

**ORIGINAL**

IN THE SUPREME COURT OF OHIO

State of Ohio, :  
 :  
 Plaintiff-Appellant, : Case No. 2011-0818  
 :  
 v. : On Discretionary Appeal from the  
 : Coshocton County Court of Appeals,  
 Sandra Griffin, : Fifth Appellate District, Case No.  
 : 2009CA21  
 Defendant-Appellee. :

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**Motion of Appellee Sandra Griffin  
to Dismiss as Improvidently Allowed or, in the Alternative,  
to Summarily Affirm or to Vacate Briefing Stay and Receive Briefs**

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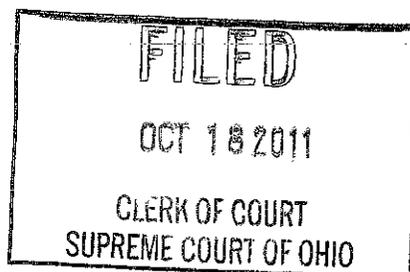
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**Motion of Appellee Sandra Griffin  
to Dismiss as Improvidently Allowed or, in the Alternative,  
to Summarily Affirm or to Vacate Briefing Stay and Receive Briefs**

**I. Introduction**

Appellee Sandra Griffin respectfully asks this Court to dismiss this case as improvidently allowed, or, in the alternative, to summarily affirm or to vacate the briefing stay.

**II. Procedural History**

The original judgment entry of sentence in this capital case did not include any mention of a conviction. Exhibit 2. Even though the indictment included capital specifications, the parties and trial court erroneously treated the case as non-capital because the prosecutor promised not to argue for the death penalty. *State v. Griffin* (1992), 73 Ohio App.3d 546, 553 (“although this is a ‘capital offense,’ it is no longer a case within the ambit of the sentencing provisions of R.C. 2929.03 et seq.”). Even though this Court expressly abrogated the reasoning of Miss Griffin’s first purported appeal, see *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, her subsequent challenges were unsuccessful.

The year after she lost her final habeas appeal, this Court issued *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. Because her judgment entry of sentence did not include any mention of a conviction, Miss Griffin then sought a final order from the trial court, and the State agreed. In fact, the State drafted the final order from which Miss Griffin appealed in this case.

On appeal, the court of appeals held that the record did not contain a capital sentencing opinion under R.C. 2929.03(F) and that the judgment entry of sentence did not contain a conviction. *State v. Griffin*, 5<sup>th</sup> Dist. No. 09CA21, 2010-Ohio-3517, ¶13. As a result, the court held that the original entry was not a final appealable order, and it decided the appeal on the merits. *Id.*

Without providing this Court with copies of the relevant entries, the State appealed to this Court and claimed that the record contained a capital sentencing opinion under R.C. 2929.03(F), which, under *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, could correct the deficiency in the judgment entry of sentence. Without a record, this Court summarily vacated the court of appeals' opinion, and remanded for further consideration of *Ketterer*. *State v. Griffin*, --- Ohio St.3d ---, 2010-Ohio-5948.

The court of appeals received supplemental briefing, and again held that the record contained no capital R.C. 2929.03(F) sentencing opinion. *State v. Griffin*, 5<sup>th</sup> Dist. No. 09CA21, 2011-Ohio-1638, ¶19-21. The State again appealed claiming that the non-capital sentencing entry was actually a capital R.C. 2929.03(F) sentencing opinion. Again, the State did not provide this Court with a copy of the relevant entries. This Court accepted the State's appeal and held this case for the decision in *State v. Lester*, Case Nos. 2010-1007 and 2010-1372. *State v. Griffin*, --- Ohio St.3d ---, 2011-Ohio-4751.

On October 13, 2011, this Court decided *Lester*, holding that the failure to include the "fact of conviction" in a sentencing entry rendered a judgment

non-final, but the failure to include the “manner of conviction” did not. *State v. Lester*, Slip Opinion No. 2011-Ohio-5204, at paragraph one of the syllabus.

