

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2008-1781
Plaintiff-Appellee,	:	
	:	On Appeal from the Greene County Court
v.	:	of Appeals, Second Appellate District
	:	Case No. 07-CA-47
ANTWAUN SMITH,	:	
	:	
Defendant-Appellant.	:	

MEMORANDUM IN OPPOSITION TO RECONSIDERATION

OFFICE OF THE OHIO PUBLIC DEFENDER

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 JAN 04 2010
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 SUPREME COURT OF OHIO

MEMORANDUM IN OPPOSITION TO RECONSIDERATION

“A motion for reconsideration * * * shall not constitute a reargument of the case * * *.”
State ex rel. Gross v. Indus. Comm'n of Ohio, 115 Ohio St.3d 249, 2007-Ohio-4916, ¶ 78
(O'Connor, J., dissenting, and quoting Sup. Ct. Prac.R. XI, §1(A)). The State's reconsideration motion is not merely a reargument of its case, but is literally a re-argument thereof, and should be denied.

The reconsideration motion itself observes that the State argued in its merit brief that reversal was not required even if this Court ruled against the State on the Fourth Amendment issue presented by this case. Motion for Reconsideration, p. 1. This fact alone is sufficient basis to deny reconsideration, under the plain language of the Court's reconsideration rule.

But the State also explicitly argued the very same point at oral argument, and—demonstrating that the State had the Court's attention at that moment—there was a clarifying question posed by Justice Pfeifer regarding the matter. See Sept. 15, 2009, Oral Argument, at 31:17-33:30, www.ohiochannel.org/media_archives/supreme_court/media.cfm?file_id=122113. The motion for reconsideration is merely a third attempt to argue this claim, and the filing thereof does not comport with the letter or spirit of Rule XI.

For the foregoing reasons, Mr. Smith respectfully asks this Court to deny the State's motion for reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Opposition to Reconsideration was forwarded by regular U.S. Mail to Elizabeth Ellis, Assistant Greene County Prosecutor, 61 Greene Street, 2nd Floor, Xenia, Ohio, 45385, this 4th day of January, 2010.



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