

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
vs.	:	
	:	
TONY F. ISAAC	:	Case No. 04COA68
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,  
Case No. 03-CRI-012

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: April 12, 2005

APPEARANCES:

For Plaintiff-Appellee

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307 Orange Street  
Ashland, OH 44805

For Defendant-Appellant

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8 East Long Street  
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*Edwards, P.J.*

{¶1} Defendant-appellant Tony F. Isaac appeals from his sentence which was imposed without his presence upon this Court's remand for resentencing. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} On March 24, 2003, a bill of information was filed against appellant, Tony F. Isaac, on five counts of rape, in violation of R.C. 2907.02(A)(1)(b) and one count of gross sexual imposition, in violation of R.C. 2907.05(A)(4). On March 26, 2003, appellant pled guilty as charged. By Judgment Entry filed May 6, 2003, the trial court sentenced appellant to a five year prison term on each count of rape and a three year prison term on the count of gross sexual imposition, to be served consecutively for a total aggregate term of 28 years in prison.

{¶3} Appellant filed an appeal and this court reversed for resentencing pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. See, *State v. Isaac*, Ashland App. No. 03COA027. Upon remand, the trial court reimposed the same sentence without hearing and, thus, without appellant's presence. See, Judgment Entry filed May 6, 2003.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Appellant raises the following assignment of error:

{¶5} "THE TRIAL COURT ERRED BY HOLDING A RESENTENCING PROCEEDING OUTSIDE OF APPELLANT'S PRESENCE."

{¶6} Appellant claims that the trial court erred in resentencing him in absentia. We agree.

{¶7} Upon remand by this court for resentencing, the trial court resentenced appellant without his presence. Crim.R. 43(A) and Section 10, Article I of the Ohio Constitution mandate a defendant's presence at every stage of the criminal proceedings, including imposition of sentence.

{¶8} In *State v. Wallace*, Richland App. No. 2002CA0072, 2003-Ohio-4119, ¶14, this court set forth the law regarding this issue as follows:

{¶9} "A defendant has a fundamental right to be present at all critical stages of his criminal trial. *State v. Hill*, 73 Ohio St.3d 433, 444, 1995-Ohio-287, 653 N.E.2d 271, citing, Crim.R. 43(A) and Section 10, Article I, Ohio Constitution. The United States Supreme Court has stated that an accused is guaranteed the right to be present at all stages of a criminal proceeding that is critical to its outcome when his or her absence may frustrate the fairness of the proceedings. *Kentucky v. Stincer* (1987), 482 U.S. 730, 745, 107 S. Ct. 2658. This right is embodied in Crim.R. 43(A). Criminal Rule 43(A) provides that, 'the defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, \* \* \*.'"

{¶10} We note the state concurs with appellant's argument. See, Appellee's Brief at pg. 5.

{¶11} Upon review, we find that the trial court erred in resentencing appellant in absentia.

{¶12} The sole assignment of error is granted.

{¶13} The judgment of the Court of Common Pleas of Ashland County, Ohio, is hereby reversed. The sentence imposed by the trial court is vacated and the matter is remanded for resentencing.

By Edwards, J.

Farmer, P. J. and

Wise, J. concur

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JUDGES

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IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

vs.

TONY F. ISAAC

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JUDGMENT ENTRY

Defendant-Appellant

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CASE NO. 04COA68

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Ashland County, Ohio, is reversed. The sentence imposed by the trial court is vacated and the matter is remanded for further proceedings consistent with the opinion. Costs to appellee.

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JUDGES