

IN the Supreme Court of Ohio

ORIGINAL

Jeremy J. Quinn, Jr.  
Appellant Pro-se,  
- vs -  
State of Ohio  
Appellees.

Case No. 17-1606

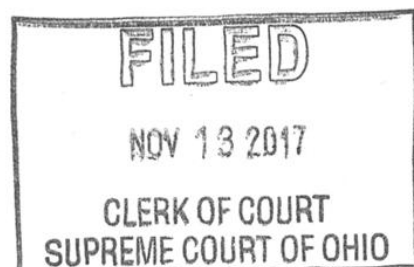
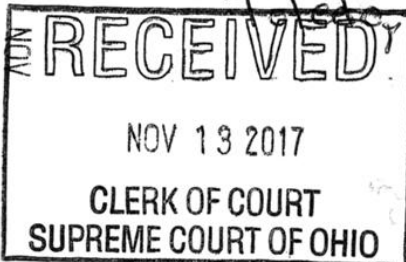
On Appeal from the Lucas  
County Court of Appeals,  
Sixth Appellate District.

Court of Appeals No. L-17-1170

Memorandum in Support of Jurisdiction  
of Appellant Jeremy J. Quinn, Jr. ●  
Pro-se

Jeremy J. Quinn, Jr. #509-127  
Ohio State Penitentiary  
878 Coitsville-Hubbard Rd  
Youngstown, Ohio 44505  
Appellant Pro-se

Brenda J. Majdalani  
Assistant Prosecuting Attorney  
Lucas County Prosecution  
700 Adams Street, Suite 250  
Toledo, Ohio 43604-5659



# Table of Contents

Page

Explanation of why this case involves a substantial Constitutional Question and is of Public or Great General Interest _____	3-4
Statement of the case and Facts _____	5-6
Argument in Support of Propositions of Law _____	6
<u>Proposition of Law No. I: Trial Courts have No Authority to impose a sentence that is void and Contary to Law</u> _____	6-9
<u>Proposition of Law No. II: A Trial Courts Failure to conduct a Merger Hearing violates the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and section 10, Article I of the OHIO Constitution</u> _____	9-10
<u>Proposition of Law No. III: The Trial Court was not order to Conduct a Foster Resentencing Hearing, but a DeNovo Resentencing Hearing</u> _____	10-11
<u>Proposition of Law No. IV: The Trial Courts continued Abuse of Discretion Constitutes as Cruel and Unusual Punishment of the United States Constitution</u> _____	11-12
<u>Proposition of Law No. V: Trial Counsel Denied Defendant Effective Assistant of Counsel in violation of the 6<sup>th</sup> and 14<sup>th</sup> United States Constitutional Amendment</u> _____	13-14
Conclusion _____	14
Certificate of service _____	14
Opinion and Judgment of the Lucas County Court of Appeals (October 13, 2017) _____	Appendix A

Explanation of why this case Involves a Substantial Constitutional Question and is one of Public or Great General Interest

Jeremy J. Quinn, Jr. is serving a sentence that violates Mandatory Sentencing Provisions and is UnConstitutional. The Trial Court failed to Conduct a Merger Hearing during his August 2<sup>nd</sup>, 2012, DeNovo Resentencing Hearing. The Trial Courts failure to Conduct a Merger Hearing pursuant to O.R.C. 2941.25, is "Contrary to Law." Ohio Law provides "When a Criminal Defendant Indictment is based off multiple offenses from one course of Conduct a Merger Hearing is to be conducted. Failure to do so violates Ohio Mandatory Sentencing Provision, and the Double Jeopardy clause of the Ohio and United States Constitution."

Mr. Quinn sentence in this Case would also constitute as Cruel and Unusual Punishment. Due to the Trial Courts repeated failure to abide by Ohio's Sentencing Provision, to ensure that Mr. Quinn is never Free. Giving him a (70)-seventy year prison sentence for (1) one-~~only~~ alleged incident against (1) one-alleged victim.

The Constitutional Question before the Court are: 1.) Whether Failure to Conduct a Merger Hearing before being sentence violates Mandatory Sentencing Provision? If so does it make a sentence Contrary to Law and Void? 2.) Does a Trial Court repeated failure to abide by Mandatory Sentence Structure, constitutes as Abuse of Discretion and Cruel and Unusual Punishment? 3.) Does a Appointed Counsel failure to object, and failure to file a Sentencing Memorandum at a Sentencing hearing, constitute as Ineffective Assistant of Counsel?

