

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
vs.	:	
	:	
CHARLES BOWMAR	:	Case No. 04COA67
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Ashland County Court of Common Pleas, Case No. 03-CRI-073

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: April 12, 2005

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Edwards, J.

{¶1} Defendant-appellant Charles Bowmar appeals from his sentence which was imposed without his presence upon this Court's remand for resentencing. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 30, 2003, the Ashland County Grand Jury indicted appellant, Charles Bowmar, on one count of felonious assault in violation of R.C. 2903.11(A)(1), one count of endangering children, in violation of R.C. 2919.22(B)(1), ten counts of rape, in violation of R.C. 2907.02(A)(1)(b) and two counts of gross sexual imposition, in violation of R.C. 2907.05(A)(4). The charges concerned four different victims.

{¶3} On September 10, 2003, appellant pled guilty as charged. By Judgment Entry filed October 21, 2003, the trial court sentenced appellant as follows. As to one victim, a five-year prison term for felonious assault, to be served concurrently with six months in jail for child endangering; as to a second victim, four consecutive eight-year prison terms for rape and a consecutive five-year prison term for gross sexual imposition; as to a third victim, four consecutive eight-year prison terms for rape and a consecutive five-year prison term for gross sexual imposition; and as to a fourth victim, two consecutive eight-year prison terms for rape. The trial court ordered that the prison terms for each victim be served consecutively for a total aggregate term of 95 years in prison.

{¶4} Appellant filed an appeal and this court reversed for resentencing pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. See, *State v. Bowmar*, Ashland App. No. 03COA063, 2004-Ohio-2963. Upon remand, the trial court

reimposed the same sentence without hearing and, thus without appellant's presence. See, Judgment Entry filed August 11, 2004.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows

{¶6} "THE TRIAL COURT ERRED BY HOLDING A RESENTENCING PROCEEDING OUTSIDE OF APPELLANT'S PRESENCE."

{¶7} Appellant claims that the trial court erred in resentencing him in absentia. We agree.

{¶8} Upon remand by this court for resentencing, the trial court resentenced appellant without his presence. Crim.R. 43(A) and Section 10, Article I of the Ohio Constitution mandate a defendant's presence at every stage of the criminal proceedings, including imposition of sentence.

{¶9} In *State v. Wallace*, Richland App. No. 2002CA0072, 2003-Ohio-4119, ¶14, this court set forth the law regarding this issue as follows:

{¶10} "A defendant has a fundamental right to be present at all critical stages of his criminal trial. *State v. Hill*, 73 Ohio St.3d 433, 444, 1995-Ohio-287, 653 N.E.2d 271, citing, Crim.R. 43(A) and Section 10, Article I, Ohio Constitution. The United States Supreme Court has stated that an accused is guaranteed the right to be present at all stages of a criminal proceeding that is critical to its outcome when his or her absence may frustrate the fairness of the proceedings. *Kentucky v. Stincer* (1987), 482 U.S. 730, 745, 107 S. Ct. 2658. This right is embodied in Crim.R. 43(A). Criminal Rule 43(A) provides that, 'the defendant shall be present at the arraignment and every stage

of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, * * *."

{¶11} We note the state concurs with appellant's argument. See, Appellee's Brief at pg. 5.

{¶12} Upon review, we find that the trial court erred in resentencing appellant in absentia.

{¶13} The sole assignment of error is granted.

{¶14} The judgment of the Court of Common Pleas of Ashland County, Ohio, is hereby reversed. The sentence imposed by the trial court is vacated and the matter is remanded for resentencing.

By: Edwards, J.

Farmer, P. J. and

Wise, J. concur.

JUDGES

