IN THE SUPREME COURT OF OHIO

SCT NO. 2025-0670

STATE OF OHIO	:	
Appellant	:	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Court of
vs.	:	Appeals CA: 24-114280
HARRY HOLLIMAN, JR.	:	
Appellee		

MEMORANDUM IN RESPONSE OF APPELLEE HARRY HOLLIMAN, JR.

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EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

This case is a straightforward sentencing appeal, and the State's Memorandum in Support of Jurisdiction[1] fails to describe issues involving public or great general interest. Indeed, the State's sole argument on this point simply repackages the public policy views underscoring its Proposition of Law: that prosecutors, rather than judges, should be the ones to decide how some sentencing enhancements are applied. *See* State Mem. at pp. 7-9. But that is not how sentencing works.

In the ordinary course of a trial, it is well-established that trial courts decide what sentence to impose while following the guidelines, mandates, and enhancements set forth by the General Assembly. Now the State claims that adhering to this otherwise-common distribution of power leads to "improper" sentencing—State Mem. at p. 1—but only and specifically as to firearm specification sentencing enhancements. This is substantively wrong as set forth below, but for purposes of this inquiry the assertion also fails to identify any public or general interest in departing from the norm as to one set of sentence enhancements.

Nothing in the State's argument indicates that this framework is failing, or even creating a problem, in any other sentencing context. Thus, there is no reason to conclude that adhering to the established and tested framework would suddenly become a problem.

ARGUMENT

Ohio law places sentencing decisions in the hands of trial courts. "Under Ohio sentencing law, the severity of a sentence imposed is in the sole discretion of the trial court and will not be set aside on appeal unless . . . the trial court unreasonably ignored the applicable sentencing statutes." *State v. Parr*, 2014-Ohio-1479, ¶ 4 (3rd Dist.) (citing *State v. Adams*, 2011-Ohio-2562, ¶ 7 (2nd Dist.)); *see also State v. Elliott*, 2021-Ohio-424, ¶ 14 (1st Dist.) ("[W]e now turn to recommended and agreed

[1] Cited herein as "State Mem. at _."

sentences, a particularly thorny subject because sentencing falls entirely within the trial court's purview.").

The State's Proposition of Law would change this in one respect: if a defendant could be sentenced under both R.C. 2941.141 and 2941.145, and no statute mandates which one must be imposed, then the State claims it must have the power to decide which is imposed—not the trial court.

State's Proposition Of Law I

The State formulates its sole proposition of law as follows:

> When an offender is convicted of firearm specifications pursuant to R.C. 2941.141 and R.C. 2941.145 for the same offense, and R.C. 2929.14(B)(1)(g) is inapplicable, the specifications merge and the State may choose which specification to pursue at sentencing

But the text of these statutes directly undercuts that claim, the interpretive canon the State relies on rests on an inapt analogy already rejected by this Court, and other provisions of the firearm specification statutes demonstrate that the General Assembly rejected the State's policy preferences.

A. The statutes' plain text refutes the State's legal argument, and the interpretive canon the State relies on instead cannot escape that.

Statutory construction must "focus first and foremost on the text of the statute." *Ayers v. Ayers*, 2024-Ohio-1833, ¶ 11 (citing *State v. Pariag*, 2013-Ohio-4010, ¶ 10). And the text of the relevant firearm specification statutes is clear that specifications' prison terms are "imposed" by "court[s]." R.C. 2941.141(B), 2941.145(B). The only factor limiting or preventing a court from imposing one specification is if a court has already imposed another. *Id.* This is consistent with the language of other statutes placing sentencing decisions in courts' hands. *See*, *e.g.*, R.C. 2929.41(B)(2) (discussing how a "court of this state" may order the prison terms it "imposes" be served consecutively). Under the plain language of the statute, there is no reason to think that any entity other than the trial court has the power to decide which of the two sentences to impose.

The State's contrary argument does not begin with the text of the firearm specification statutes, nor with anything to do with those statutes, nor even with another sentencing statute. Rather, it begins

with the statute governing convictions for allied offenses. State Mem. at pp. 4-5 (citing R.C. 2941.25). This statute limits what a "defendant may be convicted of," rather than what sentence can be imposed following a conviction. R.C. 2941.25(A). Nonetheless, the State utilizes this statute to invoke the "prior-construction" canon of statutory interpretation:

> If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort . . . they are to be understood according to that construction.
>
> Scalia & Garner, *Reading Law*, at 322 (2012).

