

IN THE SUPREME COURT OF OHIO

13-1044

STATE OF OHIO,  
Appellee,  
v.  
JASON T. BODE,  
Appellant,

Supreme Court Case No.:

On Appeal from the  
Fairfield County Court  
of Appeals, Fifth  
Appellate District

Court of Appeals  
Case No.: 12-CA-33

**NOTICE OF COURT OF APPEALS' DECISION**  
**DENYING APPELLANT JASON T. BODE'S**  
**MOTION TO CERTIFY A CONFLICT**

Scott P. Wood (0063217)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON  
144 East Main Street  
P.O. Box 667  
Lancaster, Ohio 43130-0667  
(740) 653-6464  
spwood@daggerlaw.com

COUNSEL FOR APPELLANT,  
JASON T. BODE

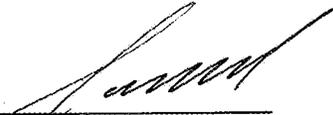
Gregg Marx (0008068)  
Jocelyn Kelly (0083646)  
FAIRFIELD COUNTY PROSECUTOR'S OFFICE  
239 West Main Street  
Lancaster, Ohio 43130  
(740) 652-7560

COUNSEL FOR APPELLEE,  
STATE OF OHIO

FILED  
AUG 23 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

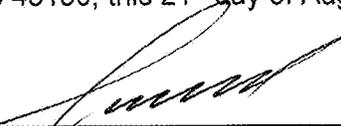
**NOTICE OF COURT OF APPEALS' DECISION DENYING  
APPELLANT JASON T. BODE'S MOTION TO CERTIFY A CONFLICT**

Appellant, Jason T. Bode, by and through counsel and pursuant to Rule 7.07(B) of the Rules of Practice of the Supreme Court of Ohio, hereby gives notice that the Fifth Appellate District Court denied Appellant's Motion to Certify a Conflict on July 12, 2013. A true and accurate copy of the Fifth Appellate District Courts' Judgment Entry is attached and marked Exhibit 1.

  
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Scott P. Wood (0063217)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON  
144 E. Main Street  
P.O. Box 667  
Lancaster, Ohio 43130-0667  
(614) 653-6464  
Attorney for Appellant,  
Jason T. Bode

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document has been served by ordinary U.S. mail service on Darren Meade and Jocelyn Kelly, Fairfield County Prosecutor's Office, 239 West Main Street, Suite 101, Lancaster, Ohio 43130, this 21<sup>st</sup> day of August, 2013.

  
\_\_\_\_\_  
Scott P. Wood (0063217)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON  
Attorney for Appellant,  
Jason T. Bode

IN COMPUTER  
SCOTT WOOD

ORIGINAL

SCANNED

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT  
BOOK 2D PGS. 363-  
364

STATE OF OHIO

Plaintiff-Appellee

-vs-

JUDGMENT ENTRY

JASON T. BODE

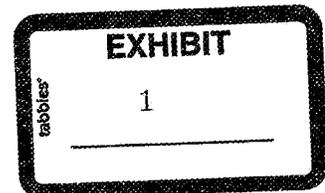
Defendant-Appellant

CASE NO. 12-CA-33

2013 JUL 12 AM 8:39  
DEBORAH SHALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO  
FILED

Defendant-Appellant, Jason T. Bode has filed a Motion to Certify the decision entered in this case on May 22, 2013 in *State v. Bode*, 5th Dist. No. 12-CA-33, 2013-Ohio-2134 as being in conflict with the decision of Eight District Court of Appeals in *Parma v. Romain*, 8th Dist. No. 87133, 2006-Ohio-3952. The Plaintiff-appellee, State of Ohio filed a response June 13, 2013.

Certification of a conflict is governed by Section 3(B)(4), Article IV of the Ohio Constitution, which reads as follows: "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination." See, also, *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613 N.E.2d 1032(1993), *syllabus, rehearing denied by, Whitelock v. Cleveland Clinic Found.*, 67 Ohio St.3d 1420, 616 N.E.2d 504(1993); App.R. 25; and S.Ct.Prac.R. IV.



Before and during the certification of a case to the Supreme Court of Ohio, pursuant to Section 3(B) (4), Article IV, Ohio Constitution, three conditions must be met. *Whitelock*, at 596, 613 N.E.2d 1032. The *Whitelock* court instructed,

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be “upon the same question.” Second, the alleged conflict must be on a rule of law--not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.

*Whitelock*, 66 Ohio St.3d at 596.

App.R. 25 states, in pertinent part,

A motion to certify a conflict under Article IV, Section 3(B) (4) of the Ohio Constitution shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of a motion to certify a conflict does not extend the time for filing a notice of appeal. A motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.

In the case at bar, appellant's motion was timely filed.

In *Romain*, the court found imposition of three days in alcohol program as a sentence for a prior conviction for operating a motor vehicle under the influence of alcohol constituted "imprisonment." The court based this conclusion upon two factors. First, participants are not free to leave and must comply with the program format. 2008-Ohio-3952, ¶22. In addition, "[s]ince appellant had no options other than to either complete the three-day program or serve the time in jail, a deprivation of his liberty did occur. Furthermore, the statute is mandatory, not discretionary, and we find the mandatory nature of the statute controlling." *Id.* at ¶ 23.

In the case at bar we stated,

Our review of the trial court record indicates that Bode was never imprisoned for the juvenile OVI adjudication. Nor did the juvenile court impose a sentence of incarceration and then suspend the jail time on the condition that Bode complete a treatment program. When Bode failed to appear for a court hearing to discuss his participation in an aftercare program, the juvenile court forwarded his driver license and the ticket to the Ohio Bureau of Motor Vehicles and closed the case. (T. March 14, 2012 at 87–88).

Further, there is no evidence that Bode was given a term of incarceration which was unconditionally suspended. There is no evidence that the juvenile court reserved the right to reinstate suspended time in the future. Bode was not placed on any probation or community control sanction that could subject him to incarceration in the future as punishment for his juvenile OVI conviction.

Bode at ¶¶ 32-33.

Accordingly, the Court in *Romain* reached different results based upon facts not present in appellant's case. Accordingly, the decision does not conflict with our decision in this case.

Appellant's Motion to Certify a Conflict is denied.

IT IS SO ORDERED.

  
HON. W. SCOTT GWIN

  
HON. WILLIAM B. HOFFMAN

  
HON. SHEILA G. FARMER