

[Cite as *State v. Bridges*, 2010-Ohio-6359.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94469**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CURTIS BRIDGES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-407434

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

**RELEASED AND JOURNALIZED:** December 23, 2010  
**ATTORNEY FOR APPELLANT**

Paul Mancino, Jr.  
75 Public Square  
Suite 1016  
Cleveland, OH 44113-2098

**ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

BY: Thorin O. Freeman  
Assistant Prosecuting Attorney  
The Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Curtis Bridges, appeals his sentence from the Cuyahoga County Court of Common Pleas. For the reasons stated herein, we affirm.

{¶ 2} Bridges was convicted of trafficking in cocaine in an amount exceeding 1,000 grams and possession of cocaine exceeding 1,000 grams, each with a major drug offender specification. He was originally sentenced to a

mandatory term of ten years on each underlying count and to five years on the specification, to run consecutively. The total sentence was 25 years.

{¶ 3} The conviction was affirmed on direct appeal in *State v. Bridges*, Cuyahoga App. No. 80171, 2002-Ohio-3771, appeal not allowed 97 Ohio St.3d 1484, 2002-Ohio-6866, 780 N.E.2d 287. Thereafter, Bridges filed a motion to vacate his sentence because he was not advised of postrelease control. The trial court granted the motion, and the case proceeded to a de novo sentencing hearing.

{¶ 4} At the hearing, all parties agreed that the convictions for trafficking and possession should merge as allied offenses of similar import. The state elected to proceed on the drug trafficking count. The trial court sentenced Bridges to a mandatory prison term of ten years on said count, which was the same as the original sentence. However, the trial court imposed a consecutive ten-year prison term on the major drug offender specification, which was five more years than the original sentence on the specification. Bridges received a total sentence of 15 years.

{¶ 5} Bridges timely filed this appeal, raising four assignments of error for our review. His first and second assignments of error provide as follows:

{¶ 6} “1. Defendant’s rights under the Fifth and Fourteenth Amendments were violated when he was sentenced to an enhanced sentence on the major drug offender specification upon his resentencing.”

{¶ 7} “2. Defendant was denied due process of law when the court, who was not the original sentencing judge, proceeded to resentence defendant to a greater sentence than that of the original judge.”

{¶ 8} When a judgment is declared void, the effect “is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268, 227 N.E.2d 223. Thus, when a court fails to impose a mandatory term of postrelease control, the sentence is void and the court is required to resentence the offender “as if there had been no sentence.” *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 13. “During a de novo resentencing, \* \* \* the trial court is free to impose the identical sentence that was originally imposed, or a greater or lesser sentence within its discretion \* \* \*.” *State v. Jackson*, Cuyahoga App. No. 92365, 2009-Ohio-4995, ¶ 9, quoting *State v. Cook*, Cuyahoga App. No. 91487, 2008-Ohio-4246, ¶ 10.

{¶ 9} In this case, it is clear that the trial court conducted a de novo sentencing hearing and did not merely defer to the original judge’s decision. The court heard arguments from counsel, considered the facts and history of the case, including the original sentence, and determined that a ten-year sentence for the major drug offender specification was appropriate.

{¶ 10} Because the sentence was imposed by a different judge than the original sentencing judge, there is no presumption of vindictiveness. See *State v. Cousin*, Cuyahoga App. No. 86120, 2005-Ohio-6722, ¶ 7-8. Moreover, the record does not reflect that the harsher sentence was the product of judicial vindictiveness or that the judge was predisposed to a particular sentence. In deciding the sentence that was imposed, the trial court considered all of the evidence before it and the purposes and principles of sentencing. The sentence was within the statutory range, and we find no abuse of discretion by the trial court.

{¶ 11} Bridges also claims that because he had partially served his sentence, the sentence could not be increased by the court. However, this is not a case where a valid sentence is being increased. Rather, the original sentence was vacated and a de novo sentencing hearing was held at which Bridges received a newly imposed sentence with credit for time served.

{¶ 12} Insofar as Bridges asserts that a maximum sentence could not be imposed under the plain language of R.C. 2929.14(D)(3)(a) because he was not also guilty of engaging in a pattern of corrupt activity, this court rejected a similar argument in *State v. Schneider*, Cuyahoga App. No. 93128, 2010-Ohio-2089, ¶ 17-18 (rejecting such an interpretation of the statute).

{¶ 13} Accordingly, Bridges's first and second assignments of error are overruled.

{¶ 14} Bridges’s third assignment of error provides as follows: “3. Defendant’s constitutional rights were violated when defendant was subjected to multiple punishments as a major drug offender.”

{¶ 15} Bridges argues that he was sentenced under an unconstitutional statute for the major drug offender specification. In support of his argument, he cites *State v. Foster*, 209 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. As we have previously recognized, rather than eliminating penalty enhancements for repeat violent specifications, “*Foster* only severs the language requiring judicial fact-finding in R.C. 2929.14(D)(3)(b).” *State v. Marcano*, Cuyahoga App. No. 92449, 2009-Ohio-6458, ¶ 12; *Foster*, supra at ¶ 99.

{¶ 16} Bridges also argues that the major drug offender specification fails to contain a culpable mental state yet provides for an additional penalty.

However, the specification was merely a penalty enhancement that attached to the underlying offense, and thus it does not include a specific mens rea of its own.

{¶ 17} Bridges further asserts that R.C. 2929.14(D)(1)(c) prohibits multiple punishments for felonies committed as part of the same act or transaction. The state correctly observes that the cited provision applies to firearm specifications. Bridges was not sentenced under that provision.

Rather, he was sentenced under R.C. 2929.14(D)(3)(b), which authorizes the sentence imposed.

{¶ 18} We also reject Bridges's argument that the major drug offender sentence violates double jeopardy. See *State v. Midcap*, Summit App. No. 22908, 2006-Ohio-2854, ¶ 12; *State v. Gonzales*, 151 Ohio App.3d 160, 2002-Ohio-4937, 783 N.E.2d 903, ¶ 40 (both cases rejecting the same argument).

{¶ 19} For these reasons, Bridges's third assignment of error is overruled.

{¶ 20} “4. Defendant was denied due process of law when the court added an additional forfeiture of items which differed from its oral pronouncement of sentence.”

{¶ 21} Bridges argues that the journal entry of sentence included a forfeiture order that was not stated in open court at the time of sentencing. A prior forfeiture order, which ordered forfeiture of the same items, was issued by the court on or about October 30, 2001. Because Bridges has failed to provide transcripts from the earlier proceedings, we must presume regularity in the proceedings and conclude that the forfeiture order was proper. See *State v. Pollard*, Cuyahoga App. No. 93002, 2010-Ohio-908, ¶ 13. Bridges's fourth assignment of error is overruled.

Judgment 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

JAMES J. SWEENEY, J., and  
MARY DeGENARO, J.,\* CONCUR

\*(Sitting by assignment: Judge Mary DeGenaro of the Seventh District Court of Appeals.)