

ORIGINAL

IN THE SUPREME COURT OF OHIO

case no. 2011-0818

STATE OF OHIO

ON APPEAL FROM THE
COSHOCTON COUNTY COURT
OF APPEALS, FIFTH
APPELLATE DISTRICT

APPELLANT

V.

SANDRA GRIFFIN

COURT OF APPEALS

CASE NO. 09CA21

APPELLEE

APPELLANT, STATE OF OHIO'S, MOTION TO REVERSE AND REINSTATE
APPELLEE'S CONVICTION OR TO REVERSE AND REMAND WITH INSTRUCTIONS
TO DISMISS THE APPEAL.

Jason Given 0074647
Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812
(740) 622-3566
Fax (740) 623-6520
COUNSEL FOR APPELLANT, STATE OF OHIO

Office of the Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394

And

Stephan P. Hardwick
Assistant Public Defender

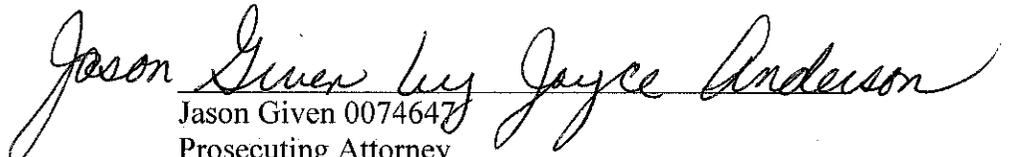
COUNSEL FOR APPELLEE, SANDRA GRIFFIN

FILED
OCT 28 2011
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION FOR STAY

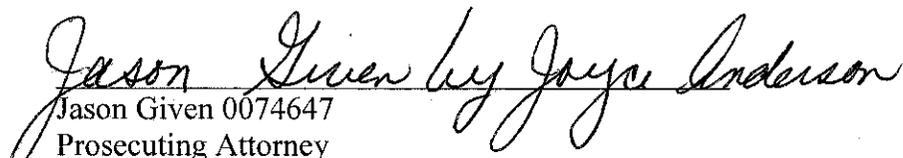
The State of Ohio, through the Office of the Prosecuting Attorney for Coshocton County, hereby asks this Court to reverse and reinstate appellee's conviction or to reverse and remand the instant case with orders to dismiss the appeal as not coming from a final appealable order. This court in *State v. Lester* Slip Opinion 2011-Ohio-5204, held that a corrected entry fails to give a defendant a new right of appeal. Therefore, the appellate court below should have dismissed the appeal as failing to come from a final appealable order.

Respectfully Submitted,


Jason Given 0074647
Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812
(740) 622-3566

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Motion was served upon counsel for Appellee, Stephan P. Hardwick, Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, by regular U.S. mail, on October 28, 2011.


Jason Given 0074647
Prosecuting Attorney

Appellee fully litigated the "single judge" issue in her first appeal and in habeas actions. The new entry corrected exactly the kind of omission as did the new entry in *Lester*, to wit: the manner in which the defendant was convicted. The corrected entry announced that the defendant had been convicted by the judge sitting as trier of fact.

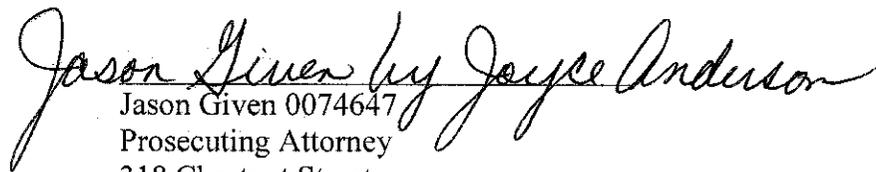
However, *Lester* is more important to the instant case for what *Lester* holds about the corrected entry, to wit: that a corrected entry does not give an appellant who has already litigated an appeal new appellate rights. The corrected entry is not a final appealable order.

As the corrected entry failed to give appellee a new right to appeal, the appellate court below should have dismissed her appeal as failing to come from a final appealable order.

CONCLUSION

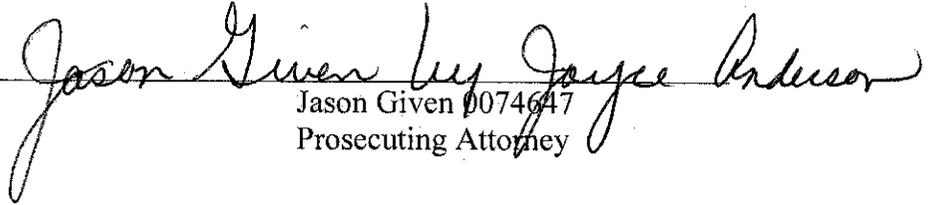
For the reasons stated above, appellant the State of Ohio respectfully requests that appellee's motion be denied.

Respectfully Submitted,


Jason Given 0074647
Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812
(740) 622-3566

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Response to Appellee's Motion to Dismiss was served upon counsel for Appellee, Stephan P. Hardwick, Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, by regular U.S. mail, on October 28, 2011.


Jason Given 0074647
Prosecuting Attorney