

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

vs.

ANTHONY BELTON,

Appellant.

\* Supreme Court Case No. 12-0902  
\*  
\* On Appeal from the  
\* Lucas County Court of  
\* Common Pleas  
\*  
\*  
\* Common Pleas  
\* Case No. CR08-2934

DEATH PENALTY CASE

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REPLY BRIEF OF APPELLANT,  
ANTHONY BELTON

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REPLY TO PROPOSITIONS OF LAW ONE AND TWO

There is not a lot to be said about Appellant's Propositions of Law One and Two that has not already been said; however, some brief observations are in order.

First, on the issue of "novelty," it is a novel argument indeed to suggest that the overriding purposes of felony sentencing set forth in R.C. 2929.11 as amended by Amend. Sub. H.B 86 apply only to "the imposition of definite prison terms for felonies." State's brief at p. 29. The state's argument that R.C. 2929.11 does not apply to all felony cases would have this Court read into the statute language that it does not contain.

Had the General Assembly such an intent when enacting the statute, it could have easily worded the statute thus: "A court that sentences an offender for a felony for which only a definite term of imprisonment is prescribed shall be guided by the following overriding purposes of [ ] sentencing. . . ." Or it could have worded the statute to read: "A court that sentences an offender for a non-capital offense shall be guided by the overriding purposes of felony sentencing. . . ."

But that is not how the statute is written. Had the General Assembly wished to limit application of the overriding purposes of felony sentencing to those offenses which only carry a definite term of imprisonment as a penalty, it could have easily said so.

The fact that it did not makes manifest its intent when it enacted the statute as it is actually written.

The state also suggests that because R.C. 2929.11 does not explicitly provide for the repeal of those statutes that purport to govern when the death penalty "may" be imposed, the "death penalty statutes" survive its enactment post-Amend. Sub. H.B. 86. This suggestion simply overlooks the tests that R.C. §§ 1.51, 1.52 and 1.58 prescribe. And to posit that R.C. 2929.11's requirement that a court impose "the minimum sanctions that the court determines accomplish [the overriding purposes of felony sentencing] without imposing an unnecessary burden on state or local government resources" still allows for the imposition of the death penalty completely eschews two basic truths: 1), that death is by no means a minimal sanction - in fact, it is the maximum sanction society can impose - and 2), that it is beyond question that death penalty cases are enormously costly and burdensome to government resources at all levels, from trial to the exhaustion of postconviction remedies. Given these realities, it is illogical to argue that the general provision represented by R.C. 2929.11 and the specific provisions - enacted earlier in time - represented by R.C. 2929.02, et seq., are not irretrievably irreconcilable.

The state also misrepresents Mr. Belton's argument by saying he "assumes that the only legitimate purpose of sentencing is 'to protect the public from future crime.'" State's brief, p. 28. This

is only half-true. Mr. Belton also pointed out in his merit brief R.C. 2929.11's mandate that a sentencing court also consider an offender's rehabilitation. As Mr. Belton has already said, "death does not rehabilitate." If a penalty ignores the requirement to consider rehabilitation when meeting the overriding purposes of felony sentencing, then that penalty, represented by the scheme contained in R.C. 2929.02, et seq., is irreconcilable with R.C. 2929.11's mandate and suffers defeat by application of the applicable tests embodied in R.C. §§ 1.51, 1.52 and 1.58. Interestingly, the state's "quotation" of R.C. 2929.11 at the top of page 28 of its brief omits the last sentence of R.C. 2929.11(A) altogether, just as its argument overlooks Mr. Belton's assertion that Ohio's former statutory death penalty scheme is wholly inconsistent with modern principles of felony sentencing. Thus, it is impossible to give logical effect to R.C. 2929.11, as it is written, while also giving effect to R.C. 2929.02, et seq.

Finally, the state suggests that because another capitally-indicted defendant unsuccessfully made the same argument advanced by Mr. Belton to this Court to the same judge who presided over Mr. Belton's trial, it necessarily follows that if Mr. Belton's trial counsel had advanced his argument made on appeal in the trial court, it would have failed and the proceedings would have been unaffected. State's brief at pp. 25 - 26.

It is often said that "timing is everything." Just because different counsel in a different case advanced the same argument to one of the same judges who presided over Mr. Belton's trial at a specific stage of the proceedings, it does not necessarily follow that Mr. Belton would have been unsuccessful in the trial court had he raised the argument in closing argument or in a motion made to the entire three judge panel.

R.C. 2945.06 says that "[t]he judges or a majority of them may decide all questions of law and fact arising upon the trial. . . ." Just because one judge on the panel might disagree with Mr. Belton's (and Mr. Winfield's) argument does not mean that two other judges might view it differently.

Trial counsel failed to advocate for a non-death sentence under the current law. An effective attorney as contemplated by the Sixth Amendment would have recognized the significance of the change in Ohio law and would have advocated for a non-death sentence consistent with that change. So advocating would have made the difference between life and death.

Objectively, trial counsel's performance fell below the standard of reasonable representation required by the Sixth Amendment. And given the difference that objectively reasonable performance would have made, there can be no question but that Mr. Belton was prejudiced by his trial counsel's ineffective performance. Strickland v. Washington (1984) 466 U.S. 668, 687;

State v. Bradley (1989), 42 Ohio St. 3d 136, paragraph two of the syllabus.

For all these reasons, Mr. Belton was denied due process and the effective assistance of trial counsel at trial, and a fair and reliable trial, as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding portions of the Ohio Constitution. And because the death penalty is no longer a valid punishment under Ohio law, Mr. Belton's sentence also violates international law.

Moreover, denial of Mr. Belton's propositions of law 1 and 2 would be contrary to, and an unreasonable application of, clearly established federal law as set forth in the United States Constitution and as defined by the United States Supreme Court in decisions cited in his propositions of law in particular, and in his merit brief in general and would also, at the same time, result in a decision that is based on an unreasonable determination of the facts in light of the evidence presented in this state court proceeding.

REPLY TO PROPOSITION OF LAW NUMBER FOUR

In his Merit Brief Mr. Belton argued that the present practices in Ohio of putting to death a person through lethal injection violates all standards of decency and is cruel and unusual punishment as that term is defined by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article One, Sections Nine, Ten and Sixteen of the Ohio Constitution.

The State's reply, when synthesized, is that no system is perfect. The State concedes there is no state postconviction relief or other state-law mode of action to litigate the issue of whether a specific lethal-injection protocol is constitutional under Eighth Amendment or under Ohio law.

Mr. Belton continues to be of the view that limiting review to federal courts, rather than Ohio's own court system, is yet another example of the unreasonableness of any means of execution, whether it be lethal injection or otherwise.

It is requested that the Proposition of Law be sustained and that, under current technology, any death sentence by lethal injection cannot be imposed without violating the applicable provisions of the United States and Ohio Constitutions and every common standard of decency, as well violating a capital defendant's right to due process and a fair and reliable sentencing hearing, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments

to the United States Constitution and the corresponding portions of the Ohio Constitution.

Moreover, denial of this proposition of law would be contrary to and an unreasonable application of clearly established federal law as set forth in the United States Constitution and as defined by the United States Supreme Court in decisions cited in this proposition of law in particular and in his merit brief in general and would also, at the same time, result in a decision that is based on an unreasonable determination of the facts in light of the evidence presented in this state court proceeding.

CONCLUSION

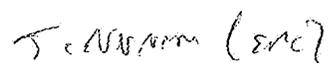
For all of the above stated reasons, as well as those set forth in his Merit Brief, Mr. Belton's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and the Ohio Constitution were violated and he was denied a fair trial and sentencing proceeding. Accordingly, this Court should adopt his Propositions of Law, vacate his death sentence, and either impose a life sentence, remand the case to the trial court for a new trial, or for a new sentencing proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellant was sent by regular U.S. Mail, postage prepaid, to Evy Jarrett, Assistant Lucas County Prosecuting Attorney, Lucas County Courthouse, 700 Adams Street, Toledo, Ohio 43624, counsel of record for appellee, State of Ohio, this en day of August 2013.



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