

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2016-P-0007</b>
ORLANDO LEE ARMSTEAD-WILLIAMS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2015 CR 0374.

Judgment: Affirmed.

*Victor Viglucci*, Portage County Prosecutor, and *Kristina Reilly*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

*Timothy Young*, Ohio Public Defender, and *Charlyn Bohland*, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Orlando Lee Armstead-Williams, appeals his conviction, following his guilty plea, of aggravated robbery, aggravated burglary, and two counts of kidnapping. The lead issue is whether aggravated robbery and aggravated burglary merged for purposes of sentencing. Our original decision in this appeal, in which we reversed and remanded, is at 2017-Ohio-1004. On the state’s motion, we reconsider our decision and for the reasons that follow, we affirm.

{¶2} The statement of facts that follows is derived from information presented at the sentencing hearing and from the police reports and witness statements filed below. On March 8, 2015, at approximately 12:00 noon, Tyler Shepherd was in his apartment at the Jordan Court Apartments in Kent, Ohio, “hanging out” and smoking marijuana with some of his friends.

{¶3} At that time, someone knocked at the door. Tyler got up and looked through the peephole, but it was dark because it was being covered. Thinking that someone might have been playing a joke on him, Tyler cracked open the door and two black males wearing masks forced their way in. Appellant, while holding a gun on Tyler, and his accomplice, Kenneth Curley, ordered Tyler to give them all the marijuana and money he had in the apartment. Tyler hesitated and, as a result, appellant struck him in the back of his head with the butt of his gun.

{¶4} Appellant aimed his gun at everyone in the apartment, and told them to get on the ground. He said they should put their face down and if anyone looked at them, he would shoot them. The victims followed the order and laid on the ground. Appellant and Curley told everyone to put their hands behind their backs, and the intruders tied the victims’ hands and then tied the victims together “wrist-to-wrist” with zip ties. According to the prosecutor, while the victims were on the floor, appellant “pistol-whipped” them. The intruders searched the pockets and wallets of the victims demanding money.

{¶5} The suspects then searched the apartment for drugs and money. They stole two cell phones and about \$2,500. The victims heard the suspects breaking things in the other rooms while yelling, “where is everything?”

{¶6} Meanwhile, two residents in a nearby apartment heard what they thought was a robbery in progress. They heard someone in the apartment yelling to get on the floor and not to move or he would shoot them and ordering someone to tell them where the stuff was. These neighbors called 911 and reported a robbery involving a gun. Within minutes, officers arrived at the door of the reported robbery yelling, “Kent Police, open the door \* \* \* and show your hands.”

{¶7} The two suspects were still in the apartment at that time and told everyone inside that if they said anything, they would kill them all. Appellant then broke and jumped out of the living room window and took off running with his gun in hand and still wearing his mask. Curley then took off his mask in the apartment, jumped out of the window and ran away following appellant. Officers found five men tied up with plastic zip ties. Investigators found marijuana all over the floor, a toilet and a cooler stuffed with marijuana, a digital scale, other drug paraphernalia, and \$8,267 in cash.

{¶8} Tyler told the police that after the males ran away, he got nervous and tried to flush the marijuana down the toilet before the police entered the apartment. Tyler admitted to selling marijuana out of the apartment.

{¶9} Meanwhile, Kent Police officers pursued the suspects. They saw appellant running in the woods. As they followed him in a nearby culvert, they saw him removing his mask and throwing it to the ground. He was still carrying his gun at the time. Officers ordered appellant to stop, but he continued running through the woods.

{¶10} At that time, other officers following Curley saw him running nearby. They stopped and handcuffed him. Upon searching him, officers found a large amount of cash in his pocket, which was later found to be \$381.

{¶11} Meanwhile, the other group of officers saw appellant run behind a shed on a residential property. The officers saw foot prints in the snow leading to the shed, but not exiting from it. The officers ordered appellant to exit the shed, but he did not respond. One officer deployed a pepper spray gun into the shed, but there was still no response. When officers started moving plywood in the shed, they found appellant hiding under it and handcuffed him. The officers found on appellant two cell phones that were stolen from the victims and a large amount of cash stolen from the apartment, later determined to be \$2,062, in his pants pocket. Officers also found a 9 mm handgun, which appellant was seen tossing on a window sill of a nearby house.

