

[Cite as *State v. Driver*, 2011-Ohio-690.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ARTEMUS DRIVER

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. John W. Wise, J.

Case No. 2010CA00133

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of  
Common Pleas, Case No. 1999CR0515

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 14, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO  
PROSECUTING ATTORNEY,  
STARK COUNTY, OHIO

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BY: RONALD MARK CALDWELL  
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Appellate Section  
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Canton, Ohio 44702-1413

*Hoffman, J.*

{¶1} Defendant-appellant Artemus Driver appeals the April 12, 2010 Judgment Entry entered by the Stark County Court of Common Pleas which resentenced him on one count of rape, one count of felonious assault and one count of kidnapping. The State of Ohio is plaintiff-appellee.

#### STATEMENT OF THE CASE<sup>1</sup>

{¶2} Appellant was found guilty of the aforementioned charges following a trial by jury. The trial court entered convictions of the charges and sentenced Appellant via Judgment Entry journalized August 26, 1999.

{¶3} Appellant filed a direct appeal from the August 26, 1999 Judgment Entry in this Court. We affirmed the trial court's judgment entry. See *State v. Driver* (October 23, 2000), Stark App. No. 1999-CA-00290, unreported.

{¶4} On April 12, 2010, the trial court resentenced Appellant pursuant to the direction of the Ohio Supreme Court as pronounced in *State v. Singleton* (2009), 124 Ohio St.3d 173, 2009-Ohio-6434. The new sentence was journalized April 19, 2010. It is from that judgment entry Appellant prosecutes this appeal assigning as error:

{¶5} "I. THE TRIAL COURT ERRED IN PERMITTING THE PROSECUTOR TO ARGUE AND PRESENT EVIDENCE REGARDING APPELLANT'S PRIOR BAD ACTS.

{¶6} "II. THE EVIDENCE AT TRIAL WAS INSUFFICIENT TO SUPPORT A CONVICTION, AND THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

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<sup>1</sup> A rendition of the facts is unnecessary for our disposition of this appeal.

## I &amp; II

{¶7} Because the same rationale for our decision applies to both assignments of error, we shall address them together.

{¶8} The entry under review was generated in accordance with the procedure set forth in *Singleton* to correct errors or deficiencies involving notification and journalization of post release control sanctions, committed during a defendant's initial sentencing. Appellant's present assignments of error were or could have been raised in his initial direct appeal to this Court.

{¶9} This Court has repeatedly held such resentencings do not allow a defendant to challenge anew his conviction(s) as such is barred under the principles of law of the case and/or res judicata. This Court's position has been validated by two recent Ohio Supreme Court decisions: *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283; and *State v. Fischer*, 2010-Ohio-6238. Pursuant to *Ketterer* and *Fischer*, Appellant's two assignments of error are overruled.

{¶10} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman  
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HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin  
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HON. W. SCOTT GWIN

s/ John W. Wise  
\_\_\_\_\_  
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ARTEMUS DRIVER	:	
	:	
Defendant-Appellant	:	Case No. 2010CA00133

For the reasons stated in our accompanying Opinion, the April 19, 2010 Judgment Entry of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin  
HON. W. SCOTT GWIN

s/ John W. Wise  
HON. JOHN W. WISE