

[Cite as *State v. Johnson*, 2016-Ohio-5842.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103891

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LARRY JOHNSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-10-544379-A

**BEFORE:** Jones, A.J., McCormack, J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** September 15, 2016

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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Cuyahoga County Prosecutor

BY: Brett Hammond  
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LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant Larry Johnson appeals from the trial court's November 20, 2015 judgment denying his motion to vacate void judgment. For the reasons that follow, we affirm.

### **Procedural History and Facts**

{¶2} In December 2010, Johnson was charged in a seven-count indictment with three counts of drug trafficking, two counts of drug possession, and one count each of possessing criminal tools and having weapons while under disability. The counts contained juvenile, major drug offender, firearm, and forfeiture specifications. Johnson filed a motion to suppress, and the trial court held a hearing. After the hearing, the court denied the suppression motion.

{¶3} In June 2011, Johnson pleaded no contest to the charges as indicted, and the court found him guilty. The court immediately proceeded to sentence Johnson to a 13-year prison term, which included consecutive sentences. Johnson filed a direct appeal, challenging the denial of his suppression motion. *State v. Johnson*, 8th Dist. Cuyahoga No. 96983, 2012-Ohio-1344. This court affirmed the judgment. *Id.* at ¶ 30.

{¶4} The facts of the case, as stated in Johnson's direct appeal, are as follows:

On November 16, 2010, Cleveland police responded to a dispatch call reporting shots fired at 3067 W. 47th Street. Several police vehicles arrived at the scene, because the caller reported that the shots were fired from an AK47 assault rifle and that someone was shot inside the house. Dispatch provided additional information over the radio, such as defendant's name as a possible suspect, the involvement of a brown Oldsmobile, and the allegation that more assault rifles were in the house.

Also, the address was corrected to 3064 — rather than 3067 — W. 47th Street.

Police officers surrounded the house, which is a duplex, and Det. John Graves spoke with the woman who lives in the downstairs unit. She stated that defendant had just run from a black vehicle to the upstairs unit where he lives. Police heard noises and saw a light come on upstairs, although there was no answer when they knocked on the door. Dispatch then broadcasted that the caller just reported that there was a dead body and drugs in the house.

Based on this information, the police forcibly entered the house to secure the scene. Defendant and two other males were inside. No one was injured, and there was no dead body. There was, however, a strong odor of marijuana. Asked by police, defendant admitted smoking marijuana and stated that there was marijuana in the bedroom. Det. Graves asked defendant if the police could search the house, and defendant consented verbally and in writing. The search revealed marijuana, crack cocaine, powder cocaine, drug manufacturing paraphernalia, and a gun in the house.

*Id.* at ¶ 2-4.

{¶5} In October 2015, Johnson filed a “motion to vacate void judgment for lack of jurisdiction,” wherein he contended that the trial court failed to consider the appropriate statutory findings in sentencing him. In November 2015, the court denied Johnson’s motion and this appeal follows.

### **Assignments of Error**

{¶6} Johnson raises the following three assignments of error for our review:

I. Must a trial court[']s sentencing entry accurately reflect the proceedings as they occurred? Does Defendant-Appellant Johnson [have] a constitutionally protected right to have the proceedings he is involved in accurately preserved in the sentencing entry?

II. Does Defendant-Appellant Johnson have the right to be present when the trial court engaged in its findings and analysis as required by statute? If so then would not the plain error standard defined in Ohio R. Crim.R. 52

apply if the court conducted its analysis without the knowledge of the parties concerned?

III. Can this court hold jurisdiction to rule on an appeal when the trial court[']s journal does not accurately reflect the proceedings as they occurred? Can Johnson be barred by the doctrine of res judicata?

### III. Law and Analysis

{¶7} Johnson's first and second assignments of error are interrelated, and we consider them together. In his first assignment, he contends that the trial court failed to consider the statutory requirements set forth under R.C. 2929.11, 2929.12 and 2929.19. Johnson's second assignment expands upon the first, and he contends that the trial court sentenced him without him being present as required under Crim.R. 43. Specifically, Johnson cites the trial court's sentencing entry that states that the court "considered all required factors of the law[,] [and] \* \* \* finds that prison is consistent with the purposes of R.C. 2929.11," and contends that the court made those findings outside of his presence.

{¶8} In his motion to vacate void judgment, Johnson contended that the court failed to make the required statutory findings as mandated by *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, and that his sentence was contrary to law because the court failed to make the required findings for the imposition of consecutive sentences.

{¶9} In *Bonnell*, the Ohio Supreme Court held that "[i]n order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings."

*Id.* at the syllabus.

{¶10} *Bonnell* refers to the requirements for consecutive sentences under Am.Sub.H.B. No. 86 (“H.B. 86”), which became effective September 30, 2011. Johnson was sentenced in June 2011, which was prior to H.B. 86’s effective date. This court has held that the amendments of H.B. 86 are not applicable to defendants who were sentenced prior to September 30, 2011. *State v. Johnson*, 8th Dist. Cuyahoga No. 99377, 2015-Ohio-96, ¶ 63. Thus, there is no merit to Johnson’s contention regarding the findings for consecutive sentences.

{¶11} In regard to the other sentencing statutes, this court held that a sentence imposed prior to September 30, 2011, was properly imposed if the sentencing entry stated that the court considered all factors required by law and the sentence was within the permissible statutory range. *State v. Kimbrough*, 8th Dist. Cuyahoga No. 94489, 2011-Ohio-89, ¶ 12. As stated, the trial court’s sentencing entry states that the court “considered all required factors of the law[,] [and] \* \* \* finds that prison is consistent with the purposes of R.C. 2929.11.” Further, the sentences imposed were within the statutory range, and 11 years of the 13-year sentence was mandatory by operation of law.

{¶12} In light of the above, the first and second assignments of error are without merit and overruled.

{¶13} For his third assignment of error, Johnson contends that the sentencing entry was not a final appealable order under *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. We disagree.

{¶14} In *Baker*, the Ohio Supreme Court held that a “judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *Id.* at syllabus. The sentencing entry here complies with all of the enumerated requirements. It (1) states that Johnson entered a no contest plea and, upon the evidence proffered by the state, the court found him guilty; (2) states the sentence imposed by the court; (3) was signed by the trial court judge; and (4) was entered on the journal by the clerk of court.

{¶15} In light of the above, the sentencing entry is a final appealable order and the third assignment of error is overruled.

{¶16} 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.

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

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LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and  
PATRICIA ANN BLACKMON, J., CONCUR

