

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

November 24, 2021

[Cite as *11/24/2021 Case Announcements #2, 2021-Ohio-4108.*]

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## APPEALS NOT ACCEPTED FOR REVIEW

### **2021-1039. State v. Hoover.**

Belmont App. No. 20 BE 0002, 2021-Ohio-2485.

Donnelly, J., dissents, with an opinion joined by Stewart and Brunner, JJ.

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#### **DONNELLY, J., dissenting.**

{¶ 1} In 2018, a Belmont County jury found appellant, John William Hoover, guilty of felonious assault. The trial court sentenced Hoover to seven years in prison.

{¶ 2} Hoover appealed, challenging the conviction and his sentence. The Seventh District Court of Appeals affirmed the conviction, but it reversed the sentence based on a violation of the attorney-client privilege and remanded the matter to the trial court for resentencing. *State v. Hoover*, 7th Dist. Belmont No. 18 BE 0019, 2019-Ohio-4229, ¶ 32, 74. At the subsequent sentencing hearing, the trial court, with a different judge presiding, sentenced Hoover to eight years in prison, which was the statutory maximum, *State v. Hoover*, 7th Dist. Belmont No. 20 BE 0002, 2021-Ohio-2485, ¶ 15, 33.

{¶ 3} Hoover appealed to this court, asserting in his first proposition of law that the increased sentence gives rise to a presumption of vindictiveness on the part of the sentencing judge. *See North Carolina v. Pearce*, 395 U.S. 711, 723-726, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). He maintains that the judge at his resentencing hearing “did not have any new harmful information. Rather, the second sentencer had additional mitigating evidence that justified a lesser sentence \* \* \*.” I offer no opinion regarding the merits of that contention, which have been neither briefed nor argued.

{¶ 4} Although the resentencing hearing in this case was de novo, I am concerned about the possible chilling effect on other potential appellants of Hoover arguably being punished for successfully asserting his right to appeal. The bottom line is that Hoover was sentenced to seven years in prison. He then prevailed in part on appeal, but his “reward” for winning was to have an extra year added to his sentence. Parties asserting rights ought not to fear that they might be penalized for asserting those rights. *See Pearce* at 723-726; *see also Texas v. McCullough*, 475 U.S. 134, 137-138, 106 S.Ct. 976, 89 L.Ed.2d 104 (1986).

{¶ 5} Because I would accept jurisdiction over Hoover’s first proposition of law in order to explore this important constitutional issue, I dissent.

STEWART and BRUNNER, JJ., concur in the foregoing opinion.

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