay between conviction and sentencing in his case. He was convicted on April 20, 2000 and sentenced on May 30, 2000. Defendant was resentenced, upon his November 6, 2009 request, on April 14, 2010. Thus, there was a ten-year lapse between his conviction and his resentencing.

{¶ 7} Furthermore, this court has held that Crim.R. 32(A) does not apply to resentencing. See *State v. Huber*, Cuyahoga App. No. 85082, 2005-Ohio-2625. Therefore, the court retained jurisdiction to resentence defendant. The Ohio Supreme Court’s recent holding in *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238, bolsters our conclusion that defendant’s 19 year and six month prison sentence stands. In *Fischer*, the Court overruled *Bezak* to the extent that it held “a complete de novo resentencing is not required when a defendant prevails only as to the postrelease control aspect of a particular sentence * * * and

the limited resentencing must cover only the postrelease control.” *State v. Fischer*, at ¶17 (quoting *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶21-22) (O’Connor, J., dissenting, joined by Lundberg Stratton, J.).

{¶ 8} Accordingly, defendant’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

PATRICIA ANN BLACKMON, P.J., and
SEAN C. GALLAGHER, J., CONCUR