

NO. 2005-1678

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF COMMON PLEAS FOR CUYAHOGA COUNTY, OHIO
NO. CR 454857

STATE OF OHIO,

Plaintiff-Appellee

-vs-

DELANO HALE,

Defendant-Appellant

**BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR
RECONSIDERATION**

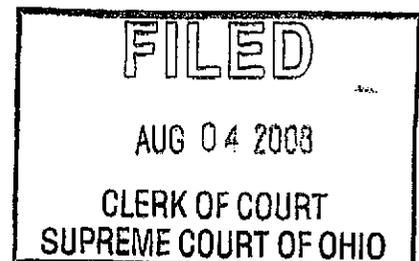
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Now comes Cuyahoga County Prosecuting Attorney William D. Mason, on behalf of the State of Ohio, by and through his undersigned assistant, and respectfully submits the State's Brief in Opposition to Appellant's Motion for Reconsideration.

Defendant has not demonstrated a compelling reason for reconsideration.

The test generally applied in reviewing an appellate motion for reconsideration "is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for the court's consideration that was either not considered at all or was not fully considered by the court when it should have been." *State v. Wong* (1994), 97 Ohio App.3d 244, 246, 646 N.E.2d 538. The State respectfully submits that neither criteria are met here.

In its 63-page opinion in this case, this Honorable Court thoroughly and exhaustively briefed each proposition of law advanced by defendant on direct appeal and correctly decided each issue based on the controlling legal standard and applicable facts. Each proposition of law was thoroughly and exhaustively briefed by the parties. The State therefore respectfully reasserts its arguments¹ advanced in the merit brief of appellee that it submitted in this case.

¹ With one exception: the State conceded error in the second proposition of law, which this Honorable Court rejected in paragraphs 241 through 243 of its opinion. The State

As a consequence, the State respectfully submits that this is not a case that meets the parameters for reconsideration expressed in *Wong, supra*. The State therefore respectfully requests that this Honorable Court deny defendant's motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Brief in Opposition to Appellant's Motion for Reconsideration was sent by regular U.S. Mail this 4th day of August, 2008 to Kelly L. Culshaw Schneider, Esq., Ruth L. Tkacz, Esq., and Kimberly S. Rigby, Esq., Assistant State Public Defenders, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215.



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hereby abandons the concession and relies on this Honorable Court's opinion as controlling legal authority.