THE STATE OF OHIO, APPELLEE, *v.* JORDAN, APPELLANT.

THE STATE OF OHIO, APPELLEE, *v.* JOHNSON, APPELLANT.

[Cite as *State v. Jordan*, 173 Ohio St.3d 335, 2023-Ohio-2666.]

Appeals dismissed as having been improvidently accepted.

(Nos. 2022-0733 and 2022-0734—Submitted April 18, 2023—Decided August 3, 2023.)

APPEALS from the Court of Appeals for Scioto County, Nos. 20CA3936, 2022-Ohio-1480, and 20CA3935, 2022-Ohio-1479.

FISCHER, J., announcing the judgment of the court.

{¶ 1} We dismiss these causes as having been improvidently accepted.

{¶ 2} Under Article IV, Section 2(B)(2)(e) of the Ohio Constitution, this court has discretionary jurisdiction over "cases of public or great general interest." After reviewing the briefing and oral arguments in these cases, we determine that this standard is not met in these appeals.

{¶ 3} We note that appellants fail to present us with a legal argument related to the sole proposition of law that we accepted for review in each case. Notably, the three propositions of law argued in appellants Sashia Johnson's and Adrienne Jordan's merit briefs differ from the single proposition of law over which we granted jurisdiction, *see* 167 Ohio St.3d 1516, 2022-Ohio-3214, 195 N.E.3d 138; 167 Ohio St.3d 1516, 2022-Ohio-3214, 195 N.E.3d 139, and appellants' expansive arguments move beyond the scope of the issue over which we granted jurisdiction.

{¶ 4} We also briefly address the concerns raised in the dissenting opinion. The position taken in the dissenting opinion is premised on its analysis of the continuing viability of *State v. Chambliss*, 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 651. *See* dissenting opinion, ¶ 35. After oral argument in these cases,

we sua sponte ordered supplemental briefing on whether a final order exists in these cases within the meaning of R.C. 2505.02 and further asked the parties to address *Chambliss*. 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 715; 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 716. Notably, all the parties advocated for following *Chambliss* and concluding that the order is appealable.

{¶ 5} *Chambliss* was a unanimous decision announced by this court only 12 years ago. In *Chambliss*, the court considered the arguments for concluding that the denial of retained counsel of choice cannot be immediately appealed, and the court rejected those arguments. *See Chambliss* at ¶ 16-22. In these appeals, no party has argued that the *Chambliss* court erred or that in the 12 years since the *Chambliss* decision, the experience of the bench and bar has proved that *Chambliss* was wrongly decided. Nor did either of the lower courts have an opportunity to consider this issue.

{¶ 6} We conclude that these appeals do not function as a suitable vehicle for reevaluating *Chambliss*. The conclusion of the dissenting opinion may very well be correct; however, in these appeals, we opt to take what one might call a more "judicially conservative" approach. At this time, we reserve any reevaluation of *Chambliss* for a case that asks us to do so in the ordinary course, with the parties and lower courts having argued and considered the issue and having properly presented it to us in a way that allows us to fully consider the pros and cons of overruling *Chambliss*.

{¶ 7} We dismiss these causes as having been improvidently accepted.

Causes dismissed.

DONNELLY and STEWART, JJ., concur.

BRUNNER, J., concurs in judgment only.

DEWINE, J., dissents, with an opinion joined by KENNEDY, C.J., and DETERS, J.

DEWINE, J., dissenting.

{¶ 8} These appeals arise from an interlocutory order issued in a criminal proceeding. The trial court removed a law firm representing two codefendants from the case, based on the judge's assessment that the dual representation was likely to create a conflict of interest for the firm's attorneys. The defendants immediately appealed the trial court's order to the court of appeals, asserting that the judge's decision violated their Sixth Amendment rights to be represented by the counsel of their choice. This court accepted the appeals to address that constitutional question.

{¶ 9} Of course, in any appeal, we must determine the threshold matter of whether we have jurisdiction over the cases. Most of the time, appellate courts lack jurisdiction to review decisions made by a trial court while the proceedings are still ongoing: the parties must wait to contest any errors made during the litigation until the trial court has issued a final determination on the merits. The same goes here. As I will explain, both this court and the court of appeals below lack jurisdiction over these appeals. I would therefore vacate the judgment of the court of appeals and dismiss the appeals for lack of jurisdiction.

{¶ 10} The majority, though, chooses to punt. Despite having accepted these cases, having entertained oral argument and briefing, and even having ordered postargument briefing on the jurisdictional issue, the majority dismisses the cases without ever answering the question whether there was appellate jurisdiction in the first place. Nor does the majority do what it rightfully ought to do if it is really convinced that there is jurisdiction: reach the constitutional issue for which it accepted these cases.

{¶ 11} By deciding not to decide, the majority squanders a prime opportunity to repair a troublesome glitch in our caselaw about the final-order doctrine. In the process, it has unnecessarily added another 11 months of delay to a trial that should have been completed years ago. Even worse, it leaves litigants

in the lurch—not knowing when they should appeal a denial-of-chosen-counsel issue. I dissent.

I. A criminal trial is put on hold before it starts

{¶ 12} Back in June of 2020, Sashia Johnson and Adrienne Jordan were riding together in a Cadillac Escalade. It was Jordan's vehicle, but Johnson was behind the wheel. Ohio state troopers stopped and searched the vehicle and discovered a large amount of cocaine. The pair was charged with felony drug trafficking and possession.

{¶ 13} The two women hired the same law firm to represent them. The prosecution raised the concern that the dual representation might create a conflict of interest as the case progressed. The firm's attorneys insisted that the pair's interests were aligned, and the two women signed waivers of any conflict. But in November 2020, after holding two hearings on the matter, the trial court determined that there was serious potential for a conflict of interest to develop. The court therefore removed the attorneys from the case and ordered the women to obtain new counsel.

{¶ 14} A few weeks later, Jordan and Johnson filed interlocutory appeals from that order, asserting that the trial court violated their Sixth Amendment rights to be represented by the counsel of their choice. *See generally United States v. Gonzalez-Lopez*, 548 U.S. 140, 150, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). The appeals halted all proceedings in the cases at the trial court. In April 2022, the Fourth District Court of Appeals affirmed the trial court's decision and remanded the cases for further proceedings. *State v. Johnson*, 2022-Ohio-1479, 187 N.E.3d 1071; *State v. Jordan*, 2022-Ohio-1480. Jordan and Johnson then appealed to this court, raising the same proposition of law: "Conflicts of interest in multiple representation cases should be judged by a clear and understandable standard or test." In September 2022, this court accepted the appeals and consolidated them

for briefing and argument. *See Jordan*, 167 Ohio St.3d 1516, 2022-Ohio-3214, 195 N.E.3d 138; *Johnson*, 167 Ohio St.3d 1516, 2022-Ohio-3214, 195 N.E.3d 139.

{¶ 15} During our review of the record, a question arose as to whether this court had jurisdiction. So, following oral arguments, we ordered the parties to submit supplemental briefs addressing "whether the common pleas court's order disqualifying defense counsel constituted a final, appealable order within the meaning of R.C. 2505.02." *Jordan*, 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 715; *Johnson*, 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 716.

II. Appellate courts have jurisdiction only over final orders

{¶ 16} Before we may exercise the power to review a case on appeal, we must first satisfy ourselves that we have been granted the jurisdiction to do so and that the lower courts also had jurisdiction to do so. *See State v. Yontz*, 169 Ohio St.3d 55, 2022-Ohio-2745, 201 N.E.3d 867, ¶ 14, citing *State ex rel. Sands v. Culotta*, 165 Ohio St.3d 172, 2021-Ohio-1137, 176 N.E.3d 735, ¶ 7.

{¶ 17} The Ohio Constitution grants the courts of appeals "such jurisdiction as may be provided by law to review and affirm, modify, or reverse *judgments or final orders* of the courts of record inferior to the court of appeals within the district." (Emphasis added.) Ohio Constitution, Article IV, Section 3(B)(2). The "provided by law" part of the constitutional provision means that the jurisdiction of the courts of appeals is set forth by statute. R.C. 2505.02 provides the requirements for a trial court's decision to constitute a final order.