This case is also of Great General Interest, because the implications of the decision of the Court of Appeals affects every Defendant in Ohio. Who's criminal conviction

or sentence is overturned and reversed being granted Habeas relief, By the "Federal Court of Ohio" in a "Writ of Habeas Corpus 28 U.S.C. § 2254 Petition."

Mr. Quinny ~~is~~ request that this Court accepts Jurisdiction to hear this case, and review the erroneous decision of the Court of Appeals.

## Statement of Case and Facts

On July 21, 2005, Mr. Quinn was indicted for the alleged kidnapping and Rape of one victim. Mr. Quinn was found guilty after a Jury Trial on November 15<sup>th</sup>, 2005, and on December 9<sup>th</sup>, 2005. The Trial Court imposed an (70) seventy year sentence against Mr. Quinn. The (70) seventy year sentence was devised by adding (7) seven consecutive (10) Ten-year terms of incarceration.

Mr. Quinn has maintained his Innocence during all proceedings.

Mr. Quinn has timely appealed this decision in the state courts. On March 9<sup>th</sup>, 2009, Mr. Quinn filed a pro-se 28 U.S.C. § 2254 writ of Habeas-Corpus Petition in the United States District, Northern District for Ohio Federal Court, case No. 3:09-cv-546. In which the District Court denied, see Quinn -vs- Ohio Dept of Rehab & Corr., 2010 WL 1433400 (N.D. OHIO April 7<sup>th</sup>, 2010)

Mr. Quinn Appealed and Sought a Certificate of Appealability to the United States Federal Court of Appeals, 6<sup>th</sup> Circuit of OHIO. As to Mr. Quinn's sentencing claim, and the court subsequently affirmed the District Court Judgment, see Quinn -vs- Ohio Dept of Rehab & Corr., No. 10-3490 (6<sup>th</sup> Cir. Sept. 21<sup>st</sup>, 2011) (unpublished Order)

Mr. Quinn filed for Rehearing in the Federal Court of Appeals for OHIO. The Court then reversed it's prior decision, and also reversed the District Court Judgment and remanded the case back to the District Court for further Proceedings. See Quinn -vs- Ohio Dept of Rehab & Corr., No. 10-3490 (6<sup>th</sup> Cir. Jan 18<sup>th</sup>, 2012) (unpublished Order)

On Remand, the Federal District Court reversed Mr. Quinn case back to the OHIO Trial Court for a "De Novo" Resentencing hearing. Due to Mr. Quinn sentence violated a United States Supreme Court ruling.

On August 2<sup>nd</sup>, 2012, the Trial Court of the Lucas County Court of Common Pleas, Toledo, OHIO, Conducted a Resentencing hearing De Novo. During the Resentencing hearing Refused

to conduct an DeNovo Allied offense / Merger hearing, Therefore committing "Structural Error" making Mr. Quinn's sentence Contrary to Law, and Void. Allied offense / Merger hearing is a Mandatory Sentencing Provision, When an Criminal Indictment is based off one course of Conduct against one victim.

The record does reflect that during the DeNovo Resentencing hearing. The Trial Court didnot conduct a Merger Hearing, Therefore, Mr. Quinn is serving a sentence that violates Mandatory Sentencing Provision, and Void under Ohio Law.

On January 19<sup>th</sup>, 2017, Mr. Quinn filed a "Motion to Correct a Void sentence," raising to the Trial Court there failure to Conduct a Merger hearing. During the August 2<sup>nd</sup>, 2012 Resentencing hearing. On June 22, 2017, the Trial Court issued a Judgment denying the Motion. Mr. Quinn timely Appealed to the Court of Appeals Sixth District, Lucas County. The Court affirmed the Trial Courts Judgment, specifically finding that Mr. Quinn Motion to the Trial Court ~~was~~ was barred by the Doctrine of Res Judicata, and that Mr. Quinn Resentencing hearing does not extend to Merger of allied offenses. Inlight of this Court decision ~~in~~ in State vs- Foster, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470.

This timely memorandum is support of Jurisdiction follows. This Court should grant jurisdiction, to resolve the questions within this case. That not only affects Mr. Quinn, but every Defendant who has there sentence overturned and reversed.

### Proposition of Law I

Trial Courts have No Authority to impose a sentence that is void and is contrary to law.

