

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

STATE OF OHIO,	:	APPEAL NO. C-130398
	:	TRIAL NO. B-0306813
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BENJAMIN WHITE,	:	
	:	
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.

In 2004, defendant-appellant Benjamin White pleaded guilty to attempted murder and felonious assault. He was sentenced to ten years' incarceration on the attempted-murder charge and to five years' community control on the felonious-assault charge. Shortly before White was to be released from prison, the trial court ordered him returned to Hamilton County for the purpose of setting up White's community control. Following a June 2013 hearing, the trial court entered judgment clarifying its original community-control sanctions. It also added 180 days of electronic home monitoring ("EMU") to White's sentence. This appeal followed.

In White's first assignment of error, he claims that the trial court's June 2013 entry must be vacated because the court lacked the authority to reconsider its 2004 judgment. White is correct that, subject to a judicially or legislatively created exception, a trial court may not reconsider a final judgment in a criminal case. *State*

OHIO FIRST DISTRICT COURT OF APPEALS

v. Rabner, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, paragraph one of the syllabus; *State v. Gilbert*, 1st Dist. Hamilton No. C-110382, 2013-Ohio-238, ¶ 5-6. Here, however, the trial court simply expounded on terms that it had already set, and explained to White how to avoid violating the terms of community control that the court had imposed almost ten years before. To the extent that the court did alter its 2004 judgment by adding 180 days of EMU to White's sentence, since White's EMU has expired, that issue is moot. White's first assignment of error is overruled.

In his second assignment of error, White contends that his offenses are allied offenses of similar import. This argument is *res judicata*. It could be properly raised only in a direct appeal from White's 2004 conviction. *See State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). White's second assignment of error is therefore overruled. The trial court's judgment 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., DINKELACKER and SUNDERMANN, JJ.

J. Howard Sundermann, retired, of the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on April 4, 2014

per order of the court _____.
Presiding Judge