{¶12} On March 17, 2015, appellant, who was one week shy of his 18th birthday, was charged in a complaint filed in the Portage County Juvenile Court with kidnapping and aggravated robbery, each with a firearm specification, if committed by an adult. He entered a denial to the complaint. On the state's motion, a Juvenile Rule 30 hearing took place at which appellant waived the probable cause hearing and stipulated to a finding of probable cause and to the bindover.

{¶13} On May 29, 2015, the grand jury returned a 15-count indictment against appellant, charging him with aggravated robbery, aggravated burglary, two counts of felonious assault, nine counts of kidnapping, tampering with evidence, and possession of criminal tools.

{¶14} On August 13, 2015, appellant and the state entered a plea bargain, pursuant to which appellant pled guilty to aggravated robbery, a felony of the first degree, with a firearm specification (Count 1); aggravated burglary, a felony of the first degree, with a firearm specification (Count 2); and two counts of kidnapping, each being

a felony of the first degree, and each carrying a firearm specification (Counts 5 and 6). The court found that appellant was advised of his rights; that he understood and waived those rights; and that he entered his guilty plea voluntarily. The court accepted appellant's guilty plea and found him guilty of each of the offenses with the accompanying specification to which he pled guilty. On the state's motion, the court dismissed the remaining 11 counts of the indictment. Appellant was referred for a pre-sentence investigation. The state and defense filed sentencing memoranda on the issue of merger.

{¶15} On October 9, 2015, the court held a sentencing hearing. On Count 1, aggravated robbery, the court sentenced appellant to three years in prison and three years on the firearm specification, each term to be served consecutively to the other. On Count 2, aggravated burglary, the court sentenced appellant to three years, which was to be served concurrently with the sentence for aggravated robbery, but the firearm specification was ordered to be served consecutively. On Count 5, the kidnapping of Tyler Shepherd, the court sentenced appellant to three years, to be served concurrently with the sentence for aggravated robbery and aggravated burglary, but the firearm specification was ordered to be served consecutively. On Count 6, the kidnapping of another victim, Kurt Pietrick, the court sentenced appellant to three years, to be served concurrently with the sentences imposed for aggravated robbery, aggravated burglary, and the kidnapping of Tyler Shepherd, but the firearm specification was ordered to be served consecutively, for a total of 15 years in prison.

{¶16} Appellant appeals, asserting five assignments of error. For his first, he alleges:

{¶17} “The trial court erred when it failed to merge for sentencing offenses that had a similar import, arose from the same conduct, and were not committed separately or with a separate animus, in violation of Orlando Armstead-Williams’s rights under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution; Article I, Section 10, Ohio Constitution; and R.C. 2941.25.”

{¶18} R.C. 2941.25 reflects the General Assembly’s intent to prohibit or allow multiple punishments for two or more offenses resulting from the same conduct. *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, ¶11. R.C. 2941.25 provides:

{¶19} (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment \* \* \* may contain counts for all such offenses, but the defendant may be convicted of only one.

{¶20} (B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment \* \* \* may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶21} The Supreme Court of Ohio, in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, held that “[u]nder R.C. 2941.25, the [trial] court must determine prior to sentencing whether the offenses were committed by the same conduct.” *Id.* at ¶47.

{¶22} In *Johnson, supra*, the Court held that when determining whether multiple offenses are allied offenses of similar import under R.C. 2941.25, “the conduct of the accused must be considered.” *Id.* at syllabus. Further, in making such determination, “the question is whether *it is possible* to commit one offense and commit the other with the same conduct \* \* \*.” (Emphasis added.) *Id.* at ¶48. “If the multiple offenses *can be committed by the same conduct*, then the court must determine whether the offenses

were committed by the same conduct, i.e., ‘a single act, committed with a single state of mind.’” (Emphasis added.) *Id.* at ¶49. “If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged.” *Id.* at ¶50.

