

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-1134
	:	(C.P.C. No. 08CR-07-5359)
Andre R. Banks,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 24, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Andre R. Banks, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Andre R. Banks is appealing from the trial court's refusal to modify his sentence imposed on February 3, 2009. He assigns three errors for our consideration:

1. The trial court abused its discretion when it upheld a sentence, where it was required to consider statutory policies and factors that apply, or do not apply, to every felony offense.
2. The statutory range mentioned in *State v. Foster*, applied in appellant's case, is based on errors in fact which made his sentence aggravated and substantiate an abuse of discretion.
3. H.B. 86 enacted changes in sentencing found to be unconstitutional by the United States Supreme Court in *Oregon v. Ice*, and should apply to appellant retroactively or

not, since the original sentencing policy appellant was sentenced under was unconstitutional in the first place.

{¶ 2} As noted above, Banks was sentenced on February 3, 2009. He pursued a direct appeal which resulted in the judgment and his sentence being affirmed.

{¶ 3} In January 2010, he filed a petition for post-conviction relief, alleging ineffective assistance of trial counsel. In March of that year, he moved to vacate his sentence because of alleged defects in the imposition of post-release control. The trial court overruled the motions.

{¶ 4} Banks pursued a second round of appeals and again the trial court's decisions were affirmed.

{¶ 5} In October 2011, Banks filed another motion for modification of sentence. This motion was also overruled, resulting in the present appeal.

{¶ 6} The judgment and sentence imposed on Banks have been affirmed twice on appeal. The issues under assignment of error Nos. 1 and 2 have already been addressed or could have been addressed on the initial appeal. As a result, the issues argued under those assignments of error are subject to the doctrine of res judicata. Those issues will not be addressed again now.

{¶ 7} The first and second assignments of error are overruled.

{¶ 8} In the third assignment of error, Banks argues that he should benefit from recently enacted changes to the criminal code in Ohio. He does not benefit from H.B. No. 86's changes to the code. First, the statutory changes do not specify that inmates already sentenced will benefit from the changes. Second, R.C. 1.58(B) provides for only those upon whom a sentence has not yet been imposed to benefit from statutory changes. The sentence for Banks was imposed over two years ago. The third assignment of error is overruled.

{¶ 9} The trial court was well within its discretion to overrule Banks' motion for modification of sentence. All three assignments of error having been overruled, the judgment of the trial court is once again affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.
