Supreme Court of Ohio Clerk of Court - Filed March 06, 2015 - Case No. 2015-0381

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Kelley A. Sweeney, Clerk of Courts

CITY OF CLEVELAND

Appellant

COA NO. 100598 | LOWER COURT NO. 2013 TRC 034882

CLEVELAND MUNI.

-vs-

TROUSSAINT D. JONES

Appellee

MOTION NO. 478997

Date 01/22/15

Journal Entry

Motion by appellee for en banc consideration is denied. See separate journal entry of this same date (motion no. 478997).

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FRANK D. CELEBREZZE, JR.
Administrative Judge

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CITY OF CLEVELAND

Appellant

COA NO. 100598 | LOWER COURT NO. 2013 TRC 034882

CLEVELAND MUNICIPAL COURT

-vs-

TROUSSAINT D. JONES

Appellee

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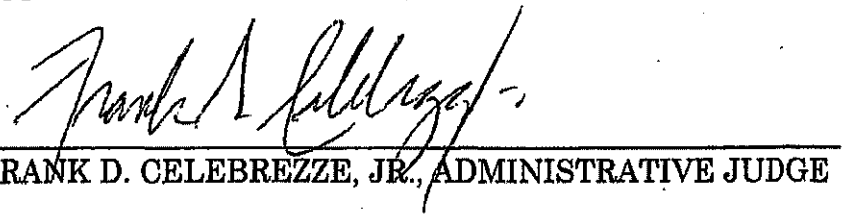
This matter is before the court on appellee's application for en banc consideration. Pursuant to App.R. 26, Loc.App.R. 26, and *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672, we are obligated to resolve conflicts between two or more decisions of this court on any issue that is dispositive of the case in which the application is filed.

Appellee contends that the panel decision conflicts with prior decisions of this court on two issues: (1) whether the state or city may appeal a trial court's verdict rendered after a no contest plea, see *State v. Gump*, 8th Dist. Cuyahoga No. 85693, 2005-Ohio-5689, *State v. Mayfield*, 8th Dist. Cuyahoga No. 81924, 2003-Ohio-2312, and *State v. Conti*, 57 Ohio App.3d 36, 565 N.E.2d 1286 (8th Dist. 1989) and (2) whether double jeopardy precludes further prosecution of a defendant after an acquittal even if the acquittal was factually or legally erroneous, see *State v. Bouman*, 8th Dist. Cuyahoga No. 88021, 2007-Ohio-824, and *State v. Ginnard*, 8th Dist. Cuyahoga No. 61964, 1992 Ohio App. LEXIS 213.

There was no majority opinion in this case. Each panel member performed a different analysis of the issues and reached different conclusions. There was no consensus about the basis for this court's jurisdiction in this appeal or whether double jeopardy would bar further prosecution. Therefore there was no decision of the court on these issues that could conflict with the prior decisions cited by appellee. The en banc application is denied.



FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

Concurring:

MARY J. BOYLE, J.,
EILEEN A. GALLAGHER, J.,
EILEEN T. GALLAGHER, J.,
SEAN C. GALLAGHER, J.,
LARRY A. JONES, J.,
KATHLEEN ANN KEOUGH, J.,
MARY EILEEN KILBANE, J.,
TIM MCCORMACK, J.,
KENNETH A. ROCCO, J., and
MELODY J. STEWART, J.

Dissenting:

PATRICIA A. BLACKMON, J.