

[Cite as *State v. Hawkins*, 2009-Ohio-4368.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91930

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER HAWKINS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-493005 and CR-492933

BEFORE: Boyle, P.J., Sweeney, J., and Jones, J.

RELEASED: August 27, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant, Christopher Hawkins aka Christopher Etheridge, appeals his convictions. Finding no merit to the appeal, we affirm.

{¶ 2} In March 2007, in Case No. CR-492933, the Cuyahoga County Grand Jury indicted Hawkins on eight counts for events that allegedly transpired in September 2006: two counts of aggravated murder, in violation of R.C. 2903.01(A) and 2903.01(B); four counts of aggravated robbery, two in violation of R.C. 2911.01(A)(1) and two in violation of 2911.01(A)(3); and two counts of felonious assault, in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). All counts had one- and three-year firearm specifications attached.

{¶ 3} Also in March 2007, in Case No. CR-493005, the grand jury indicted Hawkins on four counts of aggravated robbery for events that allegedly occurred in August 2006, in violation of R.C. 2911.01, with one- and three-year firearm specifications.

{¶ 4} At the time of the alleged crimes, Hawkins was 16 years old.

{¶ 5} In October 2007, Hawkins withdrew his former pleas of not guilty and entered guilty pleas in both cases. In Case No. CR-492933, Hawkins pled guilty to one count of aggravated murder with the three-year firearm specification (Count 1) and one count of felonious assault with the three-year firearm specification (Count 6). The remaining counts were nolle. In Case No. CR-493005, Hawkins pled guilty to four counts of aggravated robbery without the one- and three-year firearm specifications.

{¶ 6} In Case No. CR-492933, the trial court sentenced Hawkins to 25 years to life on the aggravated murder, six years on the felonious assault, and ordered that it be served concurrent to the murder sentence, and three years on the firearm specification, to be served prior to and consecutive to the murder sentence, for an aggregate sentence of 28 years to life in prison. Five years of mandatory postrelease control was also part of his sentence.

{¶ 7} In Case No. CR-493005, the trial court sentenced Hawkins to eight years on each count, and ordered that counts 1 and 2 be served consecutive to counts 3 and 4, for an aggregate sentence of 16 years in prison. The trial court then ordered that this sentence be served concurrent to the sentence he received in Case No. CR-492933. Five years of mandatory postrelease control was also part of his sentence.

{¶ 8} It is this judgment that Hawkins appeals, raising three assignments of error for our review:

{¶ 9} “[1.] The trial court violated Appellant’s rights under the United States and Ohio Constitutions by not holding an inquiry into Appellant’s request for new counsel and by not providing Appellant with new counsel prior to his plea.

{¶ 10} “[2.] The trial court violated Appellant’s rights under the United States and Ohio Constitutions by accepting appellant’s guilty pleas when they were not voluntarily made.

{¶ 11} “[3.] The trial court erred in convicting Appellant of the aggravated robbery counts in CR-493005.”

Inquiry into Request for New Counsel

{¶ 12} In his first assignment of error, Hawkins argues that the trial court violated his Sixth Amendment right to counsel because it failed to inquire into the reasons for his request for new counsel prior to accepting his plea. He further contends that the trial court erred by not granting his request for new counsel.

{¶ 13} We note at the outset that Hawkins was assigned two attorneys to represent him because he was charged with aggravated murder. On the morning Hawkins's case was set for trial, the state informed the trial court that the parties had reached a plea agreement. The state set forth the parameters of the negotiated plea to the trial court. At that point, Hawkins told the trial court, "I would like to try to get some new lawyers" because "I feel like my lawyers [are] not going to fight for me to the fullest extent." The following exchange then occurred between the trial court, Hawkins, and his two attorneys.

{¶ 14} "THE COURT: Mr. [Hawkins], this case has been pending [since] March of 2007. This is the first time you've ever indicated your dissatisfaction with these two lawyers.

{¶ 15} "Let me tell you, Mr. Hawkins, that the two lawyers that you have seated beside you at this time are above reproach, and certainly two of the finest lawyers you could have to represent you.

{¶ 16} "Whether or not you like the answers they give you, Mr. [Hawkins], is not at issue. They both know their business. They both will fight hard for you at a trial, and they will do their best to represent you in accordance with their canons

of ethics and code of responsibility, zealously represent you. So that's not an issue.

{¶ 17} "You're going to trial today or you're going to enter a plea of guilty today.

{¶ 18} "Mr. [Hawkins], I want to make sure you understand.

{¶ 19} "Mr. Buckley and Shaughnessy, is that your understanding of the plea that's been offered by the state?

{¶ 20} "MR. BUCKLEY: Your Honor, it is. Basically its twenty-eight years to life.

{¶ 21} "I would just like to add that [Mr. Shaughnessy] and I have explained this fully to Chris. I think he understands the plea, the ramifications. We also communicated with his family. His dad is sitting right behind us here. His mother is over here, and his grandmother was here yesterday, and we had them in the courtroom, and we've talked with all of them. I think – and I just want to put this on the record.

{¶ 22} "[Mr. Shaughnessy] and I strongly recommended to Chris that he take this plea. As lawyers who've done a lot of these cases, and looking at the evidence in this case, being fully versed, we think it's in his best interest to enter into the plea bargain as outlined.

{¶ 23} "I think what Christopher's voiced to you today, asking to have new lawyers, is maybe he doesn't want to hear what we've said.

{¶ 24} “I will say, that we will zealously represent him if this is a trial. We’re prepared to do that. We’re prepared to go forward, but we have recommended to him and his family that the plea bargain is in his best interest.

{¶ 25} “THE COURT: Okay. Thanks.

{¶ 26} “MR. SHAUGHNESSY: Your Honor, for the record, I would just concur with the thoughts of Mr. Buckley.

{¶ 27} “Again, we did spend numerous hours with his family. We’ve been in communication with them throughout the months, during the pretrials.

{¶ 28} “We’ve gone out to the scene. We’ve done everything we need to do to prepare for this trial. Your honor, we are prepared to go forward, but again, it is our belief that Christopher should entertain the plea bargain offered by the State of Ohio, given the fact that he’s 17 years of age [16 at the time of the alleged crimes].

{¶ 29} “THE COURT: And the court does recognize that counsel – all counsel for these three young men charged in this indictment, have repeatedly been at the court for pretrial conferences with the prosecuting attorney in this matter, and have worked many, many hours at each of those events on this matter.

{¶ 30} “What was done outside the court is obviously extensive, based upon the motion practice filed in this case.

{¶ 31} “Mr. [Hawkins], you heard what the lawyer for the state of Ohio said, Miss Hilow, and what your own lawyers have said. The fact of the matter is, I

have to make sure you understand what you're going to do here today, sir, before we bring up the jury.

{¶ 32} "You are facing on two counts, young man, a sentence of life imprisonment without the possibility of parole.

{¶ 33} "That means the rest of your life you will live and die in prison. Do you understand that?

{¶ 34} "[HAWKINS]: Yes, ma'am.

{¶ 35} "THE COURT: The court may also impose a sentence of life imprisonment without parole until you serve twenty years, twenty-five years, or thirty years.

{¶ 36} "But ultimately, I could send you to prison for life without parole.

{¶ 37} "You're also facing an additional possible sentence, if convicted, of fifty-six years on the other crimes related to this case, plus three years for the firearm specification. So that's fifty-nine years on top of anything else you get in this case for the aggravated murders.

{¶ 38} "And on the other case, sir, you're facing, if convicted, forty years in prison, plus three years for the firearm specification, so an additional forty-three years.

{¶ 39} "And the three-year firearm specifications on these two separate cases are not going to merge by law. They don't have to. These crimes were committed separately and distinctly. So, you're looking at forty-three years on the other case, and by my calculations that is 112 years in prison on these cases,

in addition to the potential of twenty to life, twenty-five to life, or thirty to life, or life without parole.

{¶ 40} “Do you understand all that, young man?

{¶ 41} “[HAWKINS]: Yes, ma’am.

{¶ 42} “THE COURT: And it is your desire, sir, to go forward with trial and face those sentencings, or you can plead guilty and receive a sentence of twenty-eight years to life in prison, and give – be given an opportunity, ultimately, in your young life to go out and be fruitful and multiply.

{¶ 43} “Do you understand you have a possibility of getting out of prison, a strong possibility of getting out of prison if you plead guilty?

{¶ 44} “If you’re convicted of all these crimes, Mr. [Hawkins], you are going to die in prison, and so is everybody else in your family.

{¶ 45} “You have till one o’clock till we bring up the jury, Mr. [Hawkins], to decide this. If you want to talk to your mom, your dad, anybody else in your family that would be helpful here. ***

{¶ 46} “One o’clock, we want an answer.”

{¶ 47} When the court resumed proceedings in the afternoon, it did not ask Hawkins what he had decided and Hawkins did not reiterate that he wanted new counsel. In fact, the afternoon plea hearing proceeded as if the morning session had not occurred.

{¶ 48} Hawkins relies on *State v. Deal* (1969), 17 Ohio St.2d 17, to argue that the trial court committed reversible error because it failed to inquire into his request for new counsel.

{¶ 49} In *Deal*, the Ohio Supreme Court held at the syllabus:

{¶ 50} “Where, during the course of his trial for a serious crime, an indigent accused questions the effectiveness and adequacy of assigned counsel, by stating that such counsel failed to file seasonably a notice of alibi or to subpoena witnesses in support thereof even though requested to do so by the accused, it is the duty of the trial judge to inquire into the complaint and make such inquiry a part of the record. The trial judge may then require the trial to proceed with assigned counsel participating if the complaint is not substantiated or is unreasonable.”

{¶ 51} In *State v. Carter* (1998), 128 Ohio App.3d 419, the Fourth Appellate District explained:

{¶ 52} “The defendant bears the burden of announcing the grounds for a motion for appointment of new counsel. If the defendant alleges facts which, if true, would require relief, the trial court must inquire into the defendant’s complaint and make the inquiry part of the record. [*Deal*] at 20; *State v. King* (1995), 104 Ohio App.3d 434, 437; *State v. Prater* (1990), 71 Ohio App.3d 78, 83.

‘The inquiry may be brief and minimal, but it must be made.’ *King*, supra, at 437, citing *Prater*, supra. Even that limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the

duty to investigate further. See *Deal*, supra, at 19. Failure to inquire into specific allegations constitutes an error as a matter of law. Id. ***” *Carter* at 423.

{¶ 53} The Ohio Supreme Court recently upheld *Deal* in *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, but adopted the Fourth District’s reasoning in *Carter* that “the ‘limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further.’” *Johnson* at _68, quoting *Carter* at 423.

{¶ 54} Thus, it is well established that the duty prescribed by *Deal*, “arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further.” Id. at 423. The question at the crux of this appeal then is: Was Hawkins’s statement to the judge, that he felt like his lawyers were “not going to fight for him to the fullest extent,” sufficiently specific to warrant an inquiry from the trial court? Under the facts of this case, we find that it was not.

{¶ 55} In *Deal*, the defendant attempted to discharge his attorney during trial, informing the court that his assigned counsel had failed to file a notice of alibi or to subpoena witnesses. The trial court rejected the defendant’s complaint as “unreasonable,” without making any inquiry into its merits. On appeal, the Ohio Supreme Court reversed the defendant’s conviction, recognizing that absent an on-the-record inquiry into the defendant’s complaints, it was impossible to conduct appellate review of appointed counsel’s performance. The

court also recognized that “[t]he appellant, by himself, did everything he could be expected to do to preserve his objection as to the incompetency of his counsel and to the defense his counsel had prepared. His objection was specific, not vague or general.” *Id.* at 19.

{¶ 56} In *Carter*, the defendant alleged that his counsel had lied to him, refused to communicate with him, and worked with the state against him. The Fourth District Court of Appeals held that the defendant had made sufficiently specific allegations to require the trial court to further investigate “the truth of the allegations.” *Id.* at 423.

{¶ 57} In *State v. Ervin* (Nov. 26, 2001), 5th Dist. No. 2000CA00297, the defendant informed the trial court on the morning of trial: “I just wanted to get me a lawyer to fight my case. I feel like he ain’t representing me right. I want to pay a lawyer to represent me.” In response, the trial court simply stated, “Motion denied. Bring in the jury.” The court held that because the defendant did not “allege facts which, if true, would require the appointment of new counsel,” the trial court had no duty to inquire into those complaints. *Id.*

{¶ 58} In *State v. Simon* (Nov. 22, 2000), 2d Dist. No. 99CA5, the defendant filed a motion to dismiss his appointed trial counsel, citing merely a “conflict of interest.” The trial court denied the motion without inquiry or a hearing. The Second District held that “‘conflict of interest’ without more, is not a sufficiently specific allegation to trigger the duty to investigate further.” *Id.*

{¶ 59} In *State v. Washington* (Aug. 17, 2001), 1st Dist. No. C-000754, the defendant orally requested a continuance immediately before trial. Washington told the court that he was “not happy” with his attorney. The trial court quickly overruled the motion without further investigation into the source of defendant’s discontent. The First District noted that the defendant contended, “with some authority,” that the trial court erred by not investigating the defendant’s complaint. But the appellate court found that the defendant’s allegation was a “general allegation of unhappiness” that was “so vague,” it did not require additional investigation. *Id.*

{¶ 60} We find the case sub judice to be similar to *Ervin*, *Simon*, and *Washington*. Hawkins’s request for new counsel was a general allegation; he did not allege specific facts which would require the appointment of new counsel. Thus, the trial court did not have a duty to inquire further into his request. Moreover, when the court returned after its break for lunch, Hawkins did not raise the subject of wanting new counsel again with the trial court. And during his actual plea colloquy, he asserted that he was satisfied with his lawyers’ representation. Accordingly, we find no error on the part of the trial court.

