

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

STATE OF OHIO,	:	APPEAL NO. C-150187
Plaintiff-Appellee,	:	TRIAL NO. B-1104759A
vs.	:	
LAMAR SIMMONS,	:	<i>JUDGMENT ENTRY.</i>
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.

After a trial by jury, defendant-appellant Lamar Simmons was found guilty of murder, in violation of R.C. 2903.02(A), and having weapons while under a disability, in violation of R.C. 2923.13(A)(3). Subsequently, on December 4, 2013, the trial court sentenced Simmons to a term of life for murder and 36 months' imprisonment for having weapons while under a disability. The trial court ordered that Simmons serve these sentences consecutively. Simmons appealed to this court. In *State v. Simmons*, 2014-Ohio-3695, 19 N.E.3d 517 (1st. Dist.), we held that the trial court failed to make the requisite findings for consecutive sentences and to incorporate those findings into its judgment entry. We therefore vacated the sentences and remanded the cause to the trial court for resentencing. *Id.* at ¶ 123. Simmons then filed a notice of appeal of this court's August 27, 2014 opinion to the Supreme Court of Ohio on October 10, 2014. While Simmons's appeal was pending in the Supreme Court, Simmons was resentenced by the trial court on November 12,

2014. The Supreme Court declined to accept jurisdiction of Simmons's appeal on March 25, 2015. *State v. Simmons*, 142 Ohio St.3d 1410, 2015-Ohio-1099, 27 N.E.3d 539.

Asserting one assignment of error, Simmons argues that the trial court did not have jurisdiction to resentence him on November 12, 2014, as the Supreme Court had exclusive jurisdiction after he had filed his notice of appeal on October 10, 2014. The state conceded this point, and we agree.

An appeal is perfected upon the filing of a written notice of appeal. R.C. 2505.04. "Once a case has been appealed, the trial court loses jurisdiction except to take action in the aid of the appeal." *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661, ¶ 8, quoting *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 9; see *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). Here, Simmons properly filed an appeal with the Supreme Court of Ohio on October 10, 2014. The action of the trial court on November 12, 2014, was not in the aid of Simmons's appeal to the Supreme Court. Therefore, the trial court did not have jurisdiction to resentence Simmons once he filed his notice of appeal. The trial court's November 12, 2014 resentencing entry is void.

We vacate the November 12, 2014 sentences, and remand the cause to the trial court for further proceedings consistent with our opinion entered in *Simmons*, 2014-Ohio-3695, 19 N.E.3d 517.

A certified copy of this judgment entry is 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., CUNNINGHAM and STAUTBERG, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

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To the clerk:

Enter upon the journal of the court on December 2, 2015  
per order of the court \_\_\_\_\_.

Presiding Judge