

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HOCKING COUNTY

STATE OF OHIO,	:	
	:	Case No. 14CA16
Plaintiff-Appellee,	:	
	:	
vs.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
HAROLD A. JOHNSON, JR.,	:	
	:	
Defendant-Appellant.	:	<b>Released: 03/02/15</b>

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APPEARANCES:

Benjamin E. Fickel, Logan, Ohio, for Appellant.

Laina Fetherolf, Hocking County Prosecutor, and William L. Archer, Jr.,  
Assistant Hocking County Prosecutor, Logan, Ohio, for Appellee.

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McFarland, A.J.

{¶1} This is an appeal from a Hocking County Common Pleas Court judgment convicting and sentencing Appellant after he pled guilty to one count of cultivation of marijuana with a forfeiture specification, one count of having weapons while under a disability with a forfeiture specification, and one count of endangering children. On appeal, Appellant contends that the trial court erred when it denied his motion to suppress evidence, which he claims was illegally obtained. However, because Appellant entered guilty pleas to the charges, he has waived his right to challenge the trial court's

decision on the motion to suppress. Thus, Appellant's sole assignment of error is overruled. Accordingly, the decision of the trial court is affirmed.

### FACTS

{¶2} The parties essentially agree on the following facts and case history. On October 1, 2013, Appellant was arraigned on an indictment filed on September 20, 2013, charging him with one count of cultivation of marijuana with a forfeiture specification, one count of having weapons while under disability with a forfeiture specification, and one count of endangering children. The indictment stemmed from an incident that occurred on September 3, 2013, at which time law enforcement arrived at Appellant's residence to conduct a "knock-and-talk" after receiving an anonymous tip that there were marijuana plants growing on his property, behind his garage. There were no adults present upon their arrival. The officers performed a protective sweep of the property, which included going behind the unattached garage, where the marijuana plants were found prior to a warrant being obtained.

{¶3} Appellant filed a motion to suppress on December 18, 2013, which was heard orally on January 28, 2014. The trial court eventually denied Appellant's motion to suppress and Appellant thereafter pled guilty to the charges and was subsequently sentenced. It is from his August 1, 2014,

judgment entry of sentence that Appellant now brings his appeal, setting forth a single assignment of error for our review.

### ASSIGNMENT OF ERROR

- I. “THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT-DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED ILLEGALLY.”

### LEGAL ANALYSIS

{¶4} In his sole assignment of error, Appellant contends that the trial court erred when it denied his motion to suppress evidence, which he claims was illegally obtained. The State responds, arguing that by pleading guilty Appellant waived his right to challenge the trial court's decision on the motion to suppress. For the following reasons, we agree with the State.

{¶5} This Court was recently presented with this exact question in *State v. Lee*, 4th Dist. Washington No. 13CA42, 2014-Ohio-4898. In *Lee*, the appellant attempted to challenge the denial of his motion to suppress on appeal despite having previously pled guilty to one count of tampering with evidence. *Lee* at ¶ 6. Based upon those facts, we held that Lee had forfeited her right to appeal the trial court's decision on the motion to suppress because she had entered a guilty plea. *Id.*; citing *State v. Jacobson*, 4th Dist. Adams No. 01CA730, 2003-Ohio-1201, ¶ 10; see also, *Huber Hts. v. Duty*, 27 Ohio App.3d 244, 500 N.E.2d 339 (2nd Dist. 1985); *State v. Kelley*, 57

Ohio St.3d 127, 566 N.E.2d 658 (1991), paragraph two of the syllabus (holding that "[a] plea of guilty following a trial and prior to sentencing effectively waives all appealable errors which may have occurred at trial, unless such errors are shown to have precluded the defendant from voluntarily entering into his or her plea \* \* \*.").<sup>1</sup>

{¶6} Like Lee, Appellant herein makes no argument that his pleas were not voluntarily entered. Thus, by entering guilty pleas he has waived the argument set forth on appeal. As such, we must overrule Appellant's sole assignment of error. Accordingly, the decision of the trial court is affirmed.

**JUDGMENT AFFIRMED.**

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<sup>1</sup> Although *Kelley* involved a guilty plea that was entered after trial, we find the reasoning equally applicable to a plea entered prior to trial.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Common Pleas Court to carry this judgment into execution.

**IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT**, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Matthew W. McFarland,  
Administrative Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**