### III. Discussion

#### A. Under *Lester*, Miss Griffin’s original sentencing entry is not final because if it did not include the “fact of the conviction.”

Miss Griffin prevails under *Lester* because the original non-capital judgment entry of sentence in her case did not include any mention that she had been convicted of anything. Under *Lester*, the failure to include any mention of the “fact of conviction” is a “substantive” error rendering the judgment non-final (and therefore not subject to correction by a nunc pro tunc entry):

We further observe that Crim.R. 32(C) clearly specifies the substantive requirements that must be included within a judgment entry of conviction to make it final for purposes of appeal and that the rule states that those requirements “shall” be included in the judgment entry of conviction. These requirements are the *fact of the conviction*, the sentence, the judge’s signature, and the entry on the journal by the clerk. . . .

Crim.R. 32(C) does not require a judgment entry of conviction to recite the manner of conviction as a matter of substance, but it does require the judgment entry of conviction to recite the manner of conviction as a matter of form.

*Lester*, at ¶11-12 (underline added, italics in original).

#### B. The court of appeals lacked subject matter jurisdiction to hear an appeal until the trial court issued a final order in 2009.

Because the “fact of the conviction” is not in Miss Griffin’s judgment entry, she did not have a final order until 2009. Because the trial court had not issued a final order, the court of appeals lacked subject matter jurisdiction

to hear her initial appeal in 1992. The lack of a final appealable order “deprive[s] the appellate court of jurisdiction to consider and correct [any] error.” See, e.g., *Hubbard v. Canton City Sch. Bd. of Educ.*, 88 Ohio St.3d 14, 2000-Ohio-260, at ¶15 (“The opinion of the court of appeals is vacated for the reason that the court of appeals lacked subject-matter jurisdiction for lack of a final appealable order.”). Accordingly, the 1992 court of appeals opinion was void ab initio. The void judgment “place[d] the parties in the same place as if there had been no” judgment. *State v. Bezak*, 114 Ohio St.3d 94; 2007-Ohio-3250, ¶13 (discussing void sentencing judgments), citing *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267.

**C. The State’s assertion that the record contains a capital R.C. 2929.03(F) sentencing opinion is simply wrong.**

What the State now claims to be the judgment of conviction, State’s Jurisdictional Memorandum at 10, is actually only the bench trial verdict that included no conviction. Exhibit 1. What the State now claims to be the R.C. 2929.03(F) sentencing opinion is simply a journalization of the sentence. Exhibit 2. The State has provided neither this Court nor the court of appeals with any explanation as to how the standard, non-capital sentencing entry is somehow a capital sentencing opinion under R.C. 2929.03(F).

**D. A non-capital sentencing entry is a non-capital sentencing entry, not a defective capital 2929.03(F) sentencing opinion.**

The State is also wrong when it asserts that the standard non-capital sentencing entry was a deficient capital sentencing opinion under R.C.

2929.03(F). The trial court made no effort to comply with R.C. 2929.03(F), or any other capital statute. Nowhere does the trial court weigh the capital sentencing factors. Nowhere does the trial court explain the sentence. The entry simply imposes a sentence in the way that trial courts imposed non-capital sentences at the time. And that is exactly what the court of appeals held in 1992. *Griffin* at 553 (“although this is a ‘capital offense,’ it is no longer a case within the ambit of the sentencing provisions of R.C. 2929.03 et seq.”).

A non-capital sentencing entry is a non-capital sentencing entry, not a defective capital R.C. 2929.03(F) sentencing opinion.

**E. This Court should not reverse the court of appeals without reviewing the record, receiving briefs, and hearing argument.**

- 1. Calling the non-capital sentencing entry in this case a capital R.C. 2929.03(F) sentencing opinion would significantly alter the meaning of that section.**

If this Court wishes to review the State’s assertion that the non-capital judgment entry of sentence is actually a capital R.C. 2929.03(F) sentencing opinion, this Court should vacate the briefing stay, receive briefs, and hear argument. This Court directly hears death penalty cases, and this Court, not the courts of appeals, should render any decision that affects subject matter jurisdiction in death penalty cases.

