

IN THE
SUPREME COURT OF OHIO

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| STATE OF OHIO | : | NO. 2013-1040 |
| Plaintiff-Appellee | : | On Appeal from the Hamilton County Court of Appeals, First Appellate District |
| vs. | : | |
| DEONDRE ANDREW | : | Court of Appeals Case Number C-120399 |
| Defendant-Appellant | : | |

MEMORANDUM IN RESPONSE

Joseph T. Deters (0012084P)
Prosecuting Attorney

Scott M. Heenan (0075734P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

Deondre Andrew, 649-110
Lebanon Correctional
P.O. Box 56
Chillicothe, Ohio 45036

PRO SE DEFENDANT-APPELLANT

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Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question

At first blush, it may appear as if the First District unreasonably denied Deondre Andrew the opportunity to file his own arguments after his appellate counsel filed an *Anders* brief. Once the procedural posture of the case is reviewed, however, that appearance is shattered.

Andrew's appellate counsel filed an *Anders* brief on January 4. Ten days later, the state filed its merit brief. Andrew did not file his request to supplement the *Anders* brief until April 25 – 6 days before the oral argument.

Andrew's memorandum in support of jurisdiction admits that he knew about the issues he felt should have been raised before his counsel filed the *Anders* brief. Despite knowing about what he felt should have been argued before that brief was even filed, Andrew waited until less than a week before oral argument to finally move to supplement his brief.

Under these circumstances, the First District properly denied Andrew the opportunity to supplement the *Anders* brief.

Statement of the Case and Facts

In his direct appeal, Andrew's original conviction was vacated in part because the trial court improperly imposed an 18-month sentence on a fifth-degree felony.¹

After the trial court followed the First District's remand order, Andrew appealed a second time. His counsel ultimately found no error and filed an *Anders* brief. Ten days later, the state filed its merit brief.

Less than a week before oral argument was scheduled, Andrew filed a pro se motion to file a supplemental brief. That motion was denied. The First District then found that there was no error with his resentencing and affirmed.

Andrew has now asked this court to accept jurisdiction over this matter.

¹ *State v. Andrew*, First Dist. No. C-110141, 2012-Ohio-1731.

Arguments in Support of the State's Propositions of Law

Proposition of Law No. 1: A trial court only has jurisdiction to follow the remand orders of a superior court.

Andrew neglects to note that the First District remanded the matter to the trial court with specific instructions. The trial court did not have jurisdiction to veer away from those instructions. As such, it did not have jurisdiction to consider an allied offenses argument at Andrew's resentencing hearing. Indeed, allied offenses were not even raised in his direct appeal – and rightfully so as Andrew was not convicted of allied offenses of similar import.

A trial court only has jurisdiction to follow the remand orders of a superior court.² That is settled law.

Proposition of Law No. 2: An appellate court does not abuse its discretion when it denies a motion to file a supplemental brief that is filed in an untimely manner.

As noted above, despite knowing about the *Anders* brief for months, Andrew filed his motion to supplement his brief six days before oral argument. Had his motion been timely filed, then he may have had a valid argument to present to this court. But an appellate court does not abuse its discretion when it denies a motion to file a supplemental brief that is filed in an untimely manner. As such, there is no valid argument that Andrew can make to this court.

² See *State v. Harris*, 1st Dist. Nos. C100470 & C100471, 2011-Ohio-2729 citing *State v. Fischer*, 128 Ohio St. 3d 92, 2010-Ohio-6238, 942 N.E.2d 332.

Conclusion

Andrew's first argument fails to take into consideration what a trial court has jurisdiction to do when a matter is remanded to it. His second argument fails to take into account his own untimeliness. With those things taken into consideration, Andrew has not presented this court with any issues that merit its attention. Jurisdiction should, therefore, be declined.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3227
Attorneys for Plaintiff-Appellee,
State of Ohio

Proof of Service

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Deondre Andrew, 649-110, Lebanon Correctional, P.O. Box 56, Lebanon, Ohio 45036, counsel of record, this 2nd day of July, 2013.



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney