

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115908
BRADY WHITTEN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-701245-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Caroline Maver and Daniel T. Van, Assistant Prosecuting Attorneys, *for appellee*.

Jonathan N. Garver, *for appellant*.

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant Brady Whitten (“Whitten”) appeals his convictions from the Cuyahoga County Court of Common Pleas. He raises the following assignments of error for review:

Assignment of Error I: The State denied [Whitten] due process of law and violated the double jeopardy clause by vindictively pursuing charges against [Whitten] in Cuyahoga County after similar charges involving the same victim were prosecuted in Lorain County resulting in [Whitten] being placed on probation. Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 10 and 16, of the Constitution of the State of Ohio.

Assignment of Error II: The trial court abused its discretion and denied [Whitten] due process of law by failing to hold a hearing on the issue of competency to stand trial after a referral had been made pursuant to R.C. 2945.371.

Assignment of Error III: The trial court abused its discretion and denied [Whitten] due process of law and violated R.C. 2947.06(B) by failing to review and consider the mitigation of punishment report prepared pursuant to R.C. 2947.06(B). Fourteenth Amendments to the Constitution of the United States and Article I, Sections 10 and 16, of the Constitution of the State of Ohio.

{¶ 2} For the reasons set forth below, we affirm Whitten’s convictions.

I. Facts and Procedural History

{¶ 3} This case stems from offenses that were alleged to have occurred in two separate homes in Parma, Ohio from January 1, 2019, through June 5, 2023. Whitten’s stepdaughter alleged that Whitten requested nude photographs of her and that Whitten had sexual contact with her when she was under the age of 13. It began when she was 11 years old and happened multiple times a week. She first reported the conduct to her boyfriend when she was 14 years old. At that time, she and her mother lived with Whitten in North Ridgeville, Ohio, which is in Lorain County.

{¶ 4} The allegations were reported to the North Ridgeville Police Department. After the investigation, in September 2023, Whitten was charged in Lorain County Court of Common Pleas in a five-count indictment. *See State v.*

Whitten, Lorain C.P. No. CR-23-109232.¹ Count 1 charged him with importuning, a felony of the fifth degree; Counts 2 and 3 charged him with gross sexual imposition, felonies of the third degree (victim under 13); and Counts 4 and 5 charged him with gross sexual imposition, felonies of the fourth degree.

{¶ 5} In November 2024, Whitten pled guilty to importuning, a felony of the fifth degree, and two counts of gross sexual imposition, felonies of the fourth degree. The State dismissed Counts 2 and 3 without prejudice. The public docket indicates that these counts were dismissed based on a conflict regarding venue. (*Whitten*, Lorain C.P. No. CR-23-109232, docket entry Nov. 25, 2024.) Whitten was sentenced to three years of probation, and ordered to pay court costs, and ordered to register as a Tier I sex offender.

{¶ 6} After sentencing, North Ridgeville police advised the Parma Police Department of the allegations that occurred in Parma's jurisdiction.

{¶ 7} The Parma police investigated and in April 2025, Whitten was indicted in Cuyahoga County with a 13-count indictment, which included seven counts of gross sexual imposition in violation of R.C. 2907.05(A)(4)(victim under 13), felonies of the third degree; two counts of kidnapping in violation of R.C. 2905.01(A)(4) with sexual motivation specifications, felonies of the first degree; one count of abduction in violation of R.C. 2905.02(B), a felony of the third degree; one count of attempted gross sexual imposition in violation of R.C. 2923.02 and

¹ Whitten's motion to supplement the record with certified copies of the indictment, the bill of particulars, and the docket in Lorain C.P. No. CR-23-109232 was unopposed and granted by this court. (J.E. Mar. 9, 2026).

2907.05(A)(4), a felony of the fourth degree; and two counts of illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1), felonies of the second degree.

{¶ 8} Whitten was arraigned, pled not guilty, and was assigned an attorney. Multiple pretrials were conducted. In August 2025, Whitten was referred to the Court Psychiatric Clinic for a competency evaluation. Although the report was completed and submitted to the trial court, which indicated that Whitten was competent to stand trial, nothing was placed on the record.