- 2. This Court should not remand this case for a third time because the court of appeals has three times made its view of the case clear.**

This Court should not simply vacate the court of appeals opinion and send it back to the court of appeals to decide this issue for the

fourth time. The Fifth District has now twice ruled that the record includes a verdict form and a sentencing entry, not, as the State claims, a judgment entry of conviction and an R.C. 2929.03(F) sentencing opinion. *State v. Griffin*, 5<sup>th</sup> Dist. No. 09CA21, 2011-Ohio-1638, ¶19-21; *State v. Griffin*, 5<sup>th</sup> Dist. No. 09CA21, 2010-Ohio-3517, ¶13. And when it heard an appeal from the original non-final order, the Fifth District expressly ruled that the trial court did not follow any part of R.C. 2929.03. *State v. Griffin* (1992), 73 Ohio App.3d 546, 553.

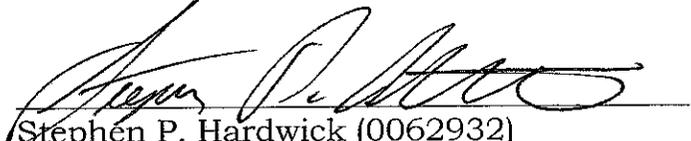
The court of appeals has correctly ruled three times that the trial court did not follow any of the capital procedures in R.C. 2929.03. There is no reason to believe that the court of appeals will change its mind or that the facts will somehow change on the State's fourth try. The trial court's original verdict remains a verdict. The trial court's non-capital judgment entry of sentence remains a judgment entry of sentence.

#### **IV. Conclusion**

The facts of this case are clear. The law is clear. Miss Griffin prevails under both *Ketterer* and *Lester*. This Court should dismiss the State's appeal as improvidently granted. In the alternative, this Court should summarily affirm the decision of the court of appeals based on *Ketterer* and *Lester*. But if this Court deems it necessary for any court to further review the State's claims that the record contains an R.C. 2929.03(F) capital sentencing opinion, this Court should vacate the briefing stay, receive briefs, and hear argument.

Respectfully submitted,

Office of the Ohio Public Defender

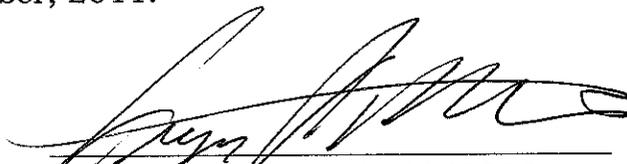
  
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Counsel for Appellee, Sandra Griffin

**Certificate of Service**

I certify that a copy of the foregoing was sent by regular U.S. Mail to Jason Given, Coshocton County Prosecutor, 318 Chestnut Street, Coshocton, Ohio 43812 this 18<sup>th</sup> day of October, 2011.

  
Stephen P. Hardwick (0062932)  
Assistant Public Defender

Counsel for Appellee, Sandra Griffin

IN THE COMMON PLEAS COURT OF COSHOCTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs

SANDRA MAXWELL GRIFFIN,

Defendant.

Case No. 89 CR 13

JUDGMENT ENTRY

JUDY STEVENS  
CLERK OF COURTS  
COSHOCTON CO., OHIO

Dec 21 2 47 PM '89

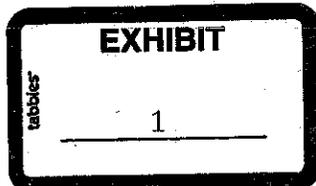
FILED

On December 18, 1989, in open court, and in the presence of the defendant, accompanied by her attorneys, Mr. Schwartz and Mr. Wateri, and in the presence of the representatives of the plaintiff, State of Ohio, Mr. Plummer and Mr. Owens, the court announced the following verdicts and findings:

(1) As to Count One, a charge of complicity in aggravated murder, the court finds the defendant guilty as charged in that count of the indictment.

