

IN THE SUPREME COURT OF OHIO  
Case No. 2014-1174

ORIGINAL

STATE OF OHIO,  
Appellant

v.

DELTA ROSARIO,  
Appellee

On Appeal from the  
Cuyahoga County Court  
of Appeals, Eighth  
Appellate District Court  
of Appeals  
CA: 100334

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**MEMORANDUM IN OPPOSITION TO JURISDICTION**

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ROBERT L. TOBIK, ESQ.  
Cuyahoga County Public Defender  
BY: CULLEN SWEENEY, ESQ. (COUNSEL OF RECORD)  
# 0077187  
Assistant Public Defender  
310 Lakeside Avenue  
Suite 200  
Cleveland, OH 44113  
(216) 443-7583  
(216) 443-3632 FAX

COUNSEL FOR APPELLEE

TIMOTHY J. MCGINTY, ESQ.  
Cuyahoga County Prosecutor  
T. ALLEN REGAS  
MARY MCGRATH  
Assistant Prosecuting Attorneys  
The Justice Center – 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113  
(216) 443-7800

COUNSEL FOR APPELLANT, THE STATE OF OHIO

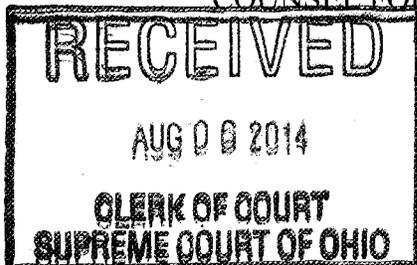
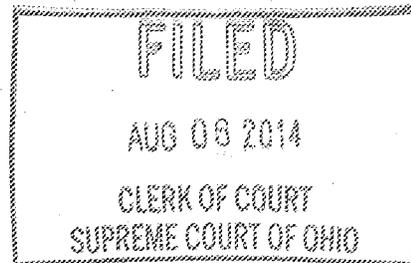


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**WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL  
CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST:**

The case does not involve a constitutional question and does not involve an issue of great public interest. The question presented by this case is whether the Court of Appeals abused its discretion in denying leave to hear a discretionary appeal taken from a community control violation hearing in a low-level felony case. In its memorandum, the State ignores the real question before this Court—whether the appellate court properly exercised its discretion--and attempts to simply present the merits of the issue it apparently would have raised if it had been granted leave to appeal to below. But that is not the posture of the case; the lower court never issued a substantive ruling on the State's proposed proposition of law. Rather, the Eighth District simply exercised its discretion not to accept a discretionary appeal. Thus the real question before this Court—one left unaddressed by the State's memorandum--is whether the court of appeals abused its discretion in deciding not to accept a discretionary appeal. That question does not involve an issue of great public interest and should not be accepted by this Court.

Moreover, to the extent that this Court feels inclined to address the substance of the State's proposition of law, it already has a vehicle for doing so in a petition for mandamus filed by the State of Ohio against Judge Sutula. *See State ex rel. McGinty v. Sutula*, Ohio Supreme Court Case No. 2014-0993 (filed 6/13/14). The instant case is an outgrowth of a legal disagreement between Cuyahoga County Common Pleas Judge John Sutula and Cuyahoga County Prosecutor Timothy J. McGinty. Historically, in Cuyahoga County, assistant county prosecutors rarely, if ever, attended probation or community control violation hearings. Recently, assistant county prosecutors started attending some, but by no means a majority, of hearings involving community control violations. In

fairness to the probationer and to manage his docket, Judge Sutula has established a rule requiring the Prosecutor's Office to provide notice of its intent to appear at a particular community control violation hearing. County Prosecutor McGinty maintains that Judge Sutula has no authority to implement such a procedure and has refused to follow it.

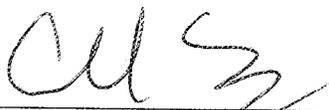
Ultimately, the dispute raised by the State's appeal is not one between Delta Rosario and the State of Ohio. The real dispute here is between the trial court judge and the county prosecutor. There is no need to put the defendant in the middle of this dispute and place him in the position of serving as a legal proxy for Judge Sutula. Regarding the underlying merits of the County Prosecutor's position, Judge Sutula, and not an individual criminal defendant, should be given an opportunity to respond to it. The State's mandamus petition provides such a forum. The instant case does not.

This Court should decline the State's request to review the Court of Appeals discretionary decision to deny the State's request for leave to appeal from a community control sanctions violation hearing.

### CONCLUSION

For the foregoing reasons, Defendant-Appellee respectfully asks this Court to decline jurisdiction over this matter as it does not present a substantial constitutional question or issue of great public interest for review.

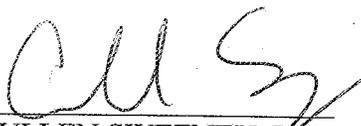
Respectfully Submitted,



CULLEN SWEENEY, ESQ.  
Counsel for Appellee

**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum In Response was served upon TIMOTHY J. MCGINTY, ESQ., Cuyahoga County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 4 day of August, 2014.

  
CULLEN SWEENEY, ESQ.  
Counsel for Appellee