

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2008-2047
Plaintiff-Appellant,	:	
v.	:	On Appeal from the Hamilton County Court of Appeals First Appellate District
TOBY PALMER,	:	
Defendant-Appellee.	:	Court of Appeals Case No. C010583

**Motion of the Ohio Public Defender for Leave to Withdraw and of
Appellee Toby Palmer for Appointment of Counsel
(Expedited Consideration Requested)**

Joseph T. Deters
Hamilton County Prosecutor

Office of the Ohio Public Defender

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(Counsel of Record)

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Counsel for Defendant-Appellee

FILED
FEB 02 2010
CLERK OF COURT SUPREME COURT OF OHIO

**Motion of the Ohio Public Defender for Leave to Withdraw and of
Appellee Toby Palmer for Appointment of Counsel
(Expedited Consideration Requested)**

Appellee Toby Palmer asks this Court to appoint attorney Lynn Maro for Mr. Palmer and to grant the Ohio Public Defender and Assistant Public Defender Stephen Hardwick leave to withdraw. The decision to vacate the court of appeals decision because the trial court's entry did not properly impose postrelease control puts the Office of the Ohio Public Defender in the awkward position of having clients with interests that would require the Office to argue both sides of an issue in the same court at the same time.

Mr. Palmer has a good faith argument that this Court should reconsider its decision to vacate the decision of the court of appeals. The matter was not briefed, and the dispositive issue is currently being briefed in State v. Fischer, Case No. 2009-897. So, at a minimum, he has a strong argument that this case should be held for the decision in Fischer.

The dispositive issue is whether an appeal from a void trial court entry is itself void. In this case, the Court vacated the court of appeals decision because the trial court did not properly impose postrelease control. State v. Palmer, Slip Opinion No. 2010-Ohio-224. Because the court of appeals in this case made findings favorable to Mr. Palmer, it is in his interests that the opinion not be vacated. However, in Fischer, a different Assistant State Public Defender is arguing that an appeal from a void judgment is itself void. In Fischer, the State, represented by a prosecuting attorney from a different

county, is arguing the position that Mr. Palmer should make in this case, namely, that an appeal from a void judgment is not itself void.

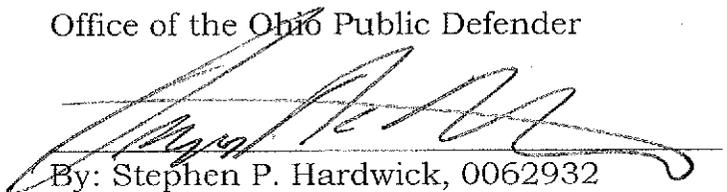
Counsel was not aware of the tension between the two cases until the day of oral argument. Five minutes before oral argument in Mr. Palmer's case, the State forthrightly informed undersigned counsel of the potential postrelease control problem. Now that Mr. Palmer needs to advocate a position opposed to the position that Mr. Fischer is making in this Court, he deserves counsel who can argue his position without regard for any other client.

Further, attorney Lynn Maro has agreed to accept the appointment. Ms. Maro has a private practice in Mahoning County. She is an experienced criminal defense lawyer. She has made appearances in twelve cases in this Court, and her name is on at least thirty-eight decisions in the court of appeals. Undersigned counsel has personally observed her work in the past, and he is confident that Ms. Maro will provide Mr. Palmer with excellent representation.

Finally, because the deadline for filing a motion for reconsideration is only ten days from today, Mr. Palmer respectfully asks for expedited consideration of this motion.

Respectfully submitted,

Office of the Ohio Public Defender



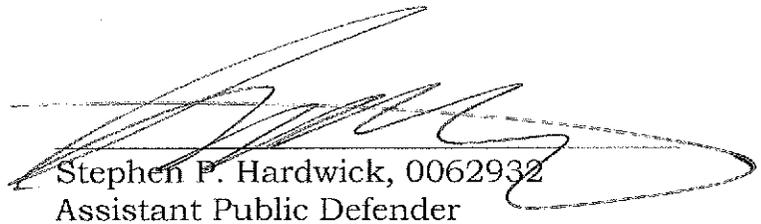
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Certification of Service

This is to certify that a copy of the foregoing was forwarded by electronic mail Scott Heenan, Assistant Hamilton County Prosecutor, Suite 4000, 230 E. 9th Street, Cincinnati, Ohio 45202, Scott.Heenan@hcpros.org, this 2nd day of February, 2010.



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