

IN THE SUPREME COURT OF OHIO

IN RE:

H.V.

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CASE NO. 12-1688

ON APPEAL FROM LORAIN  
COUNTY COURT OF APPEALS  
NINTH APPELLATE DISTRICT

CA CASE NOS. 11CA010139 AND  
11CA010140

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MERIT BRIEF OF THE APPELLEE THE STATE OF OHIO

DENNIS P. WILL, #0038129  
Prosecuting Attorney  
Lorain County, Ohio  
225 Court Street, 3<sup>rd</sup> Floor  
Elyria, Ohio 44035  
Phone:(440) 329-5389  
Fax: (440) 329-5430

SHERYL TRZASKA #0079915  
Assistant State Public Defender  
Office of the Ohio Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
Phone: (614) 466-5394  
Fax: (614) 752-5167  
Sheryl.Trzaska@opd.ohio.gov

By:

CHRIS A. PYANOWSKI, #0084985  
Assistant Prosecuting Attorney  
Chris.Pyanowski@LCProsecutor.Org

COUNSEL FOR THE STATE OF OHIO      COUNSEL FOR H.V.

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## STATEMENT OF THE CASE

On November 18, 2010, the juvenile, H.V., admitted to one count of Attempted Domestic Violence with two prior convictions, a felony of the fourth degree, and the court adjudicated him a delinquent child.<sup>1</sup> The matter was set for dispositional hearing before the Honorable Judge Boros on December 18, 2010. H.V. received a permanent commitment to the Ohio Department of Youth Services (ODYS) with eighty three days credit for time served. He was released to parole (supervised release) on March 17, 2011.

H.V. struggled once he returned to the community. He was removed from his mother's house and placed with his sister due to his violent and abusive behavior towards the other children of the home. Subsequently, his sister asked he be removed from her home due to his refusal to follow her rules. Also, while in public, H.V. would flash gang signs, placing his family in potential danger. Finally, H.V. failed to make contact with his parole officer for over a month and a parole violation charge was filed and a hearing set. H.V. failed to appear for the hearing and a warrant was issued. When the warrant was executed and H.V. was remanded to the detention home, he assaulted another resident of the facility, breaking the resident's eye socket, resulting in a felonious assault charge. In order to restrain H.V., detention home staff had to apply pepper foam multiple times.

On November 8, 2011, H.V. admitted to one count of Felonious Assault, a felony of the second degree and one count of Violation of Parole, and was adjudicated a delinquent child. The matter was set for dispositional hearing before the Honorable Judge Boros on November 23, 2011.

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<sup>1</sup> Required page references not included due to original trial court case file being transferred to Ninth District Appellate Court and therefore being unavailable for reference prior to Appellee filing lower appellate court brief.

On November 23, 2011, Judge Boros revoked H.V.'s previously granted parole for a minimum period of ninety days and, on the felonious assault, ordered a permanent commitment to the ODYS for a minimum period of one year, maximum his twenty-first birthday, said commitment to run consecutive to the parole revocation.

H.V. filed a timely appeal, challenging the parole revocation and commitments. H.V. argued that the court was not permitted to revoke his parole and commit him to ODYS for anything other than a minimum of thirty days and that the court further erred by ordering the parole revocation be served consecutively to the new commitment. The Ninth District Court of Appeals affirmed the juvenile court's commitment of H.V. to ODYS. *In re H.V.*, 9<sup>th</sup> Dist. Nos. 11CA010139 and 11CA010140, 2012-Ohio-3742.

## ARGUMENT

**FIRST PROPOSITION OF LAW: When a juvenile court revokes a child's supervised release, the juvenile court may determine whether the child should be returned to the Ohio Department of Youth Services, and the Court may commit the child for a prescribed minimum period of time in excess of thirty days.**

The Revised Code outlines the procedures for revocation of supervised release by a juvenile court in R.C. 5139.52(F). It states that the juvenile court may revoke the child's supervised release upon determining that the child committed a serious violation of his supervised release. R.C. 5139.52(F). If the juvenile court does revoke the child's release and orders the child to be returned to the Ohio Department of Youth Services (ODYS), the child shall remain institutionalized for a minimum period of thirty days. R.C. 5139.52(F). One of the issues before this Court is who has the authority to extend that period of institutionalization for a period greater than the minimum thirty days.

The Eight, Ninth, and Eleventh Districts have held that R.C. 5139.52(F) establishes a minimum, not an exact, amount of time for which the trial court may recommit the juvenile to ODYS upon a revocation of parole. *In re T.K.*, 9<sup>th</sup> Dist. C.A. No. 26076, 2012-Ohio-906; *In re D.B.*, 8<sup>th</sup> Dist. No. 97445, 2012-Ohio-2505; *In re A.N.*, 11<sup>th</sup> Dist. Nos. 2011-A-0057 and 2011-A-0058, 2012-Ohio-1789. These courts have held that there are no time period limitations set forth in R.C. 5139.52(F) regarding a child's return to ODYS upon a revocation of parole and a juvenile court is within its broad discretion to impose any disposition when the court commits the child to ODYS for a minimum greater than thirty days. *In re T.K. at P10*; *In re D.B. at P18*; *In re A.N. at P12*. While the statute "requires that the child remain institutionalized for a minimum of thirty days, this provision prevents the child's release before that time" but it "does not limit the court from sentencing [the child] to a longer stay, not to exceed his 21<sup>st</sup> birthday." *In re T.K. at*

P10 . “The statute merely establishes an absolute minimum amount of time for which the trial court must recommit the juvenile.” *In re A.N. at P12*.

In contrast, the Second and Twelfth Appellate Districts have held that the juvenile court’s authority is limited to deciding whether to revoke the child’s parole and returning the child to ODYS. *In re I.M.*, 2012-Ohio-3847, 974 N.E.2d 168 (2<sup>nd</sup> Dist.); *In re L.B.B.*, 12<sup>th</sup> Dist. Case No. CA2012-01-011, 2012 Ohio 4641. According to the Second and Twelfth District, the court can only decide whether to return the juvenile to ODYS for a minimum of thirty days under R.C. 5139.52(F) and then ODYS Release Authority determines if the juvenile shall remain in the institution past the thirty days. *In re I.M. at P28*; *In re L.B.B. at P12*.

When considering the issue of statutory interpretation, this Court must look to the legislative intent behind the statute. *State v. Buehler*, 113 Ohio St.3d 114, 2007-Ohio-1246, 863 N.E.2d 124, ¶29. Intent can be interpreted through an examination of the statutory language, “reading words and phrases in context and construing them according to the rules of grammar and common usage.” *Buehler*, at ¶ 29. “[W]e must give effect to the words of a statute and may not modify an unambiguous statute by deleting words used or inserting words not used.” *State v. Teamer* (1988), 82 Ohio St.3d 490, 1998-Ohio-193, 696 N.E.2d 1049. Courts also should examine the plain meaning and the history of the statute when looking to determine legislative intent. *Riffle v. Physicians & Surgs. Ambulance Serve.*, 2013-Ohio-989, 2013 Ohio LEXIS 787, ¶23.

Here, the statute is not ambiguous, the legislative intent behind the statute is clear, and all of the words that are necessary to interpret this statute are already in the statute. In its relevant portion, Ohio Revised Code 5139.52(F) reads:

If the *court* of the county in which the child is placed on supervised release conducts a hearing and determines at the hearing that the child violated one or more of the terms and conditions of the child's supervised release, the *court*, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to the department of youth services for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the *court* orders the child to be returned to a department of youth services institution, the child shall remain institutionalized for a minimum period of thirty days, the department shall not reduce the minimum thirty-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to the department, the release authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day period, and the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization or any period of institutionalization in excess of the minimum thirty-day period.

When drafting this statute, the legislature consistently conveyed authority to the court to make decisions regarding the delinquent. The statute provides that the *court* has the ability to revoke a juvenile's supervised release and the *court* has the authority to order that the child be returned to the Ohio Department of Youth Services. Further, the legislature clearly indicated that a juvenile who has violated his supervised release be held for a "minimum of thirty days." The word minimum means least – there is no other meaningful interpretation of that word – thus, in this situation, the logic of the statute indicates that if the *court* has the ability to hold the juvenile for a minimum of thirty days that the *court* may order the delinquent held for longer.

Alternatively, if the legislature had intended for ODYS release authority to be the only one who was able to determine the juvenile could be institutionalized for a period of time greater than the minimum thirty days, it could have simply added the word "sole" so that the statute would have read "the release authority, in its "sole" discretion, may require the child to remain in institutionalization for longer than the minimum thirty-day

period.” However, the legislature did not create such a limitation to the juvenile court’s authority.

The last section of R.C. 5139.52(F) further supports the Appellee’s reading of the statute where it says “the child is not eligible for judicial release or early release during the minimum thirty-day period of institutionalization *or any period of institutionalization in excess of the minimum thirty-day period.*” This further supports the argument that the juvenile court may institutionalize a juvenile for a period greater than the minimum thirty day commitment for a parole revocation because there would be no reason to limit judicial release or early release authority if the ODYS release authority had sole discretion as to institutionalization in excess of the minimum thirty days as the Appellant argues.

H.V. argues that the statute gives the juvenile court the authority only to determine three things: that H.V. committed a serious violation of his parole, that H.V.’s parole was thereby revoked, and he was to be returned to ODYS for a minimum of thirty days. After that, according to H.V., only ODYS Release Authority can determine what happens to H.V. as it relates to a period of institutionalization in excess of the minimum thirty days. If that was the case, the statute would not need to limit the juvenile court’s authority to consider judicial release because after the court determined those three things and returned H.V. to ODYS, the juvenile court would be done. If ODYS Release Authority has sole discretion to continue a juvenile’s institutionalization past the minimum thirty days and the juvenile cannot be released before the minimum time has passed, there would be no need for the statute to limit the judicial release authority by stating “the child is not eligible for judicial release ... during the minimum thirty-day

period of institutionalization *or any period of institutionalization in excess of the minimum thirty-day period.*” R.C. 5139.52(F). This language clearly takes into consideration the scenario where the juvenile court orders a minimum commitment greater than thirty days.

The Legislature has indicated that it believes the language of the statute is facially clear as it has not amended it since it became effective January 1, 2002, even when it made other amendments to the statute September 30, 2011.

In *Hewitt v. L.E. Myers Co.*, 134 Ohio St. 3d 199, 2012-Ohio-5317, 981 N.E.2d 795, ¶ 20-21, this Court took into account that several districts had interpreted a statute in the same manner without reading extra words into it. The majority of appellate districts that have examined the issue before this court in this matter and agree with the Appellee’s interpretation of R.C. 5139.52(F). See *In re A.N.*, 11th Dist. No. 2011-A-0057, 2011-A-0058, 2012-Ohio-1789, 2012 Ohio App. LEXIS 1577, *In re T.K.*, 9th Dist. No. 26076, 2012-Ohio-906, 2012 Ohio App. LEXIS 784, *In re D.B.*, 8th Dist. No. 97445, 2012-Ohio-2502, 2012 Ohio App. LEXIS 2213. To interpret the statute otherwise would limit the juvenile court’s long recognized broad discretion to impose any disposition it believes is proper and ignore that it is the juvenile court that “is in the best position to evaluate facts of each case and determine whether a longer period of rehabilitation may be needed under each separate fact pattern.” *In re Caldwell*, 76 Ohio St. 3d 156, 1996 Ohio 410.

The juvenile court revoked H.V.’s parole after he was adjudicated for felonious assault and a violation of his parole. The juvenile court then committed H.V. to ODYS for a “minimum of ninety days” for his parole violation. The juvenile court was not

limited by R.C. 5139.52(F) to a commitment for a minimum of thirty days as H.V. argues. The juvenile court was well within its authority established by statute to commit H.V. to ODYS for a minimum of ninety days, as the language of the statute “does not limit the court” from committing the juvenile for a period longer than the minimum of thirty days.

**SECOND PROPOSITION OF LAW: A juvenile court may order a revocation of supervised release to be served consecutively to a new commitment to the Department of Youth Services.**

Juvenile courts have broad discretion to craft dispositions for delinquent children and absent an abuse of discretion, reviewing courts should not disturb a juvenile court’s disposition. *In re D.S.*, 111 Ohio St. 3d 361, 2006-Ohio-5851, 856 N.E.2d 921, at P6. Included in that broad dispositional discretion, “a juvenile court is authorized to impose consecutive terms of commitment upon a delinquent minor for separate delinquent acts whether or not they arise from the same set of operative facts.” *In re Caldwell* at 161. This Court has previously recognized a court’s authority to order that sentences for parole violations be served consecutive to sentences for new crimes. *Jordan v. Maxwell* (1965), 1 Ohio St. 2d 76. The State would argue that is the appropriate approach and would ask this Court to adopt it here.

