

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
GERALD D. FIELDS	:	Case No. CT11-0037
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case. No. CR2009-0166

JUDGMENT: Affirmed

DATE OF JUDGMENT: November 21, 2011

APPEARANCES:

For Plaintiff-Appellee

ROBERT L. SMITH
27 North Fifth Street
Zanesville, OH 43701

For Defendant-Appellant

GERALD D. FIELDS, PRO SE
P.O. Box 57
Marion, OH 43301

Farmer, P.J.

{¶1} On October 13, 2009, appellant, Gerald Fields, pled guilty to one count of trafficking in drugs in violation of R.C. 2925.03 and one count of permitting drug abuse in violation of R.C. 2925.13. By judgment entry filed November 9, 2009, the trial court sentenced appellant to an aggregate term of nine years in prison. Appellant's case was affirmed on appeal. *State v. Fields*, Muskingum App. No. CT2009-0057, 2010-Ohio-6233.

{¶2} On July 19, 2011, appellant filed a motion for sentence modification, claiming his sentence should be reduced pursuant to H.B. No. 86. By journal entry filed July 22, 2011, the trial court denied the motion.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. As appellant failed to list any assignments of error pursuant to App.R. 16(A)(3), we glean the following assignment from appellant's arguments:

I

{¶4} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SENTENCE MODIFICATION PURSUANT TO H.B. NO. 86."

{¶5} We note this case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶6} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form."

{¶7} This appeal shall be considered in accordance with the aforementioned rule.

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{¶8} Appellant claims the trial court erred in denying his motion for sentence modification pursuant to H.B. No. 86. We disagree.

{¶9} The sentencing reforms of H.B. No. 86 eliminated any distinction between crack cocaine and powder cocaine, and lowered several cocaine thresholds. The effective date of the reforms was September 30, 2011. Appellant was sentenced on November 9, 2009.

{¶10} Contained within H.B. 86 at Section 4 is the specific legislative intent not to make the changes retroactive:

{¶11} "The amendments***apply to a person who commits an offense specified or penalized under those sections on or after the effective date of this section and to a person to whom division (B) of section 1.58(B) of the Revised Code makes the amendments applicable."

{¶12} R.C. 1.58(B) provides: "If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended."

{¶13} Based upon the statutory provisions, we find the trial court did not err in denying appellant's motion for sentence modification.

{¶14} The sole assignment of error is denied.

{¶15} The judgment of the Court of Common Pleas of Muskingum County, Ohio
is hereby affirmed.

By Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

SGF/sg 1103

