

[Cite as *State v. Hardwick*, 2004-Ohio-5857.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 83604

STATE OF OHIO,	:	ACCELERATED DOCKET
Plaintiff-Appellee	:	JOURNAL ENTRY
vs.	:	AND
JACQUE HARDWICK,	:	OPINION
Defendant-Appellant	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	NOVEMBER 4, 2004
	:	
	:	
CHARACTER OF PROCEEDING	:	Criminal appeal from Common Pleas Court Case No. CR-422533
JUDGMENT	:	APPEAL DISMISSED AS MOOT
	:	
DATE OF JOURNALIZATION	:	
APPEARANCES:		

For Plaintiff-Appellee:

WILLIAM D. MASON
Cuyahoga County Prosecutor
MATTHEW E. MEYER
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For Defendant-Appellant:

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ANNE L. KILBANE, P.J.:

{¶ 1} Jacque Hardwick appeals from an order of Judge Daniel Gaul that sentenced him to consecutive prison terms for two felonies of the fourth and fifth degrees arising out of a single incident. He claims that his due process rights were violated when he was given consecutive sentences, and the aggregate sentence exceeded the maximum sentence of the highest felony.

{¶ 2} From the record we glean the following: Hardwick was indicted in April 2002 on two counts of drug trafficking¹, one count of possession of drugs,² and one count of tampering with evidence³. He pleaded guilty to amended charges of trafficking in drugs, a fifth degree felony, and attempted tampering with evidence, a fourth degree felony, with the remaining charges dismissed. In September 2002, he was sentenced to consecutive terms of eleven months' imprisonment for drug trafficking and fifteen months' imprisonment for attempted tampering with evidence. He appealed, and we affirmed in part, reversed in part, and remanded for resentencing.

¹R.C. 2925.03

²R.C. 2925.11

³R.C. 2921.12

{¶ 3} In September 2003, after a year in prison, Hardwick returned for resentencing and received the same twenty-six month sentence. Hardwick appeals on the assignments of error set forth in the appendix to this opinion.

{¶ 4} In *State v. Wilson*,⁴ the Supreme Court of Ohio held as follows:

{¶ 5} "Where a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction."⁵

{¶ 6} The record reveals that Hardwick received a twenty-six month sentence and has since been released. Since he only challenged the sentence in his assignments of error and not the underlying conviction, the fact that he has served his sentence renders the issue moot.⁶

APPENDIX A:

"I. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SENTENCED TO CONSECUTIVE SENTENCES.

II. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT, IN EFFECT, EXCEEDED THE MAXIMUM SENTENCE BY IMPOSING CONSECUTIVE SENTENCES."

⁴(1975), 41 Ohio St. 2d 236, 325 N.E.2d 236, syllabus.

⁵See, also, *State v. Berndt* (1987), 29 Ohio St.3d 3, 4, 504 N.E.2d 712 (reaffirming the syllabus of *Wilson*).

⁶*State v. Blivens* (Sept. 30, 1999), Lake App.No. 98-L-189.

It is ordered that the parties bear their own costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

<u>DIANE KARPINSKI, J.,</u>	<u>And</u>
<u>JAMES J. SWEENEY, J.</u>	<u>CONCUR</u>

ANNE L. KILBANE
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).