

[Cite as *State v. Bogan*, 2006-Ohio-3842.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87259

STATE OF OHIO	:	
	:	
Plaintiff-appellee	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
JAMES C. BOGAN	:	
	:	
Defendant-appellant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	JULY 27, 2006
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CHARACTER OF PROCEEDING	:	Criminal appeal from
	:	Cuyahoga County Court of
	:	Common Pleas
	:	Case No. CR-396492

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellee	:	WILLIAM D. MASON Cuyahoga County Prosecutor MICHELLE D. EARLEY, Assistant Justice Center, 9 th Floor 1200 Ontario Street Cleveland, Ohio 44113
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For defendant-appellant	:	SHARON L. McDOWELL Attorney at Law P.O. Box 40103 Bay Village, Ohio 44140-0103
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KENNETH A. ROCCO, P. J.:

{¶ 1} In this appeal brought on the accelerated calendar, defendant-appellant James C. Bogan challenges the trial court's decision to deny on remand for a resentencing hearing his motion to withdraw his guilty plea to four counts of gross sexual imposition.¹

{¶ 2} The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶ 3} Bogan argues in his sole assignment of error that the trial court abused its discretion in denying his motion. He contends that because his case had been remanded pursuant to *State v. Bogan*, Cuyahoga App. No. 84468, 2005-Ohio-3412² for resentencing, his motion to withdraw his guilty plea should have been treated as a motion made prior to sentencing. Pursuant to Crim.R. 32.1, a pre-sentence motion to withdraw a plea is considered under a more lenient standard than a post-sentence motion.

{¶ 4} This court disagrees on the authority of *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94. Accordingly, Bogan's assignment of error is overruled.

¹Bogan presents no challenge to his sentence.

²That opinion contains a thorough review of the facts underlying Bogan's original convictions.

{¶ 5} As recently stated in *State v. Cvijetinovic*, Cuyahoga App. No. 82894, 2003-Ohio-7071, the Ohio Supreme Court has held that when a conviction has been affirmed on appeal, as Bogan's convictions were, the trial court lacks jurisdiction subsequently to hear the defendant's motion to withdraw his guilty plea, "since the judgment of the reviewing court is controlling upon the lower court as to all matters within the compass of the judgment." *Id.*, at ¶12.

{¶ 6} Consequently, since the trial court lacked jurisdiction to consider Bogan's motion, the motion properly was denied. *Id.*, at ¶¶16-22.

Affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

KENNETH A. ROCCO
PRESIDING JUDGE

MICHAEL J. CORRIGAN, J. and

PATRICIA ANN BLACKMON, J. CONCUR

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).