

No. 2012-0118

ORIGINAL

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT
COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
CASE NO. 96637

STATE OF OHIO,

Plaintiff-appellant

-vs-

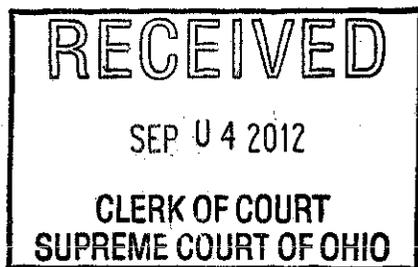
J.S., A MINOR CHILD

Defendant-Appellee

REPLY BRIEF OF APPELLANT, THE STATE OF OHIO

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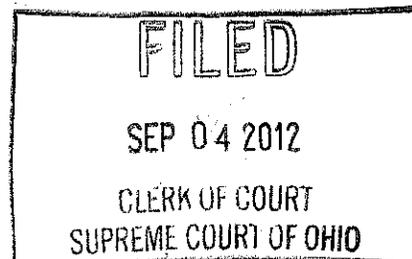


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STATEMENT OF THE CASE AND FACTS

The State adds the following to its Statement of the Case and Facts:

In J.S.'s first appeal to the Eighth District, the court noted that J.S. had been sentenced to a minimum five year commitment in ODYS and a minimum nine year adult prison term that was suspended. *In re: J.S.*, Cuyahoga App. No. 95365, 2010-Ohio-6199, ¶ 4. The appellate court stated,

Primarily we note that the SYO disposition was authorized by law pursuant to R.C. 2152.13(D)(2)(a)(iii); however, the parties agree that the entry is unclear as to what counts were being addressed in the juvenile portion of the sentence. Secondly the adult portion of the sentence *appears to impose an agreed sentence of nine years but also imposed* indefinite sentences on each count, which are not authorized by law.

Id. at ¶ 7, emphasis added. Therefore the matter was remanded.

In J.S.'s second appeal the appellate court found,

In February 2011, the trial court held a resentencing hearing and *again* sentenced J.S. to a juvenile sentence of five years and imposed the agreed-upon sentence of nine years in prison for the adult portion of the sentence.

In re: J.S., Cuyahoga App. No. 96337, 2011-Ohio-6280, ¶ 5, emphasis added.

LAW AND ARGUMENT

PROPOSITION OF LAW:

A sentencing error that is not timely appealed, and is unrelated to a juvenile court's decision to invoke an adult prison sentence against a serious youthful offender, cannot be used to nullify the adult portion of the juvenile's blended sentence.

The State of Ohio respectfully requests this Court reverse the Eighth District's determination that "the trial court erred when it invoked the adult portion of J.S.'s SYO sentence." *In re: J.S.*, Cuyahoga App. No. 96337, 2011-Ohio-6280, ¶ 18. J.S. cannot contest the fact that the original disposition that was agreed-upon and jointly proposed by the parties to the Juvenile Court included a five year ODYS commitment and a suspended nine year SYO

adult prison term. J.S. also cannot contest the fact that he committed an act of rape while serving his five years in ODYS. As both the five years at ODYS and the nine years of adult prison time were reflected in both the 2007 and 2011 dispositional entries of the Juvenile Court, J.S. must not be permitted to escape serving the adult portion of his SYO sentence.

J.S. repeatedly cites the State's failure to challenge the Eighth District's order of remand in *J.S. I*. To be clear, when the Eighth District remanded this matter for resentencing via *J.S. I*, the State did not seek any further appeal of that ruling because the State conceded that Juvenile Court's dispositional entry was unclear as to what counts were being addressed in the juvenile portion of his sentence. *In re: J.S.*, Cuyahoga App. No. 95365, supra, at ¶ 7. Ultimately the appellate court remanded (1) because the parties agreed that the juvenile portion was unclear and (2) because, in addition to the agreed sentence of nine years, the Juvenile Court unlawfully "also imposed indefinite sentences on each count". *Id.* Since the State conceded an error that justified the remand, an appeal from the Eighth District's order in *J.S.I* would have been inappropriate.

