

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	CASE NO. 2011-818
PLAINTIFF-APPELLANT	:	
	:	On discretionary appeal from the
v.	:	Coshocton County Court of Appeals,
	:	Fifth Appellate District,
SANDRA GRIFFIN,	:	Case No. 2009CA21
	:	
DEFENDANT-APPELLEE	:	

APPELLANT STATE OF OHIO'S MEMORANDUM OPPOSING
APPELLEE'S MOTION FOR RECONSIDERATION

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FILED
JAN 02 2014
CLERK OF COURT
SUPREME COURT OF OHIO

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I. Introduction

This Court's opinion is clear and unambiguous. There is nothing contained in the opinion that requires reconsideration, in that there is no portion of the opinion that can be deemed to have been made in error. Appellee is attempting to reargue the positions she espoused in her reply brief and at oral argument. Therefore, pursuant to S.Ct.Prac.R.18(B) Appellee's motion for reconsideration should be denied.

The Court held, based upon the law as it existed in 1990, that Appellee's original sentencing entry was a final appealable order and that the Fifth District Court of Appeals had subject matter jurisdiction over Appellee during her first appeal as of right in 1990. The Court's holding is also clear in setting forth that a criminal defendant is barred by the doctrine of res judicata and is not permitted to re-litigate issues that were raised and decided on direct appeal even if the criminal defendant is later provided a new sentencing entry pursuant to *State v. Baker*, 119 Ohio St.3d 197 (2008).

II. Standard

S.Ct.Prac.R. 18 permits the filing of motions for reconsideration. However, S.Ct.Prac.R.18(B) clearly states that "A motion for reconsideration shall not constitute a reargument of the case...". Further, this Court in *State ex rel Huebner v. W. Jefferson Village* held that reconsideration procedures are invoked by the Court to "correct decisions, which upon reflection, are deemed to have been made in error". *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio State 3d 381 (1995).

III. Discussion

The Appellee fails to meet the standard for reconsideration as she is attempting to reargue issues that she brought before the Court in her merit brief and during oral argument. Also, there is no error in the holding in this case. Therefore, Appellee's motion for reconsideration should be denied.

Appellee's arguments mirror the issues raised in her brief and at oral argument. The crux of Appellee's argument at the time of briefing and oral argument centered on the issue of *Baker* and the Fifth District Court of Appeals lack of subject matter jurisdiction at the time of Appellee's first appeal as of right. The arguments contained in her pending motion are essentially a restatement of those arguments.

The Appellee argues in her first discussion point that the Court is permitting a waiver of subject matter jurisdiction with its opinion in this case. However, the Court held that based on the applicable law at the time of the 1990 sentencing entry that the Fifth District Court of Appeals was vested with subject matter jurisdiction. Further, the controlling law at the time regarding final appealable orders was not the holding in *State v. Baker*, but rather the holding in *State v. Hunt*. *Hunt* held that "Generally, the sentence in a criminal case is the judgment." *State v. Hunt*, 47 Ohio St 2d 170 (1976) and Opinion at ¶41. Based on this rationale there was no waiver of subject matter jurisdiction, rather subject matter jurisdiction was properly vested in the Fifth District Court of Appeals based upon the statutes and case law in existence at the time of Appellee's sentencing in 1990.

Appellee re-argues the issue of waiver of subject matter jurisdiction in her second discussion point. However, as explained above waiver was not an issue as the 1990 sentencing entry was a final appealable order that provided the appellate court with subject matter

jurisdiction in 1990. Therefore, the 2009 re-sentencing judgment entry was a nullity. This fact dispels Appellee's concerns as outlined in her second discussion point.

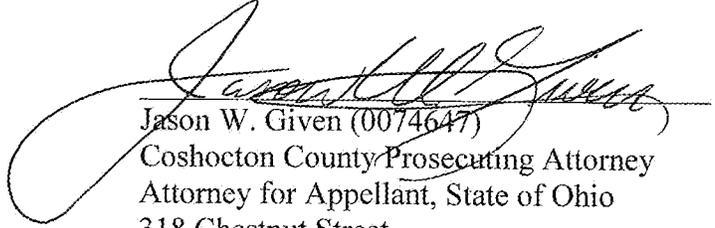
Finally Appellee argues, in her third discussion point, that the issue of the one document *Baker* rule remains undecided by both the majority and the dissent. This is not true. The Court's holding outlines the fact that the *Hunt* decision controlled whether the 1990 sentencing entry was a final appealable order. Opinion at ¶41. The Court also holds that a criminal defendant that has availed herself of the appellate process cannot come back decades later, arguing *Baker*, and re-litigate issues that had been decided in the past. Opinion at ¶49. The doctrine of res judicata prohibits any such collateral attack. Opinion at ¶49.

Therefore, based upon the case law at the time and the doctrine of res judicata subject matter jurisdiction was properly exercised by the Fifth District Court of Appeals in this case and a waiver never occurred. Further, the issue of *Baker's* role in the majority's opinion is explained.

CONCLUSION

Appellee's motion for reconsideration should be denied. Appellee is simply rearguing her theories of the case. The Appellee's interpretations of the Court's opinion and the Appellee's perceived issues that could come forth from her interpretation are simply not reasonable. When looked at in its totality the Court's holding is clear and without ambiguity. For these reasons and the reasons set forth above the motion for reconsideration should be denied.

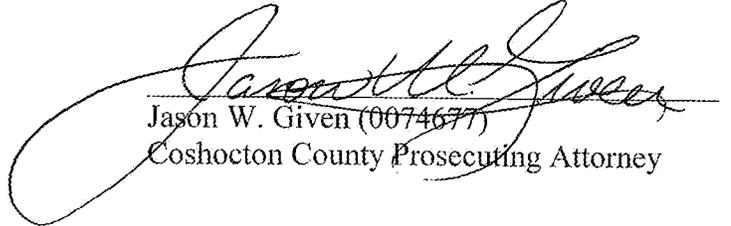
Respectfully Submitted,



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Certificate of Service

A copy of the foregoing Memorandum in Opposition of Appellee's Motion for Reconsideration was served upon Stephen P. Hardwick, Assistant Public Defender , Attorney for Appellee Sandra Griffin at 250 E. Broad Street, Suite 1400, Columbus, OH 43215 by regular U.S. Mail this 2nd day of January, 2014.



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