

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2011-2164
Plaintiff-Appellee,	:	
vs.	:	On Appeal from the Court of Appeals, Eighth Appellate District, Cuyahoga County
MELVIN BONNELL,	:	
	:	CA Case No. 96368
Defendant-Appellant.	:	<b>This is a death penalty case.</b>

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APPELLANT MELVIN BONNELL'S MOTION FOR RECONSIDERATION

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On May 14, 2014, by a five to two margin (Lanzinger, J. and O'Neill, J., dissenting), this Court declined to accept Appellant Melvin Bonnell's appeal to this Court. Because the lower court's decision should be revisited, as its holding is in direct contradiction to this Court's holding in *State v. Lester*, 130 Ohio St.3d 303, 304, 308, 2011 Ohio 5204, syl. 1, ¶14 (2011), this Court must reconsider the denial of jurisdiction in this case. A supporting memorandum is attached.

Respectfully submitted,

By:   
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Counsel for Appellant

**Memorandum in Support**

On May 14, 2014, by a five to two margin (Lanzinger, J. and O’Neill, J., dissenting), this Court declined to accept Appellant Melvin Bonnell’s appeal to this Court. Because the lower court’s decision should be revisited, as its holding is in direct contradiction to this Court’s holding in *State v. Lester*, 130 Ohio St.3d 303, 304, 308, 2011 Ohio 5204, syl. 1, ¶14 (2011), Melvin Bonnell now seeks reconsideration of the denial of jurisdiction in this case.

Although convicted and sentenced to death in 1988, Melvin Bonnell has yet to have his first appeal of right with proper jurisdiction. The reason: to this day, Bonnell does not have a Crim.R. 32 compliant judgment entry, from which he can take an appeal pursuant to R.C. §2505.02. The trial court failed to properly journalize the fact of conviction for Count One of Bonnell’s indictment. And the prosecutor, as the victorious party at trial, failed to ensure the entry’s proper journalization.

The Eighth District Court of Appeals below agreed that Bonnell **never** received a Crim.R. 32 compliant judgment entry, specifically finding that “neither the fact nor the manner of conviction was indicated on the [aggravated burglary] count. As a result, the trial court failed to [] comply with Crim.R. 32(C).” *State v. Bonnell*, No. 96368, 2011 Ohio 5837, ¶11 (Cuyahoga Ct. App. November 10, 2011). However, then, in complete contravention of this Court’s

decision in *Lester*, 2011 Ohio 5204, the court of appeals found that the “proper remedy is for the trial court to issue a nunc pro tunc entry that includes the fact and manner of conviction on the aggravated burglary charge.” *Id.* at ¶18. The court added that “the corrected judgment entry is not a new final order from which a new appeal may be taken.” *Id.* This lower court holding is clear error according to this Court’s reasonable holding in *Lester* and the analysis supporting that holding.

In *Lester*, this Court carefully distinguished between errors that are a matter of form and those that are a matter of substance. This Court specifically delineated that the “fact of conviction” is a matter of substance and “shall” be included in the judgment of conviction. *Lester*, 130 Ohio St.3d, at 307, 2011 Ohio 5204 at ¶11. This Court then announced that only errors in form, *not* substance, may be corrected by the issuance of a Crim.R. 32(C) fully compliant nunc pro tunc entry. *Id.* at 320, ¶20. This Court specifically found, “[i]n [*Lester*], the original resentencing order complied with the substantive requirements of Crim.R. 32(C). . . The trial court’s addition indicating how appellant’s conviction was effected affected only the form of the entry and made no substantive changes. Accordingly, we hold that a nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken.” *Id.*

The converse of this Court’s holding is that when a substantive requirement, such as the fact of conviction, is not included in the judgment of conviction, as in this case, a nunc pro tunc entry is inappropriate. In that instance, regardless if the defendant in fact realized that he had been convicted, a first final judgment of conviction *must* be entered, from which a first appeal of right may then be taken.

The remedy crafted by the Eighth District Court of Appeals is in direct conflict with and unconstitutionally circumvents this Court's clear syllabus law. This Court must reconsider its denial of jurisdiction in this case so that this egregious flouting of this Court's standing precedent may be remedied. The failure to do so deprives Appellant of equal protection and due process of law – his status as a death row defendant or the age of his faulty, non-compliant entry should not be the basis to deny him equal application of this Court's precedent.

Pursuant to S.Ct.Prac.R. 18.02, this Court may use its reconsideration authority 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 St.3d 381, 383, 662 N.E.2d 339 (1995); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2014-Ohio-1940, ¶ 9. This is one of those cases where reconsideration is proper. The court of appeals in this case sidestepped this Court's direct mandate. Inferior state courts should not be allowed to bypass those portions of the holding they find distasteful, otherwise confidence and integrity in the judicial system is damaged. The error is clear, and reconsideration should be granted.

Therefore, this Court should reconsider its prior decision in this case denying jurisdiction, accept jurisdiction, and reverse and remand this case to the trial court with instructions that it enter a first final appealable order, from which Bonnell may have a first appeal of right with proper jurisdiction.

Respectfully submitted,

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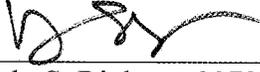
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Counsel for Appellant

**Certificate of Service**

I hereby certify that a true copy of the foregoing APPELLANT MELVIN BONNELL'S MOTION FOR RECONSIDERATION has been served by regular U.S. Mail upon Matthew Meyer, 8<sup>th</sup> Floor, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113 on this 23<sup>rd</sup> day of May 2014.

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