

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : CASE NO. 2010-1105

Appellee, :

vs. :

GREGORY C. OSIE, : {Capital Case}

Appellant. :

On Appeal from the Court of Common Pleas,
Butler County, Ohio Case No. CR2009-02-0302

APPELLEE'S MOTION IN OPPOSITION OF RECONSIDERATION

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RECEIVED
JUL 29 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JUL 29 2014
CLERK OF COURT
SUPREME COURT OF OHIO

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Appellee,

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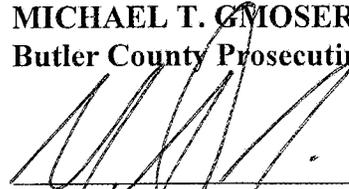
GREGORY OSIE,

Appellant.

MOTION IN OPPOSITION OF RECONSIDERATION

Now comes Appellee and moves this Court to DENY Appellant's "Motion for Reconsideration." Appellant's motion is without merit and should be denied as more fully discussed in the Memorandum in Support attached hereto.

Respectfully Submitted,
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MOTION IN OPPOSITION

Appellee, State of Ohio, hereby gives notice of its opposition to Appellant's "Motion For Reconsideration." In Appellant's motion he argues that this Court did not consider its own past precedent, that the State did not present sufficient evidence, and that this Court's weighing process cannot cure the merger of one capital specification. However, as this Court fully complied with all legal requirements, and properly applied the law to the facts of this case, the Motion to Reconsider should be denied.

What is more, a motion for reconsideration is not to be filed simply on the basis that a party disagrees with the prior appellate court decision. However, it is clear that Appellant has filed his motion simply because he disagrees. The State prays that this motion will be denied.

S.Ct.Prac.R. 18.02(A) provides that a motion for reconsideration "must be filed within ten days after the Supreme Court's judgment entry or order is filed with the Clerk of the Supreme Court." The Rule continues and requires that "[a] motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions: (1) Refusal to accept a jurisdictional appeal; (2) The sua sponte dismissal of a case; (3) The granting of a motion to dismiss; (4) A decision on the merits of a case." S.Ct.Prac.R. 18.02(B). The standard for reviewing 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." *Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515 (1987), paragraph one of the syllabus. "An application for reconsideration may not be filed simply on the basis that a party disagrees with the prior appellate court decision." *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (1996).

Contrary to Appellant's argument, this Court did not commit an "obvious error" nor did it fail to consider fully an issue. Rather, Appellant's motion is merely a written expression of Appellant's disagreement with this Court's decision. As such, reconsideration should be denied.

Proposition of Law I:

The Panel complied with all requirements and allowed the Appellant to exercise or waive his right to Allocution.

In Appellant's first argument, he turns his allocution argument into one about the ability of the trial court to have issued a nunc pro tunc order. In fact Appellant specifically argues that "the court should have corrected the post release control error with a nunc pro tunc entry." (Appellant's motion, p. 4) However, in the present case, the trial court never informed Appellant about postrelease control. Thus, there was no clerical error to fix, and a nunc pro tunc entry would have been wholly inappropriate. *See, State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, ¶ 13. As such, this argument is misguided and clearly directed at the fact that Appellant simply disagrees with this Court's decision, rather than asserting that this Court made an obvious legal error.

As this Court correctly found, the trial court brought all the parties together on May 10, because the trial court failed to provide notifications and imposition of post release control. "The trial court clearly regarded the sentence imposed at the May 3 hearing as void. Therefore, the May 10 hearing was 'the time of imposing sentence' for purposes of Crim.R. 32(A)(1). At that hearing, the trial court asked Osie whether he wished to say anything, and Osie said that he did not. The court gave Osie everything he was entitled to under Crim.R. 32(A)(1)." *State v. Osie*, - - Ohio St.3d. - -, Slip Opinion No. 2014-Ohio-2966, at ¶ 180.

This Court continued noting that:

Before asking Osie on May 10 if he wished to say anything, the trial court had explained in open court that in its opinion, the sentence imposed on May 3, or a portion thereof, was void. It was evident from the trial court's remarks that it regarded the entire sentence imposed on May 3 as being rendered void (at least potentially) by the postrelease-control error. The stated purpose of the resentencing was "to correct that error," which threatened to render the sentence void; from the trial court's perspective, anything less than a complete resentencing would risk failing to completely correct the error.

Therefore, it should have been—and almost certainly was—obvious to Osie that the trial court intended to resentence him on all counts, including the capital counts. That being the case, it was equally clear that the trial court's direct invitation to Osie to "say anything" also covered all counts, including the capital counts. We find no ambiguity in that invitation and therefore reject Osie's proposed analogy to *Green*. Accordingly, Osie's first proposition of law is overruled.

Id. at ¶¶ 184-185.

