

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       26804

Appellee

v.

JA'RELLE SMITH

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 11 12 3560 (D)

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 18, 2015

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WHITMORE, Judge.

{¶1} Appellant, Ja’Relle Smith, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} In late December 2011, Smith approached a woman in her attached garage and forced her, at gunpoint, into the backseat of her car. Smith, and his accomplices, drove the victim to two different ATMs and forced her to withdraw cash. Then, they drove the victim to a cemetery, robbed her of personal items, and fled in her car. For these acts, Smith was charged with aggravated robbery, aggravated burglary, and kidnapping in juvenile case number DL12-01-008.

{¶3} On another occasion in late December 2011, Smith approached a mentally challenged 60-year-old male in front of his home and forced him inside at gunpoint. Once inside, Smith robbed the man, a 63-year-old mentally challenged female, and an 84-year-old

woman. For these acts, Smith was charged with a total of three counts of aggravated robbery, three counts of aggravated burglary, and one count of kidnapping in case numbers DL12-03-519 and DL12-03-319.

{¶4} On yet another, separate occasion in late December 2011, Smith approached a female outside of her home, forced her inside at gunpoint, and robbed her. Smith was charged with aggravated robbery, aggravated burglary, and kidnapping in case number DL12-03-692. Additionally, Smith's DNA was matched to blood found in a home that had been burglarized and he was charged with burglary in case number DL-12-03-687.

{¶5} On March 22, 2012, the juvenile court held a hearing in which Smith, his attorney, and his father attended. Smith waived probable cause in case numbers 008, 519, and 319 and denied the newly filed charges in case numbers 687 and 692. The court granted the State's previously filed motion to relinquish jurisdiction to the court of common pleas in case numbers 008, 519, and 319. The State informed the juvenile court that it would file a similar motion for case numbers 687 and 692.

{¶6} On March 27, 2012, the juvenile court held a hearing on case numbers 687 and 692. Smith and his attorney were present, Smith's father was not. Smith waived probable cause in both cases. The court set case number 687 (burglary) for an amenability hearing and granted the State's motion to transfer case number 692 to the court of common pleas.

{¶7} On April 10, 2012, Smith was indicted in the Summit County Court of Common Pleas on five counts of aggravated robbery, three counts of aggravated burglary, two counts of kidnapping, and one count of burglary. All counts contained a firearm specification. On January 2, 2013, Smith pleaded guilty to two counts of aggravated robbery, two counts of aggravated burglary, one count of kidnapping, and one firearm specification. The remaining charges and

specifications were dismissed. The court sentenced Smith to an aggregate prison term of 16 years. Smith now appeals and raises five assignments of error for our review.

## II

### Assignment of Error Number One

THE JUVENILE COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO APPOINT A GUARDIAN AD LITEM FOR JA'RELLE SMITH'S PROBABLE CAUSE HEARING BEFORE CASE NO. DL12-03-0692 WAS TRANSFERRED TO CRIMINAL COURT, IN VIOLATION OF JUV.R. 4(B)(1) AND R.C. 2151.281(A)(1).

{¶8} In his first assignment of error, Smith argues that the juvenile court committed plain error when it failed to appoint him a guardian ad litem during the probable cause hearing in which his father did not attend. We disagree.

{¶9} Pursuant to Crim.R. 52(B), “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Crim.R. 52(B). “Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. To establish plain error,

[f]irst, there must be an error, i.e., a deviation from the legal rule. \* \* \* Second, the error must be plain. To be “plain” within the meaning of Crim.R. 52(B), an error must be an “obvious” defect in the trial proceedings. \* \* \* Third, the error must have affected “substantial rights [ ]” [to the extent that it] \* \* \* affected the outcome of the trial.

(Alterations sic.) *State v. Hardges*, 9th Dist. Summit No. 24175, 2008-Ohio-5567, ¶ 9, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶10} On March 27, 2012, the court held a probable cause hearing for case numbers 692 and 687. Smith and his attorney were present, but his father was not. Smith orally waived his

father's presence<sup>1</sup> and executed a written waiver of his rights. Smith then waived probable cause. The court bound over case number 692 and set case number 687 for an amenability hearing.

{¶11} Smith argues that the juvenile court erred when it failed to appoint a guardian ad litem, pursuant to Juv.R. 4(B)(1), during the March 27, 2012 bindover hearing in which his father was not present. Assuming without deciding that the court erred, Smith has failed to argue how this affected the outcome of the hearing. *See Barnes* at 27. Because Smith has not argued that the error affected his substantial rights, nor does the record support such an argument, Smith's first assignment of error is overruled.

{¶12} To the extent Smith argues his convictions stemming from case number 692 are void because the juvenile court did not adhere to certain statutory and rule requirements during his bindover hearing, these arguments are beyond the scope of the stated assignment of error and will not be addressed. *See Pleban*, 2011-Ohio-3254, ¶ 41.