A criminal sentence is void and Contrary to Law, when a court lacks authority to Act, or when it imposes a sentence

that is not in accordance with statutorily mandated terms. Sentences imposed for crimes of multiple counts from one Course of Conduct without a Merger Hearing are void. The doctrine of Res Judicata does not apply to void sentences.

A void sentence is "One imposed by a court that lacks subject-matter, jurisdiction, or the Authority to act." A voidable sentence is one imposed by a court that has both Jurisdiction and Authority to Act but was imposed in an invalid, irregular, or erroneous manner." See State vs. McCall, 2012-Ohio-5604, 7<sup>th</sup> Dist. Citations omitted.

No court has the Authority to impose a sentence that is Contrary to law. "Although the interests in finality of a sentence are important, they cannot Trump the interests of Justice, which require a judge to follow the letter of the law in sentencing a defendant." State vs. Fischer, 128 Ohio St. 3d 92, 94, at 23 (2010) "When a Trial Court disregards statutory mandates, principles of Res Judicata, including the doctrine of law of the case, do not preclude Appellate review. The sentence may be reviewed at anytime on direct Appeal or by collateral Attack." Id at 30

This Court has consistently recognized a narrow, and imperative, exception to that general rule. This court has ruled "A sentence that is not in accordance with statutorily mandated terms is void. See State vs. Simpkins, 117 Ohio St. 3d 420, 2008 1197, 884 N.E. 2d 568 at P. 14 (2008); State vs. Bezak, 114 Ohio St. 3d 94, 2007 Ohio 3250, 868 N.E. 2d 961 (2007); State vs. Jordan, 104 Ohio St. 3d 21, 2004 Ohio 6085, 817 N.E. 2d 864 (2004); State vs. Beasley (1984), 14 Ohio St. 3d 74, 75, 14 OBR 511, 471 N.E. 2d 774; Colegrave vs. Burns (1964), 175 Ohio St. 437, 25 O.O. 2d 447, 195 N.E. 2d 811; see also Woods vs. Telb (2000), 89 Ohio St. 3d 504, 2000 Ohio 171, 733 N.E. 2d 1103.

In "Fischer at P 9" this court ruled "Any attempt by a

Court to disregard statutory requirements renders the attempted sentence a Nullity or Void." (Quoting Beasley, 14 Ohio St. 3d at 75, 14 OBR 511, 471 N.E.2d 774.)

Under Ohio law it is clear, that "when a Criminal Indictment, is based off Multiple offenses that arose out of the same Criminal Conduct, a Merger Hearing is to be conducted. This is a Mandatory Sentencing Statute and cannot be ignored by a Trial Court."

There are several District Courts of Appeals in Ohio that have ~~had~~ overturned cases, because of Trial Courts failure to conduct a Merger Hearing before sentencing. See state-vs-Mangrum (1993), 86 Ohio App. 3d 156, 158, 620 N.E.2d 196; state-vs-Ewing, 2<sup>nd</sup> Dist. No. 23949, 2011 Ohio 1981, ¶16; state-vs-Little, 2009-Ohio-4328, Ohio App. Lexis 3645 (2009) where these Courts have stated "The trial court is still duty-bound to conduct a Merger Hearing to determine whether the crimes were committed ~~separately~~ separately or with a separate animus for each offense prior to sentencing the defendant," ~~see~~ see Ewing, Id.

This same principle was founded by this Court in state-vs-Underwood, 124 Ohio St. 3d 365, 2010 1, 922 N.E.2d (2010). In which this Court reversed, because the Trial Court failed to conduct a Merger Hearing before the sentencing phrase. The Court ruled "The duty to conduct a Merger Hearing, when Multiple offenses arise out of the same criminal conduct, is Mandatory and not discretionary." Although these cases pertain to Defendants who took plea deals, The same standard clearly Applies to Defendants that went to Trial. As did Mr. Quinn did in his case.

If this Merger Hearing is a Mandatory Sentencing Provision, in which a Trial Court is duty bound to do, Then when a Trial Court fails to conduct a Merger Hearing, the sentence is Contrary to law and Void. Due to it violates Mandatory Sentencing Provisions, and sentences that are Contrary to law and Void, "are not" subjected to the doctrine of Res Judicata.



