

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-0082

Marlin Thomas,
Appellant,
v.
State of Ohio,
Appellee.

: On Appeal from the Hamilton
: County Court of Appeals,
: First Appellate District
:
: Court of Appeals
: Case No. C-100321

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT MARLIN THOMAS

Marlin Thomas 416-659
W.C.I.
P.O. Box 120
Lebanon, Ohio 45036

COUNSEL FOR APPELLANT, MARLIN THOMAS

Joseph T. Deters
HAMILTON COUNTY PROSECUTOR
230 E. 9th St., Suite 4000
Cincinnati, Ohio 45202

COUNSEL FOR APPELLEE

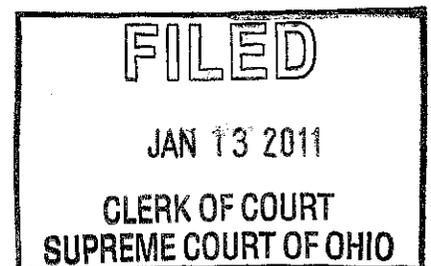
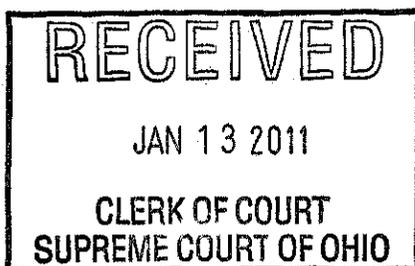


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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The defendant-appellant issues are of public and great general interest and involve substantial constitutional questions. Marlin Thomas asks this court to accept jurisdiction regarding the propositions of law that the Hamilton County Common Pleas Court violated Thomas' Due Process rights and erred to his prejudice under cruel and unusual punishment when the court re-sentenced him to 45 years after already serving 9 years in prison and having rehabilitated himself. The sentence is grossly disproportionate to the severity of his offenses.

STATEMENT OF THE CASE AND FACTS

a) Procedural History

In 2001, defendant-appellant Marlin Thomas was convicted by a jury on 12 counts of aggravated robbery and related crimes in connection with an alleged December 25 crime spree that injured several victims. He filed a direct appeal and his convictions were affirmed in 2002. This Court subsequently declined jurisdiction.

On March 6, 2009, the First District-pursuant to reconsideration under State v. Cabrales- vacated the sentence in part and remanded for re-sentencing, finding that the trial court violated RC 2941.25 when it sentenced Thomas on felonious assault in both count 7 and count 8. (See C010724, 1st District Court of Appeals, March 6, 2009).

On May 8, 2009, Thomas was re-sentenced to 40 total years in prison, 5 years less than originally sentenced. He appealed in C090347. On February 24, 2010, this Court vacated the judgment of the Court of Appeals of March

6^s, 2009, as well as the underlying trial court resentencing entry of May 12, 2009.

On March 24, 2010 the First District did an Entry of Dismissal of Appeal C-090347, as due to this Courts judgment that there was no final judgment to appeal. On May 6, 2010, the Trial Court entered its judgment, sentencing Thomas to 45 years in the Ohio Department of Corrections.

b) Statement of the Facts:

On April 29, 2010, Thomas appeared in court for re-sentencing. The State said that the Ohio Supreme Court had vacated the prior sentencing and sent the case back for a new sentencing hearing, and to correct any post-release control issues. The court noted that it did not hear the case originally.

Defense counsel noted there were 15 counts, but that counts 7 and 8 were allied offenses, and asked that only one sentence be given for those counts. Counsel said that as to 7 and 8, victim Mary Barnett was pistol whipped and shot in the arm when her purse was taken, and asked that those counts be merged. Counsel also asked that as to counts 4 and 14, they were also the same charge against same victim, and ask that only one sentence be done on those counts.

Counsel noted that the first re-sentencing court, Judge Mallory, had said that had he done the case originally he probably would have given 16 years oas a sentence and noted that the original plea deal was ten years in prison.

Thomas was 22 when the event occurred, and was 31 years old now. Counsel said that when the events occurred, Thomas had no history, and he was young during this event. Further, Thomas was in the Pacer Program, was a member of Narcotics Anonymous, was co-facilitator of his church services Victim Awareness classes, and had a much different outlook now that he was 31, instead of 22. He also obtained a GED in 2005, and had a 13 year old child.

