In the
Supreme Court of Ohio

STATE OF OHIO.,	:	Case Nos. 2024-0899
	:	
Appellant,	:	On Appeal from the
	:	Geauga County
v.	:	Court of Appeals,
	:	Eleventh Appellate District
SUSAN M. BALLISH,	:	
	:	Court of Appeals
Appellee.	:	Case No. 2023-G-0044

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLANT

KATHLEEN A. EVANS (0100028)
Assistant Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
614.466.5394
614.752.5167 fax
Kathleen.Evans@opd.ohio.gov

Counsel for Appellee
Susan M. Ballish

JAMES R. FLAIZ (0075242)
Geauga County Prosecutor
NICHOLAS A. BURLING (0083659)
Assistant Prosecuting Attorney
231 Main Street, 3rd Floor
Chardon, Ohio 44024
440.279.2100
nburling@geauga.oh.gov

Counsel for Appellant
State of Ohio

DAVE YOST (0056290)
Attorney General of Ohio

T. ELLIOT GAISER* (0096145)
Solicitor General
**Counsel of Record*
TRANE J. ROBINSON (0101548)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
614.466.5087 fax
thomas.gaiser@ohioago.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Dave Yost

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INTRODUCTION

This case arises from a community control sanction for a misdemeanor offense, but it also poses a fundamental question about the allocation of authority within the judicial branch: Who decides a criminal sentence?

Criminal sentencing is a creature of statute. *State v. Daniel*, 2023-Ohio-4035, ¶¶28–30. Democratically accountable legislatures define the parameters of crime and punishment. Courts operating within their allotted "scope of judicial discretion" exercise "the judicial power … to impose a sentence authorized by law." *Id.* at ¶16 (quotation omitted). For misdemeanors, the General Assembly conferred on trial courts broad discretion to decide the appropriate sentence, within statutory guardrails. R.C. 2929.22(A). That leaves appellate courts a relatively limited role in reviewing criminal sentences. Reviewing courts should first ensure that the General Assembly authorized the sentence by law and, second, check that the sentencing court did not abuse its discretion. That is all.

In this case, Appellee Susan Ballish committed a misdemeanor theft. Her sentence included a community control condition: she must abstain from using alcohol and unprescribed drugs for one year. The General Assembly specifically authorized sentencing courts to impose that condition on misdemeanor offenders. R.C. 2929.27(A)(8). And the court did not abuse its considerable discretion in selecting that condition, because the condition reasonably related to Ballish's criminal history.

The court of appeals, however, saw fit to invalidate the alcohol-and-drug restriction. The court held the condition unlawful because it did not relate to the theft offense Ballish committed. *State v. Ballish*, 2024-Ohio-1855, ¶13 (11th Dist.) (App.Op.). But no statute says that a community control condition must relate to the offense. Rather, the court of appeals inherited that non-statutory requirement from one of this Court's outmoded cases, *State v. Jones*, 49 Ohio St. 3d 51 (1990) (per curiam). With little regard for the relevant statute's text, *Jones* provided three factors "courts should consider" when reviewing a condition of probation, including the relation between the crime and probationary condition. *Id*. at 53.

State v. Jones does not change the fact that Ballish's sentence was authorized by law and not an abuse of discretion. Moreover, for three reasons, *State v. Jones* and the cases applying its considerations did not compel the court of appeals to reverse Ballish's sentence. *First*, significant overhauls of the criminal sentencing laws repealed the law *Jones* construed. So *Jones* was superseded by statute.

Second, even applying *Jones*, the alcohol-and-drug restriction should stand. *Jones* and its follow-on cases only ever applied to *unenumerated* sanctions that the sentencing court devised and that the General Assembly never expressly authorized, but the restriction here is expressly authorized. Moreover, *Jones* introduced considerations to assist a court's abuse-of-discretion review, but the court of appeals wrongly treated the considerations as independent requirements, like necessary elements of lawful sentence. *See* App.Op.

¶13. And this Court has already applied the *Jones* considerations to uphold a condition that, like this one, is based on criminal history. *See City of Lakewood v. Hartman*, 86 Ohio St. 3d 275, 278 (1999).

Third, if the Court believes Ballish's sentence conflicts with *Jones* despite the previous reasons to abandon or distinguish it, then the Court should overrule *Jones*. Indeed, to the extent a community control condition *must* relate to the crime (as opposed to, say, the offender's criminal history), *Jones* is inconsistent with the sentencing laws that the General Assembly devised, and the legislature makes the rules of criminal sentencing.

The Attorney General, as *amicus*, respectfully urges this Court to reverse.

STATEMENT OF *AMICUS* INTEREST

The Attorney General has a duty to defend Ohio law and an interest in ensuring that courts correctly apply those laws. The Attorney General also has an interest in ensuring that the legislative framework for criminal sentencing is preserved. The Eleventh District's decision ignored the plain language of the sentencing laws and expanded the scope of appellate review of criminal sentences. As Ohio's chief law officer, the Attorney General has a strong interest in seeing this error corrected. R.C. 109.02.

STATEMENT OF THE CASE AND FACTS

This case implicates the evolution of Ohio's criminal sentencing system, so the Attorney General provides an overview before turning to the particulars of this case.

1. Before "major criminal reform" in 1996, criminal sentences in Ohio varied widely and unpredictably. *See State v. Comer*, 2003-Ohio-4165, ¶10. Ohio used a system of "indeterminate felony-sentencing … in which a sentence was expressed in the form of a minimum and maximum prison term with the release decision in the hands of a parole board." *State v. Foster*, 2006-Ohio-856, ¶34 (citing Ohio Crim. Sent'g Comm'n, *The Impact of Ohio's Senate Bill 2 on Sentencing Disparities* 4–5 (April 19, 2002)). Sentencing courts of that era generally had discretion "to suspend sentence[s] of imprisonment and place the offender on probation," if the court found a non-carceral sanction consistent with "the need for protecting the public." Am. Sub. H.B. 381, §2951.02(A), 143 Ohio Laws, Part III, 4697, 4720 (1991). The sentencing laws directed the court to require, as a mandatory condition of probation, that the offender "abide by the law and not leave the state without the permission of the court." *Id*., §2951.02(C), 143 Ohio Laws at 4720. And the "court [could] impose additional requirements on the offender" as a "condition of the offender's probation." *Id*. For example, the court could sentence misdemeanor offenders "to perform supervised community service work." *Id*., §2951.02(H), 143 Ohio Laws at 4722. Any additional condition had to advance "the interests of doing justice, rehabilitating the offender, and [e]nsuring his good behavior." *Id*., §2951.02(C), 143 Ohio Laws at 4720.

