

ORIGINAL

IN THE OHIO SUPREME COURT

STATE OF OHIO,
Plaintiff-Appellee,
-VS-
Steven W. Yee,
Defendant-Appellant..

) Supreme Court Case No., 2012-1401

) Sixth District Court of Appeal's Case
) No., E-93-072

APPELLANT, STEVEN W. YEE'S MOTION FOR RECONSIDERATION

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RECONSIDERATION

Mr. Yee says he has demonstrated in his Memorandum in Support of Jurisdiction that this case [D]oes involve a substantial Ohio and United States Constitutional question and that it [is] a case of public and great general interest.

In fact, the issue of Allied Offenses of Similar Import is such an important issue under Ohio Law, the Ohio Supreme Court has once again accepted jurisdiction over the case of State v. Williams, 129 Ohio St.3d 1474, 953 N.E.2d 841(accepted on 9-21-2012, allied offense claims), Reconsideration must be Granted.

Therefore, pursuant to S.Ct. R. Prac. 3.6 (A)(3) Mr. Yee asks the Ohio Supreme Court to hold this case for decision of Williams, supra and/or that both cases be decided together for judicial economy and just results.

Moreover, in light of the evolution of the law in Ohio an allied offense claim renders a sentence contrary to law and void. Even further, in light of the retroactive decision of State v. Johnson, 128 Ohio St.3d 153, Mr. Yee's convictions for Aggravated Murder and Aggravated Robbery are now an allied offense of similar import subject to merger and courts in Ohio have been instructed to recognize this issue under the Plain Error Rule.

Reply to Appellee's argument for Proposition of Law One:

Res Judicata [Does Not] bar further litigation in a criminal case of issues which were raised previously or could have been raised previously in an appeal for an allied offense claim, because a sentence with an allied offense is contrary to law and void.

Contrary to what the appellee's are claiming, in the State of Ohio a sentence that is contrary to law is void. Colegrove v. Burns, 175 Ohio St. 437, 438, 195 N.E.2d 811 (1964).

And as we know, a sentence that contains an allied offense error is contrary to law under R.C. § 2953.08 (A)(4). State v. Wilson, 2011-Ohio-2669, 2011 WL 2274628 (Ohio); at ¶14); State v. Anderson, 2012-Ohio-3347, 2012 Ohio App. LEXIS 3008 (1st Dist.) (HN 1).

Moreover, a sentence containing an allied offense is subject to Plain Error review, Crim. R. 52 (B), State v. Underwood, 124 Ohio St.3d 365, State v. Yarbrough, 104 Ohio St.3d 1, Anderson, supra at (HN 1).

A void sentence is no sentence and a void sentence is open to collateral attack at any time, by any person and res judicata and/or law of the case do not apply. State v. Fischer, 128 Ohio St.3d 92.

In State v. Harris, 132 Ohio St.3d 318 (2012) at ¶16 the Ohio Supreme Court holds....."Although we explicitly limited our decision to those cases in which a court does not properly impose a statutorily mandated period of post release control, id, at ¶31, we find the same logic in Fischer, to be controlling when it comes to other statutorily mandated terms....."

Allied offense claims are now jurisdictional in light of this holding based on the evolution of the laws in Ohio.

A sentence with an allied offense claim is outside of the statutory range and void and open to collateral attack at any time by any person and res judicata and/or law of the case do not apply.

Reply to Appellee's argument for Proposition of Law One:

Aggravated Murder and Aggravated Robbery [Are] allied offenses of similar import under the retroactive decision of State v. Johnson, 128 Ohio St.3d 153

Once again, the appellee's got it wrong. The Ohio Supreme Court in State v. Johnson, 128 Ohio St.3d 153 rendered the retroactive statutory interpretation for R.C. § 2941.25 and that decision overruled State v. Rance, (1999) 85 Ohio St.3d 632.

Imposition of concurrent sentences for defendant's allied offenses is not the equivalent of merging allied offenses. State v. Damron, 129 Ohio St.3d 86, syllabus 1.

The Johnson decision, supra overruled all of the former case authority for the statutory interpretation of what R.C. § 2941.25 has always meant.

Prior to this Court's proper decision in Johnson, supra, Courts of Ohio used a statutory comparison of the elements test for an allied offense claim. See (Page 8 of appellee's brief and cases cited).

The line of cases cited and relied upon by the appellee's are no longer Ohio Law and they all must be overuled along with their progney.

In fact, the Ohio Supreme Court did just that in another allied offense claim in the Dameron case, supra at (¶18), (judgment vacated and cause remanded).

Res judicata and/or law of the case do not apply to an allied offense of similar import claim and under Ohio law as the prpper statutory interpretation now holds; Aggravated Murder if committed at the same time by the same conduct when committing Aggravated Robbery is an allied offense of similar import subject to merger, Johnson supra, therefore reconsideration must be granted.

CONCLUSION

Wherefore, Mr. Yee asks the court to reconsider and to accept jurisdiction over this case and answer the question raised in the appellant's jurisdictional memorandum as a yes. Moreover, in light of the Williams case pending on an allied offense claim, Mr. Yee asks the court to hold this case pending the determination of that case and/or both cases be decided together in the interest of justice, as this will prevent any further violations of the Ohio and U.S. Constitutions.

11-14-2012

Respectfully submitted,

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SERVICE

A true copy of the foregoing was sent out today 11-14-2012 by regular U.S. mail to the Erie County Prosecutors Office, at 247 Columbus Ave., Sandusky, Ohio 44370.

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