{¶ 18} The final-order requirement is consistent with the longstanding rule that a party generally must seek review of all errors in a case in a single appeal following a final adjudication of the case on the merits. *See Anderson v. Richards*, 173 Ohio St. 50, 55, 179 N.E.2d 918 (1962); *Ashtabula v. Pub. Util. Comm.*, 139 Ohio St. 213, 215, 39 N.E.2d 144 (1942); *see also Cobbledick v. United States*, 309 U.S. 323, 324-325, 60 S.Ct. 540, 84 L.Ed. 783 (1940). This rule serves several important interests. It "minimiz[es] appellate-court interference" in the trial-court

proceedings and "reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals." *Flanagan v. United States*, 465 U.S. 259, 263-264, 104 S.Ct. 1051, 79 L.Ed.2d 288 (1984). And it promotes judicial economy "by forbidding piecemeal disposition on appeal of what for practical purposes is a single controversy," *Cobbledick* at 325.

{¶ 19} In line with these established principles, Ohio's final-order statute grants an appellate court jurisdiction over interlocutory appeals only in limited circumstances. *See generally* R.C. 2505.02. So when, as here, a party attempts to appeal an order issued by the trial court in the middle of a case, the reviewing court should be particularly alert to the possibility that it lacks jurisdiction.

{¶ 20} The state does not contest Jordan and Johnson's ability to immediately appeal the trial court's order. But the question whether a trial court's decision qualifies as a final order is one that an appellate court must consider regardless of whether any party has raised it. *Yontz*, 169 Ohio St.3d 55, 2022-Ohio-2745, 201 N.E.3d 867, at ¶ 14. And under a proper reading of Ohio's final-order statute, the trial court's order disqualifying defense counsel does not constitute a final order.

A. Under the plain terms of the final-order statute, there is no final order

1. The trial court's order concerns a provisional remedy

{¶ 21} Of the categories of final orders listed in R.C. 2505.02, one is potentially applicable in this case: an interlocutory order that "grants or denies a provisional remedy." R.C. 2505.02(B)(4). A "provisional remedy" is "a proceeding ancillary to an action," R.C. 2505.02(A)(3), and " '[a]n ancillary proceeding is one that is attendant upon or aids another proceeding,' " *State v. Muncie*, 91 Ohio St.3d 440, 449, 746 N.E.2d 1092 (2001), quoting *Bishop v. Dresser Industries, Inc.*, 134 Ohio App.3d 321, 324, 730 N.E.2d 1079 (3d Dist.1999). Provisional remedies include proceedings regarding the suppression of evidence, R.C. 2505.02(A)(3), discovery of a privileged matter, *id.*, and dismissal

on double-jeopardy grounds, *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 49-51.

{¶ 22} In these cases, the order disqualifying defense counsel involves a provisional remedy. The conflict issue is " 'separate from' " and " 'collateral to' " the question of the defendants' guilt or innocence, and the proceeding on that issue is " 'independent of the main trial.' " *Id.* at ¶ 50, quoting Sellers, *Between a Rock and a Hard Place: Does Ohio Revised Code Section 2505.02 Adequately Safeguard a Person's Right Not to Be Tried?*, 28 Ohio N.U.L.Rev. 285, 299 (2002).

{¶ 23} Still, for an order granting or denying a provisional remedy to qualify as a final order, it must satisfy two conditions. R.C. 2505.02(B)(4). First, the order must "determine[] the action with respect to the provisional remedy and prevent[] a judgment * * * in favor of the appealing party with respect to the provisional remedy." R.C. 2505.02(B)(4)(a). Second, the order must be of such a nature that the appealing party "would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action." R.C. 2505.02(B)(4)(b).

{¶ 24} That last requirement is dispositive here. If either Jordan or Johnson is ultimately convicted of a crime, she may challenge the trial court's decision to remove her chosen counsel in a direct appeal from the judgment of conviction. And if she is successful in that challenge, her conviction will be reversed and she will receive a new trial.

2. Jordan and Johnson have a remedy through an appeal at the end of the case

{¶ 25} Most trial errors can be remedied by way of an appeal following a final judgment on the merits. Thus, this court has found that an appeal after the conclusion of a case would not afford a meaningful remedy in only a few situations—all of which involve orders affecting a right that, once lost, can never be regained. *See Muncie*, 91 Ohio St.3d at 451, 746 N.E.2d 1092, quoting *Gibson-Myers & Assocs., Inc. v. Pearce*, 9th Dist. Summit No. 19358, 1999 WL 980562,

*2 (Oct. 27, 1999) (appeals from interlocutory orders are permitted when " 'the proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage' suffered by the appealing party"). Perhaps the best example is an order directing that an incompetent criminal defendant be given medication against his will. *See id.* Once the medication has been administered, the liberty interests at stake have already been breached and the effects of the medication cannot be undone. Similarly, this court has held that an order denying a motion to dismiss a criminal case on double-jeopardy grounds may be immediately appealed, since the right not to be tried would be lost once the trial has taken place. *Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23. And this court has permitted interlocutory appeals from orders compelling the disclosure of confidential information, *see Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, 898 N.E.2d 589, because once the confidential information is disclosed, the disclosure cannot be undone.

{¶ 26} The order at issue here is markedly different from the above examples. The trial court's decision in these cases implicates the defendants' Sixth Amendment rights to the counsel of their choice. Significantly, the United States Supreme Court has held that a violation of that right is a structural error. *Gonzalez-Lopez*, 548 U.S. at 150, 126 S.Ct. 2557, 165 L.Ed.2d 409. The effect of most trial errors may be " 'quantitatively assessed in the context of other evidence' " in order to determine whether the error was harmless, *id.* at 148, quoting *Arizona v. Fulminante*, 499 U.S. 279, 307-308, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). But because the consequences of a structural error are " 'necessarily unquantifiable and indeterminate,' " *id.* at 150, quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993), "such an error is not subject to harmless-error review," *McCoy v. Louisiana*, 584 U.S. 414, 427, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018). Thus, "in the case of a structural error where there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to

'automatic reversal' regardless of the error's actual 'effect on the outcome.' " *Weaver v. Massachusetts*, 582 U.S. 286, 299, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017), quoting *Neder v. United States*, 527 U.S. 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).

{¶ 27} In short, when a structural error is preserved, a defendant is entitled to reversal without any showing of prejudice, or in other words, without a showing that the error affected the outcome of the proceedings. Far from lacking an effective remedy in an appeal after a conviction, then, Jordan and Johnson will have a remedy that is even more effective than a typical postjudgment appeal: should they demonstrate a violation of their Sixth Amendment rights, they would automatically get a new trial and would be permitted to proceed with the attorney of their choice. *See Commonwealth v. Johnson*, 550 Pa. 298, 306, 705 A.2d 830 (1998) ("If a judgment is obtained and it is determined on appeal that the trial court improperly removed counsel, the right to counsel of choice is not lost. There will be a new trial and the defendant will have his counsel of choice").

B. This court's caselaw has gone awry

{¶ 28} The United States Supreme Court has reached the same conclusion. In *Flanagan*, 465 U.S. 259, 104 S.Ct. 1051, 79 L.Ed.2d 288, it determined that a denial of a defendant's choice of counsel is not immediately appealable. At the time the Supreme Court decided *Flanagan*, it had not yet determined that a choice-of-counsel error was structural. (That decision came later in *Gonzalez-Lopez*.) But even so, the *Flanagan* court determined that an order denying choice of counsel is not immediately appealable regardless of whether the defendant would be required to demonstrate prejudice on appeal. As the court explained, "if establishing a violation of [the petitioners'] asserted right requires no showing of prejudice to their defense, a pretrial order violating the right does not meet the third condition for coverage by the collateral order exception: it is not 'effectively unreviewable on

appeal from a final judgment,' " *id.* at 268, quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978).

