

# The Supreme Court of Ohio

---

## CASE ANNOUNCEMENTS

December 29, 2022

[Cite as *12/29/2022 Case Announcements #3, 2022-Ohio-4785.*]

---

## RECONSIDERATION OF PRIOR DECISIONS

### **2021-0670. State v. Barnes.**

Cuyahoga App. No. 109442, **2021-Ohio-842**. Reported at \_\_ Ohio St.3d \_\_, 2022-Ohio-4486, \_\_ N.E.3d \_\_. On motion for reconsideration. Motion denied.

Fischer, J., concurs, with an opinion.

Kennedy and DeWine, JJ., dissent.

W. Scott Gwin, J., of the Fifth District Court of Appeals, sitting for Donnelly, J.

---

### **FISCHER, J., concurring.**

{¶ 1} I believe that the majority opinion was wrongly decided, as I noted in my dissenting opinion. *See State v. Barnes*, \_\_ Ohio St.3d \_\_, 2022-Ohio-4486, \_\_ N.E.3d \_\_, ¶ 43-70 (Fischer, J., dissenting). However, I agree that the motion for reconsideration filed by appellee, the state of Ohio, should be denied. Thus, I concur in the decision to deny the motion for reconsideration. I write separately to emphasize that I have a significant problem with the way these motions for reconsideration are being handled by this court at this time.

{¶ 2} The Rules of Practice of the Supreme Court of Ohio permit a party to file a motion for reconsideration within ten days after entry of this court's judgment. S.Ct.Prac.R. 18.02(A). Our rules also afford a party opposing reconsideration the same amount of time to respond to that motion. S.Ct.Prac.R. 18.03(A). And our rules also specifically allow amici curiae to file memoranda in support of or memoranda in response to reconsideration within those same time frames. S.Ct.Prac.R. 18.02(C) and 18.03(B).

{¶ 3} In this case, the state filed its motion for reconsideration on December 27, 2022. Appellant, Terry Barnes Sr., filed his memorandum in opposition to reconsideration on December 28. Any amicus curiae, like Ohio Attorney General Dave Yost, would have until January 6, 2023, to file a memorandum in response to reconsideration. Nevertheless, over the objections of the undersigned, the justices of this court were forced to vote on this motion by December 29, 2022—eight days before the amici curiae’s deadline to respond. *See* S.Ct.Prac.R. 18.03(B).

{¶ 4} While both parties have had an opportunity to be heard by this court, that does not mean that this court should issue a decision on this motion for reconsideration immediately, as it does today. Doing so not only denies the amicus curiae the opportunity to participate in the reconsideration process that is guaranteed by our rules, but we also arbitrarily deny ourselves the time for a thorough, full, and fair deliberation of the state’s motion for reconsideration and Barnes’s memorandum in opposition to reconsideration. The court makes this decision within 48 hours after the motion for reconsideration was filed and within 24 hours after the memorandum in opposition to reconsideration was filed. This early activity is improper because it insults the parties and the judicial system, and it denies the nearly 12 million Ohioans the full and fair consideration due to all participants in this process.

{¶ 5} There is no need for this type of rushed decision. This case is not expedited. And the change in the membership of the court will not deprive the state or Barnes of full and fair consideration should this court decide to wait for the entire period allotted by our rules to pass before issuing a decision on the motion for reconsideration. Justice demands that motions for reconsideration that are filed this month be treated the same as motions for reconsideration that were filed in the previous months. After all, “[j]ustice is served by the consistent and methodical application of the law.” *State v. LaRosa*, 165 Ohio St.3d 346, 2021-Ohio-4060, 179 N.E.3d 89, ¶ 64 (Donnelly, J., concurring in part and dissenting in part), quoting *State v. Tijerina*, 3d Dist. Defiance No. 4-02-01, 2002-Ohio-2979, ¶ 11.

{¶ 6} The parties in this case deserve the same consideration that this court has provided to other litigants, which our rules demand. And to the extent that a pattern of not following our reconsideration rules in prior election years somehow justifies the court’s reconsideration decision today, that practice should be stopped. We have these rules for a reason. And we

should stop acting as though a change in the membership of this court is now a valid reason to shortchange the parties in our consideration of motions filed in this court.

{¶ 7} Nevertheless, after reviewing the state’s motion for reconsideration and Barnes’s memorandum in opposition to reconsideration, but without consideration of any responsive amicus brief, I agree that the state’s motion should be denied. Therefore, I respectfully concur.

---