

IN THE SUPREME COURT OF OHIO

State of Ohio	Case No.	2011-0818
Appellant,		
v.	On Appeal from the Coshocton County Court of Appeals, Fifth Appellate District.	
Sandra Griffin		
Appellee	Appellate Case No. 09 CA 0021	

MERIT BRIEF OF APPELLANT THE STATE OF OHIO

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STATEMENT OF THE CASE AND FACTS

During November and December of 1988, Sandra Griffin, Carl Steven Lewis, and James Steurer Jr. plotted to rob and kill James Steurer Sr. On January 4, 1989, while Appellee packed the victim's collection of firearms and searched his house for cash, Carl Steven Lewis shot James Steurer Sr. in the head, killing him. See *State v. Griffin* (1992), 73 Ohio App.3d 546 for these facts.

The Coshocton County Grand Jury indicted Appellee for complicity (R.C. 2923.03) to commit aggravated murder, R.C. 2929.04(A), with an accompanying specification pursuant to R.C. 2929.04(A)(7), that the murder was committed during the course of an aggravated robbery; aggravated robbery, 2911.01; unlawful possession of dangerous ordnance, 2923, 17; and grand theft, 2913.02(A)(1). The indictment also contained firearm specifications (R.C. 2929.71), to the charges of aggravated murder and aggravated robbery.

To render imposition of the death penalty impossible, Appellee waived her right to a jury trial and the parties agreed that a single judge would conduct a bench trial. (Tr. dated 11-1-1989, p. 92-101.)

After a complete bench trial, the judge found Appellee guilty of all charges, and specifications. (Tr. Vol VI, p. 1110-1112.) On December 21, 1989, the court filed an entry of conviction recording "[t]he court finds the defendant guilty..." on all charges and the death penalty specification. (Appendix, p. 21-22 .) On January 29, 1990, the court filed a sentencing entry, imposing a sentence of life with parole eligibility in thirty years on the aggravated murder charge; a consecutive three-year term on the firearm specification; a concurrent 10 to 25 year term for aggravated robbery; and a three year term on the firearm specification attached to the aggravated

robbery, to be served only if the sentence for the firearm specification attached to the aggravated murder charge subsequently be negated. (Appendix p., 17-20 .)

The Coshocton County Court of Appeals affirmed in *State v. Griffin* (1992), 73 Ohio App. 3d.546 . This court dismissed the appeal in *State v. Griffin* (1992), 64 Ohio St.3d 1428.

Appellee filed a federal petition for a writ of habeas corpus, which was denied on September 30, 1998. In May 1999, Appellee filed an application to reopen her appeal pursuant to *State v. Murnahan*, (1992), 63 Ohio St.3d 60. The trial court denied that application on May 24, 1999 and this court affirmed.

On August 4, 2009, Appellee filed a motion for a final appealable order, relying on *State v. Baker* 119 Ohio St.3d 197, 2008-Ohio-3330. The trial court journalized a "judgment on sentencing entry" on August 27, 2009. Appellee filed a notice of appeal.

On September 24, 2009, Appellant filed a motion to dismiss. The State observed that Appellee had raised the "single judge" issue in her appeal in 1992 and in her application to reopen in 1999. The State asserted the new appeal was barred by the doctrine of res judicata.

On July 27, 2010, in a 2-1 opinion, the Coshocton County Court of Appeals vacated Appellee's conviction, because of the single judge issue, and remanded the case for proceedings consistent with the opinion. On August 13, 2010, appellant filed a notice of appeal and a motion for stay in this court. On December 9, 2010, this court summarily vacated and remanded "for application of *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9." On April 1, 2011, the Coshocton County Court of Appeals reinstated its reversal.

Appellant filed a memorandum in support of jurisdiction to this court on May 13, 2011. This court on September 21, 2011 accepted jurisdiction and held the case for disposition of *State v. Lester*, 130 Ohio St. 3d 303, 2011-Ohio-5204, which this court decided on October 13, 2011. On November 30, 2011, this court vacated the stay and ordered briefing.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law I: Res Judicata precludes a litigant from using a resentencing entry issued pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330 to relitigate an issue when that defendant has already litigated the same issue on direct appeal.

Despite this court's remanding the instant case "for application of *State v. Ketterer****,"the Coshocton County Court of Appeals held *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831 inapplicable because the court changed its mind about whether the two documents filed in December, 1989 and January, 1990 under R.C. 2929.03 constituted a final appealable order under *State v. Baker* 119 Ohio St.3d 197, 2008-Ohio-3330 .

In *State v. Griffin* No. 09CA21, 2010 Ohio 3517, vacated and remanded 2010-Ohio-5948, at paragraph 14 on page 4 of the lower court's opinion, the court said the following: "From our review of the trial court's judgment entries, we find a judgment entry of conviction filed on December 21, 1989 wherein the trial court announced its verdicts, and a separate sentencing entry filed on January 29, 1990 wherein the trial court imposed the sentence. If we were permitted to read the two judgment entries in pari materia, there would be no *Baker* argument. Unfortunately, this is not the law."

Upon remand, however, the appellate court held that the single judge procedure removed the case from the ambit of R.C. 2929.03. In other words, the court reached the same conclusion that it had in 1992, to wit: that the instant case was no longer a capital case. The court said the entries failed to satisfy *Baker* because "there was no need for a separate opinion pursuant to R.C. 2929.03(F) because the procedures of R.C. 2929.03(D) were not utilized." opinion, p. 5. The implicit holding of *State v. Parker* 95 Ohio St.3d 524, 2002-Ohio-2833, however, is that a case in which an indictment contains death penalty specifications remains a capital case. Having found that the original entries failed to constitute a final appealable order, the appellate court held that the 1992 appeal in the case *sub judice* was a nullity and that the defendant was entitled to the advantage of *State v. Parker* 95 Ohio St..3d 524, 2002-Ohio-2833.

The Coshocton County Court of Appeals seems not to have even considered that, unless res judicata prohibits relitigating issues actually litigated in cases such as the instant case, and if the appellate court were correct that the two documents in the instant case were insufficient to result in a valid appeal in 1992, then the decision *in State v. Parker* would probably also be invalid.

Appellant feels confident that the original entries in *State v. Parker* also failed to weigh aggravating circumstances against mitigating factors. As the purpose of the single judge procedure was to avoid even the possibility of the death penalty, it would have been pointless for the single judge to have engaged in the weighing process.

Unless the doctrine of res judicata applies to issues actually litigated, even if there be error in the order appealed from, *Parker* would not be settled law. Unless res judicata applies to

issues actually litigated, no post conviction petition litigated before *State v. Mapson* (1982) 1 Ohio St.3d 217 is final. Unless the doctrine of res judicata applies to issues that were litigated or that could have been litigated, the defendants in *Pratts v. Hurley*, 102 Ohio St. 3d 81, 2004-Ohio-1980 and *State ex rel Rash v. Jackson* 102 Ohio St. 3d 145, 2004 Ohio 2053 would, even today, be entitled to new trials. In both cases, this court held that a *Parker* error rendered a judgment not void but voidable and that neither defendant could use collateral relief to obtain successive appeals.

Before this court decided *State v. Parker* 95 Ohio St.3d 524, 2002-Ohio-2833, it was common practice for capital defendants to avoid the death penalty by waiving juries and appearing before a single judge. Unlike the instant case, in which the defendant entered a not guilty plea and went to trial before a single judge, most capital defendants who chose single judges entered guilty pleas. Also unlike the instant case, in which Appellee fully litigated the single judge issue on direct appeal in 1992 and in a Murnahan motion in 1999, most of those defendants did not appeal the single judge procedure.

This court has been reluctant to undermine the finality of judgments, unless justice required it, as in cases in which courts omitted a term of post release control from the sentencing entry. This court held that a defendant had a right to a second appeal on the issue of post release control only. *State v. Bezak* 114 Ohio St.3d 94, 2007-Ohio-3250.

This court in *State v. Fischer*, 128 Ohio St.3d.92, 2010 Ohio 6238, eschews the argument that defendants who have fully litigated convictions on appeal may obtain new

appeals due to *Baker* errors. On page 14 of that opinion, para.38, the court calls that argument "creative," before rejecting it.

The question the court accepted in *Fischer* is "whether a direct appeal from a resentencing ordered pursuant to *State v. Bezak* is a first appeal as of right." Id. Para 5. The court holds it is not. An appeal from a resentencing necessitated by a court's omitting a sentence of post release control is limited to issues about the post release control; issues already litigated remain barred by the doctrine of res judicata.

Fischer "is limited to a discrete vein of cases: those in which a court does not properly impose a statutorily mandated period of post release control." Id at para 32, p. 12. The Coshocton County Court of Appeals majority relied on that limitation to ignore the other things in *Fischer* that this court said about res judicata. The dissent in both recent *Griffin* cases said that appellee's recent appeals should be barred by the doctrine of res judicata.

In the instant case, Appellee actually litigated, in 1992, the exact issue that she won reversal on in 2010 and again in 2011. Finality matters. Even when a change in the law would have benefitted a defendant at trial or on appeal, if all appeals have been pursued and decided against the defendant, the defendant is unentitled to the benefit of the new law.

In the instant case, the old law benefitted Appellee. The single judge procedure precluded even the possibility of the death penalty. Under the facts of the instant case, the death penalty was a real possibility. This defendant was not a getaway driver with a bad boyfriend. She planned the murder for months, spent the night before the murder in the victim's bed, and gathered the victim's gun collection and cash while her accomplice shot the victim in the head.

As this court said in *State v. Lester*, 130 Ohio St. 3d 303, 2011-Ohio-5204, appellate courts have misunderstood its opinion in *Baker*. In both *Fischer* and *Lester*, this court said that *Baker* has nothing to do with whether entries are void or voidable. This court in *State v. Lester* held that an entry filed for the sole purpose of complying with Crim. R. 32 (C) failed to provide new appellate rights. The doctrine of res judicata should still apply.

Proposition of Law No. II: In cases in which R.C. 2929.03(F) requires the court or panel to file a sentencing opinion, a final, appealable order consists of both the sentencing opinion filed pursuant to R.C. 2929.03(F) and the judgment of conviction filed pursuant to Crim. R. 32 (C). *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, applied.

Appellee respectfully submits that the appellate court below, by applying only parts of R.C. 2929.03, is missing the point of *State v. Parker*, to wit: If an indictment contains death penalty specifications, it is a capital indictment.

In *State v. Parker* 95 Ohio St.3d 524, 2002 Ohio 2833 (2002), this court accepted the Cuyahoga County case of *State v. Parker* in which the appellate court had held that a single judge lacked jurisdiction to accept a guilty plea in a capital case even if the state agreed to forgo the death penalty. Among the three cases that were in conflict with the Cuyahoga appellate case was *State v. Griffin* (1992), 73 Ohio App. 3d 546.

As in the instant case, there would have been no reason for the entries in *Parker* to comply with all requirements of R.C. 2929.03, as there would have been no need for the single judge to determine whether the aggravating circumstances outweighed the mitigating factors..

The court below held that the three judge requirement of the capital murder statute applies, but that the two document rule of *State v. Ketterer* does not apply because there would be no weighing of aggravated circumstances against mitigating factors.

Appellee will argue that *Ketterer* does not apply because the two documents filed in cases in which defendants availed themselves of the one-judge-rule were not perfect. If this be true, then every defendant who convinced trial courts to use the one-judge-rule to avoid all chance of the death penalty would be entitled not only to a new appeal but also to a new trial.

