ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:	:	
	:	Case No. 2013-1295
M.C.,	:	
a minor child.	:	On Appeal from the Erie County Court of Appeals Sixth Appellate District
	:	
	:	C.A. Case No. E-12-031
	:	

MOTION FOR RECONSIDERATION OF APPELLANT M.C.

KEVIN J. BAXTER #0015782
Erie County Prosecuting Attorney

ASHLEY L. THOMAS # 0086241
Assistant Erie County Prosecutor
(Counsel of Record)

Erie County Office Building
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870
(740) 592-3208
(740) 592-3291 (Fax)

COUNSEL FOR THE STATE OF OHIO

The Office of the Ohio Public Defender

BROOKE M. BURNS #0080256
Assistant State Public Defender
(Counsel of Record)

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
brooke.burns@opd.ohio.gov

COUNSEL FOR M.C.

FILED
DEC 02 2013
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Page No.

Memorandum in Support of Reconsideration 1

Certificate of Service 6

Appendix:

In Re: M.L., Case No. 2013-1295 (November 20, 2013), Entry A-1

MEMORANDUM IN SUPPORT OF RECONSIDERATION

"There is a gap between the originally benign conception of the [juvenile] system and its realities." *Breed v. Jones*, 421 U.S. 519, 529, 95 S.Ct. 1779, 44 L.E.2d 346 (1975). This Court has repeatedly recognized that delinquency laws feature inherently criminal aspects, and "the state's goals in prosecuting a criminal action and in adjudicating a juvenile delinquency case are the same: 'to vindicate a vital interest in the enforcement of *criminal* laws.'" (Emphasis sic). *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 76, quoting *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 26, citing *Breed v. Jones*, 421 U.S. 519, 531, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975). And, as recognized by the United States Supreme Court, a juvenile's "commitment is a deprivation of liberty[;] It is incarceration against one's will, whether it is called criminal or civil." *Breed* at 530, citing *In re Gault*, 387 U.S. 1, 50, 87 S.Ct.1428, 18 L.Ed.2d 527.

The Sixth District's holding in *In re M.C.*, 6th Dist. Erie. No. E-12-031, 2013-Ohio-2808 is based on outdated and inapplicable case law. In *M.C.*, the Sixth District Court of Appeals found that "a longstanding series of Ohio appellate decisions, * * * has held R.C. 2941.25 does not apply to juvenile proceedings." *In re M.C.*, 6th Dist. Erie No. E-12-031, 2013-Ohio-2808, ¶ 21. The court relied primarily on the Tenth District's decision in *In re Skeens*, 10th Dist. Franklin Nos. 81AP882 & 81AP883, 1982 Ohio App. LEXIS 12181 (Feb. 25, 1982) in support of its holding. *Id.* But, the present delinquency system is markedly different from that which existed when *Skeens* was decided.

Juvenile dispositions resemble adult sentencing statutes more closely now than they did three decades ago. Juveniles are eligible for consecutive commitments and mandatory firearm specifications. R.C. 2152.17. Juvenile adjudications are considered "convictions" for purposes of adult offender status. R.C. 2901.08(A); 2929.14. And, a juvenile's registration status may be used as the basis for an adult felony conviction if he fails to comply with his registration requirements. R.C. 2950.99.

In addition, the collateral consequences of a delinquency adjudication have the potential to impede a child's successful reintegration into the community following a term of incarceration. Youth who are adjudicated delinquent may be expelled from school, have their licenses suspended, be prohibited from obtaining public housing, and have limited job opportunities based on their delinquency adjudications. R.C. 2151.357(D); 2151.358(D)(4)(f); 2151.354(A)(3); 2151.87(F); 3313.661(A); and 42 U.S.C. § 13663(a)(2010).

This case presents this Court with the opportunity to examine the applicability of R.C. 2941.25 to juvenile delinquency proceedings, given the consequences that accompany delinquency adjudications, and to ensure that Ohio Courts are uniformly applying the statute to youth facing incarceration.

In *Skeens*, the Tenth District held that R.C. 2941.25(A) does not apply to delinquency proceedings because, under Ohio's juvenile code, "a minor is not charged with a crime" and, "[e]vidence that the minor committed acts that would constitute a crime if committed by an adult is only used for the purpose of

establishing that the minor is delinquent, not to convict him of a crime and to subject him to punishment for that crime." *In re Skeens*, 10th Dist. Franklin Nos. 81AP882 & 81AP883, 1982 Ohio App. LEXIS 12181 6. But, the Tenth District also found that because the youth in *Skeens* was only given one disposition for multiple offenses, the doctrine of merger would not have applied to his case. *Id.* at 7.

Every court of appeals that has held that R.C. 2941.25 does not apply to juvenile proceedings, has relied on *Skeens*. *In re Bowers*, 11th Dist. Ashtabula No. 2002-A-0010, 2002-Ohio-6913, ¶ 23; *In re H.F.*, 8th Dist. Cuyahoga No. 94840, 2010-Ohio-5253, ¶ 13; *In re S.S.*, 4th Dist. Vinton No. 10CA682, 2011-Ohio-4081, ¶ 29; *In re J.H.*, 8th Dist. Cuyahoga No. 85753, 2005-Ohio-5694, ¶ 18; *In re M.K.*, 6th Dist. Erie No. E-12-025, 2013-Ohio-2027, ¶ 11; and *In re Lugo*, 6th Dist. Wood No. WD-90-38, 1991 Ohio App. LEXIS 2805, *20 (June 14, 1991). But, this reliance is misplaced in light of the Tenth District's treatment of the same issue in the years since *Skeens*.

In 1998, the Tenth District was asked to overrule its primary holding in *Skeens*, based on the changing face of the juvenile justice system and the outdated nature of the rationale employed in *Skeens*. *In re Durham*, 10th Dist. Franklin Nos. 97APF12-1653 & 97APF12-1654, 1998 Ohio App. LEXIS 4297, *9 (Sept. 17, 1998). In *Durham*, the Tenth District found that it did not need to "specifically decide this legal issue or specifically overrule that aspect of the decision in *Skeens*," because Durham did not receive multiple commitments following his adjudication for what may have been allied offenses of similar import. *Id.* Instead, the Tenth District

held that the secondary holding in *Skeens*—that merger principles are not applicable where only one disposition is imposed for allegedly allied offenses—applied in *Durham*. *Id.* at *11.

In 2010, the Tenth District was again asked to overrule its position on the applicability of R.C. 2941.25 to juvenile proceedings. *In re B.O.J.*, 10th Dist. Franklin Nos. 09AP600, 09AP601, & 09AP602, 2010-Ohio-791, ¶ 21. In *B.O.J.*, the Tenth District again noted its primary and secondary holdings in *Skeens*, and that it had been asked to overrule its primary holding in *Durham*. *Id.* at ¶ 22. The Tenth District acknowledged:

> Without deciding the applicability of R.C. 2941.25 to juvenile delinquency proceedings, this Court in *In re Durham* instead relied on this court's alternative holding in *In re Skeens* and found that even if merger principles applied, they were not violated because separate dispositions were not entered on the offenses.

Id. at ¶ 23. And, as it did in *Durham*, the Tenth District found that although B.O.J. was adjudicated delinquent of multiple offenses, he was only committed to the Ohio Department of Youth Services ("DYS") for one. *Id.* at ¶ 24. Thus, "even if merger principles apply here, they were not violated." *Id.*

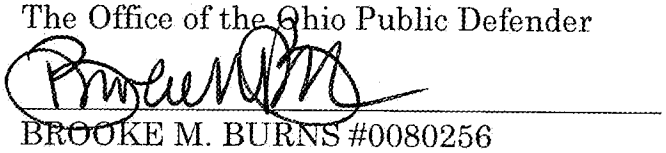
Rather than reaffirm its primary holding in *Skeens*, in both *Durham* and *B.O.J.*, the court left open the question whether R.C. 2941.25 should apply to juvenile delinquency proceedings, given the differences between the juvenile justice system in 1982 and present day. *Durham* at *11; *B.O.J.*, at ¶ 24. But, because neither youth in either of those cases actually received multiple terms of incarceration, the court was unable to answer that question. M.C.'s case is distinguishable from *Skeens*, *Durham* and *B.O.J.*, in that, he was given multiple

terms of incarceration and multiple specifications attached to those terms for two separate offenses which were committed with a single act and single state of mind. *See State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 48-49.

Accordingly, M.C. asks this Court to reconsider the denial of his appeal, accept this case, and determine whether the current realities of the juvenile system require that a youth's double jeopardy rights are ensured through the uniform application of R.C. 2941.25 to their cases.

Respectfully Submitted

The Office of the Ohio Public Defender



BROOKE M. BURNS #0080256
Assistant State Public Defender
(Counsel of Record)

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
brooke.burns@opd.ohio.gov

COUNSEL FOR M.C.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION FOR RECONSIDERATION OF APPELLANT M.C. was forwarded by regular U.S. Mail this 2nd day of December, 2013 to the office of Ashley L. Thomas, Assistant Erie County Prosecutor, Erie County Office Building, 247 Columbus Avenue, Suite 319, Sandusky, Ohio 44870.

BROOKE M. BURNS #0080256
Assistant State Public Defender

COUNSEL FOR M.C.

#407188

IN THE SUPREME COURT OF OHIO

IN RE:	:	
	:	Case No. 2013-1295
M.C.,	:	
a minor child.	:	On Appeal from the Erie
	:	County Court of Appeals
	:	Sixth Appellate District
	:	
	:	C.A. Case No. E-12-031
	:	

APPENDIX TO MOTION FOR RECONSIDERATION OF APPELLANT M.C.

The Supreme Court of Ohio

FILED
NOV 20 2013
CLERK OF COURT
SUPREME COURT OF OHIO

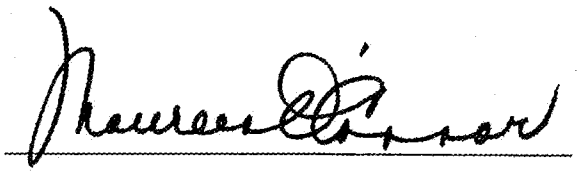
In re M.C.

Case No. 2013-1295

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Erie County Court of Appeals; No. E-12-031)



Maureen O'Connor
Chief Justice