

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

CASE NOS. 2007-1261
2007-2425

Appellee,

vs.

DONALD J. KETTERER,

Appellant.

*On Appeal from the Court of Common Pleas
of Butler County, Ohio
CR2003-03-0309*

MOTION IN OPPOSITION OF MOTION FOR RECONSIDERATION

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MOTION IN OPPOSITION

Appellee, the State of Ohio, hereby gives notice of its opposition to Appellant's 'Motion For Reconsideration.' Appellant's motion should be denied because this Honorable Court's decision to impose the statutory remedy in R.C. 2929.191 due to the lower court's failure to properly impose postrelease control was not an obvious error. Further, this Honorable Court did consider all issues raised by Appellant in its decision rendered on August 25, 2010. *State v. Ketterer*, ___ Ohio St.3d ___, 2010-Ohio-3838. Thus, for these reasons, as are more fully set forth in the accompanying memorandum, this Honorable Court should DENY Reconsideration.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF DENIAL OF RECONSIDERATION

The standard for reviewing 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 consideration that was either not considered at all or was not fully considered by the court when it should have been.” *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 523 N.E.2d 515, paragraph one of the syllabus (Emphasis added). “An application for reconsideration may not be filed simply on the basis that a party disagrees with the prior appellate court decision.” *State v. Owens* (1996), 112 Ohio App.3d 334, 336, 678 N.E.2d 956.

A. This Honorable Court’s decision imposing the remedy in R.C. 2929.191 was not an obvious error.

This Honorable Court held that the lower court committed four errors when it notified Appellant of postrelease control. *Ketterer*, ___ Ohio St.3d ___, 2010-Ohio-3831, at ¶81. To remedy these errors, this Court remanded the case to the lower court and directed it to apply R.C. 2929.191. *Ketterer*, at ¶84. That decision is consistent with this Court’s previous holding that since the enactment of R.C. 2929.191, titled correction of judgment to include supervision information, the legislature has provided a statutory remedy to correct a failure to properly impose postrelease control. *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434. Thus, since the errors committed by the lower court were limited to postrelease control notification, R.C. 2929.191 is the correct remedy. As such, this Honorable Court’s decision was not an obvious error that warrants reconsideration.

B. This Honorable Court considered all issues raised by Appellant.

On August 25, 2010, this Honorable Court rendered its decision in *Ketterer*, 2010-Ohio-3831, in which all of Appellant's six propositions of law were addressed. Appellant in his merit brief filed on November 5, 2007, submitted six propositions of law. None of Appellant's propositions of law addressed the right to appeal a sentence based on R.C. 2953.08. (Appellant's brief filed on November 5, 2007). R.C. 2953.08 is not referenced at all in Appellant's brief filed on November 5, 2007, nor in his reply brief filed on January 7, 2008, and furthermore, Appellant does not reference R.C. 2953.08 in his supplemental brief filed on November 18, 2009.

However, Appellant, disguised as a motion for reconsideration, now attempts to include another proposition of law to argue that his sentence, not just the notification of postrelease control, was in error and thus a de novo sentencing hearing is required. The doctrine of res judicata "bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal." *Ketterer*, 2010-Ohio-3831, at ¶62 (Emphasis added).

Therefore, since this Honorable Court considered all propositions of law raised by Appellant in his appeal and the doctrine of res judicata bars the assertion of claims that should have been previously raised by Appellant, Appellant's motion for reconsideration should be denied.

CONCLUSION

In the present case, there is no obvious error in this Honorable Court's decision, and all issues raised by Appellant were considered in the decision rendered by this Honorable Court on August 25, 2010. For these reasons, the State submits that reconsideration is inappropriate in this case and asks that this Court **DENY** Ketterer's Motion for Reconsideration.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion In Opposition was sent to:
Randall L. Porter, Ohio Public Defender's Office, 250 East Broad Street, Suite 1400
Columbus, Ohio 43215; by U.S. ordinary mail this 10th day of September, 2010.



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