

IN THE SUPREME COURT OF OHIO

TYRONE McGHEE

*

CASE NO. 2006-2088

Appellant

*

On appeal from the Shelby
County Court of Appeals,
Third Appellate District

-vs-

*

STATE OF OHIO

*

Court of Appeals
Case No. 17-06-05

Appellee

*

MEMORANDUM OPPOSING MOTION FOR RECONSIDERATION
RULE XI, SECTION 3(a)

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FILED

MAR 08 2007

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

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MEMORANDUM OPPOSING MOTION FOR RECONSIDERATION

Appellant's Motion for Reconsideration should be denied for the following reasons:

Firstly, Appellant sites plethora of cases in apparent support for the proposition that because the appellant's decision, in the case at bar, has been cited directly or indirectly by a number of lower courts that one should presume that the acceptance of jurisdiction by the Ohio Supreme Court is prudent or necessary. Appellant, however, provides no analysis or showing that the citation and application of this case by the lower courts has been inconsistently or improperly interpreted or that there are additional issues that need to be resolved by this Honorable Court. Standing alone, a statistical presentation of the popular use of this case, directly or indirectly, by the lower courts does not mean that this particular case is a case of public or great general interest that involves a substantial constitutional question that still needs resolved by this Honorable Court. Such analysis should be given little weight.

Secondly, Appellant cites Cunningham v. California (January 22, 2007), 59 U.S. - ____ as additional support for his argument. In Cunningham the Court is reviewing California's determinate sentencing law (DSL) which specifically requires the finding of additional facts for the imposition of a maximum sentence. As already noted in Appellee's Memorandum in Response to Appellant's Memorandum in Support of Jurisdiction, in the case at bar the trial judges sentencing discretion was not affected by State v. Foster (2006) 109 Ohio St. 3d 1, 2006-OHIO-856, 845 N.E 2d 470. Appellant raises no additional facts or law that changes this analysis.

Wherefore, Appellee respectfully requests that this Honorable Court over-rule Appellant's Motion for Reconsideration.

SHELBY COUNTY PROSECUTING ATTORNEY

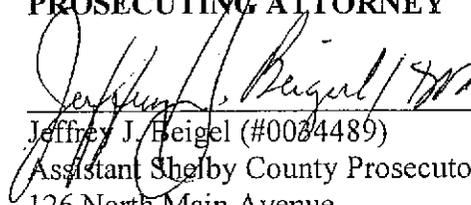
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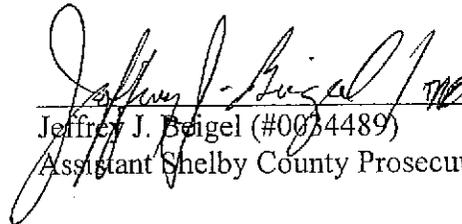
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Certificate of Service

I hereby certify that a copy of the foregoing Entry of Appearance has been sent via U.S. Mail on the 7th day of March, 2007 to Kenneth J. Rexford, Attorney for Appellant, 112 North West Street, Lima, Ohio 45801.



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