

[Cite as *State v. Mobley*, 2018-Ohio-4793.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106765

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JAMAL MOBLEY**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-16-608024-A

**BEFORE:** S. Gallagher, J., McCormack, P.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** November 29, 2018

## **ATTORNEY FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Jamal Mobley appeals his conviction and sentence for felonious assault.

Upon review, we affirm.

### **Background**

{¶2} Appellant was charged under a complaint filed in the Cuyahoga County Court of Common Pleas, Juvenile Division, that set forth five counts, with Count 1 being attempted murder. The offenses were alleged to have been committed when appellant was 17 years old.

{¶3} The juvenile court held a probable cause hearing on July 7, 2016, and found probable cause to support the charges. The court found the case was subject to a mandatory bindover and transferred the case to the Cuyahoga County Court of Common Pleas, General Division, pursuant to R.C. 2152.12(B).

{¶4} On July 26, 2016, the grand jury indicted Mobley on three charges, including Count 1 — attempted murder, with one- and three-year firearm specifications; Count 2 — felonious

assault, with one- and three-year firearm specifications; and Count 3 — criminal damaging or endangering.

{¶5} In the course of proceedings, the state and appellant reached a plea agreement pursuant to which appellant entered a plea of guilty to an amended Count 2 for felonious assault, in violation of R.C. 2903.11(A)(2), a felony of the second degree, with a one-year firearm specification. The remaining counts, including the attempted murder charge, were nolle.

{¶6} The trial court held a sentencing hearing on January 10, 2017. The trial court imposed a prison sentence of one year on the firearm specification, to run prior to and consecutive with a six-year prison term for the underlying offense of felonious assault, for a total of seven years. The court also imposed three years of mandatory postrelease control. The trial court stayed the sentence and remanded the case to the juvenile court for an amenability hearing.

{¶7} The juvenile court held a hearing on March 22, 2017, took the matter under advisement, and set a date for the court's decision of April 6, 2017. In a journal entry filed April 13, 2017, the trial court indicated that the juvenile court had returned the case after finding that appellant "is not amenable to the care or rehabilitation in the juvenile system, and the safety of the community required subjecting the child to adult sanctions." Therefore, the trial court ordered the previously stayed sentence into effect. Thereafter, a docket entry dated May 19, 2017, indicated the bindover from the juvenile court was received May 16, 2017, after the case was indicted, and therefore, no bindover was entered.

{¶8} The state of Ohio supplemented the record on appeal with the juvenile court's mandatory-bindover journal entry filed July 7, 2016, the journal entry summarizing the amenability hearing filed April 13, 2017, and the juvenile court's journal entry filed May 3, 2017,

which journalized the court's April 6, 2017 decision determining that appellant "is NOT amenable to the care or rehabilitation within the juvenile system."

{¶9} Appellant was granted leave to file a delayed appeal and was appointed counsel. The matter is now before us for review.

### **Assignments of Error**

{¶10} Appellant raises three assignments of error under which he claims that he was denied due process of law when (1) he was sentenced prior to any proceedings conducted in the juvenile court and that the proceedings were void; (2) he was subjected to an amenability hearing that occurred when appellant had not been properly bound over in the first instance; and (3) he was sentenced to more than a minimum sentence as a first offender in the common pleas court.

### **Law and Analysis**

{¶11} Appellant claims that the proceedings did not comply with Juv.R. 30 or R.C. 2152.12. Appellant's argument is misguided.

{¶12} In this case, appellant was subject to a mandatory bindover pursuant to R.C. 2152.12(A)(1)(a)(i), arising from a charge for attempted murder; after appellant entered a plea deal and pleaded guilty to an offense allowing a discretionary transfer, appellant was subject to a reverse bindover pursuant to R.C. 2152.121(B)(3), with the sentence imposed being stayed; and in accordance with R.C. 2152.121(B)(3)(b), the previously stayed sentence was ordered into effect after the juvenile court held an amenability hearing, determined appellant "is not amenable to the care or rehabilitation within the juvenile system," and returned the case to the trial court.

{¶13} First, the juvenile court followed the required procedure for a mandatory bindover. The record reflects that a complaint was filed against appellant in juvenile court that included a charge for attempted murder. R.C. 2152.12(A)(1)(a)(i) provides that "the juvenile court at a

hearing shall transfer the case” if the juvenile is charged with committing an act that would be “attempted murder if committed by an adult,” “the child was sixteen or seventeen years of age at the time of the act charged,” and “there is probable cause to believe that the child committed the act charged.”

{¶14} Here, the juvenile court conducted a probable cause hearing on July 7, 2016, and found that “the child was seventeen (17) years of age at the time of the conduct charged and that there is probable cause to believe that the child committed an act that would be the crime of Count one, Attempted Murder \* \* \* if committed by an adult.” Therefore, the case was subject to a mandatory bindover.

