

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2012-0216
Plaintiff-Cross Appellant	:	On Appeal from the Summit County Court of Appeals
vs.	:	Court of Appeals
DAVID WILLAN	:	Case Number 24894
Defendant-Cross Appellee	:	

BRIEF OF AMICUS CURIAE, THE OHIO PROSECUTING ATTORNEYS ASSOCIATION, IN SUPPORT OF STATE OF OHIO'S MERIT BRIEF

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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 Merit Brief on Proposition of Law 1 in its 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. Under the statute, a ten year sentence is mandatory when the most serious offense in the pattern of corrupt activity is a first degree felony. The provision is unambiguously mandatory. A trial court has no discretion. The decision of the Ninth District below to the contrary is properly reversed.

STATEMENT OF THE CASE AND FACTS

Amicus adopts by reference the statement of case and facts contained in the State of Ohio's Merit Brief.

AMICUS CURIAE PROPOSITION OF LAW NO. 1

R.C. 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 R.C. 2929.14(D)(3)(a)¹ after his conviction of a first degree felony violation of R.C. 2923.32. The relevant part of R.C. 2929.14 reads 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 R.C. 2929.14(D)(3)(a) did not apply to the offense of engaging in a pattern of corrupt activity under R.C. 2923.32².

The Ninth District's decision thereby directly conflicts with decisions of the Sixth³ and Eighth⁴ Districts which have held that the mandatory sentencing provision of former R.C. 2929.14(D)(3)(a) is applicable to any corrupt activity where the predicate offense is a first degree felony. The Ninth District ostensibly went out of its way to find ambiguity. It then ignored the

¹ Now RC 2929.14(B)(3)

² 2011 WL 6749842 (Ohio App. 9 Dist), 2011-Ohio-6603

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

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

plain text of the statute and instead – rewrote the statute to restrict the ten year mandatory term to only corrupt activity linked to drug offenses or attempted rape. In the Ninth District’s world, it is as though the legislature never used the unqualified words “corrupt activity”.

For a court to rewrite or interpret a statute, the statute must first be ambiguous.⁵ A statute is ambiguous if its language is susceptible to more than one reasonable interpretation.⁶ Where the language is ambiguous, a court must apply the clear meaning of the words used.⁷ The statute must be applied as written and no further interpretation is necessary.⁸ Rules of statutory construction require provisions not be interpreted so as to render them meaningless.⁹ A court must give effect to words used in the statute and not delete words used or insert words that are not used.¹⁰

Here, the legislature used the unqualified language “guilty of corrupt activity.” The corrupt activity statute is R.C. 2923.32. The Ninth District decided that the failure of the legislature to include a numerical statutory reference to R.C. 2923.32 in addition to a verbal reference to the corrupt activity statute renders the statute ambiguous. Amicus submits it simply does not.

The Ninth District appears to require the legislature to be consciously redundant before it will credit words the legislature actually used. Despite the fact the words “corrupt activity” can only refer to R.C. 2923.32 – the Ninth District has decided the legislature drafted meaningless words simply because it did not redundantly refer to the general corrupt activity statute by “R.C.

⁵ *State ex Rel. Celebreeze v. Allen* (1987), 32 Ohio St.3d 24, 27.

⁶ *State ex. Rel Toledo Edison Co. v. Clyde* (1996), 76 Ohio At.3d 508, 513.

⁷ *Roxane Laboratories, Inc. v. Tracy* (1996), 75 Ohio St.3d 125, 127, 1996-Ohio-257.

⁸ *Burrows v. Indus. Comm.* (1997), 78 Ohio St.3d 78, 81.

⁹ *State v. Dickey* (1991), 61 Ohio St.3d 175.

¹⁰ *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50.

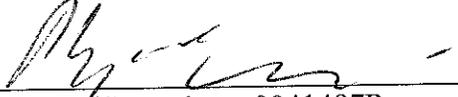
2923.32.” Rules of statutory construction, however, do not require such redundancy. They do require courts to give effect to the words used.

CONCLUSION

R.C. 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 Ninth District unilaterally has decided to require redundancy before it will credit words actually used in a statute. The Rules of statutory construction do not require such redundancy to give meaning to otherwise unambiguous terms. The OPAA urges this Court to reverse the decision of the Ninth District below.

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 24 day of September, 2012.


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