{¶ 61} We note, however, that the better practice would have been for the trial court to conduct a minimal inquiry regarding Hawkins’s concerns. This would have permitted the trial court to quickly dispose of any nonmeritorious claims and would have resulted in a more complete record on appeal. However,

under the specific facts and circumstances in this case, the trial court did not err by not conducting such an inquiry.

{¶ 62} Hawkins further contends that the trial court erred by not granting his request for new counsel. We disagree.

{¶ 63} A trial court's decision regarding a request for substitute counsel is governed by an abuse of discretion standard. See *State v. Murphy* (2001), 91 Ohio St.3d 516, 523. Thus, an appellate court will not reverse the trial court's decision absent an abuse of discretion. *Id.* The term "abuse of discretion" implies that the court's decision was "unreasonable, arbitrary, or unconscionable."

State v. Adams (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. It is well established that an indigent defendant is not entitled to the counsel of his choosing, but rather, only the right to competent, effective representation. See *Murphy*, *supra*. Further, the right to counsel does not guarantee the defendant a meaningful relationship with counsel. See *Morris v. Slappy* (1983), 461 U.S. 1, 13-14; *State v. Pruitt* (1984), 18 Ohio App.3d 50, 57. In order for a criminal defendant to discharge a court-appointed attorney, the defendant must show a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to the effective assistance of counsel. See *State v. Coleman* (1988), 37 Ohio St.3d 286, paragraph four of the syllabus. Thus, an indigent defendant is entitled to new counsel "only upon a showing of good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result." *State v.*

Edsall (1996), 113 Ohio App.3d 337, 339; see, also, *State v. Blankenship* (1995), 102 Ohio App.3d 534, 558.

{¶ 64} Further, when the timing of a request for new counsel is an issue, a trial court may make a determination as to whether the appellant's request for new counsel was made in bad faith. See *State v. Graves* (Dec. 15, 1999), 9th Dist. No. 98CA007029. A motion for new counsel made on the day of trial, "intimates such motion is made in bad faith for the purposes of delay." *State v. Haberek* (1988), 47 Ohio App.3d 35, 41.

{¶ 65} After reviewing the record in its totality, we find that the trial court did not abuse its discretion when it denied Hawkins's request for new counsel on the day of trial. Both of Hawkins's appointed attorneys informed the trial court that they were prepared to go to trial that day and represent him to the fullest extent. They indicated on the record that they had done all they could do to prepare for the trial. Although they stated that Hawkins did not like their advice that he should accept the plea offer, there is no indication that there was a complete breakdown in attorney-client communications or that there was an irreconcilable conflict. Moreover, Hawkins's attorneys had a duty to give him an honest appraisal of his case, and to be candid, which is what Hawkins's attorneys did here. See *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, ¶150. "If the rule were otherwise, appointed counsel could be replaced for doing little more than giving their clients honest advice." *Id.*

{¶ 66} Accordingly, in the absence of a more articulable breakdown of the attorney-client relationship by Hawkins, we conclude the trial court acted reasonably in denying his last-minute request for new counsel.

{¶ 67} Hawkins's first assignment of error is overruled.

Voluntariness of a Plea

{¶ 68} In his second assignment of error, Hawkins maintains that the trial court violated his constitutional rights by accepting his guilty pleas, claiming that his pleas were not voluntarily entered into. He claims that the record is clear that he "had no confidence in his counsel's ability to represent him at trial," and that he was "forced or coerced" into accepting the plea.

{¶ 69} First, we note that Hawkins never moved to withdraw his guilty plea, either before or after sentencing. Second, a guilty plea waives all appealable orders except for a challenge as to whether the defendant made a knowing, intelligent, and voluntary plea. *State v. Clay*, 8th Dist. Nos. 89339-89341, 2008-Ohio-314, _15. "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process,' precluding a criminal defendant from 'rais[ing] independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *State v. Spates*, 64 Ohio St.3d 269, 272-273. (Citations omitted.)

