

**IN THE SUPREME COURT OF OHIO
CASE NO. 2015-0994**

STATE OF OHIO,	}
	}
Appellant	}
v.	}On Appeal from the Cuyahoga County
	}Court of Appeals, 8th Judicial District
	}Case No. 101209
QUISI BRYAN,	}
	}
Appellee	}

**APPELLEE’S MEMORANDUM IN OPPOSITION
TO STATE’S MEMORANDUM IN SUPPORT OF JURISDICTION**

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**THE STATE’S APPEAL DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION OR AN ISSUE OF GREAT PUBLIC
INTEREST**

This appeal presents the issue of what law should apply to Mr. Bryan, who was sentenced to an indefinite term of 8 to 25 years on February 28, 2014 for a rape which occurred in 1994. The State claims that the Appellate Court was wrong in reversing the trial court’s sentence. The State argues that the trial court was correct in applying the sentencing law in effect at the time of the offense, as opposed to the law in effect when Mr. Bryan received his sentence, which would have provided a maximum sentence of 11 years. However, this issue has already been addressed by this Court in *State v. Taylor*, 138 Ohio St.3d 194 (2014) and does not need to be revisited in the instant appeal. Additionally, the language of R.C. 1.58(B) and the sentencing reforms in Am.Sub.H.B. 86 (“H.B. 86”) clearly provide that Mr. Bryan is entitled to be sentenced based on the more lenient sentencing law that was in effect on February 28, 2014.

The State claims that the Eighth District’s decision in this case “changes the landscape of what laws a defendant may be sentenced under when the offense was committed before July 1, 1996.” State’s Memorandum at 1. However, the Appellate Court’s ruling simply requires courts to apply R.C. 1.58(B) to determine whether sentencing laws in effect at the time of the offense or those in effect at the time of sentencing should apply to a convicted defendant. This requires courts to conduct a relatively simple analysis and is consistent with the legislative intent behind H.B. 86. Therefore, the State’s appeal does not involve a substantial constitutional question or an issue of great public interest, and should not be heard by this Court.

STATEMENT OF THE CASE AND FACTS

Defendant, Quisi Bryan, already having been sentenced to death for a crime committed in 2001, was indicted in 2013 for a rape which was alleged to have occurred in 1994. After a jury trial, he was found guilty of rape and kidnapping. The trial court sentenced him to concurrent indeterminate terms of imprisonment of ten to twenty-five years. On appeal, the 8th district reversed the sentence, finding that Mr. Bryan should have been sentenced to a determinate term of imprisonment of between three and eleven years. *State v. Bryan*, 8th Dist. No. 10-1209, 2015-Ohio-1635.

LAW AND ARGUMENT

STATE’S PROPOSITION OF LAW: A DEFENDANT WHO COMMITS AN OFFENSE PRIOR TO JULY 1, 1996 IS SUBJECT TO THE LAW IN EFFECT AT THE TIME OF THE OFFENSE AND NOT SUBJECT TO SENTENCING PROVISIONS OF HB 86 EFFECTIVE SEPTEMBER 30, 2011.

The State argues that “[a] defendant who commits an offense prior to July 1, 1996 is subject to the law in effect at the time of the offense.” This contradicts both Ohio law and a prior ruling from this Court. First, R.C. 1.58(B) states that “[i]f the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.” Therefore, based on a plain reading of this statute, the law in force at the time Mr. Bryan was sentenced should apply because it provided for a reduced sentence.

This Court addressed a substantially similar issue in *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, 5 N.E.3d 612. In *Taylor*, the defendant shoplifted \$550 worth of cologne on July 23, 2011. *Id.* at 195. At that time, the offense was classified as a fifth-degree felony. *Id.* at 196. Prior to his sentencing, however, H.B. 86 was enacted

and made the theft of property valued at less than \$1,000 a first-degree misdemeanor.

