

[Cite as *State v. Hayden*, 2011-Ohio-616.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94955**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOHN HAYDEN**

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-464065

**BEFORE:** Sweeney, J., Kilbane, A.J., and Keough, J.

**RELEASED AND JOURNALIZED:** February 10, 2011  
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**JAMES J. SWEENEY, J.:**

{¶ 1} Defendant-appellant John Hayden (“defendant”) appeals the court’s resentencing him to include postrelease control. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} In May of 2005, defendant pled guilty to various offenses and was sentenced to an aggregate of five years in prison. This sentence failed to properly include postrelease control, and on March 15, 2010, the court held a resentencing hearing. At this hearing, the court properly informed defendant that postrelease control was part of his sentence. However, the court did not mention a prison term.

{¶ 3} On March 18, 2010, the court issued a journal entry regarding the resentencing

hearing, which “reimposed” the original five-year prison sentence and properly included postrelease control.

{¶ 4} On March 19, 2010, defendant was released from prison.

{¶ 5} Defendant appeals and raises one assignment of error for our review.

{¶ 6} “I. Mr. Hayden was not provided a sentencing de novo, as required.”

{¶ 7} Specifically, defendant argues that the court erred when it failed to conduct a de novo resentencing hearing; however, he is not subject to a second resentencing because his original sentence has expired. See *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568 (superseded by statute on other grounds). Therefore, defendant claims his sentence should be vacated and he should be discharged from postrelease control.

{¶ 8} The Ohio Supreme Court’s recent decision in *State v. Fischer*, 2010-Ohio-6238, ¶29, governs this case: “the new sentencing hearing to which an offender is entitled [for failure to properly include postrelease control] is limited to proper imposition of postrelease control.” See, also, R.C. 2929.191.

{¶ 9} The March 15, 2010 resentencing hearing was limited to properly imposing postrelease control and was conducted before defendant’s sentence was completed. This suffices under *Fischer* and defendant’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.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR