

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :  
 Plaintiff/Appellant, : CASE No. 15-1259  
 -v- : 10TH DIST. CASE NO. 14 AP 517  
 SOLEIMAN MOBARAK :  
 Defendant/Appellee. :

SOLEIMAN MOBARAK'S MEMORANDUM CONTRA MOTION TO STAY

Soleiman Mobarak opposes the State's *Motion to Stay* execution of the Tenth District Court of Appeals' judgment, which reversed his conviction after finding that the acts with which he was charged were not criminal at the time of their alleged commission prior to December 20, 2012. In fact, three different panels of respected Tenth District jurists (consisting of eight different judges) have ruled consistently and unanimously on this issue of statutory interpretation.

This Court should also be mindful that Mr. Mobarak has already spent just over three years in prison on this issue. The effect of a stay of execution is to keep Mr. Mobarak in prison for an indefinite time during the pending appeal to this Court, despite his conviction being overturned and the repeated rulings of the Tenth District. This is certainly an inequitable result. The defendants in the other related cases (Thomas Smith and Ghassan Mohammad) are not imprisoned.

The State's characterization of Mr. Mobarak as a dangerous flight risk is unfounded. The State admits that it is holding Mr. Mobarak's passport, eliminating the possibility of international travel. Although Mr. Mobarak's initial bond was

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later revoked in this case (the Defendant is not aware of the trial court's reasoning for same and doesn't know how the State's counsel is aware of same as stated in its Memorandum in Support), the State cannot deny that he has always voluntarily turned himself in when asked to do so. Mr. Mobarak has strong family ties to the Columbus area, including his mother, father, children and several brothers who live there. His mother is currently in need of physical care and attention. The unrelated charges previously brought against him have either been dropped or settled with pleas to one misdemeanor in each case. The State theorizes that Mr. Mobarak is a flight risk. The basis for that theory would seem to be greatly diminished in view of the overturning of his conviction

This Court is by now well familiar with those arguments contained in the jurisdictional briefings on *State v. Mohammad*<sup>1</sup> and *State v. Smith*<sup>2</sup>, but those arguments are not material to its decision on whether a stay of execution is warranted here. However, in brief rebuttal to the State's arguments, Mr. Mobarak submits that the matter is far from one of great public interest. The law has been changed since Mr. Mobarak and the two similarly situated defendants were first charged. The legislature has rectified the fact that the acts Mr. Mobarak has been convicted of were not proscribed by the criminal code. The State has not offered, nor was Mr. Mobarak able to locate, any other cases dealing with this specific issue within this very narrow time frame (approximately a seven month span in 2012). While the issues of law certainly have significance to Messrs. Smith, Mohammad,

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<sup>1</sup> Case No. 15-774 in this Court

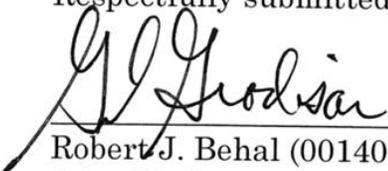
<sup>2</sup> Case No. 15-406 in this Court

and Mobarak, it should go without saying that a question of law that affects only three of Ohio's citizens and has been changed to avoid further such situations is not a question of "great general or public interest."

Mr. Mobarak has been convicted *ex post facto*—in violation of his constitutional rights—and has been wrongly imprisoned (for just over three years at this time). Defendant prays that this Court overrule the State's *Motion for Stay* and issue an order for his immediate release.

In the alternative, if the Court believes a bond to be appropriate, Mr. Mobarak respectfully requests that this Court issue an immediate order for bond (rather than referring the matter back to the trial court as requested by the State). The appellate rules contemplate a bond decision from the ruling court, not the lower court. *See App.R. 27*. To the extent that this Court determines bond to be necessary, Mr. Mobarak requests bond on terms identical to the initial trial court bond in this case: \$100,000 appearance, \$25,000 cash surety, and \$5,000 recognizance.

Respectfully submitted,

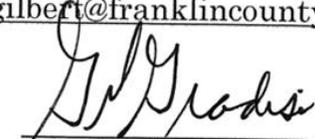


Robert J. Behal (0014085)  
John M. Gonzales (0038664)  
Gilbert J. Gradisar (0021782)  
THE BEHAL LAW GROUP LLC  
501 South High Street  
Columbus, Ohio 43215  
T: 614/ 643-5050  
F: 614/ 340-3892

Email: [rbehal@behallaw.com](mailto:rbehal@behallaw.com)  
[jgonzales@behallaw.com](mailto:jgonzales@behallaw.com)  
[ggradisar@behallaw.com](mailto:ggradisar@behallaw.com)  
*Attorneys for Defendant/Appellee*

CERTIFICATE OF SERVICE

On the 4th day of August, 2015, I served a copy of the foregoing on Plaintiff/Appellant's counsel via e-mail at [sgilbert@franklincountyohio.gov](mailto:sgilbert@franklincountyohio.gov).



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Gilbert J. Gradisar (0021782)