Because sentencing courts held seemingly unbridled authority to "impose additional requirements on the offender," *id*, this Court parsed that broad language in 1990 and placed "limit[s]" on sentencing courts' "discretion." *Jones*, 49 Ohio St. 3d at 52. The

requirement that probation conditions serve the interests of justice, rehabilitation, and good behavior, the Court reasoned, supported three considerations for sentencing courts: "whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Id*. at 53. The Court sourced those considerations from two Sixth District cases, a federal court of appeals case, and three intermediate-court cases from other states. *See id*.

2. The General Assembly modernized felony sentencing in 1996. As "the first major criminal reform" in over two decades, *Comer*, 2003-Ohio-4165, at ¶10, the General Assembly passed legislation that ushered in "a comprehensive sentencing structure" designed to "introduce certainty and proportionality to felony sentencing," *Foster*, 2006-Ohio-856, at ¶34. As for non-carceral sentences, felony and misdemeanor sentencing diverged on separate tracks. For felony offenses, the 1996 reforms introduced "community control sanctions" instead of probation, Am. Sub. S.B. 2, §2929.15, 146 Ohio Laws, Part IV, 7136, 7470 (1996), and enacted a list of "nonresidential sanctions" the court could impose, *id.*, §2929.17, 146 Ohio Laws at 7473. These new community control sanctions applied only to felony offenses, not misdemeanors. *Cf. State v. Talty*, 2004-Ohio-4888, ¶16.

The new legislation left the misdemeanor sentencing scheme largely unchanged, with courts having discretion to "[s]uspend" a sentence "imposed for a misdemeanor … and place the offender on probation." Am. Sub. S.B. 269, §2929.51(A)(1), 146 Ohio Laws, Part VI, 10752, 10962 (1996). And when placing a misdemeanor offender on probation, the court remained able to "impose additional requirements on the offender." *Id.*, §2951.02(C)(1)(a), 146 Ohio Laws at 10982–83.

3. By 2004, the General Assembly updated misdemeanor sentencing into its modern form, realigning it with the felony community-control model. The amended law allowed courts to sentence misdemeanor offenders to a combination of residential, nonresidential, and financial "community control sanctions." Am. Sub. H.B. 490, §2929.25, 149 Ohio Laws, Part V, 9484, 9673–74 (2002). The General Assembly enumerated 14 nonresidential sanctions that a court could "impose upon the offender." *Id.*, §2929.27(A), 149 Ohio Laws at 9677–78. And the listed sanctions did not preclude the court from "impos[ing] any other sanction … reasonably related to the overriding purposes and principles of misdemeanor sentencing." *Id.*, §2929.27(B), 149 Ohio Laws at 9678.

In that same act, the General Assembly repealed the misdemeanor probation provision—former R.C. 2951.02. *Id.*, 149 Ohio Laws at 9714–22. But the General Assembly relocated in the new misdemeanor sentencing laws the authority of sentencing courts to "impose additional requirements on the offender" that serve "the interests of

doing justice, rehabilitating the offender, and ensuring the offender's good behavior"—the same language *Jones* addressed. *Id.*, §2929.25(B)(2), 149 Ohio Laws at 9675.

4. After the 1996 legislative reforms, on three occasions, this Court reviewed community control sanctions using the *Jones* considerations. *See Hartman*, 86 Ohio St. 3d at 278; *Talty*, 2004-Ohio-4888, at ¶9; *State v. Chapman*, 2020-Ohio-6730, ¶17. All three cases (four, counting *Jones*) involved community control sanctions that the General Assembly had not specifically authorized.

5. Today, the misdemeanor sentencing laws operate as follows. Broadly, "the overriding purposes of misdemeanor sentencing," namely, deterrence and punishment, guide the sentencing court. R.C. 2929.21(A). To that end, "the sentencing court shall consider … the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public." *Id*. The General Assembly afforded the "court that imposes a sentence" the "discretion to determine the most effective way" to carry out these purposes. R.C. 2929.22(A).

The General Assembly gave sentencing courts broad authority. Courts "may impose on the offender any sanction or combination of sanctions under [the misdemeanor laws]." *Id*. Courts should consider various factors, such as the nature of the offense, criminal history, risk to others, age, likelihood of recidivism, and military service. R.C. 2929.22(B)(1). The sentencing court must also consider the adequacy of "a combination

of community control sanctions" before sentencing a misdemeanant to jail. R.C. 2929.22(C). But should the court determine a jail sentence appropriate, the sentence must be "a definite jail term," not exceeding 30, 60, 90, or 180 days depending on the degree of the offense. R.C. 2929.24(A). In no event may a court "sentence any person to a prison term for a misdemeanor." R.C. 2929.26(D).

In at least four ways, then, the General Assembly cabined the court's discretion to incarcerate a misdemeanor offender. First, prison (as opposed to jail) is not an option. *Id*. Second, the court must deem non-jail sanctions inappropriate. R.C. 2929.22(C). Third, the court must set a definite duration of the sentence. R.C. 2929.24(A). Fourth, as a function of the offense's degree, the General Assembly imposed sentence maxima. *Id*. Also, for certain misdemeanor offenses, the General Assembly limited the sentencing court's discretion by making a jail sentence "mandatory." *E.g.*, R.C. 2929.01(T).

As alternatives to jail, courts may select from three varieties of misdemeanor community control sanctions—residential, nonresidential, and financial. R.C. 2929.26; R.C. 2929.27; R.C. 2929.28. The "sentencing court may" impose "one or more [of the] community control sanctions" written in the law, plus "any other conditions of release under a community control sanction that the court considers appropriate." R.C. 2929.25(A)(1)(a). Independent of the community control sanction(s) the court chooses, it must also require the offender to "abide by the law" and to get permission to "leave the state." R.C. 2929.25(C)(2). If the court elects to "impose additional requirements on the

offender," such conditions must serve "the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior." *Id*.

The statutes providing for all three varieties of community control sanction (residential, nonresidential, and financial) have the same structure. They list specific sanctions that the court "may impose," while clarifying that the court is "not limited to" those enumerated options and free to craft its own nonstandard conditions of community control. R.C. 2929.26(A); R.C. 2929.27; R.C. 2929.28.

