

The Supreme Court of Ohio

ADMINISTRATIVE ACTIONS

March 25, 2021

[Cite as *03/25/2021 Administrative Actions, 2021-Ohio-931.*]

Amendments to the Rules of Superintendence for the Courts of Ohio (new Sup.R. 5.02) were adopted on March 2, 2021, and are effective July 1, 2021. The final version of the amendments has been posted on the court's website and will be published in the April 5, 2021 Ohio Official Reports advance sheet.

O'Connor, C.J., and Fischer, Donnelly, Stewart, and Brunner, JJ., concurred in adopting the amendments.

Kennedy, J., dissented, with a statement joined by DeWine, J.

KENNEDY, J., dissenting.

{¶ 1} I dissent from the court's adoption of amended Sup.R. 5.02, which requires any bail schedule used by a municipal or county court to contain the presumption of personal recognizance for pretrial release as the default bond and requires the adoption of a uniform bail schedule in counties with more than one municipal or county court.

{¶ 2} Adopting Sup.R. 5.02 is contrary to our rulemaking authority under the Ohio Constitution. Article I, Section 9 of the Ohio Constitution requires this court to adopt rules for establishing procedures to set the amount and conditions of bail pursuant to Article IV, Section 5(B) of the Ohio Constitution. However, that rulemaking power is limited by General Assembly oversight pursuant to the Ohio Constitution.

{¶ 3} Article IV, Section 5(B) provides that all rules of procedure adopted by this court must be submitted to the General Assembly for its review prior to January 15 of every year. The General Assembly then has the power to disapprove any proposed rules prior to the rule becoming effective. The Constitution grants the General Assembly this oversight authority because rules of procedure adopted pursuant to Article IV, Section 5(B) supersede other laws, so long as the rules

do not abridge, enlarge, or modify any substantive right. By adopting this procedural rule under the Superintendence Rules, this court evades the review by the General Assembly required by the Constitution. Because Sup.R. 5.02 establishes requirements affecting the amount and conditions of bail that have not been adopted in a rule of procedure and submitted to the General Assembly, it may not take effect under Article I, Section 9 and Article IV, Section 5(B).

{¶ 4} The Superintendence Rules are promulgated pursuant to a constitutional provision separate from the procedural rules. Article IV, Section 5(A)(1) controls the adoption of Superintendence Rules, and that provision does not allow the Superintendence Rules to supersede laws that are in conflict with them. Rather, as the preface to the Superintendence Rules explains, those rules were adopted simply to ensure the “prompt disposition of all causes, at all times, in all courts of this state.” Ohio courts have long recognized that the Superintendence Rules were not designed to alter substantive rights or procedural law.

{¶ 5} Moreover, Sup.R. 5.02 is contrary to R.C. 2937.23(A)(2) and the rule that flows from that statute, Crim.R. 46(G). R.C. 2937.23(A)(2) grants each judge discretion in setting his or her own bond schedule in misdemeanor cases and in imposing financial and nonfinancial conditions of release. Crim.R. 46(G), effective July 1, 2020, which passed General Assembly review, currently mirrors the requirements of the statute. As adopted, Sup.R. 5.02 contradicts the language of the statute by usurping the independent authority the General Assembly has given trial-court judges across the state. Although the material in the administrative packet asserts that these new provisions flow from Crim.R. 46, no language in Crim.R. 46 or the controlling statute authorizes what the court adopts today.

{¶ 6} Therefore, the adoption of amended Sup.R. 5.02 is contrary to R.C. 2937.23(A)(2), conflicts with Crim.R. 46(G), and exceeds the authority granted to this court by Article IV, Section 5(B) of the Ohio Constitution. This action by the majority strips the General Assembly of oversight authority expressly provided to it by the Ohio Constitution. Because this court exceeds the bounds of its constitutional authority, I dissent.

DEWINE, J., concurs in the foregoing statement.
