

COURT OF APPEALS OF OHIO, SEVENTH APPELLATE DISTRICT,
BELMONT COUNTY

State v. Lanier

2023-Ohio-3088 (Ohio Ct. App. 2023) · No. 22 BE 0070 · Decided August 31, 2023

SUMMARY

The Seventh District Court of Appeals of Ohio affirmed Andre Maurice Lanier’s convictions and sentence following his no-contest pleas to drug possession and trafficking charges. The court held that the trial court did not abuse its discretion by treating Lanier’s post-remand motion to dismiss or suppress as untimely and denying leave to file it. The appeal also raised ineffective assistance, due process, and alleged vindictive sentencing issues.

CASE DETAILS

COURT	Court of Appeals of Ohio, Seventh Appellate District, Belmont County
WRITING FOR THE COURT	David A. D’Apolito, P.J.; Carol Ann Robb, J.; Mark A. Hanni, J.
JURISDICTION	Ohio
DECIDED	August 31, 2023
DOCKET	22 BE 0070
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed after the trial court, following remand from a prior appeal, denied leave to file an untimely motion to dismiss/suppress, accepted no-contest pleas to all four indictment counts, and imposed concurrent maximum sentences totaling eleven years.
STANDARD OF REVIEW	A trial court's decision whether to grant leave to file an untimely motion to suppress is reviewed for abuse of discretion. Ineffective-assistance claims require deficient performance and prejudice under Strickland. Felony sentences are reviewed under R.C. 2953.08(G)(2), and the appellate court may disturb a sentence only upon a clear and convincing finding that the applicable statutory findings are unsupported or that the sentence is otherwise contrary to law.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the court's jurisdiction subject to Ohio law governing appellate precedent.
PARTIES	Andre Maurice Lanier v. State of Ohio

TOPICS

suppression of evidence

criminal procedure

ineffective assistance

due process

sentencing

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

appellate sentencing

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by treating Lanier's post-remand motion to dismiss/suppress as untimely under Crim.R. 12(D) and by denying leave to file it out of rule.
2. Whether Lanier received ineffective assistance of counsel because his attorneys failed to timely file or properly seek leave to file the suppression motion.
3. Whether the increased sentence imposed after Lanier's successful prior appeal violated due process because it was presumptively or actually vindictive.
4. Whether the trial court erred by imposing maximum sentences based on the statutory sentencing purposes, principles, and seriousness and recidivism factors.

HOLDINGS

1. The trial court did not abuse its discretion in denying Lanier leave to file the post-remand motion to dismiss/suppress because the Crim.R. 12(D) deadline expired in 2015, the appointment of new counsel after remand did not restart the deadline, and counsel failed to establish good cause for the delay.
2. Lanier failed to establish ineffective assistance because he did not demonstrate deficient performance resulting in prejudice; post-remand counsel could not file a timely motion after the deadline had expired, and the original counsel's failure to timely litigate the motion became immaterial when Lanier withdrew it in exchange for substantial plea benefits.
3. The increased post-remand sentence did not violate due process because no presumption of vindictiveness arose and the record did not show actual vindictiveness.
4. The trial court did not err in imposing maximum concurrent sentences because the sentences did not exceed the statutory maximums, the court considered R.C. 2929.11 and R.C. 2929.12, and the appellate court could not independently reweigh those considerations.

KEY QUOTATIONS

“The effect of a reversal and an order of remand is to reinstate the case to the docket of the trial court in precisely the same condition that obtained before the error occurred.” (§ 46)

“Nothing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.” (§ 73)

FACTUAL BACKGROUND

On January 14, 2015, law enforcement executed a search warrant at an apartment building in Warren Township, Belmont County, and seized cocaine and ethylone in quantities exceeding statutory bulk amounts. Lanier was indicted on possession and trafficking charges involving both substances. After remand, he entered no-contest pleas to all four original charges, and the trial court imposed concurrent maximum sentences, including eleven years on the first-degree-felony cocaine-possession count.

PROCEDURAL HISTORY

Lanier was indicted in 2015 on drug-possession and drug-trafficking charges. He initially withdrew a suppression motion in exchange for a plea agreement, later absconded before sentencing, and was sentenced in 2021. The court of appeals vacated his convictions and sentence in a prior appeal because the trial court failed to strictly comply with jury-trial waiver requirements. After remand, new counsel filed an untimely suppression motion, which the trial court denied without reaching the merits; Lanier then pleaded no contest to the indictment and received concurrent maximum sentences. The Seventh District affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. T.D.J., 7th Dist. Mahoning No. 16 MA 0104, 2018-Ohio-2766, ¶ 62
- State v. Brown, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶¶ 16, 42-43
- State v. Lanier, 7th Dist. Belmont No. 21 BE 30, 2022-Ohio-2024
- State v. Phillips, 74 Ohio St.3d 72, 97, 656 N.E.2d 643 (1995)
- State v. DiFabio, 7th Dist. Mahoning No. 16 MA 0139, 2017-Ohio-8028, ¶ 11
- State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980)
- State v. Alexander, 7th Dist. Carroll No. 03 CA 789, 2004-Ohio-5525, ¶¶ 92-93
- State v. Sutton, 7th Dist. Mahoning No. 15 MA 0121, 2017-Ohio-732
- State v. Michailides, 8th Dist. Cuyahoga No. 99682, 2013-Ohio-5316, ¶ 9
- State v. Merritt, 126 Ohio App.3d 711, 714, 711 N.E.2d 279 (6th Dist. 1998)
- State v. Garrett, 2d Dist. Greene No. 2004 CA 110, 2005-Ohio-4832
- State v. Smith, 4th Dist. Ross No. 10CA3148, 2011-Ohio-602
- State v. Hoover, 9th Dist. Wayne No. 02CA0056, 2003-Ohio-2344
- City of Solon v. Randazzo, 8th Dist. Cuyahoga No. 76914, 2000 WL 1754005 (Nov. 30, 2000)
- State v. Mathis, 6th Dist. Lucas No. L-21-1184, 2022-Ohio-2291
- Wilson v. Kreusch, 111 Ohio App.3d 47, 51, 675 N.E.2d 571 (2d Dist. 1996)
- Armstrong v. Marathon Oil Co., 32 Ohio St.3d 397, 418, 513 N.E.2d 776 (1987)
- State v. Robson, 165 Ohio App.3d 621, 2006-Ohio-628, ¶¶ 19, 21 (4th Dist.)
- State v. Shelton, 1st Dist. Hamilton No. C-060789, 2007-Ohio-5460, ¶ 5
- Strickland v. Washington, 466 U.S. 668, 687, 689, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)

- State v. Bradley, 42 Ohio St.3d 136, 141-143, 538 N.E.2d 373 (1989)
- State v. Carter, 72 Ohio St.3d 545, 558, 651 N.E.2d 965 (1995)
- State v. Conway, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 101
- Lockhart v. Fretwell, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993)
- North Carolina v. Pearce, 395 U.S. 711, 723-724, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969)
- Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989)
- State v. Michaels, 7th Dist. Mahoning No. 17 MA 0122, 2019-Ohio-497, ¶ 2
- State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1
- State v. Jones, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649
- State v. Toles, 166 Ohio St.3d 397, 2021-Ohio-3531, 186 N.E.3d 784
- State v. Wilson, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31
- State v. Arnett, 88 Ohio St.3d 208, 215, 724 N.E.2d 793 (2000)