

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

RALPH E. CLARK,

Defendant-Appellant.

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Case No. 07-1047

07-1047

On Appeal from the
Ashtabula County of Appeals,
Eleventh Appellate District, Case
No. 2006-CA-4

**Motion of Appellant Ralph E. Clark to Hold Arguments in this Case
on the Same Day as State v. Sarkozy, Case No. 2006-1973**

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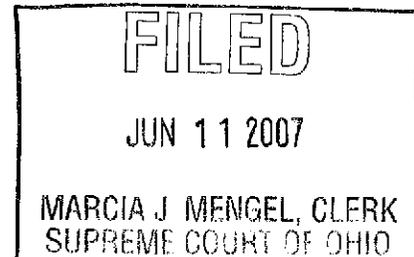
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**Motion of Appellant Ralph E. Clark to Hold Arguments in this Case
on the Same Day as State v. Sarkozy, Case No. 2006-1973**

This Court should set this case for oral argument on the same day as State v. Sarkozy, Case No. 2006-1973 because Mr. Clark's case presents a similar, but not identical issue. In Sarkozy, this Court will decide whether the complete failure to inform a defendant about postrelease control at the plea hearing renders the plea involuntary when that defendant is, in fact, subject to postrelease control. Mr. Clark's case asks this Court to address the consequences of telling a defendant that he is subject to limited postrelease control when, in fact, the defendant faces a lifetime of parole. Mr. Clark is not subject to postrelease control because he was convicted of aggravated murder, and he was not convicted of any first, second, third, fourth or fifth degree felony.

Sarkozy will cast light on the question in Mr. Clark's case, but it will likely not entirely resolve the ultimate issue. Mr. Sarkozy was not told about any post-prison supervision in the plea process. As far as Mr. Sarkozy knew, he was agreeing to serve his prison term and then get on with his life. But Mr. Clark's case involves misinforming him that he was subject to limited postrelease control instead of unlimited parole. The trial court substantively, repeatedly, and erroneously described postrelease control, not parole, to Mr. Clark during the plea and sentencing process. He was also misinformed that the maximum penalty for any post-release violation would be nine months incarceration instead of the reimposition of a life prison term.

In Sarkozy, the parties have no reason to brief the issue of what appellate courts should do when trial courts misinform defendants that the defendants will face parole instead of postrelease control. Or what appellate courts should do when defendants receive incorrect information about post-release supervision (such as telling a defendant he faces three years when in he faces five, or that he faces discretionary postrelease control when he faces mandatory postrelease control). In Sarkozy, the only issue is the effect of the trial court omitting the topic entirely.

Further, in Mr. Clark's case, both the State and Mr. Clark have arguments that are different from the arguments presented in Sarkozy. In Mr. Clark's case, the State has asserted that knowledge of the potential of a life sentence cures any error regarding the trial court's confusion of postrelease control and parole. Mr. Clark can argue that telling him that he faced three years of postrelease control instead of a potential of a lifetime of parole is far more significant than forgetting to mention a fixed term of five years of postrelease control.

This Court could hold this case for the decision in Sarkozy, but it would make more sense to hear arguments for both cases on the same day. That way, this Court could ask all counsel to address how their proposed rules would apply to the different factual and legal situations in both cases.

Because briefing has begun in Sarkozy, Mr. Clark can commit to filing his merit brief without seeking an extension by in this Court. Mr. Clark would also be willing to accept an accelerated briefing schedule.

Conclusion

The issues in Mr. Clark's case are similar enough to the issues in Sarkozy to merit hearing arguments on both cases on the same day. But the issues are sufficiently different that the decision in one case will not likely resolve the issues in the other.

Accordingly, this Court should set both cases for argument on the same day.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by U.S. Mail, postage prepaid to Shelley Pratt, Ashtabula County Assistant Prosecutor, Courthouse 25 West Jefferson Street, Jefferson, Ohio 44047 on this 11th day of June, 2007.



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