

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 109409
 v. :
 :
 JAMIL ABRAMS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: April 27, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-643698-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jeffrey M. Maver, Assistant Prosecuting Attorney, *for appellee*.

Timothy Young, State Public Defender, and Lauren Hammersmith, Assistant State Public Defender, *for appellant*.

LARRY A. JONES, SR., J.:

{¶ 1} Defendant-appellant Jamil Abrams (“Abrams”) appeals from his conviction and sentence for felonious assault with a one-year firearm specification.

The state filed a notice of conceded error in response to Abrams's first assignment of error. After a review of the record and applicable law, we find merit to this appeal.

{¶ 2} In 2019, a complaint was filed in Cuyahoga County Juvenile Court alleging that Abrams was a delinquent child and had committed acts that would be the following offenses if committed by an adult: attempted murder, felonious assault, discharge of a firearm on or near a prohibited premises (all with one- and three-year firearm specifications), tampering with evidence, and theft. Abrams was subject to mandatory bindover to adult criminal court based on the attempted murder count.

{¶ 3} After his transfer to adult criminal court, Abrams was charged with one count each of felonious assault and discharge of a firearm on or near a prohibited premises, both with one- and three-year firearm specifications, and one count of theft.¹

{¶ 4} In November 2019, Abrams pleaded guilty to felonious assault with a one-year firearm specification. The remaining counts were nolle. The trial court sentenced Abrams to a term of five to seven years in prison. The record reflects that neither the court nor the parties considered the mandatory provisions of R.C. 2152.121 and that his sentence must be stayed and his case remanded to juvenile court for further review.

¹Unlike the complaint in juvenile court, Abrams was not charged with attempted murder or tampering with evidence.

{¶ 5} It is from these proceedings that Abrams now appeals, raising two assignments of error:

I. The Cuyahoga County Court of Common Pleas erred as a matter of law when it failed to sentence Jamil Abrams in accordance with R.C. 2152.121.

II. Jamil was denied the effective assistance of counsel, in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; and Article I, Sections 10, and 16, Ohio Constitution.

{¶ 6} In the first assignment of error, Abrams argues that the trial court erred when it failed to sentence him in accordance with R.C. 2152.121. The state concedes that the sentence in this case should be stayed and the case remanded back to juvenile court. We agree the court erred and note that this court has previously held that a trial court's failure to follow R.C. 2152.121 is plain error. *State v. Murphy*, 8th Dist. Cuyahoga No. 97459, 2012-Ohio-2924, ¶ 16.

{¶ 7} In some cases, the juvenile court has no discretion to determine which children can benefit from its rehabilitative services. *See* R.C. 2152.10(A) and 2152.12(A). The bindover statutes require the juvenile court to transfer jurisdiction if there is probable cause to believe that a 16- or 17-year-old child has committed a certain type of offense. R.C. 2152.10(A) and 2152.12(A). After transfer and through the adversarial process, the juvenile may be convicted of a lesser offense that would have permitted the juvenile court to retain the juvenile and benefit from rehabilitative services, but for the initial mandatory transfer. *Compare* R.C. 2152.12(A) *with* R.C. 2152.12(B).

{¶ 8} In 2011, the Ohio legislature enacted R.C. 2152.121. R.C.

2152.121(B)(3) instructs as follows:

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) * * * of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929 of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. * * *

{¶ 9} Pursuant to R.C. 2152.121, at the criminal sentencing hearing, the trial court must consider and compare how a juvenile's case was transferred to its jurisdiction, and the resulting offense of conviction before the court. R.C. 2152.121(B). "In other words, the trial court must determine what the juvenile court would have been required to do with the case if the juvenile had been charged with only those offenses for which convictions were obtained." *State v. D.B.*, 150 Ohio St.3d 452, 2017-Ohio-6952, 82 N.E.3d 1162, ¶ 12. If the resulting offense would not have required mandatory transfer, but would have allowed for discretionary transfer, the trial court must impose a sentence, stay the sentence, and return the case to juvenile court. *See id.* at ¶ 12-13. This ensures that the juvenile court is

afforded full discretion to determine those children that will benefit from rehabilitative measures, even if the court was not initially afforded that discretion.