{¶ 9} In November 2025, Whitten pled guilty to three counts of gross sexual imposition, felonies of the third degree, and one count of attempted kidnapping, a felony of the second degree without the sexual motivation specification. He agreed that the offenses were not allied offenses of similar import and accepted a Tier II sex-offender registration.

{¶ 10} Whitten was sentenced to 5 years in prison on each count of gross sexual imposition and 7 to 10 ½ years in prison on the attempted kidnapping count. The sentences were ordered to be served concurrently for a total of 7 to 10 ½ years in prison. The trial court imposed 5 years of mandatory postrelease control and ordered Whitten to pay court costs. He received 6 days of jail-time credit. Whitten was advised of his registration requirements.

{¶ 11} This appeal followed.

II. Law and Analysis

Vindictive Prosecution and Double Jeopardy Claims

{¶ 12} In Whitten’s first assignment of error, he argues that his due process rights and the Double Jeopardy Clause were violated when the Cuyahoga County Prosecutor’s Office vindictively pursued charges that could have, and should have, been pursued in the Lorain County case. He contends that he was only indicted in Cuyahoga County because he received probation in the Lorain County case.

{¶ 13} The State counters that Whitten waived this argument by pleading guilty and by failing to raise the issue in the trial court. The State further argues that the subsequent indictment did not violate double jeopardy and was not vindictive prosecution because it involved separate offenses, on separate dates, in separate counties.

Vindictive Prosecution

{¶ 14} The Due Process Clause protects criminal defendants from vindictive prosecution. *State v. Weston*, 2014-Ohio-4252, ¶ 47 (7th Dist.), citing *Thigpen v. Roberts*, 468 U.S. 27, 30 (1984); *Blackledge v. Perry*, 417 U.S. 21, 27-28 (1974); U.S. Const., amend XIV, § 1. “To establish that the government’s actions amounted to vindictive prosecution, the defendant must demonstrate either actual vindictiveness, which requires ‘direct evidence of an expressed hostility or threat to him for having exercised a constitutional right.’” *State v. Tankers*, 1998 Ohio App. LEXIS 1724,*13 (8th Dist. Apr. 23, 1998), quoting *U.S. v. Scholz*, 91 F.3d 157 (9th Cir. 1996). “To punish a person because he has done what the law plainly allows him

to do is a due process violation of the most basic sort.” *Id.*, citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); *U.S. v. Goodwin*, 457 U.S. 368, 374 (1982).

Double Jeopardy

{¶ 15} The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution protect a defendant from being twice put in jeopardy for the same offense. *In re A.G.*, 2016-Ohio-3306, ¶ 8. Both the United States Supreme Court and the Ohio Supreme Court have acknowledged that

“[t]he Double Jeopardy Clause protects against three abuses: (1) ‘a second prosecution for the same offense after acquittal,’ (2) ‘a second prosecution for the same offense after conviction,’ and (3) ‘multiple punishments for the same offense.’ *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), *overruled on other grounds*, *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989).”

Id. at ¶ 8, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 10.

Waiver

{¶ 16} With limited exception, when a defendant like Whitten enters a guilty plea, “a plea of guilty is a complete admission of the defendant’s guilt.” Crim.R. 11(B)(1). “[A] defendant who enters a guilty plea waives all nonjurisdictional defects in prior proceedings, including most challenges to the indictment.” *State v. Logan*, 2026-Ohio-2076, ¶ 35 (8th Dist.), citing *State v. Sims*, 2018-Ohio-388, ¶ 12 (8th Dist.). “As this court has explained, a guilty plea represents a break in the chain of events that preceded it in the criminal process.” *Id.* at ¶ 36, citing *State v. Belton*, 2016-Ohio-1581, ¶ 83. When a defendant admits

in open court that he is guilty of the charged offense, he may not thereafter assert independent claims concerning the alleged deprivation of constitutional rights that occurred before the plea was entered. *Id.*, citing *State v. Szidik*, 2011-Ohio-4093, ¶ 5 (8th Dist.). The waiver does not apply if the errors actively prevented the defendant from entering a knowing, intelligent, and voluntary plea. *Id.*

{¶ 17} Whitten relies on *Blackridge v. Perry*, 417 U.S. 21 (1974), asserting that his vindictive-prosecution and double-jeopardy claims are not waived by accepting a plea. In *Blackridge*, while serving a prison sentence, Perry assaulted another inmate and was charged with misdemeanor assault with a deadly weapon. He was convicted after a bench trial and sentenced to six more months in prison. Perry exercised his right for trial de novo in a court of general jurisdiction, which is an absolute right under North Carolina law and annuls the prior conviction. In the meantime, the State filed felony charges for the same conduct. Perry pled guilty and was sentenced to five to seven years in prison.

{¶ 18} Perry filed a writ of habeas corpus in federal court arguing a violation of his due process rights and the Double Jeopardy Clause. The *Blackridge* Court recognized a narrow exception where the Due Process Clause prohibits the State from dragging a defendant into court on a more serious charge based on the same conduct following the exercise of a legal right.

{¶ 19} As will be discussed below, *Blackridge* is distinguishable because Whitten was not dragged into court to face increased charges for the same offenses that he pled guilty to in Lorain County. Rather, he was charged with separate

offenses that occurred in a separate jurisdiction. Thus, Whitten waived his vindictive-prosecution and double-jeopardy claim when he pled guilty.²

{¶ 20} Moreover, Whitten did not raise his vindictive-prosecution or double-jeopardy claims in the trial court. Alleged defects in the institution of the prosecution and/or in the indictment must be raised before trial or they are waived. Crim.R. 12(C) and (H). “As a general rule, an appellate court will not consider an alleged error that the complaining party did not bring to the trial court’s attention at the time the alleged error is said to have occurred.” *Cleveland v. Townsend*, 2013-Ohio-5421 (8th Dist.), quoting *State v. Slagle*, 65 Ohio St.3d 597, 604 (1992).

{¶ 21} At sentencing, in an effort to secure probation, Whitten argued that he was currently on probation in Lorain County based on charges arising out of similar conduct involving his stepdaughter. The trial court inquired and the State explained that the offenses occurred over several years, starting in Cuyahoga County and continued in Lorain County when his stepdaughter reported the allegations. The Parma Police Department was informed of the allegations after the Lorain County case concluded. At no time did Whitten claim vindictive prosecution or a violation of the Double Jeopardy Clause; therefore, Whitten forfeited all but plain error. *State v. Toda*, 2019-Ohio-4903, ¶ 15 (6th Dist.), citing *State v. Pirman*, 94 Ohio App.3d 203, 208 (11th Dist. 1994).

² We also note that Whitten does not contend that his plea was unknowingly or involuntarily entered, nor do we find any indication in the record to suggest his plea was not knowingly, intelligently, or voluntarily entered.

Plain Error

{¶ 22} “Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Crim.R. 52(B). Plain error is an obvious error or defect in the trial court proceedings that affects a substantial right. *State v. Rogers*, 2015-Ohio-2459, ¶ 22. Plain error requires a showing that there was an error, that the error was plain or obvious, and that but for the error the outcome of the proceeding would have been different and that reversal is necessary to correct a manifest miscarriage of justice. *State v. Buttery*, 2020-Ohio-2998, ¶ 7, citing *State v. Quartermann*, 2014-Ohio-4034, ¶ 16. The party asserting plain error “bears the burden of proof to demonstrate plain error on the record.” *Rogers* at ¶ 22, citing *Quartermann* at ¶ 16.

{¶ 23} With the foregoing law in mind, we review Whitten’s vindictive-prosecution and double-jeopardy claims for plain error. The crux of his argument is that all of the charges should have been prosecuted in Lorain County and that the Lorain County Prosecutor’s Office chose not to pursue the charges committed in Cuyahoga County and “instead, chose to hold them in reserve — an ace in the hole — in order to give the prosecution a second bite at the apple in the event that it was dissatisfied with the outcome of the Lorain County prosecution.” (Whitten brief, p. 12.) He asserts that under Crim.R. 8(A) and R.C. 2901.12(H) the offenses should have been charged in one county because the case involved the same victim and same conduct.

