IN THE SUPREME COURT OF OHIO

IN RE: E.L., A MINOR CHILD	:	Case No. 08-2299
	:	On Appeal from the Cuyahoga County Court of Appeals Eighth Appellate District
	:	C.A. Case No. 90848

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT E.L.

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A delinquent child's probation shall not be revoked unless the juvenile court finds, pursuant to Juv.R. 35(B), that "the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified." 4

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In re: E.L. Decision and Journal Entry, Cuyahoga County Court of Appeals, Case No. 90848, October 14, 2008 ..... A-1

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This Court should take this case and hold it for the decision in In re L.A.B., Case Nos. 2007-0895 and 2007-0912, discretionary appeal granted, 114 Ohio St.3d 1478, 2007-Ohio-3699; certified conflict accepted, 114 Ohio St.3d 1476, 2007-Ohio-3699. Although this case concerns an admission to an alleged probation violation, and not the waiver of counsel as in L.A.B., like L.A.B., this case presents this Court with an opportunity to consider the applicability of Juv.R. 29 at probation revocation hearings and the basic due process rights of a child facing a probation revocation.

This Court accepted review of L.A.B., in part, to resolve a conflict regarding the application of Juv.R. 29 to probation violations in juvenile court. This case follows the decision in L.A.B. in that the Eighth District determined that the colloquy requirements of Juvenile Rule 29 do not apply to probation revocation hearings. Although E.L. argued that both Juvenile Rule 29 and Juvenile Rule 35(B) require the court to respect E.L.'s basic rights to due process, the Eighth District rejected E.L.'s claims under both arguments.

Specifically, the Eighth District followed the reasoning in In re P.F., Case No. 2008-1195, discretionary appeal granted, cause held for the decision in L.A.B., 119 Ohio St. 3d 1485; 2008-Ohio-5273, and found that although E.L. was not notified of the specific terms of his probation when he was placed on probation, his misbehavior at his placement was a violation of probation that E.L. could have "reasonably believed" would occur—even though Juv.R. 35(B) requires the court to make a "finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), *been notified*." In re E.L., 8th Dist. No. 90848, 2008-Ohio-5094, ¶15. (Emphasis added.) And, like the Ninth District in L.A.B. and P.F., the Eighth District held that Juv.R. 35, not Juv.R. 29, applies to probation revocation hearings. E.L. at ¶18-20.

Like L.A.B. and P.F., this case stands as dangerous precedent for children who face a loss of liberty at probation revocation proceedings. This Court's pending decision in L.A.B. regarding the application of Juv.R. 29 to probation revocation hearings will provide guidance, but will not fully resolve the issues in this case. Accordingly, this Court must accept this case and stay briefing on E.L.'s Proposition of Law until L.A.B. is decided by this Court. After L.A.B. is issued, this Court should order briefing in this matter.

Because there is uncertainty in the lower courts regarding a child's right to due process at a juvenile probation revocation proceeding and the application of Juv.R. 35(B) to that proceeding, this case is of public and great general interest and involves a substantial constitutional question.

STATEMENT OF THE CASE AND FACTS

On May 31, 2007, the Cuyahoga County Juvenile Court conducted disposition in E.L.'s case. T.d. 52. The court placed E.L. "in the custody of the Court Probation Officer, for placement at Kokomo," a residential treatment facility in Kokomo, Indiana. T.d. 52. The order did not specifically sentence E.L. to probation, and did not specify any terms of probation. T.d. 52. It did specify that "[E.L.] is not to be released from [Kokomo] without notification to the Court," and that "[u]pon termination of the placement, [E.L.] is to participate in aftercare supervision programming, subject to the rules of probation of this Court." T.d. 52.

On October 17, 2007, E.L.'s probation officer filed a Motion for Violation of Court Order. T.d. 56. The motion alleged that E.L. "has failed to honor or obey" the juvenile court's May 31, 2007 order that placed E.L. at the Kokomo Academy for residential treatment, by exhibiting a range of inappropriate behaviors, which culminated in Kokomo's asking for E.L.'s removal from the program. T.d. 56, p.1.

On November 20, 2007, the juvenile court conducted a hearing on the violation of court order. Nov. 20, 2007, T.pp. 1-16. The court accepted E.L.'s admission to the complaint. Nov.20, 2007, T.pp. 2-10. In its final entry, the court found that "[t]he child admits to amended motion through counsel. The Court accepted such admission after personally addressing the child pursuant to Juvenile Rule 29."[1] T.d. 65. For disposition, the court committed E.L. to DYS for a minimum period of six months, maximum of his twenty-first birthday. T.d. 65-66.

In its opinion, the Eighth District found that although E.L. was not notified of the specific terms of his probation when he was placed on probation, his misbehavior at his placement was a violation of probation that E.L. could have "reasonably believed" would occur—even though Juv.R. 35(B) requires the court to make a "finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified." In re E.L., 8th Dist. No. 90848, 2008-Ohio-5094, ¶15. And, the Eighth District held that Juv.R. 35, not Juv.R. 29, applies to probation revocation hearings. E.L. at ¶18-20. E.L.'s appeal to this Court timely follows.

ARGUMENT

STATEMENT REGARDING THE CERTIFIED QUESTION IN IN RE L.A.B.

This Court accepted review of In re L.A.B., in part, to resolve a conflict regarding the application of Juv.R. 29 to probation violations in juvenile court. Case Nos. 2007-0895 and 2007-0912, discretionary appeal granted, 114 Ohio St.3d 1478, 2007-Ohio-3699; certified conflict accepted, 114 Ohio St.3d 1476, 2007-Ohio-3699. In E.L.'s case, the Eighth District held that Juv.R. 29 does not apply to probation revocation hearings. E.L. at ¶18-20.

[1] E.L. argued in the court of appeals that the juvenile court complied with neither Juv.R. 29 nor Juv.R. 35.

Should this Court conclude that Juv.R. 29 applies to probation revocation hearings, this Court's decision in In re C.S., 115 Ohio St. 3d 267; 2007-Ohio-4919, dictates:

> [I]n a juvenile delinquency case, the preferred practice is strict compliance with Juv.R. 29(D). We further hold, however, that if the trial court substantially complies with Juv.R. 29(D) in accepting an admission by a juvenile, the plea will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver. For purposes of juvenile delinquency proceedings, substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea.

C.S. at ¶113. The record in this case reveals that the juvenile court did not comply with the requirements of Juv.R. 29—strictly or substantially—therefore, if this Court determines that Juv.R. 29 applies to probation revocation hearings, the matter must be remanded to the juvenile court for a new hearing. Accordingly, this Court should hold this case for the decision in L.A.B.

PROPOSITION OF LAW

A delinquent child's probation shall not be revoked unless the juvenile court finds, pursuant to Juv.R. 35(B), that "the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified."

Even if this Court concludes that Juv.R. 29 does not apply to probation revocation hearings, this Court must reverse the Court of Appeals' decision and remand the matter to the juvenile court for a new hearing, because the totality of the circumstances in this case does not support the finding of a valid plea pursuant to Juv.R. 35. Accordingly, this Court should accept jurisdiction in this case and hold this case for L.A.B. Further, should this Court hold that Juv.R. 35, not Juv.R. 29, applies to probation revocation hearings, this Court should allow briefing in this case, as the decision in L.A.B. may not fully resolve the issues in this case.

I. Argument in support of jurisdiction

In In re C.S., 115 Ohio St. 3d 267; 2007-Ohio-4919, ¶80, this Court recognized that applying the Due Process Clause to situations in juvenile court is "an uncertain enterprise which

must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." Citing Lassiter v. Dept. of Social Servs. of Durham Cty., North Carolina (1981), 452 U.S. 18, 24-25, 101 S.Ct. 2153, 68 L.Ed.2d 640. Further, this Court recognized that the due process doctrine recognizes that "not all situations calling for procedural safeguards call for the same kind of procedure." Id. at 81; citing Morrissey v. Brewer (1972), 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484.

As was noted by the Seventh District in In re Royal (1999), 132 Ohio App.3d 496, 507, 725 N.E.2d 685, "Juv.R. 35(B) recognizes a juvenile's due process rights through its requirements." In re Kirby, 5th Dist No. 06-CA-6 & 06-CA-91, 2008-Ohio-876, ¶15. And, the court in Royal found that whether or not Juv.R. 29 applies to probation revocation hearings, when a juvenile court fails to comply with the basic requirements of Juv.R. 35(B), the matter must be reversed. Royal at 508.

In this case, the Eighth District noted that E.L.'s claim was that the juvenile court erred when it found that E.L. "committed very specific violations of a nonspecific court order." E.L. at ¶12. Specifically, on May 31, 2007, for disposition in his delinquency case, the juvenile court placed E.L. "in the custody of the Court Probation Officer, for placement at Kokomo," a residential treatment facility in Kokomo, Indiana. T.d. 52. The order did not specifically sentence E.L. to probation, and did not specify any terms of probation. T.d. 52. Accordingly, E.L. had not been properly notified of the terms of probation, because there were none.

