

[Cite as *State v. Garvin*, 2012-Ohio-179.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96819

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KENNETH GARVIN

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-543309

BEFORE: Stewart, P.J., Cooney, J., Kilbane, J.

RELEASED AND JOURNALIZED: January 19, 2012

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Kenneth Garvin, appeals from his guilty plea on single counts of sexual battery and gross sexual battery. His sole assignment of error is that the court erred by imposing consecutive sentences for those counts without first determining whether they were allied offenses of similar import. The state concedes the merit of Garvin's assignment of error and asks that we sustain the assigned error and remand for an allied offense hearing and a resentencing.

{¶ 2} Our review of the sentencing confirms the state’s concession. We summarily sustain the assignment of error and remand for a hearing at which the court must determine whether the counts of sexual battery and gross sexual imposition are allied offenses of similar import. *See State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 47.

{¶ 3} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, PRESIDING JUDGE

COLLEEN CONWAY COONEY, J., AND
MARY EILEEN KILBANE, J., CONCUR