

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	
)	Case No. 2009-1149
Plaintiff-Appellant,)	
)	On Appeal from the
)	Lake County Court of Appeals
-vs.-)	Eleventh Appellate District.
)	
)	
JAMES LESLIE DYE,)	Court of Appeals Case No. 2008-L-106
)	
Defendant-Appellee.)	
)	

MEMORANDUM IN RESPONSE TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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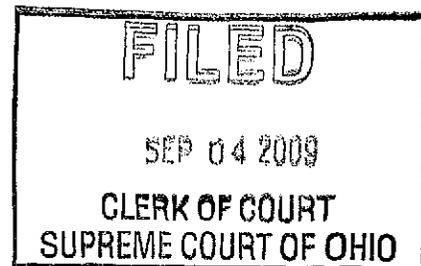


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1. The Eleventh District did not “pervert” this Court’s precedent but simply held that the facts of this case satisfied the test enumerated by this Court in *State v. Carpenter* (1993), 68 Ohio St.3d 58, 1993-Ohio-226, 623 N.E.2d 66, therefore requiring that Mr. Dye’s sentence be vacated.
2. The Eleventh District correctly applied the de novo standard of review in analyzing the trial court’s denial of Mr. Dye’s Motion to Dismiss the Indictment. Contrary to the Appellee’s statement that a majority of the appellate courts defer to the trial court’s factual findings on review of a motion to dismiss, at least seven appellate districts have held that the deferential de novo standard applies. The Appellee’s attempt to apply the standard of review applicable to a motion to suppress is entirely inappropriate here. In any event, many of the facts that were analyzed by the Eleventh District were the same facts that both parties had earlier stipulated to prior to Mr. Dye’s plea. The purpose of the joint stipulated factual statement was to create a detailed record for the Eleventh District’s review.
3. Mr. Dye’s second assignment of error concerned sentencing, specifically, which aggravated vehicular homicide statute should have applied at sentencing. Because the Eleventh District vacated Mr. Dye’s sentence in its entirety, Mr. Dye’s second assignment of error became moot. This Court should not render an advisory opinion on this matter.

APPELLEE'S MEMORANDUM IN RESPONSE

APPELLEE'S RESPONSE TO APPELLANT'S PROPOSITION OF LAW NO.1

THE ELEVENTH DISTRICT CORRECTLY APPLIED *CARPENTER* HERE IN ACCORDANCE WITH THIS COURT'S PRECEDENT AND SUBSEQUENT DECISIONS IN *STATE V. ZIMA* AND *STATE V. HARRISON*.

The Appellant accuses the Eleventh District of “perverting” and “rendering meaningless” this Court’s decision in *State v. Carpenter* (1993), 68 Ohio St.3d 59, 623 N.E.2d 66. (See Appellant’s Memorandum, p.6). Specifically, the Appellant asserts that the Eleventh District’s decision applied *Carpenter* to all cases where there is a plea of guilty, regardless of whether the plea was negotiated. (See Appellant’s Memorandum, p.6). In addition, the Appellant falsely asserts that *Carpenter* only applies when there is a negotiated plea of guilty to a lesser offense than the charges in the original indictment. (See Appellant’s Memorandum p.6).

The Appellant is attempting to create smoke screens here to divert this Court’s attention from the true essence of *Carpenter’s* holding. The Appellant’s arguments are directly at odds with the essence of the *Carpenter* decision and this Court’s subsequent decisions interpreting *Carpenter*.

In *State v. Zima* (2004), 102 Ohio St.3d 61, this Court stated the underlying purpose of *Carpenter* as follows, “the essence of this holding is to require the state to reserve its right to file additional charges based upon the contingency of the death of the alleged victim.” *Zima*, 102 Ohio St.3d 61, 63. In *Zima*, it was noted that the defendant in *Carpenter* reasonably believed that by giving up his rights that may have resulted in an acquittal and entering a plea, the defendant reasonably anticipated that the incident was terminated and that he would not be called on to account for the incident again. *Id.* at 64. citing *Carpenter*, 68 Ohio St.3d 59, 61-62.

By the defendant entering a guilty plea, this Court recognized an implied promise on the part of the state not to prosecute the defendant for any further offenses that may arise out of the

same incident. *Zima*, 102 Ohio St.3d 61,64. In *Zima*, this Court also found it critical that the defendant's expectation that his guilty plea would terminate the incident was inherently justified because the prosecutor and the court had jurisdiction over all the charges, both actual and potential, and because the negotiated guilty plea included the dismissal of all pending charges. *Zima*, 102 Ohio St.3d 64.

Pursuant to *Carpenter* and *Zima*, the keystone of any analysis under *Carpenter* or *Zima* centers on the defendant's expectations at the time of the earlier plea. Here, the circumstances surrounding Mr. Dye's earlier negotiated plea in 1999 clearly illustrate that he had a reasonable expectation that his plea of guilty would forever terminate the incident.

The Eleventh District found that Mr. Dye entered into a negotiated plea in 1999. In 1999, Mr. Dye was charged with aggravated vehicular assault and driving under the influence. The aggravated vehicular assault charge carried three specifications. At the time of the plea, Mr. Dye signed a document that was provided to him by the Appellant that was self-described as a "plea agreement." In this "plea agreement," the second two specifications to the aggravated vehicular assault charge were not included.

Although the Appellant adamantly asserts that there was no negotiated plea here, the Appellant has never offered any explanation whatsoever as to why Mr. Dye signed a document provided by the Appellant that is described as a "plea agreement." The representations made by the Appellant on the record also evidence a negotiated plea.

When Mr. Dye entered his guilty plea in 1999, the trial court was prepared to immediately remand him to custody. The Appellant informed the trial court that an *agreement* had been made in which Mr. Dye would be permitted to continue his bond pending sentencing. (emphasis added). This Court and the Eleventh District have recognized that an agreement by the

state not to object to the continuance of a personal recognizance bond pending sentencing can be a term of a plea agreement. *State v. Harrison* (2009), 2009 WL 2341829, 2009-Ohio-3547; *State v. Wendt*, 1993 WL 545125, *1, unreported (11th Dist., Portage, December 3, 1993).

In addition, as noted by this Court in *Zima* as a critical issue in analyzing *Carpenter*, the prosecutor and trial court here were the same at all stages. The Appellant entered into a plea agreement with Mr. Dye in 1999. Mr. Dye signed a document provided by the Appellant labeled as a “plea agreement.” In exchange for Mr. Dye’s plea, the Appellant also agreed to request that bond be continued pending sentencing. The Appellant also received the significant benefit of securing a conviction while also averting the potential pitfalls and uncertainties that inherently surround a jury trial. To his detriment, Mr. Dye relinquished substantial constitutional rights that may have resulted in an acquittal.

Here, the Eleventh District did not extend the holding of *Carpenter* to all guilty pleas, as the Appellant suggests. In actuality, the Eleventh District simply applied *Carpenter* methodically to the facts of this case and held that Mr. Dye’s situation fell within the parameters of *Carpenter*. Here, the Eleventh District found that 1) there was a negotiated plea 2) the victim’s subsequent death was foreseeable at the time of the original plea and 3) the state failed to reserve on the record the right to bring subsequent criminal charges at the time of the original plea, therefore satisfying the three part test provided by *Carpenter*.

Considering that the Eleventh District factually found that there was a negotiated plea, the Appellant’s argument that the Eleventh District “perverted” *Carpenter* by applying it to all guilty pleas is mystifying, without merit, and ignores the true analysis of *Carpenter*: whether the criminal defendant has a reasonable expectation that his guilty plea is forever terminating the incident.

The Appellant also argues that the Eleventh District “perverted” *Carpenter* because 1) Mr. Dye pled to the charges in the original indictment in 1999, not a lesser offense of the charges in the indictment and 2) pleading guilty to an indictment is not a negotiated plea. The Appellant’s argument has already been rejected by this Court.

In *State v. Harrison* (2009), 2009 WL 2341829, 2009-Ohio-3547, this Court recently affirmatively applied *Carpenter* to a case where 1) the defendant reached a negotiated plea by agreeing to plead to the original charges in a bill of information and 2) the defendant did not plead to a lesser offense of the original charges. Therefore, the Appellant’s argument that the Eleventh District “perverted” *Carpenter* must fail as this Court has already applied *Carpenter* to situations where a defendant pleads to the original charges and not a lesser offense of the original charges.

Moreover, this Court affirmatively applied *Carpenter* to a situation where the defendant, by a negotiated plea agreement, pled guilty before even being indicted, directly refuting the Appellant’s arguments. In *Harrison*, this Court applied *Carpenter* to a case where the subsequent charges were not even homicide charges.

Here, Mr. Dye’s case is close, if not identical to the defendant in *Harrison*. Mr. Dye also pled to the original charges in the indictment, however, two specifications were dismissed from the original indictment. Like the agreement in *Harrison*, Mr. Dye also signed a “plea agreement” and also reached a similar negotiated agreement with the Appellant where the Appellant would recommend the continuation of bond pending sentencing. In *Harrison*, however, this Court applied *Carpenter* to a subsequent prosecution involving various felonies, none of them alleging homicide. Here, Mr. Dye was subsequently charged with homicide, *Carpenter* must apply.

In *Harrison*, the defendant was charged with six counts in a bill of information. *Harrison*, at *1. The defendant signed a plea agreement in which the state 1) agreed not to object to a presentence investigation 2) agreed not to object to the setting of bond and 3) agreed to make no recommendation on sentencing. *Id.* at *1. The defendant then agreed to plead to the *original* six counts in the bill of information. *Id.* at *1. (emphasis added). On the same day the defendant executed the plea agreement, the defendant entered a guilty plea and was found guilty on all six counts by the trial court. *Id.* at *1. The defendant was sentenced to one year in prison. *Id.*

After serving the one year sentence, as a result of an error by the trial court in sentencing, the defendant ultimately withdrew his plea. *Id.* at *3. The state renewed the same charges, along with additional new charges, all arising from the earlier incident to which the defendant had originally pled guilty. *Id.* at *4. The defendant was convicted on 18 counts at a subsequent jury trial. *Id.* The defendant appealed the state's ability to launch a second prosecution based on the earlier incident to which the defendant had already pled guilty. *Id.* at *5. This Court agreed, holding that the plea agreement, guilty plea, and completed sentence in the first prosecution ended the state's case against the defendant. *Id.*

In *Harrison*, this Court looked to *Carpenter* and *Zima*, stating, "The key to the continued validity of the plea agreement in *Carpenter* was the *reasonableness of the defendant's expectation that the prosecution would end...and terminate any future charges based on the same incident.*" *Id.* at *7. (emphasis added) The Court noted again that under a *Carpenter* analysis, when a defendant enters a guilty plea, the defendant has a reasonable expectation of closure when the prosecutor and court have jurisdiction over all the charges, both actual and potential, and the negotiated plea includes the dismissal of all pending charges. *Id.* at *7, citing *Zima* at ¶ 12.

The *Harrison* Court further examined *Zima*, specifically focusing on *State v. Lordan* (1976), 116 N.H. 479, 363 A.2d 201, as an appropriate example of a “plea agreement closing the door on any further action against the defendants arising from the same events.” *Harrison*, 2009 WL 2341829 at *8. The New Hampshire Supreme Court stated, “The submission and acceptance of the defendant’s pleas to the first three indictments must have contemplated that no further charges would be brought, for the defendant by his pleas deprived himself of any meaningful defense to the present charges.” *Harrison*, 2009 WL 2341829, citing *Lordan*, 116 N.H. 479, 481.

The New Hampshire Supreme Court held:

Where the defendant commits several offenses in a single transaction and the prosecutor has knowledge of and jurisdiction over all these offenses and the defendant disposes of all charges then pending by a guilty plea to one or more of the charges, the prosecutor may not prefer additional charges arising from the same transaction unless either he has given notice on the record at the time of the plea of the possibility that he may prefer further charges or the defendant otherwise knows or ought reasonably to expect that further charges may be brought.

Harrison, 2009 WL 2341829 at *9, citing *Lordan*, 116 N.H. at 482, 363 A.2d 201.

This Court noted that *Harrison* was similar to the situation in *Lordan* in that the defendant had 1) entered a negotiated plea agreement 2) the defendant agreed to waive prosecution by indictment to be prosecuted by the bill of information 3) the defendant agreed to plead guilty to all the counts set forth in the bill of information and 4) the prosecutor and court had jurisdiction over all the actual and potential charges. *Harrison*, 2009 WL 2341829 at *9.

This Court held that *Carpenter* applied to bar the second prosecution, stating:

The second prosecution as whole was invalid because *Harrison* had a reasonable expectation that he could not be called onto to account further on any charges arising out the investigation that led to the original prosecution. As in *Carpenter*, this expectation was entirely reasonable and justified, and the prosecutor was aware of this expectation at the time of the plea agreement.

Harrison, 2009 WL 2341829 at *10. Based on *Carpenter*, this Court held that there should have never been a second prosecution. *Harrison*, 2009 WL 2341829 at *10.

--- Here, pursuant to *Carpenter*, ~~*Zima*~~, ~~*Harrison*~~, and ~~*Lordan*~~, there should have never been a second prosecution of Mr. Dye. Because the cornerstone of any analysis under *Carpenter* is the reasonableness of the defendant's expectation, the totality of the circumstances here illustrates that Mr. Dye had a very reasonable expectation that by entering his plea, he would achieve closure, shutting the door to any subsequent prosecutions based on the same conduct.

First, similar to *Lordan* and *Harrison*, Mr. Dye believed that his guilty plea would forever terminate the incident because his admissions of guilt to the underlying criminal charges basically deprived himself of any meaningful defense to the subsequent homicide charge. In 1999, when Mr. Dye entered a guilty plea in which he admitted that he was 1) driving under the influence and 2) that as a proximate result of being impaired, Mr. Dye struck the victim, Mr. Dye essentially admitted the underlying facts and conduct that subsequently led to the homicide charge.

At the 1999 plea, Mr. Dye relinquished several constitutional rights, including his right to trial, his right to testify, his right to call witnesses on his behalf, and his right to compel the Appellant to prove every element of the alleged offenses beyond a reasonable doubt. By pleading guilty, the Appellant secured a conviction while also severely crippling any meaningful defense that Mr. Dye could assert against the subsequent homicide charges. This is striking evidence that Mr. Dye reasonably believed he was terminating the incident forever when he entered his plea in 1999.

In addition, the same prosecutor and trial court had jurisdiction over all charges, both actual and potential. In interpreting *Carpenter*, this Court has noted on multiple occasions that a

key factor in determining whether a defendant's expectation of closure is reasonable is whether the same prosecutor and trial court have jurisdiction over all charges, both actual and potential.

Here, when Mr. Dye entered his guilty plea in 1999, the Appellant did not make any reservation on the record of the right to possibly bring homicide charges against Mr. Dye should the victim later succumb to his injuries. By the Appellant's failure to make any reservation of rights whatsoever, Mr. Dye had was entirely reasonable in believing his 1999 plea would forever terminate the incident.

Finally, Mr. Dye's plea negotiations and resultant negotiated plea with the Appellant solidifies that Mr. Dye had a reasonable expectation that his 1999 guilty plea would forever terminate the incident. In exchange for his guilty plea, the Appellant 1) did not make a reservation on the record of the right to bring possible future charges, therefore waiving such right 2) in exchange for his guilty plea, the Appellant agreed to recommend to the judge that Mr. Dye's bond continue pending sentencing 3) the Appellant provided Mr. Dye with a written document defined as a "plea agreement," and 4) the Appellant's document that is self described as a "plea agreement" makes no mention in writing whatsoever of the right to bring future charges stemming from the original conduct.

For the Appellant to continue to argue that it acted appropriately in bringing subsequent homicide charges against Mr. Dye constitutes blind neglect to the precedent established by this Court.

Simply put, the Eleventh District did not "pervert," "render meaningless" extend, or misapply *Carpenter* here. The Eleventh District simply found that 1) the victim's death was foreseeable at the time of Mr. Dye's guilty plea 2) there was a negotiated guilty plea and 3) the Appellant failed to reserve the right bring additional criminal charges against Mr. Dye at the time

of the 1999 plea. The Eleventh District correctly applied the facts here and found that the necessary elements were present to trigger the application of *Carpenter's* prohibition against subsequent homicide charges.

The Eleventh District also correctly recognized that the pivotal question in any *Carpenter* analysis revolves around whether the defendant had a reasonable expectation of closure at the time of the original guilty plea. Here, the Eleventh District followed *Carpenter* and *Zima* by noting the importance of the fact that the Appellant and same trial court had jurisdiction over all charges, actual and potential. The Eleventh District also noted when the Appellant failed to reserve the right to bring additional charges and Mr. Dye entered his guilty plea, the Appellant made an implied promise not to further prosecute the defendant for further offenses that might arise out the incident.

This case does not present a felony involving a case of public or great general interest. Mr. Dye's situation simply falls within the purview of *Carpenter* and subsequent decisions interpreting *Carpenter*. It was the Appellant's responsibility, not Mr. Dye's, to make a simple reservation on the record of the right to bring future homicide charges. Mr. Dye's liberty should not be compromised because of the Appellant's own neglect and ignorance of this Court's precedent.

Following *Carpenter*, *Zima*, *Harrison*, and *Lordan*, the Eleventh District correctly applied *Carpenter* to Mr. Dye's situation. This Court should deny jurisdiction here as the Eleventh District's decision fully comports with and is entirely within the bounds of this Court's decisions in *Carpenter*, *Zima*, and *Harrison*.

APPELLEE'S RESPONSE TO PROPOSITION OF LAW NO.II

THE ELEVENTH DISTRICT APPLIED THE CORRECT STANDARD OF REVIEW HERE, AS AT LEAST SEVEN DISTRICTS HAVE HELD THAT A MOTION TO DISMISS AN INDICTMENT IS REVIEWED DE NOVO.

At least seven separate appellate districts, including the Eleventh District, have all held that appellate review of a motion to dismiss an indictment is a de novo review. *Akron v. Molyneaux*, 144 Ohio App.3d 421, 426, 760 N.E.2d 461(9th Dist., Summit, 2001); *State v. Benton*, 136 Ohio App.3d 801, 737 N.E.2d 1046 (6th Cir, Ottawa, March 17, 2000); *State v. Hubbard*, 12th Dist. No CA 2004-12-018, 2005-Ohio-6425; *State v. Palivoda*, 2006 WL 3544825 (11th Dist., Ashtabula, December 8, 2006); *State v. Preztak*, 181 Ohio App.3d 106, 907 N.E.2d 1254 (8th Dist., Cuyahoga, February 12, 2009); *State v. Merritt*, unreported, *2, 2007 WL 339135 (5th Dist., Richland, February 5, 2007); *Whitehall v. Khoury*, 10th Dist. No. 07AP-711, 2008-Ohio-1376, 2008 WL 787670 at ¶ 7. A de novo standard of review does not give deference to the determination of the trial court. *Akron v. Frazier* (2001), 142 Ohio App.3d 718, 721, 756 N.E.2d 1258.

The Appellant is suggesting that the Eleventh District *must* defer to the trial court's findings and apply a hybrid standard of review by giving deference to the trial court's factual findings and then applying the law of the case to the facts under a de novo standard of review. (emphasis added). The Appellant is essentially arguing that the standard of review for a motion to suppress should apply here.

An appellate court's review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside* (2003), 100 Ohio St.3d 152, 797 N.E.2d 71. The trial court assumes the role of trier of fact and is, therefore, in the best position to resolve factual questions and evaluate witness credibility. *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972.

On appellate review of a motion to suppress, the appellate court independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts meet the appropriate legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539.

Here, the hearing before the trial court on Mr. Dye's motion to dismiss the indictment cannot be considered a motion to suppress. Mr. Dye was not attempting to suppress or prohibit the Appellant from presenting certain evidence at trial, Mr. Dye simply challenged the right of the Appellant to commence a second prosecution.

In addition, the hearing on the motion to dismiss was an oral argument hearing with no presentation of witnesses by either party. The trial court did not have to evaluate the credibility of any witnesses or determine the veracity of any testimony. The trial court rendered a decision on the motion to dismiss the indictment based on 1) the transcripts of the plea and sentencing hearings in the 1999 case 2) the motion to dismiss the indictment and the Appellant's opposition brief and 3) the oral arguments of the parties. The Eleventh District was provided with the exact same transcripts, pleadings, and documents that were utilized by the trial court in ruling on the motion to dismiss the indictment.

In fact, before Mr. Dye entered his plea to the homicide charge, the Appellant and Mr. Dye submitted a joint stipulated factual statement prior to Mr. Dye's no contest plea. The Appellant and Mr. Dye agreed to enter into a joint stipulated factual statement solely for the purpose of creating a detailed record for the Eleventh District's review.

In this joint factual statement, the Appellant agreed that at the time of Mr. Dye's 1999 plea, the Appellant had recommended the dismissal of the specifications to the aggravated vehicular assault charge. The Appellant agreed in the joint factual statement that at the time of

Mr. Dye's 1999 plea, the Appellant had agreed to recommend the continuance of bond pending sentencing. The Appellant also agreed to a report in the joint factual statement that stated that it was foreseeable that the victim would likely die of complications of his quadriplegia. The Appellant essentially agreed to stipulate to the critical facts that the Eleventh District analyzed pursuant to *Carpenter*.

The Appellant reliance on the Fourth District for the appropriate standard of review is misplaced. In *State v. Certain*, 180 Ohio App.3d 457, 461 905 N.E.2d 1259, 1262 (4th Dist., Ross, Jan. 8, 2009), the Fourth District held that when the defendant and state entered into a stipulation of facts, the appellate court's role was limited to conducting a de novo review of the trial court's application of the law to these stipulated facts. The Fourth District's decision in *Certain* refutes the case law asserted by the Appellant in regards to the appropriate standard of review.

The Eleventh District applied the correct standard of review here. The Appellant cannot in one instance enter into a joint stipulation of facts and then subsequently dispute the Eleventh District's interpretation of these facts simply because the facts were not interpreted in the Appellant's favor. Therefore, this Court should deny jurisdiction on the basis that the Eleventh District properly applied a de novo standard of review.

APPELLEE'S RESPONSE TO APPELLANT'S PROPOSITION OF LAW NO.III

THE APPELLANT'S REQUEST FOR AN ADVISORY OPINION IS CONTRARY TO THIS COURT'S GENERAL RULE OF AVOIDING THE ISSUANCE OF ADVISORY OPINIONS.

The Appellee's second assignment of error concerned which version of the aggravated vehicular homicide statute should apply to Mr. Dye for purposes of sentencing. Because the

Eleventh District reversed Mr. Dye's conviction and totally vacated Mr. Dye's sentence, the Eleventh District found Mr. Dye's second assignment of error to be moot.

It is the duty of appellate courts to decide actual controversies by a judgment which can be carried into effect. *Knutty v. Wallace*, 100 Ohio App.3d 555, 654 N.E.2d 420 (10th Dist., Franklin, Jan. 31, 1995). Where a decision cannot be made effectual by a judgment, a court should not express an opinion upon that issue and the issue becomes moot. *Knutty*, 654 N.E.2d at 422 citing *Miner v. Witt* (1910), 82 Ohio St.3d 71, 551 N.E.2d 128.

The Appellant is essentially requesting an advisory opinion regarding Mr. Dye's second assignment of error. This Court has stated, "[t]he duty of this court, as of every judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *State ex rel Eliza Jennings Inc. v. Noble* (1990), 49 Ohio St.3d 71, 74, 551 N.E.2d 128,131. In regards to advisory opinions, this Court has noted its well-settled precedent to avoid indulging in the issuance of advisory opinions. *State ex. rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections* (2000), 90 Ohio St.3d 238, 242, 736 N.E.2d 893, *Egan v. Natl Distillers & Chem. Corp.* (1986), 25 Ohio St.3d 176, 495 N.E.2d 904.

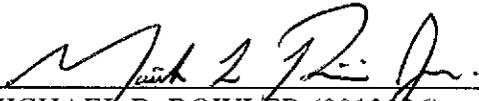
Here, the Appellant is requesting an advisory opinion on a sentencing issue that the Eleventh District determined to be moot when it vacated Mr. Dye's sentence. Therefore, this Court should deny jurisdiction on the Appellant's request for an advisory opinion.

CONCLUSION

For the reasons discussed above, because this case does not involve matters of public and great interest and does not present any substantial constitutional question, the Appellee

respectfully requests that this Honorable Court deny jurisdiction and allow the Eleventh District Court of Appeals' decision to stand.

Respectfully Submitted,

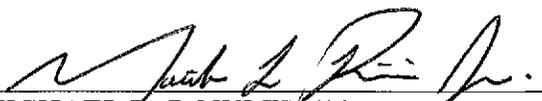

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above Memorandum in Opposition to Jurisdiction was sent by ordinary U.S. mail to counsel for the Appellant, Teri Daniel, Lake County Prosecutor's Office, 105 Main Street, P.O. Box 490, Painesville, Ohio 44077.

Respectfully Submitted,


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