Nonresidential sanctions are at issue in this case. The sentencing court "may impose … any nonresidential sanction" that the General Assembly "authorized." R.C. 2929.27(A). The General Assembly explicitly authorized fourteen specific sanctions, such as day reporting, house arrest (with or without electronic and alcohol monitoring), community service, drug treatment, drug and alcohol use monitoring (with or without testing), a curfew, and the list goes on. *Id*. And that list is unexhaustive: Apart from those listed sanctions, the court "may impose any other sanction" so long as it is designed to "discourage … a similar offense" and "reasonably related to the overriding purposes and principles of misdemeanor sentencing." R.C. 2929.27(C).

Finally, community control sanctions cannot exceed five years. R.C. 2929.25(A)(2). The sentencing court retains "sole discretion" to "modify," "substitute," or "reduce the period of time" of the sanctions it imposes. R.C. 2929.25(B), (E).

Ohio Sentencing Laws	Felony	Misdemeanor
Purpose	R.C. 2929.11	R.C. 2929.21
Sentencing considerations	R.C. 2929.12	R.C. 2929.22
Incarceration	R.C. 2929.14	R.C. 2929.24
Residential sanction	R.C. 2929.16	R.C. 2929.26
Nonresidential sanction	R.C. 2929.17	R.C. 2929.27
Financial sanction	R.C. 2929.18	R.C. 2929.28

6. Susan Ballish committed a first-degree misdemeanor theft. She pleaded guilty to stealing from Walmart in Chardon, Ohio. For that offense, the court could have imposed a sentence of up to six months in jail. R.C. 2929.24(A)(1). Instead, the trial court imposed a suspended sentence of jail time, a fine, and one year of probation with conditions. App.Op. ¶2. The conditions required Ballish to (1) obey the law, (2) get permission to leave the State, (3) attend a theft course, (4) consent to warrantless searches by her probation officer, (5) abstain from using alcohol and drugs, subject to random testing for both, and (6) not enter a bar unless for work. App.Op. ¶¶2, 4; Sentencing Tr. 9–10 (Nov. 1, 2023). Ballish objected to the alcohol-and-drug restrictions. App.Op. ¶13. The court overruled the objection, noting on the record that Ballish had recently been on probation with the same judge for "an alcohol and/or drug related offense." *Id.*

Ballish challenged the alcohol-and-drug restriction on appeal, arguing that a sentencing "court's discretion in imposing any particular condition is limited by the test set forth in *State v. Jones*." App.Op. ¶8. Ballish argued the alcohol-and-drug restriction is unrelated to the theft offense she committed. *Id.* Even though the court imposed a standard sanction that the General Assembly pre-approved, the Eleventh District agreed

with Ballish and reversed and remanded for resentencing. App.Op. ¶¶12–13, 19. The State opposed that conclusion on the basis that "*Jones* is inapplicable" post-1996 reforms, but the court rejected that argument because "the Ohio Supreme Court utilized the *Jones* factors" in *Talty*. App.Op. ¶¶10–11.

7. This Court accepted jurisdiction of the State's appeal. *09/03/2024 Case Announcements*, 2024-Ohio-3313. Ballish's one-year community-control term was set to expire at the end of October 2024. But with the express purpose of avoiding "mootness issues" in this Court, the State requested the trial court to stay the sentence, which the court granted pending this Court's decision. *State v. Ballish*, No. 2023 CRB 00658, Mot'n to Suspend (Chardon Mun. Ct., Oct. 8, 2024); *id*., Stay Order (Oct. 8, 2024). Thus, Ballish's sentence is currently stayed with approximately three weeks of time yet unserved. There is no indication that Ballish violated any term of community control. (Upon lifting its stay, the municipal court may forego the remaining time on Ballish's sentence. R.C. 2929.25(B).)

JURISDICTION

Before reaching the merits, one jurisdictional wrinkle warrants attention. After this Court took up jurisdiction, the municipal court stayed Ballish's sentence to prevent this appeal from becoming moot. *Ballish*, No. 2023 CRB 00658, Stay Order (Oct. 8, 2024). The general rule is, "once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify,

or affirm the judgment." *State ex rel. Rock v. Sch. Emp. Ret. Bd.*, 2002-Ohio-3957, ¶ 8. As an exception, the trial court may "take action in aid of the appeal." *In re S.J.*, 2005-Ohio-3215, ¶9; S.Ct.Prac.R. 7.01(D)(1).

Here, the municipal court's stay order is for the express purpose of aiding this Court's jurisdiction. The stay paused the community-control sentence so that it did not expire before this Court could decide the case, thus averting mootness. The stay did not affect the "substance of the judgment of sentence under appeal," just its timing. *State ex rel. Dobson v. Handwork*, 2020-Ohio-1069, ¶17. If the Court disagrees, *In re S.J.* suggests the stay order would be "void." 2005-Ohio-3215, at ¶14. But subsequent cases have overtaken that aspect of *In re S.J.* and clarify that the stay order—assuming it beyond the municipal court's jurisdiction—is merely *voidable*. If the trial court acts without "subject matter jurisdiction," then "its judgment is void"; judgments that are not categorically outside a court's authority are voidable through an appeal. *In re K.K.*, 2022-Ohio-3888, ¶¶48, 50, 54 (quotation omitted).

This stay order, if entered without jurisdiction, would be voidable. In misdemeanor cases, "the sentencing court retains jurisdiction over the offender and the period of community control for the duration of the" sentence. R.C. 2929.25(B). And trial courts are not categorically unable to stay a judgment after an appeal is perfected. *Cf.* Civ.R. 62(B). It follows that an improper post-appeal stay would be at most *voidable*—not the rare judicial order that was a nullity from its inception. Ballish has not contested this stay

order. Therefore, her sentence is currently stayed and, though paused, has not concluded. That means this case is not moot, and the Court should reach the merits.

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

> *A sentencing court, subject to ordinary abuse-of-discretion review, may impose a nonresidential sanction expressly authorized by law.*

The Attorney General makes two points. *First*, the sentencing laws contemplate appellate review of misdemeanor community control sanctions only for an abuse of discretion. Here, the trial court did not abuse its discretion by sentencing Ballish to an alcohol-and-drug restriction. *Second*, in this case, *State v. Jones* is no impediment to the Court applying the sentencing laws of the General Assembly's design.

