ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	CASE NO: 15-0780
Plaintiff/Appellee	:	On Appeal from the Clermont County Court of Appeals 12th Appellate District
-v-	:	
JEFFREY N. SAAG	:	
Defendant/Appellant	:	C.A. CASE NO: CA2014 08 057

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JEFFREY N. SAAG

JEFFREY N. SAAG
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DEFENDANT/APPELLANT

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FILED
MAY 15 2015
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
MAY 15 2015
CLERK OF COURT
SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

It is this Court's role, in the exercise of the judicial power as granted by the Constitution, is to interpret the law that the General Assembly enacts, and the primary goal in construing a statute is to ascertain and give effect to the intent of the legislature. Being mindful of "legislative intent," it is likewise important to recognize that it is the General Assembly who is vested with the power to define, classify, and prescribe punishment for offenses in the State of Ohio.

Despite the vagueness of Appellant's offenses occurring in 1992, the courts ignored the codification of R.C. §1.58(B) when sentencing Appellant in 2002.

Ignoring the plain language of the legislature, the outcome of this case is directly affected as the penalty and punishment for the offenses were abrogated by Senate Bill 2 enacted in 1996, and the genesis of accepting the plea as offered.

The classification itself contradicts the sentence as imposed as Appellant was sentenced under "old law" to serve two terms of five to twenty-five years of imprisonment, yet it was 'clear and convincing' that Appellant wasn't the worst form of an offender pursuant to Megan's Law, and classified as a sexually oriented offender.

The courts had an obligation to ignore procedural irregularities, recognize that the sentence as imposed was void and order re-sentencing consistent with the statutory language in 2002.

STATEMENT OF THE CASE AND THE FACTS

Subsequent to counsel's advice, Jeffrey N. Saag, hereinafter Appellant, pled to two counts of Rape from conduct occurring sometime in 1992.

Despite counsel's assurances of being sentenced pursuant to Senate Bill 2, Appellant was sentenced to the prior laws in effect in 1992.

On July 10, 2014, being guided by legislative intent and this Court's holdings, Appellant filed a Motion to Correct the Sentence as imposed.

On July 31, 2014, the lower court overruled Appellant's motion absent any meritorious conclusions.

After a timely notice of appeal, Appellant was denied the transcripts in his "first" appeal of right.

On May 4, 2015, the Twelfth Appellate District affirmed the lower court and invoked R.C. §2953.21 and State v. Rush, 83 Ohio St.3d, 58 (1998) as the basis for their decison.

Appellant avers that his argument is not "vaguely titled" and clearly supported by established law, the Ohio General Assembly, and this Court's holdings.

PROPOSITION OF LAW I

Whether the courts committed prejudicial error in imposing a void sentence

Contrary to the State's antiquated citings, and ignored by the Twelfth Appellate District in their reliance of State v. Reynolds, 79 Ohio St.3d 158, 1997-Ohio-304, 679 N.E.2d 1131, setting forth the "exclusive remedy" as set forth in R.C. §2953.21, the first part of the test in Reynolds is it must be subsequent to a direct appeal of right. As previously elucidated to the courts, and as the record concurs, Appellant, upon the advice of counsel, agreed to the plea pursuant to the provisions of Senate Bill 2, and forewarned he would not be entitled to any appeal. Moreover, long after the analysis of Reynolds, this Court held in State v. Jordan, 104 Ohio St.3d 21, 2004-Ohio-6085, and clearly underpins Reynolds, is the fundamental understanding that no court has the authority to substitute a different sentence for that which is required by law.

As a general rule, sentencing errors are not jurisdictional and do not render a judgment void. State v. Payne, 114 Ohio St.3d 502, 2007-Ohio-4642. The procedural posture clearly presented included exceptions to the general rule that when a sentence is "contrary to law" and have been imposed without subject matter jurisdiction nor comports with the legislature that sentence is void. This Court has long recognized that a void judgment is not controlled by any statute as it has no legal force or effect, and the validity of which may be asserted by any party whose rights are effected at any time and any place, whether directly or collaterally. See, Black's Law Dictionary (8th Ed. 2004) @ 861.