This court in *State v. Lester* 130 Ohio St. 3d 303, 15, 2011-Ohio-5204 said that the purpose of Crim. R. 32(C) is to ensure that a defendant is on notice concerning when a final judgment has been entered and the appellate time begins to run. Appellee obviously had that notice as she immediately appealed her conviction, including the three-judge issue on which the court below reversed in the instant case.

Although a defendant is entitled to an entry showing the manner of conviction, an entry lacking that manner of conviction is still a final appealable order. *State v. Lester* 130 Ohio St. 3d 303, 2011-Ohio-5204. The court said in *Lester* than an entry filed for the sole purpose of complying with Crim. R. 32 (C) failed to provide new appellate rights. Appellee has argued that the prosecution waived the right to argue that the new entry failed to grant new appellate rights because the prosecutor wrote the entry. However, a prosecutor cannot invest an appellate court with jurisdiction. As a corrected entry filed pursuant to *State v. Baker*, grants no new appellate rights, a prosecutor cannot create those rights.

There is a difference between a sentencing opinion that contains errors and a sentencing opinion that fails to impose part of a sentence. This court has said that post release control is part of the sentence. A comparable issue with a sentencing entry under R.C. 2929.03 might be if the court sentenced a defendant to life, but left out the period after which the defendant would be eligible for parole. This court in *Fischer* recognized at para 39 the irony that would prevent a reviewing court from correcting sentencing errors if every sentencing entry that was contrary to law failed to be a final order subject to review. Most important, for this case, if the lower court were correct, the original entry in *Parker* would suffer the same error, rendering the order appealed from in *Parker* non-appealable and the decision, under the Coshocton court's reasoning, invalid.

This court's decision in *State v. Baker* did not change *State v. Parker*. This court in *Lester* clarified *Baker* to distinguish between substantive requirements and requirements of the rule alone. Courts determine their own jurisdiction. As the county appellate court, this court, and the federal courts all affirmed this case ten years before this court decided the three judge rule in *Parker*, the appellate court was wrong to determine that it and this court did not have jurisdiction after all, over twenty years after appellee's conviction became final.

CONCLUSION

The appellate court's opinion is circuitous and inconsistent with *State v. Lester*, *State v. Fischer*, and *State v. Ketterer*. The consequences of the decision, if allowed to stand, will be enormous. Under the Coshocton County Court's reasoning, every person who benefitted from the single judge procedure to avoid the death penalty is entitled to a second appeal and a new trial. As some courts will no doubt disagree with the Coshocton County Court's declining to apply res judicata, this court will eventually face motions to certify conflicts.

This court twice rejected appellee's invitation to grant her the benefit of *State v. Parker*. Nothing makes her any more deserving of that benefit today. The State of Ohio respectfully requests that this court vacate and remand with instructions to either dismiss the appeal because an entry issued to satisfy Crim. R. 32(C) fails to give new appellate rights, or to hold that the defendant is barred by the doctrine of res judicata from re-litigating the issue of the three-judge-panel.

Respectfully submitted,


Jason Given

COUNSEL FOR APPELLANT, STATE OF OHIO

Proof of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to counsel for Appellee, Stephen Hardwick, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 on this day January 23, 2012.

Jason Given by Joyce Anderson

Jason Given

COUNSEL FOR APPELLANT,

STATE OF OHIO

IN THE SUPREME COURT OF OHIO

State of Ohio
Appellant

11-0818

On Appeal from the Coshocton County
Court of Appeals
Fifth Appellate District

Sandra Jean Maxwell Griffin

Case No.

