Supreme Court of Ohio Clerk of Court - Filed February 03, 2015 - Case No. 2014-1174

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellant,	:	Case No. 2014-1174
	:	
v.	:	On Appeal from the
	:	Cuyahoga County Court of Appeals,
DELTA ROSARIO,	:	Eighth Appellate District, Case No.
	:	101558
Appellee.	:	

APPELLANT'S MEMORANDUM IN RESPONSE
TO APPELLEE'S AMENDED MOTION TO DISMISS

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
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Appellant,	:	Case No. 2014-1174
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Now comes Cuyahoga County Prosecutor Timothy McGinty, by and through undersigned counsel, on behalf of Appellant the State of Ohio, and respectfully submits its Memorandum in Response to Appellee's Amended Motion to Dismiss the State's appeal, attached hereto.

Respectfully submitted,

TIMOTHY J. McGINTY (#0024626)
CUYAHOGA COUNTY PROSECUTOR

/s/ Mary H. McGrath
MARY H. McGRATH (#0041381)
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MEMORANDUM

Appellee seeks dismissal of the State's appeal, portraying the legal issues involved as a recurring dispute between a Common Pleas Judge and the County Prosecutor regarding the County Prosecutor's role at community control violation hearings. This representation minimizes the substantial constitutional questions presented in this felony appeal and *State v. Collins*, Case No. 2014-1200, *State v. Marks*, Case No. 2014-1173, *State v. Jenkins*, Case No. 2014-1175, *State v. Harris*, Case No. 2014-1176, *State v. Wiley*, Case No. 2014-1201, *State v. Scott*, Case No. 2014-1177, and *State v. Washington*, Case Numbers 2014-1363 and 2014-1368, which have been accepted and held for decision in *Rosario*.

This appeal involves a trial court's denial of substantial rights protected by due process through its standing order that the State, through its assistant prosecuting attorneys, are not entitled to notice or an opportunity to be heard *on behalf of the State* at community control violation and revocation hearings, and those sentencing hearings that result from termination or revocation of community control sanctions. This appeal also involves a trial court's violation of the separation of powers doctrine by delegating probation officers, non-lawyer court employees, as the sole representatives of the State at community control violation and revocation hearings.

While appellee correctly points out that the Eighth District Court of Appeal has exercised its discretion and accepted two of the State's appeals on this issue, this appeal

is properly before this Court, as it involves a felony, raises a substantial constitutional question, and is of public or great general interest. Moreover, the Eighth District has exercised its discretion in an inconsistent manner; judges of the court have accepted two cases while different judges have rejected five cases. In the meantime, the trial court continues to adhere to its blanket policy. The State, through its assistant prosecuting attorneys, are not notified of community control hearings and are barred from speaking or otherwise providing legal representation on behalf of the State at community control hearings. Instead, the court continues to require probation officers to be the sole representatives of the State at these hearings.

The State respectfully requests this Court deny Appellee's amended motion.

Respectfully submitted,

TIMOTHY J. McGINTY (#0024626)
CUYAHOGA COUNTY PROSECUTOR

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response to Appellee's Amended Motion to Dismiss has been served via email upon Cullen Sweeney, counsel of record for Delta Rosario, at csweeney@cuyahogacounty.us on this 3rd day of February, 2015.

/s/ Mary H. McGrath
MARY H. McGRATH (#0041381)