

ORIGINAL

IN THE
SUPREME COURT OF OHIO

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| STATE OF OHIO | : | NO. 2011-0818 |
| Plaintiff-Appellant | : | On Appeal from the Coshocton County Court of Appeals, Fifth Appellate District |
| vs. | : | |
| SANDRA GRIFFIN | : | Court of Appeals Case Number 09 CA 0021 |
| Defendant-Appellee | : | |

**AMICUS CURIAE OHIO PROSECUTING ATTORNEYS ASSOCIATION
MERIT BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT STATE OF OHIO**

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STATEMENT OF AMICUS INTEREST

The Ohio Prosecuting Attorneys Association (“OPAA”) offers this amicus brief in support of the State of Ohio’s merit brief. The OPAA is a private non-profit membership organization that was founded in 1937 for the benefit of the 88 elected county prosecutors. Its mission is to increase the efficiency of its members in the pursuit of their profession, to broaden their interest in government, to provide cooperation and concerted action on policies that affect the office of the Prosecuting Attorney, and to aid in the furtherance of justice.

STATEMENT OF THE CASE AND FACTS

The OPAA joins in Plaintiff-Appellant’s Statement of the Case and Facts.

AMICUS CURIAE PROPOSITION OF LAW NO. 1

PURSUANT TO *STATE V. LESTER*, GRIFFIN’S CORRECTED JUDGMENT ENTRY DOES NOT PROVIDE HER A NEW, FINAL APPEALABLE ORDER FROM WHICH A SECOND ROUND OF APPEALS MAY BE INITIATED.

This Court sua sponte held this case for its decision in *State v. Lester*.¹ On October 13, 2011, this Court issued its decision in *Lester* holding that a corrected entry fails to give a defendant a new right of appeal.² The syllabus of the Court in *Lester* reads as follows;

1. A judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge’s signature, and (4) the time stamp indicating the entry upon the journal by the clerk. (Crim. R. 32(C), explained; State v. Baker, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, modified.)

2. A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim. R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken.

In this case, Griffin sought and obtained a corrected judgment entry on sentencing – once again sentencing her to life imprisonment with parole eligibility after 30 years plus 3 years on the

¹ Entry 2011-0818, dated September 21, 2011.

² 130 Ohio St.3d 303, 958 N.E.2d 142, 2011-Ohio-5204.

firearm specification. (See August 27, 2009 sentencing entry.) Griffin is now seeking to re-litigate an issue she lost on direct appeal by claiming the corrected sentencing entry entitles her to a de novo direct appeal. Her claim fails.

Pursuant to *Lester*, this corrected entry should not and does not provide Griffin a vehicle for a new round of appeals. And the reasoning behind *Lester* reflects sound principles of public policy. Finality of judgments must be respected.

Public policy dictates that there be an end to litigation; that those who have contested an issue shall be bound by the results of the contest, and that matters once tried shall be forever settled as between the parties.³ “We have stressed that the doctrine of res judicata is not a mere rule of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, of public policy and private peace, which should be cordially regarded and enforced by the courts.” Here, the original documents in Griffin’s case constituted a final appealable order. The crucial issue was not how Griffin was convicted – but that she was convicted.⁴ A conviction is composed of a guilty verdict or finding and a sentence.⁵ The trial court found Griffin guilty and sentenced her accordingly. These documents, together, stated the “fact of conviction.”⁶ Griffin pursued a direct appeal from the order and her claims were heard and rejected.⁷

The Fifth Appellate District held that Griffin should receive relief upon her de novo appeal premised upon the *State v. Parker*⁸ issue. However, Griffin has fully litigated this “single judge” issue in her first appeal and in federal court habeas actions.

³ *State v. Szeftcyk* (1996), 77 Ohio St.3d 93, 95, 671 N.E.2d 233, 235, quoting *Federated Dept. Stores Inc. v. Motie* (1981), 452 U.S. 394, 401, 101 S.Ct. 2424, 2429, 69 L.Ed.2d 103, 110-111.

⁴ *State v. Lester*, *supra*.

⁵ *State v. Henderson* (1978), 58 Ohio St.2d 171.

⁶ *State v. Ketterer*, 126 Ohio St.3d 448.

⁷ *State v. Griffin* (1992), 73 Ohio App.3d 546.

⁸ 95 Ohio St. 524, 2002-Ohio-2833.

CONCLUSION

Griffin's new entry corrected the type of omission contemplated in *Lester*: the manner in which she was convicted. The corrected entry announced that Griffin had been convicted by the judge sitting as trier of fact. Pursuant to *Lester*, this corrected entry does not provide Griffin a vehicle for a round of de novo appeals to re-litigate settled issues. Griffin's initial conviction documents were not tentative – they were clear and provided the foundation for her direct appeal. Pursuant to *Lester*, the entry was final for purposes of precluding further litigation on appeal. The OPAA asks the Court to reverse the decision of the Fifth District Court of Appeals and reinstate Griffin's conviction.

Respectfully,

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Prosecuting Attorney

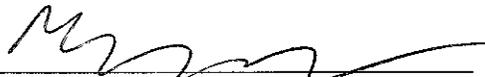


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PROOF OF SERVICE

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Jason W. Given (0074647), Coshocton County Prosecuting Attorney, 318 Chestnut Street, Coshocton, Ohio 43812, and to the Office of the Ohio Public Defender, Attn: Stephen P. Hardwick (0062932), Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, counsel of record, this 19 day of January, 2012.



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