I. The trial court imposed a lawful community control sanction.

A criminal sentence is lawful if it is authorized by statute and not an abuse of discretion. The sentence in this case, a modest nonresidential community control sanction, falls well within the sentencing court's authority.

A. Trial courts have broad discretion when sentencing misdemeanor offenders.

The State requires buy-in from all three branches of government to impose criminal punishment. The power to prosecute charges belongs to the executive. The judiciary adjudicates criminal culpability and imposes sentences. But the legislature's role is primary: It alone stewards the lawmaking power to delineate unlawful conduct and its punishments. *State v. Taylor*, 2014-Ohio-460, ¶12. For petty theft the same as capital

murder, prosecutors may pursue and courts may impose only those criminal charges and punishments that the legislature enables.

This case involves the interplay between the legislative and judicial roles in sentencing. "Courts have no inherent discretion with respect to the composition of a criminal sentence." *Daniel*, 2023-Ohio-4035, at ¶28. All authority originates in the General Assembly, which "may grant the court discretion in selecting from the consequences provided by law, or it may" exercise its own prerogative to "mandate certain consequences." *Id*. at ¶30; *see, e.g.*, R.C. 1547.99(G)(1) (misdemeanor with mandatory jail term); R.C. 4511.19(G)(1)(a)(i) (same). Courts simply "apply sentencing laws as they are written." *State v. Gwynne*, 2023-Ohio-3851, ¶10 (quotation omitted).

To confer authority on sentencing courts is itself a legislative choice. When sentencing "an offender for a misdemeanor," the trial court "has discretion to determine the most effective" sentence. R.C. 2929.22(A); *see Daniel*, 2023-Ohio-4035, at ¶¶16, 29. The sentencing laws prefer non-carceral misdemeanor sanctions over jail sentences. R.C. 2929.22(C). And the sentencing court holds "discretion in determining the proper conditions of probation," *Hartman*, 86 Ohio St. 3d at 277, as it "considers appropriate," R.C. 2929.25(A)(1)(a).

That conferral of discretion informs how reviewing courts should assess misdemeanor sentences on appeal. Appellate courts "review the trial court's imposition of community-control sanctions" only for an abuse of discretion. *Talty*, 2004-Ohio-4888,

at ¶10. That deferential standard is as it "should be," because fashioning the appropriate sentence for a crime "necessarily involves an exercise of judgment" tasked to trial courts. *State v. Hartman*, 2020-Ohio-4440, ¶30 (emphasis added).

For appellate review of misdemeanor sentences, the two-step approach that the *Kalish* plurality described is the correct model. The "trial court has full discretion to determine" the appropriate sentence. *State v. Kalish*, 2008-Ohio-4912, ¶17 (plurality op.). A reviewing court's role is circumscribed to checking, first, that the sentence "complie[s] with the applicable rules and statutes," meaning that it is authorized by law. *Id*. The appellate review provision contemplates remand of "a sentence imposed contrary to law." R.C. 2953.07(A). Next, "a sentence within the permissible statutory range is subject to review for abuse of discretion." *Kalish* at ¶17; *see Toledo v. Reasonover*, 5 Ohio St. 2d 22, 24 (1965); *Jones*, 49 Ohio St. 3d at 55 (finding "no abuse of discretion by the trial court in imposing [a] condition of probation"). Felony sentencing review differs somewhat by virtue of a statute that does not apply to misdemeanors. R.C. 2953.08(A), (G)(2); *see Gwynne*, 2023-Ohio-3851, at ¶5. And even felony-sentencing review, which is *more* searching, remains "deferential." *Id.* at ¶15.

The courts of appeals uniformly align with the rule that an "appellate court reviews the imposition of a misdemeanor sentence for an abuse of discretion." *State v. Dowdy*, 2024-Ohio-1045, ¶6 (1st Dist.); *State v. Inman*, 2021-Ohio-1573, ¶7 (4th Dist.); *Univ. Heights v. Univ. Realty USA, LLC*, 2022-Ohio-3034, ¶6 (8th Dist.); *State v. Warner*, 2023-Ohio-1083,

¶7 (9th Dist.); *State v. Horton*, 2017-Ohio-8549, ¶36 (10th Dist.); *State v. Batchelor*, 2024-Ohio-3232, ¶9 (12th Dist.). Indeed, the felony-review law's proviso that the "standard for review *is not* whether the sentencing court abused its discretion" is strong textual evidence that the default review *is* for abuse of discretion. R.C. 2953.08(G)(2) (emphasis added); *see Kalish* at ¶17.

B. The General Assembly authorized the reasonable sanction the trial court placed on Ballish.

Here, the trial court did not exceed its "discretion to determine the most effective" sentence. R.C. 2929.22(A). The court sentenced Ballish to one year of probation, with a fine and a set of nonresidential community control sanctions, including a requirement that she abstain from using alcohol or drugs, subject to random testing. This collection of non-carceral sanctions falls within the trial court's express authority and discretion.

A court abuses its discretion by imposing an "unreasonable, arbitrary[,] or unconscionable" sentence. *See State v. Adams*, 62 Ohio St. 2d 151, 157 (1980); *State v. Beasley*, 2018-Ohio-16, ¶12. "The term discretion itself involves the idea of choice, … a determination made between competing considerations." *State v. Jenkins*, 15 Ohio St. 3d 164, 222 (1984) (quotation omitted). A sentence that reflects "passion or bias" rather than "the exercise of reason" represents an abuse of discretion. *Id.*; *see, e.g.*, *Beasley* at ¶10 ("blanket policy of not accepting no-contest pleas").

A "community-control sanction" generally is not an abuse of discretion "as long as the condition is reasonably related to the probationary goals." *Chapman*, 2020-Ohio-6730,

at ¶8. Rare is the case "that a trial court abused its discretion by imposing too severe a sentence on a defendant convicted of violating an ordinance where the sentence imposed is within the limits authorized by [law]." *Reasonover*, 5 Ohio St. 2d at 24. Equally rare is an abuse of discretion when the trial court sentences within what this Court more recently described as "the legally permissible range of choices." *State v. Hackett*, 2020-Ohio-6699, ¶19. Save for arbitrary or unreasonable sanctions, "trial courts have full discretion to impose a prison sentence within the statutory range." *State v. Mathis*, 2006-Ohio-855, ¶37; *Foster*, 2006-Ohio-856, at ¶100 (same).