Pursuant to R.C. 2152.16(A)(1)(d), H.V. was subject to a commitment for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed his attainment of twenty-one years of age for his adjudication for felonious assault, a felony in the second degree and a violation of R.C. 2903.11(A)(1). Pursuant to R.C. 5139.52(F), H.V. was subject to having his parole revoked and being returned to the ODYS for violating that parole which stemmed from a prior adjudication for felony

domestic violence. R.C. 5139.52(F) makes no limitation that the parole revocation cannot be ordered served consecutively to a commitment for new felony adjudications.

H.V. is asking this Court to limit the juvenile court's ability to order consecutive commitments in this case even though the language of the statute that he cites does not apply to this situation. He argues that R.C. 2152.17(F) provides the only authority by which a trial court can order a juvenile to serve consecutive commitments but that statute applies to the commitment of a delinquent child to ODYS if adjudicated for a specification which is not the factual situation in this matter. H.V. asks this court to read the language of the statute as the sole authority of the juvenile court to order consecutive commitments and the statute does not say that or even imply it.

If this court were to decide that R.C. 2152.17(F) does apply to a situation such as this where a juvenile has his parole revoked, and receives a commitment, and is given a commitment for a new felony, both commitments to be served consecutively, the State argues that the parole revocation should relate back to the felony offense from which the juvenile was placed on parole thereby satisfying R.C. 2152.17(F) and allowing for the commitments to be ordered served consecutively. *State v. Black*, 2<sup>nd</sup> Dist. No. 24005, 2011 Ohio 1273, 12-13 (upon finding that a community control violation occurred based on a violation of law, the trial court's imposition of a prison sentence is not a punishment for the new offense, but rather, is a "continuing consequence of the original conviction."); *See also State v. Myers*, 5<sup>th</sup> Dist. No. 2003CA0062, 2004 Ohio 3715.

The juvenile court committed H.V. to ODYS for a period of time within the range allowed by statute. Therefore, both commitments were within the authority granted to the trial court by statute and they were proper. Furthermore, when taking into

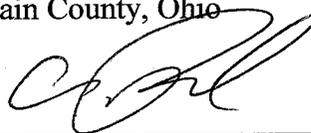
consideration the purposes of juvenile dispositions outlined in R.C. 2152.01, this particular juvenile's past delinquent history, and the fact that both commitments were within the statutorily allowed limits, the juvenile court was within its discretion to order the commitments be served consecutively. The State would ask that this court recognize the juvenile court's discretion when crafting the disposition for H.V. and not disturb that disposition as it is within statutory authority.

CONCLUSION

Based on the foregoing facts, law, and argument, it is respectfully requested that this Court uphold the decision of the Ninth District Court of Appeals.

Respectfully Submitted,

DENNIS WILL, 0038129  
Prosecuting Attorney  
Lorain County, Ohio



---

CHRIS PYANOWSKI, 0084985  
Assistant Prosecuting Attorney  
225 Court Str., 3<sup>rd</sup> Floor  
Elyria, OH 44035  
Phone: (440) 329-5389  
Fax: (440) 328-2179  
Chris.Pyanowski@LCProsecutor.Org

CERTIFICATE OF SERVICE

A copy of the State of Ohio's Brief was sent by regular U.S. Mail, postage paid  
and by email this 24<sup>th</sup> day of April, 2013 to Attorney Sheryl Trzaska, counsel for

H.V. at:

Sheryl Trzaska  
Counsel for H.V.  
Assistant State Public Defender  
250 East Broad Street, Suite 1400  
Columbus, Oh 43215

Sheryl.trzaska@opd.ohio.gov



---

CHRIS PYANOWSKI, 0084985  
Assistant Prosecuting Attorney  
225 Court Str., 3<sup>rd</sup> Floor  
Elyria, OH 44035  
Phone: (440) 329-5389  
Fax: (440) 328-2179  
Chris.Pyanowski@LCProsecutor.Org