

IN THE COURT OF COMMON PLEAS OF CLARK COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

-v-

ALEXANDER D. BOYER,

Defendant.

16-CR-0160

ENTRY

FILED
2016 OCT 12 AM 9:35
RON VINCENT CLERK
COMMON PLEAS COURT
CLARK COUNTY OHIO

This case was before the Court on the motion of the defendant to dismiss count two, a charge of Having Weapons While Under Disability, a felony of the third degree. The defense bases its argument on the recent Ohio Supreme Court case in which the Court ruled that the State's use of a person's prior adjudication of juvenile delinquency could not be used to enhance the penalty of a subsequent adult criminal conviction. *State v. Hand*, 2016-Ohio-5504, 2016 WL 4486068.

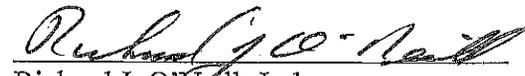
The reasoning upon which the Supreme Court based its ruling is that a juvenile does not have the same maturity as an adult in making decisions affecting the juvenile court case. Further, the Court found that the use of a juvenile adjudication to enhance the penalty for subsequent adult conviction denies the defendant's right to due process because in juvenile court the defendant did not have a right to a trial by jury.

In this case, the defendant's prior juvenile delinquency adjudication not only enhances the potential penalty, but is an element of the offense. This Court finds, using the same reasoning set forth in the *Hand* case, finds that if the use of a person's prior juvenile adjudication to enhance a subsequent adult penalty is a violation of that person's right to due process, then it is also a

violation of the persons right to due process to use a prior juvenile delinquency adjudication as an element for a subsequent adult felony offense.

It is, therefore, ORDER that the defense motion be granted and that count two of the indictment be DISMISSED.

This is a final appealable order.


Richard J. O'Neill, Judge

cc:
Brian Driscoll, Assistant Prosecuting Attorney
James Marshall, Attorney for Defendant