Counsel said Thomas had been using the justice system to reform himself, and that a lower sentence was appropriate. Counsel said a 45 and half-year sentence was double his lifespan when he was sentenced at age 22.

Mr. Thomas then spoke on his own behalf, and said that he was a changed man, understood the crimes were terrible, and asked the court for leniency. The State responded that Mr. Thomas did not accept the plea deal and there was a trial. The state noted that the original sentencing judge was the one who sat through the trial, and saw the witnesses. The state then argued that counts 7 and 8 should not be merged, that they were two different acts, pistol whipping and shooting the alleged victim during a robbery. The State asked that the original 45 and half-year sentence be applied.

The court said it was not going to change the sentence and thought, "it needs to remain pure, rather than confusing." The court then advised of post-release control, and Mr. Thomas said he did not understand and never heard of post-release control. The court explained post-release control in detail, and Mr. Thomas said he understood. The court then said it was going to leave everything the same as it was before the Court of Appeals dismissed everything, or "before that was vacated."

The State then reminded the court that it still needed to go through what the sentence was on each count. The court sentenced as follows: Count 1, six years on the aggravated robbery, plus three years on the gun specification; count 2, robbery, merged; count 3, felonious assault plus the gun specification five years; count 4, aggravated robbery plus gun spec, eight on the robbery, three on the spec; count 5, robbery, merged; count 6, robbery, merged; count 7, felonious assault plus the gun spec six years; count 8, felonious assault plus the gun spec, five years; count 11, weapon under disability, six months; count 12, receiving stolen property, one year;

count 14, aggravated robbery plus gun spec, four years; count 15, aggravated robbery plus the gun spec, four years, for a total of 45.5 years.

Counsel said that the prior judge ran count 11 concurrent and asked the same, and the court did. The court kept counts 7 and 8, and 4 and 14, consecutive and counsel noted the record was preserved for appeal on that issue.

The state then said that count 2,5, and 6 should be merged with other counts as allied offenses of similar import, and the court said yes. The court then side-bared, and then said it would re-state the entire sentence as there was confusion. To wit: Count 1, six years, plus three years consecutive on gun spec 2; count 3, five years; count 4, 8 years plus three years consecutive on gun spec 2; count 7, 6 years; count 8, 5 years; count 11, 6 months concurrent. The court went on: Count 2, one year; count 14, four years; count 15, four years. Specification 1 to count 1 and 4, and spec 1 and 2 on counts 3,7,8,14, and 15 merged with spec 2 in counts 1 and 4. Counts 2,5, and 6 were to be merged as allied offenses, and counts 1,3,4,5,7,8,12,14, and 16 to be served consecutive to each other. The court said it would credit for any time served.

First Proposition of Law: The trial court erred when it denied Due Process of Law as the Sentencing Entry incorrectly states the imprisonment conditions on count 5.

Mr. Thomas was given a 45 year sentence at re-sentencing, and the entry incorrectly states "consecutive" on count 5 for the time when it is an allied offense, the sentence is improper.

The court sentenced Mr. Thomas and properly merged count 5 as an allied offense of similar import; however the sentencing entry improperly lists the time on count 5 as consecutive. At sentencing, the state conceded that

counts 2,5, and 6 should be merged with other counts as allied offenses of similar import, and the court said yes.

"Crim.R. 36 specifically authorizes the trial court to correct 'clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission *** at any time.' A trial court may use a nunc pro tunc entry to correct mistakes in judgments, orders, and other parts of the record so the record speaks the truth. A nunc pro tunc order is limited to memorializing what the trial court actually did at an earlier point in time, such as correcting a previously issued order that fails to reflect the trial court's true action.

However,*** once a defendant has started to serve a sentence, a court may not modify or increase it, as that constitutes double jeopardy.

On page two of the sentencing entry, the court at the second last paragraph correctly states that "Counts 2,5, and 6 are merged with other counts as allied offenses of similar import." However, in the next paragraph the entry incorrectly states that, "The sentences in counts...5...are to be served consecutively to each other...". This is an error in sentencing and as such the defendant should be resentenced.

Second Proposition of Law: Appellant was denied Due Process of law and subject to cruel and unusual punishment when the Court re-sentenced him to 45 years.

Where a defendant is given a 45 year sentence on re-sentencing after spending 9 years in prison already and having rehabilitated himself, the sentence is grossly disproportionate to the severity of his offense.

