

**IN THE  
SUPREME COURT OF OHIO**

<b>STATE OF OHIO</b>	:	NO. 2012-0216
Plaintiff-Appellee	:	APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS
vs.	:	Court of Appeals
<b>DAVID WILLAN</b>	:	Case Number 24894
Defendant-Appellant	:	

**BRIEF OF AMICUS CURIAE, THE OHIO PROSECUTING ATTORNEYS  
ASSOCIATION, IN SUPPORT OF STATE OF OHIO, APPELLEE'S MOTION FOR  
RECONSIDERATION**

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## STATE OF AMICUS INTEREST

The Ohio Prosecuting Attorneys Association (“OPAA”) offers this amicus brief in support of the State of Ohio’s Motion for Reconsideration of this Court’s May 25, 2012 decision to decline jurisdiction as to Proposition of Law 1 of the state’s Cross-Appeal.

The Ohio Prosecuting Attorneys Association is a private non-profit membership organization that was founded for the benefit of the 88 elected county prosecutors. The founding attorneys developed the original mission statement, which is still adhered to, and reads: “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 which affect the office of Prosecuting Attorney, and to aid in the furtherance of justice. Further, the association promotes the study of law, the diffusion of knowledge, and the continuing education of its members.”

Amicus has a great interest that the mandatory sentencing provisions of former RC 2929.14(D)(3)(a) be consistently and uniformly interpreted and enforced in all districts of the State of Ohio. The decision of the Ninth District below, if not reviewed by this Court, results in a split among the appellate districts as to the effect and scope of former RC 2929.14(D)(3)(a). Certifications of conflict will inevitably ensue. Reconsideration and clarification of the issue at this point will serve judicial economy and is in the best interests of the citizens and Courts of Ohio.

## STATEMENT OF THE CASE AND FACTS

Amicus adopts by reference the statement of case and facts contained in the State of Ohio's March 6, 2012 Memorandum in Support of Jurisdiction of Cross-Appeal.

### AMICUS CURIAE PROPOSITION OF LAW NO. 1

**RC 2929.14(D)(3)(a) Established 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.**

Willan was sentenced to a 10 year mandatory term pursuant to RC 2929.14(D)(3)(a)<sup>1</sup> after his conviction of a first degree felony violation of RC 2923.32. The relevant part of RC 2929.14 read as follows:

If the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, \* \* \*, the court *shall* impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code.

The Ninth District, finding ambiguity in the statute, reversed the 10 year sentence and held that the mandatory 10 year term of RC 2929.14(D)(3)(a) did not apply to the offense of engaging in a pattern of corrupt activity under RC 2923.31<sup>2</sup>.

The Ninth District's decision thereby directly conflicts with decisions of the Sixth<sup>3</sup> and Eighth<sup>4</sup> Districts which have held that the mandatory sentencing provision of former RC 2929.14(D)(3)(a) is applicable to any corrupt activity where the predicate offense is a first degree

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<sup>1</sup> Now RC 2929.14(B)(3)

<sup>2</sup> 2011 WL 6749842 (Ohio App. 9 Dist), 2011-Ohio-6603

<sup>3</sup> *State v. Noe* 2009 WL 517 4163 (Ohio App. 6 Dist), 2009-Ohio-6978

<sup>4</sup> *State v. Schneider* 2010 WL 1918 560 (Ohio App. 8 Dist), 2010-Ohio-2089

felony. This Court will inevitably be asked to resolve this conflict. This case provides the perfect vehicle to resolve the conflict expeditiously.

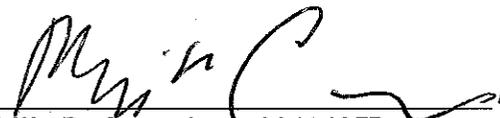
**CONCLUSION**

RC 2929.14(D)(3)(a), by its terms, clearly contemplated that its mandatory sentencing provisions apply to any Corrupt Activity where the predicate offense was a felony of the first degree. The OPAA asks this Court to reverse the decision of the Ninth District to the contrary.

However, even should this Court agree with the Ninth District on this point, reconsideration is appropriate here to clarify the issue for Ohio Courts. The principle of judicial economy is best served by resolving the issue now to avoid a prolonged period of uncertainty until the conflict among districts is certified to this Court in the future.

Respectfully,

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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 William T. Whitaker, Andrea Whitaker, William T. Whitaker Co., L.P.A., 54 East Mill Street, Suite 301, Akron, Ohio 44308, counsel of record, this 1 day of June, 2012.



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