In Mr. Quinn case, on August 2<sup>nd</sup>, 2012, Mr. Quinn was given a DeNovo Resentencing Hearing, in which the Court was order to do by the Federal Court. The Trial Court was faced with a criminal Indictment, that is based off Multiple Offenses that arose out of the same Criminal Conduct. Yet, the Trial Court refused and ignored the Merger Hearing.

The doctrine of Res Judicata applies to charges that are Allied offense, in which a Defendant fails to object or raise in Direct Appeal. Mr. Quinn is not raising this issue at all, but only raises the Trial Courts failure to Conduct a Merger Hearing, which the Trial Court has a duty bond duty to do so, because failure to do so violates Mandatory Sentencing Provisions, and is contrary to law there by void, and not subject to the doctrine of Res Judicata.

Mr. Quinn asks that this Court Grant Jurisdiction of this. To resolve the Court of Appeals ruling that was misplaced.

### Proposition of Law, II

A Trial Courts failure to conduct a Merger hearing violates the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.

"The concept of merger originates in the prohibition against cumulative punishments as established by the Double Jeopardy clauses of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution." State vs. Williams, 124 Ohio St. 3d 381, 384, 2010 Ohio 147, 922 N.E. 2d 937. The constitutional prohibition against multiple punishments for the same offense is codified in Ohio Revised Code, 2941.25.

A Merger Hearing is the beginning bases of determining whether or not charges are Allied offense. Therefore, a

Merger Hearing is a Key Element of the Double Jeopardy Clause, which is why it's Mandatory and Cannot be ignored. When the trial court failed to conduct the Merger Hearing it clearly allowed Mr. Quinn. To be sentence to charges that violate the Double Jeopardy Clause of the United States and Ohio Constitution.

Mr. Quinn asks that the Court accept Jurisdiction of this issue to resolve this matter, of whether failure to conduct a Merger Hearing violates the Double Jeopardy clause.

### Proposition of Law III

The Trial Court was not order to Conduct a Foster Resentencing Hearing, but a DeNovo Resentencing hearing.

Mr. Quinn was granted Habeas relief, by the Federal Court of Appeals for Ohio, in a writ of Habeas Corpus 28 U.S.C § 2254 petition. See Quinn-us- Ohio Dept of Rehab. & Corr., No. 10-3490 (6<sup>th</sup> Cir. Jan. 18<sup>th</sup>, 2012) (Unpublished Order). In the Federal Court of Appeals ruling, the ~~trial~~ Court order Mr. Quinn a "DeNovo" ~~com~~ resentencing hearing, because Mr. Quinn sentence violated a United States Supreme Court ruling. The court also went on to further state "Nothing would prevent Mr. Quinn from being sentence under Ohio sentencing law affective on the date of his resentencing hearing." That was due to there was No retroactive laws that protected Mr. Quinn from being sentence to those laws or under those laws. However, the Trial Court was still order to conduct a DeNovo Resentencing Hearing.

A "DeNovo" sentencing hearing mean's "A New- as if the original sentence never took place." Therefore, the Trial Court was suppose to conduct a Merger Hearing, Due to Mr. Quinn Indictment, and the charges he was found guilty of. Is based off of Multiple offenses that arose out of the same criminal conduct. Mr. Quinn is convicted of one person, in which multiple acts was alleged to be committed from one alleged act.

The Court of Appeals for the Sixth District, Lucas County, Ohio.

Ruled in its Judgment " Foster resentencing does not extend to include consideration of Allied offenses for the purpose of sentencing and Res Judicata remains a bar to Consideration of Merger claims at Foster resentencing." see state vs Quinn, h-17-1170 at ¶ 11. (Citing state vs Foster, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E. 2d 470 at P 16.

The court was wrong in its judgment because: 1.) The Federal Court of Appeals clearly ordered a De Novo Resentencing Hearing; 2.) That Mr. Quinn may be sentence under Ohio's current sentencing structure, and that Retroactive Application may apply to Mr. Quinn.

Further, Resentencing after remand due to Foster requires "a sentencing hearing De Novo." State vs Mathis, 109 Ohio St. 3d 84, 2006 Ohio 855, P 37, 846 N.E. 2d 1. State vs Bezak, 114 Ohio St. 3d 94, 2007 Ohio 3250, P 6, 868 N.E. 2d 961; State vs Jordan, 104 Ohio St. 3d 21, 2004 Ohio 6085, 817 N.E. 2d 864 at paragraph two of syllabus. The resentencing on remand, is to be conducted on a De Novo basis. State vs Bezak at P 6. The resentencing hearing is to be conducted "as if there had been no sentence." Jordan at P. 13.

There's no ruling in Foster that says a Trial Court has a right to ignore Mandatory Sentencing Statute, which is why the court should accept Jurisdiction. The Trial Court failed to conduct a Merger Hearing.

#### Proposition of Law IV

The Trial Court continued Abuse of Discretion constitutes as Cruel and Unusual Punishment of the Eighth Amendment to the United States Constitution

The Ohio Supreme Court decision in State vs Kalish, 120 Ohio St. 3d 23, 2008-Ohio-4912, 896 N.E. 2d 124, sets forth a two-step Analysis, to be employed in a reviewing of Felony sentences on Appeal. First, Appellate Courts are required to "examine the Sentencing Courts Compliance with all applicable rules and statutes is imposing the sentence to determine whether the sentence is clearly and Convincingly Contrary to law." Id at ¶ 26. Second, if the first prong is satisfied, the Court reviews the decision under a Abuse of Discretion.

An Abuse of Discretion is "more than an error of law or Judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." Blakemore -us- Blakemore (1983), 5 Ohio St. 3d 217, 219 5 OBR 481, 450 N.E. 2d 1140, quoting State -us- Adams (1980), 62 Ohio St. 2d 151, 157, 16 O.O. 3d 169, 404 N.E. 2d 144.

The Trial Courts attitude is displayed by it's repeated failure to abide by Mandatory Sentencing Provisions. When sentencing Mr. Quinn, The Trial Court Continues to give Mr. Quinn a sentence that is Contrary to law.

This is done by the Trial Court, because the Court Know's if it abides by Mandatory sentencing statue when sentencing Mr. Quinn, Mr. Quinn will gain his freedom back. However, the Trial Court has stated on record, they will do everything in there power to ensure Mr. Quinn is never Free again, which is why the Trial Court continues to ignore Mandatory Sentencing Provisions when sentencing Mr. Quinn.

Mr. Quinn is serving a sentence that Constitutes Cruel and Unusual Punishment. There is only "one" alleged victim in this case, and "One" alleged incident occurred. Yet Mr. Quinn was given a (70) seventy year sentence. Mr. Quinn has more time then a Defendant who has multiple victims, (or) for that matter a Murder case.

Mr. Quinn has always maintained his innocence in this case, and because he refuses to admit a crime he didnot do, The Trial Court gives Mr. Quinn a sentence an Unreasonable and Unconscionable sentence. His sentence does not reflect "even" Application or ~~proper~~ fairness, but shows bia's behavior and attitude towards him.

Mr. Quinn asks that the Court grant Jurisdiction of this issue, to correct this error of law, that is before the Court. Mr. Quinn sentence reflects and shows Cruel and Unusual Punishment.

## Proposition of Law V

### Trial Counsel denied Defendant Effective Assistant of Counsel in violation of the 6<sup>th</sup> and 14<sup>th</sup> United States Constitution Amendment.

Appellant must first establish that his attorney's actions were below a objective standard of reasonable professional representation. Strickland -vs- Washington (1984), 466 U.S. 668, 687. Second, that he was prejudiced by the errors, specifically that there is a "Probability sufficient to undermine confidence in the ~~the~~ Outcome." State -vs- Bradley (1989), 42 Ohio St. 3d 136, 142. Citation Omitted.

Mr. Quinn was facing a 70 year sentence, and because of Counsel repeated failure of effective representation, Mr. Quinn was given a unconstitution sentence, of 70 years, for one alleged incident against one person. The Colloquy the Attorney had with the trial court's leads one to question "whether the Trial Attorney at the Resentencing hearing understood the law, or whether he ignored it intentionally." Had he understood the law, he would have raised and objected to the Trial Court failure to conduct a Mandatory statutory sentencing. In Not conducting a "Merger Hearing" which is Mandatory under Ohio Law.

The Court could also question whether the sentencing Attorney read the Federal Court ruling and decision, that reversed Mr. Quinn sentence. Had he did so he would have known Mr. Quinn was to be given a "DeNovo" ~~an~~ Resentencing Hearing. That includes a Merger Hearing. Due to Mr. Quinn's Indictment is based off one course of conduct against one victim. The sentencing Attorney for Mr. Quinn even failed to file a sentencing Memorandum, during the August 2<sup>nd</sup>, 2012, Resentencing Hearing. The Appointed Counsel in Mr. Quinn Resentencing Hearing, clearly showed that he did not want to represent Mr. Quinn in this case, at least Effectively.

