

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO : Case No. 08-2251
Appellee :
-vs- :
DANTAE CHAMBLISS, ET AL : On Appeals from the
Appellate District Court
Of Appeals
Appellant 91272

MERIT BRIEF OF APPELLANTS
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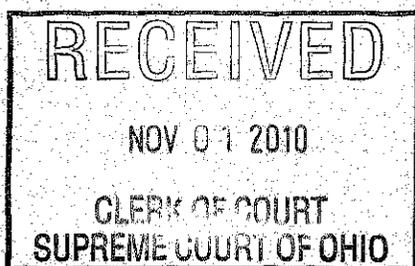
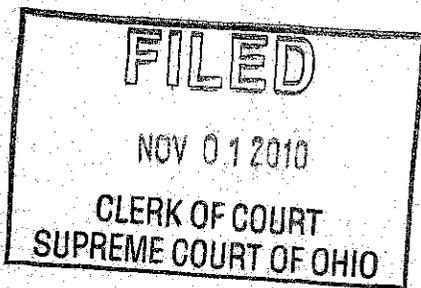


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SUMMARY OF ARGUMENT

The issue presented in this case addresses the ability of a court of appeals to prevent the commission of a structural trial error before a trial has begun. May an appellate court, via an interlocutory appeal, stop the trial court from persisting in an erroneous disqualification of counsel that dooms the validity of the upcoming trial, or must the appellate court remain a bystander who simply waits until after the damage is done to reverse the conviction?

Allowing interlocutory appeals under these circumstances is permitted by R.C. 2505.02(B)(4) when that statute is analyzed in the same manner employed by this Court in *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307. The conclusion that interlocutory appeals are permissible under R.C. 2505.02(B) is all the more mandated when R.C. 2505.02(B)(4) is interpreted in pari materia with R.C. 2901.04, which states that “sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.”¹

In this case, the Eighth District Court of Appeals was addressing a pretrial, interlocutory, appeal from the trial court’s revocation of the defendant’s bond and from the trial court’s sua sponte disqualification of the defendant’s attorney. The court of appeals reversed the bond revocation but believed itself powerless to disturb the disqualification of counsel, because this Court, in *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, held that the pretrial disqualification of counsel in a criminal case is not a final appealable order under an earlier version of R.C. 2505.02. The significant aspect of *State ex rel. Keenan* in this appeal is *Keenan’s* determination that a criminal defendant whose counsel was disqualified had an adequate remedy via a post-conviction appeal.

¹ R.C. 2901.04(B).

The Eighth District, in its unanimous opinion below, stated that it was “particularly conflicted” by its decision in this case: *State v. Chambliss*, Cuyahoga App. No. 91272, 2008-Ohio-5285 (hereinafter “Opinion Below”) at n. 7. The Eighth District noted that this Court’s 1994 decision in *Keenan* preceded the United States Supreme Court’s more recent holding in *United States v. Gonzalez-Lopez* (2006), 548 U.S. 140. When *Keenan* was decided, the denial of counsel was *presumptively* prejudicial. In *Gonzalez-Lopez*, the United States Supreme Court held that “the erroneous deprivation of the right to counsel of choice ‘with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as *structural error*.’” *Gonzalez-Lopez*, quoting *Sullivan v. Louisiana* (1993), 508 U.S. 275 (emphasis added). As the Eighth District noted, structural error “permeates the entire conduct of a trial so that the trial cannot reliably serve its function as a means for determining guilt or innocence.” Opinion below at par. 14. Accord, *Arizona v. Fulminante* (1991), 499 U.S. 279, 309; *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297 at par. 17.

Because the improper denial of counsel of choice is a structural error, it differs from the normal type of pretrial rulings from which defendants do not have a right to immediate appeal. A structural error is more than merely a presumptively prejudicial error where the State still has the opportunity to avoid reversal by demonstrating that the defendant suffered no actual prejudice. To the contrary, when a structural error is committed, the court of appeals does not even engage in an error analysis – it *automatically* reverses the conviction. *Gonzalez-Lopez*, at 148.

By adopting the proposition of law set forth herein, this Court will hold that Chapter 2505 of the Revised Code be interpreted to permit pre-trial appeals of the denial of counsel. As a result, this Court will ensure that criminal defendants whose counsel of choice have been

incorrectly disqualified, as well as courts, prosecutors, witnesses and crime victims not be subjected to a trial that is doomed from the beginning to be repeated in the event the defendant is convicted.

For these reasons, and as further discussed *infra*, the Proposition of Law set forth herein is required by the express language of R.C. 2505.02(B) and advances the sound public policy that was implicitly recognized by the General Assembly in enacting R.C. 2901.04.

STATEMENT OF THE CASE AND FACTS

Trial Proceedings

The trial court proceedings are summarized in the first five paragraphs of the Opinion Below, 2008-Ohio-5285. Footnotes found in the Opinion Below have been omitted. Explanations and citations to the record have been added by defendants-appellants in footnotes.

{¶ 1} Defendants-appellants, Dantae Chambliss, James Bennett, and Travis Sanders, appeal the trial court's judgments removing their respective counsel, remanding them to the county jail, and ordering them to retain new counsel.

{¶ 2} Appellants were indicted on several drug-related offenses, and each retained his own attorney. The charges carried mandatory prison time. All three appellants posted the bonds that were set for them, and were released pending trial. Appellants filed various pretrial motions, including motions to compel production of the search warrant affidavit and to unseal it, motions to suppress, and motions to disclose the identity of a confidential and reliable informant. These motions have never been ruled on.²

² Chambliss filed a discovery demand, two motions to unseal the affidavit, and a motion to continue trial which set forth as a reason for the continuance that the affidavit remained sealed. These pleadings were filed on September 20, 2007, November 20, 2007, December 5, 2007 and April 3, 2008 respectively. See, Chambliss Docket and referenced pleadings. Bennett filed a discovery demand, a motion to unseal the affidavit, and a motion to continue the trial date which set forth as a reason for the continuance that the affidavit remained sealed. These pleadings were filed on September 28, 2007, December 4, 2007, and April 4, 2008, respectively. See Bennett Docket and referenced pleadings. Sanders filed two motions to unseal the affidavit and a motion to continue the trial date which set forth as the sole reason for the continuance that the affidavit remained sealed. See Sanders Docket and referenced pleadings. Following counsel's disqualification, orders unsealing the affidavit in Chambliss' and Bennett's cases were journalized. See orders journalized on April 10, 2008.

{¶ 3} The record reflects that the State did not want to reveal the identity of the informant in this case and, therefore, was hesitant to permit the search warrant affidavit to be unsealed. As a result of these concerns, the State and appellants reached a compromise whereby appellants would plead guilty to amended counts of the indictment which did not carry mandatory prison time, the identity of the informant would not be revealed, and the search warrant would not be unsealed. As part of the plea agreement, the State agreed to recommend a community control sanction at sentencing for Sanders and two year sentences for Chambliss and Bennett.³

{¶ 4} The trial judge assigned to the case was unavailable on the day of the plea, and the plea was taken by another judge. The plea journal entry on behalf of Sanders states that “[t]he state recommends community control sanctions and should the sentencing court choose to impose a prison term, the state has no objection to withdrawal of the pleas.” The plea journal entries on behalf of Chambliss and Bennett state that the “[r]ecommended sentence by the state is 2 years[;] no objection by the state to withdraw the plea should the court choose to impose a harsher sentence.” On the date set for sentencing, the trial court refused to accept the agreement between the State and the defense, and the docket reflects that appellants then orally moved to withdraw their pleas. These oral requests were granted on March 27, 2008 and the court set the matter for trial on April 8, 2008 at 9:00 am.⁴

{¶ 5} On April 8, the day set for trial, in addressing some preliminary issues, Bennett’s attorney indicated that the search warrant affidavit had not yet been ordered unsealed and, as a result, if required to proceed to trial without the necessary information to which he was entitled, he would be ineffective as counsel within the meaning of the Sixth Amendment. In response, the court ordered removed all three of appellants’ attorneys, ordered appellants to retain new counsel within ten days, verbally ordered the appellants’ bonds revoked, by judgment entry ordered the appellants remanded to the county jail, and refused former counsels’ requests to be heard on the record on behalf of their clients. On April 10, 2008, counsel for appellants filed a notice of appeal, and a motion to stay execution of the court’s judgments pending appeal.⁵

³ See Chambliss Docket, February 26, 2008; Bennett Docket, February 26, 2008; Sanders Docket, February 26, 2008. See also, Tr. 14-15, 18-19, 22-24.

⁴ See Chambliss Docket, February 26, 2008 and March 27, 2008; Bennett Docket, February 26, 2008 and March 27, 2008; Sanders Docket, February 26, 2008 and March 27, 2008. See also, Tr. 4-7, 21-22. In addition, Chambliss and Bennett had each filed written motions to withdraw their pleas on March 3, 2008.

⁵ Tr. 13-18, 22-24.

Proceedings Before the Court of Appeals

The Eighth District originally announced its decision on July 31, 2008. Cuyahoga App. No. 91272, 2008-Ohio-3800. That decision was not journalized. Instead, the Court vacated its originally announced decision and journalized its decision in the Opinion Below on October 9, 2008.

The Opinion Below held that the trial court erred in remanding the defendants to jail after the trial court rejected the plea agreement. However, with respect to whether the trial court erred in removing counsel, the Eighth District, relying on *Keenan*, held that there was no appellate jurisdiction to consider this issue prior to the completion of the trial, i.e., that this was not a final appealable order.

The Eighth District went on to “acknowledge that [it is] significantly troubled” by the fact that, in this case, the State’s only response has been to argue that the disqualification of counsel is not a final appealable order – the State has never tried to defend the propriety of the trial court’s sua sponte disqualification of the defendants’ counsel of choice.

By asserting that this is not a “final appealable order,” the State is left in a position where, should they obtain a conviction at trial, said conviction would be subject to automatic reversal. Likewise, appellants could not possibly sustain a loss – they either “win” the case, or it is reversed. We can conceive of no greater waste of court time and resources; not to mention the cost to appellants of having to pay two sets of retained attorneys for perhaps two trials. And, in light of the “structural” nature of the error, quare whether anything that transpired in a first trial could be used by the State against appellants in a second trial, including the testimony of appellants, should they elect to testify.

Reluctantly, we find that, pursuant to *Keenan*, supra, the error alleged by the order directing the unilateral removal of appellants’ retained counsel is not a final and appealable order, and accordingly, appeal upon that issue is dismissed.

Opinion below, at pars. 15, 18.

A timely appeal was filed with this Court, along with a memorandum in support of jurisdiction. The State waived its response. This Court accepted for review the single proposition of law set forth below.

This within joint merits brief for all defendants-appellants now follows.

ARGUMENT

Proposition of Law I:

The denial of counsel of choice prior to trial is a final appealable order which a court of appeals has jurisdiction to review and affirm, modify or reverse.

The wrongful denial of a criminal defendant's counsel of choice is among the most serious errors a trial court can commit. In *United States v. Gonzalez-Lopez* (2006), 548 U.S. 140, the United States Supreme Court recognized that the right to be represented by counsel of one's choice:

[C]ommands, not that a trial be fair, but that a particular guarantee of fairness be provided--to wit, that the accused be defended by the counsel he believes to be best. "The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause." *Strickland, supra*, at 684-685. In sum, the right at stake here is the right to counsel of choice, not the right to a fair trial; and that right was violated because the deprivation of counsel was erroneous. No additional showing of prejudice is required to make the violation "complete."

Id., at (italics in original).

Gonzalez-Lopez went on to address the federal government's contention that the erroneous deprivation of counsel could be subject to a harmless error analysis. In rejecting that possibility, the Court held that the denial of counsel of one's choice is a structural error.

[W]e must consider whether this error is subject to review for harmlessness. In *Arizona v. Fulminante*, 499 U.S. 279 (1991), we divided constitutional errors into two classes. The first we called "trial error," because the errors "occurred during

presentation of the case to the jury" and their effect may "be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt." *Id.*, at 307-308 (internal quotation marks omitted). These include "most constitutional errors." *Id.*, at 306. The second class of constitutional error we called "structural defects." These "defy analysis by 'harmless-error' standards" because they "affect the framework within which the trial proceeds," and are not "simply an error in the trial process itself." *Id.*, at 309-310.⁴ See also *Neder v. United States*, 527 U.S. 1, 7-9 (1999). Such errors include the denial of counsel, see *Gideon v. Wainwright*, 372 U.S. 335 (1963), the denial of the right of self-representation, see *McKaskle v. Wiggins*, 465 U.S. 168, 177-78, n. 8 (1984), the denial of the right to public trial, see *Waller v. Georgia*, 467 U.S. 39, 49, n. 9 (1984), and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction, see *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

We have little trouble concluding that erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Id.*, at 282. Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds," *Fulminante, supra*, at 310--or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe

Id. (italics and bracketed material in original).

With this federal constitutional background, this Court should analyze the Proposition of Law in light of R.C. 2505.02(B)'s provisions regarding final appealable orders.

I. Statutory Analysis Under R.C. 2505.02(B)

The trial judge's disqualification of Appellants' counsel is a final appealable order under Chapter 2505 of the Revised Code. R.C. 2505.02(B) sets forth the types of orders that are final appealable orders, i.e. orders that can be reviewed on direct appeal to a court of appeals.

Subsection (B)(4), which was not in existence when *Keenan* was decided, pertains to the type of circumstance presented herein, where a trial court has denied a criminal defendant the right to be represented by counsel of choice.⁶

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

In *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307 this Court examined subsection B(4):

Thus, R.C. 2505.02(B)(4) sets forth a three-pronged test for determining whether a decision granting or denying a provisional remedy is a final order. *State v. Muncie* (2001), 91 Ohio St.3d 440, 446, 746 N.E.2d 1092.

The first prong of this test asks whether the proceeding is a provisional remedy.

The second and third prongs of the test for a final and appealable order examine whether the order determines the action and prevents a judgment in favor of the appealing party with respect to the provisional remedy and whether the appealing party would have a meaningful or effective remedy following a final judgment in the case.

⁶ In *Keenan*, this Court focused on subsection (B)(2) in determining that the denial of counsel of choice was not a final appealable order because it was not made in a “special proceeding.” However, *Keenan* also concluded that Keenan possessed an adequate remedy at law to appeal the disqualification of his choice of counsel. This latter aspect of *Keenan* is at issue in this case because, if the defendants have an adequate remedy at law, they cannot take interlocutory appeals pursuant to subsection (B)(4) either. See *infra*.

Id., at pars. 18-19, 24.

In re A.J.S. applied this tripartite criteria and concluded that, in a mandatory juvenile bindover proceeding, a juvenile court order denying the State's motion for a bindover was final and appealable. Applying these same criteria in the instant case should also cause this Court to hold that the trial court's order denying defendants their respective counsel of choice is final and appealable.

A. The First Criterion: The Choice of Counsel is a Provisional Remedy

The first requirement of subsection (B)(4) is that the trial court's proceeding must have addressed a provisional remedy. Accord, *In re A.J.S.* at par. 19. A provisional remedy is a "proceeding ancillary to an action." R.C. 2505.02(A)(3).

"While R.C. 2505.02 does not define "ancillary," this court has held that "[a]n ancillary proceeding is one that is attendant upon or aids another proceeding." *Muncie*, 91 Ohio St.3d at 449, 746 N.E.2d 1092, quoting *Bishop v. Dresser Industries* (1999), 134 Ohio App.3d 321, 324, 730 N.E.2d 1079.

In re A.J.S., at par. 20.

Applying these definitions of "provisional remedy" and "ancillary," it is apparent that a ruling denying a defendant his or her counsel of choice is a provisional remedy because the choice of counsel is attendant upon and aids the trial process in the underlying criminal case. See, *State v. Saadey* (June 30, 2000), Columbiana App. No. 99 CO 49, 2000 WL 1114519, unreported ("a ruling on a motion to disqualify counsel in a criminal case is ancillary to the main action and thus qualifies as a provisional remedy under R.C. 2505.02(A)(3)").

B. The Second Criterion: The Trial Court's Denial of Counsel of Choice Has Determined the Provisional Remedy

The second requirement of R.C. 2505.02(B)(4) is that the ruling below determine the provisional remedy and prevents judgment for the appellant with respect to the provisional

remedy. Here, there can be no question that the provisional remedy, i.e., whether appellants will be represented by their counsel of choice, has been determined finally and against the appellants. Under the trial court's ruling, the appellants must go to trial represented by attorneys other than their attorneys of choice or else they must represent themselves. See, *Saadey* ("it is clear when a court rules on a motion for disqualification, the resulting order determines the action with respect to the motion and prevents judgments in favor of the appellant with respect to the motion.").

C. The Third Criterion: No Meaningful or Effective Remedy via a Post-Conviction Appeal.

The final criterion concerns whether defendants have a post-trial appellate remedy that can adequately redress the injury they will suffer from a wrongful disqualification of their counsel of choice. It is on this criterion that this case turns.

There are at least four reasons why a post-conviction appeal is an inadequate substitute for an immediate appeal of the disqualification of counsel of one's choice:

1. Prevailing in a post-conviction appeal does not guarantee that counsel of choice will be able to make the tactical decisions in a second trial that would have been available at the first trial.
2. Prevailing in a post-conviction appeal requires the defendant to run the gauntlet of trial twice.
3. Prevailing in a post-conviction appeal requires the defendant to defend after a presumptively prejudicial passage of time;
4. Prevailing on appeal will not shield the defendant from the likelihood that the defendant will endure restraints of liberty during the appellate process

These concerns are addressed seriatim.

1. The Defendants' Options in a Re-Trial May Be Hampered by the Tactical Decisions of Counsel-By-Default

In *Gonzalez-Lopez*, the Supreme Court recognized that different attorneys will make different tactical choices in defending a case. *Id.*, at 150. These differences in trial tactics are a

principal reason that the wrongful denial of counsel of choice cannot be subject to an analysis for prejudice.

Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial.

Id. at 150.

But the tactical differences between attorneys may cause the attorney-of-choice to have to pursue a different strategy on re-trial than would have been employed initially, solely because the tactical decisions of counsel-by-default made during the first trial have now limited what is available at the second trial. Witness examinations may have to be modified in light of prior testimony at the previous trial. The defendant's decision to testify or not to testify may be affected by the testimony of a defense witness at the first trial that counsel-of-choice never would have called. At the very least, the State has been given a preview of one possible defense strategy in the first trial and can now take steps to hone its presentation.

Because the re-trial will not be the same as the first trial, for reasons that *Gonzalez-Lopez* acknowledged are unquantifiable, it follows that a post-trial appeal does not provide an equally meaningful and effective remedy as a pre-trial appeal of a wrongful disqualification of counsel.

2. Forcing the Defendants to Run the Gauntlet of Trial Twice.

Even though the United States Supreme Court, in *Gonzalez-Lopez*, has guaranteed that a defendant will automatically receive a new trial if his or her counsel is wrongly disqualified, the defendant still suffers the constitutional indignity of having to be tried twice. This, alone, satisfies the third criterion of R.C. 2505.02(B)(4).

The Double Jeopardy Clause of the United States Constitution generally protects the criminal defendant from having to undergo a second trial. See, e.g., *Abney v. United States* (1977), 431 U.S. 651.

Because of this focus on the “risk” of conviction, the guarantee against double jeopardy assures an individual that, among other things, he will not be forced, with certain exceptions, to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense. It thus protects interests wholly unrelated to the propriety of any subsequent conviction.

Id., at 661.⁷

While a retrial after a conviction is one of the “certain exceptions” that is not barred by the Double Jeopardy Clause, the fact remains that a criminal defendant will still be required to endure the “personal strain, public embarrassment, and expense of a criminal trial more than once” if an appeal of the disqualification of counsel of choice is not allowed prior to trial. In that these constitutionally-condemned adverse consequences could be avoided by an immediate appeal, the option of having to wait for a post-conviction appeal is neither a “meaningful” nor an “effective” remedy.

This is not to suggest that every issue in every criminal case must be subject to an interlocutory appeal. See Part III, *infra*. But, in that an erroneous disqualification is a structural error which has been consummated as soon as counsel is disqualified, an immediate appeal in order to avoid an *automatic* re-trial is practical and will fully protect the defendant from running

⁷ It is for this reason that a defendant in states such as Ohio who loses a pretrial motion to dismiss a prosecution on the basis of double jeopardy has immediate access to relief via a writ of habeas corpus in federal court – because the state has not provided the defendant the pretrial opportunity to seek appellate relief prior to running the gauntlet of trial in possible violation of the Fifth Amendment. See generally, *Gully v. Kunzman* (C.A. 6, 1979), 592 F.2d 283 (interpreting analogous Kentucky criminal procedure).

the gauntlet of trial twice. Because of this, the post-conviction appeal of this issue is a far less efficacious remedy than the immediate appeal.

3. Success in a Post-Conviction Appeal Means Re-Trying a Stale Case

As a practical matter, a post-conviction appeal necessarily causes a re-trial to occur more than one year after the original trial. With the passage of time also comes constitutionally-recognized prejudice to the defendant. A delay of more than one year from a defendant's having been charged until the defendant's having been tried is presumptively prejudicial under the Sixth Amendment's speedy trial provision. *Doggett v. United States* (1992), 505 U.S. 647. When a criminal defendant is erroneously forced to go to trial with different counsel, it will take far more than one year since indictment before he or she is able to prevail in a post-conviction appeal and be re-tried.

On the other hand, resolution of the disqualification issue via an interlocutory appeal can be handled expeditiously because the record is limited and there is only one issue on appeal. Unlike a post-conviction appeal, which must also address any other errors committed at trial, an interlocutory appeal of the disqualification of counsel can be placed on an accelerated calendar and decided in very short order. Indeed, in this case, counsel were disqualified on April 8, 2008 and the Eighth District originally announced its decision on July 31, 2008 – less than four months later. See, *State v. Chambliss et al.*, Cuyahoga App. No. 91272, 2008-Ohio-3800 (released but not journalized on July 28, 2008; vacated on October 9, 2008 by Opinion Below).

Once again, because of the time lag attendant to trying a case with counsel-by-default, followed by a post-conviction appeal, the normal appellate process does not provide a meaningful nor and effective remedy for a criminal defendant whose counsel has been erroneously disqualified.

4. The Defendants May Be Subjected to Additional Liberty Restrictions and Public Scorn When Taking a Post-Trial Appeal

Defendants taking pretrial appeals will usually continue to be subject to their pretrial conditions of release. On the other hand, defendants taking post-trial appeals oftentimes find themselves subjected to more restraints on their liberty than they confronted prior to trial. Oftentimes a convicted defendant is required to begin serving a period immediately upon sentencing – particularly in cases such as the instant case where a conviction carries mandatory imprisonment. Even those defendants who are able to secure an appellate bond will oftentimes find themselves subjected to conditions of bond beyond those imposed prior to trial, such as more closely monitored release, home confinement, etc. Moreover, these additional conditions are combined with the public humiliation of having been convicted, which can limit employment opportunities and generally subject the defendant to public scorn.

Once again, the post-trial appeal is not as meaningful or effective as an interlocutory appeal because the defendant labors under these more onerous conditions of release and under the cloud of a conviction during the pendency of the post-trial appeal.

II. Interpreting R.C. 2505.02(B)(4) in Pari Materia with R.C. 2901.04 Requires Interlocutory Appeals of the Disqualification of Counsel In Order to Effect the Fair, Effective and Speedy Administration of Justice.

Statutes governing procedure in criminal cases should be construed so as to effect fairness as well as the efficient and speedy administration of justice. R.C. 2901.04 (B).⁸ These

⁸ R.C. 2901.04(B) states: “Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.”

considerations all weigh in favor of interpreting R.C. 2505.02(B)(4) so as to permit interlocutory appeals of the disqualification of counsel of choice.

The adverse effects on criminal defendants who are forced to wait until after trial to appeal the disqualification of counsel have already been discussed. But the public at large as well as other individuals involved in the criminal justice system also suffer when fairness and efficiency are compromised because defendants cannot immediately appeal the denial of counsel of choice.

Where defendants are denied counsel of choice, they are less likely to have the confidence in counsel-by-default to agree to plead guilty when such a plea is warranted. This is particularly so in light of *Gonzalez-Lopez*, which guarantees a defendant a new trial if counsel of choice was wrongfully disqualified. A defendant who is outraged at having lost counsel of choice is more likely to go to trial in order to vindicate this interest, particularly if the defendant knows that a retrial is automatic if the court of appeals agrees that counsel was improperly disqualified. Accordingly, needless trials will occur. Moreover, even those cases that would never have been resolved without trial will now have two trials when counsel of choice has been wrongfully disqualified and reversal is automatic.

While, as the Opinion Below recognized, the criminal defendant may have nothing to lose in going to trial when counsel has been wrongfully disqualified, others will suffer adverse effects. Victims will be required to go through the rigors of trial twice. Other witnesses will be inconvenienced. In some cases, prosecutors may be required to extend overly-indulgent plea offers to defendants in order to avoid these consequences.

Obviously, re-trials also affect the efficiency of trial courts, as well as appellate courts (who may now see two rounds of appeals from verdicts, one after each trial). The same

inefficiencies that arise in civil cases where counsel have been wrongfully restricted from participating in a case are also present in criminal cases. Yet, denial of pro hac vice status in a civil case is a final appealable order. E.g., *Guccione v. Hustler Magazine, Inc.* (1985), 17 Ohio St.3d 88.

As the Opinion Below concluded:

We apprehend no reason why the selection and retention of an attorney in a civil case is to be more protected (by immediate access to the appellate process) than the choice and retention of counsel in a criminal case. Especially in a situation such as we have here, where should there be a conviction, reversal would be "automatic."

Id., at par. 17, quoting *State v. Payne*, 114 Ohio St.3d 502,505, 2007-Ohio-4642.

III. An Improper Disqualification of Counsel Differs from Pretrial Rulings Denying Motions to Suppress Tangible Evidence, Statements or Identifications.

In analyzing the Proposition of Law, the question may be raised as to why a trial court's order disqualifying counsel is any different than, for example, a pretrial motion denying a motion to suppress the use of evidence obtained in violation of the Fourth Amendment. The answer lies in the structural nature of the disqualification of counsel.

Other constitutional errors pertain to discrete aspects of a trial. Such errors affect the validity of the individual convictions only to the extent that they impact on the evidence presented in support of those convictions. For example, illegally obtained evidence that may have been relevant to one count will have no bearing on another count.

In contrast, the right to counsel of choice permeates the entire proceeding – not just the evidence presented with respect to a particular count. It is for this reason that *Gonzalez-Lopez* views an erroneous disqualification of counsel as a structural error, which can never be harmless error.

There is a practical distinction as well between a trial court's denial of counsel of choice and a trial court's denial of a motion to suppress evidence. Unlike the wrongful denial of counsel of choice, which will always result in a new trial under *Gonzalez-Lopez*, not all pretrial rulings on suppression issues require a new trial. In some cases, the improper admission of evidence obtained in violation of the State or federal constitution may still be harmless beyond a reasonable doubt and the conviction is affirmed. In these cases a new trial is not required. See generally, *Chapman v. California* (1967), 386 U.S. 18, 22-24 (constitutional errors subject to harmless error). In other cases, the improper admission of evidence is so critical that, once the evidence is suppressed, a retrial is practically impossible – for example, when a court of appeals holds that the drugs in a drug possession case should have been suppressed

Accordingly, as a matter of both theory and practice, a trial court's denial of the right to counsel of choice, which permeates the entire proceeding and always requires a new trial, is different than a trial court's denial of pretrial suppression motions.

IV. In Light of the Above, *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, Should Not Be Followed.

In *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, this Court held that, as a matter of law, a writ of mandamus would not issue to require a trial court to reinstate a criminal defendant's counsel-of-choice. This Court held that the writ would not lie because defendant Keenan possessed an adequate remedy via post-conviction appeal to vindicate any wrongful denial of his counsel of choice. The *Keenan* Court noted that the wrongful denial of counsel of choice was presumptively prejudicial under then-existing United States Supreme Court precedent. Thus, at the time that this Court decided *Keenan*, the denial of counsel of choice, the defendant Keenan could not be assured that a wrongful denial of counsel would automatically

result in a new trial. As has already been discussed, *Gonzalez-Lopez* has altered this landscape – now a retrial is guaranteed in light of the structural nature of the error.

While *Keenan* was decided before R.C. 2505.02(B)(4) was in existence, and thus need not be overruled, *Keenan*'s recognition that there is an adequate remedy on direct appeal when counsel is wrongly disqualified affects the (B)(4) criteria. To the extent that this aspect of *Keenan* needs to be clarified, or even overruled, this Court should do so:

[A]prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it.

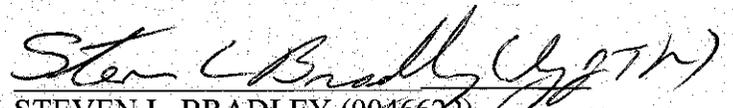
City of Westlake v. Galatis, 100 Ohio St.3d 216, 228, 2003-Ohio-5849, par. 48.

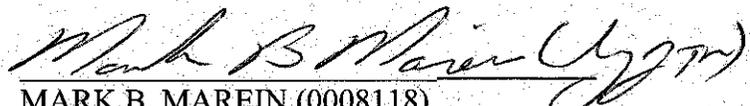
In the instant case, all three of the *Galatis* criteria have been met. First, *Gonzalez-Lopez* represents a change in circumstances that has removed the justification for clinging to *Keenan*. Second, as discussed in Part III, supra, the notion that an adequate remedy exists on appeal is contrary to the fair and efficient administration of justice and is thus not practical. Third, there is no one who depends upon the status quo and who would be adversely affected if pretrial disqualifications of counsel of choice were to be subject to immediate appeal. To the contrary, everyone benefits from a change in the law – the court system, prosecutors, victims, defendants and the public at large all benefit when a trial is done right the first time.

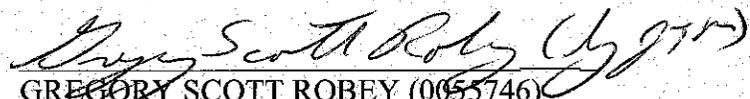
CONCLUSION

For the reasons set forth above, this Court should adopt the Proposition of Law and remand the instant case to the Eighth District Court of Appeals for its determination of whether counsel was erroneously disqualified from the trial of the instant case.

Respectfully submitted,

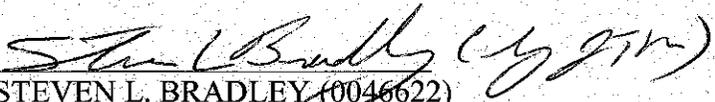

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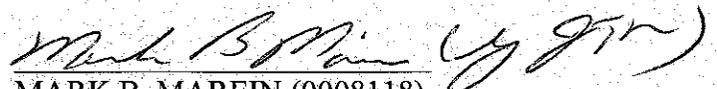

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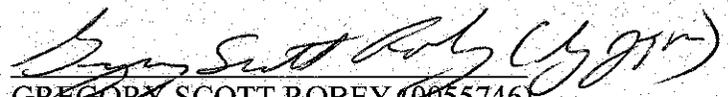

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Counsel for Appellant, Travis Sanders

CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief was served via U.S. Regular Mail to Thorin Freeman,
Assistant County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

-vs-

DANTAE CHAMBLISS

Appellant

08-2251

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 91272

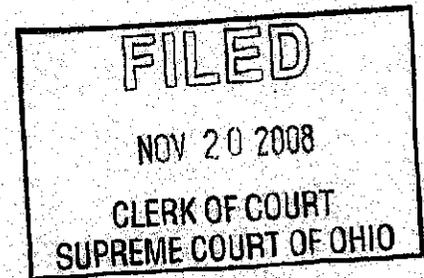
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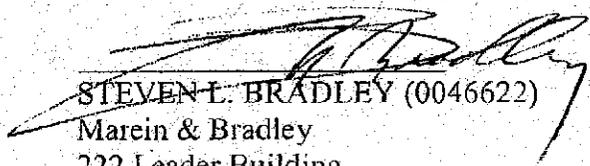


Notice of Appeal of Appellant Dantae Chambliss

Appellant Dantae Chambliss hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case No. 91272, and journalized on October 9, 2008.

This felony case raises substantial constitutional questions and is one of great public and great general interest.

Respectfully submitted,



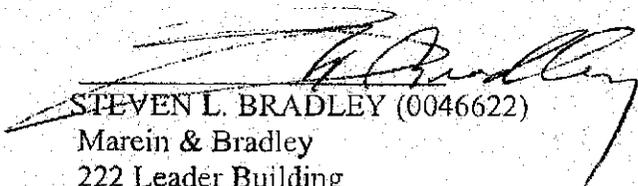
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A copy of the foregoing Notice of Appeal was served via U.S. Regular Mail to William Mason, Cuyahoga County Prosecutor and or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 19 day of November, 2008.


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IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

-vs-

JAMES BENNETT

Appellant

08-2251

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 91272

NOTICE OF APPEAL OF APPELLANT JAMES BENNETT

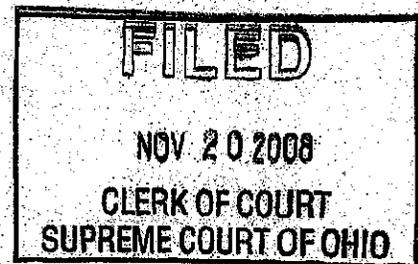
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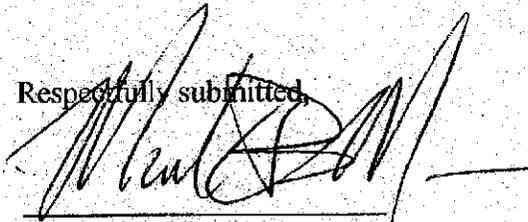


Notice of Appeal of Appellant James Bennett

Appellant James Bennett hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case No. 91272, and journalized on October 9, 2008.

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Respectfully submitted,



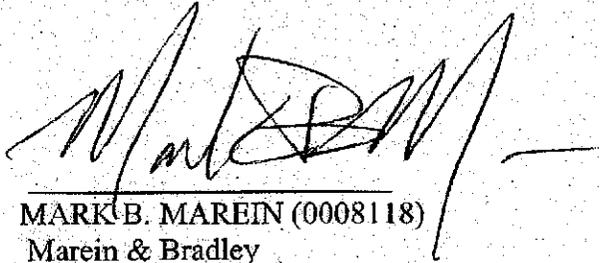
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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal was served via U.S. Regular Mail to William Mason, Cuyahoga County Prosecutor and or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 19th day of November, 2008.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO

08-2251

Appellee

-vs-

TRAVIS SANDERS

Appellant

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 91272

NOTICE OF APPEAL OF APPELLANT TRAVIS SANDERS

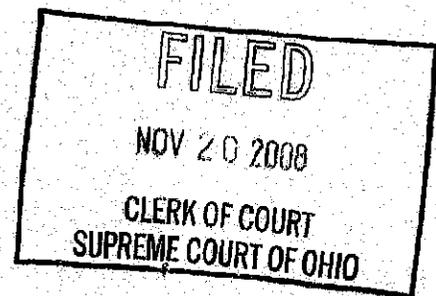
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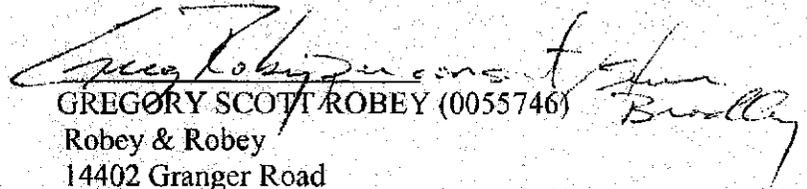


Notice of Appeal of Appellant Travis Sanders

Appellant Travis Sanders hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case No. 91272, and journalized on October 9, 2008.

This felony case raises substantial constitutional questions and is one of great public and great general interest.

