

[Cite as *State v. Pimental*, 2011-Ohio-335.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 94789**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**GREGORIO PIMENTAL**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-441436

**BEFORE:** Celebrezze, J., Kilbane, A.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** January 27, 2011

## **ATTORNEY FOR APPELLANT**

David L. Doughten  
The Brownhoist Building  
4403 St. Clair Avenue  
Cleveland, Ohio 44103

## **ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor  
BY: Kristen L. Sobieski  
Assistant Prosecuting Attorney  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Gregorio Pimental, a.k.a. Rolando Gonzalez, appeals the trial court's decision finding him guilty of a major drug offender specification. After reviewing the record, we affirm.

{¶ 2} A complete recitation of the facts in this case can be found in *State v. Pimental*, Cuyahoga App. No. 84034, 2005-Ohio-384, ¶3-8. In 2001, James Smith, who had previously been selling drugs for appellant, terminated the relationship and ceased communicating with appellant. *Id.* at ¶3. In late 2001, Detective James Cudo with the Cleveland Police Department began targeting Smith as a suspect in a cocaine trafficking operation. *Id.* at ¶4. During a search of two of Smith's homes, the police

found a duffle bag containing appellant's car title and birth certificate and multiple items related to drug trafficking. Id. at ¶5.

{¶ 3} After this search, appellant became the focus of the drug trafficking investigation and Smith was used as an informant. Id. at ¶6. The police monitored phone calls between Smith and appellant in which appellant agreed to deliver "two or three" kilograms of cocaine to Smith. Id. After arriving at the prearranged address where the drugs were to be exchanged, the police conducted a search of appellant's vehicle. Id. at ¶7. This search revealed no drugs, but a drug dog alerted to a hollow compartment inside appellant's driver's side door. Id.

{¶ 4} Appellant was indicted in a seven-count indictment for one count of engaging in a pattern of corrupt activity, one count of drug trafficking with a major drug offender specification, one count of possession of drugs, one count of possessing criminal tools, two counts of conspiracy to commit drug trafficking, and one count of tampering with records. Appellant waived his right to a jury trial, and a bench trial commenced in October 2003. Appellant was ultimately found guilty of drug trafficking with a major drug offender specification and tampering with records. He was sentenced to ten years for drug trafficking plus an additional one year for the major drug offender specification. This term was to run concurrently to three years for tampering with records, for an aggregate sentence of 11 years in prison.

{¶ 5} Appellant's drug trafficking conviction was affirmed in *Pimental*, supra, but he did not challenge the major drug offender specification or his conviction for tampering with records. Subsequently, on October 25, 2007, the state filed a motion in the trial court requesting resentencing of appellant so that postrelease control could be imposed. The trial court granted the state's motion. On December 21, 2009, the trial court resentenced appellant to an identical prison term, but included a proper postrelease control advisement. During the resentencing hearing, the trial court overruled a motion by appellant to strike the major drug offender specification. Appellant has now filed this appeal challenging the sufficiency of the evidence supporting the major drug offender specification.

### **Law and Analysis**

{¶ 6} Although the state contends that there was sufficient evidence to support the major drug offender specification, it also argues that appellant's arguments are barred by the doctrine of res judicata. We agree.

{¶ 7} The doctrine of res judicata bars judicial review of claims that were or could have been addressed in an individual's direct appeal. *State v. Walker*, Cuyahoga App. No. 93749, 2010-Ohio-4008, citing *State v. Holt*, Cuyahoga App. No. 87019, 2006-Ohio-3327, citing *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus. See, also, *State v. Fischer*, \_\_\_\_ Ohio St.3d \_\_\_\_, 2010-Ohio-6238. Appellant filed a

direct appeal challenging the validity of his drug trafficking conviction. He failed to challenge the major drug offender specification in that appeal; therefore, his arguments are barred by res judicata. Appellant's sole assignment of error is overruled.

### **Conclusion**

{¶ 8} Appellant directly appealed his convictions and did not challenge the evidence supporting the major drug offender specification. His arguments are therefore barred by res judicata and will not be addressed by this court.

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.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, A.J., and

COLLEEN CONWAY COONEY, J., CONCUR