

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1069

Appellee

Trial Court No. CR0200901706

v.

Idro Price

DECISION AND JUDGMENT

Appellant

Decided: August 24, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Andrew J. Lastra, Assistant Prosecuting Attorney, for appellee.

Henry Schaefer, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the September 28, 2009 judgment of the Lucas County Court of Common Pleas, which sentenced appellant following his conviction by the court of two violations of trafficking in marijuana following the entry of a no contest plea.

Upon consideration of the assignments of error, we reverse the decision of the lower court. Appellant, Idro Price, asserts the following single assignment of error on appeal:

The court erred [sic] in sentencing and entering a conviction on the record on both the possession and sale offense when Mr. Price should have only been sentenced on the State's choice of one of the charges, and only one conviction should be entered on the record.

{¶ 2} Appellant was indicted in a multi-count indictment alleging violations of (1) R.C. 2925.03(A)(2) and (C)(3)(b), trafficking in marijuana in the vicinity of a school or juvenile, a felony of the fourth degree, (2) R.C. 2925.03(A) and (C)(3)(b), trafficking in marijuana in the vicinity of a school or juvenile, a felony of the fourth degree, and (3) R.C. 2925.02(A)(4)(a) and (C)(3), corrupting another with drugs, a felony of the fourth degree. Appellant pled no contest to the trafficking charges and was found guilty. A nolle prosequi was entered as to Count 3. On September 28, 2009, the court sentenced appellant to imprisonment of 17 months in prison as to each count, to be served consecutively, for a total period of incarceration of 34 months.

{¶ 3} Appellant sought a delayed appeal from this decision on March 1, 2010, asserting that the trial court never held a hearing on the issue of whether these offenses were allied offenses of a similar import and should have been merged prior to sentencing. Appellant asserted that he did not know that he had been improperly sentenced until after the time for a direct appeal had already run. On March 30, 2010, this court permitted appellant to file a delayed criminal appeal.

{¶ 4} At the time of his conviction, a conviction under R.C. 2925.03(A)(1) for sale of packaged marijuana and a conviction under R.C. 2925.03(A)(2) for packaging marijuana for sale were not allied offenses. *State v. Moore*, 8th Dist. No. 85828, 2006-Ohio-277, ¶ 53. However, while appellant's delayed appeal was pending, the Ohio Supreme Court established a new test for determining when multiple offenses are allied offenses. *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 45-49, overruling *State v. Rance*, 85 Ohio St.3d 637, 710 N.E.2d 699 (1999).

{¶ 5} Therefore, on appeal, appellant asserts his convictions should have been merged under the new rule of law rather than whether he should have had an allied offense hearing. But, we find that this case must be remanded to the trial court for application of the new law to the facts of this case. Appellant's sole assignment of error is found well-taken insofar as the court must consider the impact of this new rule of law.

{¶ 6} Having found that the trial court did commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is reversed. This case is remanded to the trial court for further proceedings consistent with this decision. Appellee is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
