In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2024-0164
	:	
Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
DAVID THOMPSON,	:	
	:	Court of Appeals
Appellant.	:	Case No. 22AP-321

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLEE STATE OF OHIO

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INTRODUCTION

This case presents a simple statutory interpretation question that no court of appeals has gotten wrong. Is each community-control sanction governed by the statutory provision that authorizes it, or does one of those provisions, which speaks only to community control as an initial sentence and expressly states that it does not govern other community-control provisions, nonetheless govern other community-control provisions? The answer is the former—each community-control provision means what it says.

The structure of Ohio's statutory code makes it possible to ask this question, but reviewing that structure also answers it. Ohio's community-control provisions all appear in R.C. 2929. Two of those provisions are relevant here. The first is the judicial-release provision, R.C. 2929.20. It governs community control granted as a condition of judicial release from a prison sentence. It allows courts to grant community control to some felony offenders who are serving a prison sentence rather than require them to serve the full sentence. It contains a provision that requires courts to place a released offender "under an appropriate community control sanction" that "shall be no longer than five years." R.C. 2929.20(K). A separate provision, the initial-sentencing provision, R.C. 2929.15(A)(1), governs a different situation. It generally authorizes a court to forgo a prison sentence in the first place by sentencing the offender to community control instead. *Id.* And it specifies that "community control sanctions imposed on an offender under this division shall not exceed five years." *Id.* Because both provisions contain five-year limits,

Appellant David Thompson argues that both refer to one-and-the-same five-year aggregate limit for all types of community control sanctions. This Court should affirm the Tenth District's decision, the latest of a string of intermediate-court decisions holding that the individual statutory caps are truly independent.

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. He is interested in supporting courts throughout the State as they review applications for judicial release consistent with state law and the interests of justice. The Attorney General also sometimes serves as special counsel to prosecute criminal cases. In those cases, the Attorney General is directly involved in the application of Ohio's criminal-law statutes including the community-control provisions at issue in this case.

STATEMENT

I. Ohio enacts two community-control provisions—the judicial-release and initial-sentencing provisions—that each create their own limits.

This case turns on two self-contained community-control provisions. The first is the judicial-release provision that governs community control served as a condition of release from prison. It requires that, when a "court grants a motion for judicial release under this section, the court … shall place the offender under an appropriate community control sanction," and specifies that, "the period of community control shall be no longer than

five years." R.C. 2929.20(K). So, when a felony offender receives judicial release from a prison sentence, the court must place that offender on community control for five years or less as a condition of release. The second provision, the initial-sentencing provision, authorizes courts to forgo a prison sentence entirely and instead "directly impose a sentence that consists of one or more community control sanctions" for felonies that do not carry mandatory prison terms. R.C. 2929.15(A)(1). It prescribes that "[t]he duration of all community control sanctions imposed … *under this division* shall not exceed five years." *Id.* So courts sentencing most felony offenders have the option to choose community control sanctions that sum to five years or less instead of prison time. Neither provision says that an offender who is sentenced to community control and a prison sentence and then receives community control as a condition of judicial release from the prison sentence may only serve a grand total of five years under both types of community control.

II. Thompson commits twenty-two felonies and receives a sentence that includes initial-sentencing community control for two of the felonies.

In 2009, Thompson was convicted of twenty-two felonies after a decade of defrauding and stealing from the congregation of the church he pastored. *State v. Thompson*, Franklin C.P. No. 09CR-1170. At sentencing, the trial court prescribed five-years' concurrent community control on counts one and three pursuant to the initial-sentencing provision. *State v. Thompson*, 2023-Ohio-4805, ¶4 (10th Dist.) ("App. Op."); R.C. 2929.15(A)(1). On counts four through twenty-three, the trial court sentenced Thompson to concurrent

prison terms totaling five years. *Id.* The trial court ordered that Thompson serve his five-year community-control sentence consecutive to his five-year prison sentence and pay restitution of $733,048.86. *Id.*

III. Thompson asks for and receives judicial-release community control for the twenty other felonies.

On November 12, 2014, nearly four years into his five-year prison sentence on counts four through twenty-three, Thompson moved for judicial release under the judicial-release provision, R.C. 2929.20. *Id.* at ¶6. The trial court granted that motion and, on January 20, 2015, placed Thompson on community control for a period of five years in lieu of completing his prison term on counts four through twenty-three. *Id.*

On May 2, 2019, the trial court found that Thompson violated the terms of community control by failing to make adequate restitution payments. *Id.* at ¶¶7–8. The court did not, however, revoke Thompson's judicial release, so he remained on community control. *Id.* at ¶8.

IV. Thompson's actions disqualify him from continuing to receive judicial-release community control.

On November 8, 2019, Thompson's probation officer filed a statement informing the court that Thompson had violated his community control by failing to make adequate restitution payments, still owing $620,175. App.Op. at ¶11. The trial court revoked Thompson's judicial release, ordering him to serve the remaining days of his five-year prison sentence on counts four through twenty-three. *Id.* at ¶¶14, 16–17. The trial court

also purported to modify Thompson's sentence on counts one and three, but the trial court lacked jurisdiction to modify that sentence because the sentence was on appeal before the Tenth District. *Id.* at ¶¶14–17. The trial court stayed the sentence pending appeal. *Id.* at ¶15. On appeal, the Tenth District remanded only for the trial court to correct its ultra vires ruling on Thompson's sentence for counts one and three. *Id.* at ¶¶16–17.

The trial court's May 6, 2022 revised judgment entry still did not get things quite right. The entry reiterated the original sentence of five years in prison for counts four through twenty-three followed by five years' community control for counts one and three. *Id.* at ¶20. But it also purported to impose a second sentence for counts one and three of six years in prison, when it meant to write—as it had in its original sentencing entry—that Thompson would serve this time only if he violated the terms of his community control for those counts. *Id.* at ¶¶4, 19; *see also id.* at ¶¶24–25. So, the Tenth District remanded a second time, instructing the trial court to issue a nunc-pro-tunc entry specifying that the original sentence stands, and that Thompson would begin his five years' community control for counts one and three upon completing his prison term for counts four through twenty-three. *Id.* at ¶50.

V. Thompson argues that he does not have to serve his initial-sentencing community control because he previously served some judicial-release community control for a different sentence.

In the same Tenth District appeal, Thompson argued "that, because he served nearly all his five-year term of judicial release community control before the trial court revoked his judicial releasee, he cannot serve his five-year sentence to community control on Counts 1 and 3," because "R.C. 2929.15(A)(1) [the initial-sentencing provision] and R.C. 2920 [the judicial-release provision] should be read together to impose a single five-year limitation on both types of community control." *Id.* at ¶¶33, 37.

The court evaluated that argument by quoting the full text of both statutory provisions and observing that "the plain language of R.C. 2929.15 and 2929.20 demonstrate that each statute contains a five-year limitation 'but as it pertains to the subject matter of each of the statutory sections.'" *Id.* at ¶35 (quoting *State v. Briggs*, 2014-Ohio-705, ¶13 (8th Dist.)). The court concluded that "[t]here is no language in either statute indicating that the General Assembly intended for [the statutes] to impose a collective five-year limitation on both a sentence of community control and a term of community control imposed pursuant to judicial release." *Id.* at ¶38. Thompson's argument "would add language to the statutes by judicial construction." *Id.* And other courts had "consistently" agreed with the Tenth District's analysis. *Id.* at ¶36 (citation omitted). Judge Beatty Blunt dissented.

VI. Thompson asks this Court to hold that the two separate durational limits for each form of community control are one aggregate durational limit for all forms of community control.

Thompson appealed, offering three propositions of law. The first proposed that the Tenth District's remand instructions were too specific. Jur. Mem. at i. Thompson also used this first proposition to argue that this Court should retroactively apply its 2019 decision in *State v. Hitchcock*, 2019-Ohio-3246, to his 2010 sentence. *Id.* at 1, 9–10. *Hitchcock* determined that Ohio courts lack statutory authorization to impose a "split sentence" of imprisonment on one count followed by a consecutive term of community control on another count. 2019-Ohio-3246, ¶24 (Fischer, J., op.); *id.* at ¶30 (Donnelly, J., concurring in judgment only); *id*. at ¶31 (Stewart, J., concurring in judgment only). So had Thompson been sentenced after *Hitchcock* was decided, the trial court could not have sentenced him consecutively to the five years' community control on counts one and three (and which Thompson had yet to begin serving). But because Thompson did not challenge the trial court's authority to impose that sentence on direct appeal, res judicata bars that claim now. App.Op. at ¶10. And this Court, in declining jurisdiction over Thompson's first proposition of law, has declined to consider applying *Hitchcock* to his sentence. Thompson's second proposition of law alleged that his sentence violated multiple constitutional provisions. *Id.*

This Court accepted jurisdiction only on the third proposition, that "[t]he maximum period of community control under Ohio's community control statutory scheme is five

years, not ten." *Id.*; *04/24/2024 Case Announcements*, 2024-Ohio-1507. If Thompson's proposition is correct, this Court would need to reverse his sentence of five years' community control for counts one and three and remand with instructions to resentence him to less than two months' community control. That is because he already served approximately four years and ten months on community control as a condition of judicial release from his prison sentence on counts four through twenty-three. (That period lasted from January 2015 until November 2019, when Thompson's repeated refusals to pay adequate restitution caused the trial court to revoke judicial release). *See* above at 3–4. Either way, Thompson will first serve the remaining eleven months of his prison sentence on counts four through twenty-three because he has not been under any form of supervision since the trial court stayed his sentence pending appeal. *See* App.Op. at ¶15.

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

> *An Ohio court may place the same individual under five years of community control as a condition of judicial release from prison under R.C. 2929.20(K) and an additional five years of community control as an original sentence in lieu of a prison term under R.C. 2929.15(A)(1) because each provision's five-year limit is independent of the other.*

I. The text of the community-control provisions create independent five-year caps that apply only to sanctions imposed under their respective provisions.

The "starting point" for statutory interpretation always "is the statute's text." *Spencer v. Freight Handlers, Inc.*, 2012-Ohio-880, ¶16. When that text "is clear and unambiguous, a court must apply it as written." *State v. Pariag*, 2013-Ohio-4010, ¶10 (citation omitted).

Here, the statutory text provides a clear answer. The relevant provisions create two separate, self-contained, five-year limits on two distinct forms of community control: (1) as a condition of judicial release from an initial sentence; and (2) as an initial sentence. Time served on one form of community control does not count toward the other.

A. The judicial-release provision limits only community control served as a condition of judicial release.

The judicial-release provision regulates community control as a condition of judicial release only and does not purport to interact with Ohio's initial-sentencing provision. The judicial-release provision is not primarily concerned with community control. It does not even address that subject until division (K), which reads, as relevant:

> *If the court grants a motion for judicial release under this section*, the court … shall place the offender under an appropriate community control sanction, … and shall reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. ... Except as provided in division (N)(5)(b) of this section, *the period of community control shall be no longer than five years*. The court, in its discretion, may reduce the period of community control by the amount of time the offender spent in jail or prison for the offense and in prison.

R.C. 2929.20(K) (emphases added). By its own terms, then, the judicial-release provision limits only the form of community control that is a condition of "judicial release under this section[.]" *Id.* Textually, the community control sanction stands in as a condition of judicial release from the offender's remaining prison term, but the General Assembly placed a five-year guardrail on judicial discretion to substitute community control for remaining prison time.

Applied to Thompson, it means that the trial court could not have placed him on more than five years' community control *as a condition of judicial release* from his prison sentence on counts four through twenty-three. It is silent on the court's ability to prescribe the distinct form of community control that the court initially *sentenced* Thompson to *in lieu of a prison sentence* on counts one and three. It leaves that form of community control to the initial-sentencing provision.

The judicial-release provision contains still more evidence of its independence from the initial-sentencing provision. It permits the court granting judicial release to "reduce the period of community control" for time the offender "spent in jail or prison for the offense and in prison," but *not* for time spent on community control as an original sentence for another offense. *Id.* If a monolithic five-year limit on all forms of community control capped a judicial-release community-control sentence , this would have been a natural place for the General Assembly to say so. Instead, the legislature's exclusion of prior time served on a community control sentence from the list of things that might limit judicial-release community control reinforces that the two forms of community control have no influence on each other.

Other parts of the judicial-release provision confirm. Division (N)(5)(b), mentioned in the quotation above, specifies that community control for prisoners who are granted judicial release because of an incapacitating or terminal illness "is not subject to the five-year limitation described in division (K) of this section[.]" R.C. 2929.20(N)(5)(b). The

General Assembly's choice not to cross-reference the initial-sentencing provision's five-year limit conveys the legislature's understanding that it is a different limit that applies only within its context of initial sentencing. Put differently, if there were a single five-year aggregate limit on the duration of all forms of community control, then this medical exception would address "the five-year limitation described in division (K) of this section *and in R.C. 2929.15(A)(1)* [the initial-sentencing provision]," or, instead, the initial-sentencing provision would mention the medical exception in R.C. 2929.20(N)(5)(b). But this silence confirms the independence of the two provisions and their respective guardrails for community control.

B. The initial-sentencing provision limits only community control served as an initial sentence in lieu of a prison term.

The text of the initial-sentencing provision likewise shows its distinctness from the judicial-release provision. The initial-sentencing provision allows a court to "directly impose a sentence that consists of one or more community control sanctions" if the offender's violations are crimes for which "the court is not required to impose a prison term[.]" R.C. 2929.15(A)(1). It then stipulates that "[t]he duration of all community control sanctions imposed … *under this division* shall not exceed five years." *Id.* (emphasis added). That language conveys two essential points.

First, it proves that the five-year limit it mentions does not apply to community control served as a condition of judicial release under the judicial-release provision because that form of community control is not imposed "under this division." Second, it

demonstrates the legislature's understanding that community-control *sentences* are not subject to the judicial-release provision's five-year limit on community control *as a condition of release*. If the judicial-release five-year limit already limited community-control sentences to five years, the legislature would not have limited them to five years *again* in the sentencing statute. It would either have said that community control sentences are "subject to the five-year limitation in R.C. 2929.20(K)," thus paralleling statements elsewhere in the code, *see* R.C. 2929.20(N)(5)(b), or said nothing at all.

*

Applied to Thompson, the initial-sentencing provision's five-year limit means that the trial court could not have sentenced him to more than five years' community control for his convictions on counts one and three. It is silent on the court's ability to also condition the privilege of Thompson's judicial release from a different sentence on a preceding five-year period of community control.

The provisions' texts agree that each governs only the form of community control that each provision specifically addresses. They establish independent five-year limits on different forms of community control, meaning that an offender's time served on one form of community control does not limit the amount of time the offender may serve on the other.

II. The Ohio appellate courts agree that the two provisions are independent.

Thompson is not the first felony offender to urge a five-year aggregate cap on both forms of judicial release, but the courts of appeals have consistently rejected this argument. Two districts have considered the precise question presented here, and both reached the same conclusion as the Tenth District below. All three determined that the statutory provisions' plain text unambiguously creates unrelated durational limits on community control that each happen to be five years.

In *State v. Jenkins*, 2011-Ohio-6924 (4th Dist.), the offender was originally sentenced to five years' community control pursuant to the initial-sentencing provision, but the trial court revoked it after four years and sentenced him to three years in prison. ¶¶2–4. The court later granted judicial release from prison, subject to another five years' community control pursuant to the judicial-release provision. *Id.* at ¶4. More than a year later, the offender violated the terms of this second form of judicial release and received a three-year prison sentence. *Id.* at ¶¶5–6. He argued that he was not legally on community control at the time of the latter violation because he had served a total of more than five years' combined community control—"1,261 days … under R.C. 2929.15(A)(1) [the initial-sentencing provision] and 672 days … under R.C. 29292.20(K) [the judicial-release provision]." *Id.* at ¶8. In affirming the trial court, the Fourth District explained that "the plain language demonstrates that" the two provisions "should be read separately, not together." *Id.* at ¶16. And, read separately, "[t]he language 'under this division' clearly

limits [the initial-sentencing provision]'s five-year maximum to community control imposed under [that provision]," while the same phrase's appearance in the judicial-release provision makes "all references to community control in [that statute] relate only to community control imposed under [it]—including the five-year maximum term." *Id.*

The Eighth District reasoned similarly in *State v. Briggs*, 2014-Ohio-705 (8th Dist.). There, the offender served about four years of a community-control initial sentence before earning a six-month prison term for violating its conditions. *Id.* at ¶¶3–5. He then applied for and received judicial release from that sentence, conditioned on another five-years' community control. *Id.* at ¶6. He soon violated the conditions of this community control, but argued that the community control sanctions had become unlawful because he had, by then, served more than five-years' community control, counting both his community-control sentence and judicial-release community control. *Id.* at ¶¶7–10. The court reviewed both the statutes and found from their text that they "are independent statutes" both with "five-year limitation[s]" that "serve different purposes." *Id.* at ¶¶13–14. Thus, there was no problem with sentencing the offender to community control for five years and then prescribing another five-years' community control as a condition of judicial release. *Id.* at ¶¶15–16. The Attorney General is aware of no court that has held otherwise.

On the contrary, the courts of appeal have consistently rejected offenders' contentions that there is any interplay between the community-control provision of initial-sentencing

provision and the community-control provision of the judicial-release provision. *E.g.*, *State v. Kingseed*, 2023-Ohio-4358, ¶¶10–13 (3d Dist.) (revocation of judicial-release community control does not allow court to impose sanctions available only upon violation of an initial-sentence community-control sentence); *State v. Woody*, 2021-Ohio-3861, ¶¶14–18 (6th Dist.) (same); *State v. King*, 2020-Ohio-1512, ¶¶12–13 (4th Dist.) (limits on sanctions for violating community-control sentence do not limit sanctions for violating judicial-release community control); *State v. Arnold*, 2019-Ohio-254, ¶20 (8th Dist.) (noting that "the rules dealing with a violation of" either form of community control are different and "should not be confused") (quoting *State v. Franklin*, 2011-Ohio-4078, ¶12 (5th Dist.)); *State v. Arm*, 2014-Ohio-3771, ¶ 1 n.1 (3d Dist.) (same); *State v. Wiley*, 2002-Ohio-460, ¶11 (9th Dist.) (same); *see also State v. Barefield*, 2023-Ohio-115, ¶23 (12th Dist.) (noting that the statutes are distinct and "this distinction is important"); *State v. Abrams*, 2016-Ohio-5581, ¶14 (7th Dist.) (explaining that the two statutes "serve separate purposes"). To treat the two statutes' separate five-year limits as one would call into question all of these decisions.

Every court of appeals to consider the provisions at issue has found that their text clearly and unambiguously creates two unrelated five-year limits. When text is that clear, it must be applied "as written." *Pariag*, 2013-Ohio-4010 at ¶10 (citation omitted). Because this Court cannot expand the statutes' internal five-year limits into an aggregate limit without inserting or deleting words, this Court should affirm.

III. Thompson's counterarguments fail.

Thompson makes two moves to evade the plain text and precedent aligned against him. First, he argues that the generic definition of "community control sanction" in R.C. 2929.01(E) impliedly repeals the judicial-release provision's community-control scheme and overrides language in the initial-sentencing provision that limits that provision's application to community control imposed at initial sentencing. This argument ignores statutory text and violates several canons of statutory interpretation. Second, Thompson invites the court to twist statutory text to weaken the res-judicata effect of his failure to challenge his "split sentence" on direct appeal. This argument is a partial collateral attack on Thompson's final sentence and also attempts to smuggle his first proposition of law back into this appeal even though this court declined to review it. Neither argument should give this Court any pause in affirming.

A. The Revised Code's generic definition of "community control sanction" does not control the specific language in other provisions.

Thompson's textual argument would excise words from some Revised Code provisions, add new words to others, and contravene several canons of statutory interpretation. He argues that, because the generic definition of "community control sanction" in R.C. 2929.01(E) does not mention the judicial-release provision, R.C. 2929.20(K), that latter provision does not really authorize community control independent of the initial-sentencing provision. Apt. Br. at 8–9, 11. Instead, according to Thompson, judicial-release community control "must be governed by 2929.15," the

initial-sentencing statute that expressly applies only to initial sentencing for crimes that carry no mandatory prison term. *Id.* at 11; R.C. 2929.15(A)(1).

Thompson is wrong for several reasons. To begin, it is not true that the provisions' two five-year limits must be one limit just because the generic definition of "community control sanction" in R.C. 2929.01(E) omits mention of the judicial-release provision. *Contra* Apt. Br. at 11. First, even the generic definition that Thompson relies on recognizes that the initial-sentencing provision does not govern all community control sanctions. The definition mentions six other statutory provisions that authorize these sanctions. R.C. 2929.01(E) (listing R.C. 2929.17–.18, .26–.28). Second, the allegedly all-controlling initial-sentencing provision itself says that it does not govern all community control sanctions. It expressly limits itself to instances where courts "directly impose a sentence" of "community control sanctions" for a crime that does not carry a statutorily required "prison term, a mandatory prison term, or a term of life imprisonment." R.C. 2929.15(A)(1). That does not cover community control as a condition of judicial release. Third, Thompson is wrong to assert that the judicial-release community-control provision provides no "independent guidance as to the nature of how th[is type of] community control sanction is to operate," and therefore cannot be independent. Apt. Br. at 9. That provision *does* provide guidance by instructing courts to set "appropriate conditions" on the community control and specifying that the sanction must be carried out "under the supervision of the department of probation." R.C. 2929.20(K). The

judicial-release provision does not depend on the initial sentencing-provision, so Thompson's attempt to funnel all community control into the initial-sentencing provision's self-contained five-year limit fails.

The canons of statutory interpretation also defeat Thompson's definitional argument. The surplusage canon instructs courts to avoid interpreting statutes in a way that renders text inoperative. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 174 (2012). Here, reading the generic definition as Thompson urges to override the limiting language in the initial-sentencing provision and the enabling language in the judicial-release provision would violate the canon by rendering language in both provisions inoperative. Thompson's reading also offends the general-specific canon by using a generic definition to silence specific text in other provisions. The canon instructs that, when general and specific provisions conflict, the specific provision prevails. Scalia & Garner, *Reading Law* at 183. So, if 2929.01(E)'s general definition really does conflict with the initial-sentencing and judicial-release provisions' specific language, then the specific language, not the general definition, controls. Further, the General Assembly recently affirmed both provisions' specific text. It last amended the initial-sentencing statute and the judicial-release statute *after* it last amended the generic definition Thompson would use to silence both. *Compare* 2022 Am.Sub.S.B. No. 288 (amending R.C. 2929.01), *with* 2023 Am.Sub.H.B. No. 33 (amending R.C. 2929.20) *and* 2022 Am.Sub.H.B. No. 281 (amending R.C. 2929.15). So, the generic definition cannot

have impliedly repealed the more specific, later-in-time language. Finally, Thompson's selective reading of R.C. 2929 violates the whole-text canon, which requires courts to construe a statute by considering its structure and *all* its language. Scalia & Garner, *Reading Law* at 167.

The problems with Thompson's textual argument do not end after this canon barrage. His reading cannot explain why the judicial-release provision includes its own five-year limit for judicial-release community control if the initial-sentencing provision already imposes that limit (despite its self-limiting language). Thompson tries to excuse this second violation of the surplusage canon by arguing that the judicial-release provision's apparently independent limit exists "just to make sure" that the initial-sentencing provision's limit applies here as well. Apt. Br. at 12. If this language were really a belt-and-suspenders approach to incorporating the initial-sentencing provision's limit, then one might expect the suspenders to mention the belt. But the judicial-release provision never references the initial-sentencing provision, and the initial-sentencing provision disclaims having any application to judicial release. R.C. 2929.20(K), 2929.15(A)(1).

The only cross-reference that the judicial-release provision does make inflicts more damage on Thompson's position. The judicial-release statute's five-year limit cross-references only the exception to that limit for terminally ill and incapacitated persons in R.C. 2929.20(N)(5)(b). Thompson's reading of the statute would render this medical-exception inoperative too because it is not mentioned in either of the provisions that,

according to Thompson, form the sole basis for community-control sanctions—the generic definition of that term in R.C. 2929.01(E) and the initial-sentencing provision's five-year limit in R.C. 2929.15(A)(1). Apt. Br. at 9–11. By Thompson's logic, the omission of the medical exception from the generic definition provision and the initial-sentencing provision should mean that no such medical exception is authorized by law. *See id.* But Thompson inexplicably takes the opposite position, that the medical exception is valid despite its lack of authorization in those earlier provisions. Apt. Br. at 15. That inconsistency destroys the alleged logical and textual foundation for his position.

B. Res judicata bars Thompson from relitigating his "split sentence," so this Court should not allow it to infect the textual analysis.

Finding no textual support for his case, Thompson plays up the burden of his having to serve a five-year community-control sentence on counts one and three of his conviction after having served more than four years of community control as a condition of judicial release from the prison sentence for his twenty other felony convictions. Apt. Br. at 11. As he points out, this Court held in 2019 that such a "split sentence" of imprisonment on one count followed by a consecutive term of community control on another count was illegal in *Hitchcock*. 2019-Ohio-3246, ¶24 (Fischer, J., op.). Under Ohio law, however, the *Hitchcock* error makes his sentence voidable, not void, because a sentence is not void when, as here, the trial court had jurisdiction to adjudicate the case. *See State v. Harper*, 2020-Ohio-2913, ¶4; *State v. Henderson*, 2020-Ohio-4784, ¶1 (plurality op.); *accord State v. Thompson*, 2020-Ohio-6756, ¶¶11–13 (10th Dist.). Moreover, Thompson's conviction

became final in 2011, and he never argued that his sentence was illegal on direct appeal. *See State v. Thompson*, 2011-Ohio-5169 ¶¶4, 13 (10th Dist.). "He cannot now come before this court and relitigate [his sentence] simply because of a subsequent decision of this court." *State v. Szefcyk*, 77 Ohio St. 3d 93, 95 (1996). Res judicata now bars him from using this case to mount a collateral attack on his sentence's validity. *Id.*; *see also Harper*, 2020-Ohio-2913 at ¶41; *Henderson*, 2020-Ohio-4784 at ¶19 (plurality op.). And this Court declined jurisdiction to consider whether res judicata should apply to his sentence. *Compare* Jur.Mem. at 1, 9–10, *with 04/24/2024 Case Announcements*, 2024-Ohio-1507. This Court should not weaken res judicata on account of sympathy for Thompson's unique situation, nor offer it as a reason to disregard the statutes' plain text. That would mock the finality that res judicata exists to promote. If anything, the rarity of Thompson's situation shows that applying the community-control provisions as written will rarely result in the ten years of community control that he will serve.

CONCLUSION

For these reasons, the Court should affirm the Tenth District's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amicus Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee was served this 20th day of August, 2024, by e-mail on the following:

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