

ORIGINAL

IN THE SUPREME COURT OF OHIO  
COLUMBUS, OHIO

STATE OF OHIO,

CASE NO. 2011-2116

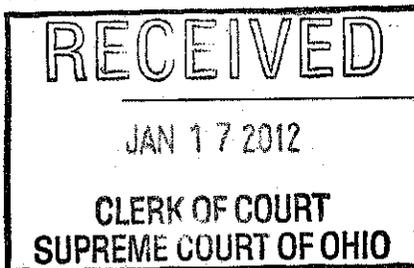
Plaintiff-Appellee,

vs.

RONALD DALE BACHMAN,

Defendant-Appellant.

ON MOTION FOR LEAVE TO APPEAL FROM  
THE OHIO COURT OF APPEALS FOR STARK COUNTY,  
FIFTH APPELLATE DISTRICT,  
CASE NO. 2011-CA-00125



MEMORANDUM IN RESPONSE  
OF PLAINTIFF-APPELLEE,  
STATE OF OHIO

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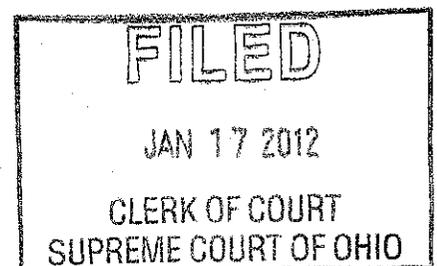


TABLE OF CONTENTS

	<u>Page</u>
WHY THE CASE SHOULD NOT BE ACCEPTED FOR REVIEW .....	1
STATEMENT OF THE CASE AND FACTS .....	1
ARGUMENT	
<u>PROPOSITION OF LAW</u>	
<b>A LEGAL ISSUE THAT HAS BEEN RAISED IN PRIOR PROCEEDINGS IN A CRIMINAL CASE IS RES JUDICATA FOR PURPOSES OF SUBSEQUENT PROCEEDINGS; RAISING THE SAME ISSUE IN DIFFERENT PROCEDURAL CONTEXTS DOES NOT AVOID THE APPLICATION OF RES JUDICATA PRINCIPLES.</b>	
<b>A TRIAL COURT HAS AUTHORITY TO CONDUCT A POST-CONVICTION HEARING TO PROPERLY IMPOSE COURT COSTS, ESPECIALLY WHEN THE HEARING IS UPON A CRIMINAL DEFENDANT'S MOTION. ....</b>	<b>5</b>
PROOF OF SERVICE .....	10

## **WHY THIS CASE SHOULD NOT BE ACCEPTED FOR REVIEW**

The Supreme Court of Ohio should not accept this case for review because it does not involve a substantial constitutional question, and is not of public or great general interest. Neither of Bachman's two claims involve any erroneous or novel application of law, but instead involve the simple application of longstanding law, especially with regard to res judicata principles.

Bachman filed a motion with the trial court to revisit the imposition of court costs, arguing that this imposition in his 1995 sentencing entry was improperly done. Specifically, the trial court did not impose court costs at the sentencing hearing itself, thereby giving Bachman an opportunity to object or move to waive. The trial court granted Bachman's motion, but limited the new hearing to the re-imposition of court costs. Bachman instead moved that a mistrial be granted in his original 1995 trial and a new trial ordered, and challenged the authority of the trial court to conduct the limited re-imposition hearing (which again was being conducted on Bachman's motion). The trial court overruled these motions, and the court of appeals affirmed. The appellate court applied res judicata principles to Bachman's mistrial motion, noting that he has raised this same underlying issue before. And the appellate court held that the trial court had the authority to grant Bachman's motion and conduct the re-imposition hearing.

There is nothing shocking or novel in the appellate court's decision. Accordingly, this Court should reject Bachman's two legal claims, and dismiss the instant appeal.

## **STATEMENT OF THE CASE AND FACTS**

In 1995, the Stark County Grand Jury returned an indictment charging Ronald Dale

Bachman with four counts of statutory rape, and one count each of sexual battery, corruption of a minor, child endangering, and gross sexual imposition. The four statutory rape charges included attendant force specifications, which mandated a life term or imprisonment upon conviction. The charges arose from Bachman's extended sexual abuse of his natural daughter over a period of years, starting when she was but five years old. A jury convicted Bachman of these charges, finding beyond a reasonable doubt that he had committed the despicable acts for which he had been charged. The trial court<sup>1</sup> thereafter sentenced Bachman to an aggregate life prison term for the repeated forcible sexual abuse of his natural daughter.

