

[Cite as *State v. Jones*, 2016-Ohio-932.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103017

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**BRANDON JONES**

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-14-587110-B

**BEFORE:** E.T. Gallagher, J., Keough, P.J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** March 10, 2016

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Brandon Jones (“Brandon”), appeals his conviction and sentence. He raises the following two assignments of error:

1. The sentence imposed on Brandon Jones was contrary to law as it (1) was not “consistent with sentences imposed for similar crimes committed by similar offenders” in violation of R.C. 2929.11(B), and (2) was cobbled together as a sentencing package in violation of Ohio’s sentencing scheme and *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824.

2. The trial court erred when it accepted the plea entered by Brandon Jones pursuant to an agreement because an essential term of the agreement was a jointly recommended illegal sentence.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

### **I. Fact and Procedural History**

{¶3} Brandon was charged with aggravated murder, murder, aggravated burglary, aggravated robbery, kidnapping, and felonious assault. Each count was accompanied by one- and three-year firearm specifications. The charges arose from a robbery at the Colony Lounge (“Colony” or “the Colony”) in Cleveland Heights, and the ensuing murder of its owner, Jim Brennan (“Brennan”).

{¶4} The facts surrounding the incident are not in dispute. Brandon was employed as a kitchen trainee at the Colony at the time of the incident. Brennan’s head cook, Richard Wise (“Wise”), supervised Brandon and recommended to Brennan that he fire Brandon due to his failure to appear for work, his tardiness when he came to work,

and his lack of professional appearance. Despite Wise's complaints, Brennan allowed Brandon to keep his job.

{¶5} Brandon and his brother, Darien Jones ("Darien"), together with Devonnie Turner ("Devonne"), decided to rob the Colony. Brandon, who had inside knowledge of the Colony's business operations, orchestrated the plan. He advised Darien and Devonnie that Monday was the best day to rob the restaurant because Brennan would not yet have deposited the weekend receipts in the bank. He gave them each a gun and told them the safe was located in the basement. He also told them the back door would be unlocked because it is used by vendors and restaurant employees.

{¶6} On Monday, June 30, 2014, the Colony was not open for lunch, per its usual schedule. At the time of the robbery, Brennan was doing payroll and accounting while Wise and Brandon were in the kitchen prepping for the day. Darien and Devonnie entered the restaurant through the back door wearing hoods. After Wise told them he could not open the safe, Darien searched for and found Brennan upstairs. Darien lead Brennan at gunpoint to the rear of the restaurant towards the stairway to the basement. Brennan attempted to escape, but Darien grabbed his arm and shot him three times, including one fatal shot to the head. Following the shooting, Devonnie and Darien fled the scene.

{¶7} Brandon pleaded guilty to every count and specification in the indictment. As part of a plea agreement, Brandon agreed to a sentence of life in prison with eligibility

for parole after serving 40 years. At counsel's request, the court ordered a presentence investigation and mitigation report.

{¶8} The court held a sentencing hearing for all the defendants at once. The court sentenced Devonne's brother, Paul Turner, to a seven-year prison term for concealing the murder weapon. Paul refused to participate in the robbery, but was later charged with several counts of obstruction of justice, tampering with evidence, and having a weapon while under disability. The court also sentenced Paul on other unrelated offenses for an aggregate 11-year sentence.

{¶9} The court sentenced Devonne and Darien, each, to 37 years to life in prison. Although Brandon's plea agreement included a jointly recommended sentence of 40 years to life in prison, his trial counsel argued he should receive the same sentence as Devonne because he was less culpable than Devonne. Counsel argued that although Devonne and Brandon planned the crime together, Devonne fired the shots that killed Brennan. Counsel further asserted that murder was not part of Brandon's plan. The trial court rejected counsel's arguments and imposed the recommended sentence of 40 years to life. Brandon now appeals from his conviction and sentence.

## **II. Law and Analysis**

### **A. Sentence**

{¶10} In the first assignment of error, Brandon argues his sentence is contrary to law because it is not “consistent with sentences imposed for similar crimes by similar offenders.” He also argues the sentence is contrary to law because it was imposed as a sentencing package, which is impermissible under Ohio’s sentencing scheme.

### **1. Consistency**

{¶11} R.C. 2953.08 sets forth specific grounds for appealing felony sentences. As relevant here, R.C. 2953.08(D)(1) provides that “[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” *See State v. Heisa*, 8th Dist. Cuyahoga No. 101877, 2015-Ohio-2269, ¶ 27. “[A] sentence is ‘authorized by law’ and is not appealable within the meaning of R.C. 2953.08(D)(1) only if it comports with all mandatory sentencing provisions.” *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, paragraph two of the syllabus.

{¶12} Therefore, our review of Brandon’s sentence is limited to determining if the court complied with statutory sentencing requirements. *State v. Downey*, 8th Dist. Cuyahoga No. 99685, 2013-Ohio-4924, ¶ 4. Pursuant to R.C. 2929.03(A)(1)(a), the maximum prison term for aggravated murder is life in prison without parole. The court sentenced Brandon to 30 years to life in prison, pursuant R.C. 2929.03(A)(1)(d), on the aggravated murder charge, plus three years on the firearm specification. Thus, the sentence Brandon received on his aggravated murder conviction was within the statutory

range of penalties. The sentences on the remaining charges, which were first-degree felonies, were also within the statutory range set forth in R.C. 2929.14(A)(1). By running two of the sentences consecutively, the court reached the aggregate 40 years to life sentence. And since the record shows that the court made all the findings required by R.C. 2929.14(C)(4) for imposition of consecutive sentences, all of Brandon's sentences were authorized by law.

