

ORIGINAL

No. 2012-0216

**IN THE SUPREME COURT OF OHIO**

APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS  
NINTH APPELLATE DISTRICT  
SUMMIT COUNTY, OHIO  
Appellate Case No. 24894

STATE OF OHIO,  
Plaintiff-Appellee,

v.

DAVID WILLAN,  
Defendant-Appellant.

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MOTION FOR RECONSIDERATION OF CROSS-APPEAL PROPOSITION OF LAW 1  
APPELLEE STATE OF OHIO

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**SHERRI BEVAN WALSH**  
Summit County Prosecutor

Brad L. Tammaro (0030156)  
Assistant Attorney General  
Special Prosecuting Attorney  
Summit County Prosecutor's Office  
P.O. Box 968  
Grove City, Ohio 43213  
Telephone: 614.277.1000  
Fax: 614.277.1010  
btammaro@ag.state.oh.us

Colleen Sims (0069790)  
Assistant Prosecuting Attorney  
Appellate Division  
53 University Ave., 6<sup>th</sup> Floor  
Akron, Ohio 44308  
simsc@prosecutor.summitoh.net

Attorneys for Appellee  
State of Ohio

William T. Whitaker (007322)  
Andrea Whitaker (0074461)  
William T. Whitaker Co., L.P.A.  
54 East Mill Street, Suite 301  
Akron, Ohio 44308  
Telephone: 330.762.0287  
whitaker@whitakerlawlpa.com

Attorneys for Appellant  
David Willan

**FILED**  
MAY 29 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

**MOTION FOR RECONSIDERATION OF CROSS-APPEAL PROPOSITION OF LAW 1  
OF APPELLEE, STATE OF OHIO**

Now comes the State of Ohio, as Appellant, and, pursuant to S.Ct. Prac. R. 11.2(B)(1), which allows for a Motion for Reconsideration where the Court refuses to grant jurisdiction in a discretionary case or an appeal of right as not involving a substantial constitutional question, hereby requests this Court to reconsider the determination to decline jurisdiction as to Proposition of Law 1 of the State's Cross-Appeal from the judgment of the Summit County Court of Appeals, Ninth Appellate District, entered in Court of Appeals Case Number 24894 on December 21, 2011. This Court declined jurisdiction of this discretionary appeal and found that neither the appeal nor cross-appeal involved any substantial constitutional question on May 25, 2012. Proposition of Law No. 1 of the State's Cross-Appeal stated:

***R.C. 2929.14(D)(3)(a) Establishes a Mandatory 10-Year Sentence  
Where a Defendant is Found Guilty of a Corrupt Activity Where  
The Predicate Crime is a Felony of the First Degree***

This Motion highlights the fact that, should this Court's declination of jurisdiction as to the State's Cross-Appeal Proposition of Law 1 go unchanged, the Court sanctions a distinct split in the appellate courts. The decision of the Ninth Appellate District establishes, within the Ninth Appellate District, the mandatory sentencing provisions of *R.C. 2929.14(D)(3)(a)* only apply to major drug-trafficking offenses, sexual crimes and kidnapping. However, that decision is directly opposite of the determination by the Eighth Appellate District which found the exact same mandatory sentencing provision was applicable to any Corrupt Activity where the predicate crime was a felony of the first degree.<sup>1</sup>

This Court should not turn a blind eye to the fact that, certified as a conflict or not, the opposing decisions of these appellate districts on the exact same sentencing provision goes

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<sup>1</sup> It should be noted that the determination made by the Eighth Appellate District is also reflected by the Sixth Appellate District in *State v. Noe* (2009), 2009 Ohio 6978.

beyond creating a *perception* that a defendant could be sentenced differently for committing the exact same crime under the exact same circumstances. Indeed, the different result reached by these appellate districts *mandates a difference* in how a defendant will be treated in sentencing based solely upon an arbitrary factor such as the location of the county in which the crime is committed.

This case presents the precise type of issue for which this Court's intervention is necessary since the ultimate result goes far beyond the borders of this one case. Intervention is necessary to ensure that the concept that this State's criminal system is one of fairness, equality and justice is more than just a concept, it is a reality. The State respectfully requests this Court reconsider the determination of May 25, 2012 to decline jurisdiction as to Proposition of Law 1 of the State's Cross-Appeal in the above-caption case.

Respectfully Submitted,

**Sherri Bevan Walsh**  
**Summit County Prosecutor**

**Brad E. Tammaro (0030156)**  
Assistant Attorney General  
Special Prosecuting Attorney  
P.O. Box 968  
Grove City, Ohio 43123  
614.277.1000  
614.277.1010 – fax  
[btammaro@ag.state.oh.us](mailto:btammaro@ag.state.oh.us)

**Colleen Sims (0069790)**  
Assistant Prosecuting Attorney  
53 University Ave, 7<sup>th</sup> Floor  
Akron, Ohio 44308  
[simsc@prosecutor.summitoh.net](mailto:simsc@prosecutor.summitoh.net)

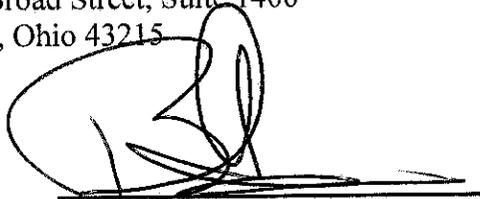
Attorneys for Appellee  
State of Ohio

**Certificate of Service**

This is to certify that the foregoing **Motion for Reconsideration of Cross-Appeal Proposition of Law 1 of Appellee State of Ohio** was served upon the following by US Mail, this 29<sup>th</sup> day of May, 2012.

**William T. Whitaker, Esq. (0007322)**  
**Andrea L. Whitaker (0074461)**  
54 E. Mill St., Suite 301  
Akron, Ohio 44308  
Attorneys for Appellant Willan

**State Public Defenders Office**  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215

A handwritten signature in black ink, appearing to read "Brad L. Tamaro", is written over a horizontal line. The signature is stylized and somewhat cursive.

**Brad L. Tamaro (0030156)**  
Assistant Attorney General  
Special Prosecuting Attorney