Bachman appealed his convictions and sentences to the Court of Appeals for Stark County (Fifth Appellate District), raising three assignments of error. This Court overruled each of these assigned errors, and affirmed Bachman's convictions and sentences.<sup>2</sup> Bachman subsequently filed an application for reopening, per App. R. 26(B), which was denied by the Court. The Ohio Supreme Court then declined to accept Bachman's case for further direct review.<sup>3</sup>

After Ohio's adoption of its version of Megan's Law, Bachman was classified as a sexual predator by the trial court. Bachman appealed this classification to this Court, which affirmed the trial court's classification ruling.<sup>4</sup>

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<sup>1</sup>Judge James S. Gwin.

<sup>2</sup>*State v. Bachman* (Sept. 23, 1996), Stark App. No. 1995-CA-00266, unreported, 1996 WL 570854, *appeal denied* (1997), 77 Ohio St.3d 1543, 674 N.E.2d 1183.

<sup>3</sup>*State v. Bachman* (2000), 89 Ohio St.3d 1409, 729 N.E.2d 381.

<sup>4</sup>*State v. Bachman*, Stark App. No. 2004-CA-00123, 2004-Ohio-6970, 2004 WL 2939083, *appeal denied*, 105 Ohio St.3d 1470, 2005-Ohio-1186, 824 N.E.2d 541. *See also*

Bachman next attempted to vitiate his convictions and sentences for sexually molesting his natural daughter over an extended period of years by filing a motion for a new trial, per Crim. R. 33(A). Bachman conceded that he had filed his motion out of time – grossly out of time. The trial court agreed and overruled the motion. In the inevitable appeal from the trial court’s ruling, this Court affirmed that ruling.<sup>5</sup>

In 2009, Bachman also admitted to vitiate his criminal convictions and sentences via a writ of mandamus on the grounds that his sentence was void due to the alleged erroneous imposition of court of costs. According to Bachman’s complaint, court costs in his case were imposed in the sentencing judgment entry, but not at the sentencing hearing itself. And borrowing from the sentencing jurisprudence application to the imposition of post-release control, Bachman argued that he was entitled to a de novo resentencing hearing as a result of the imposition of court costs in this fashion. This Court denied the writ on the grounds that Bachman had an adequate remedy at law by way of appeal.<sup>6</sup>

In 2010, Bachman filed a motion for resentencing, arguing that his sentence was void due to the alleged improper imposition of court costs. He raised the same analogy to post-release control cases, and claimed that the alleged defect was the imposition of court costs solely in the

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*Bachman v. Bagley* (C.A. 6, 2007), 487 F.3d 979 (upholding dismissal on timeliness grounds of Bachman’s federal habeas corpus petition challenging his sexual predator classification).

<sup>5</sup>*State v. Bachman*, Stark App. No. 2010-CA-00119, 2010-Ohio-5804, 2010 WL 4881606, *appeal denied*, 128 Ohio St.3d 1444, 2011-Ohio-1618, 944 N.E.2d 694. *See also State, ex rel. Bachman v. Heath*, Stark App. No. 2010-CA-00094, 2010-Ohio-3859, 2010 WL 3248964 (dismissing as moot Bachman’s complaint for a writ of procedendo concerning his motions for a new trial).

<sup>6</sup>*State, ex rel. Bachman v. Heath*, Stark App. No. 2009-CA-00241, 2010-Ohio-233, 2010 WL 320478.

sentencing judgment entry and not also at the sentencing hearing itself. The trial court granted the request for resentencing, and conducted the resentencing hearing via video conferencing solely on the issue of court costs. Prior to the hearing, Bachman filed a “Sentencing Memorandum & Motion for Mistrial.” In support of the mistrial motion, Bachman raised the same issue that he has raised before in his motion for new trial, claiming that he is entitled to a new trial due to an alleged error at trial. The trial court overruled the mistrial motion, as well as the motion to waive court costs, and reimposed the court costs that had originally been imposed solely by judgment entry.