{¶23} More recently, in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, the Ohio Supreme Court reaffirmed its holding in *Johnson* that in determining the existence of allied offenses, the emphasis is on the defendant’s conduct, rather than an abstract comparison of the elements of the subject offenses. *Ruff* at ¶16, 26. However, the Court in *Ruff* stated that the *Johnson* test is “incomplete because R.C. 2941.25(B) provides that when a defendant’s conduct constitutes two or more offenses of dissimilar import, the defendant may be convicted of all of the offenses.” *Ruff* at ¶16. The Court in *Ruff* held: “In determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must evaluate three separate factors - the conduct, the animus, and the import.” *Id.* at paragraph one of the syllabus. Further, “[t]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) \* \* \* if the harm that results from each offense is separate and identifiable.” (Emphasis added.) *Id.* at paragraph two of the syllabus. The Court in *Ruff* explained:

{¶24} A trial court and the reviewing court on appeal when considering whether there are allied offenses that merge into a single conviction under R.C. 2941.25(A) must first take into account the conduct of the defendant. In other words, how were the offenses committed? If *any of the following is true*, the offenses *cannot merge* and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance - in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, [or] (3) the offenses were committed with a separate animus or motivation. (Emphasis added.) *Ruff* at ¶25.

{¶25} Thus, *Ruff* reaffirmed the two elements in the merger analysis in *Johnson* (whether the offenses were committed separately and whether they were committed with a separate animus) and added a third element (whether the offenses were of similar import).

{¶26} We review the trial court's merger ruling de novo. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, ¶28.

{¶27} The indictment charged appellant with aggravated burglary, in violation of R.C. 2911.11(A)(1) and/or (A)(2), in that, by force, he trespassed in an occupied structure with purpose to commit therein a criminal offense and he (1) inflicted or attempted or *threatened to inflict physical harm* on Tyler Shepherd and/or (2) had a firearm on or about his person.

{¶28} The indictment also charged appellant with aggravated robbery, in violation of R.C. 2911.01(A)(1) and/or (A)(3), in that, while committing a theft offense, he (1) had a firearm on or about his person and brandished or used it, and/or (3) *inflicted serious physical harm* on Tyler Shepherd. Appellant pled guilty to both offenses as charged.

{¶29} While aggravated burglary and aggravated robbery can be allied offenses of similar import under *Johnson* and *Ruff*, we must consider these offenses in the context of appellant's conduct to determine (1) if the offenses were *dissimilar in import* or significance; (2) if the offenses were *committed separately*; or (3) if the offenses were committed *with a separate animus* or motivation. If *any of these three factors* is true, the offenses are not subject to merger pursuant to R.C. 2941.25. *Ruff* at ¶25.

{¶30} Ohio courts, including this court, applying *Johnson*, have repeatedly held that aggravated burglary does not merge with aggravated robbery where they were committed separately and/or with a separate animus.

{¶31} For example, in *State v. O'Neil*, 11th Dist. Portage No. 2010-P-0041, 2011-Ohio-2202, the defendant and his accomplice, while armed with guns, forced their way into the victim's apartment with the intent to commit a crime (aggravated burglary). After the burglary was completed, the accomplice forced the victim into the kitchen and, while holding him at gunpoint, stole cash from his wallet (aggravated robbery). Applying *Johnson*, this court held the defendant committed these crimes separately and with a separate animus. *Id.* at ¶49.

{¶32} Further, in *State v. Broomfield*, 10th Dist. Franklin No. 12AP-469, 2013-Ohio-1676, the defendant was found guilty of aggravated burglary and aggravated robbery. In holding the offenses did not merge, the Tenth District stated:

{¶33} Applying the *Johnson* decision to similar facts, this court has previously concluded that aggravated burglary and aggravated robbery were not allied offenses of similar import because they were committed through separate conduct. See *State v. McClurkin*, 10th Dist. [Franklin] No. 11AP-944, 2013-Ohio-1140, ¶51-55 \* \* \*. \* \* Appellant committed aggravated burglary by forcing his way into the residence. He committed aggravated robbery against [the victim] by demanding and taking money or property from her [at gunpoint]. Thus, these offenses were committed through separate conduct and they do not merge. See *Johnson* at ¶51. *Broomfield*, *supra*, at ¶23.

{¶34} More recently, in *State v. Lewis*, 11th Dist. Lake No. 2012-L-074, 2013-Ohio-3974, appeal not allowed by the Ohio Supreme Court at 142 Ohio St.3d 1424, 2015-Ohio-1353, the defendant was charged with aggravated robbery and aggravated burglary and found guilty of both counts. On appeal, this court held the offenses were

committed with separate conduct. *Id.* at ¶131-132. In arriving at this conclusion, this court held that the counts did not merge because one offense was completed by the use of harm, which was additional, subsequent conduct that was not needed to complete the other offense. *Id.* at ¶130-131. This court stated that if a separate penalty could not be imposed for the offense that required harm, it would mean that the defendant would be free to inflict physical harm on the victim without having to face additional penalty, a result that was clearly not intended by the legislature in enacting R.C. 2941.25(B). *Lewis, supra*, at ¶132.