{¶13} With respect to Brandon's consistency argument, R.C. 2929.11(B) directs courts to impose sentences consistently. *State v. Summers*, 2d Dist. Darke No. 2013 CA 16, 2014-Ohio-2441, ¶ 16. However, R.C. 2929.12 requires that the trial court use discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in R.C. 2929.11. *State v. Mansley*, 2d Dist. Montgomery No. 26417, 2015-Ohio-2785, ¶ 14. The court may find, after consideration of all the sentencing factors, that disparate sentences of similarly situated codefendants is justified. *State v. Moore*, 8th Dist. Cuyahoga No. 99788, 2014-Ohio-819, ¶ 75 (S. Gallagher, J., concurring in judgment only and dissenting in part.). The court makes this determination in its own discretion.

{¶14} Although we must ensure that Brandon's sentence is authorized by law, we may not review his jointly recommended sentence for abuse of discretion. *Underwood* at ¶ 22; R.C. 2953.08(D)(1). In *Underwood*, the court observed that "the General Assembly intended a jointly agreed-upon sentence to be protected from review precisely because the parties agreed that the sentence is appropriate. Once a defendant stipulates

that a particular sentence is justified, the sentencing judge no longer needs to independently justify the sentence.” *Id.* at ¶ 27, quoting *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 25 (court’s discretion in imposing consecutive sentences in a jointly recommended sentence was not subject to review.).

{¶15} Brandon’s argument implies the court abused its discretion by imposing a greater sentence on him than his codefendants for the same crime. However, because the court uses its discretion in deciding whether disparate sentences are justified, it is beyond the scope of appellate review. R.C. 2953.08(D)(1).

## **2. Sentencing Package**

{¶16} Brandon also argues that his sentence was imposed as a comprehensive package and that sentencing packages are contrary to law.

{¶17} However, the trial court has discretion to decide whether or not to impose a jointly recommended sentence. *State v. Davis*, 11th Dist. Lake No. 2002-L-188, 2004-Ohio-792, ¶ 10, citing *State v. Palmer*, 7th Dist. Mahoning No. 99 CA 6, 2001 Ohio App. LEXIS 5198 (Nov. 19, 2001); *see also State v. Mathews*, 8 Ohio App.3d 145, 456 N.E.2d 539 (10th Dist.1982). Indeed, Crim.R. 11 does not contemplate that punishment will be a subject of a plea bargain because punishment is determined by statute and is imposed in the court’s discretion. *Mathews* at 146. “[T]he trial court is not required to impose a jointly recommended sentence” and may order a term that exceeds the recommendation. *State v. Cisternino*, 11th Dist. Lake No. 2010-L-031, 2011-Ohio-2453, ¶ 30. As previously stated, we have no authority to question the



court's discretion in imposing a jointly recommended sentence. *Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, at paragraph two of the syllabus.

{¶18} Therefore, the first assignment of error is overruled.

## **B. Guilty Plea**

{¶19} In the second assignment of error, Brandon argues the trial court erred when it accepted Brandon's guilty plea pursuant to a plea agreement because an essential term of the agreement was a jointly recommended illegal sentence. He contends the jointly recommended sentence violated *Saxon* because it was an unlawful sentencing package. *See State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824 (Ohio's sentencing scheme does not permit sentencing packages.).

{¶20} The "sentencing package doctrine" is a federal doctrine that requires a sentencing court to consider the sanctions imposed on multiple offenses as the components of a single, comprehensive sentencing plan. *Id.* at ¶ 5. Pursuant to this doctrine, an error within the sentencing package as a whole, even if only on one of multiple offenses, may require modification or vacation of the entire sentencing package due to the interdependency of the sentences for each offense. *Id.* at ¶ 6, citing *United States v. Clements*, 86 F.3d 599, 600-601 (6th Cir.1996).

{¶21} By contrast, Ohio's felony sentencing scheme is designed to focus the judge's attention on one offense at a time. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 6, citing *Saxon* at ¶ 8. The Ohio Supreme Court has held that "[t]he sentencing-package doctrine has no applicability to Ohio sentencing laws:

the sentencing court may not employ the doctrine when sentencing a defendant and appellate courts may not utilize the doctrine when reviewing a sentence or sentences.” *Saxon* at paragraph two of the syllabus.

{¶22} The court did not impose a single comprehensive sentence on Brandon’s multiple convictions. The record shows the trial court imposed separate sentences on each conviction, individually, as required by Ohio felony sentencing statutes. By running two sentences consecutively, Brandon’s aggregate prison term totaled 40 years to life as contemplated by the parties’ jointly recommended sentence. As previously stated, the court had discretion to impose the jointly recommended sentence, and R.C. 2953.08(D)(1) prohibits us from reviewing that discretion.

{¶23} Therefore, the second assignment of error is overruled.

{¶24} Judgment affirmed.

It is ordered that appellee recover from 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.

EILEEN T. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR