

ORIGINAL

NO. 2012-2093

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF CUYAHOGA COUNTY, OHIO
NO. 97719

STATE OF OHIO,

Plaintiff-Appellant

-vs-

LASHAWN AMOS

Defendant-Appellee

MOTION TO CONSOLIDATE APPEALS

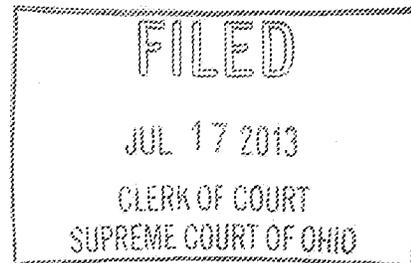
Counsel for Plaintiff-Appellant

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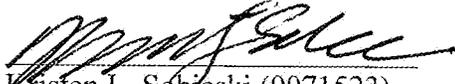
IN THE SUPREME COURT OF OHIO

NO. 2012-2093

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|---------------------|---|-------------------|
| STATE OF OHIO, |) | |
| Plaintiff-Appellant |) | |
| -vs- |) | CASE NO. CA 97719 |
| LASHAWN AMOS, |) | |
| Defendant-Appellee |) | |

Now comes Cuyahoga County Prosecutor Timothy J. McGinty, by and through his undersigned assistant and on behalf of the State of Ohio, to hereby respectfully request this Honorable Court consolidate, for the purposes of oral argument, the instant case with Defendant-Appellant Christopher Richmond's case which is currently pending in this Court as *State v. Richmond*, Docket No. 2012-2156. The reasons in support of this motion are set forth fully the attached brief.

Respectfully submitted,
TIMOHTY J. MCGINTY
CUYAHOGA COUNTY PROSECUTOR


Kristen L. Sobieski (0071523)
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
216.443.7800

BRIEF IN SUPPORT OF CONSOLIDATION FOR ORAL ARGUMENT

The Plaintiff-Appellant State of Ohio successfully petitioned this Court for jurisdiction in the instant case, *State v. Amos*, Docket No. 2012-2093. The State has submitted the following proposition for this Court's consideration: A trial court may not sentence a criminal defendant to community control sanctions without considering a presentence investigation report.

Also currently pending before this Court is the matter of Defendant-Appellant Christopher Richmond's appeal in *State v. Richmond*, Docket No. 2012-2156. The proposition of law submitted there is: When neither party request the preparation of a pre-sentencing investigation, a trial court's felony sentence of community control sanctions will not be disturbed on appeal in the absence of the most exigent circumstances.

Both *Richmond* and *Amos* arise out of the Eighth District Court of Appeals and your undersigned counsel represents the State of Ohio in both cases. In each instance, the trial court sentenced a fifth degree felony offender to "time served" without first ordering a presentence investigation report. In both cases the State advocates the position that a trial court's failure to comply with the sentencing statute (by ordering a presentence report prior to imposing a community control sanction) constitutes plain error. In each case, the defense argues that it is not reversible error for a trial court to impose a "time served" sentence on a felony offender without first considering a presentence report. Both matters are governed by the same statute, criminal rule and precedent. Moreover both matters are in similar stages of the briefing process. Consolidation of these matters

for purposes of oral argument and decision would further the interests of justice as well as the principles of judicial economy.

For all of these reasons, the State of Ohio respectfully requests this Honorable Court consolidate this matter with the pending case *State v. Richmond*, Docket No. 2012-2156. As these cases share the same legal issue, the State requests the Court schedule a single, consolidated oral argument.

Respectfully submitted,

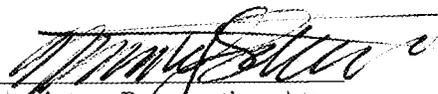
TIMOTHY J. MCGINTY
CUYAHOGA COUNTY PROSECUTOR

BY: 
Kristen L. Sobieski (0071523)
Assistant Prosecuting Attorney

SERVICE

A true and accurate copy of the foregoing Motion to Consolidate has been sent by regular United States Mail on this 17th day of July, 2013 to the following counsel for Defendant-Appellee Lashawn Amos:

Brian McGraw, Esq.
1370 Ontario Street, Suite 2000
Cleveland, Ohio 44113


Assistant Prosecuting Attorney