Mr. Quinn has clear grounds in this case, the Prejudice is clearly obvious. Had Appointed Counsel done it's job. Mr. Quinn would of had a Merger Hearing and a clear opportunity to

have his charges merged. Or at least raised the issue on record to preserve the issue for Appeal. Yet, appointed Counsel did nothing to raise this issue, or fight properly for Mr. Quinn.

Ineffective Assistance by Appointed counsel is clearly shown, and Mr. Quinn asks that the Court find Plain Error and reverse this case back for a ~~DeNovo~~ DeNovo Resentencing Hearing

### Conclusion

The Court of Appeals in this case was wrong ~~in~~ in its judgment. A Merger Hearing is a Mandatory Sentencing Provision, and a Trial Courts failure to conduct a Hearing, Makes a Sentence Contrary to law and Void. "Griffin & Katz, OHIO Felony Sentencing Law (2008) 1211, Sec 10:8, says "Ignoring an issue or factors which a statute requires a court to consider, render the resulting judgment Contrary to law".

For that forgoing reason, and the reasons stated within this Memorandum. This case involves multiple substantial Constitutional Questions, and is of great General Interest. The Appellant Pro-se, request that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully, Jeremy J. Quinn  
Appellant - Defendant.  
Pro-se

### Certificate of Service

I certify that a copy of the Memorandum in support of Jurisdiction was placed in the prison mailing system, to be sent ~~to~~ by Mail to Brenda J. Majdalani, Assist Prosecuting Attorney, 700 Adams Street, 5<sup>th</sup> 250, Toledo, OHIO 43604, on November 5<sup>th</sup>, 2017.

Jeremy J. Quinn  
Appellant - Defendant Pro-se

FILED  
COURT OF APPEALS

2017 OCT 13 AM 9:16

COMMON PLEAS COURT  
BERNIE OLSON  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-17-1170

Appellee

Trial Court No. CR0200502529

v.

Jeremy J. Quinn, Jr.

**DECISION AND JUDGMENT**

Appellant

Decided: **OCT 13 2017**

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Jeremy J. Quinn, Jr., pro se.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} This accelerated appeal is from a judgment of the Lucas County Court of  
Common Pleas. For the reasons that follow, we affirm.

{¶ 2} In July 2005, appellant, Jeremy Quinn, Jr., was indicted on one count of  
kidnapping and six counts of rape. The case proceeded to a jury trial and, on

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OCT 13 2017

Appendix  
"A"

November 16, 2005, the jury found appellant guilty on all counts. On December 9, 2005, the trial court accepted the verdicts and sentenced appellant to an aggregate period of 70 years incarceration.

{¶ 3} Appellant made a direct appeal of the December 2005 judgment. He set forth four assignments of error: (1) the verdicts were unsupported by sufficient evidence and against the manifest weight of the evidence; (2) the sentence imposed by the trial court was excessive and contrary to law when the sentence exceeded the minimum term of imprisonment on the basis of findings made by the trial court judge pursuant to a facially unconstitutional statutory sentencing scheme; (3) appellant was deprived of effective assistance of counsel; and (4) prosecutorial misconduct during the trial rendered appellant's trial fundamentally unfair and a new trial should be granted.

{¶ 4} Appellant did not raise the issue of merger in his original direct appeal, although he had unsuccessfully argued merger in the trial court. We affirmed appellant's convictions and sentence. *See State v. Quinn*, 6th Dist. Lucas No. L-06-1003, 2008-Ohio-819.

{¶ 5} On August 2, 2012, appellant was resentenced under *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. The trial court reimposed the original 70-year aggregate sentence, and appellant appealed that judgment. *See State v. Quinn*, 6th Dist. Lucas No. L-12-1242, 2014-Ohio-340.

{¶ 6} In the third assignment of error in that appeal, appellant argued "the trial court erred by not merging the offenses of conviction for purposes of sentencing." We



affirmed the judgment and specifically overruled that assigned error, holding that “res judicata remains a bar to consideration of merger of allied offenses in *Foster* resentencing.” *Id.* at ¶ 17.

