

IN THE SUPREME COURT OF OHIO

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| STATE OF OHIO, | : |
| | : |
| Plaintiff-Appellant, | : Case No. 2016-0215 |
| | : |
| v. | : On discretionary appeal from the |
| | : Muskingum County Court of Appeals, |
| BRADLEY E. GRIMES, | : Fifth Appellate District, |
| | : Case No. CT2015-0026 |
| Defendant-Appellee. | : |

**MEMORANDUM IN RESPONSE OF
DEFENDANT-APPELLEE BRADLEY E. GRIMES**

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WHY THIS COURT SHOULD DECLINE JURISDICTION

This Court has declined nearly identical requests for jurisdiction at least five times in the past 26 months. *See 11/10/2015 Case Announcements*, 143 Ohio St.3d 1543, 2015-Ohio-4633, 40 N.E.3d 1180, 8 (*State v. Love*, 2015-0904); *5/20/2015 Case Announcements*, 142 Ohio St.3d 1465, 2015-Ohio-1896, 30 N.E.3d 974, 9 (*State v. Burroughs*, Case No. 2014-2106); *2/18/2015 Case Announcements*, 141 Ohio St.3d 1473, 2015-Ohio-554, 25 N.E.3d 1080, 7 (*State v. Pyne*, Case No. 2014-1471); *10/8/2014 Case Announcements*, 140 Ohio St.3d 1453, 2014-Ohio-4414, 17 N.E.3d 599, 7 (*State v. Elliott*, Case No. 2014-1093); *12/24/2013 Case Announcements*, 137 Ohio St.3d 1443, 2013-Ohio-5678, 999 N.E.2d 697, 11 (*State v. Viccaro*, Case No. 2013-1511). The Fifth District's decision below was correct under this Court's precedent. This Court should decline jurisdiction.

STATEMENT OF THE CASE AND FACTS

In Muskingum County Court of Common Pleas Case No. CR2011-0150, the trial court sentenced Bradley E. Grimes to an 18-month aggregate prison term for third-degree-felony robbery and fifth-degree-felony vandalism. The sentencing entry contained the following language regarding postrelease control:

The Court further notified the Defendant that “**Post Release Control**” is **mandatory** in this case for **three (03) years** as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code §2967.28. The Defendant is ordered to serve as part of this sentence any term for violation of that post release control.

Mr. Grimes completed his prison sentence and was released on December 30, 2012. He was placed on postrelease control for three years at that time.

In Montgomery County Court of Common Pleas Case No. CR2013-0198, the trial court sentenced Mr. Grimes to one year of imprisonment for unlawful sexual conduct with a minor.

The court also imposed a judicial-sanction sentence because Mr. Grimes was on postrelease control when the new felony was committed. That sentence equaled the time remaining on Mr. Grimes's postrelease-control term, and was ordered to be served consecutively to the one-year sentence. The judicial sanction was approximately 719 days.

Mr. Grimes completed his one-year prison term in September 2014 and began serving only his judicial-sanction sentence. Because the postrelease control that supported that sentence was void under binding precedent of this Court, Mr. Grimes filed with the trial court a motion to vacate that sentence. The State filed a response that same day. Mr. Grimes filed a reply to the State's memorandum contra. Less than two hours after the reply was filed, the trial court journalized a one-sentence entry denying Mr. Grimes's motion. The trial court gave no explanation of why it denied Mr. Grimes's motion.

On appeal, citing this Court's authority and its own, a unanimous panel of the Fifth District Court of Appeals reversed the trial court's decision. *See generally State v. Grimes*, 5th Dist. Muskingum No. CT2015-0026, 2015-Ohio-3497. Mr. Grimes was released from prison. The court of appeals granted the State's request for consideration en banc. But because the full court was unable to concur in a decision, the decision of the original panel stood.

RESPONSE TO THE STATE'S PROPOSITION OF LAW

Nothing has changed in the time since this Court declined the State's requests for jurisdiction on nearly identical issues. *See 11/10/2015 Case Announcements*, 143 Ohio St.3d 1543, 2015-Ohio-4633, 40 N.E.3d 1180, 8 (*State v. Love*, 2015-0904); *5/20/2015 Case Announcements*, 142 Ohio St.3d 1465, 2015-Ohio-1896, 30 N.E.3d 974, 9 (*State v. Burroughs*, Case No. 2014-2106); *2/18/2015 Case Announcements*, 141 Ohio St.3d 1473, 2015-Ohio-554, 25 N.E.3d 1080, 7 (*State v. Pyne*, Case No. 2014-1471); *10/8/2014 Case Announcements*, 140 Ohio St.3d 1453, 2014-Ohio-4414, 17 N.E.3d 599, 7 (*State v. Elliott*, Case No. 2014-1093); *12/24/2013 Case Announcements*, 137 Ohio St.3d 1443, 2013-Ohio-5678, 999 N.E.2d 697, 11 (*State v. Viccaro*, Case No. 2013-1511). At bottom, this Court has acknowledged that Ohio law requires complete, accurate postrelease-control language in sentencing entries. *See, e.g., State v. Billiter*, 134 Ohio St.3d 561, 2012-Ohio-5144, 980 N.E.2d 960, ¶ 2, 11-12; *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 77-79; *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 69 *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, paragraph one of the syllabus. Additionally, this Court requires postrelease-control imperfections in sentencing entries to be corrected before an inmate is released from prison. *See, e.g., State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718, ¶ 16-17; *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301, ¶ 29-32; *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 18-19. Simply, the Fifth District's decision in this case was correct and in line with this Court's precedent. This Court should decline jurisdiction.

CONCLUSION

The State has not offered this Court any good reason to review Mr. Grimes’s case. This Court should deny jurisdiction.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN RESPONSE OF DEFENDANT-APPELLEE BRADLEY E. GRIMES** was forwarded by regular U.S. Mail to D. Michael Haddox, Muskingum County Prosecutor, 27 North Fifth Street, P.O. Box 189, Zanesville, Ohio 43702, on this 12th day of February, 2016.

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