Appellee

Court of Appeals Case No. 09 CA 0021

STATE OF OHIO'S NOTICE OF APPEAL

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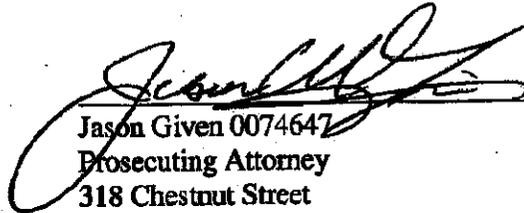
FILED
MAY 13 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellant, the State of Ohio

The State of Ohio hereby gives notice of appeal to the Supreme Court of the judgment of the Coshocton County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 09CA21 on April 1, 2011.

This case raises a substantial constitutional question and is one of public or great general interest.

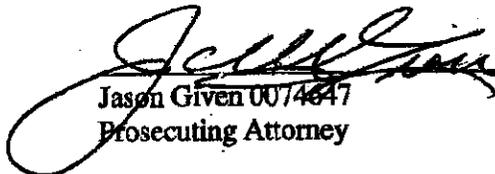
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice of appeal was sent by U.S. regular mail to counsel for Appellant, Stephan P. Hardwick, Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, and Timothy Young, State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, by regular U.S. mail, on this 12 day of May, 2011.



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IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff

-VS-

SANDRA GRIFFIN

Defendant

JUDGMENT ENTRY

CASE NO. 09-CA-21

For the reasons stated in our accompanying Memorandum-Opinion, our original reversal and remand are reimposed. Costs to the state of Ohio.

FILED
DATE APR 1 2011
TIME _____
Fifth District Court of Appeals
State of Ohio
County of Coshocton

Shirley J. Farmer

John G. Edwards

JUDGES

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff

-vs-

SANDRA GRIFFIN

Defendant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 09-CA-21

OPINION

CHARACTER OF PROCEEDING:

On Remand from the Supreme Court of Ohio, Case No. 2010-1434

JUDGMENT:

Original Reversal & Remand Reimposed

DATE OF JUDGMENT ENTRY:

FILED
APR 1 2011
DATE _____
TIME _____

Fifth District Court of Appeals
State of Ohio
County of Coshocton

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{¶1} On February 27, 1989, the Coshocton County Grand Jury indicted Sandra Griffin on several counts, including one count of aggravated murder with death and firearm specifications in violation of R.C. 2903.01(A), R.C. 2929.04(A)(7), and R.C. 2941.141.

{¶2} On November 1, 1989, Ms. Griffin waived her right to a speedy trial and her right to be tried by a three-judge panel or a jury. The state agreed not to pursue the death penalty, but did not dismiss the death specification.

{¶3} A trial before a single judge commenced on December 7, 1989. The trial court found Ms. Griffin guilty of all counts except two. By judgment entry on sentencing filed January 29, 1990, the trial court sentenced Ms. Griffin to an aggregate term of life imprisonment with parole eligibility after thirty years, and ordered her to serve three years actual incarceration on the firearm specification, to be served consecutively.

{¶4} This court affirmed the conviction. See, *State v. Griffin* (1992), 73 Ohio App.3d 546, further appeal dismissed (1992), 64 Ohio St.3d 1428.

{¶5} On August 4, 2009, Ms. Griffin filed a motion for a final appealable order pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. On August 27, 2009, the trial court filed a new judgment entry on sentencing, once again sentencing Ms. Griffin to life imprisonment with parole eligibility after thirty years plus the three years for the firearm specification.

{¶6} Ms. Griffin filed an appeal, challenging the fact that a single judge heard her capital trial and sentencing hearing. This court, after lengthy analysis on several issues, including the application of *Baker*, R.C. 2929.03(F), prior direct appeal, non-final

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orders, and finality of judgments, reversed and remanded the case for new trial. *State v. Griffin*, Coshocton App. No. 09CA21, 2010-Ohio-3517.

{¶7} The state of Ohio filed an appeal with the Supreme Court of Ohio. On December 9, 2010, the Supreme Court of Ohio entered the following decision:

{¶8} "The judgment of the court of appeals is vacated, and the cause is remanded to the court of appeals for application of *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9." *State v. Griffin*, 127 Ohio St.3d 266, 2010-Ohio-5948, ¶2.

{¶9} This matter is now before this court for determination in light of the Supreme Court of Ohio's remand.

{¶10} In *Ketterer* at ¶17, the Supreme Court of Ohio specifically found, in aggravated murder cases, R.C. 2929.03(F) determines the nature of "a final appealable order":

{¶11} "We distinguish the present case from *Baker* and agree with the state that in aggravated-murder cases subject to R.C. 2929.03(F), the final, appealable order consists of the combination of the judgment entry and the sentencing opinion. Because R.C. 2929.03(F) requires the court to file a sentencing opinion, *Baker* does not control this case, because *Baker* addressed only noncapital criminal cases, in which a judgment of conviction alone constitutes a final, appealable order. R.C. 2929.03(F) requires that a separate sentencing opinion be filed in addition to the judgment of conviction, and the statute specifies that the court's judgment is not final until the sentencing opinion has been filed. Capital cases, in which an R.C. 2929.03(F) sentencing opinion is necessary, are clear exceptions to *Baker*'s 'one document' rule."

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{¶12} In *Ketterer*, the defendant pled guilty to aggravated murder and was sentenced to death by a three-judge panel. A sentencing opinion pursuant to R.C. 2929.03(F) was filed. In the case sub judice, Ms. Griffin was tried and found guilty of aggravated murder by a single judge. Ms. Griffin had waived her right to a three-judge panel because the state had agreed not to pursue the death penalty, although the state did not dismiss the death specification. She was sentenced to life imprisonment with parole eligibility after thirty years.

{¶13} During the time of appellant's case, R.C. 2929.03(F) read as follows:

{¶14} "**** The court or panel, when it imposes life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. The court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed."

{¶15} R.C.2929.03(D)(3), applicable during appellant's case, stated the following:

{¶16} "Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after

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receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

{¶17} "(a) Life imprisonment with parole eligibility after serving twenty full years of imprisonment;

{¶18} "(b) Life imprisonment with parole eligibility after serving thirty full years of imprisonment."

{¶19} The threshold question is whether R.C. 2929.03(F) applies to a defendant who never had a mitigation hearing under R.C. 2929.04. Clearly, the record sub judice establishes the imposition of the death penalty was never to be considered. Ms. Griffin was sentenced to life imprisonment with parole eligibility after thirty years pursuant to R.C. 2929.03(D)(3)(b). There was never a finding on the question of aggravating circumstances outweighing mitigating factors in Ms. Griffin's case. By not having a mitigation hearing, it is as if the procedures set forth in R.C. 2929.03(D) are bypassed.

{¶20} R.C. 2929.03(F) references subsection (D) as the predicate to the filing of a separate opinion on weighing the mitigation factors vis-à-vis the aggravating circumstances. In this case, there was no need for a separate opinion pursuant to R.C. 2929.03(F) because the procedures of R.C. 2929.03(D) were not utilized.

{¶21} We therefore conclude that the holding in *Ketterer* as it applies to the issue of a final appealable order does not apply in this case. There was no final

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appealable order until the August 27, 2009 judgment entry on sentencing. The holding of our previous decision in this case applies. There was no need for a mitigation entry under R.C. 2929.03(F).

{¶22} In *State ex rel. DeWine v. Burge*, ___ Ohio St.3d ___, 2011-Ohio-235, Justice Lanzinger, in a concurring opinion at ¶24, discussed whether new appellate rights emerge from a *Baker* violation:

{¶23} "I concur in the court's opinion, but write separately to note that our decision today leaves open the question whether new appellate rights arise from a new sentencing entry issued in order to comply with Crim.R. 32(C).^{FN2} We have held that a sentencing entry that violates Crim.R. 32(C) renders that entry nonappealable. *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, ¶19. In light of the facts of the present case, we eventually will need to determine what effect an appellate decision has when the appellate court's jurisdiction was premised upon a sentencing entry that violated Crim.R. 32(C) and was thus nonappealable.