The central question, notwithstanding the ineffectivesness of counsel, is the legislative intent of Senate Bill 2, enacted in 1996 and the failure of the court to apply the legislative mandates at sentencing in 2002. By the plain terms of the General Assembly and concomitant with its plenary power, the amendments of Senate Bill 2 via R.C. §1.58(B) retroactively apply [i]f the penalty, forfeiture, or punishment for <u>any</u> offense is reduced by amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

PROPOSITION OF LAW II

Whether the courts committed prejudicial error in ignoring the protections of double jeopardy

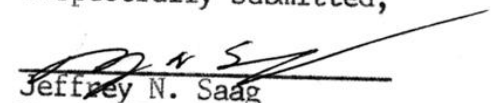
The Ohio General Assembly in codifying double jeopardy protections has expressed its "intent" as to when multiple punishments can be imposed. This legislative language was in force and in effect prior to sentencing and more importantly, at the plea hearing.

This Court has long recognized that strict compliance of Criminal Rule 11 is a mandatory duty of the court and <u>any</u> waiver at the plea hearing must be a knowing and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. <u>State v. Adams</u>, 43 Ohio St.3d 67, 69, 538 N.E.2d 1025 (1989). The alleged facts and discrepancy of dates do not establish the criteria necessary for separate convictions and punishments. The guilty plea does not include a waiver of double jeopardy nor a stipulation that the offenses are not allied offenses of similar import nor resolves the merger question. Thus, the guilty plea alone does not constitute a valid waiver of a constitutional right.

-CONCLUSION-

Allowance of any court outside the confines of the legislative mandates is contrary to law and requires this Court to accept jurisdiction.

Respectfully submitted,



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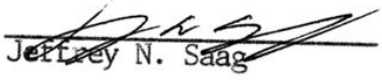
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to D. Vincent Faris, 76 Riverside Drive, Batavia, Ohio 45103, on this 13 day of May, 2015.



Jeffrey N. Saag

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	CASE NO:
Plaintiff/Appellee	:	On Appeal from the Clermont County Court of Appeals 12th Appellate District
-v-	:	
JEFFREY N. SAAG	:	
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APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JEFFREY N. SAAG

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

COURT OF APPEALS
FILED
MAY 04 2015
BARBARA A. WIEDENBEIN
CLERK
CLERMONT COUNTY, OH

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-08-057
- vs -	:	JUDGMENT ENTRY (Accelerated Calendar)
JEFFREY N. SAAG,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2001 CR 00029

{¶ 1} This cause is an accelerated appeal wherein appellant, Jeffrey N. Saag, appeals from an entry in the Clermont County Court of Common Pleas denying his motion to correct sentence.[1] On appeal, Saag argues that his sentence is void because the trial court applied the wrong sentencing guidelines in his case and that his convictions for two counts of rape should have been merged.

{¶ 2} Although we find Saag meets the four requirements to construe his vaguely titled motion to correct his sentence as a petition for postconviction relief, we further find his motion is untimely and an impermissible successive petition. *State v. Wilkins*, 12th Dist. Clinton No. CA2013-05-012, 2013-Ohio-5372, ¶ 9-10; R.C. 2953.21(A); R.C. 2953.23. Additionally, Saag does not satisfy the exception to the prohibition against untimely and successive postconviction relief petitions. Saag failed

1. Pursuant to Loc.R. 6(A), we have sua sponte assigned this appeal to the accelerated calendar.

to demonstrate that he was prevented from discovery of the facts upon which he had to rely to present his claim for relief or otherwise argue that his petition is based upon a new federal or state right that has been recognized by the United States Supreme Court. *State v. Mootispaw*, 12th Dist. Fayette No. CA2014-04-006, 2014-Ohio-5316; R.C. 2953.23(A).

{¶ 3} Even without construing his motion to correct sentence as a postconviction relief petition, Saag's arguments fail. Because crimes were committed by Saag in 1992 and the Ohio Supreme Court has specifically stated that the sentencing provisions of Am.Sub.S.B. No. 2 only apply to those crimes committed on or after the effective date of July 1, 1996, Saag is not entitled to the benefit of such sentencing provisions. *State v. Rush*, 83 Ohio St.3d 53, 58 (1998). Additionally, Saag's argument regarding merger of his convictions should have been raised on direct appeal and is now barred by res judicata. *Wilkins* at ¶ 16. We find that the trial court did not err in denying his motion to correct sentence. As such, Saag's two assignments of error are overruled. Judgment affirmed.

{¶ 4} Pursuant to App.R. 11.1(E), this entry shall not be relied upon as authority and will not be published in any form. A certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

{¶ 5} Costs to be taxed in compliance with App.R. 24.

Robin N. Piper, Presiding Judge

Robert A. Hendrickson, Judge

Mike Powell, Judge