

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND HEIGHTS

(Plaintiff-Appellant)

vs.

WARREN LEWIS

(Defendant-Appellee)

:
:
: Supreme Court Case No. 2010-1203
:
:
:
: On Appeal from the
: Cuyahoga County Court of Appeals
: Eighth Appellate District
:
: Court of Appeals
: Case No. CA09-92917

REPLY BRIEF OF APPELLANT CITY OF CLEVELAND HEIGHTS, OHIO

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III. STATEMENT OF FACTS

Defendant-Appellant the City of Cleveland Heights, Ohio (hereinafter the “City”) incorporates herein the statement of facts contained within its merit brief filed with this Court on November 29, 2010. Defendant clarifies, however, that Plaintiff-Appellee, Warren Lewis (hereinafter Mr. Lewis), moved the trial court for a stay of execution on February 6, 2009.¹

IV. ARGUMENT

In its merit brief, the City argued that the Plaintiff voluntarily served his sentence when he failed to file an application for stay of execution in the court of appeals pursuant to Ohio APP. R. 8(A). As such, his appeal to the Eighth District should be deemed moot.

On January 18, 2011 Mr. Lewis filed his merit brief. In addition, amicus briefs were submitted by the Cuyahoga County Public Defender’s Office, the Ohio Association of Criminal Defense Attorneys, Towards Employment² and Mr. D. Jim Brady (hereinafter referenced as the “amici curiae”). As there is considerable overlap in the arguments advanced by Mr. Lewis and the amici curiae, the City shall, where applicable, collectively refer to them as the “opposition.”

A. Proposition of Law: An appeal is moot when a misdemeanor defendant serves all aspects of his or her sentence before filing a motion for stay of execution of the sentence in the court of appeals.

Mr. Lewis voluntarily served his sentence before he filed for a stay of execution in the Eighth District Court of Appeals; therefore, his appeal to the Eighth District was moot. At the outset, the City points out that although the Eighth District reversed Mr. Lewis’ conviction, it did

¹ Appellant inadvertently stated that the Stay of Execution was submitted in February of 2010.

² The Cuyahoga County Public Defender, Ohio Association of Criminal Defense Lawyers, and Towards Employment jointly filed an amicus brief in support of the Appellee.

so only after the trial court (upon hearing all of the evidence presented during trial) found him guilty of obstruction of official business and after Mr. Lewis had already served his sentence. As such, the Eighth District's decision to reverse Mr. Lewis' conviction was purely academic and, therefore, should not be considered by this Court.

The only issue before this Court is whether Mr. Lewis voluntarily served his sentence, thereby, rendering his appeal to the Eighth District moot. Mr. Lewis maintains that he did not voluntarily serve his sentence because: (1) he was only required to file a motion for stay of execution in the trial court, before serving a sentence, to avoid a moot appeal; (2) the Eighth District has never required a motion for stay of execution to be filed in both the trial court and the court of appeals to prevent a moot appeal; (3) a criminal defendant can never be said to "voluntarily" serve a criminal sentence; and (4) there is no practical or logical reason for imposing a "two-motion"³ requirement. The oppositions' arguments are specious, and wholly ignore the City's well reasoned and common sense approach to the question presented to this Court.

The opposition also raises the question of whether Mr. Lewis will suffer a collateral disability if his appeal is deemed moot. This issue, however, is not before the Court and should be ignored. Regardless, Mr. Lewis failed to demonstrate that he would suffer a collateral disability.

Finally, the amici curiae also request that this Court overturn its decision in *State v. Wilson*. There is, however, no legitimate basis for overturning *Wilson*.

³ The opposition refers to this as the City's "two motion" rule, though this appellation is misleading. As noted in the City's merit brief, both the Second District and the Seventh District appellate courts have espoused this so called "two motion" rule. To suggest, as the opposition does, that this "two motion" rule is a mechanism of the City's design is inaccurate – and such rhetoric a poor substitute for the law.

(1) A misdemeanor defendant must avail his or her self of the relief provided for under Appellate Rule 8(B) prior to serving his or her sentence; otherwise, an appeal to the court of appeals is moot.

Mr. Lewis' voluntarily served all aspects of his sentence before filing a stay of execution in the court of appeals; therefore, his appeal to the Eighth District should be declared moot. The parties differ as to when a criminal defendant's actions should be deemed "voluntary" under *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236. The City maintains that because Mr. Lewis served his sentence, despite having the opportunity and ability to apply for a stay of execution in the Court of Appeals under Ohio Appellate Rule 8(B), he voluntarily served his sentence.

In *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236, the Ohio Supreme Court held that "[w]here a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot. The Second and Seventh District appellate court have interpreted *Wilson* to require a misdemeanant to file a stay of execution in both the trial court and the court of appeals prior to completely serving a sentence; otherwise, the misdemeanant will be deemed to have voluntarily completed the sentence. See *Dayton v. Huber*, 2nd Dist. No. 20425, 2004-Ohio-7249; *Carroll County Bureau of Support v. Brill*, 7th Dist. No. 05CA818, 2005-Ohio-6788;⁴ see, also *State v. Concliff* (1978), 61 Ohio App.2d 185, 193, 401 N.E.2d 469. Although the Eighth District Court of Appeals has interpreted the "voluntariness" requirement of *Wilson* differently than the Second District and Seventh District appellate courts,

⁴ Although the opposition suggests that the decisions in *Huber* and *Brill* were dicta, this is not correct. Given that courts of appeal do not have jurisdiction to consider moot issues, since appellate review is limited to actual cases in controversy, it is difficult to discern any basis for concluding that the opinions expressed by the Seventh District and Second District courts of appeal in *Brill* and *Huber*, respectively, constitute dicta. See, e.g. *State v. Downs*, 11th Dist. No.2004-A-0029, 2005-Ohio-2520, at ¶ 6. Regardless, a review of *Huber* and *Brill* belie the oppositions' position, as for example the *Brill* Court stated: "[r]egardless of which type of contempt was involved ... Brill completed his jail sentence voluntarily" *Brill* at ¶31.

this Court should adopt the reasoning of the Second and Seventh District courts of appeal in *Huber* and *Brill*, respectively. The Second District and Seventh District provide a more practicable and logical approach to addressing voluntariness than the one taken by the Eighth District.

In this case, Mr. Lewis and the amici curiae argue that this Court should look at voluntariness from the vantage point of the misdemeanor defendant. They maintain that Mr. Lewis should be deemed to have involuntarily served his sentence based on any of the following factors: (1) he pled not guilty to the criminal charges; (2) he challenged the criminal charges brought against him, and (3) he filed a motion for stay of execution in the trial court. According to the opposition, these factors suggest that Mr. Lewis could not have intended to voluntarily serve his sentence, irrespective of any subsequent choices he made. There is nothing, however, in *State v. Wilson* and its progeny to suggest that the intent of the misdemeanant is relevant in determining whether a sentence is voluntarily served. Following the “intent” approach, which is what the opposition recommends, would render the *Wilson* decision meaningless, for it can always be assumed that a misdemeanor defendant will never intend to serve a sentence.

Whether a misdemeanor defendant voluntarily serves his or her sentence should not be based on the intent of the misdemeanant, but rather on something more objective, such as whether he or she was compelled to serve the sentence. In this case, Mr. Lewis chose to complete his sentence, namely the six months of inactive probation, rather than seek a stay of execution in the court of appeals. He had more than enough time (nearly four months) to file a stay of execution in the court of appeals before serving all aspects of his sentence. Moreover, Mr. Lewis was under absolutely no duress to serve his sentence. On his own free will, he chose to serve his sentence and he chose not to seek a stay of execution in the court of appeals; therefore, any

notion that he involuntarily served his sentence is meritless. Accordingly, Mr. Lewis should be deemed to have voluntarily served his sentence, and his appeal to the Eighth District declared moot.

(2) Mr. Lewis wholly misconstrues the City's reliance on App. R. 8(B).

The language of Ohio App. R. 8(B) does not support Mr. Lewis' position in this case. Ohio Appellate Rule 8(B) permits a criminal defendant to seek a stay of execution in the court of appeals. Ohio Appellate Rule 8(B) is clear that: (1) a misdemeanor defendant must initially file a stay of execution in the trial court, and (2) if the application to stay is denied, the misdemeanor defendant may pursue this same relief (stay of execution of the sentence) from the court of appeals. See OHIO APP. R. 8(B).

In the instant case, Mr. Lewis incorrectly suggests that the use of the permissive "may" in Ohio APP. R. 8(B), when referring to filing for a stay in the court of appeals, belies the City's position. Mr. Lewis impliedly suggests that if he were required to file a stay of execution in the court of appeals, Rule 8(B) would instead state that if the trial court stay is denied, the misdemeanor defendant "shall" file a stay of execution in the court of appeals.

Admittedly, Ohio Appellate Rule 8(B) uses "shall" with respect to filing a stay in the trial court, and "may" with respect to filing in the court of appeals; however, this is inconsequential. First, Ohio Appellate Rule 8(B) is a procedural rule; it does not deal with substantive questions, such as the "voluntariness" requirement under *State v. Wilson*. Second, use of "shall" is in the "imperative mood," which is intended to tell the appellate practitioner that it must file a stay in the trial court before filing for a stay in the court of appeals. Given this context, it would be grammatically unsound for the drafters of Ohio Appellate Rule 8(B) to use the word "shall," instead of "may," with respect to filing an application for stay in the court of appeals.

B. Mr. Lewis' argument that he will suffer a collateral disability, if his appeal to the Eighth District Court of Appeals is deemed moot, should be rejected.

(1) Mr. Lewis failed to take an appeal of the Eighth District's determination that he did not suffer a collateral disability; therefore, he is barred from having this issue addressed by the Court.

Mr. Lewis is precluded from raising the collateral disability issue before this Court, as he failed to file a notice or appeal or cross-appeal with respect to the issue. If an appellee fails to file a notice of cross-appeal on a particular issue, the Ohio Supreme Court will not consider the appellee's arguments with respect to that issue. See *Rowland v. Collins*, 48 Ohio St. 2d 311, 358 N.E.2d 582 (1976). This is true even where the appellee asserts alternative grounds in his or her brief that would support the decision appealed from. *Lenart v. Lindley*, 61 Ohio St. 2d 110, 399 N.E.2d 1222 (1980); see, also *Parton v. Weilmann* (1959), 169 Ohio St. 145, 170-171, 158 N.E.2d 719

In the instant case, the Eighth District Court of Appeals determined that Mr. Lewis would not suffer a collateral disability if his appeal were deemed moot. The Eighth District Court held that the record on appeal did not support a finding that Mr. Lewis would suffer a collateral disability or loss of his civil rights if his appeal were mooted. (See Merit Brief of the City of Cleveland Heights, attached Appx. p. 9 ("Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 401-402). The Eighth District held:

The facts show that Lewis failed to show a collateral disability and we cannot infer the existence of one from this record. Consequently, in order for Lewis to avoid dismissal of his appeal, he has to show that his sentence was stayed or involuntarily satisfied.

Thus, the court of appeals ruled that Mr. Lewis did not support a finding of a collateral disability.

The only issue before this Court is whether Mr. Lewis voluntarily served his sentence; Mr. Lewis did not file a cross-appeal as to whether he suffered a collateral disability. On June 10, 2010, the Eighth District Court of Appeals certified a conflict to this court, stating as follows:

THIS COURT CERTIFIES THAT A CONFLICT EXISTS BETWEEN THIS COURT'S EN BANC DECISION IN *CITY OF CLEVELAND HEIGHTS V. LEWIS*, CUYAHOGA APP. NO. 92917, 2010-OHIO-2208, AND THE DECISIONS OF THE SECOND DISTRICT AND SEVENTH DISTRICT IN *DAYTON V. HUBER*, MONTGOMERY APP. NO. 20425, 2004-OHIO-7249; AND *CARROLL CITY. BUR. OF SUPPORT V. BRILL*, CARROLL APP. NO. 05 CA 818, 2005-OHIO-6788.

THE COURT HEREBY CERTIFIES THIS MATTER TO THE OHIO SUPREME COURT PURSUANT TO APP. R. 25(A) AND ARTICLE IV SECTION 3(B)(4) OF THE OHIO CONSTITUTION FOR RESOLUTION OF THE FOLLOWING ISSUE:

"WHETHER AN APPEAL IS RENDERED MOOT WHEN A MISDEMEANOR DEFENDANT SERVES OR SATISFIES HIS SENTENCE AFTER UNSUCCESSFULLY MOVING FOR A STAY OF EXECUTION IN THE TRIAL COURT, BUT WITHOUT SEEKING A STAY OF EXECUTION IN THE APPELLATE COURT."

On September 29, 2010, this Court determined that a conflict existed, and accepted this case for review on the issue set forth above.

Resolution of the conflict between the Eighth District and the Seventh/Second District Court in no way requires this Court to review whether Mr. Lewis will suffer a collateral disability if his appeal is declared moot. There is, in fact, no apparent conflict between the Eighth District Court of Appeals and the Second District or Seventh District as to the analysis of collateral disabilities under *State v. Wilson* and its progeny. Accordingly, Mr. Lewis should have filed a separate appeal and/or cross-appeal with respect to the collateral disability issue. He did not; therefore, this Court should not address the issue. In addition, the amici curiae also attempt to address the collateral disability issue in their briefs. Given that this issue is not before the Court, their arguments on this point should also be ignored.

(2) Mr. Lewis had an opportunity to present evidence of a collateral disability in the court of appeals, but failed to do so.

The opposition argues that Mr. Lewis did not have an opportunity to address whether he suffered a collateral disability in the court of appeals; therefore, he did not have a meaningful opportunity to be heard on the issue. They point to the fact that the court of appeals sua sponte raised the issue for the first time during oral argument. In addition, the opposition complains that it would be patently unfair to require Mr. Lewis to establish that he would suffer collateral disabilities, if his appeal were declared moot, because he was precluded from introducing evidence outside the record to establish collateral disabilities. The oppositions' complaints are unfounded.

It is appropriate to consider evidence outside the appellate record in determining whether an appeal is moot or justiciable. *State v. Popov*, 4th Dist. Ct. App. No. 10CA26, 2011-Ohio-372, citing *Miner v. Witt* (1910), 82 Ohio St. 237, 239, 92 N.E. 21 (per curiam) (holding that an event that causes a case to become moot may be proved by extrinsic evidence). A court of appeals may look at items outside the record for the limited purpose of determining whether an appeal is moot. See *State ex rel. Luchette v. Pasquerilla* (2009), 182 Ohio App.3d 418, 429, 913 N.E.2d 461, 469 (11th Dist. Ct. App.), citing *Am. Energy Corp. v. Datkuliak*, 174 Ohio App.3d 398, 2007-Ohio-7199, ¶ 19-39 (7th Dist.).

In addition, an appellant has ample opportunities to introduce extrinsic evidence of a collateral disability to a court of appeals. Initially, an appellant may introduce evidence of a collateral disability in his or her merit brief or in a brief subsequently filed in the court of appeals. Moreover, an appellant can introduce this evidence during oral argument, albeit through representations made by counsel. There is also nothing to preclude an appellant from requesting,

from the court of appeals, an opportunity to brief the collateral disability issue, i.e. if the issue is of mootness is raised by the Court. Finally, Ohio Appellate Rule 26 permits a party to file an application for reconsideration. If the court of appeals determines that there is not sufficient evidence of a collateral disability, the appellant could conceivably introduce such evidence in a motion for reconsideration.

