

David Willan, through counsel, hereby opposes Plaintiff/Appellee's motion for reconsideration regarding ORC § 2929.14(D)(3)(a) and its applicability to this case. On February 6, 2012, Appellant/Cross-Appellee David Willan filed a Notice of Appeal and Memorandum in Support of Jurisdiction in the above captioned matter. Shortly thereafter, the State filed a Notice of Appeal and a motion to stay the execution of the judgment of the Ninth District Court of Appeals. In that request, the State twice addressed its concerns regarding the COA's opinion dealing with sentencing and ORC § 2929.14(D)(3)(a). Motion for Stay of Execution of Judgment, pp. 2 and 3. This Court denied the Motion for Stay. 3/21/12 Entry. On March 6, 2012, the State filed its Memorandum in Support of Jurisdiction of Cross-Appeal and Response to Appellant's Memorandum ("State's Memorandum"). On May 23, 2012, this Court declined to accept jurisdiction of both the appeal and the cross-appeal because neither presented a substantial constitutional question. There were no dissents from this decision.

In its Memorandum, the State raised the issue of ORC § 2929.14(D)(3)(a)'s applicability to this case and *State v. Schneider*, 8th Dist. No. 93128, 2010 Ohio 2089 on no less than six of its thirty pages. State's Memorandum, pp. 1-2, 10, 12-14. Moreover, the State's Memorandum contains the exact same argument made in its Motion to Reconsider. In the State's Memorandum, it exhaustively details its argument regarding its contention that *Schneider* contained the correct interpretation of ORC § 2929.14(D)(3)(a) and that this Court's guidance was necessary to determine which decision was correct. State's Memorandum, p. 2, 13-14. In its Motion to Reconsider, the State reargues that exact proposition. It argues that this Court should accept jurisdiction to settle the State's perceived conflict regarding *Schneider*. Motion to Reconsider, pp. 2-3. Although the State did not perceive a conflict such that it sought to certify, it now sounds the alarm bells that this Court must reconsider an issue entirely argued and

addressed by its decision to decline jurisdiction. There is nothing in its Motion to Reconsider that has not been previously argued virtually verbatim in the State's Memorandum.

Although this Court's Rules of Practice allow for a Motion to Reconsider, the Rule specifically states that "[a] motion for reconsideration shall not constitute a reargument of the case." S.Ct. Prac. R. 11.2(B). *State ex rel. Shemo v. City of Mayfield Heights* (2002), 96 Ohio St. 3d 379, 383. The sole issue presented to this Court is exactly what is prohibited by the rules. It is a reargument of the issue fully addressed by the State and declined by the Court. There is not a single new argument, fact, interpretation of law. Further, in recycling its argument to the Court, the State has failed to articulate how the issue presented for reconsideration presents a "substantial constitutional question." The Motion to Reconsider simply chides the Court for "turning a blind eye" to the "conflict." Motion to Reconsider, p. 3. As noted above, the State's concern regarding the "conflict" did not rise to the level of filing a motion to certify the conflict after the Ninth District Court of Appeals rendered its decision.

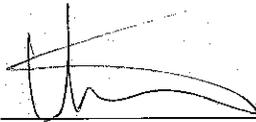
On June 4, 2012, the Ohio Prosecuting Attorneys Association ("OPAA") filed an Amicus Motion for Reconsideration. This organization did not file an amicus memorandum in support of jurisdiction of the State's cross-appeal regarding ORC § 2929.14(D)(3)(a). The OPAA's Brief in Support of the Motion for Reconsideration contains the same argument as the one reused in the State's Motion for Reconsideration: that a conflict exists. Like the State, the OPAA simply disagrees with this Court's decision to decline jurisdiction of the cross-appeal and offers nothing but a "reargument of the case."

Both the State and the OPAA erroneously rely on *State v. Noe*, 2009 Ohio 6978; 2009 Ohio App. LEXIS 5825. That reliance is misplaced. Whether the sentence was mandatory was not an issue appealed or addressed in the *Noe* case. In fact, the Sixth District Court of Appeals'

Opinion includes no citations to ORC § 2929.14(D)(3)(a). The Court simply restates Mr. Noe's sentence. There is no opinion or decision regarding ORC § 2929.14(D)(3)(a) so there is no conflict between the Ninth District Court of Appeals decision in the instant case and *Noe*.

For the foregoing reasons, Appellant/Cross-Appellee Willan respectfully requests that this Court deny Appellee/Cross-Appellant's Motion to Reconsider.

Respectfully submitted,
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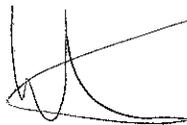
CERTIFICATE OF SERVICE

A copy of the foregoing was served by regular U.S. mail this 7th day of June, 2012 upon:

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