{¶ 29} This court adopted the rationale of *Flanagan* in *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994), *superseded by statute as stated in Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, at ¶ 39. The defendant in *Keenan* attempted to pursue an interlocutory appeal of a trial-court order removing his attorney, but his appeal was dismissed for lack of jurisdiction. He simultaneously brought a mandamus action against the judge presiding over his criminal case, and when the court of appeals dismissed his complaint, he sought this court's review of the alleged choice-of-counsel violation. We held that mandamus was not an appropriate mechanism for reviewing an alleged choice-of-counsel violation, because the defendant had an adequate legal remedy by way of an appeal from the final judgment in the case. We explained, "An appeal following conviction and sentence would be neither impractical nor ineffective since any error in granting the motion [to disqualify defense counsel] would, in certain circumstances, be presumptively prejudicial." *Id*. at 179, citing *Flanagan* at 268.

{¶ 30} Inexplicably, this court did an about-face in *State v. Chambliss*, 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 651. There, this court held that "the denial of retained counsel of choice in a criminal proceeding is a final, appealable order," *id*. at ¶ 2. In reaching that conclusion, the *Chambliss* court relied heavily on the United States Supreme Court's decision in *Gonzalez-Lopez* concluding that a choice-of-counsel violation is structural error. The *Chambliss* court seemed to believe that *Gonzalez-Lopez* somehow undermined *Flanagan*'s holding that a choice-of-counsel error was not immediately appealable. *Chambliss* at ¶ 18-19. But the *Chambliss* court didn't explain how the structural nature of an error undermines the notion that an appeal following a conviction provides a meaningful and effective remedy under R.C. 2505.02(B)(4)(b). To the contrary, the court

conceded that "defendants could not lose, since they would either win the case or it would be reversed due to structural error." *Id*. at ¶ 16.

{¶ 31} The *Chambliss* court's apparent determination that *Flanagan*, 465 U.S. 259, 104 S.Ct. 1051, 79 L.Ed.2d 288, was no longer viable following the Supreme Court's decision in *Gonzalez-Lopez* makes little sense. While it is true that *Flanagan* was decided before the court recognized that a choice-of-counsel violation was a structural error, the *Flanagan* court had concluded that such an error would not be immediately appealable even if "no showing of prejudice" was required. *Flanagan* at 268. Thus, nothing about the United States Supreme Court's subsequent confirmation that this type of error is structural called into question the holding in *Flanagan*.

{¶ 32} It is not surprising, then, that federal courts have continued to rely on *Flanagan* even after the *Gonzalez-Lopez* decision. *See, e.g.*, *United States v. Tillman*, 756 F.3d 1144 (9th Cir.2014); *United States v. Sueiro*, 946 F.3d 637 (4th Cir.2020); *United States v. Martirossian*, 917 F.3d 883 (6th Cir.2019). Indeed, the United States Supreme Court cited *Flanagan* with approval in a 2009 case:

> The crucial question * * * is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders. We routinely require litigants to wait until after final judgment to vindicate valuable rights, including rights central to our adversarial system.

Mohawk Industries, Inc. v. Carpenter, 558 U.S. 100, 108-09, 130 S.Ct. 599, 175 L.Ed.2d 458 (2009), citing *Flanagan* at 260.

{¶ 33} To be sure, the United States Supreme Court's interpretation of the federal final-order doctrine does not control the outcome of these cases; our own

final-order statute does. But *Flanagan* persuasively analyzes the question whether a choice-of-counsel error can be effectively reviewed on appeal from a final judgment—a requirement under Ohio law for an order granting or denying a provisional remedy to be directly appealable. *See* R.C. 2505.02(B)(4)(b). This is presumably why this court first adopted *Flanagan*'s rationale decades ago.

{¶ 34} The *Chambliss* court's other justifications for concluding that an interlocutory order disqualifying a defendant's chosen counsel is a final, appealable order are equally unconvincing. For instance, the court pointed out that a contrary conclusion would potentially force defendants "to run the gauntlet of trial twice," *Chambliss*, 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 651, at ¶ 21. But as we have explained, "the possibility of retrial does not render the appeal mechanism ineffective." *State v. Glenn*, 165 Ohio St.3d 432, 2021-Ohio-3369, 179 N.E.3d 1205, ¶ 24. The *Chambliss* court also reasoned, "A criminal defendant might exhaust his or her resources during the first trial," and "if counsel of choice were later deemed to have been erroneously removed, the subject matter of the first trial, including the strategy employed, witnesses cross-examined, etc., would be stale and likely weakened." *Chambliss* at ¶ 22. While these are valid concerns, they "are present in virtually every criminal appeal," *Glenn* at ¶ 24. "In every case where erroneous pre-trial rulings ultimately require a new trial, defendants have revealed their defenses and borne the costs of trial. The majority of pre-trial rulings, however, are not immediately appealable." *Johnson*, 550 Pa. at 305, 705 A.2d 830.

