

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case Nos. 2007-656 and 2007-657
Appellant,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
vs.	:	
Thomas L. Veney,	:	Court of Appeals Case No. 06AP-523
Appellee.	:	

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**MEMORANDUM OF DEFENDANT-APPELLEE THOMAS L. VENNEY  
OPPOSING THE MOTION FOR RECONSIDERATION AND REQUEST FOR A STAY  
OF JUDGMENT AND A MOTION FOR THE SUSPENSION OF THE EXECUTION OF  
THE SENTENCE OR FOR RELEASE ON PERSONAL RECOGNIZANCE OR  
UNSECURED BAIL IF THE COURT GRANTS A STAY**

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Yeura R. Venters (0014879)  
Franklin County Public Defender

and

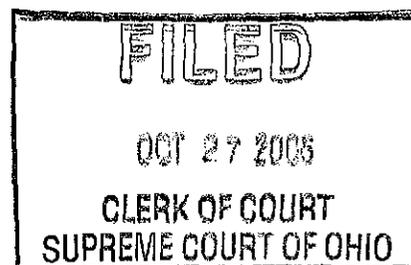
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and

Steven L. Taylor (0043876), Counsel of Record  
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Counsel for Plaintiff-Appellant



**MEMORANDUM OF DEFENDANT-APPELLEE THOMAS L. VENEY  
OPPOSING THE MOTION FOR RECONSIDERATION AND THE REQUEST  
FOR A STAY OF JUDGMENT AND A MOTION FOR RELEASE ON  
PERSONAL RECOGNIZANCE OR UNSECURED BAIL IF THE COURT  
GRANTS A STAY**

For the reasons set forth in the attached memorandum, the appellee asserts that this Court's decision rendered herein was both properly and fully considered and that the motion for reconsideration should be denied. The state's request for a stay should be denied pursuant to R.C. 2953.09, public policy considerations, and the interests of fairness. If the Court does grant a stay, then the appellee requests that the execution of his sentence should be stayed too. If the Court does not stay the execution of the sentence, then the defendant requests that he be released on a personal recognizance bond or on unsecured bail.

Respectfully submitted,

Yeura R. Venters 0014879  
Franklin County Public Defender



By John W. Keeling 0014860  
Assistant Public Defender  
Counsel for Appellee  
373 South High Street  
Columbus, Ohio 43215  
(614) 719-8783

**MEMORANDUM IN SUPPORT**

The Motion for Reconsideration

The state's motion for reconsideration should be overruled. A party

cannot use a motion for reconsideration to reargue its case. It has been determined that a motion for reconsideration is proper only when it seeks to call to the attention of the court an obvious error in its decision, or raises an issue that was either not considered at all or was not fully considered by the court when it should have been. *State v Black* (1991), 78 Ohio App. 3d 130, 604 N.E. 2d 171; *Columbus v Hodge* (1987), 37 Ohio App. 3d 68, 523 N.E. 2d 515; *Matthews v Matthews* (1981), 5 Ohio App. 3d 140, 450 N.E. 2d 278.

This Court has, by rule, stated that a motion for reconsideration shall be confined to the grounds urged for reconsideration and "shall not constitute a reargument of the case". S.Ct.Prac.R. XI (2)(A). The state, in its motion for reconsideration, is attempting to reargue its case after this court fully and properly issued a ruled on the merits.

#### The Request for a Stay

The state's request for a stay should be denied. The Court of Appeals ruled against the state and so did this Court. When an appellate court rules in favor of a criminal defendant, the law attaches what amounts to a presumption of regularity with respect to the decision of the appellate court. R.C. 2953.09 provides in relevant part as follows:

**2953.09 Execution of the sentence or judgment suspended.**

(A)(1) Upon filing an appeal in the supreme court, the execution of the sentence or judgment imposed in cases of felony is suspended.

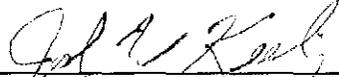
In large part, the purpose of this requirement is to prevent the state from

enforcing a sentence that has been determined to be invalid merely by seeking further review. In the instant case, the defendant sought to withdraw his improperly obtained guilty plea because he wanted a trial on the merits. He has been held for almost three years pursuant to a guilty plea that has been declared infirm by the Court of Appeals and this Court. The state, by means of repeated stays, should not be allowed to evoke the full measure of punishment that should only be meted out after a properly entered guilty plea or a fair trial. If this Court does grant a stay of its judgment, then the stay should also suspend the execution of the defendant's sentence as provided for in R.C. 2953.09.

If for some reason this Court does not elect to suspend the execution of the defendant's sentence pending any stay granted to the state, then the appellee would request that he be released on a personal recognizance bond or on unsecured bail during the pendency of any stay granted by this Court.

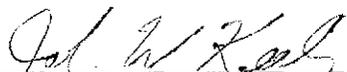
Respectfully submitted,

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Franklin County Public Defender

  
By John W. Keeling 0014860  
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Counsel for Appellee  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was hand delivered to Steven L. Taylor, Assistant Franklin County Prosecutor, 373 South High Street, Thirteenth Floor, Columbus, Ohio 43215, on this Monday, October 27, 2008.

  
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John W. Keeling 0014860  
Counsel for Appellee