

[Cite as *State v. Miniffee*, 2013-Ohio-5132.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 99780

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**BRANDON MINIFEE**

DEFENDANT-APPELLANT

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**JUDGMENT:  
DISMISSED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-498906

**BEFORE:** S. Gallagher, P.J., Kilbane, J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** November 21, 2013

**FOR APPELLANT**

Brandon Minifee, pro se  
542-048  
Trumbull Correctional Institution  
P.O. Box 901  
Leavittsburg, OH 44430

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: Kristen L. Sobieski  
T. Allan Regas  
Assistant Prosecuting Attorneys  
Justice Center - 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

SEAN C. GALLAGHER, P.J.:

{¶1} Defendant Brandon Minifee appeals from the trial court’s denial of his motion for resentencing filed on February 26, 2012. For the following reasons, Minifee’s current appeal is dismissed for lack of a final, appealable order.

{¶2} In *State v. Minifee*, 8th Dist. Cuyahoga No. 91017, 2009-Ohio-3089 (“*Minifee I*”), this court reversed Minifee’s sentence on his felony murder and felonious assault convictions because those two offenses were allied and subject to merger. Although the state elected which conviction to proceed to sentencing on, the trial court never resentenced Minifee pursuant to the *Minifee I* decision. The state conceded and our review of the docket confirmed this error. Accordingly, there is no final sentencing entry upon which Minifee can now appeal. *See State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 13, citing *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, ¶ 24 (noting that “the appellate court’s remand requires the trial court to conduct a new sentencing hearing[, at which, the trial court must] \* \* \* ‘merge the crimes into a single conviction for sentencing, \* \* \* and impose a sentence that is appropriate for the merged offense’”).

{¶3} The appeal is dismissed for the lack of a final, appealable order, and the cause is remanded to the trial court for the purposes of complying with this court’s *Minifee I* mandate.

It is ordered that appellee recover from appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and  
PATRICIA ANN BLACKMON, J., CONCUR