Ballish's sentence was authorized by law and reasonable, so it follows that it was lawful.

1. The General Assembly authorized alcohol and drug restrictions.

The "court that imposes a sentence" for a misdemeanor determines the appropriate set of sanctions. R.C. 2929.22(A); R.C. 2929.25(A)(1). The sentencing laws confine that discretion in important ways. For example, prison sentences are off limits, jail sentences are discouraged, the court must condition community control on the offender "not leav[ing] the state without … permission," and no sanction may "exceed five years." R.C. 2929.22(C); R.C. 2929.26(D); R.C. 2929.25(A)(2), (C)(2). Those sentencing requirements are valid legislative directives. An equally valid legislative choice, the sentencing court "may impose any community control sanction or combination of community control sanctions" it "considers appropriate." R.C. 2929.25(A)(1)(a). That includes any

"combination of nonresidential sanctions" the General Assembly enumerated in R.C. 2929.27(A). And it includes additional, unenumerated sanctions, provided they reasonably relate to the "principles of misdemeanor sentencing." R.C. 2929.27(C).

The General Assembly expressly authorized the condition at play here. The sentencing court imposed an alcohol-and-drug sanction. The sentencing laws specifically provide the sanction of "drug and alcohol use monitoring, including random drug testing." R.C. 2929.27(A)(8).

2. This restriction was reasonable, conscionable, and not arbitrary.

The trial court imposed one of the "community control sanctions authorized by" the nonresidential sanction provision. R.C. 2929.25(A)(1)(a). On appeal, all that abuse-of-discretion review requires is that Ballish's alcohol-and-drug condition was not "unreasonable, arbitrary[,] or unconscionable." *Beasley*, 2018-Ohio-16, at ¶12. Plainly, it was not.

An unreasonable act lacks a "sound reasoning process that would support that decision." *See AAAA Enters., Inc. v. River Place Cmty. Urb. Redevelopment Corp.*, 50 Ohio St. 3d 157, 161 (1990). An unreasonable sentence would be outside "sensible or rational limits; excessive." *Black's Law Dictionary* 1857 (12th ed. 2024). Courts routinely apply "the general standard of reasonableness review" to community control conditions. *Chapman*, 2020-Ohio-6730, at ¶9. Here, the municipal court imposed the alcohol-and-drug condition for good reason: "Ballish has been on probation with me for an alcohol

and/or drug related offense … within the last year and a half," the court explained, so it decided to "keep that as a term of probation." App.Op. ¶13. To be sure, the court based the condition on criminal history rather than the crime of theft, but that is a permissible, rational consideration when fashioning an appropriate sentence of community control. *See Hartman*, 86 Ohio St. 3d at 278.

The municipal court's alcohol-and-drug restriction was not arbitrary, either. A decision "made 'without consideration of or regard for facts or circumstances'" is arbitrary. *Beasley*, 2018-Ohio-16, at ¶12 (bracket omitted) (quoting *Black's Law Dictionary* 125 (10th ed. 2014)); *accord Black's Law Dictionary* 128 (12th ed. 2024) ("(Of a judicial decision) founded on prejudice or preference rather than on reason or fact"). The court explained why it imposed the alcohol-and-drug condition. The sentencing court was familiar with Ballish and her criminal history, and it made a reasoned, fact-based decision that one year of sobriety would advance the goals of community control sentencing. Thus, the municipal court considered and addressed the needs of Ballish and the Chardon community.

An unconscionable act is "[s]hockingly unjust or unfair," *Black's Law Dictionary* 1841 (12th ed. 2024), or an "action that no conscientious judge, acting intelligently, could honestly have taken," *State v. Hancock*, 2006-Ohio-160, ¶130 (quotation omitted). Ballish is a repeat offender who committed a first-degree misdemeanor. A modest one-year sobriety requirement (in lieu of jail time) does not rise to the dramatic level of

unconscionability. Far from it, the community control condition is sensible and likely to promote good behavior.

C. *Jones*'s considerations artificially confine courts' discretion to sentence offenders, contrary to the sentencing laws.

The court of appeals did not find the alcohol-and-drug restriction unreasonable, arbitrary, or unconscionable. It reversed because the sanction did not relate "to the nature of the theft offense." App.Op. ¶17. But no statute establishes a relatedness requirement. It is the creation of appellate courts (initially the Sixth District in 1976, *see State v. Livingston*, 53 Ohio App. 2d 195, 197, and eventually this Court in 1990, *see Jones*, 49 Ohio St. 3d at 53). In truth, *Jones* characterized a sanction's "relationship to the crime" as a relevant "consider[ation]," not a requirement. *Id.*; *see* below at 30–32. But the court of appeals treated it as an indispensable requirement. App.Op. ¶13. So understood, the relatedness requirement represents an intrusion into the sentencing discretion the General Assembly assigned trial courts.

The sentencing laws make clear that trial courts "may impose on the offender any sanction or combination of sanctions." R.C. 2929.22(A); *see* R.C. 2929.25(A); R.C. 2929.27(A). The court of appeals overread *Jones* to mean every sanction *must* relate to the crime. App.Op. ¶¶17–18. That court-made artifice narrows a sentencing court's discretion in a manner at odds with the sentencing laws. The General Assembly can narrow sentencing discretion on its own—and it has, to name a few ways, by (1) requiring as conditions of their community-control sentences offenders to "abide by the law and

not leave the state without … permission" and (2) capping the "duration" of any sanction at "five years." R.C. 2929.25(A)(2), (C)(2). But a community control sanction can easily satisfy those criteria without having "some relationship to the crime." *Jones*, 49 Ohio St. 3d at 53. The sentencing laws implement no crime-sanction relation requirement, and the court of appeals erred by requiring one.

On top of the statutory requirements of community control sentences, the sentence must not be "unreasonable, arbitrary[,] or unconscionable." *Beasley*, 2018-Ohio-16, at ¶12; *accord United States v. Gardner*, 32 F.4th 504, 530 (6th Cir. 2022). The decision below proves that a relatedness requirement can prevent reasonable, conscionable, non-arbitrary sanctions that meet every criterion of the sentencing laws. Said another way, *Jones* excludes lawful sentences.

