

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2021-0948
Appellee,	:	
	:	On Appeal from the Cuyahoga
v.	:	County Court of Appeals
	:	Eighth Appellate District
MICHAEL STANSELL,	:	
	:	Case No. 109023
Appellant.	:	

**MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLANT MICHAEL STANSELL**

Cuyahoga County Prosecutor's Office

DAN T. VAN, 0059592
Assistant Prosecuting Attorney
(Counsel of Record)

Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113
dvan@prosecutor.cuyahogacounty.us

**COUNSEL FOR APPELEE
STATE OF OHIO**

Cuyahoga County Public Defender

JOHN T. MARTIN, 0020606
Assistant Public Defender
(Counsel of Record)

310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
(216) 443-7583
jmartin@cuyahogacounty.us

**COUNSEL FOR APPELLANT
MICHAEL STANSELL**

Office of the Ohio Public Defender

ADDISON M. SPRIGGS, 0097713
Assistant State Public Defender

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 644-0702
(614) 752-5167 – Fax
addison.spriggs@opd.ohio.gov

**COUNSEL FOR AMICUS CURIAE
OHIO PUBLIC DEFENDER**

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STATEMENT OF THE CASE AND FACTS

Amicus curiae adopts and incorporates the statement of the case and facts as set forth by Mr. Stansell in his merit brief.

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender (“OPD”) is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The OPD also plays a key role in the promulgation of Ohio law and procedural rules. A primary focus of the OPD is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems.

As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely handle criminal cases in Ohio courts. This work includes representation at both the trial and appellate levels. The OPD has an interest in the present case because, at its heart, it’s about finality versus justice for our clients in the courts around the state.

INTRODUCTION

This court has a long history grappling with the void/voidable doctrine. *See State v. Beasley*, 14 Ohio St.3d 74, 471 N.E.2d 774 (1984); *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864; *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568; *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422; *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248; *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776. This line of cases arose from the understanding that courts are not perfect and that a mechanism needs to exist to correct sentences that do not conform with statute. *See, e.g., Henderson* at ¶ 47

(explaining that “mistakes happen” and some “sentencing mistakes are not revealed until after the time for direct appeal has passed.”).

Recently, this court reversed course to return to its “traditional understanding of the distinction between void and voidable sentences.” *Id.* at ¶ 1. This change, however, did not fix two critical underlying issues: (1) trial and appellate courts make mistakes and impose and affirm the imposition of unauthorized sentences; and (2) a defendant may not become aware of the illegality of his sentence in a timely fashion.

There *must* be a mechanism to attack these illegal sentences after the time for a direct appeal has passed. If not, individuals like Mr. Stansell may remain in prison long after the expiration of their statutorily authorized prison sentence. *See State v. Abuhilwa*, 9th Dist. Summit No. CA 26183, 2012-Ohio-3441 (holding that the defendant’s “life imprisonment” sentence meant life in prison without the possibility of parole despite statute providing parole eligibility).

The very premise of our prison system is one in which individuals receive sentences that are carefully calibrated to their crimes. The Revised Code sets forth a wide range of punishments and sentencing courts consider the nature of the crime, the history of the defendant, and the principles and purposes of felony sentencing before imposing a carefully crafted sentence. Defendants then serve their sentence, pay their debt to society, and are then given an opportunity be released back into the community. In the present case and others like it, defendants who do not become aware of sentencing errors until it is too late continue to be incarcerated long after the appropriate sentence is complete. This court has eliminated any mechanism for challenging such errors outside of the traditional direct appeal process. Our constitution demands more. And confidence in our system requires more.

ARGUMENT

APPELLANT’S PROPOSITION OF LAW:

A sentence that exceeds the statutory maximum for the offense of conviction must be corrected by a trial court even when the sentence has not been challenged on direct appeal and the time for noting an appeal has passed. (clarifying *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248; *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776).

Out of a concern for finality, this court reversed course on a void/voidable doctrine that permitted defendants to correct egregious sentencing errors even after the time for an appeal had passed. *See State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248; *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608; *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776. Therefore, a defendant must file a notice of appeal within thirty days of sentencing to challenge any sentencing errors; otherwise, they forfeit the opportunity to challenge them at all.

I. A direct appeal must be initiated within 30 days after the sentencing entry is filed.

In Ohio, appellate review of a conviction is a fundamental right, and a criminal defendant has a statutory right to appeal. Ohio Constitution, Article IV, Section 3; R.C. 2953.02; R.C. 2953.08; R.C. 2505.03; *State v. Sims*, 27 Ohio St.2d 79, 81, 272 N.E.2d 87 (1971). The Ohio Appellate Rules of Procedure lay out the process by which an appeal proceeds through Ohio’s appellate courts. Under those rules, a party has 30 days from the date of a final order to appeal. App.R. 4. If a convicted individual does not commence an appeal within those 30 days after the sentencing entry is filed, they forfeit their only appeal of right.

II. The first thirty days of an incarcerated individual's sentence are not a time for quiet reflection and legal research.

But what do those first thirty days look like for someone who has just entered the Department of Rehabilitation and Correction (“DRC”) facility and begun serving his sentence?

This first 30-45 days of incarceration are busy, unpredictable, and unfamiliar to many. A convicted individual must first be transported to a DRC facility. This transfer process from county jail to a state prison reception center may take even longer than 30-45 days. This transfer process has been extended during the COVID-19 pandemic.¹ Once at a DRC reception center, convicted individuals must proceed through intake processing. This intake includes security screenings, physical and mental health screenings, the creation of programming recommendations, classification, security assignment, and a period of quarantine. Department of Rehabilitation and Correction Website, FAQs: Transfers, <https://drc.ohio.gov/faq/transfers>, (accessed January 18, 2022). During all of this, it is impossible to imagine a newly incarcerated individual studying the law and thinking critically about possible errors in his sentencing.

And while all incarcerated individuals receive a legal orientation when they arrive at the facility, it occurs in a group setting, where there is no time for individualized communication with lawyers. And during the COVID pandemic, this orientation has been run by a DRC staff member, not a lawyer. The staff member provides nonspecific information about where convicted individuals can find information related to their sentences, how to contact an attorney from the OPD’s Prison Legal Services division, and who to contact at DRC with questions.

During these initial 30 to 45 days, incarcerated individuals are adjusting to what is probably the most significant change of their lives. They are learning to live in the most controlled and

¹ OPD engages with many convicted individuals when they arrive at DRC. This is the common experience of our clients.

regimented environment in our society. This includes being in their cell at specific times for “count,” eating at specific times, meeting and navigating relationships with fellow prisoners, learning who to trust, learning how to purchase personal items, and when to make phone calls, and meeting their intake responsibilities. This intake process on average takes 30-45 days. At the conclusion of these first 30-45 days, convicted individuals are transferred to another state institution where they must adjust to their environment all over again.

III. Not all sentencing errors will reveal themselves in the first thirty days after sentencing.

It is a defendant’s burden to file a notice of appeal that confirms to the requirements laid out in App.R. 4. But in many instances, a defendant will neither understand that he may appeal his sentence or that there is an error to raise on appeal.

Almost all plea agreements contain boilerplate language informing defendants that they have waived their right to appeal. Although such a waiver does not include challenging a sentence, many defendants, who have no legal background, are misled into believing they have waived the ability to raise any arguments at all. And through that misunderstanding, may fail to file a timely notice of appeal to challenge errors that occurred in sentencing. Appellate counsel is not automatically appointed at the end of every sentencing hearing – the onus is on the defendant to recognize the need for an appeal and request assistance. That is too high a burden for a non-attorney to carry. *See Henderson* at ¶ 48 (Chief Justice O’Connor explaining that defendants often “rely largely on counsel to interpret complex sentencing statutes.”)

And as Chief Justice O’Connor noted in her *Henderson* concurrence, many significant, prejudicial sentencing errors may not reveal themselves until far too late, and then only by happenstance. For example, in the instant case, Mr. Stansell only became aware of the illegality of his sentence years after he was sentenced. He began litigating this issue in 2014. Appellant’s

Memorandum in Support of Jurisdiction, pg. 3. He proceeded pro se until the 8th District Court of Appeals appointed the Cuyahoga Public Defender's Office to assist Mr. Stansell with oral argument. *Id.* The Cuyahoga County Public Defenders have remained on this case for the reconsideration, en banc review, and present appeal. *Id.* Similarly, in the *Abuhilwa* case, *supra*, Mr. Abuhilwa litigated his case pro se. It was in this case that the 9th District Court of Appeals determined that "life imprisonment" was construed to mean life in prison without the possibility of parole despite the statute requiring parole eligibility. *Abuhilwa*, 2012-Ohio-3441. Mr. Abuhilwa only learned of the illegality of his sentence when he believed he was up for parole, contacted OPD for assistance, and learned that DRC changed his sentence to conform with the appellate court's decision. As it currently stands, Mr. Abuhilwa will never have a chance at parole due to this change in his sentence and this change in case law.

And so, if this court intends to adhere to its *Harper/Henderson* line of cases, errors like these will continue to slip through the cracks. *See Henderson* at ¶ 48.²

² In addition to the arguments raised above, sentences that result in wrongful incarceration beyond the statutory maximum equate to cruel and unusual punishment. Court decisions that sentence an individual to die in prison when that sentence was not permitted by law is cruel and unusual punishment. Eighth Amendment of the United States Constitution; Article 1, Section 9 of the Ohio Constitution. Cruel and unusual punishment is not limited to the barbarous methods in use at the time the 8th Amendment was adopted. *Gregg v. Georgia*, 428 U.S. 153, 171 (1976). This court has determined that when the harshest punishment is not imposed, in juvenile context, the resultant sentence is not cruel and unusual punishment. *State v. Anderson*, 151 Ohio St.3d 212, 2017-Ohio-5656, 87 N.E.3d 1203. However, we have a situation here and in other cases, see *Abuhilwa supra*, where the harshest punishment was imposed in direct violation of the law – the punishment that results in a lifetime and death while incarcerated. This is cruel and unusual punishment.

Keeping individuals incarcerated beyond their legal incarceration limits equates to a wrongful conviction. Their freedom and liberty are limited without due process and in violation of law.

CONCLUSION

Our criminal justice system is built on a foundation of fairness, justice, and the belief that our laws have meaning and that someone who commits a crime will do the time that is carefully calibrated by our lawmakers to suit that crime. Allowing an individual to remain caged beyond what is lawfully allowed is not only unfair and unjust; it erodes the very bedrock of our criminal legal system.

Everyone agrees Mr. Stansell's sentence is contrary to law. So, what is the argument for leaving it in place? Finality. Here, finality means the difference between someone ever having a chance at redemption and someone dying in prison. It is imperative that this court provide a way to fix such serious errors. Our continued faith in this system relies on it.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

/s/ Addison M. Spriggs

ADDISON M. SPRIGGS, 0097713

Assistant State Public Defender

250 East Broad Street, Suite 1400

Columbus, Ohio 43215

(614) 644-0702

(614) 752-5167 – Fax

addison.spriggs@opd.ohio.gov

**COUNSEL FOR AMICUS CURIAE
OHIO PUBLIC DEFENDER**

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was forwarded by e-mail to Dan T. Van, Counsel of Record for Appellee, at dvan@prosecutor.cuyahogacounty.us; and John T. Martin, Counsel for Appellant, at jmartin@cuyahogacounty.us, on this 18th day of January, 2022.

/s/ Addison M. Spriggs
ADDISON M. SPRIGGS, 0097713
Assistant State Public Defender

**COUNSEL FOR AMICUS CURIAE
OHIO PUBLIC DEFENDER**

#1507831