**[Cite as *State v. Johnson*, 2016-Ohio-8614.]**

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | |
| | : | Hon. Sheila G. Farmer, P.J. |
| Plaintiff-Appellee | : | Hon. John W. Wise, J. |
| | : | Hon. Patricia A. Delaney, J. |
| -vs- | : | |
| | : | Case No. 16CAA080037 |
| | : | |
| BRIAN A. JOHNSON | : | |
| | : | |
| | : | |
| Defendant-Appellant | : | O P I N I O N |

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| CHARACTER OF PROCEEDING: | Appeal from the Delaware County Court of Common Pleas, Case No. 14 CR I 01 0019 |
| JUDGMENT: | AFFIRMED |
| DATE OF JUDGMENT ENTRY: | December 16, 2016 |

APPEARANCES:

| For Plaintiff-Appellee: | For Defendant-Appellant: |
|---|---|
| CAROL O'BRIEN<br>DELAWARE CO. PROSECUTOR<br>JAHAN KARAMALI<br>140 N. Sandusky St., 3rd Floor<br>Delaware, OH 43015 | BRIAN A. JOHNSON, PRO SE<br>Inmate No. 707-245<br>Chillicothe Correctional Inst.<br>P.O. Box 5500<br>Chillicothe, OH 45601 |

*Delaney, J.*

{¶1} Appellant Brian A. Johnson appeals from the August 23, 2016 "Judgment Entry Denying the Defendant's 8/23/16 Motion to Strike" of the Delaware County Court of Common Pleas. Appellee is the state of Ohio.

## FACTS AND PROCEDURAL HISTORY

{¶1} This case has a lengthy procedural history. A statement of the facts underlying appellant's convictions upon two counts of rape is not necessary to our resolution of this appeal.

{¶2} Appellant was charged by indictment upon one count of rape pursuant to R.C. 2907.02(A)(1)(c) [Count I]; one count of rape pursuant to R.C. 2907.02(A)(2) [Count II]; one count of rape pursuant to R.C. 2907.02(A)(1)(c) [Count III]; one count of rape pursuant to R.C. 2907.02(A)(2) [Count IV]; one count of sexual battery pursuant to R.C. 2907.03(A)(2) [Count V]; one count of sexual battery pursuant to R.C. 2907.03(A)(1) [Count VI]; one count of sexual battery pursuant to R.C. 2907.03(A)(2) [Count VII]; and one count of sexual battery pursuant to R.C. 2907.03(A)(1) [Count VIII]. Appellant entered pleas of not guilty.

{¶3} At trial, the trial court amended Counts III, IV, VII, and VIII to attempted offenses and appellant was found guilty as charged.

{¶4} At sentencing, the trial court found Counts I, II, V, and VI merge, and Counts III, IV, VII, and VIII merge. The trial court sentenced appellant upon Counts II and IV to an aggregate prison term of 14 years.

{¶5} Appellant directly appealed the convictions and sentence; we affirmed in *State v. Brian A. Johnson,* 5th Dist. Delaware No. 14CAA070039, 2015–Ohio–1676,

appeal not allowed, 43 Ohio St.3d 1501, 2015-Ohio-4468, 39 N.E.3d 1271. Appellant applied to reopen both appeals and the applications were overruled.

{¶6} Appellant filed his first petition for postconviction relief on February 26, 2015 and the trial court denied the petition without a hearing on March 12, 2015. A motion to reconsider was overruled. Appellant appealed from the trial court's decision but we dismissed the appeal in *State v. Johnson*, 5th Dist. Delaware No. 15CAA030027.

{¶7} Appellant filed a second petition for postconviction relief on October 21, 2015, which the trial court overruled the next day. Appellant appealed from that decision in *State v. Johnson,* 5th Dist. Delaware No. 15 CAA 11 0092, 2016-Ohio-1213, appeal not allowed, 146 Ohio St.3d 1471, 2016-Ohio-5108, 54 N.E.3d 1269.

{¶8} On November 25, 2015, appellant moved for appointment of counsel and the trial court overruled the motion. Appellant appealed the decision in *State v. Johnson*, 5th Dist. Delaware No. 15 CAA 12 0096 and we dismissed the appeal.

{¶9} Appellant then filed, e.g., a motion to compel and a motion for judicial release, both of which were overruled.

{¶10} On March 3, 2016, appellant filed a motion for resentencing which the trial court denied on the same day. Appellant filed an appeal and this Court affirmed the trial court's decision, but remanded the matter to the trial court to issue a nunc pro tunc sentencing entry stating the rape sentences are mandatory. *State v. Johnson*, 5th Dist. Delaware No. 16CAA030011, 2016–Ohio–4617. Appellant did not appeal to the Supreme Court of Ohio. Instead, appellant filed a motion for reconsideration which this court denied on October 20, 2016.

{¶11} On June 24, 2016, the trial court issued a nunc pro tunc judgment entry as directed by this court.

{¶12} On July 21, 2016, appellant filed a second motion for resentencing which the trial court denied the next day. We affirmed the trial court's decision in *State v. Johnson*, 5th Dist. Delaware No. 16 CAA 08 0033, 2016-Ohio-7731.

