

[Cite as *In re R.L.J.*, 2017-Ohio-2992.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105138

IN RE: R.L.J.

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL 87100350

BEFORE: Jones, J., S. Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: May 25, 2017

ATTORNEY FOR APPELLANT

Stephen P. Hanudel
Stephen P. Hanudel, Attorney at Law
124 Middle Avenue, Suite 900
Elyria, Ohio 44035

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor

BY: Frank Romeo Zeleznikar
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} In 1987, defendant-appellant, R.L.J. and his brother, C.J., were charged in the stabbing death of Christina Kozak. R.L.J. and C.J. were minors at the time of Kozak's death and were charged in juvenile court with aggravated murder and aggravated robbery.

A bindover hearing was held on March 11, 1987, and the court issued an order that day transferring the cases to the common pleas court for the brothers to stand trial as adults.

{¶2} In September 1987, R.L.J. pleaded guilty to aggravated murder with a felony murder specification in Case No. CR-87-216477-B. In October 1987, he pleaded guilty to aggravated robbery with a three-year firearm specification in Case No. CR-87-221669-B. He was sentenced to life in prison with parole eligibility after 20 years. R.L.J. was granted leave to file a delayed appeal from his convictions in CR-87-216477-B and CR-87-221669-B and his convictions were affirmed in *State v. Johnson*, 8th Dist. Cuyahoga Nos. 55295, 55811, and 55812, 1989 Ohio App. LEXIS 1525 (Apr. 20, 1989), *application to reopen denied*, *State v. Johnson*, 8th Dist. Cuyahoga Nos. 55295, 55811, and 55812, 2000 Ohio App. LEXIS 3617 (Aug. 8, 2000). Johnson also pursued an appeal from the trial court's denial of his motion for a new trial in CR-87-216477-B, which this court affirmed in *State v. Johnson*, 8th Dist. Cuyahoga No. 80247, 2002-Ohio-2712.

{¶3} In 2003, R.L.J. filed a petition for a writ of habeas corpus in federal court, which was dismissed. Then, in 2016, R.L.J. filed a series of writs and motions. He filed a petition for a writ of habeas corpus in the Eleventh District Court of Appeals,

which was dismissed. *Johnson v. Sloan*, 11th Dist. Ashtabula No. 2016-A-0009, 2016-Ohio-5375. He sought a writ of prohibition in this court alleging that the general division of the Cuyahoga County Court of Common Pleas patently and unambiguously lacked jurisdiction to convict and sentence him on the aggravated robbery charge in CR-87-221669-B. This court denied his writ and granted respondent's motion to dismiss. *State ex rel. Johnson v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 104891, 2017-Ohio-394, ¶ 19. R.L.J. also filed the motion that is the basis for this appeal, asking the juvenile court to issue a nunc pro tunc order with regard to the bindover judgment entry filed March 11, 1987. The court held a hearing on the matter and denied the motion.

{¶4} R.L.J. now appeals, raising one assignment of error for our review:

I. The Juvenile Court erred by denying Appellant a Nunc Pro Tunc Entry to reflect the truth of Appellant's bindover proceedings in 1987.

{¶5} In his motion, that, as mentioned, was filed in juvenile court, R.L.J. asked the court to amend its March 11, 1987 bindover entry, by way of a nunc pro tunc order, to reflect that a physical examination of him never occurred and that his mental examination was not completed by a qualified person.

{¶6} Trial courts are granted authority to correct errors in judgment entries so that the record speaks the truth through the use of nunc pro tunc entries. *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 163-164, 656 N.E.2d 1288 (1995); Crim.R. 36. Crim.R. 36 provides that "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at

any time.” Thus, a nunc pro tunc entry merely serves as an accurate reflection of what the trial court actually decided; it cannot be used to reflect what the court might or should have decided, or intended to decide. *State v. Carter*, 8th Dist. Cuyahoga No. 101810, 2015-Ohio-1834, ¶ 40, citing *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 18.

{¶7} The record reflects that during the March 11, 1987 bindover hearing, R.L.J.’s probation officer advised the court that after psychological and psychiatric tests were performed in the detention home, the examinations did not find that R.L.J. had any physical or mental abnormalities.¹ In its March 11, 1987 entry granting the bindover, the court stated, in part:

The court finds after a full investigation, including a mental and physical examination of said child made by a duly qualified person(s), and after a full consideration of the child’s prior juvenile record, efforts previously made to treat and rehabilitate the child, the child’s family environment, the child’s school record, and other matters of evidence, that there are reasonable grounds to believe that the child herein is not amenable to care or rehabilitation in any facility designed for the care * * * of delinquent children * * *.

¹Former R.C. 2151.26 required a mental and physical examination of the child by a public or private agency, or a person qualified to make the examination, as part of bindover proceedings.

{¶8} In his motion, R.L.J. asked the juvenile court to amend its order to show that he never received a physical exam and that his mental exam was not performed by a qualified person. That request is not clerical; it is a substantive request, and such an order would not be accurately reflecting the trial court's findings at the bindover hearing as evidenced by the hearing transcript and March 11, 1987 entry. Therefore, the use of a nunc pro tunc order in this instance would be improper, and the trial court did not err when it denied R.L.J.'s motion.

{¶9} Moreover, R.L.J.'s motion is barred by res judicata. Had R.L.J. wished to raise the issue of the validity of his physical and mental exam as they related to his bindover proceedings, he could have done so on direct appeal. *State v. Moore*, 2d Dist. Clark No. 2013 CA 97, 2014-Ohio-4411, ¶ 22. He did not and is now barred from doing so.

{¶10} The sole assignment of error is overruled.

{¶11} 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 be sent to said 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.

LARRY A. JONES, SR., JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR