

IN THE SUPREME COURT OF OHIO

19-0690

Case No. _____

STATE OF OHIO,
Plaintiff/Appellee.

v

JULIO C.VARGAS,
Defendant/Appellant.

On Appeal From The Cuyahoga
County Court of Appeals.
Eighth Appellate District.

Court of Appeals No.108329.

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JULIO C.VARGAS:

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For Appellant

Cuyahoga County Prosecutor Office.1200
Ontario St.Cleveland Ohio,44113.Counsel
For Appellee.

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APPENDIX

Court of Appeals Judgment Entry Eighth Appellate District Cuyahoga County Ohio Case No.108329.

Explanation of why this case is a case of public or great general interest and involves a substantial constitutional question:

The Supreme Court of Ohio has Jurisdiction over the subject matter in this instant appeal pursuant to Ohio Constitution IV §2(B)(2)(4)(iii) where this case raise a fundamental United States Constitutional Question Amendment 14 Equal Protection Under the law. Baxstrom v Herold, 383 U.S. 107, 86 S.Ct. 760, Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. Police Dep't Of Chicago v Mosley, 92 S.Ct. 2286, Equal protection clause require that statutes affecting interests by narrowly tailored to their legitimate objective. Wood v Collier, 836 F3d. 534, Equal protection claim that is premised on differential treatment, but not based on membership in a suspect class or the infringement of a fundamental right may be cognizable as a so-called class of one. We review such claims under a two-prong test, The plaintiff must show that he or she was intentionally treated differently from other similarly situated and there was no rational basis for the difference in treatment.

Ohio Legislature inacted R.C.2953.08: GROUND FOR APPEAL BY DEFENDANT or PROSECUTOR OF SENTENCE FOR FELONY, APPEAL COST OVERSIGHT COMMITTEE, Where a criminal defendant may appeal a sentence that is contrary to law or sentence is not authorize by law R.C.2953.08(A)(1)(4)(D)(1),

(A)(1). In addition to any other right to appeal and except as provided in division (D) of this section. A defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds.

(4). The sentence is contrary to law.

(D)(1).A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law.Has been recommended jointly the defendant and prosecution in the case and is imposed by a sentence judge.

The defendant has a United States Constitutional Right to appeal his sentence that was not authorize during plea negotiation with the state of ohio Amendment 14 R.C.2953.08(D)(1).

The defendant entered into a plea agreement with the state of ohio to plea no contest to count(1) Aggravated Vehicular Homicide R.C.2903.06(A)(1) (a)(2)(a) Third Degree Felony;count(3)Aggravated Vehicular Assault R.C.2903.08(A)(1) Third Degree Felony.

Defendant was under the understanding his no contest plea he agreed upon would yield the defendant sentence under a third degree felony R.C.2929.14(A)(3), instead,During the sentencing phase,the trial court change the defendant plea agreement with the state of ohio/sentence from a third degree felony to a first and second degree felony and impose a (15)year prison term upon the defendant.

The trial court enhancement of count(1) and count(3) was to increase the punishment for a person who at the timeof the accident was under a suspended driver license R.C.2903.06(B)(b)(i)(3)(c)(i)(v) and R.C.2903.08(B)(1)(a) (b).

The record show,the defendant at the time of the accident had a valid driver license and defendant had no prior traffic-related offense or conviction of OVI R.C.2903.06 R.C.2903.08.

Since the defendant had a valid driver license at the time of the accident. The trial court had no authority to enhance the defendant sentence were the defendant did not agree to the change of degree of felony from a third degree felony to a first and second degree felony. The trial court (15)year prison term is not authorized by law R.C.2953.08(D)(1).

The defendant as of right R.C.2953.08(A)(1) filed a motion for leave of court to file delayed appeal App.R.5(A)(2)(D)(1)(2) R.C.2953.08(C)(4)(D)(1) arguing the trial court (15)year sentence was not authorized by law R.C.2953.08(D)(1).

The court of appeals adjudicated, "Sua Sponte, appeal is dismissed" the court of appeals treated the defendant differently than other defendants for similar situation appealing unauthorize sentences in State v Underwood, 922 NE2d. 923,

A sentence is authorized by law and is not appealable within the meaning of R.C.2953.08(D)(1) only if it comports with all mandatory sentencing provision.

The court of appeals violated the defendant United States Constitutional Right Amendment 14 Equal Protection of the law in adjudicating the defendant claim R.C.2953.08(D)(1).

STATEMENT OF THE CASE

APRIL 11 2014, The Cuyahoga County Grand Jury indicted the defendant in a (9)count indictment charging, (2)count Aggravated Vehicular Homicide R.C.2903.06(A)(1)(a), (4)count Aggravated Vehicular Assault R.C.2903.08(A)(1)(a)(b); (3)count Driving While Under The Influence Of Alcohol or Drugs R.C.4511.19(A)(1)(a).

JUNE 29 2014,defendant entered into a plea agreement with the state of ohio,to enter a no contest plea to all (9)counts as a third degree felonies.

JULY 30 2014,the trial court imposed the following prison term,count(1),(9)years;count(3),(6)years to be serve consecutively to each other, count(5) and (6),(2)two years to be serve concurrent,count(7),(8),and (9),(6) six months. The trial court ordered the sentences to be serve concurrently to count(1) and (3) for a total prison term of (15) years.

The defendant timely appealed his conviction to the Court of Appeals Eighth Appellate District Case No.101796. JULY 16 2015,the court of appeals affirmed the defendant conviction inpart,reversed and remanded inpart to the trial court for resentencing pursuant to R.C.2929.14(C)(4).

MARCH 22 2017,the trial court held a resentencing hearing and the court rein-imposed the same (15) year sentence including the necessary statutory provision of R.C.2929.14(C)(4). MARCH 12 2019,the defendant filed a motion for leave of court as of right to file a delayed appeal pursuant to R.C.2953.08(C)(4)(D)(1) App. R.5(A)(2)(d)(1)(2) before the court of appeals. APRIL 10 2019,the court of appeals Sua Sponte dismiss the appeal.

STATEMENT OF THE FACTS

The record show,the defendant agreed with the state of ohio to entered a no contest plea to count(1)Aggravated Vehicular Homicide R.C.2903.06(A)(1) (a)(2)(a),and count(3) Aggravated Vehicular Assault R.C.2903.08(A)(1)(B)(1) felonies of the third degree.

During the sentencing phase the trial court disregarded the plea agreement and imposed a (9)year sentence on count(1) as a first degree felony and (6)year sentence on count(3) as a second degree felony. The defendant did not agree to enter his no contest plea upon a first and second degree felony.

PROPOSITION OF LAW ONE:

The Court of Appeals error and Violated the Defendant United States Constitutional Rights Amendment 14 Equal Protection of the Law R.C. 2953.08(D)(1).

ARGUMENT:

Ohio Legislature inacted R.C.2953.08(D)(1) to allow criminal defendants to seek appeal as of right to challenge a unauthorized sentence based upon a plea agreement. See State v Underwood, 2010 Ohio Lexis 2,922 NE2d.923, A sentence is authorized by law and is not appealable within the meaning of R.C.2953.08(D)(1), Only if it comports with all mandatory sentencing provision.

Defendant entered into a plea agreement with the state of ohio where the defendant agreed to plea not contest to Count(1) Aggravated Vehicular Homicide R.C.2903.06(A)(1)(2)(a). Count(3) Aggravated Vehicular Assault R.C.2903.08(A)(1) each count are third degree felony. See R.C.2903.06(A)(B)(1)(3),

(B1).Whoever violates division(A)(1)or(2)of this section is guilty of aggravated vehicular homicide and shall be punished as provided in divisions(B)(2)and (3)of this section

(3).Except as otherwise provided in this division,aggravated vehicular homicide committed in violation of division (A)(2)of this section is a felony of the third degree.

R.C.2903.08(A)(1)(B)(1),

(1)(a).As the proximate result of committing a violation of division(A)of section 4511.19 of the revised code or of a substantially equivalent municipal ordinance.

(B)(1).Whoever violates division(A)(1)of this section is guilty of aggravated vehicular assault,except as otherwise provided in this division aggravated vehicular assault is a felony of the third degree.

During the sentencing hearing,the trial court change the defendant plea agreement with the state of ohio to be sentence under third degree felony to enhance the defendant sentence from a third felony to a first and second degree felony. Despite the plea agreement,the trial court can increase the defendant sentence only if at the time of the car accident the defendant was driving under a suspended driver license.R.C.2903.06(b)(1),

(b).Except as otherwise provided in division(B)(2)(c)of this section,aggravated vehicular homicide committed in violation of division(A)(1)of this section is a felony of the first degree, and the court shall impose la mandatory prison term on the offender as described in division(E)of this section if any of the following apply.

(i).At the time of the offense the offender was driving under a suspension or cancellation imposed under chapter 4510. or any other provision of the revised code or was operting a motor vehicle or motorcycle,did not have a valid driver license,commercial driver license,temporary instruction permit,probationary license,or nonresident operting privilege,and was not eligible for renewal of the offender driver license or commercial driver license without examination under section 4507.10 of the revised code.

R.C.2903.08(B)(1)(a),

(B).Aggravated vehicular assault is a felony of the second degree if any of the following apply,

(a).At the time of the offense,the offender was driving under a suspension imposed under chapter 4510. or any other provision of the revised code.

The defendant at the time of the accident did have a valid driver license on APRIL 5 2014. The record will show,the defendant driver license was not suspended until (4)months after the defendant was indicted for the instant charge offenses in the case of City of Cleveland v Julio C.Vargas under case No.2014-TRC-005532 and three weeks before the defendant entered his no contest plea to the charge offenses.

The record show,defendant had no prior traffic-related offenses or conviction of OVI R.C.2903.06(b)(i) R.C.2903.08(B)(1)(a). The state of ohio mention the defendant had a prior OVI conviction under a false name of carlos ramos in the city of Euclid,but the state of ohio offer no proof to support this fact.Tr.p.37.

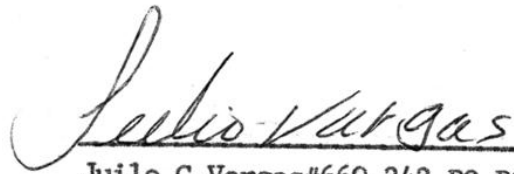
The trial court violated the plea agreement the defendant has with the state of ohio to be sentence to third degree felonies.State v Greitzer 2005 Ohio App.Lexis 6229.

Since the defendant did not agree to be sentence to first and second degree felonies under count(1),count(3) the trial court sentence is not authorize by law State v Underwood,2010 Ohio 1.922 NE2d.923.

The court of appeals treated the defendant differently than the defendant in State v Underwood,922 NE2d.923. The court of appeals intentionally refuse to determine whether the trial court (15)year sentence as authorize by law R.C.2953.08(D)(1) and State v Underwood,922 NE2d.923.

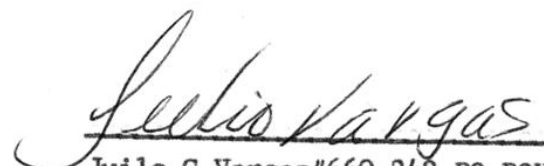
Conclusion:

Defendant has demonstrated the court of appeals violated his united states constitutional rights to equal protection under the law. This Supreme Court of Ohio must accept jurisdiction over this instant case.


Juilo C. Vargas #660-242. P.O. BOX. 57
Marion Ohio, 43301.

CERTIFICATE OF SERVICE

I certify that I have sent a true copy of this foregoing to appellee counsel of record, Cuyahoga County Prosecuting Attorney Office, 1200 Ontario St. Cleveland Ohio, 44113. On this 13th day of may 2019. By first class U.S. mail postage prepaid.


Juilo C. Vargas #660-242. P.O. BOX. 57
Marion Ohio, 43301.

Appendix

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.
108329

LOWER COURT NO.
CR-14-584296-A

COMMON PLEAS COURT

-vs-

JULIO C. VARGAS

Appellant

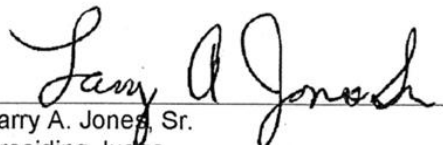
MOTION NO. 527404

Date 04/10/19

Journal Entry

Sua sponte, appeal is dismissed. See entry 527084.

Judge Kathleen Ann Keough, Concur


Larry A. Jones, Sr.
Presiding Judge

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