In the instant case, Mr. Lewis could have introduced evidence that he would suffer a collateral disability during oral argument (through representations made by his attorney); he could have requested an opportunity to brief the collateral disability issue; or filed an application for reconsideration pursuant to Ohio App. Rule 26(A). Instead, Mr. Lewis chose not to introduce any evidence of a collateral disability, but rather focus on whether he voluntarily served his sentence. (See Merit Brief of Appellant City of Cleveland Heights, Ohio. at Appx. pg. 9 (“Announcement of [the Eighth District] Court’s Decision” (May 19th, 2010, Vol. 705, pg. 401))). Thus, Mr. Lewis had an opportunity to be heard on the issue of whether he would suffer a collateral disability if his appeal were deemed moot. The Eighth District Court of Appeals, moreover, did not deny Mr. Lewis notice of and a meaningful opportunity to be heard on the collateral disability issue; rather, Mr. Lewis chose to sleep on his rights.

In addition, Mr. Lewis had notice that a court of appeals cannot answer moot questions; therefore, he should have introduced evidence of a collateral disability in his merit brief to the Eighth District. In *In re S.J.K.* (2007), 114 Ohio St.3d 23, 25, 867 N.E.2d 408, 410, this Court held that an appellant has the burden of establishing that his or her appeal is not moot. *Id.*, citing *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236; *State v. Golston* (1994), 71 Ohio St.3d 224, 226, 643 N.E.2d 109. In addition, lack of subject matter jurisdiction may be raised sua sponte by a court at any stage in the proceedings and may be raised for the first time on appeal.

State v. Davis, 7th Dist. No. 08 MA 16, 2008-Ohio-6211, ¶ 10. In fact, an appellate court is bound to raise jurisdictional questions not raised by the parties. *Id.*; see, generally *In re Byard*, 74 Ohio St.3d 294, 296, 1996-Ohio-163, 658 N.E.2d 735. Thus, appellants are always on notice that they will have to show, at every stage of the proceedings, that their appeal is viable and that the court of appeals has subject matter jurisdiction to address the issue(s) on appeal.

In the instant case, Mr. Lewis should have been cognizant of this burden on appeal, i.e. to show that his appeal was not moot. Mr. Lewis could have established in his merit brief (or a subsequently filed brief) to the Eighth District. Arguably, Mr. Lewis first received actual notice that his appeal might be moot during oral argument. Nonetheless, this does not discharge him of his duty to maintain, at all stage of his appeal, a viable case. Prudence would dictate that a misdemeanant, such as Mr. Lewis, introduce evidence of a collateral disability in his or her initial brief. Given that Mr. Lewis failed to introduce evidence of collateral disability to the court of appeals; therefore, his appeal should be deemed moot.

(3) Mr. Lewis has failed to demonstrate that he will suffer a collateral disability if his appeal is deemed moot.

In his merit brief, Mr. Lewis for the first time attempts to introduce evidence of a collateral disability. Even if this late attempt to salvage his appeal is permitted, Mr. Lewis still has failed to establish a collateral disability. An appeal is moot unless the misdemeanant defendant can establish that at some point in the proceeding he or she has “offered evidence from which an inference can be drawn that [the misdemeanant] will suffer some collateral legal disability or loss of civil rights.” See *State v. Berndt*, 29 Ohio St.3d 3, 4, 504 N.E.2d 712, 713. An appeal is moot “only if it is shown that there is no possibility that any collateral legal consequences will be imposed upon the basis of the challenged conviction. See *In re S.J.K.*, 114

Ohio St. 23, 26, 867 N.E.2d 408, 411, quoting *Wilson*, 41 Ohio St.2d at 237, 325 N.E. 2d 236. A collateral disability is “an adverse legal consequence of a conviction or judgment that survives despite the court's sentence having been satisfied or served.” *In re S.J.K.*, 114 Ohio St. at 25, 867 N.E.2d at 410, citing *Pollard v. United States* (1957), 352 U.S. 354, 77 S.Ct. 481.

