

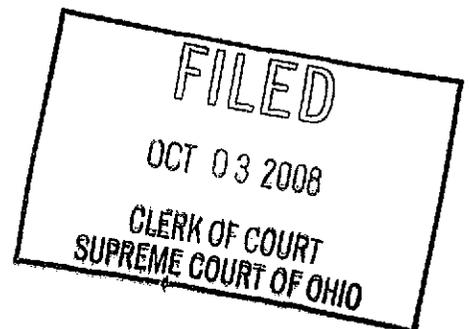
IN THE SUPREME COURT OF OHIO
Nos. 2008-661

STATE OF OHIO :
Appellee :
-vs- : On Appeal from the Cuyahoga County
HUGH HUNTER : Court of Appeals, Eighth Appellate
Appellant : District, Case No. 89456

MOTION TO VACATE BRIEFING STAY

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IN THE SUPREME COURT OF OHIO
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MOTION TO VACATE BRIEFING STAY

Now comes Appellant Hugh Hunter, by and through undersigned counsel and pursuant to S.Ct. R XIV, Section 4, and respectfully requests that this Court vacate its briefing stay in the instant case and order that briefing proceed on Hunter's first proposition of law. The reasons for this request are set forth in the attached memorandum in support.

Respectfully submitted,

CULLEN SWEENEY, ESQ.
Counsel for Appellant

MEMORANDUM IN SUPPORT

On April 7, 2008, appellant Hugh Hunter filed an appeal with this Court raising, among other things, the following proposition of law:

Proposition of Law I: The RVO-enhanced sentence imposed upon appellant constituted a deprivation of his liberty without due process of law and a violation of his constitutional right to a trial by jury.

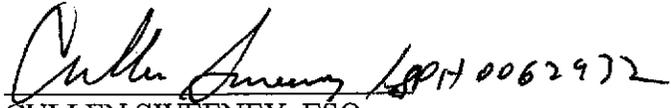
In essence, appellant contends that the trial court erred in imposing a repeat violent offender (RVO) penalty enhancement because such an enhancement had been excised by this Court in *State v. Foster* (2006), 109 Ohio St. 3d 1 and/or because such an enhancement is unconstitutional. In the State of Ohio's response to Hunter's request for jurisdiction on his first proposition of law, it disagreed with the merits of his argument but asked that this Court accept jurisdiction over the issue and stay briefing pending the resolution of *State v. Sanchez*, Ohio Supreme Court Case Nos. 2008-215 and 2008-429 (accepted on April 9, 2008). *Sanchez* raised substantially similar issues as the instant case, except that it involved the major drug offender (MDO) penalty enhancements rather than the RVO penalty enhancement at issue here.

On August 6, 2008, this Court accepted Mr. Hunter's appeal on his first proposition of law, stayed briefing, and held the case for its decision in *Sanchez*. On August 22, 2008, the appellee in *Sanchez* filed a motion to dismiss arguing, among other things, that his judgment entry of sentence was not a final appealable order because it did not dispose of all of the counts of his indictment. On September 24, 2008, this Court granted the motion to dismiss.

Although *Sanchez* has been dismissed due to a jurisdictional flaw, the important issues, raised by both *Sanchez* and the instant case, remain. Appellant, therefore, respectfully requests that this Court vacate its briefing stay in the instant case and order that briefing proceed on Hunter's first

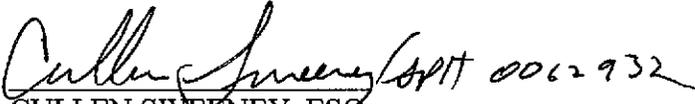
proposition of law.

Respectfully submitted,


CULLEN SWEENEY, ESQ.
Counsel for Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Motion was served upon William D. Mason, Cuyahoga County Prosecutor, The Justice Center, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113 and/or a member of his staff 3rd day of October 2008.


CULLEN SWEENEY, ESQ.
Assistant Public Defender
Counsel of Record for Appellant