

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO,**

**Appellee,**

**V.**

**ASLEIGH SMITH,**

**Appellant.**

**CASE NO. 2022-0855**

**On Appeal from the Ohio Court  
of Appeals, Second Appellate  
District, Clark County**

**Court of Appeals**  
**Case No. 2021-CA-0056**

MEMORANDUM IN RESPONSE OF APPELLEE,  
THE STATE OF OHIO

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## STATEMENT OF THE CASE AND FACTS

Defendant-Appellant, Ashleigh Smith, on or about October 28, 2020, in Clark County, Ohio, did to a child under eighteen years of age, or a mentally or physically handicapped child under twenty-one years of age, abuse the child in violation of Section 2919.22(B)(1) of the Ohio Revised Code and the violation resulted in serious physical harm to the child involved, in violation of 2919.22(E)(2)(d), of the Ohio Revised Code. (Bill of Information, 9/27/2021). The victim was Defendant's three-year-old foster daughter. (Disposition Tr. 10/21/21, p. 11).

On September 28, 2021 Defendant entered a plea of guilty to the offense of endangering children, a felony of the second degree. Defendant filed a sentencing memorandum on October 19, 2021.

On October 21, 2021 disposition was held. At the sentencing hearing, the State remained silent. The trial court heard statements from the grandmother of the victim, the Defendant, and Defendant's mother. (Disposition Tr. 10/21/21, p.4-6). The trial court stated that it considered "the record, the oral statements, the purposes and principles of sentencing under Section 2929.11 of the revised code. . . . the seriousness factors and the recidivism factors relevant to the offense and the offender pursuant to Revised Code Section 2929.12. . . . [and] the need for deterrence, incapacitation, rehabilitation, and restitution and the sentencing guidelines under 2929.13." (*Id.* at 6-7).

Pursuant to R.C. 2929.12(B), the trial court found that Defendant's conduct is more serious than that normally constituting such an offense, reasoning "the physical injuries suffered by the victim of the offense due to the conduct of the defendant was exacerbated because of the physical condition and age of the victim. The victim of the offense suffered serious physical

harm as a result of the offense. The defendant's relationship with the victim facilitated the offense." (*Id.* at 7). The trial court found no factors indicating the offense was less serious than what normally constitutes the offense. (*Id.*)

The trial court further found that Defendant minimized her role in causing the victim's severe and permanent injuries and Defendant and her husband "made up stories to the police to protect" each other. (*Id.* at 8).

The trial court also specifically considered the extent of the victim's injuries—"retinal hemorrhages, subdural hemorrhages, worsening restricted diffusion and onset of cerebral edema, and non-deforming injuries to the vertebral bodies suggestive of hyperflexion injury. They are the result of abusive head trauma." (*Id.* at 11). The trial court additionally noted the victim "has extensive subgaleal hematoma which in a child of this age results from hair pulling. She has multiple healing fractures of the skull, clavicle, and fingers and extensive cutaneous injuries on nearly every part of her body. She has experienced multiple incidents of abuse." (*Id.*)

The trial court found that Defendant's statements explaining the victim's medical condition were not consistent with the medical examination made. (*Id.* at 12). The history Defendant provided "does not account for the multiple healing fractures of the skull, clavicle, and fingers, which by their nature of healing, indicate they were sustained many days to weeks prior" and "many, if not all, of these fractures would have been recognizable to her caregivers." (*Id.* at 13).

The trial court concluded that "As a result of these injuries, [the victim] has suffered permanent disabling harm, including neurocognitive disorder and impaired functional mobility." (*Id.* at 13).

Defendant was then sentenced to a minimum prison term of seven (7) years to a maximum term of ten and one-half (10.5) years. (*Id.* 14-15; Judgement Entry 10/22/21, p.2).

#### STATEMENT OF APPELLEE'S POSITION

This case is not of public or great general interest nor involves a substantial constitutional question—instead Defendant's sole proposition of law asks this Court to reverse its decision in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649 and to require trial courts to put into the record their findings in weighing the sentencing factors of R.C. 2929.11 and R.C. 2929.12. The Supreme Court of Ohio should decline to exercise jurisdiction over this appeal and dismiss the appeal because there is no error to correct in *Jones*.

#### APPELLEE'S POSITION AS TO APPELLANT'S PROPOSITIONS OF LAW

##### Response to Appellant's Proposition of Law I

##### ***R.C. 2953.08(G)(2) does not allow a court of appeals to review the trial court's findings made pursuant to R.C. 2929.11 and R.C. 2929.12***

As this Court has previously explained in *Jones*, R.C. 2953.08(G)(2) does not permit appellate courts to review whether a sentence is supported by the record, they may only review if the sentence is otherwise contrary to law:

[W]hen the General Assembly amended R.C. 2953.08(G) in 2000 to eliminate the broad provision permitting an appellate court to review whether "the record does not support the sentence," it left the "otherwise contrary to law" provision that is still in current R.C. 2953.08(G)(2)(b) unchanged. Concluding that the term "otherwise contrary to law" nonetheless has expanded to include an appellate court's conclusion that a sentence is not supported by the record would run contrary to the notion that we "must presume that the amendments were made to change the effect and operation of the law," *Lynch*, 79 Ohio St.3d at 254, 680 N.E.2d 1222; *see also State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, 41

N.E.3d 1178, ¶ 1 (stating that statutory amendments deleting language permitting awards of restitution to third parties showed that legislature intended to disallow such awards).

*Jones*, at ¶ 38. In seeking to reverse *Jones*, Defendant seeks to judicially manufacture a broad right to appeal through reinterpretation of the statutory text. This is beyond the intent of the statute, and well beyond what the state or federal constitutions require. Simply, there is no constitutional right to an appeal, “A litigant has no inherent right of appeal or review. Such right is purely statutory and requires the appellant to comply with the appeal provisions of the law.” *Cooke v. Kinney*, 65 Ohio St.2d 7, 8, 417 N.E.2d 106 (1981). Therefore appellate review of sentences is very limited, “We begin with the general proposition that once it is determined that a sentence is within the limits set forth in the statute under which it is imposed, appellate review is at an end.” *Dorszynski v. United States*, 418 U.S. 424, 431, 94 S. Ct. 3042 (1974).

Defendant does not only seek to reverse *Jones*—in order to provide a record for appellate review—she seeks to effectively reverse *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 31 and *State v. Arnett*, 88 Ohio St.3d 208, 215, 2000-Ohio-302, 724 N.E.2d 793 (2000), which have held that trial courts are not required to make any specific factual findings on the record. (Appellant’s Memorandum In Support of Jurisdiction, July 11, 2022, p. 6). In summary, Defendant seeks to overturn longstanding precedent in order to create a right that does not exist statutorily or constitutionally. R.C. 2953.08 does not provide for appellate review of the trial court’s analysis of the R.C. 2929.11 and R.C. 2929.12 sentencing factors.

## CONCLUSION

For the foregoing reasons, the Supreme Court of Ohio should decline to exercise jurisdiction over this appeal and dismiss the appeal.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Response was served by e-mail on Thomas M. Kollin, counsel for Appellant, at [kollin@kollinfirm.com](mailto:kollin@kollinfirm.com), on this 10th day of August, 2022.

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