{¶15} Next, the trial court followed the required procedures for a reverse bindover. During the proceedings in the general division, appellant entered into a plea agreement with the state and pleaded guilty to felonious assault in violation of R.C. 2903.11(A)(2), a felony of the second degree. The remaining charges, including the attempted murder charge, were nolle. The trial court sentenced appellant, but because the offense to which appellant pleaded guilty would not have required a mandatory transfer from the juvenile division to the general division, the sentence was stayed and the reverse-bindover procedure set forth in R.C. 2152.121(B)(3) was activated, requiring transfer of the case back to the juvenile court.

{¶16} R.C. 2152.121(B)(3) instructs as follows:

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) \* \* \* of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in

juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of 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 pending completion of the procedures specified in this division.* \* \* \*

(Emphasis added.)

{¶17} In this case, appellant pleaded guilty to felonious assault, which is an offense that if committed by an adult would have allowed discretionary transfer of the case. *See* R.C. 2152.10(B). Thus, the trial court properly stayed the prison sentence and transferred jurisdiction back to the juvenile court.

{¶18} Finally, after the filing of a motion by the prosecuting attorney, the juvenile court conducted an amenability hearing in accordance with R.C. 2152.121(B)(3)(b), considered each of the factors pursuant to R.C. 2152.12(D) and (E), and determined that appellant “is NOT amenable to the care or rehabilitation within the juvenile system.” After the juvenile court returned the case to the general division, the trial court lifted the stay and ordered the previously imposed sentence into effect as required under R.C. 2152.121(B)(3)(b).

{¶19} The Supreme Court recently discussed the reverse-bindover process in *State v. D.B.*, 150 Ohio St.3d 452, 2017-Ohio-6952, 82 N.E.3d 1162. It noted that in some cases, “the trial court must conduct the reverse-bindover procedure in R.C. 2152.121(B)(3)” and that “[t]his procedure is required if the crimes for which convictions were obtained, had they been

delinquency charges, would have subjected the juvenile's case only to discretionary, rather than mandatory, transfer proceedings.” *Id.* at ¶ 13.

{¶20} The record reflects that the proper statutory procedures were followed in this case. Appellant's first and second assignments of error are overruled.

{¶21} Appellant also challenges the trial court's imposition of more than the minimum sentence. He asserts that he is “a first offender as an adult” and challenges the trial court's consideration of the statutory factors under R.C. 2929.12.

{¶22} The Supreme Court of Ohio has held that “[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or *more than the minimum sentence.*” (Emphasis added.) *State v. Sargent*, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 34, quoting *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus. A sentencing court is permitted to consider an offender's juvenile record in crafting an appropriate sentence; and in fact, the seriousness and recidivism factors set forth in R.C. 2929.12 require trial courts to consider an offender's juvenile adjudications. *State v. Walton*, 8th Dist. Cuyahoga No. 106103, 2018-Ohio-1963, ¶ 25, citing R.C. 2929.12(D)(2)-(3) and (E).

{¶23} At the sentencing hearing in this matter, the trial court indicated that it had reviewed the presentence investigation report. The trial court heard from defense counsel, the assistant prosecutor, and appellant. Defense counsel acknowledged appellant's “substantial criminal history” and presented mitigating factors, including his rehabilitation. Defense counsel noted the plea deal was a “fair deal.” Appellant apologized to the court. The assistant prosecutor offered the victim's description of the crime, in which appellant went to the driver's

side window of the victim's vehicle and pointed a gun at the victim, the firearm jammed and appellant had to clear the firearm, and appellant proceeded to fire multiple shots at the vehicle as the victim drove away. The prosecutor indicated that another individual, who was a passenger in the vehicle, provided a similar description of events and indicated she was "terrified" for her life.

{¶24} The trial court noted appellant's juvenile record is "extremely lengthy and violent" and included a prior robbery with a firearm specification in 2013, a separate robbery in 2013, and multiple theft offenses. The court found that appellant "pose[s] a serious threat to our community." Prior to imposing sentence, the trial court stated that it had considered "all of the seriousness and recidivism factors" and the need to protect the public from future crimes and to punish the offender. The sentencing journal entry also states that "the court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11."

{¶25} The record reflects that the trial court considered the statutory factors, including appellant's juvenile record, in imposing more than the minimum sentence. "[An] appellant's sentence is not contrary to law simply because he disagrees with the way in which the trial court weighed the factors under R.C. 2929.11 and 2929.12 and applied these factors in crafting an appropriate sentence." *State v. Frazier*, 2017-Ohio-8307, 98 N.E.3d 1291, ¶ 28 (8th Dist.). Appellant has failed to demonstrate by clear and convincing evidence that the record does not support his sentence under the relevant statutes, or that his sentence was contrary to law. We overrule appellant's third assignment of error.

{¶26} Judgment affirmed.



It is ordered that appellee recover from appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR