

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

IN THE MATTER OF:

J. G., ALLEGED DELINQUENT CHILD.

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**OPINION AND JUDGMENT ENTRY**  
Case No. 18 MA 0113

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Criminal Appeal from the  
Court of Common Pleas, Juvenile Division of Mahoning County, Ohio  
Case No. 17 JA 203

**BEFORE:**

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

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**JUDGMENT:**

Reversed and Remanded.

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*Atty. Paul Gains*, Prosecuting Attorney and *Atty. Ralph Rivera*, Assistant Prosecutor,  
Mahoning County Prosecutor's Office, 21 West Boardman Street, 6<sup>th</sup> Floor,  
Youngstown, Ohio 44503, for Plaintiff-Appellee, and

*Atty. Victoria Bader*, The Office of the Ohio Public Defender, 250 East Broad Street,  
Suite 1400, Columbus, Ohio 43215, for Defendant-Appellant.

Dated:  
September 10, 2019

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**Donofrio, J.**

{¶1} Appellant, J.G., appeals from a Mahoning County Common Pleas Court Juvenile Division judgment imposing a sentence that it had previously suspended. The court had previously adjudicated appellant a delinquent child based on a charge of kidnapping with a firearm specification.

{¶2} On February 13, 2017, the Youngstown Police Department filed a complaint in Mahoning County Juvenile Court alleging that the 16-year-old appellant was a delinquent child for committing: two counts of aggravated robbery, first-degree felonies if committed as an adult; one count of carrying a concealed weapon, a fourth-degree felony if committed as an adult; and one count of trafficking in drugs, a fourth-degree felony if committed as an adult. Firearm specifications accompanied each charge.

{¶3} On May 17, 2017, appellant reached a plea agreement with plaintiff-appellee, the State of Ohio. Pursuant to the plea deal, appellant admitted to one count of kidnapping with an attached firearm specification and the state dismissed the remaining charges. The court accepted the plea agreement and set the matter for a disposition hearing.

{¶4} At the disposition hearing, the trial court committed appellant to the Ohio Department of Youth Services (DYS) for a minimum of 12 months not to exceed his twenty-first birthday on the kidnapping charge. On the firearm specification, the trial court committed appellant to DHS for 36 months to be served consecutive to the kidnapping commitment. The trial court additionally determined that appellant was a serious youthful offender (SYO). Thus, it also imposed a suspended prison sentence of 36 months.

{¶5} On April 18, 2018, the state filed a motion to invoke the suspended prison sentence due to appellant's continuous violations of DHS regulations. At an August 22, 2018 hearing on the motion, the trial court ordered appellant to serve the suspended sentence. But instead of ordering appellant to serve the 36-month sentence it previously imposed, the court ordered appellant to serve a 60-month prison sentence.

{¶6} Appellant filed a timely notice of appeal on October 12, 2018. He now raises two assignments of error.

{¶7} Appellant's first assignment of error states:

THE JUVENILE COURT ERRED WHEN IT INVOKED J.G.'S SERIOUS YOUTHFUL OFFENDER SENTENCE AND IMPOSED A GREATER PRISON TERM THAN PREVIOUSLY ORDERED. R.C. 2152.14(E)(2); FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND ARTICLE I, SECTION 10, OHIO CONSTITUTION (A-1).

{¶8} Appellant argues that the trial court erred in ordering an increased prison sentence. He points out that R.C. 2152.14(E)(2) only permits the court to lessen a sentence, not to increase it.

{¶9} The state has filed a confession of judgment in favor of appellant. It agrees that the trial court imposed a prison term not authorized by statute.

{¶10} When reviewing a felony sentence, an appellate court must uphold the sentence unless the evidence clearly and convincingly does not support the trial court's findings under the applicable sentencing statutes or the sentence is otherwise contrary to law. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231 ¶ 1.

{¶11} In regard to invoking adult sentences for juvenile delinquents, the court has the discretion not to invoke the adult sentence, or to lessen the sentence imposed at the time of disposition. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 82.

{¶12} R.C. 2152.14(E) dictates under what circumstances a juvenile court may invoke the adult portion of a serious youthful offender's sentence for failure to successfully complete the traditional juvenile disposition. Pursuant to R.C. 2152.14(E)(2),

[t]he court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term

was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

{¶13} As the Ohio Supreme Court has stated, “the adult portion of the sentence invoked as a result of the evidence may be more lenient, though not more severe, than the original stayed sentence.” *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 37, citing R.C. 2152.14(E)(2).

{¶14} In the case at bar, when invoking the adult portion of appellant’s sentence, the trial court increased appellant’s sentence from 36 months to 60 months. This increase was contrary to R.C. 2152.14(E)(2). Therefore, appellant’s 60-month prison sentence is contrary to law.

{¶15} Accordingly, appellant’s first assignment of error has merit and is sustained.

{¶16} Appellant’s second assignment of error states:

J.G. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.  
SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S.  
CONSTITUTION; AND ARTICLE I, SECTION 10, OHIO CONSTITUTION.

{¶17} Appellant argues that he was denied the effective assistance of counsel because his counsel failed to object to his sentence.

{¶18} Given our resolution of appellant’s first assignment of error, his second assignment of error is rendered moot.

{¶19} For the reasons stated above, the trial court’s judgement is hereby reversed. This matter is remanded for a new invocation hearing where the trial court may impose the 36-month prison sentence or may impose a shorter prison sentence.

Waite, P. J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division of Mahoning County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**