#### Assignment of Error Number Two

THE SUMMIT COUNTY JUVENILE COURT ERRED WHEN IT TRANSFERRED JA'RELLE SMITH'S KIDNAPPING CHARGES TO CRIMINAL COURT WITHOUT CONDUCTING AN AMENABILITY HEARING, IN VIOLATION OF R.C. 2152.10(A)(2) AND 2152.12(A)(1)(b); THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION; AND THE OHIO CONSTITUTION, ARTICLE I, SECTION 16.

{¶13} In his second assignment of error, Smith argues that his kidnapping conviction is void because the juvenile court failed to properly transfer subject matter jurisdiction to the court

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<sup>1</sup> We note that pursuant to Juv.R. 2(Y) a child's parent is a party in a juvenile court proceeding. Whether one party may waive the presence of another party to the proceeding is beyond the scope of Smith's stated assignment of error. Accordingly, we do not reach this issue in rendering our decision. *See State v. Pleban*, 9th Dist. Lorain No. 10CA009789, 2011-Ohio-3254, ¶ 41.

of common pleas. Specifically, Smith argues that the court’s transfer was ineffective because it did not conduct an amenability hearing on his various kidnapping charges. We disagree.

{¶14} The juvenile court has the exclusive original jurisdiction over “a person under eighteen years of age [who] allegedly commits an act that would be a felony if committed by an adult.” R.C. 2151.23(I). “[I]n response to a rise in rates and severity of juvenile crime and the belief that not all juveniles can be rehabilitated, in 1969, the General Assembly enacted a statutory scheme that provides for some juveniles to be removed from the juvenile courts’ authority.” *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, ¶ 9.

{¶15} There are two types of transfers from juvenile court to the court of common pleas: discretionary and mandatory. *Id.* at ¶ 10. “Mandatory transfer removes discretion from judges in the transfer decision in certain situations. Discretionary transfer, as its name implies, allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety.” (Internal citations and quotations omitted.) *Id.* Before the court may exercise its discretion in transferring a case to common pleas, it must conduct a hearing and consider certain factors for and against the transfer. R.C. 2152.12(B).

{¶16} Smith acknowledges that his aggravated robbery and aggravated burglary charges were subject to mandatory bindover. *See* R.C. 2152.12(A)(1)(b)(ii). Smith argues, however, that the court was required to hold an amenability hearing before transferring his kidnapping charges because these charges are subject to a discretionary, not mandatory, transfer. *See* R.C. 2152.10(A)(2)(b). R.C. 2152.12(B). In support of his argument, Smith cites R.C. 2152.12(F)(2) which provides:

If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the

court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the cases or cases involving one or more of the acts charged be transferred pursuant to that division.

Smith asserts that this provision requires the court to parse out mandatory bindover charges from discretionary charges even when they all arise from the same act. We disagree.

{¶17} R.C. 2152.12(F) provides:

If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for, and if a motion is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

- (1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.
- (2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the cases or cases involving one or more of the acts charged be transferred pursuant to that division. \* \* \*

Thus, R.C. 2152.12(F) only applies if the State files motions requesting the court relinquish jurisdiction under both R.C. 2152.12(A) and R.C. 2152.12(B).

{¶18} At the March 22, 2012 hearing, the State sought to bind over case numbers 008, 519, and 319 under division (A). Therefore, R.C. 2152.12(F) does not apply. In this instance, language in R.C. 2152.12(A)(1)(b) and R.C. 2152.12(I) is instructive. R.C. 2152.12(A)(1)(b)(ii) requires the court to transfer “*the case*” if the accused was at least sixteen years old when he or she committed a category two offense with a firearm. (Emphasis added). Further, R.C. 2152.12(I) states that once the juvenile court determines that there is probable cause to believe

that the child has committed an act that is subject to a mandatory bindover, the juvenile court loses jurisdiction “with respect to *the delinquent acts* alleged in the complaint.” (Emphasis added.) Based on the language of R.C. 2152.12(A)(1)(b) and (I), we conclude that the court must transfer any charges in the complaint that arise from any delinquent act that is subject to a mandatory bindover.

{¶19} At the March 27, 2012 hearing, the State sought to transfer case number 692 pursuant to R.C. 2152.12(A) and case number 687 pursuant to R.C. 2152.12(B). According to R.C. 2152.12(F)(2), the court was required to resolve the mandatory transfer request first, before resolving the discretionary bindover motion. Here, the court did just that when it granted the motion to transfer case number 692 and set case number 687 for an amenability hearing.

{¶20} Smith argues that, pursuant to R.C. 2152.12(F)(2), the court was required to resolve each charge individually. The plain language of the statute, however, does not support Smith’s position. Pursuant to R.C. 2152.12(F)(2), if the court determines that one or more acts charged are subject to mandatory bindover, the court must transfer “*the case or cases*” that involve the relevant act or acts. (Emphasis added.) Moreover, as discussed above, once the juvenile court determines that there is probable cause to believe that the child has committed an act that is subject to a mandatory bindover, the juvenile court loses jurisdiction “with respect to the delinquent acts alleged in the complaint.” R.C. 2152.12(I).