The alcohol-and-drug restriction on Ballish is a case in point. A sobriety restriction serves to rehabilitate Ballish, consistent with the goals of misdemeanor sentencing. The sanction is an eminently reasonable measure to instill good behavior. Ballish, after all, has a recent substance related offense, as the trial court stated on the record. And, even if fair minds could differ, appellate courts are ill-stationed to countermand the trial judge, who "sees and hears the evidence, … has full knowledge of the facts[,] and gains insights not conveyed by the record." *Gall v. United States*, 552 U.S. 38, 51 (2007). The community control condition is lawful and reasonable. Therefore, the Court should reverse the court of appeals and reinstate the trial court's lawful sentence.

II. *Jones* does not render the alcohol-and-drug condition unlawful.

This Court's *Jones* case does not compel a different result. Recall that under *Jones*, sentencing courts "should consider whether the condition" (1) "reasonably relate[s] to rehabilitating the offender, (2) has some relationship to the crime," and (3) "reasonably relate[s] to future criminality and serves the statutory ends of probation." 49 Ohio St. 3d at 53. The court of appeals reversed the alcohol-and-drug restriction because it found the second element missing. App.Op. ¶17. For at least three reasons, this Court should reinstate the alcohol-and-drug condition.

A. *Jones* was superseded by statute.

Jones is not good law anymore. This Court applies the force of stare decisis to "rulings rendered in regard to specific statutes." *Stetter v. R.J. Corman Derailment Servs., LLC*, 2010-Ohio-1029, ¶37 (quotation omitted). When a new law is "sufficiently different from the previous enactments," the Court will not assign its precedent under the old law "blanket application of stare decisis" effect. *Id*. at ¶38 (quotation omitted). Instead, the Court will provide "fresh review" of the new law, some resemblance to the old law notwithstanding. *Id*. at ¶¶38–39; *New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng'g, Inc.*, 2019-Ohio-2851, ¶20. Structural changes to a law are enough to "warrant a fresh review of the statute." *New Riegel* at ¶22 (quotation omitted).

Under this Court's precedents on precedent, the General Assembly superseded *Jones* by statute and the case no longer holds the force of stare decisis. This Court decided *Jones*

in 1990, before the State underwent sweeping criminal sentencing reform. *See Foster*, 2006-Ohio-856, at ¶34; *see also* above at 4–5. At the time, sentencing courts could "suspend [a] sentence" of incarceration "and place the offender on probation" instead. Am. Sub. H.B. 381, §2951.02(A), 143 Ohio Laws, at 4720. And "the court [could] impose additional requirements on the offender" as conditions of probation. *Id*., §2951.02(C), 143 Ohio Laws at 4720. The single law pertaining to probationary sentencing offered courts little guidance, though it did stipulate that conditions should serve the interests of justice, rehabilitation, and good behavior. *Id*. And the *Jones* considerations represented this Court's way to "limit[]" the "broad discretion" of trial courts. *Jones*, 49 Ohio St. 3d at 52.

Today, criminal sentencing operates under a different structure, with clear statutory guardrails on sentencing courts. The General Assembly overhauled felony sentencing in 1996 and misdemeanor sentencing by 2004. *See* above at 5–7. The most immediate difference is that the General Assembly repealed former Section 2951.02(C), the provision that *Jones* construed. That point bears repeating: The statute involved in *Jones* is no more.

When the General Assembly transitioned the sentencing scheme from probation to community control, it also implemented a brand-new sentencing structure applicable to misdemeanor offenses. *See* R.C. 2929.21. One statutory directive for sentencing misdemeanor offenses is the trial court must "consider the appropriateness of imposing a community control sanction" before resorting to a carceral sentence. Sentencing courts now have authority to craft a set of community control sanctions "that the court considers

appropriate." R.C. 2929.25(A)(1)(a). And the General Assembly specifically enacted several residential, nonresidential, and financial sanctions that a court may choose from. R.C. 2929.26; R.C. 2929.27; R.C. 2929.28. The same provisions allow the court to impose other sanctions not expressly enumerated in the law. The takeaway: The General Assembly enacted a detailed system for misdemeanor sentencing, and those laws superseded the old system. *Jones* is of the old system; it is not a product of the laws in effect today. As such, stare decisis does not insulate *Jones* from "fresh review" of the best reading of the sentencing laws. *Stetter*, 2010-Ohio-1029, at ¶38.

Jones does not live on merely because the language it construed still exists in the law today. It remains true that sentencing courts "may impose additional requirements on the offender" that advance "the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior." R.C. 2929.25(C)(2); *see also Jones*, 49 Ohio St. 3d at 53. But the best inference is not that the General Assembly intended to bring *Jones*'s "old soil with it" when it relocated that language. *George v. McDonough*, 596 U.S. 740, 746 (2022) (quotation omitted). Rather, the best inference is that the General Assembly intended to reform the mechanics of misdemeanor sentencing (bringing it up to speed with felony sentencing) without abandoning the traditional principles of criminal punishment, namely, deterrence and punishment. Thus, the General Assembly made more explicit its commitment to those traditional principles. *See* R.C. 2929.21(A); R.C. 2929.22(A), (B)(2); 2929.25(C)(1); R.C. 2929.27(C).

Structural reforms to misdemeanor sentencing displaced *Jones*, even though today's law preserves *Jones*-era language. That carried-over language espouses generic goals of sentencing, like "doing justice" and "rehabilitating the offender." R.C. 2929.25(C)(2). The criminal laws of 1990 gave the *Jones* Court little else to work with to reign in sentencing discretion. Different today, the misdemeanor sentencing laws impart on courts specific guidelines to follow. Most relevant here, "the court imposing a sentence for a misdemeanor … may impose upon the offender any" of the nonresidential sanctions the General Assembly enumerated in Section 2929.27(A). "Evaluating the context … is essential to a fair reading of the text." *Great Lakes Bar Control, Inc. v. Testa*, 2018-Ohio-5207, ¶8. In the context of the modern sentencing laws, a requirement that sanctions bear "some relationship to the crime of which the offender was convicted," *Jones*, 49 Ohio St. 3d at 53, is inconsistent with courts' authority to impose any enumerated nonresidential sanction. *Jones* does not survive "a fresh review" of the sentencing laws. *Stetter*, 2010-Ohio-1029, at ¶39.

