

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-926 (C.P.C. No. 10CR06-3677)
Kevin A. Barclay,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on April 25, 2013

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

*Mark M. Hunt*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Plaintiff-appellant, the State of Ohio, appeals from a judgment entry of conviction and sentence entered by the Franklin County Court of Common Pleas that sentenced defendant-appellee, Kevin A. Barclay, to community control. For the following reasons, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} On June 22, 2010, a Franklin County Grand Jury indicted Barclay with one count of possession of cocaine in violation of R.C. 2925.11. The charge alleged that he possessed an amount of crack cocaine equal to or exceeding 5 grams but less than 10 grams. The offense allegedly occurred on October 6, 2009. Barclay initially entered a not guilty plea, but on May 16, 2011, he withdrew that plea and entered a guilty plea to the

charge. The trial court accepted Barclay's guilty plea, found him guilty, and set the matter for sentencing.

{¶ 3} The trial court did not sentence Barclay until October 11, 2012. The trial court sentenced Barclay to a term of community control under the amended version of R.C. 2925.11(C)(4)(b) that went into effect on September 30, 2011. The state objected, noting that prior to those amendments, the former version of R.C. 2925.11(C)(4)(b) required a mandatory prison term for Barclay's offense. The state requested the trial court to sentence Barclay under the version of the statute in effect at the time of the offense. The trial court rejected the state's argument, relying on this court's opinion in *State v. Limoli*, 10th Dist. No. 11AP-924, 2012-Ohio-4502, in which we rejected the same argument.

{¶ 4} The state appeals and assigns the following error:

The trial court erred in failing to apply the law in effect at the time of defendant's crack-cocaine offense, which required that defendant be sentenced for a third-degree felony and required that the court impose a mandatory prison term.

## **II. *State v. Limoli***

{¶ 5} The state concedes that our decision in *Limoli* resolves this case. We agree. In that case, the state presented the same arguments it does here in support of its proposition that the former version of R.C. 2925.11(C)(4)(b) that was effective at the time of the drug offense should apply to the defendant's sentencing. We fully considered those arguments and rejected them. *Limoli* at ¶ 50-65. The state argues that it has filed an application for reconsideration in *Limoli*. This court, however, recently considered and rejected that application. *State v. Limoli*, 10th Dist. No. 11AP-924 (Feb. 5, 2013) (memorandum decision).

## **III. Conclusion**

{¶ 6} Based on *Limoli*, we overrule the state's assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and SADLER, JJ., concur.

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