

[Cite as *In re Ingram*, 2002-Ohio-806.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 79808

IN RE: KHARY INGRAM,

JOURNAL ENTRY

[Appeal by Khary Ingram]

AND

OPINION

DATE OF ANNOUNCEMENT  
OF DECISION:

FEBRUARY 28, 2002

CHARACTER OF PROCEEDING:

Civil appeal from the Juvenile  
Court Division of Common Pleas  
Court, Case No. 01101655

JUDGMENT:

Vacated and Remanded for  
Resentencing.

DATE OF JOURNALIZATION:

APPEARANCES:

For plaintiff-appellee:

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecutor

PATRICK LEARY, ESQ.  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

For defendant-appellant:

DAVID H. BODIKER, ESQ.  
Ohio Public Defender

LISA F. THOMPSON, ESQ.  
Assistant State Public Defender  
8 East Long Street, 11th Floor  
Columbus, Ohio 43215

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PATTON, J.:

{¶1} Juvenile-appellant Khary Ingram appeals his sentence following his plea bargain in juvenile court.

{¶2} The juvenile, a seventeen-year-old boy with an extensive prior juvenile history, was accused of breaking into a neighbor's home and stealing items from the home. A complaint was filed alleging that he was a delinquent child for committing the offense of burglary in violation of R.C. 2911.12(A)(2), which offense would be a second degree felony if committed by an adult. Initially the juvenile denied the charge. However, the prosecutor filed a motion to relinquish jurisdiction to the common pleas court, at which time the juvenile agreed to a negotiated plea agreement. He agreed to admit to the charges and to a minimum two-year confinement to the Department of Youth Services. He timely appealed.

{¶3} The juvenile states two assignments of error. For his first assignment of error, the juvenile states,

{¶4} THE TRIAL COURT EXCEEDED ITS STATUTORY AUTHORITY WHEN IT COMMITTED KHARY INGRAM TO A MINIMUM OF TWO (2) YEARS AND A MAXIMUM OF HIS TWENTY-FIRST BIRTHDAY IN DEPARTMENT OF YOUTH SERVICES FOR BURGLARY, A FELONY OF THE SECOND DEGREE IF COMMITTED BY AN ADULT.

{¶5} The juvenile argues that the juvenile court exceeded its authority by committing him to a term which exceeds the minimum term permitted by statute. R.C. 2151.355(A) lists the terms to which a juvenile can be committed. R.C. 2151.355(A)(5) states that a juvenile may be committed for a minimum of one year and a maximum

of his twenty-first birthday for an offense that would be a second degree felony if committed by an adult. He states, therefore, that the court was without authority to increase his minimum confinement, despite the plea agreement.

{¶6} The juvenile is correct. As this court recently noted in *In Re: Dwayne Vaughters* (Nov. 1, 2001), Cuyahoga App. No. 79056, unreported, 2001 Ohio App. LEXIS 4890, despite any plea agreement made between the juvenile and the prosecutor, the "court has no power to substitute a different sentence for that provided by law. \*\*\* Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *Id.* at 3, citing *State v. Beasely* (1984), 14 Ohio St.3d 74, 75.

{¶7} Therefore, as in *Vaughters*, we remand this case to the trial court for resentencing with the appropriate minimum term of confinement as defined in R.C. 2151.355(A)(5).

{¶8} The first assignment of error is sustained.

{¶9} For his second assignment of error, the juvenile states,

{¶10} KHARY INGRAM WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO OBJECT TO THIS SENTENCE OR OTHERWISE BRING THE SENTENCING ERROR TO THE COURT'S ATTENTION.

{¶11} In light of the disposition of the first assignment of error, the second assignment of error is moot.

{¶12} The disposition is vacated and remanded for further proceedings consistent with this opinion.

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{¶13} It is, therefore, ordered that appellant recover of appellee his costs herein taxed.

{¶14} It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

TIMOTHY E. McMONAGLE, ADM.J., and

PATRICIA ANN BLACKMON, J., CONCUR.

JOHN T. PATTON\*  
JUDGE

\*Judge John T. Patton, Retired, of the Eighth District Court of Appeals, sitting by assignment.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).