{¶ 24} As an initial matter, we note that “[d]ouble jeopardy only prevents multiple prosecutions for the ‘same offense’ or a ‘separate offense where the government has lost an earlier prosecution involving the same facts;’ *but does not require the government to bring its prosecutions together.*” (Emphasis added.) *State v. Lawrence*, 2025-Ohio-5277, ¶ 19 (9th Dist.), quoting *United States v. Dixon*, 509 U.S. 688, 705 (1993).

{¶ 25} Similarly, Ohio’s venue statute, R.C. 2901.12, does not require the State to prosecute all the charges that are part of a course of criminal conduct in one county. Rather, R.C. 2901.12 provides in relevant part:

(H) When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender *may* be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred[.]

(Emphasis added.) “The venue statute allows the State to bring charges against a defendant occurring in different jurisdictions, that occurred as part of a course of conduct, in any jurisdiction in which one of those offenses or any element of one of those offenses occurred *but does not require it*. Thus, the use of the permissive term ‘may’ instead of the term ‘shall.’” (Emphasis added.) *Lawrence* at ¶ 23.

{¶ 26} Likewise, Crim.R. 8(A) states that

[t]wo or more offenses *may* be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(Emphasis added.) Again, Crim.R. 8 allows the joinder of offenses but does not require it.

{¶ 27} Whitten's vindictive-prosecution and double-jeopardy claims fail because, as set forth above, neither prosecutor's office is required to prosecute crimes occurring in another jurisdiction simply because the offenses involved the same victim or a course of conduct for the convenience or interests of any of the parties. Furthermore, it is in the public's interest to prosecute crimes in the counties in which they occur, so potential criminals will not be incentivized to commit offenses in certain jurisdictions assuming they will not be prosecuted in that jurisdiction.

{¶ 28} Furthermore, we find no merit to Whitten's claim that anyone from Lorain County purposely waited to inform the Parma Police Department. In this case, there are very few facts in the record because it was a plea. However, based on the record before this court, which includes the presentence-investigation report and the Lorain County Children Service's records, it is evident that Whitten's stepdaughter was very reluctant to talk with anyone, including the forensic examiner, regarding the details of the allegations and where the offenses occurred. This is not uncommon with children who have been sexually abused. The details may be revealed over time and sometimes the details will never be revealed.

{¶ 29} A review of the bill of particulars in Lorain County shows that the Lorain County prosecutor thought all of the offenses occurred at Whitten's home on Jaycox Road, in North Ridgeville, including the offenses that occurred when

Whitten's stepdaughter was under the age of 13. Moreover, the State did not dismiss the charges that occurred in Cuyahoga County until the day of the plea, indicating that there was a conflict with the venue. Based on the record before this court, it appears that this is when it was learned that some of offenses occurred in a different location. By dismissing these counts, all of the offenses committed in Parma from the time Whitten's stepdaughter was 11 years old until she turned 13 years old were left unresolved. North Ridgeville Police Department and the Lorain County Prosecutor's Office were required to report the allegations to Parma Police Department pursuant to R.C. 2151.421.

{¶ 30} Finally, after reviewing the Lorain County indictment and the Cuyahoga County indictment, as well as the pleas accepted in both cases, we find that the Double Jeopardy Clause was not violated. Whitten's plea in the Lorain County case encompassed sexual conduct that occurred when his stepdaughter was over the age of 13 and the offenses occurred in their home on Jaycox Road in North Ridgeville, Ohio, which was detailed in the bill of particulars. Whereas, Whitten's plea in the Cuyahoga County case involved sexual conduct that occurred when his stepdaughter was under the age of 13 and the offenses occurred in their home on Aaron Drive and then in their home on Royal Ridge Drive both in Parma, Ohio, which was detailed in the indictment.³

³ We note that the timeframe included in the Cuyahoga County indictment, January 1, 2019, through June 5, 2023, includes some of the time that the stepdaughter was over the age of 13 and living in Lorain County. Clearly this is a mistake in the indictment; however, that defect was waived when Whitten pled guilty. Furthermore, we find that it does not rise to a constitutional violation because the record reflects that the

{¶ 31} After careful review, we find Whitten has not established a plain or obvious error in the proceedings; therefore, we find no plain error.