Mr. Lewis argues that he might suffer a collateral disability if his appeal is deemed moot, and his conviction upheld, based on the following: (1) his employment with the U.S. Postal Service could be adversely affected; (2) he may have to expunge his criminal conviction for obstruction of official business, and thus will be precluded from expunging a subsequent criminal conviction; and (3) his 42 U.S.C. § 1983 unlawful arrest claim under the Fourth Amendment will be rendered unviable. None of the above constitutes a “collateral disability” under *Wilson* and its progeny.

With regard to the employment issue, Mr. Lewis did not present any evidence to the court below (or this Court) to suggest that he would in fact suffer some adverse employment action if his conviction were upheld. The City further notes that Mr. Lewis was, in fact, convicted of obstruction of official business in the trial court. If he were to suffer some adverse employment action, it would have likely occurred after his conviction in the trial court. Yet, Mr. Lewis has presented no such evidence that he has or will suffer an adverse employment action if his appeal is deemed moot and his conviction upheld.

As to the expungement issue, *Berndt* is instructive. In *Berndt*, this Court held that the enhancement of a criminal penalty, if the misdemeanant commits another offense, does not constitute a collateral disability, because “no such disability will exist if [the misdemeanant] remains in the confines of the law.” *Berndt*, 29 Ohio St.3d at 4-5, 504 N.E.2d at 713. In this case, if Mr. Lewis remains within the confines of the law, he will not need to seek another

expungment (this of course assumes that he will expunge his criminal conviction for obstruction of official business if his conviction is upheld). As such, his alleged inability to seek an expungement for some uncommitted, future criminal conviction cannot be fairly classified as a collateral disability.

In addition, Mr. Lewis inability to pursue monetary relief in a civil lawsuit cannot be deemed a collateral disability under *Wilson*. The crux of *Wilson*, *Berndt* and *In re S.J.K.* is the possibility of a collateral (often civil) disability “imposed” upon the misdemeanant emanating from the conviction. There is nothing being “imposed” upon Mr. Lewis if he is unable to seek monetary relief for an alleged unlawful arrest. Regardless, Mr. Lewis’ potential recovery for an alleged unlawful arrest is speculative.

Accordingly, for the above reasons, Mr. Lewis cannot establish that he will suffer a collateral disability if his appeal to the Eighth District is declared moot.

C. The Amici Curiae’s argument that *State v. Wilson* and its progeny should be reversed is unpersuasive and should be rejected.

A misdemeanor defendant should be required to present specific proof that a misdemeanor conviction may result in the imposition of a collateral disability. In *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216, 797 N.E.2d 1256, at Syllabus ¶1, this Court held that:

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.

Thus, all three elements must exist before a prior decision of this Court is overturned.

The amici curiae argue that this Court should overrule *Wilson* for two reasons: (1) requiring a misdemeanant to prove some future collateral disability is impractical, if not

impossible and (2) collateral consequences have become so pervasive, that this Court should automatically assume the existence of a collateral disability in every case. The amici curiae's arguments are unpersuasive.

The decision in *State v. Wilson* is not less practical today than at the time the Court decided the case. Initially, the City notes that this Court appears to have never intended for its decision in *Wilson* to be applied to felony cases. See *State v. Golston* (1994), 71 Ohio St.3d 224, 227, 643 N.E.2d 109, 111 – 112. In *Golston*, this Court overturned an appellate court decision, stating “we specifically disapprove of *Williams, supra*, 80 Ohio App.3d 542, 609 N.E.2d 1307, which improperly extended the rule of *Wilson* and *Berndt* to cases involving appeals from felony convictions.” *Id.* Thus, contrary to the amici curiae's position, this Court did not reverse itself in *Golston*, and has confined its decision to *Wilson* to misdemeanor offenses.