Bachman appealed this ruling of the trial court to the Court of Appeals for Stark County (Fifth Appellate District), challenging the trial court’s mistrial ruling, as well as the re-imposition of court costs. The appellate court rejected both challenges. First, the court found that the mistrial ruling was barred by res judicata principles. And second, the court found that limited resentencing on court costs alone was not erroneous, and that the defective imposition of court costs at the original 1995 sentencing hearing did not render the entire sentence void.

Bachman now files the instant appeal, seeking to have this Court accept the case for review and reverse the decision of the court of appeals.

Bachman has raised to same two issues in the this appeal – that the application of res judicata to his mistrial issue was in error, and that the trial court lacked authority to resentence him solely on court costs (despite the fact that the trial court conducted this hearing on Bachman’s own motion). Bachman, however, has raised these two separate and distinct issues in one convoluted proposition of law. The State’s proposed proposition of law will include both claims, despite the fact that the legal issues are different and distinct.

## ARGUMENT

### PROPOSITION OF LAW

**A LEGAL ISSUE THAT HAS BEEN RAISED IN PRIOR PROCEEDINGS IN A CRIMINAL CASE IS RES JUDICATA FOR PURPOSES OF SUBSEQUENT PROCEEDINGS; RAISING THE SAME ISSUE IN DIFFERENT PROCEDURAL CONTEXTS DOES NOT AVOID THE APPLICATION OF RES JUDICATA PRINCIPLES.**

**A TRIAL COURT HAS AUTHORITY TO CONDUCT A POST-CONVICTION HEARING TO PROPERLY IMPOSE COURT COSTS, ESPECIALLY WHEN THE HEARING IS UPON A CRIMINAL DEFENDANT'S MOTION.**

Bachman has raised two different and distinct legal claims in his one proposition of law – claims that he raised as two separate assignments of error in his direct appeal to the court of appeals. The first claim concerned a mistrial motion that Bachman has raised in prior proceedings, and has been repeatedly rejected by the trial court and court of appeals. The appellate court in this appeal ruled that the issue, having been raised before and rejected, was res judicata for purposes of this appeal from the re-imposition of court costs. The second claim dealt with the re-imposition of those court costs. The trial court conducted a hearing to impose these court costs properly, correcting a defect when they were originally imposed at the 1995 sentencing. The reason for the court's hearing was in response to Bachman's own motion (apparently seeking to have his entire sentence voided and have a de novo resentencing, instead of one limited to the re-imposition of court costs). The appellate court found that the trial court properly limited this hearing to the re-imposition of court costs, and that the court had authority to do so pursuant to this Court's *Joseph* decision.

### *Mistrial Claim*

Bachman argues first that the trial court abused its discretion in overruling his motion for mistrial. Despite the narrow focus of the resentencing hearing, i.e., to impose court costs at a sentencing hearing as well as in the sentencing judgment entry, Bachman attempted to vacate his convictions on the grounds of alleged error that happened in his 1995 trial. Raising once again the issue of the alleged erroneous admission of evidence at trial – an issue raised in his motion for a new trial – Bachman claimed at the resentencing hearing that he had been denied a fair trial in 1995. The trial court overruled this motion and proceeded with the resentencing to impose court costs. The court of appeals correctly held that the trial court's ruling was correct based upon the preclusive doctrines of res judicata. For these reasons, this Court should reject this challenge to the decision of the court of appeals.

Bachman argued that he was entitled to a de novo resentencing due to the alleged erroneous imposition of court costs at his 1995 trial. Analogizing to the post-release control line of cases, Bachman posited that the same or similar alleged defect in the imposition of court costs should also result in the entire criminal sentence being void. The jurisprudence governing post-release control, however, evolved to the stage that the erroneous imposition of post-release control results only in the post-release control portion of the criminal sentence being void. In other words, the remaining portions of the criminal sentence remain valid. As a result, any resentencing as a result of this defect is limited to the re-imposition of post-release control, and any subsequent appeal from that resentencing is similarly limited to challenges to the re-imposition of post-release control.<sup>7</sup>

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<sup>7</sup>See *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332.