{¶13} The instant appeal purportedly arises from the trial court's August 23, 2016 "Judgment Entry Denying the Defendant's 8/23/16 Motion for Resentencing" and "Judgment Entry Denying the Defendant's 8/23/2016 Motion to Strike."

{¶14} Appellant raises two assignments of error:

**ASSIGNMENTS OF ERROR**

{¶15} "I. WAS THE DEFENDANT-APPELLANT'S FUNDAMENTAL AND SUBSTANTIVE RIGHTS TO SUBSTANTIVE, PROCEDURAL DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, GUARANTEED BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECITON 2 & 16 OF THE OHIO CONSITUTION, [VIOLATED]? WHEN THE TRIAL COURT FAILED TO COMPLY WITH R.C. 2929.19(B)(2)(A), (B); AND AS A RESULT OF APPEAL ADJUDICATION IN CASE NO. 16-CAA-03-0011, THE APPEAL COURT FAILED TO REVIEW THE MERITS UNDER A [CONTRARY TO LAW AND PLAIN ERROR] ANALYSIS PURSUANT TO R.C. 2953.08(G)(2)(b), AND CRIM.R. 52(B); THUS, DID THE TRIAL AND APPELLATE COURT COMMIT PLAIN AND MANIFEST ERROR WHEN IT FAILED TO SUA SPONTE RAISE QUESTION TO ITS JURISDICTION TO HEAR THE APPEAL AND ISSUE A NUNC PRO TUNC CORRECTION SENTENCING ENTRY ON THE MATTER PURSUANT TO R.C. 2929.19(B)(7), THUS, RAISING A CONSTITUTIONAL QUESTION

AND CHALLENGE ON THIS MERIT; THEREFORE, IS SECTION (B)(&7) UNCONSTITUTIONAL IN PART, AND APPELLANT'S SENTENCE VOID IN PART; THEREBY, AS A RESULT WAS THE DEFENDANT-APPELLANT PREJUDICED BY THESE ERRORS AS CITED BY HIS INEFFECTIVE CLAIM IN THIS REGARD?" [brackets in original] [*sic* throughout].

{¶16} "II. WAS THE DEFENDANT-APPELLANT'S FUNDAMENTAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL, GUARANTEED BY THE 6TH AMENDMENT UNDER THE EQUAL PROTECTION AND DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 2, 10 & 16 OF THE OHIO CONSTITUTION, [VIOLATED]? WHEN TRIAL COURT FAILED TO OBJECT TO THE TRIAL COURTS FAILURE TO COMPLY WITH R.C. 2929.19(B)(2)(a); AND COUNSEL'S FAILURE TO CHALLENGE THE CONSTITUTIONALITY AND SEVERABILITY OF SECTION (B)(7); IN ADDITION, DID COUNSEL'S FAILURE TO CONSULT THE DEFENDANT-APPELLANT ON THE POSSIBLE MANDATORY PENALTY IN THE EVENT OF CONVICTION DURING PLEA NEGOTIATIONS RENDER HIS CONVICTION VOIDABLE WITH A SUBSTANTIAL PREJUDICE SUFFERED BY APPELLANT?" [brackets in original] [*sic* throughout].

## ANALYSIS

I., II.

{¶17} This case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated-calendar cases and states in pertinent part:

> (E) Determination and judgment on appeal.
>
> The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.
>
> The decision may be by judgment entry in which case it will not be published in any form.

{¶18} One of the most important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983).

{¶19} Appellant's two assignments of error are related and will be addressed together. Appellant's arguments are admittedly duplicative and are thus determined by the law of the case. This appeal constitutes, essentially, an impermissible collateral attack upon our prior decisions, admittedly raising the same arguments as the prior appeal.

{¶20} Appellant acknowledges his arguments herein are the same as presented in *State v. Johnson*, 5th Dist. Delaware No. 16CAA030011, 2016–Ohio–4617. He asserts "* * * that this new appeal is a continued collateral attack of the same merits, yet with a constitutional and subject matter jurisdictional claim, which was not fully presented or considered by this court in case no. 16-CAA-03-0011." Further, he admits, "he has re-

presented, the exact and identical arguments in [context and content] * * *." (brackets in original).

{¶21} We note, however, we overruled appellant's motion to reconsider pursuant to App.R. 26(A)(1). Moreover, those decisions appear to be not yet final because appellant has appealed both decisions to the Ohio Supreme Court in Case Number 16-1634.

{¶22} In the instant appeal, appellant asks us to revisit our decision yet again. A new appeal is not an appropriate third bite of the apple. Our prior decision remains the law of the case for purposes of this appeal. The "law of the case" doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The decision of this Court in the first appeal remains the law of the case as to all subsequent proceedings both at the trial level and upon review. *State v. Boyd*, 5th Dist. Stark No. 1999CA00352, 2000 WL 1055798, at *3 (July 24, 2000).

{¶23} Appellant's two assignments of error are overruled and the judgments of the Delaware County Court of Common Pleas are affirmed.

## CONCLUSION

{¶24} Appellant's two assignments of error are overruled and the judgments of the Delaware County Court of Common Pleas are affirmed.

By: Delaney, J. and

Farmer, P.J.

Wise, J., concur.