{¶ 7} On January 19, 2017, appellant filed a “Motion to Correct a Void Sentence pursuant to O.R.C. 2941.25,” in which he claimed his convictions were void because “the trial court committed reversible error, by failing to conduct a merger hearing pursuant to Ohio Revised Code 2941.25, during the August 2, 2012 resentencing hearing.” The state argued in response that appellant’s challenge to merger was barred by res judicata and the law of the case doctrine. The trial court overruled appellant’s motion on June 21, 2017, stating as follows:

Before the court is Defendant’s “Motion to Correct a Void Sentence,” filed pro se January 19, 2017, and the state’s response. The court construes this motion as a petition for post-conviction relief. Defendant argues that the trial court erred by failing to merge various findings of guilty. However, as pointed out by the state, Defendant argued these matters on appeal in 2013 in CL-2012-1242, and was unsuccessful. The law of the case doctrine thus applies, and Defendant’s motion is denied.

{¶ 8} Appellant now appeals from that judgment setting forth the following assignments of error:

I. The Trial Court Erred in it's (sic) Judgment dismissing Appellant (sic) Motion to Correct a Void Sentence in it's (sic) failure to conduct a Merger Hearing, making his sentence void and Contrary to Law.

II. The Trial Court Abused it's (sic) discretion during the August 2nd, 2012 resentencing hearing by sentencing Mr. Quinn without conducting a Merger Hearing.

{¶ 9} In both assigned errors we find appellant raises and appeals the issue of merger and, therefore, we will address and dispose of both assigned errors simultaneously.

{¶ 10} As previously noted, “[i]t is longstanding law in Ohio that ‘any issue that could have been raised on direct appeal and was not is res judicata and not subject to review in subsequent proceedings.’” *See Quinn*, 6th Dist. Lucas No. L-12-1242, 2014-Ohio-340, at ¶ 14. A “failure to raise merger on direct appeal would bar under res judicata consideration of the issue” beyond direct appeal. *Id.*, citing *State v. Rice*, 6th Dist. Lucas No. L-12-1127, 2012-Ohio-6250, ¶ 7.

{¶ 11} Furthermore, “*Foster* resentencing does not extend to include consideration of merger of allied offenses for purposes of sentencing and \* \* \* res judicata remains a bar to consideration of merger claims at *Foster* resentencing.” *Id.* at ¶ 16, citing *State v. Strickland*, 11th Dist. Trumbull No. 2012-T-0009, 2012-Ohio-5125, ¶ 12; *State v. Smith*, 3d Dist. Marion No. 9-11-36, 2012-Ohio-1891, ¶ 23-24; *State v. Poole*, 8th Dist. Cuyahoga No. 94759, 2011-Ohio-716, ¶ 11-13; *State v. Dillard*, 7th Dist. Jefferson No.

08-JE-35, 2010-Ohio-1407, ¶ 22; and *State v. Martin*, 2d Dist. Montgomery No. 21697, 2007-Ohio-3585, ¶ 15. Accordingly, appellant's assignments of error are not well-taken.

**Conclusion**

{¶ 12} The judgment of the Lucas County Court of Common Pleas is affirmed.

The costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

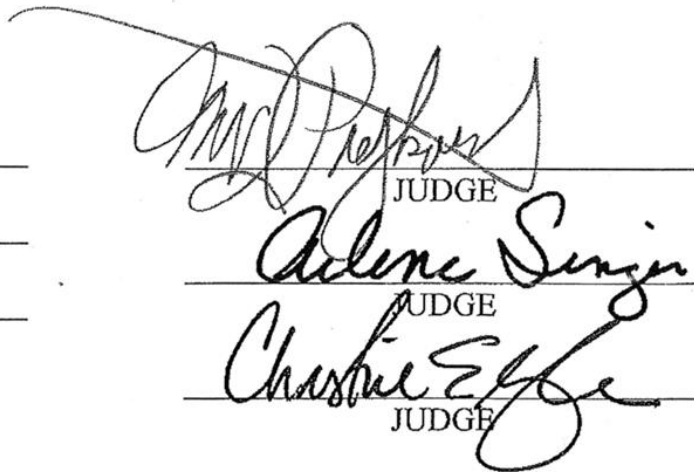
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Arlene Singer, J.

Christine E. Mayle, J.

CONCUR.



JUDGE  
JUDGE  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.supremecourt.ohio.gov/ROD/docs/>.