

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	*	Case No: 2012-0902
Plaintiff-Appellee,	*	On appeal from the Lucas County Court of Common Pleas
-vs-	*	
ANTHONY BELTON,	*	DEATH PENALTY CASE
Defendant-Appellant.	*	Common Pleas Case No.: 2008-2934

OPPOSITION TO APPELLANT'S MOTION FOR RECONSIDERATION

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OPPOSITION TO MOTION FOR RECONSIDERATION

Appellant seeks reconsideration of the decision affirming his conviction and sentence. He asks this Court to (1) remand the case to the trial court for application of *Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 616 (2016); (2) hold that the economic cost of a death sentence should be considered in mitigation; and (3) hold that the trial court should instruct a jury that the defense has no burden of proof in the mitigation phase and remand the matter for a new trial.

Reconsideration is unnecessary. This Court's decision was consistent with prior precedents of this Court and the United States Supreme Court, and appellant raises no new issue or precedent requiring a different result.

ARGUMENT

- I. **A remand is unnecessary to permit a trial court to consider application of an intervening United States Supreme Court precedent to a statutory scheme.**

After Belton's appeal was fully briefed, the United States Supreme Court applied its prior precedents to find that Florida's capital punishment statutory scheme violated the Sixth Amendment. *See Hurst v. Florida*, 577 U.S. ___, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). The Florida statute at issue in *Hurst* required the court to find an aggravating circumstance before imposing the death penalty, but permitted the court to impose a death sentence over the jury's recommendation against it. As this Court held, Ohio's statutes are different in material respects from the Florida statute:

Because the determination of guilt of an aggravating circumstance renders the defendant eligible for a capital sentence, it is not possible to make a factual finding during the sentencing phase that will expose a defendant to greater punishment. Moreover, in Ohio, if a defendant is tried

by a jury, then the judge cannot impose a sentence of death unless the jury has entered a unanimous verdict for a death sentence. R.C. 2929.03(D)(2).

State v. Belton, Slip Opinion No. 2016-Ohio-1581, ¶59.

Appellant now complains that the decision in his case was based on precedents pre-dating *Hurst*, and he asks that the Court remand this case to the trial court for additional briefing on *Hurst's* application. This Court's decision relied—properly—on the exact same prior precedents cited in *Hurst*. Compare *Belton, supra*, ¶¶56-59; *Hurst, supra*, 136 S.Ct. at 621-624 (both citing, among other authorities, *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)).

No facts or legal issues need to be clarified in the lower court in order to validate the analysis of Supreme Court precedents already performed by this Court. The applicable statutes are known and do not vary depending on any circumstance that could be determined in the trial court. Likewise, appellant identifies neither any flaw in this Court's reasoning nor any legal argument which requires a fresh look at the issue. Reconsideration is therefore unnecessary.

II. This Court has considered and rejected the argument that cost is a mitigating factor in a capital sentencing.

During oral arguments, appellant argued that cost should be considered as a mitigating factor when weighing whether to impose a death sentence. However, this Court had already rejected that argument. *Belton, supra*, 2016-Ohio-1581, ¶194, citing *State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031, ¶114. Appellant identifies no change in law or facts requiring reconsideration of the issue since the

decision in this case or, for that matter, the decision in *Davis*. The request for reconsideration should be denied as seeking reargument of the case. See S.Ct.Prac.R. 18.02(B).

III. This Court properly held that defendant has a burden to prove the existence of mitigating factors.

In Motion 27, Belton requested "an order relieving the Defendant of the burden of proving the existence of mitigating factors at the penalty phase." (Motion, filed Feb. 19, 2009.) This Court held that the denial of the order was proper, reasoning that "the defendant bears the burden to prove the existence of any mitigating factors beyond a reasonable doubt." *Belton, supra*, 2016-Ohio-1581, ¶87.

Belton now contends that the trial court erred in voir dire by misstating the applicable test for recommending a death sentence, because "mitigation outweighing aggravating circumstances is a common, semantic mistake." (Motion for Reconsideration at p. 8.) But the motion originally before the trial court did not address the question of weighing mitigation against aggravating circumstances but rather raised the issue of whether defendant had any burden whatsoever to prove a mitigating factor. This Court properly upheld denial of the order based on previous precedents. *Id.*, citing *State v. Stumpf*, 32 Ohio St.3d 95, 512 N.E.2d 598 (1987). See also R.C. 2929.03(D)(1) and *State v. Jenkins*, 15 Ohio St.3d 164, 171-172, 473 N.E.2d 264 (1984).

Belton's criticism of the trial court's statements in voir dire fail to address the issue raised in his pre-trial motion. This Court properly evaluated and decided the issue, and reconsideration is therefore unnecessary.

CONCLUSION

Appellant has failed to demonstrate any issue which was not decided or which was decided improperly. Appellee respectfully requests that the Court deny the motion for reconsideration.

Respectfully submitted,

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LUCAS COUNTY, OHIO

By: 
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CERTIFICATION

I certify that a copy of the foregoing was sent via e-mail and by ordinary U.S. Mail this 12th day of May, 2016, to Spiros P. Cocoves, scocoves@gmail.com and 610 Adams Street, 2nd Floor, Toledo, Ohio 43604-1423 and to Jeffrey P. Nunnari, 3349 Executive Parkway, Suite D, Toledo, OH 43606.


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