Respectfully submitted,

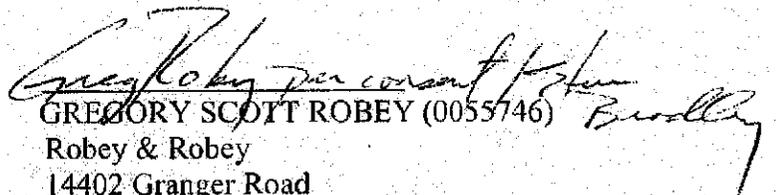

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OCT 9 - 2008

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91272

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANTAE CHAMBLISS, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED IN PART; DISMISSED IN PART

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-500664

BEFORE: McMonagle, J., Gallagher, P.J., and Boyle, J.

RELEASED: October 9, 2008

JOURNALIZED: October 9, 2008

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ON RECONSIDERATION¹

CHRISTINE T. McMONAGLE, J.:

Defendants-appellants, Dantae Chambliss, James Bennett, and Travis Sanders, appeal the trial court's judgments removing their respective counsel, remanding them to the county jail, and ordering them to retain new counsel.

Appellants were indicted on several drug-related offenses, and each retained his own attorney. The charges carried mandatory prison time. All three appellants posted the bonds that were set for them, and were released pending trial. Appellants filed various pretrial motions, including motions to compel production of the search warrant affidavit and to unseal it, motions to suppress, and motions to disclose the identity of a confidential and reliable informant. These motions have never been ruled on.

The record reflects that the State did not want to reveal the identity of the informant in this case and, therefore, was hesitant to permit the search warrant affidavit to be unsealed. As a result of these concerns, the State and appellants reached a compromise whereby appellants would plead guilty to amended counts of the indictment which did not carry mandatory prison time, the identity of the

¹The original announcement of decision, *State v. Chambliss*, 2008-Ohio-3800, released July 31, 2008, is hereby vacated. This opinion, issued upon reconsideration, is the court's journalized decision in this appeal. See App.R. 22(E); see also, S.Ct.Prac.R. II, Section 2(A)(1).

informant would not be revealed, and the search warrant would not be unsealed. As part of the plea agreement, the State agreed to recommend a community control sanction at sentencing for Sanders and two-year sentences for Chambliss and Bennett.

The trial judge assigned to the case was unavailable on the day of the plea, and the plea was taken by another judge. The plea journal entry on behalf of Sanders states that “[t]he state recommends community control sanctions and should the sentencing court choose to impose a prison term, the state has no objection to withdrawal of the pleas.” The plea journal entries on behalf of Chambliss and Bennett state that the “[r]ecommended sentence by the state is 2 years[;] no objection by the state to withdraw the plea should the court choose to impose a harsher sentence.” On the date set for sentencing, the trial court refused to accept the agreement between the State and the defense, and the docket reflects that appellants then orally moved to withdraw their pleas. These oral requests were granted on March 27, 2008 and the court set the matter for trial on April 8, 2008 at 9:00 am.²

On April 8, the day set for trial, in addressing some preliminary issues, Bennett’s attorney indicated that the search warrant affidavit had not yet been

²One appellant, Sanders, later filed a notice of objection to the order vacating the plea agreement and motion to enforce the plea agreement.

ordered unsealed and, as a result, if required to proceed to trial without the necessary information to which he was entitled, he would be ineffective as counsel within the meaning of the Sixth Amendment. In response, the court ordered removed all three of appellants' attorneys, ordered appellants to retain new counsel within ten days, verbally ordered the appellants' bonds revoked, by judgment entry ordered the appellants remanded to the county jail, and refused former counsels' requests to be heard on the record on behalf of their clients.³ On April 10, 2008, counsel for appellants filed a notice of appeal, and a motion to stay execution of the court's judgments pending appeal.

On April 11, 2008, we granted a stay, vacated the trial court's order remanding appellants, and ordered that appellants be released forthwith on their previously posted bonds. We did not reinstate any revoked bonds, as revocation of the bonds did not appear in the court's entry of judgment. *State v. Chambliss*, Cuyahoga App. No. 91272, Motion No. 407777.

In their sole assignment of error, appellants challenge the trial court's judgments removing their counsel and remanding them to jail.

³Upon the record, the judge said he was revoking appellants' bonds; the judgment entries, however, do not specifically revoke the bond, rather they simply remand appellants.

As to the issue of the remand of appellants to jail and the verbal (but not journalized) order revoking their bond, the State does not contest the merits of appellants' claim.⁴ The law is clear and unequivocal that Section 9, Article I of the Ohio Constitution guarantees appellants bail, and this guarantee is put into effect by Crim.R. 46. In order to deny bail, the court is required to follow the dictates of R.C. 2937.222.⁵ At oral argument, the State contended that this court had already vacated the order of remand in its entry granting a stay, and since the order revoking the bonds was never journalized, there is nothing left to be resolved.

We disagree; our order vacating the remand of appellants to jail was solely in fulfillment of a "request for stay" filed by appellants; it did not resolve whether the remand was error. We first acknowledge that "remanding the defendants to jail" and "revoking their bonds" have no difference in meaning in the context of this case; whether appellants had valid bonds is of no moment; the trial court ordered all of them to jail. While new bonds did not have to be written upon our order of release of appellants, the bonds were effectively

⁴The State only argues that since the only journalized order is for remand, and since the defendants have been released, this issue is not "ripe" for adjudication.

⁵The record before us is silent as to whether the charges against appellants are of the nature where bail can be denied under the statute; we proceed to analyze the case as though they are.

“revoked,” “set aside,” or “ignored”—regardless of how termed, the outcome for appellants resulted in them being incarcerated.

In this particular case, appellants were first deprived of counsel. Then, with no notice, no opportunity to be heard, and no legally sufficient cause articulated upon the record, the trial court jailed all three appellants. While the trial court stated that he did this because the pleas were vacated and appellants again faced mandatory time,⁶ this statement to the Supreme Court ignores the fact that all three appellants involved here had been free on substantial surety bonds *before* pleas were ever taken,⁷ and there is no evidence whatsoever that they had come to pose any greater danger to the community than they did when the bonds were first set, nor is there any evidence in the record that they ever failed to appear as scheduled or breached any conditions of their bonds. In sum, there is no evidence in the record of any sort that could support a modification, let alone cancellation, of these three bonds since appellants met the conditions of their bonds in accordance with Crim.R. 46. Other than the removal of counsel, the record reflects no change of circumstances whatsoever from conditions when the original bond was set.