The requirement that a misdemeanant provide specific proof of a collateral disability is not onerous and is easily applied. If a misdemeanant defendant is aware of some collateral disability that may affect some future, specific endeavor, he or she is able to present such evidence to the Court. The *Wilson* decision is not concerned with unrealistic or hypothetical future situations, but rather on (imminent or future) collateral disabilities that the misdemeanant can articulate to the Court. Thus, to suggest that the collateral disability requirement is unworkable is meritless.

There further has not been a change in circumstances to no longer justify continued adherence to *Wilson*. The amici curiae present an extensive list of potential collateral disabilities that might befall a defendant if convicted of misdemeanor offense. There is no question that if convicted, a misdemeanor defendant may suffer a collateral disability. In fact, this is precisely why this Court created the *Wilson* test.

To impliedly suggest, moreover, that this Court could not have anticipated an increase in the number of potential collateral disabilities also strains credulity. As the Honorable Judge Christine McMonagle stated, in her concurring opinion in the proceedings below, that:

In 1975, when the Ohio Supreme Court decided *State v. Wilson* (1975), 41 Ohio St.2d 236, 70 O.O.2d 431, 325 N.E.2d 236, the court recognized numerous instances where convictions resulted in disabilities: under state law, as a result of a conviction, a defendant could not engage in certain businesses, serve as an official of a labor union, vote in elections, or serve as a juror. Even in cases in which a disability *might* occur, courts have decided that cases should not be rendered moot on appeal.

See *Cleveland Hts. v. Lewis* (2010), 187 Ohio App.3d 786, 795, 933 N.E.2d 1146, 1153 (8th Dist. Ct. App.). (See Merit Brief of the City of Cleveland Heights, Ohio, attached Appx. 22 (“Announcement of [the Eighth District] Court’s Decision” (May 19th, 2010), Vol. 705, pg. 414). When this Court decided *Wilson*, it was not blind to the numerous collateral disabilities that might occur if a defendant is found guilty of a misdemeanor offense. Nor is it reasonable to conclude that this Court suffered from myopia when it rendered its decision in *Wilson*, and thus could not foresee a potential increase in the number of collateral disabilities that might befall a person convicted of a misdemeanor offense.

In addition, a number of the collateral disabilities cited in the amici curie’s table are specific to certain offenses. For example, a number of the disabilities emanate from the commission of misdemeanor crimes involving moral turpitude. If the misdemeanant is convicted of a crime involving moral turpitude, then he or she will be able to determine the exact collateral disability he or she may suffer if the conviction stands and, cite to those specific collateral disabilities when confronted with a mootness challenge to an appeal. The same reasoning applies to collateral disabilities associated with procuring a license, obtaining employment and immigration issues. Presumably, criminal defendants will know what misdemeanor offenses they

are being charged with. They will further know that if convicted of those charges, they may suffer specific collateral disabilities associated with those charges. Therefore, any suggestion that a misdemeanor defendant will encounter an incalculable and unreasonable number of collateral disabilities simply is not true.

V. CONCLUSION

Based upon the foregoing, Appellant, the City of Cleveland Heights, Ohio respectfully requests that this Honorable Court find Mr. Lewis' appeal to the Eighth District Court of Appeals moot and reverse the Eighth District Court of Appeals' decision overturning Mr. Lewis' conviction for obstruction of official business.

Respectfully submitted,



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VI. PROOF OF SERVICE

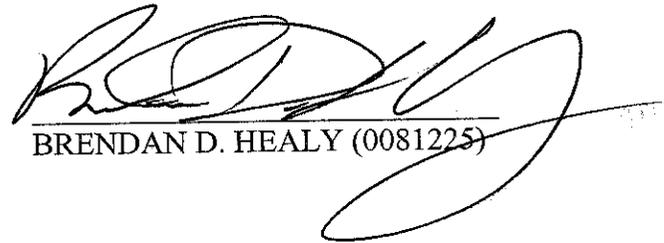
A copy of the foregoing Merit Brief of the Appellant City of Cleveland Heights, Ohio was sent by ordinary U.S. mail this 22th day of February, 2011, to:

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