The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 13, 2022

[Cite as *05/13/2022 Case Announcements #2*, 2022-Ohio-1606.]

APPEALS NOT ACCEPTED FOR REVIEW

2022-0164. State v. Polizzi.
Lake App. Nos. 2020-L-016 and 2020-L-017, 2021-Ohio-244.
Donnelly, J., dissents, with an opinion.
Brunner, J., dissents and would accept the appeal on proposition of law Nos. I, II, IV, and V.

DONNELLY, J., dissenting.

{¶ 1} This case is yet another example of the alarming nonexistence of appellate review of criminal sentences in Ohio.

{¶ 2} The Eleventh District Court of Appeals had vacated appellant Anthony J. Polizzi Jr.'s sentence primarily because the record did not support the trial court's decision to consecutively run maximum sentences for every single one of Polizzi's eight low-level felony sex offenses and ultimately sentence him to 33 years in prison, far in excess of the state's requested 20-year sentence. *State v. Polizzi*, 11th Dist. Nos. 2018-L-063 and 2018-L-064, 2019-Ohio-2505. On remand, the trial court knocked a few months off each sentence and again ran them all consecutively for a total of close to 30 years based on findings that were identical to its original decision. *See* 2021-Ohio-244, ¶ 17, 25. In reviewing the trial court's revised sentencing entry, the appellate court noted that the trial court failed to follow the law of the case regarding consecutive sentencing but concluded there was nothing it could do in light of the intervening decisions in *State v. Gwynne*, 158 Ohio St.3d 279, 2019-Ohio-4761, 141 N.E.3d 169, and *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649.

{¶ 3} On reconsideration, the appellate court acknowledged that *Gwynne* and *Jones* were not intervening decisions, because they addressed sentencing decisions made under R.C. 2929.11 and 2929.12, while this case involved consecutive-sentencing factors under R.C. 2929.14(C). 2021-Ohio-244 at ¶ 87-88. Nonetheless, the appellate court held that the trial court's second sentencing decision—previously characterized as noncompliant with the appellate court's mandate regarding consecutive sentencing—somehow actually *did* comply with the appellate court's mandate. *Id.* at ¶ 98. The appellate court held that there were at least some findings that supported the trial court's decision to run sentences consecutively and that it was not within the appellate court's purview to determine whether only a portion of those sentences should be consecutive, because such a determination would constitute a reweighing of the facts. *Id.* at ¶ 99.

{¶ 4} Dissenting in part, one appellate judge opined that an appellate court does not improperly reweigh facts when overturning a decision to run two sentences consecutively any more than it does when overturning a wholesale decision to run a large group of sentences consecutively. *Id.* at ¶ 107 (Wright, J., concurring in part and dissenting in part). There is no law that says review of consecutive sentencing is an all-or-nothing decision. Further, the appellate judge who dissented in part contended that the proportionality analysis for consecutive sentences under R.C. 2929.14(C)(4) must be applied as each link along the chain of multiple sentences is added because, under R.C. 2929.41(A), the default for each sentence is for it to run concurrently. As the chain gets longer, "the bar for each succeeding consecutive sentence is raised, and it becomes increasingly difficult to satisfy the R.C. 2929.14(C)(4) criteria." *Id.* at ¶ 110 (Wright, J., concurring in part and dissenting in part).

{¶ 5} This appeal provides the court with a clear, straightforward opportunity to determine how appellate review of the links between consecutive sentences under R.C. 2929.14(C)(4) and 2953.08(G)(2)(a) can be squared with this court's logic in *Gwynne* and *Jones*. By passing on the opportunity, this court is giving a pass to a method of consecutive-sentencing review that is just as hollow and toothless as our current standards for reviewing individual sentences.

{¶ 6} Any semblance of meaningful appellate review of criminal sentences is further decimated each time this court declines to accept jurisdiction in one of these cases. Appellate review is an important check on the system. The public needs to know that our criminal justice system operates in a way that promotes enormous sentencing disparities from courtroom to

courtroom by telling trial-court judges that they should just trust their guts when resolving the rapid-fire, high-volume stream of sentencing matters that come before them on a daily basis and then telling appellate-court judges that there is nothing they can do when reviewing sentences on appeal. The problems exemplified by this case need to be brought to light. Because I believe this court should accept jurisdiction over Polizzi's appeal, I dissent.