

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	)	SUPREME COURT CASE
	)	NO. 2014-1255
Appellee,)	
	)	ON APPEAL FROM THE
vs.	)	COURT OF APPEALS,
	)	NINTH APPELLATE
PENNY J. SHAFFER	)	DISTRICT NOS. 12CA0071-M
	)	& 12CA0077-M
Appellant.)	
	)	MEDINA COUNTY
	)	COURT OF COMMON PLEAS
	)	CASE NO. 12CR0125

MEMORANDUM IN OPPOSITION TO JURISDICTION OF THE STATE OF OHIO

DEAN HOLMAN (#0020915)
 Medina County Prosecuting Attorney
 72 Public Square
 Medina, Ohio 44256
 (330) 723-9536
 (330) 723-9532 (fax)

PETER GALYARDT (#0085439)
 Assistant State Public Defender
 Office of the Ohio Public Defender
 250 East Broad Street
 Suite 1400
 Columbus, Ohio 43215
 (614) 752-5167
 (614) 466-5394
 peter.galyardt@opd.ohio.gov

BY: MATTHEW A. KERN* (#0086415)
 Assistant Prosecuting Attorney
 * *Counsel of Record*
 Medina County Prosecutor's Office
 72 Public Square
 Medina, Ohio 44256
 (330) 723-9536
 (330) 723-9532 (fax)

COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

RECEIVED
 AUG 04 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

FILED
 AUG 04 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR
GREAT GENERAL INTEREST1

STATEMENT OF THE CASE AND FACTS2

LAW AND ARGUMENT3

 I. Enhanced sentences for third-degree felony convictions are permissible only for
 the offenses explicitly identified in R.C. 2929.14(A)(3)(a). R.C. 2929.14(A)(3)(a)
 and (b).....3

CONCLUSION.....12

TABLE OF AUTHORITIES

CASES

Abraham v. Nat'l City Bank Corp., 50 Ohio St. 3d 175, 553 N.E.2d 619 (1990).....	7
Acme Eng. Co. v. Jones, 150 Ohio St. 423, 83 N.E.2d 202 (1948)	7
Callanan v. United States, 364 U.S. 587 (1961).....	13, 14
Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S, 132 S. Ct. 1670 (2012).....	11
In re Clemons, 168 Ohio St. 83, 151 N.E.2d 553 (1958)	14
State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Edn., 131 Ohio St. 3d 478, 2012 Ohio 1484	11
State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities, 68 Ohio St. 3d 426, 627 N.E.2d 993 (1994)	6
State ex rel. Francis v. Sours, 143 Ohio St. 120, 53 N.E.2d 1021 (1944).....	5, 10
State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn., 74 Ohio St. 3d 543, 660 N.E.2d 463 (1996)	5, 10
State v. Anderson, 57 Ohio St. 3d 168, 174, 566 N.E.2d 1224 (1991)	12
State v. Conyers, 87 Ohio St. 3d 246, 719 N.E.2d 535 (1999).....	6, 7
State v. Hairston, 101 Ohio St. 3d 308, 2004 Ohio 969	4, 5, 11
State v. Kreisler, 109 Ohio St. 3d 391, 2006 Ohio 2706	14
State v. Owen, 11 th Dist. Lake No. 2012-L-102, 2013 Ohio 2824	4, 5, 8, 10
State v. Shaffer, 9 th Dist. Medina Nos. 12CA0071-M & 12CA0077-M, 2014 Ohio 2461	3, 12
State v. Stevens, 139 Ohio St. 3d 247, 2014 Ohio 1932.....	13, 14
State v. Straley, Slip Op. No. 2014 Ohio 2139 (May 29, 2014).....	13
State v. Sturgill, 12 th Dist. Clermont Nos. CA2013-01-002 & CA2013-01-003, 2013 Ohio 4648	4, 5, 6, 10
State v. White, 132 Ohio St. 3d 344, 2012 Ohio 2583	14
State v. Willan, 136 Ohio St. 3d 222, 2013 Ohio 2405	11, 12
United States v. Brown, 333 U.S. 18 (1948)	15
United States v. Moore, 423 U.S. 122 (1975)	14, 15
United States v. Turkette, 452 U.S. 576 (1981).....	14

STATUTES

R.C. 1.516, 7, 10
R.C. 1.52(A)8
R.C. 2901.04(A) 14
R.C. 2925.0413, 5, 8
R.C. 2925.041(A)passim
R.C. 2925.041(C)(1).....passim
R.C. 2925.11(A)2
R.C. 2925.11(C)(1)(a).....2
R.C. 2929.14(A)(3)(a)3, 12, 15
R.C. 4511.198

RULES

Crim. R. 11(B)(2)2

**EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR GREAT
GENERAL INTEREST**

This Honorable Court should not accept jurisdiction for the following reasons:

1. This case does not present a substantial constitutional question because the issue presented is one of statutory interpretation, not constitutional interpretation. The language of the statute is clear and the intent of the General Assembly is unambiguous. The Ninth District did not misapply the relevant law or strain the language of the statute; rather, it simply addressed the claimed discrepancy and noted how that discrepancy must be resolved.
2. This case is not of public or great general interest because unlike OVI offenses at issue in *State v. South*, Ohio Supreme Court No. 2014-0563 (pending), this case involves a sentencing enhancement under the illegal assembly or possession of chemicals used to manufacture drugs when the defendant has two or more times been previously convicted of or pleaded guilty to a felony drug abuse offense and one of those convictions was to a violation of specific sections including, as relevant in this case, a prior conviction for the same offense of illegal assembly or possession of chemicals for the manufacture of drugs. Unlike *South* which presents a question over the OVI statute, a commonly-used statute in the criminal justice system, this case presents a question regarding factual circumstances unlikely to recur and which will be capable of being resolved along similar lines to the Court's eventual decision in *South*.

STATEMENT OF THE CASE AND FACTS

The underlying facts of this case are only available through the Indictment, to which Penny J. Shaffer (“Shaffer” or the “Defendant”) eventually pleaded no contest, and transcripts of the Plea and Sentencing Hearings. Neither the Indictment nor the transcripts of the plea or sentencing hearings indicate the specific manner in which Shaffer committed the underlying offenses. In court on May 4, 2012, however, Shaffer pleaded “no contest” to the charges in the Indictment. (Tr. at 14.) In pleading “no contest,” Shaffer admitted to the facts alleged in the indictment. Crim. R. 11(B)(2).

The Medina County Grand Jury indicted Shaffer on March 7, 2012, charging her with two (2) counts: one count of illegal assembly or possession of chemicals for manufacturing drugs in violation of R.C. 2925.041(A), a felony of the third degree; and one count of possession of drugs (methamphetamine) in violation of R.C. 2925.11(A) and (C)(1)(a), a felony of the fifth degree.

Shaffer initially pleaded not guilty and the matter proceeded through the pre-trial process. Following pre-trial motion practice and the exchange of discovery, Shaffer appeared in court on May 4, 2012 and entered “no contest” pleas to both counts of the Indictment in exchange for a jointly-recommended sentence under which the State and Defendant agreed that potential one (1) year prison sentence for count II would be run concurrently with the mandatory minimum prison sentence for count I. The trial court accepted that plea and followed the jointly recommended sentencing recommendation and imposed a five (5) year prison sentence. The trial court imposed sentence in its journal entry filed on May 8, 2012.

Shaffer filed notice of appeal and a motion for delayed appeal on August 27, 2012 and again on September 13, 2012. The Ninth District granted the motion for leave to appeal and

consolidated the appeals. After briefing and oral argument, the Ninth District affirmed the imposition of the five (5) year prison sentence on June 9, 2014. *State v. Shaffer*, 9th Dist. Medina Nos. 12CA0071-M & 12CA0077-M, 2014 Ohio 2461.

Shaffer timely filed a Notice of Appeal and a Memorandum in Support of Jurisdiction on July 23, 2014. The State of Ohio hereby responds in opposition, urging the Court to decline jurisdiction and dismiss the attempted appeal.

LAW AND ARGUMENT

- I. Enhanced sentences for third-degree felony convictions are permissible only for the offenses explicitly identified in R.C. 2929.14(A)(3)(a). R.C. 2929.14(A)(3)(a) and (b).

Shaffer contends that because the third degree felony sentencing language specifically relevant to her conviction under R.C. 2925.041 was not listed in R.C. 2929.14(A)(3)(a) that the most she can be imprisoned is three (3) years. This argument, however, goes against the specific language of R.C. 2925.041(C)(1) and the clear intent of the General Assembly as part of Am. Sub. H.B. 86 in which – unlike the other conflict cases already accepted in *State v. South*, Ohio Supreme Court No. 2014-0563 – both statutes were amended simultaneously.

Section 2925.041(C)(1) of the Ohio Revised Code provides:

If the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense and if at least one of those previous convictions or guilty pleas was to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.04 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

Through her argument, Shaffer concedes that she has two or more times been previously convicted of or pleaded guilty to a felony drug abuse offense and that at least one of those

previous convictions or guilty pleas was to a violation of R.C. 2925.041(A). Rather than contend that she does not satisfy the condition precedent for application of the five (5) year mandatory minimum, Shaffer instead contends that R.C. 2929.14(A)(3) makes her violation of R.C. 2925.041(A) subject only to a maximum of three (3) years imprisonment. This is directly opposite the clear, unequivocal requirement in R.C. 2925.041(C)(1) that Shaffer be sentenced to no less than five (5) years.

Although questions of statutory interpretation are reviewed de novo, e.g. *State v. Owen*, 11th Dist. Lake No. 2012-L-102, 2013 Ohio 2824, at ¶ 17, the primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. *State v. Sturgill*, 12th Dist. Clermont Nos. CA2013-01-002 & CA2013-01-003, 2013 Ohio 4648, at ¶ 41, citing *State v. Hairston*, 101 Ohio St. 3d 308, 2004 Ohio 969, at ¶ 11. “The cornerstone of statutory interpretation is legislative intention.” *Owen*, 2013 Ohio 2824, at ¶ 17, citing *State ex rel. Francis v. Sours*, 143 Ohio St. 120, 124, 53 N.E.2d 1021 (1944). To determine intent, courts must first look the language of the statutes themselves. *Sturgill*, 2013 Ohio 4648, at ¶ 41, citing *Hairston*, 101 Ohio St. 3d 308, at ¶11. “If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary.” *Id.*, quoting *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St. 3d 543, 545, 660 N.E.2d 463 (1996).

On the surface, R.C. 2925.041(A) and R.C. 2929.14(A)(3) appear to be in conflict. The penalty section of the illegal assembly or possession of chemicals statute, R.C. 2925.041(C)(1), however, provides for a mandatory five (5) year sentence for violations of R.C. 2925.041(A) when the offender has previously been twice convicted for drug abuse offenses and one of those convictions is for a prior violation of R.C. 2925.041(A). The general sentencing statute for

felonies of the third degree, R.C. 2929.14(A)(3), on the other hand, does not list R.C. 2925.041 as an offense for which a five (5) year prison sentence is allowed as a felony of the third degree.

R.C. 2925.041(C)(1) operates like a sentencing enhancement, making it more specific than the general sentencing statute. In *Sturgill*, the Twelfth District held that although the third degree felony OVI offense calling for a five (5) year prison sentence and R.C. 2929.14(A)(3) appeared to conflict, the OVI offense with specification acted as a specific exception to the general sentencing statute. 2013 Ohio 4648, at ¶ 40. As the Twelfth District found in *Sturgill*, the existence of the additional condition precedent to application of a higher sentencing level makes the statutes no longer in conflict. *Id.* Like the harmonization of the statutes in *Sturgill*, the statutes at issue in this case can be read together to ascertain the General Assembly's intent to permit a five (5) year minimum sentence for a third-degree felony illegal assembly offense. *Id.*

“It is a well-settled principle of statutory construction that when an irreconcilable conflict exists between two statutes that address the same subject matter, one general and the other special, the special provision prevails as an exception to the general statute.” *State v. Conyers*, 87 Ohio St. 3d 246, 248, 719 N.E.2d 535 (1999), citing R.C. 1.51, *State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities*, 68 Ohio St. 3d 426, 429-430, 627 N.E.2d 993 (1994), *Abraham v. Nat'l City Bank Corp.*, 50 Ohio St. 3d 175, 178, 553 N.E.2d 619 (1990), and *Acme Eng. Co. v. Jones*, 150 Ohio St. 423, 83 N.E.2d 202 (1948) at paragraph one of the syllabus.

R.C. 1.51, entitled “Special or local provision prevails over general; exception,” reads as follows:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

The Ohio Supreme Court in 1999 held that the common meaning of “general” is “that which is ‘universal, not particularized, as opposed to special.’” *Conyers*, 87 Ohio St. 3d at 250, quoting Black’s Law Dictionary 682 (6th Ed. 1990). Under any reasonable interpretation of R.C. 2929.14(A)(3), the sentencing law applies to *all felonies subject to specific exception*. One specific exception, relevant in this case, is found in R.C. 2925.041(C)(1) which requires a prison sentence of no less than five (5) years if the offender has twice been convicted of drug abuse offenses and one of those offenses is a prior violation of R.C. 2925.041(A). There is no dispute in this case that Shaffer meets that specific condition precedent, and thus by the very terms of R.C. 2925.041(C)(1) the trial court was required to impose a five (5) year prison sentence. Section 2925.041(C)(1) applies in a very circumscribed set of conditions and therefore acts as a specific exception to the otherwise general sentencing scheme.

Another important fact in this case is that unlike the situation in either *Owen* or *Sturgill*, the statutes in this case were amended by the *same* enactment of the General Assembly – both the most recent amendment to R.C. 2925.041 and the most recent amendment to R.C. 2929.14(A)(3) were enacted by the General Assembly as part of the overhaul to criminal sentencing in Am. Sub. H.B. 86, effective September 30, 2011.

In *Owen*, the Eleventh District noted that the General Assembly amended the OVI statute, R.C. 4511.19, effective September 23, 2011, while the General Assembly amended the sentencing statute, R.C. 2929.14(A)(3), effective September 30, 2011. *See Owen*, 2013 Ohio 2824, at ¶ 18-19. The Court found that because both statutes were specific statutes, the later enacted one controlled. That rule is the result of application of specific rules where both statutes are specific. *Id.* at ¶ 28, citing R.C. 1.52(A).

As shown above, however, even if the Court finds that both statutes are specific (a finding the State specifically denies), neither statute is “latest in date of enactment” because they are the product of the *same bill* and therefore were enacted simultaneously. Moreover, as shown by Appellant’s own brief, while R.C. 2925.041(C)(1) contained a mandatory minimum sentence for previous drug abuse offenses, Am. Sub. H.B. 86 (2011) specifically amended R.C. 2925.041(C)(1) to require a mandatory five (5) year sentence when the offender had twice been convicted of drug abuse offenses and one of the prior offenses was a violation of R.C. 2925.041(A). See DENNIS M. PAPP, OHIO LEG. SERV. COMM. *Final Analysis – Am. Sub. H.B. 86*, available at <http://www.lsc.state.oh.us/analyses129/11-hb86-129.pdf>, at page 73 and n.90 (detailing the amendments to R.C. 2925’s internal sentencing scheme for third degree felonies, including illegal assembly or possession of chemicals for manufacture of drugs). As the Ohio Legislative Service Commission (LSC) analysis notes, certain drug offenses were previously third degree felonies for which a mandatory prison term applied. *Id.* The LSC analysis notes that the amendment under Am. Sub. H.B. 86 retains the third degree felony penalty but only requires a mandatory prison term if the defendant has twice been previously convicted of or pleaded guilty to drug abuse offenses. *Id.* The amendment goes further, however, and actually requires a mandatory prison term of *no less than five (5) years* if the offender also has previously been convicted of or pleaded guilty to specific offenses, one of which is a prior violation of R.C. 2925.041(A).

This is not a situation where the General Assembly had previously enacted a mandatory five (5) year prison sentence before later amending the permissible range of prison sentences. As part of its comprehensive review of criminal sentencing in the State, the Ohio General Assembly lessened the mandatory prison term for most illegal assembly or possession of chemicals to

manufacture drug offenses. The General Assembly, however, specifically added the provision at issue in this case to require a mandatory prison sentence of no less than five (5) years if the offender met a very specific condition precedent. Unfortunately for Shaffer, she meets that condition and therefore faced the enhanced penalty provision under the amended version of R.C. 2925.041(C)(1) in effect when she committed the underlying offense.

In light of the fact that the General Assembly specifically added the sentencing enhancement provision in question to R.C. 2925.041(C)(1) in the same law as its amendment to bifurcate sentences under R.C. 2929.14(A)(3), it is clear that the General Assembly viewed the mandatory prison sentence in R.C. 2925.041(C)(1) as an *exception* to the otherwise *general* sentencing scheme under R.C. 2929.14. As a specific exception to an otherwise general statutory scheme, the specific provision prevails over the general statute regardless of the date of its enactment. R.C. 1.51; *Sturgill*, 2013 Ohio 4648, at ¶ 40.

Because the intent of the General Assembly is clear, the Court's role is to give effect to the will of the legislature. *See Owen*, 2013 Ohio 2824, at ¶ 17, citing *Sours*, 143 Ohio St. at 124. "If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary." *Id.*, quoting *Savarese*, 74 Ohio St. 3d at 545. Courts must "give effect to 'every word, phrase, sentence, and part of the statute' and . . . avoid an interpretation that would 'restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly's wording.'" *State v. Willan*, 136 Ohio St. 3d 222, 2013 Ohio 2405, at ¶ 5, quoting *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Edn.*, 131 Ohio St. 3d 478, 2012 Ohio 1484, at ¶ 18. If the language of a statute is plain and unambiguous, it must be applied as written. *Id.*, citing *Hairston*, 101 Ohio St. 3d 308, at ¶ 13.

Here, a holding that Shaffer was subject only to a three (3) year maximum sentence would have the effect of reading out of R.C. 2925.041(C)(1) the additional sentencing scheme for previous offenders with specific conditions precedent. Such an interpretation would not give effect to the clear intent of the legislature in amending drug abuse offense sentencing generally while retaining mandatory minimums for certain offenders. Such an interpretation would do violence to the General Assembly's wording by unduly narrowing the scope of and therefore rendering R.C. 2925.041(C)(1) moot.

Sentencing statutes are often "complex, but 'the mere possibility of clearer phrasing' will not defeat the most natural reading of the statute." *Willan*, 136 Ohio St. 3d 222, at ¶ 11, quoting *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 132 S. Ct. 1670, 1682 (2012). And the General Assembly need not draft a law with "scientific precision" before a court must enforce it. *Id.*, quoting *State v. Anderson*, 57 Ohio St. 3d 168, 174, 566 N.E.2d 1224 (1991).

Where, as here, there is only one reasonable construction of a statutory scheme, a trial court does not err in following the specific requirement of the statute. R.C. 2925.041(C)(1) required a prison sentence of no less than five (5) years when the offender has twice been previously convicted of or pleaded guilty to drug abuse offenses and one of the prior drug abuse offenses is a violation of, inter alia, R.C. 2925.041(A). Shaffer has at least two previous drug abuse offenses, one of which is a violation of R.C. 2925.041(A). By the express terms of R.C. 2925.041(C)(1), the trial court imposed a five (5) year prison sentence.

The appellate court in this case understood the intent of the General Assembly and held, similar to Sturgill, that the sentence was required by law. *State v. Shaffer*, 9th Dist. Medina Nos. 12CA0071-M & 12CA0077-M, 2014 Ohio 2461, at ¶ 14. The fact that the General Assembly amended both sections R.C. 2925.041(C)(1) and R.C. 2929.14(A)(3)(a) in Am.Sub.H.B. 86 is the

clearest indication of the General Assembly's intent to generally lower third degree felony sentencing while increasing the penalty for certain repeat drug abuse offenders convicted of illegally assembling or possessing chemicals for the manufacturing of drugs. *Shaffer*, 2014 Ohio 2461, at ¶ 14-15.

Shaffer contends that the rule of lenity applies. As this Court has recently and repeatedly held, however, the rule of lenity only applies if the language is ambiguous. If the language of a statute is clear and unambiguous, the court must apply it as written. *State v. Straley*, Slip Op. No. 2014 Ohio 2139 (May 29, 2014), at ¶ 9. As Justices Kennedy and O'Donnell noted earlier this year in *State v. Stevens*, 139 Ohio St. 3d 247, 2014 Ohio 1932, at ¶ 39 (Kennedy & O'Donnell, JJ., concurring in part and dissenting in part), quoting *Callanan v. United States*, 364 U.S. 587, 596 (1961), "[w]e must remember that the rule of lenity applies 'at the end of the process . . . , not at the beginning as an overriding consideration of being lenient to wrongdoers.'" As Justices Kennedy and O'Donnell further observed, with Justice French indicating agreement, when the statute is not ambiguous, the rule of lenity does not apply. *Id.* at ¶ 43 (Kennedy & O'Donnell, JJ., concurring in part and dissenting in part); *id.* at ¶ 26 (French, J., concurring in judgment) (noting that she would join Justice Kennedy's opinion); *id.* at ¶ 62 (O'Connor, C.J., dissenting) (noting that the rule of lenity only applies when the statute is ambiguous and should not be used to create one), citing *United States v. Turkette*, 452 U.S. 576, 587 n.10 (1981).

"Statutory interpretation involves an examination of the words used by the legislature in a statute, and when the General Assembly has *plainly and unambiguously conveyed its legislative intent*, there is nothing for a court to interpret or construe, and therefore, the court applies the law as written." *Id.* at ¶ 43 (Kennedy & O'Donnell, JJ., concurring in part and dissenting in part)

(emphasis in original), quoting *State v. Kreischer*, 109 Ohio St. 3d 391, 2006 Ohio 2706, syllabus. And even if a statute could be read to create an ambiguity, a court should not necessarily default to an interpretation proposed by a defendant. As the Court noted in *State v. White*, 132 Ohio St. 3d 344, 2012 Ohio 2583, at ¶ 20, citing *In re Clemons*, 168 Ohio St. 83, 87-88, 151 N.E.2d 553 (1958), the court “should be mindful that, although criminal statutes are strictly construed against the state, R.C. 2901.04(A), they should not be given an artificially narrow interpretation that would defeat the apparent legislative intent.”

The rule of lenity comes into operation at the end of the process, not at the beginning as an overriding consideration of being lenient to wrongdoers. *Callanan*, 364 U.S. at 596. If there is no ambiguity, the rule of lenity does not come into play. *Turkette*, 452 U.S. at 587 n.10, citing *United States v. Moore*, 423 U.S. 122, 145 (1975) and *United States v. Brown*, 333 U.S. 18, 25-26 (1948). As the *Moore* Court noted, “[t]he canon in favor of strict construction [of criminal statutes] is not an inexorable command to override common sense and evident purpose. . . . Nor does it demand that a statute be given the ‘narrowest meaning’; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.” 423 U.S. at 145, quoting *Brown*, 333 U.S. at 25-26.

Here, the appellate court considered the clear, specific language of R.C. 2925.041(C)(1) and the vague, generalized language of R.C. 2929.14(A)(3)(a), and concluded that the specific language controlling in this case in R.C. 2925.041(C)(1) prevailed as an exception to the otherwise general rule for sentencing in third degree felony cases. The appellate court considered the relevant language, the fact that both statutes were amended at the same time on the same date in the same bill, and the nature of the changes to each section. Based on that examination, it was clear that the legislature made a policy choice about violations of R.C.

2925.041(A) when the defendant has prior drug abuse offenses and specifically a prior conviction for the same section. Based on the clear language and the apparent intent of the General Assembly, the Ninth District in this case affirmed the imposition of a mandatory five (5) year prison sentence under the explicit provisions of the Revised Code.

Nothing about this decision presents a case of great general or public interest or implicates a substantial constitutional question. The Ninth District was presented with a question of statutory interpretation and answered the question put before it. Exercise of the Court's jurisdiction when the Ninth District clearly got it right will not aid in the resolution of a statewide conflict or promote any further understanding of the issues at play. That is already being done in *State v. South*, Ohio Supreme Court No. 2014-0563, a certified conflict case about third degree felony sentencing for OVI prosecutions.

CONCLUSION

For all of the foregoing reasons, the State of Ohio respectfully requests that this Honorable Court decline jurisdiction over the instant discretionary appeal.

Respectfully submitted,

DEAN HOLMAN, # 0020915
Prosecuting Attorney
Medina County, Ohio

By:


MATTHEW A. KERN, #0086415
Assistant Prosecuting Attorney
Medina County Prosecutor's Office
72 Public Square
Medina, Ohio 44256
(330) 723-9536
(330) 723-9532 (fax)

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction of the State of Ohio was sent regular U.S. mail to Peter Galyardt, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, this 30th day of July, 2014.



MATTHEW A. KERN
Assistant Prosecuting Attorney