

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee

vs.

SHENIKQUE ANDERSON

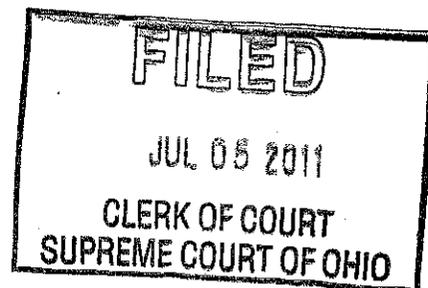
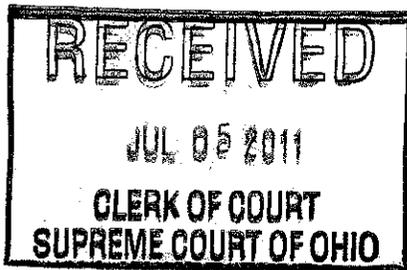
Appellant

Case No. C 11 0030

Trial No. B 10 04516

11-1145

MEMORANDUM IN SUPPORT OF JURISDICTION



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Proposition of Law No. 1: When the trial court improperly imposes a maximum sentence, it errs
to a defendant’s prejudice.

Authorities Presented:

Ohio Revised Code §2929.11(A) 2

Ohio Revised Code §2929.11(B) 2

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No.	C 11 0030
	:		
Appellee	:	Trial No.	B 10 04516
	:		
vs.	:	MEMORANDUM IN SUPPORT OF	
	:	JURISDICTION	
SHENIKQUE ANDERSON	:		
	:		
Appellant	:		

**ISSUES OF THIS CASE RAISE SUBSTANTIAL CONSTITUTIONAL QUESTIONS
AND ARE OF GREAT PUBLIC INTEREST**

Shenikque Anderson asks this Court to accept jurisdiction regarding the propositions of law that the Hamilton County Common Pleas Court violated her due process rights and erred to her prejudice when the trial court entered a judgment entry of conviction and erroneous sentence. This case is of public or great general interest and involves a substantial constitutional question because the decision rendered in this matter by the First District Court of Appeals is erroneous by failing to recognize the assignments of error argued in the appeal violated her constitutional due process rights and is in conflict with other Ohio appellate courts. Thus, this Court needs to adjudicate this appeal to resolve and clarify for all appellate courts the due process questions raised herein.

STATEMENT OF THE CASE AND PROCEDURAL POSTURE

Appellant (Anderson) was indicted by the Hamilton County Grand Jury for six counts of aggravated arson, felonies of the first degree. After being found competent to stand trial, Anderson and the State of Ohio entered into a plea agreement whereby the State dismissed five counts in return for her guilty plea to one count of aggravated arson. The trial court sentenced her to five years imprisonment.

Anderson appealed her case to the First District Court of Appeals (Case No. C 11 0030) which affirmed her conviction on June 8, 2011. She now asks this Court to take jurisdiction of this case.

On July 3, 2010, in Cincinnati, Ohio, Ms. Anderson became upset at her husband and set fire to her condo. Four different condos were heavily damaged in an amount totaling approximately \$625,000. No one was injured in the fire. (T.p. 37)

Proposition of Law No. 1: When the trial court improperly imposes a prison sentence, it errs to a defendant's prejudice.

The trial court sentenced Anderson to a prison sentence in this case. The sentence was unconstitutionally excessive and the trial court did not comply with Revised Code §2929.11 in imposing the sentence. According to that Ohio sentencing statute: "The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender."¹ In addition, a sentence imposed for a felony shall be ". . . commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders."²

In the present case, the trial court imposed an arbitrary and erroneous sentence on Anderson by imposing a five-year prison sentence. There was no indication Anderson had any prior felony record or had served a prior prison sentence. Moreover, no one was physically injured in the fire, although it caused extensive damage. The record indicates Anderson should have received a community control sentence due to her serious mental and physical illness which required extensive medical treatment, treatment she could not adequately receive in prison. (T.p. 23-25, 49-50)

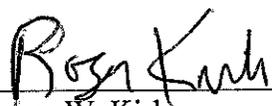
¹*Ohio Revised Code* §2929.11(A)

²*Ohio Revised Code* §2929.11(B)

CONCLUSION

Based on the foregoing, Shenikque Anderson asks this Court to take jurisdiction of this case.

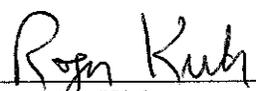
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was hand-delivered to the office of the Hamilton County Prosecutor on 7-1-, 2011.



Roger W. Kirk
Attorney for Defendant-Appellant

APPENDIX

Judgment Entry of the First District Court of Appeals

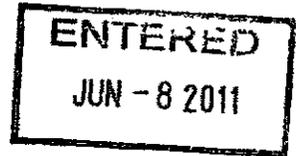
**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO, : APPEAL NO. C-110030
Plaintiff-Appellee, : TRIAL NO. B-1004516
vs. : *JUDGMENT ENTRY.*

SHENIKQUE ANDERSON,
Defendant-Appellant.



D93364312



We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Shenikque Anderson was indicted for six counts of aggravated arson after Anderson had become upset with her husband and had set fire to their condominium complex. No one had been injured in the fire, but four condominiums had sustained severe damage. Anderson pleaded guilty to one count of aggravated arson, and the trial court sentenced her to five years in prison. Anderson now appeals.

Anderson raises a single assignment of error for our review, wherein she argues that the trial court erred by imposing an excessive sentence. Anderson contends that the trial court abused its discretion in imposing a five-year prison sentence for the following reasons: no one was injured in the fire; Anderson has no prior felony convictions; and Anderson's physical and mental illnesses will not be adequately treated in prison. In reviewing Anderson's sentence, we must determine

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

whether the sentence imposed was contrary to law, and if the sentence was not contrary to law, then we must determine whether the trial court abused its discretion in imposing it.²

The trial court sentenced Anderson to five years in prison, which is within the statutory sentencing range for aggravated arson.³ Furthermore, after a review of the record, we hold that Anderson's sentence was not an abuse of discretion. Prior to sentencing, the trial court ordered a presentence-investigation report, as well as a court-clinic evaluation to determine whether Anderson was competent to stand trial. At the plea hearing, Anderson and her attorney both spoke to the trial court regarding Anderson's mental- and physical-health issues. Therefore, we cannot say that the trial court acted unreasonably, arbitrarily, or unconscionably in imposing its sentence.⁴ We overrule Anderson's assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

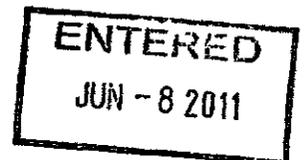
HILDEBRANDT, P.J., HENDON and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 8, 2011

per order of the Court


Presiding Judge



² *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, at ¶14 and 17.

³ R.C. 2929.14(A)(1).

⁴ *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.