Id. After H.B. 86's enactment, the defendant was convicted and sentenced for a misdemeanor, based on the amendments of H.B. 86. *Id.* In determining whether the amendments of H.B. 86 applied to the defendant, this Court stated as follows:

[T]he legislature intended that the amendments apply to **all offenders, regardless of when their offenses were committed**, because it conditioned application of the reduced penalty—which arises by virtue of the reduced classification—on whether or not the offenders had been previously sentenced.

Id. at 197-98 (Emphasis Added).

The issue of whether the amended penalties of H.B. 86 applied to the defendant in *Taylor* depended on when the sentence was imposed, not when the offense occurred. *Id.* at 198. Therefore, this Court held that pursuant to R.C. 1.58(B), the defendant should be sentenced in accordance with the statutes amended by H.B. 86. *Id.*

In this case, similar to the situation in *Taylor*, the alleged offense occurred prior to the enactment of H.B. 86, but the defendant was sentenced after H.B. 86's enactment. Therefore, in accordance with R.C. 1.58(B), Mr. Bryan is entitled to the more lenient sentence based on the law in effect at the time the sentence was issued.

The State, however, attempts to distinguish this case from the situation described in *Taylor* by relying on Section 5 of Am.Sub. S.B. 2 ("S.B. 2"), which went into effect on July 1, 1996. The uncodified Section 5 provides:

The provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposed a term of imprisonment for an offense that was committed prior to that date.

According to the State, even though H.B. 86 was enacted after S.B. 2, it did not

expressly supersede S.B. 2 and therefore, S.B. 2 is still valid law. Thus, the State argues that an offender who committed an offense prior to July 1, 1996 should be sentenced based on the law that was in force at the time of the offense and is not entitled to the benefit of R.C. 1.58(B). However, this argument would lead to an illogical sentencing scheme and is in direct conflict with the legislative intent of H.B. 86.

“[L]egislative intent determines whether a defendant is entitled to the benefit of legislation that reduced the penalties for a crime after the crime has been committed but prior to sentencing.” *State v. Limoli*, 140 Ohio St.3d 188, 2014-Ohio-3072, 192, citing *Dorsey v. United States*, 132 U.S. 2321 (2012). “[W]here there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.” *State v. Young*, 62 Ohio St.2d 370, 374, 406 N.E.2d 499 (1980), citing *United States v. Bass*, 404 U.S. 336, 348 (1971). “[S]ections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” R.C. 2901.04(A).

In regard to H.B. 86, this Court has noted that the General Assembly intended “to reduce the state’s prison population and to save the associated costs of incarceration by diverting certain offenders from prison and by shortening the terms of other offenders sentenced to prison.” *Taylor*, 138 Ohio St.3d at 198, citing Ohio Legislative Service Commission, Fiscal Note & Local Impact Statement to Am.Sub.H.B. 86, at 3. In accordance with *State v. Young* and R.C. 2901.04(A), any ambiguity in S.B. 2 or H.B. 86 should be resolved in favor of Mr. Bryan. Had the General Assembly not intended H.B. 86 to apply to pre-1996 offenses, it would have explicitly stated that exception in the law’s text. Therefore, because the State’s argument contradicts Ohio law, this Court’s

ruling in *Taylor*, and the legislative intent behind H.B. 86, this Court should deny the State's request for an appeal.

CONCLUSION

For the reasons discussed above, the State's appeal does not involve a substantial constitutional question or issue of great public interest. Therefore, the Defendant/Cross-Appellant requests that this Court deny the State's request for an appeal. However, the Defendant/Cross-Appellant does present an issue that involves a substantial constitutional question and issue of great public interest because he was deprived of his right to a fair trial as a result of a twenty-year preindictment delay. Therefore, the Defendant/Cross-Appellant requests that this Court accept his appeal to address his deprivation of the right to due process of law.

Respectfully submitted,

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SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for Appellant, Daniel T. Van, The Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113 on July 15, 2015.

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