The problem with the State's invocation is that this canon is premised on statutes using the **same** specific word or phrase. As Justice Scalia explains, "it is reasonable to believe that the terminology bears a consistent meaning" "when a statute uses **the very same terminology** as an earlier statute." *Id* at 323 (emphasis added). And that is not the case here.

> Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> R.C. 2941.25(A)
>
> Imposition of a one-year mandatory prison term upon an offender under division (B)(1)(a) (iii) of section 2929.14 of the Revised Code is precluded if a court imposes an eighteen-month, three-year, fifty-four-month, six-year, or nine-year mandatory prison term on the offender under division (B)(1) (a)(i), (ii), (iv), (v), or (vi) of that section relative to the same felony.
>
> R.C. 2941.141(B).

There is no word or phrase from the allied-offense statute repeated in the firearm specification statute, not the least of which one which has "received authoritative construction" governing the State's discretion to choose which conviction to impose.

More importantly, the statutes do not address the same subject matter: one governs which "conviction" may be imposed, the other governs which "sentence" is imposed following a conviction. This Court has emphasized that distinction in discussing *State v. Whitfield*, which the State relies on at page 5 of its Memorandum.

> *Whitfield* makes clear that it is the state that determines which offense to pursue at sentencing . . . At the hearing, the trial court must accept the state's choice among allied offenses, "merge the crimes into a single conviction for sentencing, * * * and impose a sentence that is appropriate for the merged offense."

State v. Wilson, 2011-Ohio-2669, ¶ 13 (quoting *State v. Whitfield*, 2010-Ohio-2, at ¶ 24) (emphasis added). In other words, R.C. 2941.25 governs how to resolve a bottleneck in the offenses comprising a conviction, and gives the State discretion to decide that issue. But the trial court still "impose[s] a sentence that is appropriate" for that conviction. *Id*. And under the firearm specification statutes, the "bottleneck" being addressed is in the imposition of the sentences themselves.

Thus, interpretations of the "allied offense" statute do not overpower the plain text of the firearm specification statute.

B. The State's concern about "under-sentencing" is nothing more than a policy disagreement with the General Assembly—one which underscores the fact that the General Assembly knew how to adopt the State's preferred policy and specifically chose not to.

The State next suggests that by allowing trial courts to elect which firearm specification to sentence defendants under creates a "windfall" for defendants who will be "under-punished" with one-year specifications rather than three-year. State Mem. at 7-8. This betrays the State's belief that the most severe specification should always be imposed where possible—a position the General Assembly clearly did not share when it enacted the firearm specification statutes.

> The "General Assembly's use of particular language to modify one part of a statute but not another part demonstrates that the General Assembly knows how to make that modification and has chosen not to make that modification in the latter part of the statute."

Wilson v. Durrani, 2020-Ohio-6827, ¶ 30 (quoting *Hulsmeyer v. Hospice of Southwest Ohio, Inc.*, 2014-Ohio-5511, ¶ 26).

The General Assembly knows how to compel sentencing courts to impose more severe firearm specifications. R.C. 2929.14(B)(1)(g), for example, expressly requires that a "sentencing court **shall** impose on the offender the prison term specified . . . for **each of the two most serious specifications**" available to it, but only in very specific circumstances. R.C. 2929.14(B)(1)(g) (emphasis added).

If the General Assembly agreed that the most serious specifications should always be imposed, then it would have said so in the very statutes at issue. It did not.

C. The decision below does not implicate prosecutors' discretion and control regarding which charges to pursue.

The State's final argument is that the prosecutor's "statutory power to bring charges" is impeded by the allowing trial court's to decide which specification to impose at sentencing. State Mem. at 9. But this argument simply restates the flawed premise that there is no distinction between deciding what charges to pursue and what sentences to impose. Indeed, the State decries the notion that trial courts will make these decisions "without any apparent judicial standards," while at the same time insisting that its own decisions must remain "not subject to judicial review." State Mem. at 9 (quotation omitted).

Sentencing decisions are often left to trial courts—with wide discretion, true, but not a wholesale lack of "judicial standards." And as the State itself points out, if prosecutors feel strongly that a particular case warrants imposition of a three-year firearm specification but are uncertain the sentencing court will agree, then the prosecutorial power to decide what charges to bring can be the solution: they need only elect to not include the one-year specification in the indictment in the first place.

CONCLUSION

For the reasons set forth above, the decision below was correct and does not warrant an exercise of this Court's jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response was delivered upon Michael O'Malley, Cuyahoga County Prosecutor, and or a member of his staff, The Justice Center 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 this June 16, 2025, via electronic service.

s/ Thomas T. Lampman

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