ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:	)	CASE NO. 12-1688
	)	
H.V.	)	ON APPEAL FROM LORAIN
	)	COUNTY COURT OF APPEALS
	)	NINTH APPELLATE DISTRICT
	)	
	)	CA CASE NOS. 11CA010139 AND
	)	11CA010140
	)	

MEMORANDUM IN RESPONSE TO MOTION FOR RECONSIDERATION

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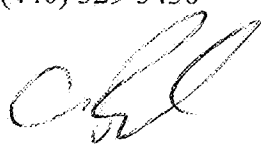
By: 

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APR 01 2014
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MEMORANDUM IN RESPONSE TO MOTION FOR RECONSIDERATION

Pursuant to S.Ct.Prac.R. 18.03, the State of Ohio respectfully requests that this Honorable Court deny the minor child's motion to reconsider. A motion for reconsideration must be confined strictly to the grounds urged for reconsideration, and must not constitute a reargument of the case. S.Ct.Prac.R. 1802(B). As set forth in the following memorandum, reconsideration is not warranted in this case.

Respectfully submitted,

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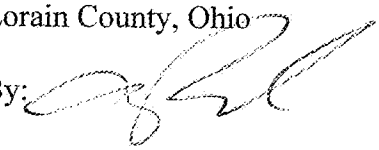
By: 

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MEMORANDUM IN SUPPORT OF DENIAL OF MOTION FOR RECONSIDERATION

A. Appellant's Motion for Reconsideration Should be Denied Because it is Simply a Recitation of the Appellant's Argument Which was Already Presented and Considered by this Honorable Court

"The purpose of a motion for reconsideration is not again to invoke an expression from the court upon matters that have theretofore been considered, but to direct the attention of the court to some questions or propositions of law, or in some cases, of fact, that have not been given attention." *Leganshuk v. Department of Liquor Control*, 67 Ohio L. Abs. 402, 120 N.E.2d 333 (C.P. 1953).

"An application for reconsideration … is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *McFadden v. Cleveland State Univ.*, 10th Dist. No. 06AP-638, 170 Ohio App. 3d 142, 2007 Ohio 939, 866 N.E.2d 82. "The test generally applied upon the filing of a motion for reconsideration … is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Id.*

Minor child-appellant H.V. attempts to use his motion for reconsideration as a vehicle to reargue its case. It provides nothing in its motion that was not presented and considered by this Honorable Court in making its decision and instead assumes that this Court made a mistake and failed to consider the arguments presented and the effect that its decision would have. The Court's decision was based on its reading and interpretation of a few statutes and the Court could have interpreted the statutes one of two ways. Both possible interpretations were presented to this Court through briefs and oral argument and

the fact that the Court did not interpret the statutes and issue a decision consistent with Appellant's argument is not grounds for reconsideration.

B. R.C. 5139.52(F) is clear in that it grants a juvenile court the statutory authority to commit a juvenile to DYS for a period exceeding the thirty day minimum set forth in the statute

The Appellant in his motion for reconsideration continues to argue that R.C. §5139.52(F) vests the exclusive authority to determine when a child shall be released from DYS after a recommitment for a parole violation with the DYS Release Authority. However, Appellant continues to ignore the question that was presented to this Court which was whether a juvenile court has the authority under R.C. 5139.52(F) to commit a juvenile to the custody of the Ohio Department of Youth Services for a period exceeding the minimum thirty days upon revocation of the juvenile's parole. The question is about what is the minimum commitment period that the juvenile court can impose and not who has the authority to release.

As recognized by the majority decision of this Court, R.C. 5139.52(F) read in its entirety clearly speaks to the minimum commitment that the juvenile court must invoke but does not limit the court from imposing a greater minimum commitment when it believes it is appropriate. *In re H.V.*, Slip Opinion No. 2014-Ohio-812, at ¶11. ODYS is vested only with the authority to increase the judge's minimum commitment for juveniles who it believes have not been rehabilitated during the minimum commitment period. *Id.* at ¶12.

C. A juvenile court is within its statutory authority to order a juvenile serve the term of commitment for violation of his supervised-release consecutively to the term imposed for commitment for a new crime.

Appellant argues that this Court's decision on this issue and reliance on *In re Caldwell* and the statutory catch-all in R.C. 2152.19(A)(8) is erroneous. Appellant relies on R.C. 2152.17(F)'s enumeration of one particular instance where consecutive commitments can be imposed to argue that this is the only time that consecutive commitments may be imposed even though the statute does not include such limiting language. This is the same argument that the Appellant made to this Court and that this Court considered prior to making its decision and it fails to take into consideration other statutes granting juvenile court's authority to order consecutive commitments and the overriding purposes behind juvenile dispositions.

R.C. 2152.01 sets forth the overriding purposes for juvenile dispositions as: to provide for the care, protection, and mental and physical development of the juvenile offender; to protect the public interest and safety; to hold the juvenile offender accountable; to restore the victim; and to rehabilitate the juvenile offender. The statute establishes that these purposes are to be achieved "by a system of graduated sanctions and services." R.C. 2152.01(A).

This statutory purpose coupled with the authority of R.C 2152.19(A)(8) to make any disposition that the court finds proper clearly gives the juvenile court the discretion to craft a disposition it believes is appropriate to accomplish rehabilitative purposes while taking into consideration all facts before it, including past sanctions and services that may have been attempted and unsuccessful. It also allows for the juvenile court to hold the

juvenile responsible for the actions that led to the parole revocation by requiring that the juvenile serve a period of commitment for that specific infraction.

CONCLUSION

For the foregoing reasons, the State of Ohio requests that this Honorable Court deny the Appellant's motion for reconsideration.

Respectfully submitted,

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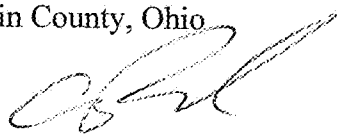
By: 

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CERTIFICATE OF SERVICE

A copy of the State of Ohio's Memorandum in Response to Motion for Reconsideration was sent by regular U.S. Mail, postage paid this 31st day of March, 2014 to Attorney Sheryl Trzaska, counsel for H.V. at:

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