

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

:

12-1325

Plaintiff-Appellee,

: Case No. _____

-VS-

:

HENRY ALLEN HOLDCROFT

: NOTICE OF PENDING MOTION TO CERTIFY
: A CONFLICT S.C.T. PRAC.R. 4.4 (A)

Defendant-Appellant.

:

:

Now comes the Defendant-Appellant, Pro-Se, before this Honorable Court, with a Notice of Pending Motion to Certify a conflict pursuant to S.Ct. Prac. R. 4.4 (A) which was filed by Counsel on July 10, 2012.

Respectfully Submitted,

Henry Allen Holdcroft

Henry Allen Holdcroft, A381-888
Hocking Correctional Facility
P.O. Box 59 A-2
Nelsonville, Ohio 45764

CERTIFICATE OF SERVICES

I, certify that a true and correct copy of the Notice of pending Motion to certify a conflict was served upon the Wyandot County

prosecuting Attorney, 137 South Sandusky Avenue, Upper Sandusky, Ohio 43351, on this 1 day of August, 2012.

Henry Allen Holdcroft

Henry Allen Holdcroft, A381-888

FILED
AUG 06 2012
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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
WYANDOT COUNTY, OHIO

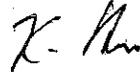
STATE OF OHIO, :
 :
 Plaintiff-Appellee, : C.A. Case No. 16-10-13
 :
 vs. : C.P. Case No. 98-CR-0044
 :
 HENRY ALLEN HOLDCROFT, :
 :
 Defendant-Appellant. :

MOTION TO CERTIFY A CONFLICT

Plaintiff-Appellant Henry Allen Holdcroft requests that this Court certify a conflict for resolution by the Supreme Court of Ohio. App.R. 25(A). This Court's July 2, 2012, judgment regarding the first assignment of error that was raised in Mr. Holdcroft's direct appeal conflicts with the judgment of another court of appeals. *Id.* A memorandum in support is attached.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



KRISTOPHER A. HAINES (0080558)
Assistant State Public Defender

250 East Broad Street – Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
kristopher.haines@opd.ohio.gov

COUNSEL FOR
HENRY ALLEN HOLDCROFT

MEMORANDUM IN SUPPORT

Ohio Appellate Rule 25 authorizes a court of appeals to certify a conflict under Article IV, Section 3(B)(4), of the Ohio Constitution when the judgment or order of the certifying court conflicts with the judgment or order of another court of appeals. App.R. 25(A).

On July 2, 2012, this Court journalized and filed its decision in this case. *State v. Holdcroft*, 3d Dist. No. 16-10-13, 2012-Ohio-3066. Regarding Mr. Holdcroft's first assignment of error, this Court noted the following:

The relevant procedural history in this case is undisputed. On September 13, 1999, the trial court ordered that Holdcroft serve ten years on Count One, aggravated arson, and five years on Count Three, arson. The trial court further ordered that the term of imprisonment for Count Three be served consecutively to the term for Count One, for an aggregate term of fifteen years. The trial court resentenced Holdcroft to impose the proper terms of PRC in January of 2010, imposing five years of mandatory PRC for Count One and up to three years of discretionary PRC for Count Three. Thus, over ten years but less than fifteen years transpired between the time of the sentencing and the resentencing hearings.

Id. at ¶ 28.

Moreover, this Court noted that “an offender that ‘has already served the prison term ordered by the trial court . . . cannot be subject to resentencing in order to correct the trial court’s failure to impose postrelease control.’” *Id.* at ¶ 29, quoting *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 18. Relying, in part, on the interpretation and history of the terms “prison term” and “sentence,” this Court addressed whether “the trial court was without jurisdiction to impose five years of mandatory PRC on Holdcroft’s aggravated arson conviction (Count One) at the resentencing hearing because Holdcroft had already served ‘the prison term ordered by the trial court.’” *Id.* at ¶ 30-35. This Court determined that Mr. Holdcroft was properly resentenced and given five years of mandatory postrelease control because his aggregate sentence had not yet expired: “Since Holdcroft had not yet completed his aggregate fifteen-year

sentence before the resentencing hearing was held, the trial court had jurisdiction to sentence him to five years of mandatory PRC on his aggravated arson conviction (Count One).” *Id.* at ¶ 43-44.

In coming to that conclusion, this Court determined that its judgment was in conflict with at least one other Ohio appellate district:

The Court of Appeals, for its part, has taken different positions on this precise issue. The Eighth District has held that it is the expiration of the sentence on the specific conviction (Count) for which post-release control is applicable, and not the offender’s ultimate release from prison, that determines whether a court may correct a sentencing error and impose post-release control at resentencing. *State v. Dresser*, 8th Dist. No. 92105, 2009-Ohio-2888, ¶ 11, reversed on other grounds in *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671, 931 N.E.2d 110.

* * *

On remand, the trial court conducted a de novo sentencing hearing and ordered the concurrent five-year sentence on the pandering charges be served *prior to* the indefinite rape sentences. *Id.* at ¶ 6. The trial court then concluded that post-release control could not be imposed on the pandering convictions, because the defendant had already served the five-year sentence on those convictions. *Id.* Thereafter, the State appealed and argued that the trial court erred by failing to impose the mandatory term of PRC. *Id.* at ¶ 7. The Eighth District rejected the State’s argument, however, and concluded that the trial court could not retroactively impose the mandatory PRC upon the defendant for his pandering convictions since he had already served the sentence for those convictions by the time of the resentencing hearing. *Id.* at ¶ 8.

Holdcroft at ¶ 36-37, citing *Dresser*. This Court took issue with the Eighth District’s contention in *Dresser* that “other districts have also considered this issue and have concluded that it is the expiration of the prisoner’s journalized sentence, rather than the offender’s ultimate release from prison, that is determinative of the trial court’s authority to resentence.” *Holdcroft* at ¶ 36-37, quoting *Dresser* at ¶ 11, citing *State v. Bristow*, 6th Dist. No. L-06-1230, 2007-Ohio-1864; *State v. Turner*, 10th Dist. No. 06AP-491, 2007-Ohio-2187; and *State v. Ferrell*, 1st Dist. No. C-070799, 2008-Ohio-5280. And after this Court sought to distinguish the decisions in *Bristow*, *Turner*, and *Ferrell*, from the facts at issue in *Dresser*, this Court noted:

Despite the obvious differences between the facts and procedural history in *Bristow*, *Turner*, *Ferrell*, and the facts and procedural history in *Dresser*, the Eighth District still follows *Dresser* and continues to examine sentences on specific convictions (Counts) for purposes of determining whether a trial court has jurisdiction to impose PRC at a resentencing hearing. *State v. Cobb*, 8th Dist. No. 93404, 2010-Ohio-5118; *State v. O'Hara*, 8th Dist. No. 95575, 2011-Ohio-3060.

Holdcroft at ¶ 38; *see also id.* at ¶ 47-59 (Shaw, J., concurring in part and dissenting in part).

Accordingly, under App.R. 25(A), Mr. Holdcroft asks that a conflict be certified to the Supreme Court of Ohio on the following questions:

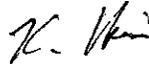
Does an Ohio trial court have jurisdiction to resentence a defendant for the purpose of imposing mandatory postrelease control regarding a particular conviction, when the defendant has already served his or her stated prison sentence regarding *that* conviction, but has yet to serve the entirety of his or her aggregate prison sentence, when all of the convictions which led to the aggregate sentence came from a single indictment?

If an Ohio trial court specifically ordered that a stated prison term regarding a particular conviction be served before another, consecutive prison term regarding another conviction, when the convictions which led to the separate prison terms came from a single indictment, and the trial court failed to properly impose postrelease control regarding the conviction for which the prison sentence was ordered to be served first, can the trial court resentence the defendant for the purpose of imposing postrelease control regarding the former conviction if the defendant has already served his or her stated prison sentence regarding *that* conviction, but remains incarcerated under his or her sentence for the latter conviction?

This Court's July 2, 2012, judgment regarding Mr. Holdcroft's first assignment of error is in conflict with the above-mentioned judgments of the Eighth District Court of Appeals. A conflict should be certified to the Supreme Court of Ohio. *See* App.R. 25(A); Article IV, Section 3(B)(4), of the Ohio Constitution.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



KRISTOPHER A. HAINES (0080558)
Assistant State Public Defender

250 East Broad Street – Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
kristopher.haines@opd.ohio.gov

COUNSEL FOR
HENRY ALLEN HOLDCROFT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing MOTION TO CERTIFY A CONFLICT was sent by regular U.S. mail to Jonathan K. Miller, Wyandot County Prosecuting Attorney, 137 South Sandusky Avenue, Upper Sandusky, Ohio 43351, on this 10th day of July, 2012.



KRISTOPHER A. HAINES (0080558)
Assistant State Public Defender

COUNSEL FOR
HENRY ALLEN HOLDCROFT

#371853