{¶21} The plain language of R.C. 2152.12(F)(2) and (I) focuses on the alleged delinquent act, not on the individual charges within a complaint. Thus, we conclude that, even under R.C. 2152.12(F)(2), the juvenile court is required to transfer all charges that arise from an act that is subject to a mandatory bindover. *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815, ¶ 32 (“when a mandatory transfer offense and a [discretionary transfer] offense

arise from the same course of conduct and the juvenile court properly transfers the mandatory offense to the adult court, all further proceedings on the discretionary transfer offense are discontinued in the juvenile court pursuant to R.C. 2152.12(I), and the juvenile court is relieved of the requirements under R.C. 2152.12(F) [to conduct an amenability hearing].”). *Accord State v. Washington*, 1st Dist. Hamilton No. C-130213, 2014-Ohio-4178, ¶ 14; *State v. Brookshire*, 2d Dist. Montgomery No. 25853, 2014-Ohio-1971, ¶ 13-21; *State v. Sims*, 7th Dist. Mahoning No. 07 MA 180, 2008-Ohio-6367, ¶ 30.

{¶22} In case number 008, the State alleged that Smith approached the victim inside her attached garage, forced her into the backseat of her car at gunpoint, drove her to two different banks, forced her to withdraw money, dropped her at another location, robbed her, and then fled in her car. Smith was charged with aggravated robbery, aggravated burglary, and kidnapping. In case numbers 519 and 319, the State alleged that Smith approached a mentally challenged 60-year-old man outside of his home and forced him inside at gunpoint. According to the State, Smith then robbed the man, a 63-year-old mentally challenged female, and an 84-year-old female. Smith was charged with three counts of aggravated robbery, three counts of aggravated burglary, and one count of kidnapping. In case number 692, the State alleged that Smith approached a woman outside of her home and forced her inside at gunpoint where he robbed her. Smith was charged with aggravated robbery, aggravated burglary, and kidnapping. Because Smith’s kidnapping charges all arose from the same course of conduct as the respective aggravated robberies and aggravated burglaries, the court did not error in transferring the kidnapping charges once it had determined the aggravated robberies and aggravated burglaries were subject to mandatory bindover. *Mays* at ¶ 32; *Washington* at ¶ 14; *Brookshire* at ¶ 13-21; *Sims* at ¶ 30. *See also* R.C. 2152.12(F)(2) and (I).



{¶23} Smith’s second assignment of error is overruled.

Assignment of Error Number Three

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED JA’RELLE SMITH’S CASES TO CRIMINAL COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND 2152.12(A)(1)(b) ARE UNCONSTITUTIONAL IN VIOLATION OF A CHILD’S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16, OHIO CONSTITUTION.

Assignment of Error Number Four

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED JA’RELLE SMITH’S CASES TO CRIMINAL COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND 2152.12(A)(1)(b) VIOLATE A CHILD’S RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTION 2, OHIO CONSTITUTION.

Assignment of Error Number Five

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED JA’RELLE SMITH’S CASES TO CRIMINAL COURT BECAUSE THE MANDATORY TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND 2152.12(A)(1)(b) VIOLATE THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT AS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTION 9, OHIO CONSTITUTION.

{¶24} In his third, fourth, and fifth assignments of error, Smith argues that the mandatory bindover statutes violate his constitutional rights. We decline to address the merits of his arguments, however, because Smith has waived them by pleading guilty.

{¶25} The Ohio Supreme Court has held that “a defendant who \* \* \* voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel ‘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. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, ¶ 78, quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). “This Court has

explained that ‘[a] defendant who enters a plea of guilty waives the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings, although [he] may contest the constitutionality of the plea itself.’” (Alterations sic.) *State v. Quarterman*, 9th Dist. Summit No. 26400, 2013-Ohio-3606, ¶ 4, quoting *State v. Atkinson*, 9th Dist. Medina No. 05CA0079-M, 2006-Ohio-5806, ¶ 21.

{¶26} Smith does not raise any allegation that his plea was not knowingly, intelligently, or voluntarily given. Nor does Smith argue that his trial counsel was ineffective in any way. Instead, Smith limits his challenge to the constitutionality of the bindover statutes. Because Smith pleaded guilty, he has waived these arguments. See *Quarterman* at ¶ 6. Therefore, Smith’s third, fourth, and fifth assignments of error are overruled.

### III

{¶27} Smith’s five assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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BETH WHITMORE  
FOR THE COURT

HENSAL, P. J.  
CARR, J.  
CONCUR.

APPEARANCES:

AMANDA J. POWELL, Assistant State Public Defender, for Appellant.

SHERRI BEVAN WALSH, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.