{¶24} "FN2. The state has raised this issue in its second proposition of law in *State v. Allen*, case No. 2010-1342, 126 Ohio St.3d 1615, 2010-Ohio-5101, 935 N.E.2d 854, and *State v. Smith*, case No. 2010-1345, 126 Ohio St.3d 1615, 2010-Ohio-5101, 935 N.E.2d 854, both of which we accepted for review and held for our decision in the case. The issue is also pending in *State v. Lester*, which we agreed to review on order of a certified conflict and on a discretionary appeal, case Nos. 2010-1007, 126 Ohio

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Coshocton County, Case No. 09-CA-21

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St.3d 1581, 2010-Ohio-4542, 934 N.E.2d 354 and 2010-1372, 126 Ohio St.3d 1579, 2010-Ohio-4542, 934 N.E.2d 353."¹

{¶25} In *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, paragraphs three and four of the syllabus, a case involving the failure to properly sentence on postrelease control, the Supreme Court of Ohio held the scope of an appeal from a resentencing hearing is limited to issues arising during the resentencing hearing:

{¶26} "Although the doctrine of *res judicata* does not preclude review of a void sentence, *res judicata* still applies to other aspects of the merits of a conviction, including the determination of guilt and the lawful elements of the ensuing sentence.

{¶27} "The scope of an appeal from a resentencing hearing in which a mandatory term of postrelease control is imposed is limited to issues arising at the resentencing hearing."

{¶28} On the issue of *res judicata* and postrelease control resentences, the *Fischer* court explained the following at ¶¶30-31:

{¶29} "Correcting the defect without remanding for resentencing can provide an equitable, economical, and efficient remedy for a void sentence. Here, we adopt that remedy in one narrow area: in cases in which a trial judge does not impose postrelease control in accordance with statutorily mandated terms. In such a case, the sentence is void. Principles of *res judicata*, including the doctrine of the law of the case, do not preclude appellate review. The sentence may be reviewed at any time, on direct appeal or by collateral attack.

¹We note as of March 23, 2011, the *Allen* and *Smith* cases are still stayed, and *Lester* is currently set for oral argument on April 6, 2011.

Coshocton County, Case No. 09-CA-21

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{¶30} "Our decision today is limited to a discrete vein of cases: those in which a court does not properly impose a statutorily mandated period of postrelease control. In cases involving postrelease control, we will continue to adhere to our narrow, discrete line of cases addressing the unique problems that have arisen in the application of that law and the underlying statute. In light of the General Assembly's enactment of R.C. 2929.191, it is likely that our work in this regard is drawing to a close, at least for purposes of void sentences. Even if that is not the case, however, we would be ill-served by the approach advocated by the dissent, which is premised on an unpalatable and unpersuasive foundation."

{¶31} We therefore conclude there has been no guidance provided to the appellate courts on the applicability of res judicata to a non-final order pursuant to *Baker*.

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Coshocton County, Case No. 09-CA-21

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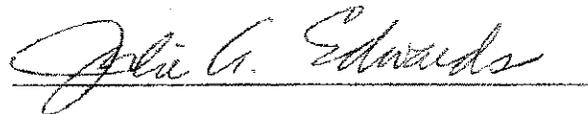
{¶32} Faced with this open issue, we are forced to conclude that under *Baker*, Ms. Griffin's assignment of error in raising *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, is valid. Our original reversal and remand are unaffected by *Ketterer*, and are hereby reimposed. See, *State v. Griffin*, Coshocton App. No. 09CA21, 2010-Ohio-3517.

By Farmer, J.

Edwards, J. concur and

Hoffman, P.J. dissents.





