

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 23, 2022

[Cite as *03/23/2022 Case Announcements #3, 2022-Ohio-792.*]

MERIT DECISIONS WITHOUT OPINIONS

2021-1568. State v. Brown.

In Mandamus. On respondent's motion to dismiss amended complaint for mandamus. Motion granted. Cause dismissed.

O'Connor, C.J., and Kennedy, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

Fischer, J., concurs, with an opinion.

FISCHER, J., concurring.

{¶ 1} Although I agree that dismissal of relator David Brown's complaint in this matter is appropriate, I write separately to address the argument that a criminal defendant has no constitutional right to hybrid representation.

{¶ 2} Hybrid representation is the right to represent oneself with the assistance of counsel, with the defendant and defense counsel sharing responsibilities in preparing and conducting trial. *State v. Hackett*, 164 Ohio St.3d 74, 2020-Ohio-6699, 172 N.E.3d 75, ¶ 34 (Fischer, J., concurring), citing *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, ¶ 29. It is true that this court has held that there is no right under the Ohio Constitution to hybrid representation. See *State v. Thompson*, 33 Ohio St.3d 1, 6, 514 N.E.2d 407 (1987); *Martin* at paragraph one of the syllabus. But as I previously explained in my concurring opinion in *Hackett*, this court did not look to the plain language of the Ohio Constitution in reaching that conclusion in *Martin* and *Thompson*. *Hackett* at ¶ 35-36 (Fischer, J., concurring).

{¶ 3} In fact, the plain language of the Ohio Constitution supports the argument that a criminal defendant has a constitutional right to hybrid representation. Article I, Section 10 of the Ohio Constitution states, “In any trial, in any court, the party accused *shall* be allowed to appear *and* defend in person *and* with counsel.” (Emphasis added.) The word “and” is conjunctive; the disjunctive word “or” is not found in the quoted constitutional provision. As a matter of grammar and basic reading comprehension, Article I, Section 10 provides a probable constitutional right to hybrid representation.

{¶ 4} It is not improper for parties to rely on this court’s holdings in *Martin* and *Thompson*, but they should be aware that those cases were decided without this court considering the very document that might guarantee the right to hybrid representation. I encourage this court to reevaluate its holdings in *Martin* and *Thompson* and take into consideration the plain language of Article I, Section 10 of the Ohio Constitution, because a plain reading of that provision supports a right to hybrid representation.