In E.L., the Eighth District also noted that Juv.R. 35(B) specifies that "Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified." E.L. at ¶13. But, the court did not apply this standard to E.L.'s revocation; instead, it found that given E.L.'s behavior while at Kokomo,

"it is reasonable to believe that [E.L.'s] failure to be welcome at [Kokomo] could result in the reinstatement of his suspended sentence." E.L. at ¶15, citing In re P.F., 9th Dist. No. 07CA009099, 2007-Ohio-4913.[2] In other words, the Eighth District held that Juv.R. 35(B) does not mean what it says.

E.L.'s case is not the first in which the Eighth District Court of Appeals has found that only minimal process is due at probation revocation proceedings. See, In re Bennett (June 12, 1997), Cuyahoga App. No. 71121, 1997 Ohio App. LEXIS 2546. But, it is the first time that the Eighth District has found that even the basic due process protections provided in Juv.R. 35(B) need not be respected before a child is committed to juvenile prison. E.L. is dangerous precedent; therefore, E.L. asks this Court to accept jurisdiction of this appeal, but stay briefing on this Proposition of Law until L.A.B. is decided by this Court. After L.A.B. is issued, E.L. asks this Court to order briefing in this matter.

CONCLUSION

This case involves a substantial constitutional question, as well as questions of public or great general interest. This Court should grant jurisdiction and stay briefing in this matter until L.A.B. is decided by this Court. After L.A.B. is issued, E.L. asks this Court to remand or order briefing in this matter.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

By: _____
AMANDA J. POWELL #0076418
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(Counsel of Record)

[2] This Court has accepted jurisdiction in In re P.F., 119 Ohio St. 3d 1485; 2008-Ohio-5273, discretionary appeal granted, cause held for the decision in L.A.B.

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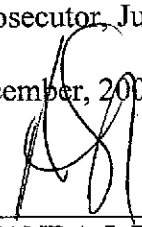
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT E.L.** was forwarded by regular U.S. Mail to the office of Kysha L. Harris, Assistant Cuyahoga County Prosecutor, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 1st day of December, 2008.



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IN THE SUPREME COURT OF OHIO

IN RE: E.L., A MINOR CHILD	: : : : : : : : :	Case No. _____ On Appeal from the Cuyahoga County Court of Appeals Eighth Appellate District C.A. Case No. 90848

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT E.L.

OCT 14 2008

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90848

IN RE: E.L.
A Minor Child

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. 05107998

BEFORE: Calabrese, P.J., Stewart, J., and Celebrezze, J.

RELEASED: October 2, 2008

JOURNALIZED: OCT 14 2008

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FILED AND JOURNALIZED
PER APP. R. 22(E)

OCT 14 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

OCT 2 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

CA07090848 53846758

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

ANTHONY O. CALABRESE, JR., P.J.:

Juvenile delinquent E.L. (appellant) appeals the court's committing him to the legal custody of the Ohio Department of Youth Services (DYS). After reviewing the facts of the case and pertinent law, we affirm.

I.

On September 7, 2005, the court found appellant delinquent relating to a gross sexual imposition offense. On November 17, 2005, the court committed appellant to DYS, suspended his sentence, and placed him on probation. At a subsequent dispositional hearing on May 31, 2007, as part of his probation, the court placed appellant at Kokomo Academy, a residential treatment facility in Indiana. On October 17, 2007, appellant's probation officer filed a "motion for violation of court order," arguing that appellant failed to follow the rules at Kokomo, and the academy was asking for appellant's removal from the treatment center. On November 20, 2007, the court adjudicated appellant to be in violation of his probation order and committed him to DYS for a minimum of six months and a maximum to his 21st birthday.

II.

In appellant's first assignment of error, he argues that "the Cuyahoga County Juvenile Court erred when it conducted a probation violation hearing,

found [E.]L. to be in violation of court order, and committed him to DYS in November and December 2007 because as of July 1, 2007, there existed no statutory authority to conduct such a hearing or make such an order." Specifically, appellant argues that R.C. 2151.23, which gives juvenile courts jurisdiction over delinquent minors, was repealed as of July 1, 2007, and that the legislature intended the amendments to this statute to take effect on January 1, 2008. See Am.Sub.S.B. No. 10. According to appellant's assertions, R.C. 2151.23 did not exist for the six months between July 1, 2007 and January 1, 2008.

The state, on the other hand, argues that Am.Sub.S.B.No. 10 repeals the portions of R.C. 2151.23 that were in conflict with the amendments, "with everything taking effect at the same time." According to the state's assertions, "the legislature did not intend to leave the juvenile court system without jurisdiction for 6 months."

"Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation. * * * However, where a statute is found to be subject to various interpretations, a court called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent." *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, 96, 573 N.E.2d 77, 80. When

ambiguity exists, "the court first looks to the language in the statute and the purpose to be accomplished." *State v. S.R.* (1992), 63 Ohio St.3d 590, 595. "Words used in a statute must be taken in their usual, normal or customary meaning. In construing a statute, it is the duty of the court to give effect to the words used and not to insert words not used." *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 217, 220 (internal citations omitted).

The pertinent parts of S.B. No. 10 are as follows:[1]

> **"To amend section[ ] *** 2151.23 *** of the Revised Code to revise Ohio's Sex Offender Registration and Notification Law and conform it to recently enacted requirements of federal law ***, [and] to increase the penalties for certain violations *** when the victim of any of those offenses is less than 13 years of age and the offense was committed with a sexual motivation ***.**
>
> **"SECTION 1. That section[ ] *** 2151.23 *** be amended *** to read as follows: [The 135 pages of substantive details of sex offender law amendments have been omitted.]**
>
> **"SECTION 2. That existing section[ ] *** 2151.23 *** of the Revised Code [is] hereby repealed.**
>
> **"SECTION 3. The amendments to section[ ] *** 2151.23 *** of the Revised Code that are made by Sections 1 and 2 of this**

[1] S.B. 10 applies to more than 70 criminal statutes found within the Ohio Revised Code, such as R.C. 2907.02, which governs rape offenses, and R.C. 2905.01, which governs kidnapping offenses, in addition to R.C. 2151.23, the statute that is the subject of this appeal. For ease of analysis, in this opinion we cite to S.B. 10 only as it applies to R.C. 2151.23.

act * shall take effect on January 1, 2008 ***.**

"SECTION 4. Sections 1 to 3 of this act shall take effect on July 1, 2007."

See, also, *State v. King*, Miami App. No. 08-CA-02, 2008-Ohio-2594 (holding that S.B. 10's purpose is "protection of the public from sex offenders"); *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375 (noting that in enacting S.B. 10, "the General Assembly merely adopted an alternative approach to the regulation and categorization of sex offenders"); *State v. Longpre*, Ross App. No. 08CA3017, 2008-Ohio-3832 (opining that S.B. 10 revamped the classification, notification, and reporting requirements of sexual offenders).

Given the background of S.B. 10, and the context within which it must be read, we cannot conclude that the legislature intended to leave a six-month vacancy between repealing over 70 sections of the Revised Code and enacting the replacement amendments. Therefore, we turn to the Ohio Supreme Court's decision in *Prem v. Cox* (1983), 2 Ohio St.3d 149, 152, which quotes *Canton v. Imperial Bowling Lanes* (1968), 16 Ohio St.2d 47, paragraph four of the syllabus: "The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences. It is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result."

An example illustrates the absurd result of appellant's argument. According to appellant's logic, R.C. 2151.23 did not exist on November 20, 2007, when the court made a dispositional ruling in his delinquency case. R.C. 2151.23 gives the juvenile court jurisdiction over delinquency matters; therefore, according to appellant, the court was without authority to rule in his case. Likewise, appellant's logic also dictates that R.C. 2907.02 did not exist between July 1, 2007 and January 1, 2008. R.C. 2907.02 makes rape a criminal offense; therefore, according to appellant, rape would not be a crime during this six-month period.

The Third District Court of Appeals of Ohio recently addressed this issue in *In the matter of Darian J. Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234. The *Smith* court reached the same conclusion that we do in the instant case, albeit based on different reasoning. *Smith* stands for the proposition that while Section 4 makes S.B. 10 effective on July 1, 2007, "this does not change the effective dates contained in each individual section for the enactment and repeal of individual provisions." Therefore, the *Smith* court concludes, the repeal and amendments were effective on January 1, 2008. The *Smith* court reasons that S.B. 10 is clear as written, and the "plain statutory language must control."

We respectfully decline to adopt the Third District's reasoning and instead hold that Section 4 of S.B. 10 creates ambiguity regarding the effective dates of

the old versus the new laws. In conclusion, to avoid an unreasonable result, we must rely on legislative intent and read S.B. 10 to mean that the "repealed" and "amended" portions of the numerous statutes affected registration, notification, etc., of classified sex offenders. The legislation had no intention to repeal or amend the substantive elements of offenses such as rape or kidnapping, or the court's authority to oversee the criminal justice system. The juvenile court's jurisdiction over delinquent minors remained uninterrupted, and appellant's first assignment of error is overruled.