{¶ 35} It is beyond quibble that *Chambliss* was wrongly decided. An order removing a defendant's chosen attorney is capable of being effectively and meaningfully reviewed at the conclusion of the criminal case, and thus it does not qualify as a final, appealable order under R.C. 2505.02(B)(4).

C. Our current rule is inefficient and can be unfair

{¶ 36} Application of the final-order statute establishes that the order at issue here is not a final, appealable order. But there are also practical considerations

that support returning to the traditional rule that a choice-of-counsel error—like most trial errors—should be reviewed at the end of a case. Our current rule disrupts judicial administration and can be unfair to litigants.

{¶ 37} To begin, "a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal * * * within 30 days of that entry." App.R. 4(A)(1). And the "failure to file a timely notice of appeal under App.R. 4(A) is a jurisdictional defect." *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, ¶ 17. In short, once a trial court's order becomes final and appealable, a party must either appeal the order or forgo any challenge to it.

{¶ 38} This puts criminal defendants asserting a choice-of-counsel violation between the hammer and the anvil. Under the current rule, a defendant faced with an order removing his attorney from his case has two options. If he wishes to challenge the order, he must halt the criminal case and take an immediate appeal—sacrificing his right to a speedy trial, prolonging his pretrial incarceration, and delaying a possible acquittal in the meantime. If, on the other hand, he decides to push forward with the case, he will lose any ability to seek review of the alleged choice-of-counsel violation.

{¶ 39} It is not only the defendant who is adversely impacted by delays. "As time passes, the prosecution's ability to meet its burden of proof may greatly diminish: evidence and witnesses may disappear, and testimony becomes more easily impeachable as the events recounted become more remote." *Flanagan*, 465 U.S. at 264, 104 S.Ct. 1051, 79 L.Ed.2d 288. Moreover, the Ohio Constitution now grants crime victims a right "to proceedings free from unreasonable delay and a prompt conclusion of the case." Ohio Constitution, Article I, Section 10a(A)(8).

{¶ 40} These cases illustrate the problems with needlessly allowing piecemeal review of trial-court proceedings. It has now been nearly three years since the trial-court proceedings against Johnson and Jordan were brought to an abrupt halt by the filing of these interlocutory appeals. The defendants are no better

off. And now the trial court must pick up where it left off before this needless detour through the appellate-court system.

{¶ 41} In my view, all involved—the state, defendants, the court system, and crime victims—would be better off if we stuck to our traditional rule. That rule, set forth in the plain language of R.C. 2505.02, requires that alleged choice-of-counsel errors be reviewed at the conclusion of criminal proceedings in the trial court.

III. Conclusion

{¶ 42} "Nothing about a disqualification order distinguishes it from the run of pretrial judicial decisions that affect the rights of criminal defendants yet must await completion of trial-court proceedings for review." *Flanagan*, 465 U.S. at 270, 104 S.Ct. 1051, 79 L.Ed.2d 288. As with most trial errors—including those of a constitutional magnitude—an appeal after final judgment provides a meaningful and effective remedy for an alleged choice-of-counsel violation. The court lacks jurisdiction over these appeals, and we should say so.

{¶ 43} If the majority disagrees, if it really believes that it possesses jurisdiction over this matter, it ought to decide the merits. There is no good reason at this late juncture to dismiss these cases as having been improvidently accepted.

KENNEDY, C.J., and DETERS, J., concur in the foregoing opinion.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Assistant Prosecuting Attorney, for appellee.

Soroka & Associates, Roger Soroka, and Joshua Bedtelyon, for appellants.