{¶35} In reviewing appellant's conduct in light of the elements of the charged offenses and *Ruff*, aggravated burglary and aggravated robbery did not merge because they were committed *separately* and *were of dissimilar import*. Under R.C. 2911.11(A)(1), the aggravated burglary was completed when appellant trespassed into Tyler's apartment by force with purpose to commit theft (by demanding money) and *threatened* to harm him. Further, under R.C. 2911.01(A), the aggravated robbery was completed when, in committing the theft, appellant *inflicted serious physical harm on Tyler* by beating him in the head with his gun. Since the aggravated burglary was complete when appellant threatened to harm Tyler, appellant's subsequent act of pistol-whipping him was unnecessary to complete aggravated burglary. Thus, aggravated robbery was committed separately. Moreover, aggravated robbery was of dissimilar import in that it caused separate, identifiable harm to Tyler. If a separate penalty could not be imposed for the aggravated robbery, that would mean that appellant would be free to inflict physical harm on Tyler without additional penalty.

{¶36} We therefore hold the trial court did not err in not merging aggravated robbery and aggravated burglary.

{¶37} Appellant's first assignment of error is overruled.

{¶38} For his second assigned error, appellant contends:

{¶39} "The trial court was without authority to sentence Orlando Armstead-Williams to prison for two counts of kidnapping, because the court was required to impose a sentence in accordance with R.C. 2152.121 and remand the matter to the juvenile court after imposing a stayed sentence."

{¶40} Appellant argues the trial court erred in sentencing him on the two non-mandatory transfer offenses to which he pled guilty, the two counts of kidnapping, because, he contends, under R.C. 2152.121, the court was required to impose sentence, but then to stay the sentence and remand the matter to the juvenile court for disposition.

{¶41} Appellant concedes he failed to raise this issue before the trial court and that we are thus limited to plain-error review. To establish plain error, appellant must point to an obvious error that affected the outcome of the proceedings below. *State v. Rohrbaugh*, 126 Ohio St.3d 421, 2010-Ohio-3286, ¶6. Reversal is warranted only if the outcome "clearly would have been different absent the error." *State v. Hill*, 92 Ohio St.3d 191, 203 (2001). Therefore, any error must have affected the outcome of this matter.

{¶42} R.C. 2152.10 and R.C. 2152.12 provide for mandatory bindover. R.C. 2152.10(A)(2)(b) provides:

{¶43} A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section

2152.12 of the Revised Code [when] \* \* \* [t]he child is charged with a category two offense, other than [kidnapping], the child was sixteen years of age or older at the time of the commission of the act charged, and \* \* \* [t]he child is alleged to have had a firearm on or about the child's person \* \* \* while committing the act charged and to have displayed \* \* \* or used the firearm to facilitate the commission of the act charged.

{¶44} Category two offenses subject to mandatory transfer include aggravated robbery and aggravated burglary, but do not include kidnapping. R.C. 2152.02(BB)(1).

{¶45} Further, R.C. 2152.12(A)(1)(b)(2) provides, as follows:

{¶46} After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing *shall transfer the case* if the child was sixteen or seventeen years of age at the time of the act charged and \* \* \* section 2152.10 of the Revised Code requires the *mandatory transfer of the case*, and there is probable cause to believe that the child committed the act charged. (Emphasis added.)

{¶47} R.C. 2152.121(B) provides that if a juvenile's case is transferred to the general division for trial as an adult, once the juvenile is convicted, the sentence to be imposed or the disposition to be made of the child shall be determined as follows:

{¶48} (3) If the court in which the child is convicted of or pleads guilty to the offense [i.e., the general division] determines \* \* \* that \* \* \* section 2152.12 of the Revised Code would not have required mandatory transfer of the case but \* \* \* that section would have allowed *discretionary* transfer of *the case*, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence \* \* \*. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of *the case* back to the juvenile court that initially transferred *the case* and the juvenile court shall proceed in accordance with this division. \* \* \*

{¶49} \* \* \*

{¶50} (4) If the court in which the child is convicted of or pleads guilty to the offense [i.e., the general division] determines \* \* \* that \* \* \* section 2152.12 of the Revised Code would have required

*mandatory transfer of the case*, the court shall impose sentence upon the child under Chapter 2929 of the Revised Code. (Emphasis added.)

{¶51} Based on a plain reading of R.C. 2152.121(B)(4), since at least one of the offenses for which appellant was convicted (aggravated robbery and aggravated burglary) was subject to mandatory transfer, the *entire case* was transferred for trial as an adult and the general division retained the authority to impose and carry out a sentence on every offense for which appellant was convicted. The transfer-back procedure is found only in R.C. 2152.121(B)(3) regarding discretionary-transfer offenses. R.C. 2152.121(B)(4), regarding mandatory-transfer, does not provide for transfer back to the juvenile court. Thus, in this case, the general division was not required to stay the sentence and transfer the case back to the juvenile court for disposition.

{¶52} This is precisely the conclusion reached by the Eighth District in *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815. In *Mays*, a 16-year-old juvenile was bound over to the general division, tried as an adult, and was convicted of aggravated robbery, robbery, felonious assault and receiving stolen property. *Mays* argued that the “reverse bindover” procedure set forth in R.C. 2152.121(B)(3) applied to his discretionary-transfer offenses (robbery, felonious assault, receiving stolen property) and that the trial court erred in carrying out a sentence on all counts. The Eighth District disagreed, stating:

{¶53} [W]e do not interpret R.C. 2152.121(B) as requiring the common pleas court to complete a separate analysis for each charge appellant ultimately pled guilty to once it determined under R.C. 2152.121(B)(4) that Count 2, aggravated robbery, required mandatory transfer of the *entire case*. In our view, once the trial court made this determination, it was permitted to sentence

appellant on each count he pled guilty to in [the case] under Chapter 2929 of the Ohio Revised Code. *Mays* at ¶40.

{¶54} Based on our review of R.C. 2152.121, the Eighth District's interpretation of that statute is consistent with its clear language and applies to the instant case. Like *Mays*, appellant was convicted of offenses that were subject to both mandatory transfer (aggravated robbery with a firearm and aggravated burglary with a firearm) and offenses that were subject to discretionary transfer (kidnapping). However, because his case *as a whole* was subject to mandatory transfer under R.C. 2152.121(B)(4) and because his case remained subject to mandatory transfer after conviction because he was convicted of both mandatory- and discretionary-transfer offenses, the general division retained jurisdiction over the entire case and was required under R.C. 2152.121(B)(4) to impose and carry out sentence on all counts.

{¶55} Moreover, the position advanced by appellant makes no sense. If we were to accept his interpretation of R.C. 2152.121(B), he would have been sentenced to prison for nine years for his conviction of aggravated robbery, the attached specification, and the specification to aggravated burglary, but the juvenile court could then choose a disposition for the remaining two counts of kidnapping that could potentially be inconsistent with the prison sentence. Moreover, such interpretation would result in a waste of judicial resources because two courts would be required to consider appellant's sentencing/disposition with potentially inconsistent results. In short, to interpret R.C. 2152.121 as only permitting the general division to carry out its

sentence as to some of appellant's counts ignores the clear language of the statute and would create an unworkable quagmire that the General Assembly did not intend.<sup>1</sup>

{¶56} We thus hold that because some of the offenses of which appellant was convicted were mandatory-transfer offenses, his entire case was subject to mandatory transfer for sentencing pursuant to R.C. Chapter 2929.

{¶57} Appellant's second assignment of error is overruled.

{¶58} Appellant's third and fourth assigned errors are related and shall be considered together. They allege:

{¶59} “[3.] The juvenile court erred when it transferred Orlando Armstead-Williams's case to criminal court because the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate a child's right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution; and, Article I, Section 16, Ohio Constitution.