(2) As to the first specification in Count One, the court finds the defendant guilty of the specification in that the defendant did commit the offense of complicity in aggravated murder while the defendant was committing, attempting to commit, or fleeing immediately after committing, or attempting to commit aggravated robbery, and the defendant while not the principal offender in the aggravated murder, did aid and abet in the commission of the aggravated murder with prior calculation and design as charged in the specification.

(3) As to the second specification, the court finds that the defendant did have a firearm as defined in Section 2923.11 of the Ohio Revised Code on or about her person or under her control while committing the offense



charged in Count One.

(4) As to Count Three, a charge of complicity in unlawful possession of dangerous ordnance, the court finds the defendant guilty as charged in Count Three of the indictment.

(5) As to Count Four, a charge of complicity in theft, the court finds the defendant guilty as charged in Count Four of the indictment.

(6) Further, as to Count Four, the court finds the value of the property stolen was \$5,000 or more and less than \$100,000.

(7) As to Count Five, a charge of complicity in aggravated robbery, the court finds the defendant guilty as charged in Count Five of the indictment.

(8) As to the specification to Count Five, the court finds the defendant did have a firearm, as defined in Section 2923.11 of the Ohio Revised Code on or about her person or under her control while committing the offense charged in Count Five.

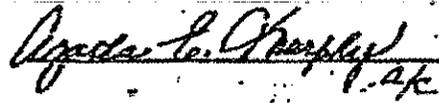
The sentencing hearing is hereby scheduled for the 17th day of January, 1990, at 9:30 o'clock A.M. Defendant is ordered held without bond, pending sentencing.



RICHARD I. EVANS, JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Judgment Entry was served upon William N. Orens, Prosecuting Attorney, 413 Main Street, Coshocton, Ohio 43812, by placing such copy in his office mail box in the Clerk of Courts' Office, and upon Mr. Dennis Fusateri and Mr. C. Jay Schwart, Attorneys for Defendant, 338 South High Street, Columbus, Ohio 43215, by regular U. S. Mail, this 8<sup>th</sup> day of December, 1989.



IN THE COMMON PLEAS COURT OF COSHOCTON COUNTY, OHIO

State of Ohio :  
Plaintiff, : Case No. 89-CR-13  
vs. : JUDGMENT ENTRY  
Sandra Maxwell Griffin : ON SENTENCING  
Defendant. :

JAN 29 11 35 AM '90  
FILED  
JUDY STEVENS REED  
CLERK OF COURTS  
COSHOCTON CO. OHIO

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This matter came on for sentencing this 25th day of January, 1990. Present in Court were the defendant, Sandra Maxwell Griffin, represented by Attorneys Dennis Pusateri and C. Jay Schwart, and William M. Owens, Prosecuting Attorney, and Attorney C. Keith Plummer representing the State of Ohio. The defendant presented evidence for the Court's consideration.

This matter is now before the Court for final disposition. Pursuant to Criminal Rule 32(A)(1), the Court inquired whether the defendant had anything to say before the Court pronounced sentence upon her. The defendant made a statement to the Court. The Court heard the remarks and arguments of defense counsel and the Prosecuting Attorney. The Court also considered testimony presented.

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Upon due consideration of the matters set forth in Section 2929.12 of the Ohio Revised Code and all other matters pertinent to the sentence to be imposed, the Court hereby sentences the defendant as for Count One (1) of the

tabbles  
EXHIBIT  
2

COSHOCTON COUNTY  
CLERK OF COURTS  
JAN 29 1990  
M. Jean Clark  
29th

indictment, to incarceration for life in the Ohio Reformatory for Women with parole eligibility after serving thirty (30) actual years of incarceration for the offense of complicity to aggravated murder in violation of the Ohio Revised Code Section 2903.01(A) and 2923.03(A)(2), an unclassified felony.

As and for the Firearm Specification to Count one (1), the Court hereby sentences the defendant to an incarceration for three (3) years in the Ohio Reformatory for Women with said three (3) years incarceration to be served as actual incarceration. The sentence for the Specification is to be served consecutively with all other counts herein.