Thomas's 45 year sentence violates Due Process and the prohibition against cruel and unusual punishment. The Eighth Amendment to the United States Constitution prohibits punishment that is grossly disproportionate to the severity of the offense. The Eighth Amendment proportionality issue is considered in light of State v. Hairston, the newest Ohio Supreme Court

pronouncement on the issue of sentencing. While the Eighth Amendment does not per se prohibit a sentence that in effect amounts to life in prison without the possibility of parole, that does not relieve the trial court of its "obligation to consider the overriding purposes of felony sentencing, the seriousness and recidivism factors, or the other relevant considerations set forth in R.C. 2929.11, 2929.12, and 2929.13." It simply directs the sentencing court to focus its analysis on each individual count, and not to be swayed by a sentence which, after due consideration of all statutory factors, may, when individually added up, amounts to a de facto life sentence.

In short, *Hairston* does not dispense with a proportionality or consistency review; it mandates it. Neither *State v. Foster*, nor *Hairston* has dispensed with the trial court's obligation to analyze the facts appurtenant to each individual count, nor to analyze whether the law demands certain counts be run consecutively or concurrently. While the court no longer must make "findings" in support of its analysis, if a reviewing court finds no justification under law within the record for a particular sentence, then that sentence is contrary to law, and should be reversed and remanded for new sentencing. Neither *Foster* nor *Hairston* "blesses" maximum consecutive sentences, nor insulates them from appellate review.

Thomas's sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. An analysis of the sentencing record under the sentencing statutes finds no justification for the sentence. There was no one murdered and no victim came to the re-sentencing.

Mr. Thomas has been a model imprisoned offender. He had been leading church services, entered a substance abuse program, and earned his GED. He was 22 when the events occurred and was now 31. Critically, the prior re-sentencing court said had it been the original one sentencing it might have given 16

years, not 45. This indicates that the prior court felt that 45 years was disproportionate to the crime, and hence cruel and unusual. However, the court this time went on to give the same sentence as before. The court said, "it needs to remain pure, rather than confusing." The court then said it was going to leave everything the same as it was before the Court of Appeals dismissed everything...or "before that was vacated." This is not the appropriate type of sentencing analysis in such a serious matter that had been previously appealed, vacated, and then remanded by the Ohio Supreme Court. Mr. Thomas is still left with a sentence that violates Due Process.

Since the court engaged in no justification of the severe nature of the sentence, the sentence is contrary to law, and Thomas should be re-sentenced to the minimum terms. Thomas has already served approximately nine years.

Third Proposition of Law: The appellant was given a sentence that does not correlate to any of the sentencing factors under 2929.11 and 2929.12.

Even in the relaxed post-Foster sentencing environment, there must be some correlation on the record between the statutory factors of 2929.11 and 12 and the relevant facts; absent any of the factors the minimum sentence must be given.

Mr. Thomas should be given nothing more than a minimum sentence as he has received a sentence that fails under review, even under the relaxed post-Foster sentencing structure, as there is no correlation between the facts on the record and the statutorily mandated- and Foster affirmed-requirements of R.C. 2929.11 and R.C. 2929.12. The court simply said it wanted the sentence to remain "pure" and that the Court of Appeals would decide the argument.

A defendant may appeal as a matter of right if the sentence imposed is contrary to law. There is no judicial fact finding required, but the court is to consider the statutory factors. There are two statutory sections that apply as a general judicial guide for every sentencing. The former states

that the two overriding purposes of felony sentencing are to protect the public from future crime by the offender; and to punish the offender. A felony sentence shall be reasonably calculated to achieve the two purposes and be commensurate with the seriousness of the offender's conduct and its impact on the victim. In achieving these purposes the courts shall consider the need for incapacitation, deterrence, rehabilitation, and restitution. The latter statute, R.C. 2929.12, grants the sentencing judge discretion to determine the most effective way to comply with the purposes and principles of sentencing. In exercising discretion the court shall consider the factors of R.C. 2929.12(B),(C),(D), and (E). A test the reviewing court may use is whether the court complied with the purposes and principles of sentencing under RC 2929.11 and 2929.12.

In this case, the sentencing hearing meets none of the possibly relevant factors for seriousness and recidivism listed in R.C. 2929.12. The court said it thought the sentence, "needs to remain pure, rather than confusing." The court then said it was going to leave everything the same as it was before the Court of Appeals dismissed everything...or "before that was vacated." As in the prior assignment of error, this is not the appropriate type of sentencing analysis are such a serious matter that has been appealed and vacated and remanded by the Ohio Supreme Court, and Mr. Thomas is still left with a sentence that violates Due Process.

Thomas spoke on his own behalf and showed genuine remorse. Nothing on the record indicates that the victims suffered serious economic harm. Nothing on the record indicates Thomas had a relationship with any victim, nor that race or age was not a factor in the crimes. Thomas was a model prisoner and earned his GED. While the court is not required to make judicial findings, it is required under Foster to at least consider the factors. As none of

the factors can reasonably be found to apply, then they were not considered, thus the sentence given in this case does not comply with the purposes and principles of sentencing under RC 2929.11 and 2929.12. Further, the prior-re-sentencing court indicated had it been the original one sentencing he might have given 16 years, not 45. This indicates that the court felt that 45 plus years was disproportionate to the crime, and hence the court did not engage in the meaningful review mandated for sentencing by RC 2929.11 and 2929.12.

The court said that the sentence needs to remain pure, rather than confusing, and concluded that the sentence was going to be appealed and that that court would determine the arguments made. The sentencing court cannot simply defer the sentencing hearing to the appellate court, and the hearing was simply not in compliance with the sentencing statutes. Since the trial court engaged in no justification of the sentence, the sentence was contrary to law, and thus Thomas should be re-sentenced to the minimum terms

Fourth Proposition of Law: Appellant was convicted and sentenced on counts that violate State v. Colon I and II.

Mr. Thomas was convicted on robbery and aggravated robbery counts for the same victims that under a plain error analysis violate Colon II. The Ohio Supreme Court recently issued a decision dealing with the need for a mens rea statement in indictments, and whether error in this regard is structural or simply subject to a plain error analysis. In Colon, the Ohio Supreme Court considered whether an indictment was defective, where the indictment contained the statutory language for robbery under R.C. 2911.02(A)(2), but "omitted a mens rea element for the actus reus element, and held that **recklessness** is the catchall culpable mental state for criminal statutes that fail to mention any degree of culpability, except for strict liability statutes, where the accused's mental state is irrelevant."

In Colon, the Ohio Supreme Court also concluded that the defect in the indictment was structural, and could be raised for the first time on appeal. The court then reversed the defendant's conviction, because the State had treated the offense as one of strict liability, rather than as an offense requiring recklessness. Subsequently, on reconsideration, the Ohio Supreme Court limited the syllabus in Colon to the facts of the case. The court noted that the case involved a unique situation, in which the defective indictment had resulted in multiple violations of the defendant's rights. The court, therefore, concluded that a structural error analysis would not be appropriate in case where multiple errors are not inextricably linked to the flawed indictment. Instead, in those situations, a plain-error analysis should be used if a defendant has failed to object to the indictment.

Admittedly this is an appeal of the re-sentencing. A plain error analysis applies, as there was obviously not a Colon objection when the trial was held as it took place long before those decisions. Thomas was demonstrably prejudiced as he was found guilty of both aggravated robberies and the robberies. The statutory language for robbery under R.C. 2911.02(A)(2) omitted a mens rea element for the actus reus element. Thomas submits that his convictions on both the aggravated robbery counts and the robbery counts violates Colon I and II, and the convictions on the robberies should be vacated.

Fifth Proposition of Law: The trial court erred in imposing sentences upon the appellant for separate counts of the indictment which constituted allied offenses of similar import.

R.C. 2941.25 prohibits the imposition of sentence for multiple counts based upon conduct constituting two or more allied offenses of similar import.

Mr. Thomas should be sentenced only to either count 4 or 14, as they are allied offenses of similar import.

Where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import,... the defendant may be convicted of only one. The imposition of multiple sentences for allied offenses of similar import is plain error. Even when the sentences are to be served concurrently, a defendant is prejudiced by having more convictions than are authorized by law.

