

ORIGINAL

IN THE SUPREME COURT OF OHIO
Case No. 2011-0599

STATE OF OHIO :
Appellant :
-vs- : On Appeal from the
DONALD EAFFORD : Cuyahoga County Court
Appellee : of Appeals, Eighth
: Appellate District Court
: of Appeals
: CA: 94718

MEMORANDUM IN OPPOSITION
TO JURISDICTION

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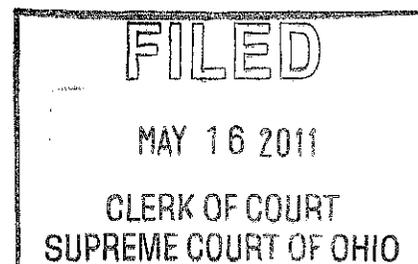


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In Opposition to Appellant’s Proposition of Law (as formulated by Appellant):

Where a verdict form states a charge of possession of drugs but omits the drug at issue, the court is to look to the entirety of the record, to include the indictment, the evidence at trial, the argument of counsel, and the jury instructions to determine the level of offense. (*State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, limited and explained.)

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**EXPLANATION OF WHY THIS CASE DOES NOT PRESENT SUBSTANTIAL
CONSTITUTIONAL QUESTIONS AND IS NOT A MATTER
OF GREAT PUBLIC OR GENERAL INTEREST**

The Ohio Supreme Court has already resolved that *State v. Pace*, Franklin App. No. 10AP-547, 2011-Ohio-320, presents no conflict that this Court should hear as to the law established in *State v. Pelfrey*. On May 4, 2011, this Court ruled that no conflict existed between *Pace* and *State v. Moore*, 188 Ohio App.3d 726, 2010-Ohio-1848. *Moore* was cited with approval by the Eighth District in its ruling in the instant matter. Therefore the Eighth District's opinion in *State v. Eafford* is not in conflict with *Pace*.

For these reasons, this Court should decline to exercise jurisdiction over this case.

STATEMENT OF THE CASE AND FACTS

Defendant-appellee, Donald Eafford was charged in a three count indictment with charges of permitting drug abuse in violation of R. C. 2925.13; drug possession in violation of R.C. 2925.11; and possessing criminal tools in violation of 2923.24, all felonies of the fifth degree. He was arraigned on August 21, 2009.

A jury trial was commenced and on January 26, 2010, following the State's case, the court dismissed the count of possessing criminal tools under Crim. R. 29. Later that afternoon, the jury returned verdicts of guilty to permitting drug abuse and possession of drugs. The court proceeded immediately to sentence and imposed eight months of prison on each count concurrent with each other but consecutive to a six month prison sentence in CR 529907.

On appeal the Eighth District Court of Appeals held that the verdict for drug possession rendered against Mr. Eafford merely convicted him of a misdemeanor and did not support the court sentencing him for a felony of the fifth degree. *State v. Eafford*, Cuy. App. No. 94718, 2011-Ohio-927.

Mr. Eafford accepts the facts of this matter as promulgated in the opinion by the Eighth District and reprinted by the State in its Motion in Support of Jurisdiction.

ARGUMENT

In Opposition to Appellant's Proposition of Law (as formulated by Appellant):

Where a verdict form states a charge of possession of drugs but omits the drug at issue, the court is to look to the entirety of the record, to include the indictment, the evidence at trial, the argument of counsel, and the jury instructions to determine the level of offense. (*State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, limited and explained.)

The State's argument should be rejected. This Court is being asked to disregard the clear directives of R.C. 2945.75 in order to provide the State with an avenue to avoid its responsibilities in the prosecution of criminal cases. Mr. Eafford's case is a clear application of this Court's holding in *Pelfrey*. The Eighth District Court of Appeals correctly held that the verdict form was insufficient because it failed to include a statement indicating either the degree of the offense or that an aggravating circumstance existed to justify a conviction on the greater offense. *State v. Eafford*, Cuy. App. No. 94718, 2011-Ohio-927, at ¶ 40.

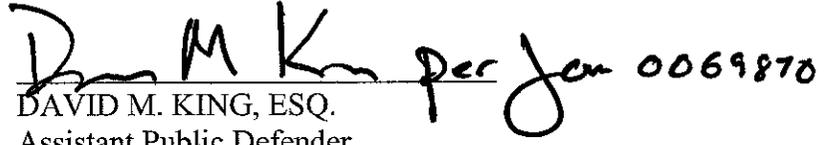
The gist of the State's argument is that the instant matter is in conflict with *State v. Pace*, supra. This Court's recent ruling, that *Pace* presents no conflict with *State v. Moore*, supra., is determinative of this action as the lower court's decision in *Eafford* was based strongly upon *Moore*.

As of this writing, the Eighth District has yet to rule on the State's Motion to Certify a Conflict which was filed on March 14, 2011. This matter does not present an issue of public or great general interest. Nor does it present a substantial constitutional question for this Court to address. This Court's limited resources would not be well spent on this matter.

CONCLUSION

Wherefore, this Court should decline to exercise jurisdiction over the instant case.

Respectfully submitted,


DAVID M. KING, ESQ.
Assistant Public Defender
Cuyahoga County
Counsel for Appellee

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum was hand delivered to Hon. William D. Mason, Cuyahoga County Prosecutor, and or a member of his staff, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this 16th day of May, 2011.


DAVID M. KING, ESQ.