

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellant,

v.

DAVON WINN,

Appellee.

:
: Case No. 2007-1842
:
: On Appeal from the Montgomery County
: Court of Appeals,
: Second Appellate District
:
: Case No. 21710
:

MEMORANDUM IN OPPOSITION OF RECONSIDERATION

OFFICE OF THE OHIO PUBLIC
DEFENDER

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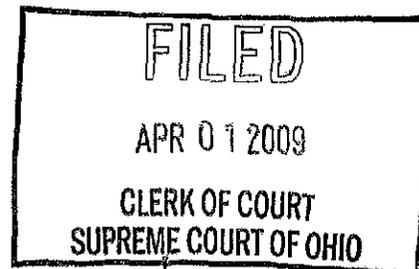
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MEMORANDUM IN OPPOSITION OF RECONSIDERATION

The test generally applied to a 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. *Matthews v. Matthews* (February 25, 1982), 10th Dist. No. 80AP-841. This Court has cited *Matthews* approvingly with regard to the standard to be applied to a motion for reconsideration. *Oberlin Manor, Ltd. v. Lorain County Board of Revision et al.*, 69 Ohio St.3d 1, 1994-Ohio-500. Furthermore, Sup. Ct. Prac.R. XI, §1(A) states that a motion for reconsideration "shall not constitute a reargument of the case" In the present case, the State's motion for reconsideration fails to meet those requirements, and as a result, that motion should be denied.

The State's motion for reconsideration does not point to an obvious error in this Court's decision in *State v. Winn*, Slip Opinion No. 2009-Ohio-1059, nor does it raise an issue that was not considered, or was inadequately considered, in this Court's decision. The State's motion merely points positively to the dissenting opinion in *Winn*. (March 27, 2009 Motion to Reconsider, pp. 1-2). And the State's motion only reasserts its argument, contained in its original briefing, regarding the significance of several hypothetical factual situations. (March 27, 2009 Motion to Reconsider, p. 2), (April 15, 2008 Brief of State of Ohio, p. 6). The majority of this Court considered, and rejected, the applicability of those hypothetical scenarios to the question of whether aggravated robbery and kidnapping are allied offenses of similar import under R.C. 2941.25 and this Court's precedent. *Winn*, at ¶24.

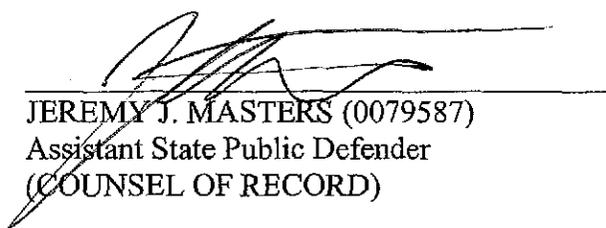
The State's discussion of the dissenting opinion in *Winn* serves to highlight the fact that the State's motion fails to meet the *Matthews* test, which requires that the moving party point to an issue that was either not considered, or not sufficiently considered, by the court. The fact that

the State's argument is essentially contained in the lengthy dissent in *Winn* indicates that this Court *did* fully consider those arguments, but that the majority of this Court ultimately held otherwise.

Contrary to the State's and the dissent's assertions, this Court's opinion in *Winn* did not erroneously create a new test for determining when a set of given offenses constitute allied offenses of similar import. This Court's opinion in *Winn* correctly applied its previous decisions in *State v. Logan* (1979), 60 Ohio St.2d 126, *State v. Jenkins* (1984), 15 Ohio St.3d 164, *State v. Fears*, 86 Ohio St.3d 329, 1999-Ohio-111, *State v. Rance*, 85 Ohio St.3d 632, 1999-Ohio-291, and *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625. And this Court reiterated its thirty-year precedent that aggravated robbery and kidnapping are allied offenses of similar import under R.C. 2941.25. *Winn*, at ¶22. Therefore, Mr. Winn requests that this Court deny the State's motion for reconsideration.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



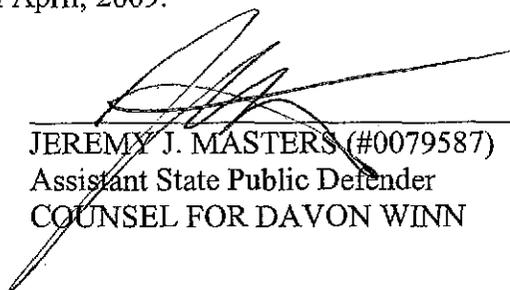
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum in Opposition of Reconsideration** was forwarded by regular U.S. Mail to Jill R. Sink, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, 5th Floor, Courts Building, 301 West Third Street, Dayton, Ohio, 45422, this 1st day of April, 2009.



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