⁶Court's affidavit in *In re Disqualification of Judge John Sutula*, Supreme Court Case No. 08-AP-033.

⁷On September 27, Chambers posted \$100,000, and Bennett and Sanders each posted \$10,000.

In *Utley v. Kohn* (1997), 120 Ohio App.3d 52, 696 N.E.2d 652, the court held that “[w]here the trial court setting the original bail has considered all the required factors in determining the amount of bail, and there is no showing of any changed circumstances of the accused or his surroundings, the bond as set must continue as a matter of right.” *Id.* at 55, citing Crim.R. 46(J) and *May v. Berkemer* (Mar. 29, 1977), Franklin App. No. 77A-183.

The issue of a final appealable order regarding the remand of appellants is resolved by R.C. 2937.222(D)(1), which explicitly provides that “[a]n order of the court of common pleas denying bail pursuant to this section is a final, appealable order[,]” “the court of appeals shall give the appeal priority on its calendar[,]” and “[d]ecide the matter expeditiously.” This court has given the bail issue priority in granting a stay, vacating the remand order, and expediting a briefing schedule and hearing.

We address next the unilateral removal of retained counsel by the court without request of either party, without notice and without opportunity to be heard, rendering the appellants under indictment, remanded to jail without bond, and wholly without counsel.

In *United States v. Gonzalez-Lopez* (2006), 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409, the United States Supreme Court held that a court’s deprivation of a criminal defendant’s choice of counsel entitles him to a reversal

of his conviction. The court further held that appellate review of the court's decision to remove counsel is not subject to a harmless-error analysis, and stated "that the erroneous deprivation of the right to counsel of choice 'with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as structural error.'" Id. at 150, quoting *Sullivan v. Louisiana* (1993), 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182. Structural errors are constitutional errors that defy analysis by "harmless error" standards because they affect the framework in which the trial proceeds, rather than just being error in the trial process itself. *Gonzalez-Lopez* at 148. Structural error permeates the entire conduct of a trial so that the trial cannot reliably serve its function as a means for determining guilt or innocence. *Arizona v. Fulminante* (1991), 499 U.S. 279, 309-310, 111 S.Ct. 1246, 113 L.Ed.2d 302. A structural error mandates a finding of "per se prejudice." *State v. Colon*, 118 Ohio St.3d 26, 30, 2008-Ohio-1624, 885 N.E.2d 917, and results in "automatic reversal." *State v. Payne*, 114 Ohio St.3d 502, 505, 2007-Ohio-4642, 873 N.E. 2d 306. The State does not contest the merits of this claim; it contends only that the order removing retained counsel is not a final appealable order.

We must acknowledge that we are significantly troubled by this argument. By asserting that this is not a "final appealable order," the State is left in a position where, should they obtain a conviction at trial, said conviction

would be subject to automatic reversal. Likewise, appellants could not possibly sustain a loss—they either “win” the case, or it is reversed. We can conceive of no greater waste of court time and resources; not to mention the cost to appellants of having to pay two sets of retained attorneys for perhaps two trials. And, in light of the “structural” nature of the error, quere whether anything that transpired in a first trial could be used by the State against appellants in a second trial, including the testimony of appellants, should they elect to testify.

In *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119, the Ohio Supreme Court, relying on *Polikoff v. Adam* (1993), 67 Ohio St.3d 100, 616 N.E.2d 213, syllabus, held that a pretrial order granting a disqualification motion in a criminal case is not a final appealable order. *Keenan* at 178. In *Polikoff*, the Supreme Court held that orders that are entered in actions that are recognized at common law or in equity and were not specially created by statute are not orders entered in special proceedings pursuant to R.C. 2505.02. We note, however, that both *Keenan* and *Polikoff* were decided before *Gonzalez-Lopez* articulated the proposition that denial of counsel of choice is structural error entitling an aggrieved defendant to an automatic reversal of his conviction. We locate no other criminal case where disqualification of an attorney constituted a final appealable order.

We do note, however, a number of cases where denial of pro hac vice status in a civil case is a final appealable order. See, for e.g., *Westfall v. Cross* (2001), 144 Ohio App.3d 211, 759 N.E.2d 881; *Guccione v. Hustler Magazine, Inc.* (1985), 17 Ohio St.3d 88, 477 N.E.2d 630. Likewise, this court, after *Polikoff*, in a legal malpractice case, found an order disqualifying chosen counsel was a final appealable order in *Ross v. Ross* (1994), 94 Ohio App.3d 123, 640 N.E.2d 265. We apprehend no reason why the selection and retention of an attorney in a civil case is to be more protected (by immediate access to the appellate process) than the choice and retention of counsel in a criminal case. Especially in a situation such as we have here, where should there be a conviction, reversal would be "automatic." *Payne* at 505.

Accordingly, we find error in the court's remand of appellants, and we vacate that order. Reluctantly, we find that, pursuant to *Keenan*, supra, the error alleged by the order directing the unilateral removal of appellants' retained counsel is not a final and appealable order, and accordingly, appeal upon that issue is dismissed.⁸

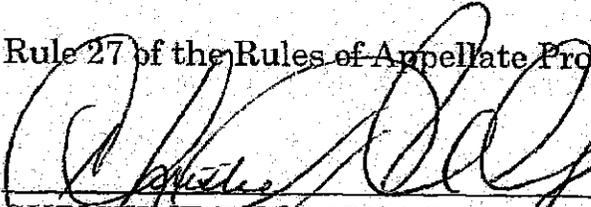
⁸We are particularly conflicted by this ruling because the right to an attorney of one's choice is a Sixth Amendment constitutional right in criminal cases, and does not find the same constitutional significance in a civil matter.

It is ordered that appellants and appellee equally split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

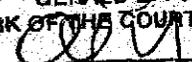
A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


CHRISTINE T. McMONAGLE, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR

FILED AND JOURNALIZED
PER APP. R. 22(E)

OCT 9 - 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY  DEP.

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

2505.02 Final orders.

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Effective Date: 07-22-1998; 09-01-2004; 09-02-2004; 09-13-2004; 12-30-2004; 04-07-2005; 2007 SB7 10-10-2007

2901.04 Rules of construction for statutes and rules of procedure.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

Effective Date: 03-23-2000; 09-23-2004