

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Willingham*, Slip Opinion No. 2020-Ohio-3475.]

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SLIP OPINION NO. 2020-OHIO-3475

THE STATE OF OHIO, APPELLANT, v. WILLINGHAM, APPELLEE.

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Cause dismissed as having been improvidently accepted—Judgment issued by court of appeals on reconsideration vacated.

(Nos. 2019-0659 and 2019-0900—Submitted May 12, 2020—Decided June 30, 2020.)

APPEAL from the Court of Appeals for Cuyahoga County,

Nos. 106706 and 107033, 2019-Ohio-1121.

APPEAL from the Court of Appeals for Cuyahoga County,

Nos. 106706 and 107033, 2019-Ohio-1892.

{¶ 1} The cause in case No. 2019-0659 is dismissed as having been improvidently accepted.

{¶ 2} In case No. 2019-0900, the judgment of the court of appeals is vacated. *See State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999

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N.E.2d 661, ¶ 8; *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 249-250, 594 N.E.2d 616 (1992); *see also* S.Ct.Prac.R. 5.02, 7.01(A)(1), and 7.01(D)(1).

O’CONNOR, C.J., and FRENCH, DONNELLY, and STEWART, JJ., concur.

KENNEDY, J., concurs in case No. 2019-0900 for the reasons stated in her dissenting opinion in *State v. Moore*, 149 Ohio St.3d 557, 2016-Ohio-8288, 76 N.E.3d 1127, ¶ 150-152, and dissents in case No. 2019-0659 and would reverse the judgment of the court of appeals in that case.

FISCHER and DEWINE, JJ., concur in case No. 2019-0900 and dissent in case No. 2019-0659 and would reverse the judgment of the court of appeals in that case.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van and Mary M. Frey, Assistant Prosecuting Attorneys, for appellant, state of Ohio.

Mark A. Stanton, Cuyahoga County Public Defender, and Paul A. Kuzmins, Assistant Public Defender, for appellee, Christopher Willingham.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Alex S. Havlin, Assistant Prosecuting Attorney, urging reversal for amicus curiae, Ohio Prosecuting Attorneys Association.