Maintaining *Jones* is also unworkable. The general-specific canon of interpretation teaches that, if a specific provision and a general provision conflict, the specific provision controls over the general one. *See State v. CSX Transp., Inc.*, 2022-Ohio-2832, ¶25 (plurality op.); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012). Courts' express authority to impose "any nonresidential sanction[s]" enumerated in law and additional sanctions, R.C. 2929.27(A), (C), is more specific than (and

inconsistent with) the crime-sanction relationship consideration that *Jones* extracted from the generic sentencing goals. *Compare* R.C. 2929.27(A), *with* R.C. 2929.25(C)(2). Thus, importing *Jones* into the modern sentencing law is unavailing in practice as well as in principle.

In sum, *Jones* construed a law that the General Assembly repealed and replaced with a "comprehensive sentencing structure." *Foster*, 2006-Ohio-856, at ¶34. The Court has previously *assumed* that *Jones* remains good law. *Talty*, 2004-Ohio-4888, at ¶9. But misdemeanor sentencing is a function of statute. The General Assembly left behind the statute from *Jones* in favor of a new, improved, and detailed network of sentencing laws. Although some of the language *Jones* parsed remains in the law today, *Jones* did not survive the criminal sentencing overhaul as a matter of precedent. The Court should follow *Jones* only to the extent it reflects a compelling interpretation the relevant statutory language. As explained below (at 33–34), *Jones* is not persuasive; nor, because it was superseded by statute, does stare decisis maintain the controlling force *Jones* once had over the now-repealed probationary sentencing provision.

B. The alcohol-and-drug condition is consistent with *Jones*.

Even if *Jones* survived Ohio's statutory reform, *Jones* permits the alcohol-and-drug condition. *Jones*'s precedential reach extended only as far as unenumerated sanctions. Furthermore, *Jones* provided courts factors to consider, not independent requirements of

a lawful sentence. Finally, this Court, applying *Jones*, has upheld sentencing conditions based on criminal history, much like the alcohol-and-drug restriction here.

1. *Jones* applied only to unenumerated sanctions.

This Court has never applied *Jones* to a community control sanction that the General Assembly expressly authorized. *Jones* arose in an entirely different context than this one. After convicting Herbert Jones of providing alcohol to minors, the trial court placed him on probation with a condition that he not associate or communicate with minors. *Jones*, 49 Ohio St. 3d at 52.

The General Assembly had not expressly authorized the condition in *Jones*. And *Jones* said nothing to suggest that a condition the General Assembly *did* expressly authorize at the time, like community service (*see* Am. Sub. H.B. 381, §2951.02(H), 143 Ohio Laws at 4722), would be vulnerable to the three added considerations.

None of this Court's cases applying *Jones* involved a codified sanction either. In *City of Lakewood v. Hartman*, as a probation condition for committing the misdemeanor offense of driving without a license, the trial court required the offender to use an in-car breathalyzer before driving. 86 Ohio St. 3d at 277. At the time, the General Assembly had not expressly authorized that condition, so the trial court imposed it as an "additional requirement[]" under the probation provision then in effect, former Section 2951.02(C)(1)(a). Am. Sub. S.B. 269, 146 Ohio Laws at 10982–83. Two of this Court's subsequent decisions, *Talty* and *Chapman*, both involved the felony offense failure to pay

child support and the same community control condition against "impregnating a woman." *Chapman*, 2020-Ohio-6730, at ¶1; *Talty*, 2004-Ohio-4888, at ¶1. Neither in 2004 nor 2020 was an antiprocreation sanction a condition the General Assembly authorized by name; both trial courts devised that sanction on their own. *Jones*, *Hartman*, *Talty*, and *Chapman* all involved judicially created sanctions that the General Assembly did not expressly enact into law.

Chapman warrants a closer read. *Chapman* assessed "how [to] review conditions of sentencing that limit a fundamental right." 2020-Ohio-6730, at ¶10. And the Court explained that *Jones* is an appropriate framework to evaluate "nonstandard community-control conditions that impact fundamental rights." *Id*. at ¶20. *Jones* involved a prior restraint on speech—a condition preventing communication with minors. *Id.* And *Chapman* and *Talty* involved the fundamental right of procreation. *Id*. at ¶10, citing *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). The *Jones* considerations, therefore, were intended "to ensure that the sanctions are appropriately crafted to meet a proper rehabilitative purpose" without infringing on fundamental "libert[ies] more than is necessary to achieve the goals of community control." *Id.* at ¶19.

Unlike in *Jones*, *Talty*, and *Chapman*, the community control sanction in this case is neither "nonstandard" nor treading on "fundamental rights." *Id*. at ¶20. By "nonstandard" the Court meant unenumerated—a sanction the General Assembly did not pre-approve in positive law. Here, in contrast, the General Assembly "authorized"

as a valid sanction a "term of drug and alcohol use monitoring." R.C. 2929.27(A)(8). That takes this sanction outside the ambit of *Jones* and its progeny. This Court has *never* said a standard, enumerated sanction must relate to the crime of conviction.

Nor does this sanction implicate a fundamental right. Ohioans have no right to use illicit controlled substances, and the sanction made an exception for drugs "lawfully prescribed by a licensed physician." Sentencing Tr. 9 (Nov. 1, 2023). As for the restriction on alcohol consumption, far from infringing a fundamental right, under the U.S. Constitution, States enjoy wide "latitude with respect to the regulation of alcohol." *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 533 (2019); *see* U.S. Const. amend. XXI, §2.

So the predicates to applying *Jones* are absent, and the Court should not now extend *Jones* to standard, enumerated community control sanctions. *Cf. Chapman*, 2020-Ohio-6730, at ¶¶10, 20. Indeed, the statute relevant to this case offers a principled line between sanctions the General Assembly expressly "authorized" and "other," unenumerated sanctions. R.C. 2929.27(C). Separate from the list of specific sanctions, the sentencing court as it sees fit "may impose any other sanction that is intended to discourage the offender … from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing." *Id*. Insofar as the *Jones* considerations implement the purposes of misdemeanor sentencing, they could be relevant to courts' assessment of "nonstandard community-control conditions." *See*

Chapman, 2020-Ohio-6730, at ¶20. But the distinction between enumerated sanctions that the General Assembly specifically authorized and unenumerated sanctions underscores that the *Jones* considerations, at most, apply only to the latter type of community control conditions.

2. *Jones* provided relevant considerations, not independent requirements.