{¶60} “[4.] The juvenile court erred when it transferred Orlando Armstead-Williams's case to criminal court because the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate a child's right to equal protection as

---

1. The Ohio Supreme Court recently considered this issue in *State v. D.B.*, \_\_\_ Ohio St.3d \_\_\_, 2016-Ohio-8334, a case that originated in the Second District. In 2014-Ohio-4858, the Second District held that where, after mandatory bindover, a juvenile is convicted of a mandatory-transfer offense, the adult court should sentence the juvenile for that offense as it would an adult. *Id* at ¶20. However, according to the court's interpretation of R.C 2152.121(B)(3), where the juvenile is also convicted of discretionary-bindover offenses, the adult court must impose an adult sentence, but then stay the sentence and return the case to the juvenile court for a juvenile disposition. *Id*. The state appealed this interpretation of the statute. The Supreme Court issued a one-sentence opinion holding: “The judgment of the court of appeals is reversed, and the cause is remanded to the \* \* \* Juvenile Division for application of *State v. Aalim*, \_\_\_ Ohio St.3d \_\_\_, 2016-Ohio-8278” (which held the mandatory-bindover statutes are unconstitutional). Later, the state filed a motion for reconsideration, which remains pending. While the only issue briefed in *D.B.* was whether the Second District erred in interpreting the reverse-bindover statute, it appears the Supreme Court did not reverse on that ground because, by remanding under *Aalim*, the juvenile court was required to hold an amenability hearing, making reverse-bindover moot.

guaranteed by the Fourteenth Amendment to the U.S. Constitution; and, Article I, Section 2, Ohio Constitution.”

{¶61} Appellant argues that Ohio’s mandatory bindover proceedings violate due process and equal protection. However, he failed to raise his constitutional challenges below. For this reason, they are waived but for plain error.

{¶62} In any event, this court, in addressing virtually the same arguments now raised by appellant in support of his constitutional challenge, has previously held that Ohio’s mandatory bindover statutes do not violate due process or equal protection and are constitutional. *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, ¶51-70.

{¶63} The Ohio Supreme Court, in *Aalim, supra* (“*Aalim I*”), held that the mandatory-transfer statutes violate due process. *Id.* at paragraph one of the syllabus. Subsequently, the Court granted reconsideration, and in *State v. Aalim*, \_\_\_ Ohio St.3d \_\_\_, 2017-Ohio-2956 (“*Aalim II*”), vacated the Court’s decision in *Aalim I*, and held that the mandatory-bindover statutes do *not* violate due process or equal protection. *Id.* at ¶27, 37.

{¶64} Based upon the Supreme Court’s holding in *Aalim II*, this court reaffirms its prior holding in *Lane, supra*, that Ohio’s mandatory-bindover statutes are constitutional.

{¶65} Appellant’s third and fourth assigned errors are overruled.

{¶66} For appellant’s fifth and final assignment of error, he alleges:

{¶67} “Orlando Armstead-Williams was denied the effective assistance of counsel, in violation of the Sixth and Fourteenth Amendments to the United States Constitution; Ohio Constitution, Article I, Section 10.”

{¶68} Appellant argues his trial counsel was ineffective because he failed to object to the constitutionality of his mandatory bindover or to the failure of the general division to stay its sentence and transfer this matter back to the juvenile court for disposition.

{¶69} This court has previously held that a guilty plea waives the right to appeal issues regarding counsel’s alleged ineffectiveness, unless the alleged ineffective assistance caused the guilty plea to be involuntary. *State v. Muhammad*, 11th Dist. Geauga No. 2014-G-3182, 2014-Ohio-5771, ¶41. Appellant does not argue on appeal that his guilty plea was involuntary. Thus, he has waived any right to allege that his counsel was ineffective.

{¶70} In any event, even if the argument was not waived, it would lack merit. In order to establish a claim of ineffective assistance of counsel, an appellant must demonstrate that his attorney’s performance was deficient and that the alleged deficiencies prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶71} Because Ohio’s mandatory-bindover statutes are constitutional and, upon sentencing, appellant was not entitled to have this case returned to juvenile court for disposition, counsel’s failure to raise either issue at trial did not amount to ineffective assistance of counsel.

{¶72} We therefore hold that appellant’s trial counsel was not ineffective.

{¶73} Appellant's fifth assignment of error is overruled.

{¶74} In light of the Ohio Supreme Court's decision in *Aalim II*, this court's judgment entered on March 20, 2017, is vacated and an amended judgment will be entered to reflect that appellant's conviction and sentence are affirmed. In addition, our opinion of March 20, 2017 (2017-Ohio-1004), is vacated consistent with this decision and entry. Further, this court dissolves the stay entered on April 10, 2017, and grants the state's motion to file reconsideration *instanter* and its motion for reconsideration.

{¶75} For the reasons stated in this opinion, the assignments of error lack merit and are overruled. It is the order and judgment of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, J.,

THOMAS R. WRIGHT, J.,

concur.