

[Cite as *State v. Holly*, 2015-Ohio-4771.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102764

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ALFRED HOLLY**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-97-356387-A

**BEFORE:** McCormack, J., Celebrezze, A.J., and Keough, J.

**RELEASED AND JOURNALIZED:** November 19, 2015

**ATTORNEY FOR APPELLANT**

Edward M. Heindel  
450 Standard Building  
1370 Ontario Street  
Cleveland, OH 44113

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: Mary McGrath  
Assistant County Prosecutor  
8th Floor, Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} In 1998, defendant-appellant, Alfred Holly, was convicted by a jury of murdering a 15-year-old boy in a gang-related shooting. He was sentenced to 28 years to life in prison. In his direct appeal, this court affirmed his convictions, which included having a weapon while under disability. This court, however, remanded the case for resentencing on the weapon while under disability count. For reasons not made known on the record, the trial court did not resentence him until 2015. Upon resentencing, his sentence for the weapon while under disability count was reduced from five years to one year, concurrent with his prison term for murder. Holly now appeals from his resentencing, claiming that his speedy trial rights were violated by the long delay in his resentencing. Upon a review of the record and applicable law, we affirm the trial court's judgment.

{¶2} The record reflects that Holly was convicted of murder (with firearm and repeat violent offender specifications) and having a weapon while under disability. He received 15 years to life for his conviction of murder, three years for the gun specifications, five years for the repeat violent offender specification, and five years for having a weapon while under disability. These terms were to run consecutively, for a total term of 28 years to life. This court affirmed Holly's convictions. However, it remanded the matter for resentencing because his weapon while under disability offense was a fifth-degree felony but the trial court erroneously sentenced him for a third-degree

felony. *State v. Holly*, 8th Dist. Cuyahoga No. 74452, 1999 Ohio App. LEXIS 3232 (July 8, 1999).

{¶3} Upon remand, the trial court initially scheduled a resentencing hearing immediately, but continued it pending Holly's appeal of this court's decision to the Supreme Court of Ohio. In November 1999, the Supreme Court of Ohio declined a review of this case. *State v. Holly*, 87 Ohio St.3d 1451, 719 N.E.2d 967 (1999). Subsequently, in 2001, Holly filed a motion for a new trial. The docket next reflects the court scheduled a resentencing hearing for August 31, 2005. On that day, the court denied his motion for a new trial but, for reasons not made known on the record, the resentencing did not take place.

{¶4} The case then went dormant for nine years. In December 2014, Holly filed a motion for resentencing. In March 2015, the belated resentencing finally took place. Holly was represented by counsel. For his weapon while under disability offense, the trial court sentenced him to one year in prison, the maximum term for a fifth-degree felony, to run concurrently with his sentence for murder. As a result, his original aggregate term of 28 years to life was reduced to 23 years to life.

{¶5} Holly appeals from the trial court's judgment, raising two assignments of error:

1. The trial court violated Crim.R. 32 and Holly's speedy trial rights when it delayed resentencing for a period of more than 15 years.

2. The trial court erred when it sentenced Holly to the maximum possible prison sentence for a felony of the fifth degree without analyzing the statutory factors in R.C. 2929.11 and R.C. 2929.12.

{¶6} Under the first assignment of error, Holly claims the 15-year delay between remand and resentencing violated Crim.R. 32(A) and warranted a discharge.

{¶7} Crim.R. 32(A) states that “[s]entence shall be imposed without unnecessary delay.” It is well settled, however, that Crim.R. 32(A) is not applicable to resentencings. *State v. McQueen*, 8th Dist. Cuyahoga No. 91370, 2009-Ohio-1085, ¶ 5, citing *State v. Taylor*, 8th Dist. Cuyahoga No. 63295, 1992 Ohio App. LEXIS 5520 (Oct. 29, 1992).

{¶8} Although Crim.R. 32(A) is not applicable to this resentencing, we do recognize that “excessive delays in sentence execution have an adverse impact on the proper administration of justice by diminishing the deterrent effect intended by criminal penalties.” *McQueen* at ¶ 5, citing *State v. Zucal*, 82 Ohio St.3d 215, 220, 694 N.E.2d 1341 (1998). “The adverse impact is measured by the prejudice caused by any delay in resentencing.” *Id.* Applying this principle, this court has found prejudice in a resentencing delay of 22 months when a defendant had been released on bond during that time period but was subsequently ordered to serve additional time. *Id.*, citing *Euclid v. Brackis*, 135 Ohio App.3d 729, 735 N.E.2d 511 (8th Dist.1999). This court found no prejudice, however, in an 11-month delay when the defendant had been incarcerated during the period of delay and his six-year sentence meant he would not have been

eligible for release during the period of delay. *Id.*, citing *State v. Huber*, 8th Dist. Cuyahoga No. 85082, 2005-Ohio-2625.

{¶9} Here, at resentencing, Holly's sentence for the weapon while under disability offense was reduced from a consecutive five-year term to a concurrent one-year term. There is no doubt that the 15-year delay in resentencing was a serious failure by the criminal justice system. However, Holly had remained lawfully incarcerated during the delay, due to the length of his sentence for his conviction of murder and the accompanying specifications. Therefore, although the delay in resentencing here was extraordinary, we do not find that Holly was actually prejudiced. The extreme remedy of discharge is not warranted.

{¶10} Under the second assignment of error, Holly claims the trial court erred when it sentenced him to the maximum one-year sentence for his fifth-degree felony without analyzing the statutory factors under R.C. 2929.11 and 2929.12.

{¶11} At resentencing, the trial court sentenced Holly to a one-year term for the weapon while under disability count, concurrent with his sentence for murder. This means he has already served his sentence for that count. "[O]nce a person has served the sentence imposed, in the absence of a challenge to the underlying conviction, there is neither a collateral disability nor a loss of civil rights that can be remedied by a modification of the length of that sentence." *State v. Wright*, 8th Dist. Cuyahoga No. 83781, 2004-Ohio-4077, ¶ 19, citing *State v. Beamon*, 11th Dist. Lake No. 2000-L-160, 2001 Ohio App. LEXIS 5655 (Dec. 14, 2001).\_ Because Holly already served his

concurrent term for the weapon while under disability count, no remedy can be provided regarding the length of his sentence. His challenge is moot. *See, e.g., State v. Pompei*, 8th Dist. Cuyahoga No. 79541, 2001 Ohio App. LEXIS 5052 (Oct. 25, 2001) (appeal challenging a sentence already served is moot).\_

{¶12} Holly's claim regarding his maximum sentence on the weapon while under disability count lacks merit even if we were to consider it. Under the current sentencing provisions, the trial court need not make any findings nor analyze specific statutory factors before imposing a maximum sentence. We review a sentence only to determine whether it is contrary to law. A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12. *State v. Smith*, 8th Dist. Cuyahoga No. 100206, 2014-Ohio-1520, ¶ 13-14. Holly's sentence is within the statutory range. Furthermore, the trial court stated on the record at sentencing that it considered the purposes and principles of R.C. 2929.11 and the factors of R.C. 2929.12. It is sufficient that the trial court acknowledged its statutory duty. *Id.* at ¶ 14. Holly's maximum sentence is not contrary to law.

{¶13} Judgment affirmed.

It is ordered that appellee recover of 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. 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.

---

TIM McCORMACK, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR