

**IN THE SUPREME COURT
OF OHIO**

IN RE: J.F.,
A MINOR CHILD

Supreme Court Case No. 2007-2239

On Appeal from the Greene County
Court of Appeals, Second District

Court of Appeals Case No. 06-CA-123

**MEMORANDUM OF APPELLEE - STATE OF OHIO IN OPPOSITION OF
JURISDICTION**

STEPHEN K. HALLER #0009172
Greene County Prosecuting Attorney
61 Greene Street, 2nd Floor
Xenia, Ohio 45385

ELIZABETH A. ELLIS #0074332 (COUNSEL OF RECORD)
Assistant Prosecuting Attorney

TX: (937) 562-5669
FX: (937) 562-5107

**COUNSEL FOR APPELLEE,
STATE OF OHIO**

DAVID H. BODIKER, #0016590
State Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215

TX:(614) 466-5394
FX:(614) 752-5167

ANGELA MILLER #0064902 (COUNSEL OF RECORD)
Assistant State Public Defender

COUNSEL FOR J.F.

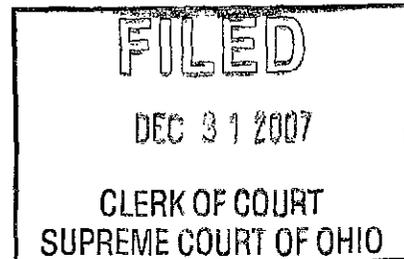


TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT:	
<u>PROPOSITION OF LAW NO. 1:</u>	
A TRIAL COURT MAINTAINS JURISDICTION TO IMPOSE A SUSPENDED COMMITMENT WHEN A DELINQUENT CHILD IS STILL ON MONITORED TIME AND THEREFORE STILL UNDER THE JURISDICTION OF THE COURT, EVEN IF INTENSIVE PROBATION IS TERMINATED.....	5
CONCLUSION	8
CERTIFICATE OF SERVICE	9

STATEMENT OF THE CASE AND OF THE FACTS

Jeremiah Frank ("Appellant" hereafter) was originally charged in a complaint dated December 1, 2003. The complaint asserted that Appellant was a delinquent child for committing five counts of theft, each a felony of the fifth degree if committed by an adult, in violation of R.C. 2913.02(A)(1) and 2152.02(F); one count of complicity to theft, a felony of the fourth degree if committed by an adult, in violation of R.C. 2913.02(A)(1), 2923.03(A)(2), and 2152.02(F); one count of resisting a lawful arrest, a misdemeanor of the second degree if committed by an adult, in violation of R.C. 2921.33(A) and 2152.02(F); and domestic violence, a misdemeanor of the first degree if committed by an adult.

The underlying facts of the Complaint were that Appellant, on or about December 1, 2003, was roaming the streets with a co-defendant, Mr. Adams. According to Appellant, he and Mr. Adams were walking down the street breaking into cars. Appellant admitted to stealing credit cards and ID cards from the cars. Appellant and Mr. Adams then stole the vehicle of Mr. Eric Foster. Mr. Adams was the driver and Appellant was the passenger. After noticing his car had been stolen, Mr. Foster called 911 and officers located the vehicle. While the officers were chasing the vehicle, the driver lost control of the vehicle and ran into a tree. Appellant and Mr. Adams got out of the car and began to run. They were both eventually apprehended and charged in Juvenile Court.

At Appellant's February 18, 2004 adjudication hearing, Appellant, in the presence of his attorney Mr. Kevin Hunt, admitted to the five counts of theft, one count of

complicity to theft, and one count of resisting arrest. In exchange for his admission, the State dismissed the charge of Domestic Violence filed December 1, 2003 with the approval of the victim. The court ordered a pre-disposition investigation to be conducted by the Juvenile Court Probation Department.

At Appellant's March 22, 2004 final disposition hearing, the Court committed Appellant to the Ohio Department of Youth Services ("DYS" hereinafter) for a minimum period of six months for each count of theft and complicity to theft, to be served consecutively, and a maximum period until his twenty-first birthday. The court suspended the commitments on the conditions that (1) Appellant not commit any future violations of the law, (2) that he successfully complies with monitored time until the age of 18, (3) that he successfully completes community control, (4) that he complete the felony offenders restitution program, (5) that he complete the stop shoplifting program, (6) that he undergo a psychiatric evaluation, and (7) that he pay fines, court costs, and restitution in a timely manner.

During Appellant's time on probation, over ten complaints were filed stating that Appellant had violated his probation/community control, including a complaint in February of 2005, when Appellant ran away from a residential treatment program. (Tr. 9/20/06, p. 8). In addition to his probation violations, on June 4, 2004, Appellant was adjudicated delinquent of committing theft, a misdemeanor of the first degree, under R.C. 2913.02(A)(1); on May 9, 2005 of committing Falsification a misdemeanor of the first degree, under R.C. 2921.13(A)(3); and on August 30, 2005 of committing Possession of Drug Paraphernalia, a misdemeanor of the fourth degree, under R.C. 2925.14. Appellant admitted to each of these charges. At the various

hearings on the matter, the Appellant repeatedly professed that he would stop this behavior. (Tr. 3/22/04, p. 9; Tr. 12/8/04, p. 9; Tr. 4/27/05, p. 3; Tr. 6/7/05, p. 3-10).

Each time the court tried to work with Appellant in order to aid him in his rehabilitation and avoid him being committed to DYS. *Id.*

Appellant's status on community control was terminated at his March 1, 2006 Probation Termination Hearing. At this time the court also ordered Appellant to pay the balance of his fines and court costs and to complete community service. The court also permitted Appellant to obtain his driver's license, which had previously been suspended indefinitely. The court, however, did not release him from his successful compliance with monitored time until the age of 18 under R.C. 2152.19(A)(3)(i).

On August 30, 2006, only five months after his status on community control was terminated, Appellant was charged with yet another Complaint. The Complaint asserted that Appellant was a delinquent child for possessing a controlled substance, a minor misdemeanor if committed by an adult, in violation of R.C. 2925.11(A); and possession of drug paraphernalia, a minor misdemeanor of the fourth degree if committed by an adult in violation of R.C. 2925.14. Both the child and his mother were present, were advised of his right to counsel, orally waived that right, and signed a waiver of counsel form. (Tr. 8/31/06, p.3-5). Appellant admitted to both possession of a controlled substance and possession of drug paraphernalia at his August 31, 2006 Plea Hearing. *Id.* On September 20, 2006, the court held a dispositional hearing and imposed Appellant's suspended commitment for only one count of theft, a felony of the fifth degree if committed by an adult, for a minimum period of six months. The court reached this decision after repeated efforts to try and rehabilitate the Appellant

and work with him in the community failed. Appellant was committed to the Department of Youth Services for a minimum period of six months and a maximum period until age twenty-one. *Id.*

The Appellant appealed that decision to the Court of Appeals of Ohio, Second Appellate District. The Delinquent Child alleged four assignments of error. On October 19, 2007, the appellate court affirmed the ability of the trial court to retain jurisdiction over the juvenile when the child completes probation but is still retained on monitored time. The appellate court reversed and remanded the matter upon a finding that while the trial court complied with due process and Juv. R. 35(A), it did not comply with the procedural safeguards of Juv. R. 35(B). The court of appeals then refused to consider the third and fourth assignments of error as moot.

The Delinquent Child now appeals to this honorable Court one assignment of error, which was his first assignment of error to the appellate court below. The Delinquent Child complains that his suspended commitment should not be able to be imposed even though the child was still under the trial court's jurisdiction and requirement for compliance with monitored time.

Thus, this case is not one that presents a substantial constitutional question, nor is it one of great public or general interest. The trial court acted within the law and the Court of Appeals, Second Appellate District, correctly found that the juvenile court retained jurisdiction over the Delinquent Child. Therefore, this case is entirely without merit and this Court should not accept jurisdiction.

ARGUMENT

PROPOSITION OF LAW NO. 1:

ATRIALCOURTMAINTAINS JURISDICTION TO IMPOSE
A SUSPENDED COMMITMENT WHEN A DELINQUENT
CHILD IS STILL ON MONITORED TIME AND
THEREFORE STILL UNDER THE JURISDICTION OF THE
COURT, EVEN IF INTENSIVE PROBATION IS
TERMINATED.

The trial court had jurisdiction over the child when it imposed the alleged delinquent child's suspended commitment, as he was still subject to monitored time by the court. Thus, he was still under the court's jurisdiction, even though his intensive probation was terminated. Therefore, the trial court did not violate any provisions of the Ohio or United States Constitution as alleged by the Appellant.

R.C. 2152.19(A)(4)(i) permits the Juvenile Court to order as disposition for a delinquent child a requirement that the child serve monitored time. R.C. §2929.01(Z) defines "monitored time" as a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life. This appears to be a case of first impression, but the statutory language is clear and unambiguous. Thus, where a juvenile's commitment to the Department of Youth Services(DYS) is suspended upon the condition that he serve monitored time until the age of 18, and the juvenile has not yet completed that requirement, the juvenile court maintains jurisdiction to sentence the child to DYS if the juvenile violates monitored time.

On March 1, 2006, the Court terminated Appellant's community control, ordered him to pay the balance of his fines and court costs, ordered him to complete community service, and terminated the restrictions on receiving his driver's license, which had previously been suspended indefinitely. The court, however, did not release him from his successful compliance with monitored time until the age of 18 under R.C. 2152.19(A)(4)(i), which was ordered at his March 22, 2004 Final Disposition Hearing. (AA-16). Since he was still under monitored time, he was still subject to the control of the sentencing court and subject to no conditions other than leading a law-abiding life. R.C. §2929.01(Z). Appellant, however, did not lead a law abiding life. From the time the suspended commitment and monitored time was impose, he adjudicated delinquent of five additional crimes, including possession of drug paraphernalia and possession of a controlled substance. (AA-13). As a result of these adjudications and Appellant still being on monitored time, Appellant's suspended commitment was still subject to the jurisdiction of the trial court.

Appellant cites *In re Cross* which states that "a juvenile court does not have jurisdiction to reimpose a suspended commitment to a [DYS] facility after a juvenile has been released from probation." 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 258. *Cross* is distinguishable from the instant case, because the juvenile in *Cross* was not still subject to any sort of other condition other than community control. The Appellant in the case below was clearly still subject to monitored time. The Tenth District Court of Appeals has held that when there are still conditions imposed on the juvenile, the court's jurisdiction continues. *In re Walker*, Franklin App. No. 02AP-421, 2003-Ohio-2137. In

Walker, the Court held that because the juvenile's probation was subject to the condition that he complete sexual offender counseling and such condition was not completed, the juvenile did not have a legitimate expectation that his sentence was complete at the time the court prosecuted his probation violations. Likewise, the delinquent child in the instant case did not have a legitimate expectation that his suspended commitment was terminated when he had not fully completed his requirement of serving monitored time. Further, the child was advised by the trial court at the time he entered his admission to the latest charges that he was still subject to the suspended commitment. (Tr. 8/31/06, p. 4,10).

Clearly, the case at bar is distinguishable from *Cross*, and the Appellant's sole assignment of error is without merit. Accordingly, the decision of the Second District Court of Appeals must be affirmed.

CONCLUSION

The Appellant has failed to demonstrate that the trial court and appellate court committed error. Based upon all of the foregoing reasons, the trial court had jurisdiction in this case, and acted appropriately in making disposition in this case. Therefore, the decisions of the trial court should be affirmed. Thus, this Court should not accept jurisdiction in this matter as it does not involve a constitutional question or a case of great general importance or interest.

Respectfully submitted,

OFFICE OF THE GREENE COUNTY
PROSECUTING ATTORNEY

By: Stephen K. Haller

Stephen K. Haller (#0009172)
Prosecuting Attorney

By: Elizabeth A. Ellis

Elizabeth A. Ellis (#074332)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by regular U. S. Mail the date same as filed of record above to David Bodiker and Angela Miller, State Public Defender, 8 East Long St., 11th Floor, Columbus, Ohio 43215.

