

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 108803
TOMARIO BENJAMIN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: January 2, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-631029-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Aqueelah A. Jordan, Assistant Prosecuting Attorney, *for appellee*.

Thomas A. Rein, *for appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Defendant-appellant Tomario Benjamin is before this court to appeal his convictions entered in the Cuyahoga County Court of Common Pleas.

{¶ 2} Benjamin was charged with multiple counts of rape, kidnapping, pandering sexually oriented material involving a minor, gross sexual imposition and

assault. On June 18, 2019, with counsel, Benjamin pleaded guilty to a total of 19 counts with an agreed sentencing range of 18 to 25 years in prison. The matter was continued.

{¶ 3} On July 1, 2019, Benjamin appeared for sentencing with counsel. Prior to imposing sentence the trial court was advised by the state that “there’s a new sentencing range,” and that as a result “we need to put the plea on the record again, and he needs to enter a plea of guilty based on that new range.”

{¶ 4} The trial court reviewed the charges, outlined the new sentencing range and reviewed Benjamin’s Crim.R. 11 rights. Benjamin did not thereafter enter a plea, guilty or otherwise. The court nevertheless imposed an aggregate sentence of 27 years in prison, including consecutive sentences on seven counts.

{¶ 5} Benjamin has raised two assignments of error:

I. Appellant’s convictions must be vacated as he did not himself plead guilty at the new plea hearing on July 1, 2019.

II. The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and HB 86.

{¶ 6} The state has conceded the error.

{¶ 7} Review of the record indicates that after Benjamin pleaded guilty on June 18, 2019, he was exposed to a different range of potential penalties. At the July 1, 2019 hearing the court addressed Benjamin:

Mr. Benjamin, do you understand that we took the plea last week, and I know the sentencing range at that time was, I think 24 [sic] years to — 18 to 24 [sic] years, alright? Now, in speaking with your attorneys and the prosecutor’s office, * * * the sentencing range has been changed from 13 to 30 years, do you understand that?

{¶ 8} Nevertheless, the trial court did not vacate Benjamin's June 18 guilty plea and it did not accept a new plea in contemplation of the amended charges against him and new range of potential penalties.

{¶ 9} Accordingly, we vacate Benjamin's sentence and convictions and remand the case to the trial court for further proceedings consistent with this opinion.

{¶ 10} Our resolution of the first assignment of error renders the second assignment of error moot. *See* App.R. 12(A)(1)(c).

{¶ 11} Judgment vacated and remanded.

It is ordered that appellant recover from appellee 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 out this judgment into execution.

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

EILEEN A. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR