

[Cite as *State v. Greenwood*, 2009-Ohio-892.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22626
Plaintiff-Appellee	:	
	:	Trial Court Case No. 02-CR-1545
v.	:	
	:	(Criminal Appeal from
KEITH D. GREENWOOD	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 27th day of February, 2009.

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MATHIAS H. HECK, JR., by JILL R. SINK, Atty. Reg. #0076955, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

KEITH D. GREENWOOD, #458-849, London Correctional Institution, P.O. Box 69, London, Ohio 43140
Defendant-Appellant, *pro se*

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BROGAN, J.

{¶ 1} Keith Greenwood was convicted in the Montgomery County Common Pleas Court of possessing more than 100 grams of crack cocaine with a major drug offender specification on February 3, 2003. He was sentenced to ten years in prison. We affirmed his conviction on May 28, 2004. *State v. Greenwood*, Mont. App. No.

19820, 2004-Ohio-2737.

{¶ 2} Greenwood moved for a new trial on June 28, 2006, alleging prosecutorial misconduct. The trial court overruled Greenwood's motion and we affirmed the trial court on August 17, 2007. *State v. Greenwood*, Mont. App. No. 21713, 2007-Ohio-4202. On December 27, 2007, Greenwood filed a motion in the trial court "to correct a void sentence." Greenwood contended in a memorandum accompanying his motion that the trial court disregarded its statutory duty pursuant to R.C. 2929.11(B) to insure that the sentence imposed on him was consistent with sentences imposed for similar crimes by similar offenders. Greenwood argued that the sentence imposed on him was therefore "void" and therefore res judicata did not act to bar a trial court from correcting the error. The trial court overruled Greenwood's motion and this appeal followed.

{¶ 3} The Appellant's first assignment must be overruled. As we noted in our first appellate opinion, the trial court was not required to follow the typical sentencing guidelines such as consistency and proportionality because the penalty for Greenwood's offense was a mandatory ten-year sentence of incarceration. See R.C. 2925.11(C)(4)(f).

{¶ 4} In his second assignment, Greenwood contends he was denied his constitutional right to due process and equal protection of the law because the Ohio Sentencing Commission has failed to make recommendations to the Ohio legislature as to needed sentencing procedures to insure consistent sentences throughout the State of Ohio. The State argues that Greenwood's failure to raise this issue in the trial court constitutes forfeiture of his right to raise this issue on appeal. We agree. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642. This issue could also have been raised in Greenwood's direct appeal and was not. Principles of res judicata bar Greenwood from

raising it in this appeal. The assignment of error is Overruled.

{¶ 5} The judgment of the trial court is Affirmed.

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FAIN, J., and FROELICH, J., concur.

Copies mailed to:

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Jill R. Sink
Keith D. Greenwood
Hon. Michael Tucker