{¶ 32} Accordingly, Whitten’s first assignment of error is overruled.

Failing to Hold a Hearing on Competency to Stand Trial

{¶ 33} In Whitten’s second assignment of error, he argues that the trial court abused its discretion and denied him due process of law when it failed to hold a hearing on competency to stand trial in accordance with R.C. 2945.37(B). The State counters that failure to hold a hearing is harmless error when the record shows no indicia of incompetence.

{¶ 34} Initially, we note that a defendant is presumed to be competent unless it is demonstrated by a preponderance of the evidence that he is incapable of understanding the nature and objective of the proceedings against him or of presently assisting in his defense. R.C. 2945.37(G). Nevertheless, R.C. 2945.37(B) states that in a criminal case, if the competency to stand trial is raised, “the trial court *shall* hold a hearing on the issue.” (Emphasis added.) However, the ““failure to hold a mandatory competency hearing is harmless error where the record fails to reveal sufficient indicia of incompetency.”” *State v. Winegarner*, 2023-Ohio-319, ¶ 34 (8th Dist.), quoting *State v. Almashni*, 2010-Ohio-898, ¶ 13 (8th Dist.), quoting

allegations occurred multiple times a week from the time Whitten’s stepdaughter was 11, at two separate homes in Parma, which are delineated in the indictment along with the alleged sexual contact. Therefore, it was not the same conduct that he pled guilty to in Lorain County.

State v. Bock, 28 Ohio St.3d 108, 110 (1986), citing *Drope v. Missouri*, 420 U.S. 162 (1975).

{¶ 35} In *State v. Hough*, 2022-Ohio-4436, the Ohio Supreme Court reaffirmed its prior holding in *Bock* stating that “whether a trial court’s failure to hold a competency hearing is reversible error is to be determined on a case-by-case basis.” *Id.* at ¶ 28. “Where a competency hearing is not held, the right to a hearing would be constitutionally mandated where the record contains sufficient evidence of incompetence demonstrating that a competency determination is necessary to preserve a defendant’s right to a fair trial.” *Winegarner* at ¶ 34, citing *Almashni* at ¶ 13, citing *State v. Skatzes*, 2004-Ohio-6391, ¶ 156.

{¶ 36} Here, a competency evaluation was requested by defense counsel and performed by the Court Psychiatric Clinic. The report was returned to the trial court prior to Whitten’s plea. The report found Whitten competent to stand trial; however, no hearing was held in accordance with R.C. 2945.37(B). Nevertheless, we find that failing to hold a hearing in this case was harmless error.

{¶ 37} A review of the record confirms that there is no indicia of incompetency. First, we note that Whitten was not referred for a competency evaluation in Lorain County and he successfully navigated that case with a plea and probation. Second, Whitten had an extensive conversation with the trial court at a violation hearing regarding his knowledge of the exclusion zones required with his GPS monitor. He was able to articulate the two zones he was advised of and why he was observed in a third zone that he was not advised about. Third, Whitten

participated in his plea hearing and indicated that he understood the plea proceedings. Finally, Whitten gave a coherent allocution at sentencing and engaged in an extensive exchange with the trial court regarding his employment, his sex-offender treatment, his substance-abuse history, and his children of whom he had custody.

{¶ 38} Although R.C. 2945.37(B) requires the trial court to hold a hearing when competency is questioned, we find that in this case, the failure to hold the hearing was harmless error because the record does not suggest that Whitten was incompetent and the Court Psychiatric Clinic found that Whitten was competent to stand trial.

{¶ 39} Accordingly, Whitten's second assignment of error is overruled.

Failing to Cite the Mitigation-of-Penalty Report

{¶ 40} In Whitten's third and final assignment of error, Whitten argues that the trial court abused its discretion and his due process rights were violated because the trial court did not expressly state that it had considered the mitigation report when sentencing Whitten, and, therefore, his sentence is contrary to law.

