

ORIGINAL

No. 2012-0216

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
Appellate Case No. 24894

STATE OF OHIO,
Appellee/Cross-Appellant

v.

DAVID WILLAN,
Appellant/Cross-Appellee

Cross-Appellant State of Ohio
Response to Motion for Reconsideration

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State of Ohio
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On June 21, 2013, Cross-Appellee Willan filed a Motion for reconsideration of this Court's decision of June 11, 2013 that reversed the Ninth Appellate District, and found that the former RC 2929.14(D)(3)(a) mandated a ten year mandatory minimum sentence for individuals convicted of a corrupt activity, where the most serious offense in the pattern of corrupt activity was a first degree felony. The basis for the Motion to Reconsider is stated as the US Supreme Court case of *Alleyne v. United States*, 570 US ___ (2013), which Willan identifies was decided June 17, 2013.

Supreme Court Practice Rule 18.02(B) specifically states that:

A motion for reconsideration shall not constitute a reargument of the case ***

Here, Willan specifically identifies that:

Mr. Willan's case must be considered in light of *Alleyne*. This is because *he raised Alleyne and the issue of judicial fact finding in his Merit Brief (see 11/14/12 Brief, Section H, pp 36-39)****

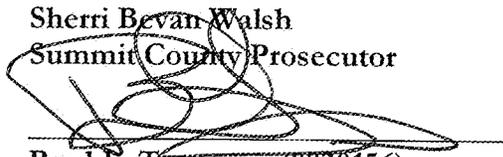
The admission that this very argument was made in the Cross-Appellee's Merit Brief filed November 14, 2012, demonstrates that the instant Motion is contrary to this Court's Rule of Practice that specifically directs that a Motion for Reconsideration *shall not* constitute a reargument of the case.

Conclusion

The Cross-Appellant State of Ohio respectfully requests this Court reject the instant Motion for Reconsideration as simply an attempt to re-present an argument that was already made in the Cross-Appellee's initial Merit Brief in this case.

Respectfully Submitted,

Sherry Bevan Walsh
Summit County Prosecutor



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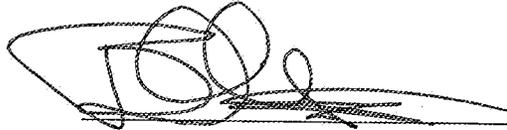
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Certificate of Service

This is to certify that the foregoing **Cross-Appellant State of Ohio Response to Motion for Reconsideration** was served upon the following by **US Mail**, this 22nd day of July, 2013.

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A handwritten signature in black ink, appearing to read 'Brad L. Tammaro', written over a horizontal line.

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