

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Supreme Ct. Case No. 05-2388
Plaintiff-Appellant, :
 :
vs. : On Appeal from the Ashtabula
 : County Court of Appeals,
 : Eleventh Appellate District
CAMERON STERLING, :
Defendant-Appellee. : Ashtabula County Court of Appeals
 : Case No. 2003-A-0135

**BRIEF OF AMICUS CURIAE-OHIO PROSECUTING
ATTORNEY'S ASSOCIATION
IN SUPPORT OF APPELLANT**

THOMAS L. SARTINI (0001937)
ASHTABULA COUNTY PROSECUTOR

SHELLEY M. PRATT (0069721)
Assistant Prosecutor
Office of the Ashtabula
25 W. Jefferson Street
Jefferson, Ohio 44047
(440) 576-3664
Fax (440) 576-3600

Attorneys for Plaintiff-Appellant

MICHAEL A. PARTLOW (0037102)
Morganstern, MacAdams & DeVito Co.,LPA
623 West St. Clair
Cleveland, Ohio 44113
(216) 621-4244

Attorney for Defendant-Appellee

AMICUS CURIAE
OHIO PROSECUTING
ATTORNEY'S ASSOCIATION

WILLIAM F. SCHENCK (0015243)
GREENE COUNTY PROSECUTOR

CHERI L. STOUT (0073725)
Assistant Prosecutor
Office of the Greene County Prosecutor
61 Greene Street, Second Floor
Xenia, Ohio 45385
(937) 562-5250
Fax (937) 562-5107

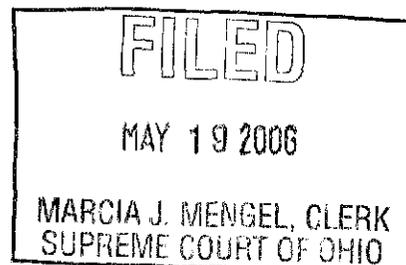


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STATEMENT OF THE CASE AND OF THE FACTS

Amicus Curiae-Ohio Prosecuting Attorneys Association adopts the statement and the facts as presented by Appellant-State of Ohio.

ARGUMENT

Proposition of Law No. 1:

R. C. 2953.82 (D) DOES NOT VIOLATE THE SEPARATION OF POWER DOCTRINE AND IS THEREFORE CONSTITUTIONAL.

The Eleventh District Court of Appeals found R. C. 2953.82 (D) to be unconstitutional as it relates to the separation of powers doctrine based upon South Euclid v. Jemison (1986), 28 Ohio St. 3d 157. However, the court failed to perform the appropriate constitutional analysis set forth by this Court. Initially, it is critical to note that legislation is not only presumed constitutional but that it shall be given a constitutional interpretation if one is reasonably available. State v. Thompson, 92 Ohio St. 3d 584, 2001 Ohio 1228, qtg. State ex rel Haylett v. Ohio Bur. of Worker's Comp. (1999), 87 Ohio St. 3d 325, 328, and State v. Keenan (1998), 81 Ohio St. 3d 133, 150. Moreover, enactments of the General Assembly must be upheld as constitutional unless they are demonstrated to be *clearly unconstitutional beyond a reasonable doubt*. State ex rel. Dickman v. Defenbacher (1955), 164 Ohio St. 142, 147 (emphasis added).

R. C. 2953.82 (D) does not encroach upon the judiciary's function for these particular types of cases. The purpose of R. C. 2953.82 is to allow a defendant who meets a particular set of requirements to request DNA testing. Specifically, defendants who pled guilty or no contest to a felony occurring before October 29, 2003, who received a prison term or death sentence, who were still serving said sentence on October 29, 2003 and if a

prison term was imposed, who still had one year or more remaining on the sentence were eligible to file a petition under R. C. 2953.82. The General Assembly set forth these narrow constraints including a two year time period for defendants to file such motions due to the nature of a guilty or no contest plea. A defendant who pled guilty or no contest had every opportunity prior to his or her plea to request DNA testing and/or proceed to trial and it may be presumed that a defendant would have weighed his or her options accordingly before entering into a knowing, voluntary and intelligently given plea.

Based upon the circumstances of a guilty or no contest plea, the General Assembly recognized that only the prosecuting attorney would be in possession of information needed to make an informed decision on a defendant's petition under R. C. 2953.82. The process undertaken in R. C. 2953.72 through R. C. 2953.81 is essentially the same process to be undertaken by a prosecuting attorney in R. C. 2953.82. A prosecuting attorney in making a decision to agree or disagree with a defendant's DNA petition under R. C. 2953.82 must make his or her decision based upon the interest of justice. Ethically and professionally, a prosecuting attorney's decision must uphold justice. The State's disagreement cannot be based upon a mere whim or dislike of a defendant but must be instead reasoned out in a statement filed with the court.

Further, "While the basic doctrine of the separation of powers is enshrined in our law, it does not necessarily follow that total and absolute separation is completely desirable or was ever fully intended by the framers of our Constitution. As has been suggested, absolute separation of powers is impossible, so certain objectives require a practical approach and a blending of the three powers of Government. Cooperation between the branches is essential as well as total objectivity by the principal parties involved." City of

Cleveland v. Mosquito (July 14, 1983), 10 Ohio App. 3d 239, 241. In U. S. v. Nixon (1974), 418 US 683, the United States Supreme Court noted that the “. . . Framers of the Constitution sought to provide a comprehensive system, but the powers were not intended to operate with absolute independence.” R. C. 2953.82 presents a situation where both the prosecuting attorney and court have overlapping functions, and the Legislature devised it to be so based upon the interest of justice. Further, the Legislature continues to maintain its original position in devising R.C. 2953.82 (D). The 126th General Assembly has introduced House Bill 481 and Senate Bill 262 to amend several sections of the Ohio Revised Code involving post conviction DNA testing, including R. C. 2953.82. However, the proposed amendments to R.C. 2953.82 do not include any amendment to R. C. 2953.82 (D). Clearly, the Legislature’s position on R. C. 2953.82 (D) remains the same as when R. C. 2953.82 was enacted.

Based upon the foregoing, the Eleventh District Court of Appeals erred in finding R. C. 2953.82 (D) to be violative of the separation of powers doctrine.

STATEMENT OF INTEREST

The Ohio Prosecuting Attorneys Association (OPAA) is an association of county prosecutors in the 88 counties in the State of Ohio. The Eleventh District Court of Appeals decision in State v. Sterling, Eleventh Dist. No. 2003-A-0135, 2005-Ohio-6081 does not engage in the constitutional analysis set forth by this Court in State ex rel. Dickman v. Defenbacher (1955), 164 Ohio St. 142 and is therefore constitutionally unsound. By not performing the appropriate constitutional analysis, the Eleventh District Court of Appeals decision presents an erosion of this Court’s constitutional analysis framework.

The decision also presents the possibility to defendants seeking to exploit the system

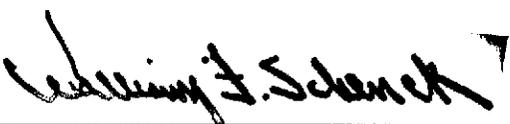
to their advantage by generating costly proceedings to the detriment of the people of the State of Ohio. The decision fails to take into consideration the purpose of protecting the safety and general welfare of the public. Further, the decision presents the possibility of flooding the courts with defendants seeking to reopen their petitions.

Consequently, the Ohio Prosecuting Attorneys Association supports the position of the State of Ohio, Appellant in this matter.

CONCLUSION

The Eleventh District Court of Appeals did not engage in the appropriate constitutional analysis in determining R.C. 2953.82 (D) to be unconstitutional. Further, the Legislature did not usurp the judiciary's function in providing the prosecuting attorney the ability to disagree with a defendant's DNA petition, where the defendant pled guilty or no contest. The Ohio Prosecuting Attorneys Association agrees with Appellant-State of Ohio that this Court should reverse the decision of the Eleventh District Court of Appeals.

Respectfully submitted,
OFFICE OF THE GREENE COUNTY
PROSECUTING ATTORNEY

By: 

William F. Schenck, #0015243
Prosecuting Attorney

By: 

Cheri L. Stout, (#0073725)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to Thomas L. Sartini, Ashtabula County Prosecutor and Shelley M. Pratt, Assistant Ashtabula County Prosecutor, Office of the Ashtabula County Prosecutor, 25 W. Jefferson Street, Jefferson, Ohio 44047 and Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair, Cleveland, Ohio 44113 by regular U. S. Mail the date same as filed of record above.

