

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1125 (C.P.C. No. 09CR-150)
William A. Worth, II,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 12, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

ON APPLICATION FOR RECONSIDERATION/
MOTION TO CERTIFY CONFLICT

BROWN, P.J.

{¶ 1} Plaintiff-appellee, state of Ohio, has filed a joint application for reconsideration and motion to certify a conflict in *State v. Worth*, 10th Dist. No. 10AP-1125, 2012-Ohio-666. Defendant-appellant, William A. Worth, II, has filed a response to appellee's filing.

{¶ 2} The test generally applied upon the filing of an application for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was not considered at all or was not fully considered by the court when it should have been.

Matthews v. Matthews, 5 Ohio App.3d 140 (10th Dist.1981), paragraph two of the syllabus.

{¶ 3} Appellee contends this court committed an obvious error in resolving one of the issues raised in appellant's sixth assignment of error. There, we found that the trial court plainly erred under former R.C. 2929.14(D)(1)(b) in imposing consecutive three-year sentences on the firearm specifications accompanying the aggravated burglary and kidnapping counts. More specifically, we determined that R.C. 2929.14(D)(1)(b) permitted only one three-year prison term because the aggravated burglary and kidnapping were committed as part of the same act or transaction. However, former R.C. 2929.14(D)(1)(g) provided an exception to the principle that only one firearm term can be imposed for felonies arising out of the same act or transaction. Former R.C. 2929.14(D)(1)(g) provided in pertinent part:

If an offender is convicted of * * * two or more felonies, if one or more of those felonies is * * * felonious assault, or rape, and if the offender is convicted of * * * a specification of the type described under division (D)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted * * * and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

{¶ 4} In this case, appellant was convicted of two or more felonies (aggravated burglary, felonious assault, kidnapping, and three counts of rape), two of the felonies (felonious assault and rape) are of the type listed in the exception, and in connection with each he was convicted of a division (D)(1)(a) firearm specification (one-year firearm specifications pursuant to R.C. 2941.141). Thus, pursuant to former R.C. 2929.14(D)(1)(g), the trial court was required to impose a prison term for each of the "two most serious specifications" of which appellant was convicted, i.e., the three-year firearm specifications accompanying the aggravated burglary and kidnapping. Moreover, by operation of law, the three-year firearm terms must be served consecutively. Former R.C. 2929.14(E)(1)(a). Thus, this court erred in concluding that the trial court plainly erred in imposing consecutive three-year prison terms on the firearm specifications accompanying the aggravated burglary and kidnapping counts. We also note that counsel was not ineffective

for failing to object to the sentence on this ground. Accordingly, we grant appellee's application for reconsideration on this issue; thus, the remand to the trial court is for the purpose of resentencing only on the discretionary one-year firearm specifications.

{¶ 5} With regard to appellee's motion to certify a conflict, we note that in *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594 (1993), the Supreme Court of Ohio held that "[p]ursuant to Section 3(B)(4), Article IV of the Ohio Constitution and S.Ct. Prac.R. III, there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Id.* at paragraph one of the syllabus. Having now properly applied the rule of law set forth in former R.C. 2929.14(D)(1)(g), we perceive no conflict with the cases cited by appellee as requiring certification to the Supreme Court of Ohio. Accordingly, we deny appellee's motion to certify conflict.

*Application for reconsideration granted;
motion to certify conflict denied.*

BRYANT and KLATT, JJ., concur.
