

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

STATE OF OHIO,	:	APPEAL NO. C-230179
Plaintiff-Appellee,	:	TRIAL NO. B-2002020-A
vs.	:	
DEARIES CROSS,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In March 2023, defendant-appellant Dearies Cross was sentenced to an aggregate 12- to 15-year prison term after pleading guilty to two drug-related felonies. Cross timely initiated a direct appeal. Although the docket statement conveyed his intent to file transcripts of proceedings as part of the record, Cross’s attorney filed his merit brief without having filed any transcripts.

In an opinion dated January 26, 2024, this court affirmed Cross’s convictions. We acknowledged that we were constrained to presume the regularity of the proceedings below due to the absence of transcripts. Citing this patent record omission, the opinion informed Cross that he had 90 days to move to reopen the appeal under App.R. 26(B) on the basis of ineffective assistance of counsel.

Represented by newly-appointed counsel, Cross timely filed an application for reopening, which was granted. Twenty-four volumes of transcripts were filed into the

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record for the reopened appeal. Thereafter, Cross filed a brief asserting a sole assignment of error challenging the trial court's failure to afford him the right of allocution at sentencing.

Allocution is personal to the defendant. *State v. McConnaughey*, 2021-Ohio-3320, ¶ 45 (1st Dist.). The right is encompassed by Crim.R. 32(A)(1), which requires that the trial court personally address the defendant and inquire whether he wishes to make a statement on his own behalf or present any information in mitigation of punishment. Trial courts must painstakingly adhere to the requisites of Crim.R. 32. *Id.* at ¶ 46, quoting *State v. Green*, 90 Ohio St.3d 352, 359 (2000). If a court imposes sentence without first having given the defendant the opportunity to speak, resentencing is mandatory unless the error is invited or harmless. *Id.*, citing *State v. Campbell*, 90 Ohio St.3d 320 (2000), paragraph three of the syllabus.

A reading of the sentencing transcript confirms that the trial court did not personally address Cross and ask whether he wished to make a statement on his own behalf before imposing sentence. Nor does the record suggest that Cross invited the error, or that any unusual circumstances rendered the error harmless. *See State v. Osume*, 2015-Ohio-3850, ¶ 24 (1st Dist.). The State concedes the error.

The sole assignment of error is sustained. Cross's sentences are reversed and the cause is remanded for resentencing. The findings of guilt remain undisturbed, and the judgment is otherwise affirmed. The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

**KINSLEY, P.J., BOCK and NESTOR, JJ.**

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**To the clerk:**

**Enter upon the journal of the court on 3/7/2025 per order of the court.**

**By: \_\_\_\_\_**  
**Administrative Judge**