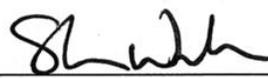


Motion for Reconsideration
of Appellant, Anthony Belton

Appellant, Anthony Belton, through undersigned counsel, moves this Court, pursuant to S.Ct. Prac. R. 18.2(B)(4), for reconsideration of its April 20, 2016 decision. The reasons for this motion are more fully set forth in the following memorandum in support.

Respectfully submitted,

 *for S.C. by phone authorization*

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MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION

INTRODUCTION

This Court, in a decision dated April 20, 2016, affirmed the Lucas County Common Pleas Court guilty verdict and death sentence. Mr. Belton seeks reconsideration of the issues discussed here and with it a remand to the trial court or for further review by this Court.

THE RIGHT TO A TRIAL BY JURY

In his brief Mr. Belton argued that he has a right to a jury trial to determine the existence of any mitigating factors and to determine whether the aggravating circumstance or circumstances to which he would plead guilty outweigh those factors by proof beyond a reasonable doubt. The right to a jury deciding cases is a valuable tool and one that must be guarded at all times.

The Sixth Amendment right to a jury trial, made applicable to the states through the Fourteenth Amendment, and as understood through Apprendi v. New Jersey (2000), 530 U.S. 466, 120 S.Ct. 2348, and its

progeny, including particularly Ring v. Arizona (2002), 536 U.S. 584, 122 S.Ct. 2428, mandates that a capital defendant has a right to a jury determination of every fact "necessary to put him to death." Ring, at 609. R.C. 2929.03(D) provides that a death sentence may only be imposed upon a finding by proof beyond a reasonable doubt that the aggravating circumstance or circumstances of which the defendant has been found guilty outweigh any mitigating factors proved by a preponderance of the evidence.

A difficulty is that although the opinion mentions the United States Supreme Court's decision in Hurst v. Florida, 577 U.S. —, 136 S.Ct. 616 (2016), the discussion concerns itself with authority predating Hurst. A remand to the trial court or additional briefing on this issue by this Court may be appropriate. Such a course of action would protect Mr. Belton's right to due process and a fair and reliable sentencing hearing, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding portions of the Ohio Constitution.

COST OF DEATH PENALTY AS A MITIGATING FACTOR

This Court denied Mr. Belton's claim that the jury should have been made aware of the costs of the death penalty as a mitigating factor. A review of the relevant statutes compels the conclusion that the jury should have access to that information and accord it whatever weight it deems appropriate.

R.C. 2929.11, "Purposes of felony sentencing," states:

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both (emphasis added).

Because a jury ordinarily does not determine sentencing issues, what the sentencing court must consider is normally not relevant to its deliberations. Death, as we know, is different. And it is these differences that mandate a capital jury – acting as a sentencing court -- to consider cost as a mitigating factor.

On reconsideration it is urged that this Court find that the cost of a death sentence is a mitigating factor that a sentencing jury may consider in the weighing process.

FORCING DEFENSE TO WAIVE A JURY
ELECT TO HAVE A TRIAL TO A THREE JUDGE PANEL

Mr. Belton, in proposition of law number five asked this court to find that the trial court erred in denying various motions filed pre trial. He argued that the denial of those motions undermined his right to a trial by jury as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the applicable portions of the Ohio Constitution.

This Court affirmed the trial court's denial of those defense motions, except one, to prohibit the prosecution from referring to the nature and circumstances of offense until offered in mitigation; This Court found that the trial court erred in denying the requested instruction, but that error did not render as involuntary his waiver of a jury trial. ¶¶ 82-93.

This Court found no error by the trial court denying an instruction that the defense has no burden of proof at the second phase of the trial. This is plainly wrong and contrary to the case law of this Court.

The trial court's statement at various times during voir dire that "if [the jury] find[s] the mitigating factors outweigh the aggravating circumstances" then it should vote on various life sentences is an incorrect formulation of the test, since the correct test is whether the aggravating circumstances outweigh mitigating factors, a matter on which the prosecution has the burden of proof beyond a reasonable doubt. See R.C. 2929.03(D)(1) and (2). The reverse formulation referring to mitigating factors outweighing aggravating circumstances is wrong, since it confuses the burden of proof. Although referring to mitigation outweighing aggravating circumstances is a common, semantic mistake, it could under other circumstances constitute fatal error. For example, if the aggravating circumstances and mitigating factors are in equipoise, the jury must recommend a life sentence.

This Court in State v. Stallings (2000), 89 Ohio St.3d 280, 284 noted: "Counsel and all trial judges should make strong efforts to avoid this mistake."

Correct rulings on these and other points would have permitted the defense to make a decision about a jury or a panel hearing the case based on the law and the tactical factors present. This matter should be remanded for a new trial, in protection of Mr. Belton's right to due process and a fair and reliable trial, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding portions of the Ohio Constitution.

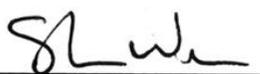
CONCLUSION

For the reasons set forth above, as well as those offered in the Merit Brief, Reply Brief, and at oral argument, it is requested this Court issue an order granting any one or each of the reasons offered in support and remanding the matter to the trial court for a new trial or sentencing hearing.

Denial of Mr. Belton's motion for reconsideration would be contrary to and an unreasonable application of clearly established federal law as defined by the United States Supreme Court and would result in a decision that is based on an unreasonable determination of the facts in light of the evidence presented in these state court proceedings. In addition, Mr.

Belton states that this motion for reconsideration and the relief sought is necessary to protect his due process rights and right to a fair and reliable trial as guaranteed by the Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

Respectfully submitted,

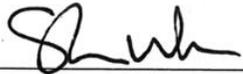

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for stay of execution was sent by regular U.S. Mail, postage prepaid, Evy Jerrett, Assistant Lucas County Prosecuting Attorney Julia Bates, Lucas County Prosecuting Attorney, Lucas County Courthouse, 700 Adams Street, Toledo, Ohio 43624, counsel of record for appellee, State of Ohio, this 2nd day of May 2016.

 for S.C. by phone authorization

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