

[Cite as *State v. Cannon*, 2005-Ohio-974.]

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHRISTOPHER K. CANNON

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 04 COA 72

OPINION

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 02 CRI 112

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: March 4, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

CHRISTOPHER R. TUNNELL  
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STEPHEN P. HARDWICK  
ASSISTANT PUBLIC DEFENDER  
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Wise, J.

{¶1} Appellant Christopher Cannon appeals the sentence imposed by the Ashland County Court of Common Pleas on the basis that the resentencing proceeding occurred outside of his presence. The following facts give rise to this appeal.

{¶2} On October 25, 2002, appellant was charged with one count of aggravated burglary and one count of felonious assault. On January 27, 2003, appellant plead guilty to burglary and felonious assault. By judgment entry filed on March 10, 2003, the trial court sentenced appellant to ten years in prison. Appellant filed an appeal and this court reversed for resentencing pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. See *State v. Cannon*, Ashland App. No. 03COA063, 2003-Ohio-5365.

{¶3} Upon remand, the trial court reimposed the same sentence without conducting a hearing. See Judgment Entry, Aug. 11, 2004. Appellant filed a delayed appeal from this judgment entry and sets forth the following sole assignment of error for our consideration:

{¶4} "I. THE TRIAL COURT ERRED BY HOLDING A RESENTENCING PROCEEDING OUTSIDE OF APPELLANT'S PRESENCE."

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{¶5} Appellant maintains the trial court erred when it resentenced him in absentia. We agree.

{¶6} Upon remand by this court for resentencing, the trial court resentenced appellant without his presence. Crim.R. 43(A) and Section 10, Article I of the Ohio

Constitution mandate a defendant's presence at every stage of the criminal proceedings, including imposition of sentence.

{¶7} In *State v. Wallace*, Richland App. No. 2002CA0072, 2003-Ohio-4119, at ¶ 14, we set forth the law regarding this issue as follows:

{¶8} “A defendant has a fundamental right to be present at all critical stages of his criminal trial. *State v. Hill*, 73 Ohio St.3d 433, 444, 1995-Ohio-287, 653 N.E.2d 271, citing, Crim.R. 43(A) and Section 10, Article I, Ohio Constitution. The United States Supreme Court has stated that an accused is guaranteed the right to be present at all stages of a criminal proceeding that is critical to its outcome when his or her absence may frustrate the fairness of the proceedings. *Kentucky v. Stincer* (1987), 482 U.S. 730, 745, 107 S.Ct. 2658. This right is embodied in Crim.R. 43(A). Criminal Rule 43(A) provides that, ‘the defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, \* \* \*.’”

{¶9} We note the state concurs with appellant's argument. See Appellee's Brief at 5.

{¶10} Accordingly, we find the trial court erred in resentencing appellant in absentia.

{¶11} Appellant's sole assignment of error is sustained.

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{¶12} For the foregoing reasons, the judgment of the Court of Common Pleas, Ashland County, Ohio, is hereby reversed and remanded to said court for resentencing.

By: Wise, J.

Farmer, P. J., and

Edwards, J., concur.

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JUDGES

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