{¶ 70} A guilty plea will be considered knowing, intelligent, and voluntary if, before accepting the plea, the trial court, at the very least, substantially complied with the procedures set forth in Crim.R. 11 with respect to nonconstitutional

notifications. *State v. Nero* (1990), 56 Ohio St.3d 106, 108. “Substantial compliance means that, under the totality of the circumstances, the defendant subjectively understands the implications of his plea and the rights he is waiving.”
Id.

{¶ 71} Crim.R. 11(C)(2) provides,

{¶ 72} “In felony cases the court may refuse to accept a plea of guilty ***, and shall not accept a plea of guilty *** without first addressing the defendant personally and doing all of the following:

{¶ 73} “(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶ 74} “(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty ***, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶ 75} “(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant’s favor, and to require the state to prove the defendant’s guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.”

{¶ 76} In the instant case, Hawkins entered into a plea bargain in which he agreed to plead guilty to reduced charges. Prior to accepting Hawkins's guilty pleas, the trial court made sure that Hawkins was not under the influence of any drugs, alcohol, or medicine that would affect his judgment. The trial court further determined that Hawkins could read, write, and understand the English language.

The trial court then explained to him that he would be waiving his right to a trial by jury, the right to confront witnesses, the right to compulsory process of witnesses, the right to be proven guilty beyond a reasonable doubt, and the right against self-incrimination, all of which he said he understood.

{¶ 77} The trial court also fully apprised Hawkins of the range of the minimum and maximum penalties and the fines provided for each offense, the possibility of the imposition of postrelease control, and the potential consequences for a violation of postrelease control. The trial court inquired into whether Hawkins had been threatened or promised anything in exchange for his plea, other than the dismissal or reduction of various counts in the indictment, and asked him if he was satisfied with his attorneys. Hawkins indicated that he understood, said he had not been threatened or coerced, and agreed that he was satisfied with his representation.

{¶ 78} The totality of the circumstances indicates that Hawkins understood the charges against him. Contrary to his assertion, there is no evidence in the record that he did not understand the plea or was otherwise confused about the proceedings. Based on these circumstances, we find that Hawkins entered into

his plea knowingly, voluntarily, and intelligently and thus, the trial court accepted his plea in compliance with Crim.R. 11.

{¶ 79} Hawkins's second assignment of error is overruled.

Defective Indictment

{¶ 80} In his third assignment of error, Hawkins argues that the indictment charging him with aggravated robbery was defective.

{¶ 81} This court has declined to extend *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, as clarified by *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, to cases in which the defendant pleaded guilty to the indictment.

State v. Lawrence, 8th Dist. Nos. 90977, 90978, 2009-Ohio-33, _29, citing *State v. Hayden*, 8th Dist. No. 90474, 2008-Ohio-6279, _5. In *Lawrence*, we quoted the Third Appellate District, in explaining:

{¶ 82} “[The defendant] has waived any alleged errors in the indictment by pleading guilty to the offenses. The court in *Colon* [I] held that ‘when an indictment fails to charge a mens rea element of a crime and the defendant fails to raise that defect in the trial court, the defendant has not waived the defect in the indictment.’ 118 Ohio St.3d 26, 2008-Ohio-1624, at _45. However, the defendant in *Colon* did not plead guilty like Gant, herein. ‘The plea of guilty is a complete admission of the defendant’s guilt.’ Crim.R. 11 (B)(1). Accordingly, ‘[b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive

crime.’ *State v. Kitzler*, 3d Dist. No. 16-02-06, 2002-Ohio-5253, _12, citing *State v. Barnett* (1991), 73 Ohio App.3d 244, 248. Therefore ‘[a] criminal defendant who pleads guilty is limited on appeal; he may only attack the voluntary, knowing, and intelligent nature of the plea and “may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”’ *State v. Woods*, 3d Dist. No. 1-05-82, 2006-Ohio-2368, _14, quoting *State v. Spates* (1992), 64 Ohio St.3d 269, 272, 1992-Ohio-130. ***

This court is not persuaded that the court in *Colon* [I] was also overruling the longstanding waiver rules with regard to guilty pleas. Accordingly, this court finds that Gant admitted guilt of the substantive crime of burglary and has, therefore, waived any alleged indictment defects for purposes of appeal.” (Some internal citations omitted.) *State v. Gant*, 3d Dist. No. 1-08-22, 2008-Ohio-5406, _13.

{¶ 83} Accordingly, Hawkins’s third assignment of error is overruled.

Judgment 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 common pleas court 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.

MARY J. BOYLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
LARRY A. JONES, J., CONCUR