

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

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| STATE OF OHIO, | : | APPEAL NO. C-110644 |
| | | TRIAL NO. B-0105717 |
| Plaintiff-Appellee, | : | |
| | | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| NADER GONZALEZ, | : | |
| | | |
| Defendant-Appellant, | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1.(E); 1st Dist. Loc.R. 11.1.1.

Following a jury trial, defendant-appellant Nader Gonzalez was found guilty of two counts of felonious assault, and was sentenced to an aggregate prison term of 16 years. This court affirmed his convictions in *State v. Gonzalez*, 154 Ohio App.3d 9, 2003-Ohio-4421, 796 N.E.2d 12 (1st Dist.).

In June 2010, Gonzalez moved to vacate his convictions on the authority of *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, paragraph one of the syllabus (“For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio.”); *see also State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, syllabus (“When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a

particular offense, the sentence for that offense is void. The offender is entitled to a new sentencing hearing for that particular offense.”). The trial court denied the motion, but on appeal, this court remanded the cause for the proper imposition of postrelease control. *State v. Gonzalez*, 195 Ohio App.3d 262, 2011-Ohio-4219, 959 N.E.2d 596 (1st Dist.). The trial court subsequently held a hearing to impose postrelease control, and this appeal followed.

In his first assignment of error, Gonzalez argues that the trial court erred in failing to conduct a de novo sentencing hearing as contemplated by *Singleton*. But since *Singleton*, the Ohio Supreme Court has held that “[t]he new sentencing hearing to which an offender is entitled under *State v. Bezak* is limited to the proper imposition of postrelease control.” *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph two of the syllabus. This court has consistently applied the holding in *Fischer* retroactively. See *State v. Harris*, 1st Dist. Nos. C-100470 and C-100471, 2011-Ohio-2729 (2004 conviction); *State v. Hall*, 1st Dist. No. C-100097, 2011-Ohio-2527 (1999 conviction). Gonzalez was, therefore, not entitled to a de novo sentencing hearing. The first assignment of error is overruled.

In his second, third, and fourth assignments of error, Gonzalez argues, respectively, that the trial court erred in (1) “mechanically re-imposing the original sentence imposed by a different judge,” (2) imposing maximum and consecutive prison terms, and (3) failing to merge his convictions under R.C. 2941.25. “Although the doctrine of res judicata does not preclude review of a void sentence, res judicata still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.” *Fischer* at paragraph three of the syllabus. Thus, on remand, the trial court’s authority was limited to the proper imposition of postrelease control; the court had no authority to

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alter the duration of Gonzalez's incarceration or to merge his convictions. *See Harris* at ¶ 6; *Hall* at ¶ 13. Accordingly, the second, third, and fourth assignments of error are overruled, and the judgment of the trial court is affirmed.

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.

SUNDERMANN, P.J., HENDON and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on August 3, 2012

per order of the court _____.
Presiding Judge