Even if *Jones* remained good law and extended to enumerated sanctions, *Jones* described factors that "courts should consider," not discrete requirements. 49 Ohio St. 3d at 53. In *Jones*, the Court determined the condition at issue comported with all three considerations. *Id*. at 54. It does not follow, however, that all three considerations are independently necessary elements of a lawful sentence. Perhaps two-of-three suffices. *Cf. Axon Ent., Inc. v. FTC*, 598 U.S. 175, 207 (2023) (Gorsuch, J., concurring in judgment) (asking, "what happens when the factors point in different directions," and answering, "No one knows.").

Hartman, *Talty*, and *Chapman* did not treat the *Jones* considerations as independent requirements. The sentencing court required Hartman to use a breathalyzer before driving, even though her offense (driving with a suspended license) was not alcohol related. 86 Ohio St. 3d at 277–78. While the sanction did not directly relate to the crime, this Court concluded "her driving record support[ed] … requiring the installation of the ignition interlock device" as a reasonable means "to rehabilitate [Hartman] and protect those who may be injured by her conduct." *Id.*

Talty described *Jones* as "stand[ing] for the proposition that probation conditions must be reasonably related to the statutory ends of probation and must not be overbroad." 2004-Ohio-4888, ¶16. So understood, the *Jones* considerations simply assist courts in "reviewing the reasonableness of [community control] conditions." *Id*. Thus, when *Talty* turned to the facts of that case—a condition of community control against procreation—the Court found the "antiprocreation condition … overbroad." *Id*. at ¶20. The Court used *Jones* as the framework to analyze the community control condition, but in the Court's actual application, it did not treat the three considerations as freestanding requirements of a lawful sentence. *Id*. at ¶¶12, 16, 21. Most recently in *Chapman*, another case involving a challenge to an antiprocreation condition, the Court asked whether the condition "reasonably relate[d] to his offense" and "to the goals of community control." *Chapman*, 2020-Ohio-6730, ¶¶27, 29. Here again, the analysis turned on wholistic reasonableness, not a disjunctive progression through three distinct *Jones* requirements.

The court of appeals here treated *Jones* differently from those precedents above. The court reasoned that "[a]ll three prongs [of *Jones*] must be satisfied for a reviewing court" to uphold a sentence on appeal. App.Op. ¶13 (quotation omitted). The court invalidated the alcohol-and-drug condition because "no facts contained in the record" showed that Ballish's theft offense "in any way related to drugs or alcohol." App.Op. ¶17. The court did not consider whether the alcohol-and-drug condition was reasonable given Ballish's history of substance-abuse related offenses. The sentencing court stated on the record

that the condition was proper because the same judge had recently placed Ballish on probation for "an alcohol and/or drug related offense." *See* App.Op. ¶13.

This Court's cases state and demonstrate that *Jones* provided relevant considerations, not (as the court of appeals surmised) independent requirements. Even if the alcohol-and-drug condition lacked a direct relation to her theft offense, such a condition was reasonable, indeed prudent, given Ballish's criminal history.

3. Precedent applying *Jones* supports the alcohol-and-drug condition.

This Court's precedent counsels that Ballish's alcohol-and-drug community control condition is lawful. *Hartman*, as noted, involved a community control condition that Hartman install a breathalyzer in her car and use it before driving. 86 Ohio St. 3d at 276. But Hartman's offense did not involve alcohol; she was guilty of driving under a suspended license. *Id*. The court of appeals thought the breathalyzer condition was insufficiently "related to the offense." *Id*. at 278. But this Court reversed, explaining that Hartman's criminal record supported the condition. *Id*. And more broadly, the condition served the purposes of probation. *Id.*

By the same reasoning, the trial court acted within its authority to require Ballish to abstain from drugs and alcohol for one year. The restriction related to Ballish's criminal history, and doubtlessly would help "rehabilit[e]" Ballish and ensure her ongoing "good behavior." R.C. 2929.25(C)(2). Under *Hartman*, which applied the *Jones* considerations,

86 Ohio St. 3d at 278, the trial court did not abuse its discretion by sentencing Ballish to an alcohol-and-drug condition.

C. Alternatively, the Court should overrule *Jones* because it contradicts the sentencing laws.

As a last resort, if this Court determines that *Jones* survived the sentencing reforms, applies to enumerated sanctions, and requires strict compliance with all three considerations like elements, and if the Court distinguishes *Hartman*, then it should acknowledge that *Jones* is irreconcilable with the sentencing laws and overrule it. As noted above (at 20–21, 25–26), that reading of *Jones* detracts from the sentencing discretion the General Assembly assigned to trial courts.

The "goal when interpreting one of Ohio's criminal statutes" is to "give effect to the legislature's intent by simply applying the law as written." *State v. Faggs*, 2020-Ohio-523, ¶15; *Gwynne*, 2023-Ohio-3851, at ¶10. On that score, *Jones* missed the target. At the time of *Jones*, probation conditions had to be "related to the interests of doing justice, rehabilitating the offender, and insuring his good behavior." 49 Ohio St. 3d at 53 (quotation omitted). Sentencing courts could determine appropriate conditions that met those criteria. The probation statute did not feature a textual requirement that each probation condition relate "to the crime of which the offender was convicted." *Id*. A given probation condition—such as an alcohol-and-drug restriction—could well serve the interests of justice, rehabilitation, and good behavior (the requirements enacted in law) without relating to the specific offense of conviction. A rational sentencing court

might impose a condition based on an offender's criminal history even if the crime giving rise to the condition did not directly relate.

For these reasons, if the Court reads *Jones* to *require* a direct offense-condition relationship, then neither the sentencing laws of 1990 nor today support that requirement. So, if all the reasons to distinguish and limit *Jones* fail, the Court should overrule *Jones* and restore the sentencing rules that the General Assembly enacted.

CONCLUSION

For these reasons, the Court should reverse the Eleventh District.

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/s T. Elliot Gaiser
T. ELLIOT GAISER* (0096145)
Solicitor General
**Counsel of Record*
TRANE J. ROBINSON (0101548)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
614.466.5087 fax
thomas.gaiser@ohioago.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Dave Yost

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellant was served this 3rd day of December, 2024, by e-mail on the following:

Kathleen A. Evans
Assistant Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Kathleen.Evans@opd.ohio.gov

Nicholas A. Burling
Assistant Prosecuting Attorney
231 Main Street, 3rd Floor
Chardon, Ohio 44024
nburling@geauga.oh.gov

/s T. Elliot Gaiser
T. Elliot Gaiser
Solicitor General