{¶ 10} Here, the juvenile court conducted a probable cause hearing in September 2019 and found that Abrams was 17 years of age at the time of the charged offense and there was probable cause to believe he had committed an act that would be the crime of attempted murder if committed by an adult. Because attempted murder is a category one offense, Abrams's was subject to mandatory bindover. Abrams's case was boundover to adult criminal court, and he was subsequently indicted with felonious assault and discharge of a firearm on or near a prohibited premises, both with one- and three-year firearm specifications, and theft.

{¶ 11} In accordance with R.C. 2152.121(B)(3), if a juvenile is ultimately convicted of or pleads guilty to an offense that would not have required mandatory transfer, but would have been eligible for discretionary transfer, R.C. 2152.121(B)(3) requires the trial court to issue a sentence, stay that sentence, and return the child's case to juvenile court. Abrams pleaded guilty to felonious assault with a one-year firearm specification. Felonious assault is not a category one or two offense. *See* R.C. 2152.02(AA) and (BB). As such, it is not eligible for mandatory transfer; it is eligible only for discretionary transfer. *Compare* R.C. 2152.10(A)(2)(b) *with* R.C. 2152.10(B).

{¶ 12} This reduction from an initial charge in juvenile court of attempted murder to a plea to felonious assault in adult criminal court triggered R.C. 2152.121(B)(3), which required the trial court to stay Abrams's sentence and return

his case to the juvenile court.² The trial court failed to stay imposition of the sentence as required by R.C. 2152.121. Consequently, because these mandates were not followed, Abrams has been transferred to an adult penal institution and is currently serving his sentence. Therefore, we remand the case to the trial court to stay his sentence and return the case to juvenile court.

{¶ 13} The first assignment of error is sustained.

{¶ 14} In his second assignment of error, Abrams contends that his counsel was ineffective for failing to raise R.C. 2152.121 at sentencing. We agree.

{¶ 15} To establish an ineffective assistance of counsel claim, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989).

{¶ 16} *Strickland* places the burden of proving ineffective assistance of counsel on the defendant. *Id.* at 687. It also requires a reviewing court to strongly presume that defense counsel adequately represented his or her client's interests. *Id.* at 690; *see also Vaughn v. Maxwell*, 2 Ohio St.2d 299, 301, 209 N.E.2d 164 (1965) (properly licensed attorney presumed competent). "The fundamental consideration in discerning a *Strickland* violation is whether defense counsel's

²Once the case is returned to juvenile court, Abrams's either receives a Serious Youthful Offender ("SYO") disposition, or if the state objects to a SYO disposition, the court conducts an amenability hearing to determine whether Abrams is amenable to rehabilitation in the juvenile justice system rather than an adult penal institution. *See* R.C. 2152.121(B)(3)(a)-(b).

performance was such as to raise compelling questions concerning the integrity of the adversarial process.” *State v. Murphy*, 8th Dist. Cuyahoga No. 97459, 2012-Ohio-2924, ¶ 19, citing *State v. Malone*, 2d Dist. Montgomery No. 10564, 1989 Ohio App. LEXIS 4690 (Dec. 13, 1989). Therefore, the “focus is on whether a defendant had access to a fair trial.” *Id.*

{¶ 17} Abrams’s counsel did not raise R.C. 2152.121 at Abrams’s plea hearing or at sentencing. Thus, because of defense counsel’s failure to raise the issue, Abrams, who was 17 years old at the time he committed these offenses, has had his sentence imposed and is serving that sentence in an adult prison instead of having his case remanded to juvenile court where counsel could have argued that he was amenable to rehabilitation within the juvenile system. Trial counsel should have known about R.C. 2152.121, which went into effect in 2011. *But see Murphy* (attorney not ineffective for failing to mention the reverse bindover procedures because the statute went into effect the same day the trial court sentenced the defendant).

{¶ 18} The second assignment of error is sustained.

{¶ 19} The case is reversed for the trial court to stay Abrams’s sentence and remand the case to the juvenile court for further proceedings in accordance with R.C. 2152.121.

Is ordered that appellant recover from appellee 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, P.J., and
EILEEN A. GALLAGHER, J., CONCUR