JUDGES

SGF/sg 309

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Coshocton County, Case no. 09-CA-21

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Hoffman, P.J., dissenting

{¶33} I respectfully dissent for the reasons set forth in my dissent in *State v. Griffin*, Coshocton App. No. 09CA21, 2010-Ohio-3517.



HON. WILLIAM B. HOFFMAN

FILED

DATE APR 1 2011

TIME _____

Fifth District Court of Appeals
State of Ohio
County of Coshocton

A-13

IN THE COURT OF COMMON PLEAS
COSHOCTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs.

SANDRA MAXWELL GRIFFIN,

Defendant.

Case No: 89 CR 013

Judgment Entry
on Sentencing

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JAN 21 11 15 AM '10
COURT CLERK

This judgment entry was prepared and filed at the request of the defendant pursuant to a Motion for a Final Appealable Order, filed August 4, 2009, and pursuant to the holding of State v. Baker, 119 Ohio St.3d 197, 893 N.E.2d 163. Any additions to the original Judgment Entry on Sentencing in this case, filed January 29, 1990, are in bold type.

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.

On November 1, 1989, while represented by counsel, the defendant waived her right to trial by jury and by a three judge panel and agreed to trial by a single judge in exchange for the State's agreement to not seek the death penalty.

On January 29, 1990, after trial to a single judge, the defendant was found guilty of complicity to commit aggravated murder with aggravated robbery and firearm specifications, complicity to unlawful possession of a dangerous ordnance, complicity to grand theft, and complicity to aggravated robbery with a firearm specification.

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.

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 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.


ROBERT J. BATCHELOR (0059760)
Prosecuting Attorney

8/21/09 
RICHARD I. EVANS, Judge

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 55 AM '90
 JUDY STEVENS, CLERK
 FILED

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.

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

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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.

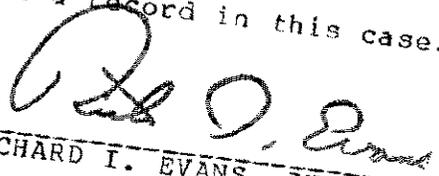
It is further ordered that the defendant pay the costs of prosecution on each count.

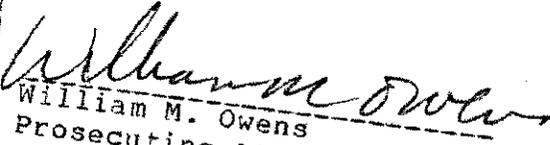
It is further ordered that the defendant be remanded to the custody of the Sheriff of Coshocton County, and that a Warrant be issued to said Sheriff for conveyance of the defendant to the Ohio Reformatory for Women. Defendant is also granted credit for time already served in the Coshocton County Justice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

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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 29th day of January, 1990.


 William M. Owens
 Prosecuting Attorney

IN THE COMMON PLEAS COURT OF COSHOCTON COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff,

:

Case No. 89 CR 13

vs

:

JUDGMENT ENTRY

SANDRA MAXWELL GRIFFIN,

:

Defendant.

:

On December 18, 1989, in open court, and in the presence of the defendant, accompanied by her attorneys, Mr. Schwart and Mr. Stateri, 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

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JUDY STEVENS BEEB
CLERK OF COURTS
COSHOCTON CO, OHIO

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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 M. Owens, 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 Pusateri and Mr. C. Jay Schwart, Attorneys for Defendant, 338 South High Street, Columbus, Ohio 43215, by regular U. S. Mail, this 21st day of December, 1989.


Angela L. Murphy a/c

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2929.03 Imposition of sentence for aggravated murder.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

(a) Life imprisonment without parole;

(b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and

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regardless of whether the offender raised the matter of age pursuant to section 2929.023 of the Revised Code, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

(i) Life imprisonment without parole;

(ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

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(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

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(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

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(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(iv) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (D)(3)(a)(i) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(c) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(d) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (E)(2)(a) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

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(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

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