III.

In appellant's second assignment of error, he argues that "the juvenile court violated E.L.'s right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section Sixteen of the Ohio Constitution and Juv.R. 35(B), when it failed to follow the requirements of Juv.R. 35(B)." Specifically, appellant argues that the court failed to notify him of the specific terms of his probation in its May 31, 2007 order. Appellant additionally argues that, consequently, the court erred when it revoked his probation and found that he "committed very specific violations of a nonspecific court order."

Juv.R. 35(B) governs probation revocation for juvenile delinquents, and it reads: "The court shall not revoke probation except after a hearing at which the

child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv.R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified." The purpose behind Juv.R. 35 is "to give the minor notice as to why a previously suspended commitment is ordered [reinstated]." *In re Royal* (1999), 132 Ohio App.3d 496, 508.

In the instant case, on November 20, 2007, the court held a hearing at which appellant was present. During the hearing, appellant was notified that the grounds on which his probation revocation was proposed were based on him not cooperating with the rules and expectations at Kokomo. In detail, he "is currently on behavior level 0 of 5. He is non-compliant and ignores staff re-direction. [He] refused to follow classroom rules and disrupts [by] walking out without permission. [He] does not engage in group therapy and chooses to read his personal material instead of assigned material. Kokomo is asking for [his] removal, in direct defiance of said Court-order." The court found that these allegations were proven beyond a reasonable doubt. Additionally, appellant was represented by counsel at the proceeding.

Appellant further argues that the May 31, 2007 order which placed him

at Kokomo "did not specify what behavior [he] was to exhibit" while at the treatment center. Appellant's original DYS sentence was suspended and it was agreed upon that he would participate in a treatment program in lieu of being committed to a detention center. Therefore, it is reasonable to believe that appellant's failure to be welcome at the treatment or rehabilitation facility could result in the reinstatement of his suspended sentence. See *In re P.F.*, Lorain App. No. 07CA009099, 2007-Ohio-4913 (noting that the delinquent's behavior at a residential treatment facility resulted in the court imposing his previously suspended commitment to DYS).

Appellant's second assignment of error is overruled.

IV.

In appellant's third and final assignment of error, he argues that his "admission to violation of court order was not knowing, voluntary, and intelligent, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Sections 10 and 16, Article I of the Ohio Constitution, and Juvenile Rule 29."

Juv.R. 29 governs how a court must accept an admission by a juvenile and is somewhat similar to Crim.R. 11's mandates on how a court must accept a guilty plea from an adult offender. However, Juv.R. 29 does not apply to juvenile probation revocation hearings. The Ninth District Court of Appeals of Ohio

determined that "at a hearing for a probation violation Juv.R. 35(B) governs and does not impose a requirement upon the juvenile court to inform the juvenile that he or she is waiving certain rights." *In re Motley* (1996), 110 Ohio App.3d 641, 642. This court agreed with *Motley* and ruled that "Juv.R. 29 standards for entering admissions do not apply to probation revocation proceedings under Juv.R. 35(B)." *In re Bennett* (June 12, 1997), Cuyahoga App. No. 71121.

Currently, this issue is pending before the Ohio Supreme Court, which granted a discretionary appeal and accepted a certified conflict. See, e.g., *In re L.A.B.*, 114 Ohio St.3d 1478, 2007-Ohio-3699.

Nonetheless, as the instant case concerns a probation revocation hearing, we follow *Motley* and *Bennett*, supra, and hold that our analysis of Juv.R. 35 in appellant's second assignment of error applies to this probation revocation hearing. Accordingly, appellant's third and final assignment of error is overruled.

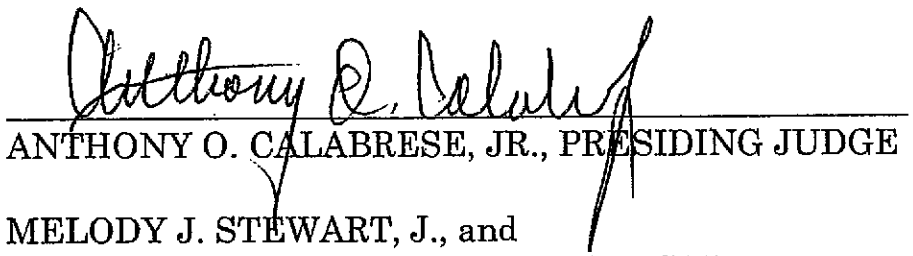
Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



ANTHONY O. CALABRESE, JR., PRESIDING JUDGE

MELODY J. STEWART, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR