

[Cite as *State v. House*, 2011-Ohio-1076.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95145

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**STEVEN HOUSE**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-369232

**BEFORE:** S. Gallagher, J., Celebrezze, P.J., and Jones, J.

**RELEASED AND JOURNALIZED:** March 10, 2011

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SEAN C. GALLAGHER, J.:

Appellant Steven House appeals his sentence by the Cuyahoga County Court of Common Pleas. For the reasons set forth herein, we affirm.

On June 27, 2000, House was convicted on four counts of felonious assault with peace officer specifications (Counts 3, 5, 6, and 8), one count of failure to comply (Count 9), and one count of driving under the influence (Count 11). The trial court sentenced him to six years on each felonious assault count, 18 months for failure to comply, and six months for DUI. The court ran Counts 3, 5, and 6 consecutively, and the remaining counts were to run concurrently for a total of 18 years.

House appealed, and this court affirmed his convictions, but vacated his sentence and remanded the case for resentencing. *State v. House* (Oct. 18, 2001), Cuyahoga App. No. 78239. On January 31, 2002, the trial court resentenced House to five years on Counts 3, 5, 6, and 8, and ran Counts 3, 5, and 6 consecutively for a total of 15 years. The prison terms on the remaining two counts were unchanged. However, the journal entry reflected that the trial court ran all four felonious assault terms consecutively. House appealed, and this court affirmed the sentence but remanded the case to the trial court to correct the sentencing entry to reflect that only three felonious assault counts were to run consecutively. *State v. House*, Cuyahoga App. No. 80939, 2002-Ohio-7227.

On July 18, 2008, House filed a motion to correct void sentences because he was not advised of postrelease control at resentencing in 2002. The state conceded this issue, and the matter was stayed until the Ohio Supreme Court decided *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958. A resentencing hearing was held on April 27, 2010. At the hearing, the parties acknowledged on the record that House had served his sentence on all but Count 6 and what remained of Count 5, and that the court could only resentence him on the unexpired felonious assault terms. See *State v. Dresser*, Cuyahoga App. No. 92105, 2009-Ohio-2888. The parties also noted that House was not prejudiced by resentencing because his total prison term was not due to expire until 2015.

The trial court resentenced House to five years on Count 6 to be served consecutive to any remaining term on Count 5 and properly imposed postrelease control as part of his sentence.

House filed this appeal, citing one assignment of error for our review. It provides, “appellant is entitled to immediate release as the trial court sentenced appellant to five (5) years in prison at a new sentencing hearing after he had already served ten (10) years in prison.”

There is no dispute that based on the law at that time, House was entitled to a de novo hearing after the 2002 resentencing hearing because of the trial court’s failure to impose postrelease control. See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

In this case, the trial court conducted a de novo sentencing hearing in 2010. House premises his appeal on the fact that when the court sentenced him anew in 2010, he started with a clean slate with regard to sentencing. House cites *Bezak* for the proposition that his sentence was void, or non-existent, for its failure to include postrelease control. House concludes from this that because his prison term began in 2000, he has completed his sentence on all counts, including Count 6, because he is entitled to credit for time served from 2000 on. He argues that the trial court was without authority to order a new sentence be served consecutively to a void sentence.

“For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo

sentencing hearing in accordance with decisions of the Supreme Court of Ohio.” *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958. “Once an offender has served the prison term ordered by the trial court, he or she cannot be subject to resentencing in order to correct the trial court’s failure to impose postrelease control at the original sentencing hearing.” *State v. Marsh*, Cuyahoga App. No. 89281, 2007-Ohio-6491, ¶ 9, citing *Bezak* at ¶ 18.

In House’s case, he was sentenced in 2002 and was rightfully entitled to the de novo resentencing he received in 2010. However, he is not entitled to another de novo resentencing. In its recent decision in *State v. Fischer*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-6238, \_\_\_ N.E.2d \_\_\_, ¶ 40, the Supreme Court held that “the scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing.”

Under *Fischer*, House cannot challenge the trial court’s imposition of three consecutive five-year terms on Counts 3, 5, and 6, as originally imposed in 2002, and reaffirmed in 2010. The only issue raised in 2010 was the trial court’s failure to impose postrelease control in 2002; all other issues, including the underlying prison terms, are barred by res judicata. See *id.*

House is required to serve out his 15-year prison term, which now includes five years of postrelease control. We do not find the trial court erred in resentencing House in 2010, and he is not entitled to immediate release. House’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
LARRY A. JONES, J., CONCUR