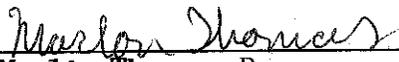
R.C. 2941.25 requires two steps: (1) the elements of the two crimes are compared. If the elements of the offenses correspond to such a degree that the commission of one crime will result in the commission of the other, the crimes are allied offenses of similar import and the court must then proceed to the second step; "(2) the defendant's conduct is reviewed to determine whether the defendant can be convicted of both offenses. If the court finds either that the crimes were committed separately or that there was a separate animus for each crime, the defendant may be convicted of both offenses."

Mr. Thomas was convicted of aggravated robbery, robbery counts, and felonious assault counts, all from the same course of conduct. Aggravated robbery and robbery are allied offenses of similar import. Nothing on the record gives evidence to suggest that the robbery counts were anything but incidental to the aggravated robbery counts. The same argument goes to the felonious assault and aggravated robbery counts. At the re-sentencing, counsel noted there were 15 counts, but that counts 4 and 14 were allied offenses, and asked that only one sentence be given for those counts. That they are the same charge against same victim, and asked that only one sentence be done on those counts. Counts 2,5, and 6 have been merged, and 4 and 14 should be merged. Counts 7 and 8 have been remanded by the First District for re-sentencing. Mr. Thomas may be sentenced for only one of those counts.

CONCLUSION

Based on all the above errors, the appellant should be re-sentenced to a minimum, concurrent term, with the counts properly merged for each alleged victim.

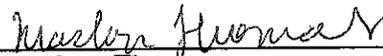
Respectfully submitted,



Marlin Thomas Pro se
c416-659 *1B-158
Warren Corr. Inst.
P.O. Box 120
Lebanon, Ohio 45036

CERTIFICATE OF SERVICE

I certify a copy of this document was sent to the Hamilton County Prosecuting Attorney at 230 E. 9th Street, Suite 4000 on ___ day of _____, 2011.



Marlin Thomas

IN THE SUPREME COURT OF OHIO

Marlin Thomas,
Appellant,

v.

State of Ohio,
Appellee.

: On Appeal from the Hamilton
: County Court of Appeals,
: First Appellate District.

:
: Court of Appeals
: Case No. C-100321
:
:

APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION
OF MARLIN THOMAS

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

| | | |
|----------------------|---|------------------------|
| STATE OF OHIO, | : | APPEAL NO. C-100321 |
| | : | TRIAL NO. B-0010201(A) |
| Plaintiff-Appellee, | : | |
| vs. | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| MARLIN THOMAS, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Marlin Thomas appeals his convictions for four counts of aggravated robbery, three counts of felonious assault, having a weapon while under a disability, and receiving stolen property, with accompanying firearm specifications.

In his first assignment of error, Thomas argues that he was denied due process of law where the trial court's sentencing entry "incorrectly state[d] the imprisonment conditions on Count 5." According to the sentencing entry, the trial court merged count five with another count, so the court imposed no sentence for the fifth count. However, the entry incorrectly stated that the sentence for count five was to be consecutive to the sentences for several other counts.

Because no sentence had been imposed for count five, the entry's statement that the "sentence" for count five should be served consecutively was clearly a clerical

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

error. Accordingly, we overrule the first assignment of error. However, we remand this case to the trial court to correct the clerical error in the sentencing entry.

In his second assignment of error, Thomas argues that the 45-year aggregate prison term constituted cruel and unusual punishment as prohibited by the Eighth Amendment to the United States Constitution.

Generally, a sentence that falls within the applicable statutory range cannot amount to cruel and unusual punishment.² In this case, none of Thomas's sentences exceeded the statutory range for the offense. The trial court imposed a maximum prison term for only one of Thomas's nine offenses. In light of the viciousness of Thomas's crime spree in which four victims were injured, the sentences were not disproportionate to the seriousness of his conduct.³ Accordingly, we overrule the second assignment of error.

In his third assignment of error, Thomas argues that his sentences were not consistent with the sentencing factors under R.C. 2929.11 or 2929.12. But even where the trial court does not explicitly put on the record its consideration of applicable sentencing statutes, it is nonetheless presumed that the court properly considered those statutes.⁴

In this case, the sentences reflected the consideration of the relevant sentencing factors.⁵ In its consideration of the offenses, the trial court specifically noted that Thomas and his associate had shot an elderly woman in the arm and had pistol-whipped her in the head, breaking her nose. The two men had also shot a man in one leg after robbing him, had stolen another's wallet at gunpoint, and, as they

² See *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, 69-70, 203 N.E.2d 334.

