

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

|                      |   |                        |
|----------------------|---|------------------------|
| STATE OF OHIO,       | : | APPEAL NO. C-060991    |
|                      | : | TRIAL NO. B-0600007    |
| Plaintiff-Appellee,  | : |                        |
|                      | : | <i>JUDGMENT ENTRY.</i> |
| vs.                  | : |                        |
| CHRISTOPHER SMITH,   | : |                        |
|                      | : |                        |
| Defendant-Appellant. | : |                        |

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

Defendant-appellant Christopher Smith was charged with two counts of attempted murder, three counts of felonious assault, one count of having a weapon while under a disability, one count of carrying a concealed weapon, two counts of aggravated robbery, and two counts of robbery. Various counts also included specifications that Smith had had a firearm, that he had used the firearm, and that he had discharged the firearm at police. Smith pleaded no contest to all counts and specifications. The trial court found Smith guilty of all charges and sentenced him to an aggregate term of 85 years' incarceration. On appeal, we vacated the sentences imposed for felonious assault in counts three and four, the sentences imposed for aggravated robbery in counts eight and ten, and the sentences imposed for robbery in counts nine and eleven. We remanded the case for resentencing so that only one

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

felonious-assault sentence was imposed for counts three and four, and so that one aggravated-robbery or robbery sentence for each victim was imposed for counts eight and nine and counts ten and eleven. We also remanded the case for correction of the trial court's entries to reflect a charge of, a plea of no contest to, and a guilty finding for aggravated robbery in count ten. The record does not demonstrate that Smith has been resentenced.

Smith filed an App.R. 26(B) application to reopen his appeal. By entry dated February 2, 2009, we granted Smith's application to permit him to present this assignment of error, which alleges that his convictions for robbery were defective because the indictment omitted the mens rea element in the robbery counts.<sup>2</sup>

"A final judgment of conviction occurs when the judgment contains '(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) the entry on the journal by the clerk of courts.'"<sup>3</sup> In *State v. Godfrey*,<sup>4</sup> we held that a challenge to the validity of an indictment under *Colon I* and *Colon II* for failing to specify a mens rea for the actus reus element of robbery was premature where we had vacated the sentence for robbery and had remanded the case for resentencing. We stated, "We have held that Godfrey's sentences must be vacated and that the case must be remanded for resentencing. Without a valid sentence, there can be no final judgment of conviction. Therefore, Godfrey's argument that his 'convictions for aggravated robbery and robbery must be

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<sup>2</sup> See *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, 893 N.E.2d 169 (*Colon II*); *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917 (*Colon I*).

<sup>3</sup> See *State v. Harris*, 122 Ohio St.3d 373, 2009-Ohio-3323, 911 N.E.2d 882, at ¶22, citing *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, syllabus.

<sup>4</sup> 1st Dist. No. C-081115, 2009-Ohio-3726.

vacated' under *Colon I* and *Colon II* is not now ripe for review, and we do not address it."<sup>5</sup>

Smith's robbery sentences have been vacated. The record does not demonstrate that he has been resentenced. Without a valid sentence, there can be no final judgment of conviction. Therefore, Smith's argument that his robbery convictions must be set aside is premature and we do not address it.<sup>6</sup>

Smith's assignment of error is overruled solely because the issue it raises is not ripe for review. The judgment of the trial court as it stands challenged in this reopened appeal is affirmed.<sup>7</sup>

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON P.J., HILDEBRANDT and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 10, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>5</sup> See *id.*, at ¶12.

<sup>6</sup> See *id.*

<sup>7</sup> Our original judgment in this case remains valid and is not affected by this Judgment Entry.