The trial court opted to grant Bachman's request for resentencing, accepting the suggested analogy to post-release control, and conducted a resentencing hearing, via video conferencing,<sup>8</sup> for the limited purpose of re-imposing court costs. At the hearing, per *Joseph*,<sup>9</sup> the trial court provided Bachman with the opportunity to move the court to waive court costs. Per *Joseph*, the hearing was limited to this narrow procedure. Bachman moved to waive court costs, which was overruled by the trial court.

Bachman, however, also sought to expand this resentencing hearing to include his motion for a mistrial of his original 1995 trial based upon the erroneous admission of evidence. This motion, however, was beyond the scope of *Joseph*. In finding the trial court erred in imposing court costs in a criminal prosecution solely in the sentencing judgment entry, the *Joseph* court held that the trial court erred in not doing so at the sentencing hearing in order to provide the criminal defendant an opportunity to move the court to waive the court costs. Thus, any remand is limited to the sole purpose of allowing the waiver motion.<sup>10</sup> This Court has reached the same conclusion relative to post-release control issues, limiting the resentencing in those cases to the re-imposition of post release control.<sup>11</sup>

Following the analogy with *Fischer*, a criminal defendant is not allowed to raise extraneous issues, unrelated to the limited purpose of the resentencing. *Joseph* expressly limited

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<sup>8</sup>As noted in the trial court's resentencing judgment entry, Bachman did not object to the video-conferencing nature of his resentencing hearing.

<sup>9</sup>*State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278.

<sup>10</sup>*Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, at ¶ 23.

<sup>11</sup>*Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, at paragraph two of the syllabus.

resentencing proceedings on court costs to the proper imposition of court costs and nothing else. Given the analogous result in the area of post-release control, it similarly follows that *Fischer's* holding relative to res judicata and law of the case acts the same way in the context of resentencings on court costs, i.e., any subsequent appeal from that resentencing is limited to issue surrounding and pertaining to the limited resentencing proceeding. All other issues are barred.

Based upon this reasoning, therefore, the court of appeals correctly held that the trial court properly overruled Bachman's mistrial motion. Based upon the analogy to *Fischer*, Bachman was precluded from raising the mistrial issue on direct appeal from the resentencing on court costs. The claim should therefore be rejected by this Court.

#### *Court Costs Claim*

Bachman's second challenge to the decision of the court of appeals is to the appellate court's holding that the the trial court had authority to conduct the resentencing hearing on court costs. Bachman argued in his brief filed with the court of appeals that, "in the absence of a remand from a higher authority, or a clear directive from the Ohio Supreme Court, the trial court lack the authority to conduct a resentencing hearing to correct the imposition of court costs in this case." The trial court, however, conducted the resentencing hearing upon Bachman's own motion! Bachman cannot complain of what he asked for. He moved the court for resentencing on court costs – having filed for extraordinary relief to compel the trial court to do so – and yet later challenged the trial court's authority to grant him the limited relief of a resentencing hearing that he requested. Bachman's claim is feckless and without merit, and was properly rejected by the court of appeals.

Bachman attempts to read the supreme court's *Joseph* decision to limit any resentencing hearings on court costs to situations where the resentencing hearing is ordered by a higher court. Bachman does not cite to any authority for such a novel theory of jurisdiction. This theory was advanced despite earlier efforts by Bachman to have this Court issue extraordinary relief by way of a writ to compel the trial court to correct the alleged error in imposing court costs. The trial court had authority to correct any sentencing defects or omissions by conducting another sentencing hearing. The trial court may do so sua sponte, and certainly upon motion by a party. The trial court does not have to wait until there is direction from a higher court to conduct such a hearing. The analogy to post-release control cases is apt in this case.

The court of appeals therefore properly held that the trial court, based on *Joseph*, had authority to impose court costs correctly, which benefitted Bachman, giving him an opportunity to move to waive these costs and provide the trial court with reasons to do so. Bachman cannot complain of what he requested. This Court should therefore reject this claim as well.

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**PROOF OF SERVICE**

A copy of the foregoing MEMORANDUM IN RESPONSE was sent by ordinary U.S. mail this 13th day of January, 2012, to RONALD DALE BACHMAN, defendant-appellant *pro se*, at Inmate No. A311-224, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, Ohio 44901-8107.

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