

[Cite as *State v. Nelson*, 2018-Ohio-4794.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106798

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARL A. NELSON, SR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-86-212590-B

BEFORE: E.A. Gallagher, A.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: November 29, 2018

FOR APPELLANT

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EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant Carl Nelson, Sr. appeals from the denial of his motion to vacate void sentencing journal entry in the Cuyahoga County Court of Common Pleas. We affirm.

Facts and Procedural History

{¶2} This court has previously described the relevant facts and procedural history of this case as follows:

On October 21, 1987, Nelson was convicted of four counts of rape and one count of kidnapping, for crimes against a 14-year-old girl. At the sentencing hearing on October 28, 1987, the trial court expressed extreme outrage over Nelson's conduct and empathized with the victim and the tragedy she had suffered. The court sentenced Nelson to 15 to 25 years on each of the five counts.

State v. Nelson, 8th Dist. Cuyahoga No. 95420, 2010-Ohio-6032, ¶ 3.

{¶3} The court ordered the counts to be served consecutively. *Id.* at ¶ 14; *State v. Nelson*, 8th Dist. Cuyahoga No. 101228, 2014-Ohio-5285, ¶ 2.

Law and Analysis

I. Consecutive Sentences

{¶4} Nelson argues that his sentencing entry is void because the trial court imposed concurrent sentences at his oral sentencing hearing but subsequently ordered his sentences to be served consecutively in his sentencing journal entry.

{¶5} This court has previously rejected Nelson’s contention that the trial court imposed concurrent rather than consecutive sentences at his oral sentencing hearings. In *State v. Nelson*, 8th Dist. Cuyahoga No. 95420, 2010-Ohio-6032, we denied substantially the same argument raised in the present appeal and stated:

A review of the record demonstrates that the trial court intended to run Nelson’s five sentences consecutively. At the hearing, the court made its intentions known by stating that it felt constrained by the enactment of maximum terms and that it felt Nelson was a menace to society and unfit to live in the community.

Id. at ¶ 14.

{¶6} In *State ex rel. Nelson v. Russo*, 8th Dist. Cuyahoga No. 96706, 2011-Ohio-3698, Nelson again raised the present challenge to his consecutive sentences through a mandamus action. In denying Nelson’s application for a writ of mandamus this court held that his argument was barred by res judicata because the issue had been addressed and rejected in his 2010 appeal. *Id.* at ¶ 7.¹

¹ Nelson also argues for the first time on appeal that his sentencing entry is void because it fails to specifically address the aggravated felony and violence specifications attached to his kidnapping count. However, this court has held that “the failure to address and sentence with regard to any specifications does not render a sentencing entry a nonfinal, nonappealable order. The failure of a trial court to address a specification constitutes a sentencing error that must be addressed upon appeal.” *State ex rel. Eaves v. Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 105041, 2016-Ohio-8063, ¶ 5; *State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 2012-Ohio-109, 961 N.E.2d 192.

{¶7} Appellant's sole assignment of error is overruled.

{¶8} This is the third time that Nelson has presented substantially the same argument pertaining to his sentencing entry. Nelson has taxed the limited resources of this court through the continuous filing of appeals that are not reasonably grounded in fact or warranted by existing law.

{¶9} The judgment of the trial court is affirmed.

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

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.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR