

BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLANT

-vs-

JOSEPH W. JONES, SR

DEFENDANT-APPELLEE

CASE NOS. 2006-1851
2006-1606

ON APPEAL FROM THE SEVENTH
DISTRICT, CASE NO. 05 MA 69,
DISCRETIONARY AND CONFLICT

STATE'S BRIEF IN OPPOSITION TO RECONSIDERATION

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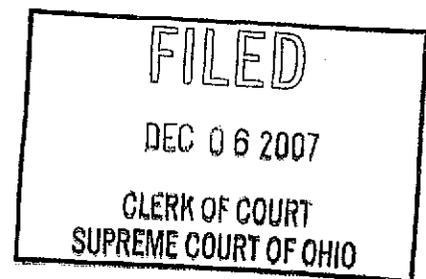
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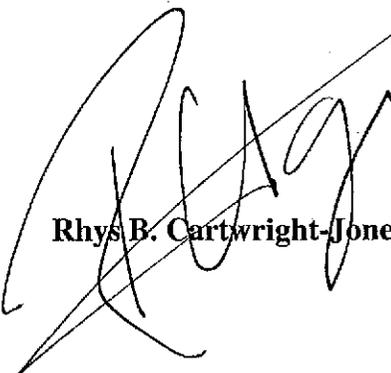
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Certificate of Service

I sent a copy of this filing to Mr. Brent L. English at the Law Offices of Brent L. English at the M.K. Ferguson Pl., Suite 470 on 1500 W. 3rd St. in Cleveland, OH 44115-1422 by ordinary mail on December 5, 2007.



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Brief in Opposition to Reconsideration

Statement of the Case and Facts Germane to Reconsideration

To provide some background for this motion, this case involves a Crim.R. 11 guilty plea. Mr. Jones, having plead guilty to domestic violence, moved the trial court for leave to withdraw his plea under Crim.R. 32.1. He supported his motion with an affidavit claiming innocence, but he did not mention any defect or irregularity in the way the trial court took his guilty plea—not in the Crim.R. 32.1 motion and not in its affidavit. The trial judge denied the motion, and Jones appealed to the Seventh District alleging abuse of discretion in the trial court’s denial of his motion and alleging that had he heard that he could plead no contest, he would have done so.

The Seventh District reversed, citing defects and irregularities in the Crim.R. 11 plea colloquy, but not requiring a specific showing of prejudice before the trial court. The state appealed. This Court reversed the Seventh District’s decision, finding that Mr. Jones showed insufficient prejudice to earn reversal. This Court remanded the case to the Seventh District to resolve the abuse of discretion issue. Jones moved for reconsideration, and the state prays this Court overrule that motion.

Law and Discussion

According to Rule XI, § 2(A) of the Ohio Supreme Court Rules of Practice, “[a] motion for reconsideration shall be confined strictly to the grounds urged for reconsideration, **shall not constitute a reargument of the case[.]**”¹ Here, however, Mr. Jones’ motion is precisely that: a recapitulation of his merits case. He even references statements made during the argument of this case. His motion offers nothing new, and the state moves this Court to deny the same.

¹ Emphasis added.

(I)

As to Mr. Jones first proposed ground for reconsideration, Mr. Jones simply argues—as he did in his merits case—that Crim.R. 11 says what it means and means what it says. But no one disputes this. The question in this case, mainly, was whether Jones had to show palpable prejudice to earn reversal. He did not make such a showing. He did not claim that defects in his plea colloquy resulted in an unknowing, involuntary, and unintelligent plea until he reached the Seventh District. And he did not make a complete claim then, offering only speculation as to what arguments he could have raised had he plead no contest. This Court, citing the lack of prejudice, decided accordingly and reversed the Seventh District’s decision. The first proposed ground for reconsideration gives Mr. Jones no relief.

(II)

As to Mr. Jones second proposed ground for reconsideration, Mr. Jones argues that the fact that he was not told of the effects of his plea should have resulted in reversal with no further showing of prejudice. First, no one knows who told Mr. Jones what. Mr. Jones never actually claimed by affidavit that anyone—his attorney included—failed to tell him anything about his plea rights. His affidavit focused on the facts of the case and not on his plea. All the record reflects is the trial court skipping that portion in the colloquy. But this argument is nothing new—Mr. Jones having raised it below—and it contradicts at least 30 years of Ohio law. Mr. Jones—both at the trial court and on appeal—had to show prejudice as part of his case in chief: that he would not have pled guilty had he heard the words “admission of guilt” in the Crim.R. 11 colloquy or that he would have plead no contest had he been given the option.

This conclusion follows under the general law of waiver, holding that “[i]t is axiomatic that a litigant’s failure to raise an issue in the trial court waives his right to raise that issue on appeal.”² And this Court recognizes that approach to guilty pleas. According to this Court, “although it can validly be argued that the trial court should adhere scrupulously to the provisions of Crim.R. 11(C)(2), there must be some showing of prejudicial effect before a guilty plea may be vacated.”³ In other words, if a trial judge skips language in the plea colloquy, that is not a good thing. No one denies that a trial court should simply follow the Crim.R. 11 script. But unless failure to do so impacts a defendant’s substantial rights—here, his right to enter a knowing plea—and unless a defendant demonstrates that by means of competent and credible evidence in the court of first instance, he has no right to relief.

Here, Jones failure to raise the issue in the trial chamber waived the same. And a request for competent and credible evidence of prejudice in the court of first instance is not particularly onerous. All Mr. Jones needed to do was include a line—one line—in the affidavit accompanying his Crim.R. 32.1 motion to withdraw that had he heard a full Crim.R. 11 script, he would have plead no-contest, not plead guilty, etc.

Ultimately, Mr. Jones asks this Court to overrule all principles of law demanding a showing of prejudice. Unfortunately, that would require, also, overruling Crim.R. 52 and ultimately overruling the common sense foundation of that rule. It would require this Court to overrule the general law of waiver, which may be as old as equity law itself.

² State v. Williams (1977), 51 Ohio St.2d 112, syl par. 1; c.f. Crim.R. 52(A)-(B).

³ State v. Stewart (1977), 51 Ohio St.2d 86, citing State v. Caudill (1976), 48 Ohio St.2d 342; Crim.R. 52(A). Notably, this Court referred to Crim.R. 11(C)(2) in the generic sense, not looking to constitutional or nonconstitutional rights.

Conclusion

There will always be errors and omissions. If there were not, reviewing courts and appellate attorneys would serve only an anachronistic purpose. But reversal—in nearly all senses—requires some showing of prejudice, some showing that but for the error the disposition of one's case would be different. Here, Mr. Jones offered speculative prejudice, but in his affidavit supporting his motion to withdraw, he mentioned nothing of irregularities in his plea proceedings. Obviously Mr. Jones did not find the plea hearing prejudicial, and there was no cause to reverse.

Wherefore, the State asks this Court to overrule Mr. Jones' motion for reconsideration.

Respectfully Submitted,

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