As such, because all parties properly understood that the May 10 hearing was to resentence Osie for all counts, and because Osie was provided an opportunity for allocution at this time, there was no error, much less an obvious error committed by this Court.

Proposition of Law III:

The State proved by a plethora of evidence that Appellant killed Williams to prevent his testimony in a criminal proceeding.

In his second reason for reconsideration, Appellant rehashes his argument that in order to be found guilty of the aggravated specification contained in R.C. 2929.04(A)(8), a criminal proceeding had to be already initiated at the time he murdered Williams. This argument violates the reconsideration rule, S.Ct.Prac.R. 18.02(B), which provides that a motion for reconsideration "shall not constitute a reargument of the case", but also should be denied based upon the facts of this case and the past precedent from this Court. *See, generally, State v. Conway*, 109 Ohio St.3d 412,

2006-Ohio-2815, 848 N.E.2d 810.

What is clear about this issue is that this Court has already decided the issue and this is not a proper aspect of a motion for reconsideration. In this Court's decision on the merits it stated that Appellant was urging this Court to "reexamine *Conway* in light of our later decision in *State v. Malone*, 121 Ohio St.3d 244, 2009-Ohio-310, 903 N.E.2d 614, in which we construed a different statute that defines a different offense." *Osie*, at ¶ 193. What Appellant is doing now is rearguing this exact same issue. This is not proper under S.Ct.Prac.R. 18.02(B).

First, even if this Court were to again evaluate this issue, it must be noted that the *Malone* case interpreted a different statute, R.C. 2921.04(B), than the one involved in this case, R.C. 2929.04(A)(8). It is the differences in the words, context, and intents of these statutes that cause Appellant's argument to fail. As this Court correctly found:

Malone's construction of R.C. 2921.04(B) provides no basis for overruling *Conway's* construction of R.C. 2929.04(A)(8). Unlike R.C. 2921.04(B), R.C. 2929.04(A)(8) is not limited to a witness who is "involved in" a criminal proceeding. Rather, R.C. 2929.04(A)(8) speaks of "a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding." (Emphasis added.) The language "to prevent" indicates that the defendant's motive is to affect a future proceeding. Moreover, R.C. 2929.04(A)(8) uses the broad, inclusive term "any" criminal proceeding. Consequently, a murder committed for the purpose of preventing the victim's testimony in a future or potential criminal proceeding is well within the statute's reach.

Osie, at ¶ 197.

As such, this Court should not reconsider an already correctly reached decision, and should continue to follow its precedent in *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810.

Secondly, Appellant then turns this argument into a factual rehash of his previous argument

that the State failed to factually prove that Osie purposely killed Williams to prevent his testimony. Again, this Court has already decided this exact issue and under S.Ct.Prac.R. 18.02(B), a motion for reconsideration “shall not constitute a reargument of the case”.

Even when the facts are rehashed, it is abundantly clear that Appellant went to the victim’s home to try to persuade him not to press charges against Robin Patterson, and when this did not work, he decided to silence the victim so that he could not press charges against Patterson. As this Court has already found:

Nicholas Wiskur testified that in a phone conversation on February 13, Williams told Osie that he intended to file charges with respect to the missing money. Wiskur further testified that the conversation became heated on both sides, indicating that Osie was angry with Williams. Osie admitted in his confession that he went to Williams's house to discuss the matter with him. Osie told the Butler County detectives that Williams had said that he was going to press charges against Patterson for stealing from him. Additionally, he told his cellmate that Williams had expressed his intention to press charges against Osie himself. These statements by Williams precipitated the quarrel that ended with Osie stabbing Williams to death. From this evidence, the trier of fact could reasonably infer that when Osie stabbed Williams, he did so with the purpose of preventing Williams from filing charges against Osie and/or Patterson.

* * *

Osie's texts to Patterson corroborate his purpose of preventing Williams from filing charges against Patterson. At 3:07 a.m., Osie texted Patterson: “Baby doll your dirt is ready to be over.” At 4:24 a.m., he texted her: “Job finished.”

Id. at ¶¶ 200-202.¹

¹ All of the following specifically support this Court’s determination: During a telephone conversation, Mr. Williams informed Appellant that “[w]ell, I’m going to go to the police. I’m going to file charges. This needs to be taken care of.” (T.p. 45) After being given his *Miranda* warnings and voluntarily waiving his rights, Appellant gave an audio taped statement. (See, State’s Exhibits 54 & 55). Appellant recalled that he and the victim discussed the fact that Williams was planning on pressing charges about Patterson, whom Appellant called “my girl.” (State’s Exhibits 55, p. 3) Appellant then explained that he attempted to persuade Williams not to file any charges. (State’s Exhibits 55, p. 3) Thereafter, Appellant began telling a fictitious story about Williams coming at him with a knife, and Appellant being forced to stab him in self-defense. (State’s Exhibits 55, p. 3-5) Appellant also admitted that as part of making contact with Robin, he sent her a text message that informed her that she did not have to worry about

What is clear from all of this evidence is that Appellant silenced Williams so that he would not file charges against Robin Patterson.² This Court's decision need not be reconsidered.

Proposition of Law IV:

This Court properly followed the law of merger, and cured any defect with its independent weighing process.

In his final reason for reconsideration, Appellant argues that this Court failed to recognize its holding in *State v. Whitfield*, 124 Ohio St.3d 319, 922 N.E.2d 1982 (2010). However, *Whitfield* is not a capital case, and does not analyze death penalty specifications and potential merger issues. As such, this Court correctly declined to utilize *Whitfield*, and instead followed its more recent death

Dave anymore. (State's Exhibits 55, p. 7) When asked to tell the story in his own words, Appellant began his story with the fact that Williams was "accusing my girlfriend Robin of stealing money and things like that * * *." (State's Exhibits 55, p. 43)

Appellant also penned a letter, in his own words while he was in jail to "baby girl". (State's Exhibit 64) In said letter, Appellant specifically addresses Robin Patterson, indicating that she is "baby girl". (State's Exhibit 64) Appellant repeatedly talks about the crime, how Patterson had stolen from Williams, and how he had tried to help her. (State's Exhibit 64) Appellant continues noting that he will not let anything bad happen to Robin when he writes "I will not let anyone or anything hurt you. Because I love you with all my heart. I gave everything up for you, who else would do that for you." (State's Exhibit 64, p. 37) Finally, Donald Simpson was Appellant's cell-mate at the jail from February 15, 2009 until April of 2009. (T.p. 95, 97) During that time, Appellant discussed the crime with Simpson and told him "that David Williams was pressing charges on Robin Patterson for stealing around \$18,000." (T.p. 99) According to Appellant, Robin had asked him to go and speak with Williams and try to convince him not to press charges. (T.p. 99) Appellant admitted to Simpson that he stole Williams' credit card and obtained gas with it, and even attempted to buy a diamond ring for Robin from the Meijer store. (T.p. 101-102).

² R.C. 2929.04(A)(8) does not require that prevention of testimony or retaliation for testimony be the only reason for the murder. *See, State v. Filiaggi*, 86 Ohio St.3d 230, 248, 1999-Ohio-99, 714 N.E.2d 867 ("The law does not require [the filing of the complaint] to be the sole reason").

penalty precedent which was directly on point. *See, State v. Fry*, 125 Ohio St. 3d 163, 2010-Ohio-1017, 926 N.E.2d 1239, at ¶ 183. As such, there is no need for reconsideration as Appellant's argument is without merit.

While this Court did merge one of the death specifications in this case, the correct law was then applied to find that death was still appropriate. This Court has held as early as 1998, and reaffirmed in 2010, that “[w]e can cure any error related to the duplicative specifications by merging the two specifications as part of our independent sentence review. *Fry*, 125 Ohio St.3d 163, 2010-Ohio-1017, 926 N.E.2d 1239, at ¶ 183, citing *State v. Mitts*, 81 Ohio St.3d 223, 232, 690 N.E.2d 522 (1998).” *Osie*, at ¶ 189. As such, this Court did not fail to recognize the *Whitfield* case, but instead applied the appropriate precedent governing the merger of death specifications. Reconsideration of this is not warranted.

Appellant also urges this Court to again evaluate or reconsider its already decided independent review. While this is also unwarranted, this Court should stand by its holding that “[h]aving independently weighed the aggravating circumstances against the mitigating factors, we find that the two aggravating circumstances of robbery-murder and witness-murder outweigh the mitigating factors present in this case beyond a reasonable doubt. ‘In particular, the R.C. 2929.04(A)(8) witness-murder specification is entitled to great weight, for it ‘strikes at the heart of the criminal justice system.’ ’ *Turner*, 105 Ohio St.3d 331, 2005-Ohio-1938, 826 N.E.2d 266, ¶ 100, quoting *State v. Jalowiec*, 91 Ohio St.3d 220, 239, 744 N.E.2d 163 (2001).” *Osie*, at ¶ 270.

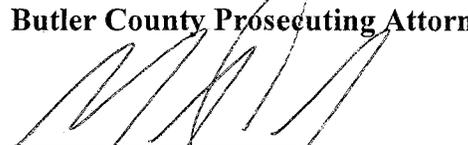
As such, the death penalty is the appropriate sentence for Appellant's heinous murder of Mr. Williams. This Court should not reconsider this issue.

Conclusion

For all of the forgoing reasons, this Court should deny reconsideration of this case and not permit Appellant to simply reargue issues that he merely disagrees with their proper and just resolution.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion In Opposition was sent to:

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by U.S. ordinary mail this 28th day of July, 2014.



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