J.S. also challenges the State's position that the 2007 and 2011 dispositional entries from the Juvenile Court were similar. However, as indicated in the Statement of the Case and Facts above, the Eighth District acknowledged in each of its decisions in this case that the 2007 and 2011 entries of the Juvenile Court included five years at ODYS and a suspended nine year adult term. *In re: J.S.*, Cuyahoga App. No. 95365, supra, at ¶ 4, and *In re: J.S.*, Cuyahoga App. No. 96337, supra, ¶ 3, 5. In this way the entries are very similar. In fact, in *J.S.II* the Eighth District qualified "In February 2011, the trial court held a resentencing hearing and *again* sentenced J.S. to a juvenile sentence of five years and imposed the agreed-upon sentence of nine years in prison for the adult portion of the sentence." *In re: J.S.*, Cuyahoga App. No. 96337, supra, ¶ 5, emphasis added. Yet neither of the charts included in J.S.'s merit brief that purportedly depict

the Juvenile Court's 2007 entry include the suspended nine year adult term. (Merit Brief of Appellee, p. 2, 8.)

Finally, J.S.'s contention that the State's position in this case conflicts with the State's oral argument in *State v. Harris* (Merit Brief of Appellee, p. 1, 14) is not correct. In *Harris* the State argued that where a trial court imposes a prison term that exceeds the statutorily prescribed range for the offense, that sentence would be unlawful and void. Neither J.S.'s five year ODYS commitment, nor his nine year SYO prison term fall into that category.

Rather, in this case, J.S.'s original dispositional entry was void (1) because the parties agreed that the juvenile portion was unclear and (2) because, in addition to the agreed sentence of nine years, the Juvenile Court unlawfully also imposed indefinite sentences on each count. *In re: J.S.*, Cuyahoga App. No. 95365, supra, at ¶ 7. Therefore, upon remand the Juvenile Court was required to impose a clear juvenile disposition and omit any reference to indefinite terms.

The State of Ohio is not asking this Court to overrule any precedent. The State respectfully requests this Court apply its precedent and find that the unrelated indefinite sentencing error that occurred in this case cannot be used to nullify the adult portion of J.S.'s blended sentence. Where a portion of a sentence is found to be void, that portion is subject to correction on remand. See, *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, *State v. Beasley* (1984), Ohio St.3d 74, 471 N.E.2d 774, *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, *State v. Evans*, 2007-Ohio-861, 113 Ohio St.3d 100, 863 N.E.2d 113, *State v. Fischer*, 2010-Ohio-6238, 128 Ohio St.3d 92, 942 N.E. 2d 332, and *State v. Harris*, 2012 WL 1556638, Slip Opinion No. 2012-Ohio-1908.

For the appellate court to fail to consider the propriety of the Juvenile Court's decision to invoke J.S.'s SYO prison term in *J.S.I*, and to then find that the Juvenile Court was precluded

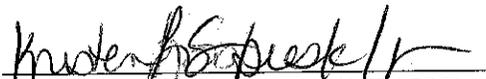
from invoking the SYO prison term in *J.S. II* because of the remand in *J.S.I*, is decision that cannot be left to stand. To give force and effect to Ohio's serious youthful offender blended sentencing scheme, this Court must adopt the State's proposition of law. Otherwise SYO blended sentences will forever be subject to attack years after imposition based on unrelated sentencing errors that were never challenged or appealed in the first place.

CONCLUSION

This Honorable Court should adopt the State's proposition of law that a sentencing error that is not timely appealed, and is unrelated to a juvenile court's decision to invoke an adult prison sentence against a serious youthful offender, cannot be used to nullify the adult portion of the juvenile's blended sentence. The ruling of the appellate court should be reversed and the order invoking J.S.'s nine year adult prison term should be reinstated.

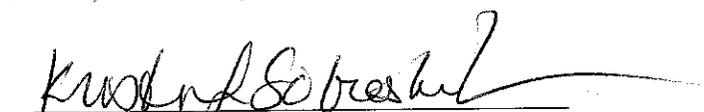
Respectfully submitted,

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SERVICE

A true and accurate copy of the foregoing reply brief of appellant has been sent this 31st day of August, 2012, to Sheryl Trzaska, Assistant State Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215.


Assistant Prosecuting Attorney