³ *Id.*

⁴ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at fn. 4.

⁵ See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

were pursued by police, had rammed their van into another victim's vehicle. In light of the seriousness of the offenses, we cannot say that the trial court acted unreasonably in imposing a significant term of imprisonment. We overrule the third assignment of error.

In his fourth assignment of error, Thomas argues that he was improperly convicted of multiple counts of aggravated robbery where the indictment was defective due to the omission of *mens rea* elements for the offenses. He was convicted of three counts of aggravated robbery in violation of R.C. 2911.01(A)(1), as well as one count of aggravated robbery in violation of R.C. 2911.01(A)(3). For each of these counts, the indictment tracked the language of the applicable statute, so it provided Thomas with adequate notice of the charges against him.⁶ Consequently, the indictment was not defective. We overrule the fourth assignment of error.

In his fifth assignment of error, Thomas argues that the trial court erred by imposing sentences for allied offenses of similar import. Thomas first argues that he could not have been sentenced for both the aggravated robbery of Mary Barnett as charged in count four of the indictment and the aggravated robbery involving Anthony Jones as charged in count 14. Because the offenses were committed against two different victims, they were of dissimilar import and separate sentences were proper.⁷

But as for counts seven and eight, Thomas's argument is well taken. In count seven, he was charged with felonious assault in violation of R.C. 2903.11(A)(2), for causing physical harm to Mary Barnett by means of a deadly weapon. In count eight, he was charged with felonious assault in violation of R.C. 2903.11(A)(1), for causing

⁶ *State v. Horner*, 126 Ohio St.3d 466, 2010-Ohio-3830, 935 N.E.2d 26, ¶45.

⁷ See R.C. 2941.25(B); *State v. Jones* (1985), 18 Ohio St.3d 116, 480 N.E.2d 408.

serious physical harm to her. The evidence presented at trial was that Thomas and a codefendant had stolen Barnett's purse, pistol-whipped her, and shot her in the arm.

Felonious assault as defined in R.C. 2903.11(A)(1) and felonious assault as defined in R.C. 2903.11(A)(2) are allied offenses of similar important, so a defendant cannot be convicted of both offenses where both are committed with a single animus against the same victim.⁸ Therefore, the trial court erred by sentencing Thomas for both felonious assaults against Barnett. We sustain the fifth assignment of error in part and overrule the assignment of error in part.

Consequently, we vacate the sentences imposed for felonious assault as charged in counts seven and eight of the indictment and remand the case for resentencing for only one of the two offenses. Moreover, the trial court is to correct the clerical error in its sentencing entry in accordance with our discussion of the first assignment of error. In all other respects, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

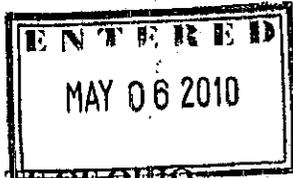
Enter upon the Journal of the Court on December 1, 2010

per order of the Court _____
Presiding Judge

⁸ See *State v. Harris*, 122 Ohio St.3d 373, 2009-Ohio-3323, 911 N.E.2d 882, paragraph two of the syllabus.

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 04/29/2010
code: GJEI
judge: 125



STATE OF OHIO
VS.
MARLIN THOMAS


Judge: NADINE ALLEN

NO: B 0010201-A

JUDGMENT ENTRY: SENTENCE:
INCARCERATION
RE-SENTENCE

Defendant was present in open Court with Counsel TIMOTHY MCKENNA on the 29th day of April 2010 for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

- count 1: AGGRAVATED ROBBERY WITH SPECS #1 AND #2, 2911-01A1/ORCN,F1
- count 2: ROBBERY, 2911-02A2/ORCN,F2, MERGED WITH ANOTHER COUNT
- count 3: FELONIOUS ASSAULT WITH SPECS #1 AND #2, 2903-11A2/ORCN,F2
- count 4: AGGRAVATED ROBBERY WITH SPECS #1 AND #2, 2911-01A1/ORCN,F1
- count 5: ROBBERY, 2911-02A2/ORCN,F2, MERGED WITH ANOTHER COUNT
- count 6: ROBBERY, 2911-02A2/ORCN,F2, MERGED WITH ANOTHER COUNT
- count 7: FELONIOUS ASSAULT WITH SPECS #1 AND #2, 2903-11A2/ORCN,F1
- count 8: FELONIOUS ASSAULT WITH SPECS #1 AND #2, 2903-11A1/ORCN,F2
- count 11: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A3/ORCN,F5
- count 12: RECEIVING STOLEN PROPERTY, 2913-51A/ORCN,F4
- count 14: AGGRAVATED ROBBERY WITH SPECS #1 AND #2, 2911-01A3/ORCN,F1
- count 15: AGGRAVATED ROBBERY WITH SPECS #1 AND #2, 2911-01A1/ORCN,F1
- count 9: RECEIVING STOLEN PROPERTY, 2913-51A/ORCN, DISMISSAL
- count 10: FAIL TO COMPLY W ORDER/SIG OF PO, 2921-331B/ORCN, JUDGMENT ENTRY OF ACQUITTAL
- count 13: ROBBERY, 2911-02A3/ORCN, DISMISSAL

