

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 3, 2024

[Cite as *09/03/2024 Case Announcements #2, 2024-Ohio-3347.*]

APPEALS NOT ACCEPTED FOR REVIEW

2024-0429. State v. Amero.

Portage App. No. 2020-P-0029, **2024-Ohio-1007.**

Donnelly, J., dissents, with an opinion.

Brunner, J., dissents, with an opinion joined by Donnelly, J.

DONNELLY, J., dissenting.

{¶ 1} I dissent from the court’s denial of jurisdiction in this case. The discretionary imposition of consecutive sentences and their extensive stacking are vexing issues for both trial and appellate judges. We have done little to help them and much to confuse them. One need look no further than *State v. Gwynne* and its various discordant opinions to see that the guidance we have provided has not been consistent or useful. See *State v. Gwynne*, 2019-Ohio-4761; *State v. Gwynne*, 2022-Ohio-4607; *State v. Gwynne*, 2023-Ohio-3851. With *State v. Glover* (appeal accepted, 2023-Ohio-2664), we have another opportunity to help the judges in this great state. As I have stated, “judges are vested with boundless and largely unrestrained power to incarcerate criminal defendants with no protective guardrails to hold the exercise of that power in check.” *State v. Toles*, 2021-Ohio-3531, ¶ 21 (Donnelly, J., dissenting). Across the state, judges are uncertain whether our laws provide an opportunity for meaningful appellate review of sentences.

{¶ 2} Sentences for similar crimes should be consistent and proportional. Sadly, that simply is not the case here in Ohio, where sentences for similarly situated defendants range from the unexplainably lenient to the shockingly excessive. Until our legislature addresses this reality with comprehensive, data-driven sentencing reform, the public will continue to believe correctly

that sentencing outcomes in Ohio are not governed by the rule of law but rather by the individual proclivities of the judge who is randomly assigned at a defendant's arraignment. *See* Donnelly, *The Guardrails Are Off: Why Judicial Discretion in Ohio Criminal Sentencing Has Careened Out of Control and How Data Analytics Can Bring It Back on Course*, 21 *Ohio St.J.Crim.L.* 1-18 (2023).

{¶ 3} In this case, Laura Amero, a school principal, pleaded guilty to two counts of sexual battery related to sexual activity with two students. 2024-Ohio-1007, ¶ 8. One was a 17-year-old juvenile, the other an 18-year-old adult. *Id.* at ¶ 58 (Lynch, J., concurring in part and dissenting in part). Amero received two five-year prison sentences, to be served consecutively, for a total of ten years' imprisonment. *Id.* at ¶ 18. In a similar case, Principal Courtney Alfred was sentenced to two years of probation after pleading guilty to four counts of sexual battery of a 17-year-old student. *See State v. Alfred*, Cuyahoga C.P. No. CR-18-627397 (Aug. 21, 2018); *see also* Cross & Hlavaty, News 5 Cleveland, *Former principal who had sex with student sentenced to probation* (Aug. 21, 2018), available at <https://www.news5cleveland.com/news/local-news/oh-cuyahoga/live-sentencing-for-principal-who-pleaded-guilty-to-sexual-battery-for-student-relationship> (accessed Aug. 26, 2024) [<https://perma.cc/KMS2-QATF>]. Both cases involve accusations of multiple acts of sexual activity between a principal and a student who was 17 years old or older, and yet the punishments are widely divergent (probation versus 10 years in prison) with no sound reasoning to explain why. This is not fair and impartial justice. Until we provide substantive guidance to prevent the imposition of arbitrary and inconsistent sentences, the disparate treatment that similarly situated defendants receive will continue to undermine the public's confidence in our criminal-justice system.

{¶ 4} This case involves the imposition of consecutive sentences. I believe we should accept jurisdiction and hold this case until *Glover* is released, at which point we may have provided better guidance to the trial and appellate judges in this state. I dissent.

BRUNNER, J., joined by DONNELLY, J., dissenting.

{¶ 1} I respectfully dissent from the decision of the majority to deny appellate jurisdiction over this appeal. Ohio Const., art. IV, § 2(B)(2)(b) provides for this court's appellate jurisdiction "in cases of felony on leave first obtained." That the Constitution specifically

recognizes felony appeals as important to our responsibilities speaks to the inherent risk of wrongful incarceration.

{¶ 2} This court’s interpretation of “cases of public or great general interest” in Ohio Const., art. IV, § 2(B)(2)(e) often leads us to deny jurisdiction of appeals when the law in the case is largely settled and our efforts might be viewed as simply error correction. But wrongly adjudicated felony cases, unjust conviction, and incarceration *are* matters of public or great general interest because they demean our criminal-justice system and fail to “promote our common welfare.” Ohio Const., preamble. And I note that Justice Donnelly’s concerns with the vagaries of unequal sentencing within the State recognizes that in promoting that common welfare, justice requires consistency in felony sentencing throughout the State, consistent with the aims of our State’s constitution.

{¶ 3} The memorandum in support of jurisdiction filed in this appeal presents this court with an opportunity to clarify aspects of the law regarding postconviction proceedings and any resulting resentencing. The appeal also offers us the opportunity to improve the State’s criminal-justice system by addressing what I perceive to be injustice. Sadly, we lack the will to provide even a review of Amero’s appeal. Accordingly, I dissent.