Count Two (2) of the indictment was dismissed by the Court upon request of the defendant. Count six (6) was dismissed by the Court upon the request of the Prosecuting Attorney.

As and for Count five (5) of the indictment, the Court hereby sentences the defendant to an indefinite sentence in the Ohio Reformatory of Women the minimum of which shall be ten (10) years and the maximum which shall be twenty-five (25) years for the offense of complicity to aggravated robbery in violation of Ohio Revised Code Section 2911.01(A) and Section 2923.03(A)(2), an aggravated felony of the first degree. The minimum of said sentence shall be served as actual incarceration and shall be served concurrently with

all other terms of incarceration stated herein. As and for count three (3) and four (4) of the indictment, the Court finds these to be allied offenses with count five (5) of the indictment and said incarceration for said offenses shall be served concurrently with count five (5). The Court does not impose any actual sentence as for counts three (3) and four (4). As and for the Firearm Specification to count five (5) of the indictment, the Court hereby sentences the defendant to a definite term of incarceration of three (3) years in the Ohio Reformatory for Women. The three (3) years of incarceration for the Firearm Specification shall be served as actual incarceration, but shall be served only if the sentence for the Firearm Specification to Count one (1) is legally negated in any manner.

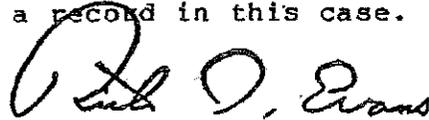
It is further ordered that the defendant pay the costs of prosecution on each count.

It is further ordered that the defendant be remanded to the custody of the Sheriff of Coshocton County, and that a Warrant be issued to said Sheriff for conveyance of the defendant to the Ohio Reformatory for Women. Defendant is also granted credit for time already served in the Coshocton County Justice Center relating to these offenses.

Upon inquiry of the Court, the prosecution stated that the victim's next of kin and immediate relatives, were notified of the date, time, and place of the hearing. Two

family members were present and did speak. The Court instructed the prosecuting attorney to notify the family of the deceased of the possibility of victim compensation available to them. Bond in this case is released.

The Clerk is ordered to make a record in this case.



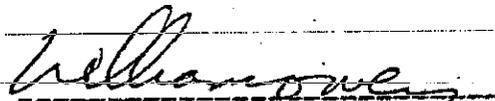
RICHARD I. EVANS, JUDGE



William M. Owens  
Prosecuting Attorney

#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Judgment Entry on Sentencing was served upon counsel for defendant, Attorney Dennis Pusateri and C. Jay Schwart, 338 South High Street, Columbus, Ohio 43215; C. Keith Plummer, Attorney at Law, 139 Courthouse Square, P.O. Box 640, Cambridge, Ohio 43725; and Sheriff David Corbett, c/o Sheriff's Department, 328 Chestnut Street, Coshocton, Ohio 43812, by regular deposit in the U.S. Mail this 29<sup>th</sup> day of January, 1990.



William M. Owens  
Prosecuting Attorney

IN THE COMMON PLEAS COURT  
COSHOCTON COUNTY, OHIO

STATE OF OHIO

Plaintiff,

vs.

SANDRA MAXWELL GRIFFIN

Defendant.

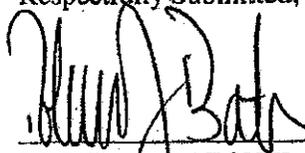
CASE NO. 89 CR 013

MEMORANDUM

Now comes the State of Ohio, by and through the Prosecuting Attorney, and hereby provides notice of the State's position that the Court should provide the defendant/petitioner with a final appealable order as requested in her motion filed August 4, 2009. (See, State v. Baker, 119 Ohio St.3d 197, 893 N.E.2d 163; State ex rel. Culligan v. Medina County Court of Common Pleas, 119 Ohio St. 3d 535, 895 N.E.2d 805.)

Further the State submits the proposed judgment entry to serve as the final appealable order.

Respectfully Submitted,



ROBERT J. BATCHELOR (0059760)

Prosecuting Attorney

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