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:



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THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 04/29/2010
code: GJEI
judge: 125

Judge: NADINE ALLEN

NO: B 0010201-A

STATE OF OHIO
VS.
MARLIN THOMAS

JUDGMENT ENTRY: SENTENCE:
INCARCERATION
RE-SENTENCE

count 1: CONFINEMENT: 6 Yrs DEPARTMENT OF CORRECTIONS
CONFINEMENT ON SPECIFICATION #2: 3 Yrs DEPARTMENT OF
CORRECTIONS
TO BE SERVED CONSECUTIVELY AND PRIOR TO THE SENTENCE
IMPOSED IN UNDERLYING OFFENSE IN COUNT #1.

count 3: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

count 4: CONFINEMENT: 8 Yrs DEPARTMENT OF CORRECTIONS
CONFINEMENT ON SPECIFICATION #2: 3 Yrs DEPARTMENT OF
CORRECTIONS
TO BE SERVED CONSECUTIVELY AND PRIOR TO THE SENTENCE
IMPOSED IN UNDERLYING OFFENSE IN COUNT #4.

count 7: CONFINEMENT: 6 Yrs DEPARTMENT OF CORRECTIONS

count 8: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

count 11: CONFINEMENT: 6 Mos DEPARTMENT OF CORRECTIONS

count 12: CONFINEMENT: 1 Yrs DEPARTMENT OF CORRECTIONS

count 14: CONFINEMENT: 4 Yrs DEPARTMENT OF CORRECTIONS

count 15: CONFINEMENT: 4 Yrs DEPARTMENT OF CORRECTIONS

SPECIFICATIONS #1 TO COUNTS #1 AND #4 AND SPECIFICATIONS #1 AND
#2 TO COUNTS #3, #7, #8, #14, AND #15 ARE MERGED WITH
SPECIFICATIONS #2 TO COUNTS #1 AND #2 FOR THE PURPOSE OF
SENTENCING.

COUNTS #2, #5, AND #6 ARE MERGED WITH OTHER COUNTS AS ALLIED
OFFENSES OF SIMILAR IMPORT.

THE SENTENCES IN COUNTS #1, #3, #4, #5, #7, #8, #12, #14, AND #15 ARE TO
BE SERVED CONSECUTIVELY TO EACH OTHER BUT CONCURRENTLY
WITH THE SENTENCE IN COUNT #11.

6
5
6
1
4
3
3
2
1
3
14
10
20
4
+ 6 yrs
9 mos spec
20
10
10

1-3
3-2
4-3
7-2
6 months
12-1
14-3 - merged
15-3

3
2
3
2
1
3
3
16
10
39
45
10
85
9
24

16
22
10
72

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 04/29/2010
code: GJEI
judge: 125

Judge: NADINE ALLEN

NO: B 0010201-A

STATE OF OHIO
VS.
MARLIN THOMAS

JUDGMENT ENTRY: SENTENCE:
INCARCERATION
RE-SENTENCE

THE SENTENCES IN SPECIFICATIONS #2 TO COUNTS #1 AND #4 ARE TO BE SERVED CONSECUTIVELY TO EACH OTHER.

THE TOTAL AGGREGATE SENTENCE IS FORTY FIVE (45) YEARS IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR THREE THOUSAND ONE HUNDRED FORTY (3140) DAYS TIME SERVED.

COSTS REMITTED. THE DEFENDANT IS INDIGENT.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENCE IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE (5) YEARS.

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IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

RE-SENTENCE