

[Cite as *State v. Hawkins*, 2011-Ohio-74.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94294

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONTE HAWKINS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-371431

BEFORE: DeGenaro, J.,* Gallagher, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: January 13, 2011

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MARY DEGENARO, J.:*

{¶ 1} Defendant Donte Hawkins appeals from the sentence imposed by the trial court on resentencing. For the reasons set forth below, we affirm.

{¶ 2} In February 1999, defendant and others were indicted in connection with a series of armed robberies. Defendant pled guilty to twenty counts of aggravated robbery with one-year firearm specifications. On March 10, 1999, the trial court sentence him to a total of 13 years of imprisonment.

{¶ 3} Thereafter, on March 6, 2008, the trial court amended the sentence to include five years of postrelease control. Defendant objects, asserting that the trial court violated Crim.R. 32(A).

{¶ 4} Crim.R. 32(A) states that a sentence “shall be imposed without unnecessary delay.” The Supreme Court of Ohio has recognized that delay for a reasonable time does not invalidate a sentence. *Neal v. Maxwell* (1963), 175 Ohio St. 201, 2 N.E.2d 782. Conversely, in *State v. Brown*, 152 Ohio App.3d 8, 2003-Ohio-1218, 786 N.E.2d 492, the court held that where there has been a delay of twenty months from the date of conviction to the date of original sentencing, an unreasonable delay has occurred. The court further held that where there was an unreasonable delay, which cannot be attributed to the defendant, the sentence, but not the underlying conviction, is invalid.

{¶ 5} In *State v. Culgan*, Medina App. No. 09CA0060-M, 2010-Ohio-2992, the court held that Crim.R. 32(A) does not apply in cases where an offender must be resentenced. The *Culgan* Court explained:

{¶ 6} “The circumstances here do not implicate Crim.R. 32(A) as this is not a case where the trial court refused to sentence Culgan. The trial court has attempted to properly sentence Culgan on three separate occasions. The delay which occurred between the date Culgan pleaded guilty on May 10, 2002, and the time his sentencing was journalized on August 18, 2009, was a result of the need for Culgan to utilize the appellate process. It follows that there has not been unreasonable delay in sentencing Culgan.”

{¶ 7} Accord *State v. Spears*, Summit App. No. 24953, 2010-Ohio-1965, citing *State v. Huber*, Cuyahoga App. No. 85082, 2005-Ohio-2625. The *Spears* Court stated:

{¶ 8} “This logic, as it relates to Crim.R. 32(A), recognizes the distinction between a trial court refusing to sentence an offender and a trial court improperly sentencing an offender. Furthermore, the Supreme Court of Ohio has held that a trial court retains continuing jurisdiction to correct a void sentence. [*State ex rel. Cruzado* [*v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795,] citing *State v. Beasley* (1984), 14 Ohio St.3d 74, 75, 471 N.E.2d 774.]”

{¶ 9} Accord *State v. Jones*, Summit App. No. 25032, 2010-Ohio-4455 (“The delay which occurred between the date Jones was found guilty and the time he was re-sentenced on September 18, 2009, was a result of the need for Jones to utilize the appellate process” and not an unnecessary delay under Crim.R. 32(A)).

{¶ 10} Similarly, where there is a delay between the sentence and a resentencing occasioned by the failure to include a required term of postrelease control in the original entry, such matter involves the correction of a void sentence and not a delay in imposing the original sentence. See *State v. Jaffal*, Cuyahoga App. No. 93142, 2010-Ohio-4999. This court stated:

{¶ 11} “Ohio courts have consistently held that when a trial court fails to sentence an offender to postrelease control, the sentence for that offense is void and the offender must be resentenced.”

{¶ 12} In this matter, the trial court did not delay in imposing the original sentence. Rather, in this instance, the trial court was required to resentence defendant because the trial court’s original sentence omitted a required term of

postrelease control. The trial court had continuing jurisdiction to correct its error and did not violate Crim.R. 32(A).

The assignment of error is overruled.

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.

MARY DEGENARO, JUDGE*

SEAN C. GALLAGHER, P.J., and
JAMES J. SWEENEY, J., CONCUR

*(Sitting By Assignment: Judge Mary DeGenaro, of the Seventh District Court of Appeals.)