{¶ 41} The State counters that his sentence is not contrary to law because the trial court considered R.C. 2929.11 and the sentence was within the statutory range. The State further argues that Whitten cites no statute or case law in support of his position and that the record reflects that the trial court did, in fact, consider the mitigation report.

{¶ 42} At the plea hearing, Whitten requested a mitigation-of-penalty report pursuant to R.C. 2947.06(B), which states:

The court may appoint not more than two psychologists or psychiatrists to make any reports concerning the defendant that the court requires for the purpose of determining the disposition of the case. . . . The psychologist's or psychiatrist's reports shall be made in writing, in open court, and in the presence of the defendant . . . [.] A copy of each report of a psychologist or psychiatrist may be furnished to the defendant, if present, who may examine the persons making the report, under oath, as to any matter or thing contained in the report.

{¶ 43} At the sentencing hearing, the trial court stated that it

had the opportunity to review the presentence investigation report prepared by the Cuyahoga County Adult Probation Department and has made that report available to counsel. Before imposing sentence, this Court will consider the record, the PSI, and any written or oral statements made to the Court today, as is required by Revised Code Section 2929.19(B)(1).

(Tr. 43.) The trial court also acknowledged receipt of the mitigation-of-penalty report and the sentencing memoranda submitted by Whitten and the State.

{¶ 44} Whitten's attorney then set forth a detailed argument explaining how the presumption of prison was overcome; specifically referring to the report stating that

the psychiatric recommendations in the mitigation of penalty report by Ph.D., Becca Bergquist, were that [Whitten] be given continued psychiatric treatment, even recommending cognitive behavioral therapy, which I don't believe he is currently receiving the CBT. He is just receiving that specific like sex offender, mental health type of therapy. They asked continued substance abuse management with the Suboxone and then outpatient sex offender treatment. So those are the court clinic's recommendations as far as continued care goes.

(Tr. 50.)

{¶ 45} After hearing from the State and Whitten’s stepdaughter’s victim-impact statement, the trial court heard from Whitten. Whitten apologized for his conduct. The trial court questioned him about his employment, his substance abuse, and the sex-offender-treatment program that he was attending through Lorain County. The trial court then stated:

So after consideration of the record, the oral statements made here today, looking at the presentence investigation report, the purposes and principles of sentencing under Ohio Revised Code Section 2929.11, the seriousness and recidivism factors relevant to the offense and offender pursuant to Revised Code Section 2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution, the Court finds that a prison term is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code and finds that the offender is not amenable to an available community control sanction.

Furthermore, the Court has considered the factors set forth in 2929.12 and finds that a prison term is commensurate with the seriousness of the defendant’s conduct, its impact on the victim, and that it’s reasonably necessary to deter the offender in order to protect the public from future crimes, and would not place an unnecessary burden on government resources.

(Tr. 66-67.)

{¶ 46} After careful review, we are unable to conclude that the trial court committed reversible error by failing to directly reference the mitigation-of-penalty report during the sentencing hearing. This court has rejected a similar argument in *State v. Floyd*, 2015-Ohio-763, ¶ 17 (8th Dist.), and then again in *State v. Reid*, 2019-Ohio-531, ¶ 13 (8th Dist.), noting that “this court found no case law or statute to support the contention that ‘failing to mention the psychiatric report at the sentencing hearing constitutes reversible error.’” *Reid* at ¶ 13, quoting *Floyd* at ¶ 17.

As in *Floyd* and *Reid*, Whitten has not cited any persuasive authority to support his position on appeal. Furthermore, it is evident from the record that the trial court considered all of the arguments of counsel, including Whitten's mitigation arguments drawn directly from the report.

{¶ 47} Finally, we find that Whitten's sentence was not contrary to law because the record reflects that the trial court considered R.C. 2929.11 and 2929.12, and sentenced Whitten within the statutory range. Therefore, we find that Whitten's due process rights were not violated.

{¶ 48} Accordingly, Whitten's third assignment of error is overruled.

{¶ 49} 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 appellant'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

KATHLEEN ANN KEOUGH, J., and
TIMOTHY W. CLARY, J., CONCUR