

# The Supreme Court of Ohio

---

## CASE ANNOUNCEMENTS

November 7, 2023

[Cite as *11/07/2023 Case Announcements #3, 2023-Ohio-4034.*]

---

## APPEALS NOT ACCEPTED FOR REVIEW

### **2023-0872. State v. Watson.**

Ashland App. No. 22-COA-027, **2023-Ohio-1469.**

Donnelly, J., dissents, with an opinion, joined by Stewart, J.

---

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

{¶ 1} It is a basic principle of due process that an individual cannot be punished for doing what the law “ ‘plainly allows him to do.’ ” *State v. Rahab*, 150 Ohio St.3d 152, 2017-Ohio-1401, 80 N.E.3d 431, ¶ 8, quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 363, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978), citing *North Carolina v. Pearce*, 395 U.S. 711, 738, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) (Black, J., concurring in part and dissenting in part). Flowing from this first principle comes a second: “[A] sentence vindictively imposed on a defendant for exercising his constitutional right[s] \* \* \* is contrary to law,” *id.*, citing *State v. O’Dell*, 45 Ohio St.3d 140, 147, 543 N.E.2d 1220 (1989).

{¶ 2} Despite these bedrock foundations of due-process jurisprudence, the Fifth District Court of Appeals affirmed the trial court’s imposition here of a more severe sentence following a criminal defendant’s successful appeal of his original sentence. And this affirmance was pronounced despite the trial court’s having stated during the resentencing hearing and on the record that the court of appeals relied on “bad law” in reversing the defendant’s sentence. Because I am concerned about the chilling effect that allowing the trial court’s actions to go unchecked in this case might have on other defendants’ decisions to exercise their right to appeal, I dissent from this court’s decision not to exercise jurisdiction over this appeal.

{¶ 3} As part of a plea agreement, Michael Watson pleaded guilty to multiple offenses for acts he had committed when he was 17 years old. 2023-Ohio-1469, 213 N.E.3d 1175, ¶ 3-4. Under the plea deal, Watson agreed to testify against his codefendants. *Id.* at ¶ 4. In exchange, the state agreed to join Watson in recommending to the trial court that Watson be sentenced to an aggregate prison term of 38 years to life. *Id.* Under this proposed resolution, the trial court, on accepting the agreement, retained the discretion to impose a sentence that was less severe or more severe than the one recommended by the parties. *See State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 28, citing *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, 831 N.E.2d 430, ¶ 6 (“trial courts may reject plea agreements and \* \* \* are not bound by a jointly recommended sentence”). Thus, Watson had no assurances (at least none that were incorporated into the limited record available at this stage of the appellate process) that the trial court would follow the joint recommendation. Nevertheless, the trial court accepted Watson’s guilty pleas and imposed the jointly recommended sentence. 2023-Ohio-1469 at ¶ 5.

{¶ 4} Watson then appealed his sentence, asserting that it was unconstitutional because the trial court had not articulated its consideration of Watson’s youth before imposing a sentence that included a potential term of life imprisonment. *Id.* at ¶ 6; *see also State v. Watson*, 5th Dist. Ashland No. 20-COA-014, 2021-Ohio-1361, ¶ 8-10. The Fifth District agreed with Watson, reversed his sentence, and remanded the case to the trial court for resentencing. 2023-Ohio-1469 at ¶ 6, citing *Watson* at ¶ 10, 14. In support of its decision, the Fifth District relied on our holding in *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803, 172 N.E.3d 952, which requires a trial court to articulate its consideration of a juvenile offender’s youth as a mitigating factor before imposing a sentence that includes a possibility of life imprisonment. *Id.* at ¶ 2, 36, 41; *see also* 2023-Ohio-1469 at ¶ 6; *Watson* at ¶ 8-10.

{¶ 5} The case returned to the trial court, and Watson had the chance to present mitigating evidence about his youth in a resentencing hearing. 2023-Ohio-1469 at ¶ 7-10. For its part, the state presented Watson’s institutional report, which set out instances of Watson’s misconduct since his imprisonment. *Id.* at ¶ 11. Despite this additional evidence, the state did not ask the trial court to impose more prison time for Watson beyond the original sentence, asking instead that the trial court reimpose its original sentence. *Id.* at ¶ 12. Though not offered as evidence by either party, the trial court also considered its observations of Watson’s behavior during the trial of a codefendant when determining Watson’s new sentence. *See id.* at ¶ 27, 36.

{¶ 6} In its opinion, the Fifth District describes what happened next at Watson’s resentencing hearing as a “discussion” about this court’s holding in *Patrick* and other developments in sentencing law that had come about since Watson’s original sentencing hearing. 2023-Ohio-1469, 213 N.E.3d 1175, at ¶ 13. But the portions of the resentencing-hearing transcript that the court of appeals relied on and that were provided by Watson in his jurisdictional memorandum to this court belie such a benign characterization. Rather than discuss *Patrick*, the trial court stated outright that this court was “flat out wrong” when it decided that case and that the Fifth District was wrong for applying the holding in *Patrick* to Watson’s case. 2023-Ohio-1469 at ¶ 26, 34. The trial court justified its criticisms by pointing to an intervening decision by the United States Supreme Court that it believed had rendered *Patrick* “bad law” and had eviscerated *Patrick*’s authority, making it inconsequential. Following its criticism of the court of appeals’ analysis, the trial court increased the minimum sentence that Watson must serve before becoming eligible for parole by five years. It is here where my concerns lie.

{¶ 7} To be sure, a resentencing hearing following remand from the court of appeals requires more than a rubber-stamping of the trial court’s original sentence. But the process is not wholly unfettered either. The resentencing process is one “by which the defendant is to be sentenced anew, with the trial court following the instructions provided by a reviewing court.” *State v. Clark*, 1st Dist. Hamilton No. C-020550, 2003-Ohio-2669, ¶ 6; *see also Giancola v. Azem*, 153 Ohio St.3d 594, 2018-Ohio-1694, 109 N.E.3d 1194, ¶ 15, quoting *Nolan v. Nolan*, 11 Ohio St.3d 1, 462 N.E.2d 410 (1984), syllabus (“ ‘an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case’ ”). The genesis of Watson’s first appeal was a question of law—the constitutionality of his original sentence. And it was on that basis that the court of appeals vacated the original sentence and remanded the case to the trial court for it to articulate its consideration of Watson’s youth as a mitigating factor. Similarly, the purpose of the resentencing hearing was for the trial court to impose a sentence that followed the law set out by this court in *Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803, 172 N.E.3d 952, and applied by the court of appeals in its decision vacating Watson’s original sentence.

{¶ 8} Yes, the state presented additional evidence at the resentencing hearing of Watson’s behavior in prison since his original sentencing hearing, but it is telling that the state did not ask the trial court to add time to Watson’s sentence. What is more, *had Watson not prevailed on*

*appeal of his original sentence*, the trial court would not have been able to consider the state’s additional evidence or its observation of Watson’s demeanor during the trial of a codefendant. Nor can the trial court’s consideration of this evidence be separated from its hostility, expressed on the record, to the Fifth District’s legal basis for remanding the case for resentencing. Given these circumstances, I find it difficult to see how Watson is not being punished for having exercised his right to appeal in the first instance—what the law plainly allowed him to do.

{¶ 9} In affirming Watson’s increased sentence on appeal, the Fifth District characterized the trial court’s language criticizing the appellate court’s decision to remand Watson’s case for resentencing after the initial appeal as “bluster” and “inappropriate” but ultimately dismissed it as “inconsequential.” 2023-Ohio-1469, 213 N.E.3d 1175, at ¶ 26. The reality remains, however, that Watson won his first appeal, and his reward was the opening of the doors for the trial court to add another five years to the prison term that he must serve before becoming eligible for parole.

{¶ 10} I fear the court of appeals’ vindication of the trial court’s conduct here will complicate the calculus that criminal defendants and their counsel use when deciding whether to exercise the defendant’s appellate rights. And it does not take much imagination to see how a case like Watson’s will result in defendants—who possess colorable claims for review—foregoing an appeal for fear of retaliation or negative treatment, even if their appeal is successful. With this possibility in mind, and because this court declines to take up these issues by not exercising jurisdiction over this appeal, I dissent.

STEWART, J., concurs in the foregoing opinion.

---