

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

STATE OF OHIO,	:	APPEAL NO. C-090589
	:	TRIAL NO. B-0604764
Plaintiff-Appellee	:	
v.	:	<i>JUDGMENT ENTRY.</i>
LONNIE WEBSTER,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Lonnie Webster was convicted of numerous crimes, including two counts of felonious assault, in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). The trial court sentenced him to two years' incarceration on each of the (A)(1) and (A)(2) charges. On appeal, this court held that Webster's felonious-assault convictions involved allied offenses of similar import. We therefore reversed the judgment of the trial court in this respect and remanded the case for resentencing.

On remand, the trial court conducted a sentencing hearing, merged the (A)(1) and (A)(2) counts, and sentenced Webster to eight years' incarceration on the (A)(1) count only. This appeal followed.

In his sole assignment of error, Webster contends that his sentence was contrary to law. He first argues that the trial court had no authority to enter a sentence other than

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

the original two-year term. Not so. Webster's original sentence had been reversed. It therefore had no legal effect, and the trial court was not bound by it. In fact, as clarified by the Ohio Supreme Court's recent decision in *State v. Whitfield*,² the trial court was required to conduct a new sentencing hearing on remand and to enter a new sentence. This argument has no merit.

Webster next argues that the trial court's decision to increase his sentence violated his right to be free from double jeopardy. While a trial court may not increase a *valid* sentence once a defendant begins serving it,³ Webster's sentence was not valid. It had been reversed by this court. Jeopardy, therefore, did not attach.⁴

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.
To the Clerk:

Enter upon the Journal of the Court on February 10, 2010

per order of the Court _____.
Presiding Judge

² ____ Ohio St.3d ____, 2010-Ohio-2, ____ N.E.2d ____.

³ See *State v. Ballard* (1991), 77 Ohio App.3d 595, 602 N.E.2d 1234.

⁴ *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶125; *State v. Beasley* (1984), 14 Ohio St.3d 74, 471 N.E.2d 774.