

THE SUPREME COURT *of* OHIO

TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

June 11, 2021
Meeting Minutes

Task Force Members in Attendance

Hon. Gene Zmuda (Chair)
Sixth District Court of Appeals

Sara Andrews
Director, Ohio Sentencing Commission

Hon. Pierre Bergeron
First District Court of Appeals

Hon. Michael P. Donnelly
Ex-officio member
Supreme Court of Ohio

Douglas Dumolt, Esq.
Non-voting Designee of Dave Yost
Ohio Attorney General's Office

Rep. David Leland
District 22

John Martin, Esq.
Cuyahoga County Public Defender's Office

Elizabeth Miller, Esq.
Non-voting Designee of Tim Young
Office of the Ohio Public Defender

Meredith O'Brien, Esq.
Ohio Association of Criminal Defense Lawyers

Sheriff Tom Riggensch
Buckeye Sheriff's Association

Joanna Sanchez, Esq.
Non-voting Designee of Tim Young
Wrongful Conviction Project
Office of the Ohio Public Defender

Hon. Nick Selvaggio
Champaign County Common Pleas Court

Timothy Young, Esq.
Ohio Public Defender

Approval of May 21, 2021 Meeting Minutes

Task Force Chair Judge Gene Zmuda opened the meeting by requesting any objections to the approval of the May 21, 2021 meeting minutes. No objections were raised and the minutes were unanimously approved by a show of hands.

Conviction Integrity in the News

Judge Zmuda notified members that Cuyahoga County's Conviction Integrity Unit ("CIU") had declined his invitation to present to the Task Force and that he had received no response from the Summit County CIU.

Judge Zmuda then introduced David Ingram, who has been tasked with establishing a CIU at the Franklin County Prosecutor's Office. Ingram explained to members that the unit is still brand new and in the process of securing funding to hire additional staff. Ingram comes to the position with experience building and launching several statewide programs. He plans to attend future Task Force meetings to gain more knowledge about conviction integrity to aid him in the creation of Franklin County's CIU.

Judge Zmuda also informed members that he will be participating in a panel discussion on wrongful convictions hosted by the National Association of Sentencing Commissions on June 23, 2021.

Vote on OPD's proposed revisions to R.C. 2953.21

Joanna Sanchez outlined the changes that were made to the Office of the Ohio Public Defender's ("OPD") proposed revisions to R.C. 2953.21 after the discussion at the Task Force's last meeting. The following changes were made:

- Addition of a good-faith duty for petitioner to obtain from previous counsel discovery items that were previously made available under Crim.R. 16
- Equitable exceptions in R.C. 2953.23 were modified to only apply to untimely petitions and successive petitions were returned to inclusion under R.C. 2953.23
- Addition of language allowing the State to file an amended response if an amended petition is filed after the State's initial response

- Addition of language clarifying the definition of arguable merit as the standard for appointment of counsel
- Removal of language clarifying the availability of additional remedies under CrimR. 32 and Crim.R. 33
- Removal of language allowing for the assignment of a new judge upon a motion by the petitioner

Representative David Leland moved to approve OPD’s proposed revisions to R.C. 2953.21 for inclusion in the Task Force’s final recommendations. Tim Young seconded the motion. A roll call was held for the approval of the revisions and the Task Force voted 8-1 to approve OPD’s revisions to R.C. 2953.21. The votes were as follows:

Sara Andrews: Yes

Judge Pierre Bergeron: Yes

Representative David Leland: Yes

John Martin: Yes

Meredith O’Brien: Yes

Sheriff Tom Riegenbach: Yes

Judge Nick Selvaggio: No

Tim Young: Yes

Judge Zmuda: Yes

Discussion of Suggested Changes to Crim.R. 32 and Ohio Adm.Code 120-1-10

Discussion included the following:

OPD’s Suggested Changes to Criminal Rule 32

- Sanchez explained many defendants are unaware of their right to postconviction remedy or wrongly assume that a postconviction petition will be appellate counsel. Thus, OPD’s suggested change to CrimR. 32 consisted of the addition of the following language:

“(C) Notification of postconviction remedy.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant of the availability of postconviction remedies pursuant to R.C. 2953.21 and the time for filing a petition pursuant to R.C. 2953.21(A)(2).

(2) Where the defendant has been sentenced to death and is indigent, the court shall advise the defendant that counsel will be appointed pursuant to R.C. 2953.21(J)(1), (J)(2), and (J)(3).

(3) Where the defendant has not been sentenced to death and is indigent, the court shall advise the defendant that counsel shall be appointed upon a motion demonstrating that one or more postconviction claims have arguable merit, pursuant to R.C. 2953.21(J)(4).”

- Judge Selvaggio opposed the inclusion of this requirement on the basis that such advisements would add unnecessary excitement to the courtroom and overwhelm defendants with information that they would not be able to properly process. He suggested that it would be more appropriate to provide the notification of postconviction rights during the prison-intake process.
- Martin asked if Judge Selvaggio would be in favor of allowing the advisement to be provided in writing.
- Judge Selvaggio responded that he thought it might be best to have a person explain postconviction rights to ensure a defendant’s understanding of the subject but did not believe sentencing was the appropriate time to do so.
- Judge Bergeron agreed that postconviction rights may not be easily explained and that advising a defendant about those rights at the time of sentencing may only serve to confuse them.
- Young did not object to providing the notification of postconviction rights in writing. He disagreed that any nuanced discussion of the postconviction process should occur as part of the notification. Young felt it would be logical to advise a defendant of their right to file a postconviction petition within one year in the same way that the defendant is advised of their right to file an appeal within 30 days.
- Judge Zmuda suggested that the language requiring the notification of postconviction rights be made more concise so that it is obvious that no explanation is required on top of the notification.
- Dumolt suggested that this notification could be added to the requirements for appointed defense counsel rather than included in Crim.R. 32. He also added that the way the new language is written, those who are convicted of a criminal offense but not sent to prison may erroneously receive notice of postconviction rights.
- Martin and Young felt that the requirement for providing this notification would be more appropriately placed on a judge, since it would be difficult to ensure that defense counsel fulfills the requirement.

OPD's Suggested Changes to Ohio Adm. Code 120-1-10

- Sanchez explained that the addition of statutory language allowing for the appointment of counsel in postconviction cases led to a need for additional requirements for the training of counsel who would take on such cases. OPD's suggested change to Ohio Administrative Code Rule 120-1-10 consisted of the addition the following language:

“(N) Adult postconviction. Where the defendant has been convicted of an offense, and counsel is appointed to represent the defendant in any stage of a postconviction relief petition or on appeal of the denial of a postconviction relief petition, within two years prior to the appointment, counsel must have completed a minimum of four hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in postconviction practice, investigation, or contributing factors to wrongful conviction, as well as one of the following:

(1) The requisite experience and training under this rule to serve as trial counsel for the underlying offense; or

(2) The requisite experience and training under this rule to serve as appellate counsel for the underlying offense.”

- Dumolt asked how these requirements would be enforced.
- Young responded that the enforcement is handled locally. The court that makes the appointment is responsible for ensuring that counsel is compliant, he said. If OPD is advised that an attorney is taking appointments outside of their qualification, OPD would investigate, but there is no front-end enforcement.
- Judge Selvaggio responded that in Champaign County, attorneys seeking appointments must return a questionnaire about their certifications every two years and the county keeps a running list of which attorneys are qualified for which types of cases.
- Representative Leland asked how OPD arrived at the number of CLE hours.
- Young responded that four hours seemed adequate enough without becoming cumbersome, especially considering how difficult it might be to find longer courses on postconviction relief specifically.

Judge Zmuda asked that Sanchez and Young make any modifications to their proposed language based on this meeting's discussion and submit them within one week. Any other members who wished to submit their own proposed language could also do so within one week. A vote on these proposals will then be held at the July 9, 2021 meeting.

Scheduling

Judge Zmuda said that he had not received from members any additions to the list of items left for review that had been distributed prior to this meeting. Thus, the schedule to cover the remaining items will be:

July 9, 2021: Presentation from Sara Andrews on Data Collection
 Presentation from Justice Donnelly on Dark Pleas

August 13, 2021: Presentation from the North Carolina Innocence Inquiry Commission
 Discussion of Professional Rule 3.8

September 10, 2021: (Tentative) Final Meeting

Meetings will continue to be held over Zoom until further notice.

Next Meeting Date – Friday, July 9, 2021 from 10:00 a.m. to 12:00 p.m.

The next meeting of this Task Force is scheduled for July 9, 2021, from 10:00 a.m. to 12:00 p.m.