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COURT OF APPEALS
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**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

ADRIAN L. HAND, JR.

Defendant-Appellant

: Appellate Case No. 25840
:
: Trial Court Case No. 2012-CR-650/2
:
: (Criminal Appeal from
: Common Pleas Court)

DECISION AND ENTRY

Rendered on the 9th day of March, 2015

PER CURIAM:

This matter comes before us on a December 4, 2014 App.R. 26(B) application for reopening filed by defendant-appellant Adrian L. Hand.

Hand seeks to reopen his direct appeal from his conviction and sentence on charges of aggravated burglary, aggravated robbery, felonious assault, and a firearm specification. We disposed of the direct appeal in *State v. Hand*, 2d Dist. Montgomery No. 25840, 2014-Ohio-3838. In so doing, we rejected his argument that the trial court's use of a prior juvenile

delinquency adjudication to enhance his sentence from a non-mandatory to a mandatory prison term violated his due process rights and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In relevant part, we reasoned:

On appeal, Hand argues that treating his delinquency adjudication as a prior conviction violates his due process rights because he was not afforded a jury trial in juvenile court and was not advised of the collateral consequences of accepting responsibility there. Relying on *United States v. Tighe*, 266 F.3d 1187 (9th Cir.2001), he also argues that treating his juvenile adjudication as a prior conviction violates *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In his appellate brief, Hand acknowledges that the weight of authority is against him. He stresses that he is raising the issue "in order to argue for a change in existing law and to preserve the issue for himself in the future." (Appellant's brief at 4).

Upon review, we are unpersuaded by Hand's arguments. This court explicitly rejected the same arguments in *State v. Craver*, 2d Dist. Montgomery No. 25804, 2014-Ohio-3635. Relying on *State v. Parker*, 8th Dist. Cuyahoga No. 97841, 2012-Ohio-4741, and cases cited therein, we rejected a claim that treating a delinquency adjudication as a prior conviction violates due process because the defendant was not afforded a jury trial in juvenile court and was not advised of the collateral consequences of accepting responsibility. *Craver* at ¶ 7-16. We also held that a prior delinquency adjudication falls within *Apprendi's* prior-conviction exception despite the fact that such an adjudication does not involve a jury trial and does not require an explanation of all possible collateral

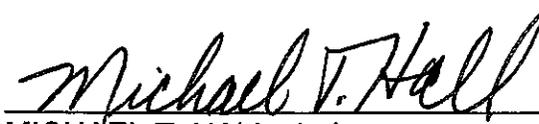
consequences. *Id.* at ¶ 9–14. Finally, we noted our review of a juvenile-court transcript in *Craver* and found substantial compliance with Juv.R. 29(D).

Based on the authority of *Craver* and the cases cited therein, we hold that treating Hand's delinquency adjudication as a prior conviction for purposes of imposing a mandatory prison sentence under R.C. 2929.13(F)(6) did not violate his due process rights or *Apprendi*. [footnote omitted]. Accordingly, Hand's assignment of error is overruled.

Id. at ¶ 5-7.

In his application for reopening, Hand argues that he received ineffective assistance of counsel in connection with his direct appeal. Specifically, he contends counsel provided ineffective assistance by failing to argue that reliance on a prior juvenile adjudication to impose a mandatory prison term also constitutes cruel and unusual punishment. As the State notes, however, Hand's legal argument and the authorities he cites deal with the constitutionality of mandatory sentences imposed on *juveniles*. But Hand was not a juvenile when he was sentenced below to a mandatory prison term. He was an adult being sentenced for crimes committed by an adult. The Seventh District recognized this distinction in *State v. Rolland*, 7th Dist. Mahoning No. 12 MA 68, 2013-Ohio-2950, when finding that using a juvenile adjudication to enhance a sentence imposed on an adult does not constitute cruel and unusual punishment. *Id.* at ¶ 15-16. We are aware of no authority for the proposition that using a juvenile adjudication to enhance an adult sentence constitutes cruel and unusual punishment. We agree with the Seventh District that it does not. Therefore, we see no genuine issue as to whether Hand was deprived of the effective assistance of counsel on appeal. Accordingly, his App.R. 26(B) application for reopening is denied.

IT IS SO ORDERED.


MICHAEL T. HALL, Judge


JEFFREY M. WELBAUM, Judge

Donovan, J., dissenting,

For reasons consistent with my dissent in the disposition of this appellant's direct appeal, I conclude there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal. I would allow the reopening for appellant to assert the argument that use of a juvenile adjudication as an enhancement to require that his adult sentencing results in mandatory incarceration is a violation of the constitutional prohibition against cruel and unusual punishment.


MARY E. DONOVAN, Judge

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