

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 11, 2026

[Cite as *08/11/2026 Case Announcements #2*, 2026-Ohio-3075.]

APPEALS NOT ACCEPTED FOR REVIEW

2026-0615. State v. Lucas.

Ottawa App. No. OT-25-002. Appellant’s motion for appointment of counsel denied.

DeWine, J., would deny the motion as moot.

Deters, J., concurs, with an opinion joined by Kennedy, C.J., and DeWine and Shanahan, JJ.

Brunner, J., concurs in part and dissents in part, with an opinion.

DETERS, J., joined by KENNEDY, C.J., and DEWINE and SHANAHAN, JJ., concurring.

{¶ 1} Ordinarily, I would not write an opinion concurring in this court’s exercise of its discretion regarding jurisdictional appeals. But I believe that the dissenting opinion exhibits a misunderstanding about the procedural posture of Dustin Lucas’s appeal and that it omits parts of the limited record that was available to us when voting whether to accept jurisdiction over the appeal. So I feel compelled to shed some light on why I believe that the court is correct in declining jurisdiction over Lucas’s appeal.

{¶ 2} Let’s consider first some matters that are left out of the dissenting opinion. When we review a jurisdictional appeal, we do not have the complete record to examine, so we often turn to the court of appeals’ decision to fill in some of the background. What the dissenting opinion fails to mention is that Lucas pleaded guilty to 35 counts of violating a protection order. *See* No. OT-25-002, ¶ 2-4 (6th Dist. Apr. 10, 2026). According to the Sixth District Court of Appeals, when the trial court accepted Lucas’s pleas, it “discussed with Lucas the nature of the

charges and the maximum penalty involved,” and “[i]n particular, the trial court told Lucas that he could receive up to 12 months in prison as to each count.” *Id.* at ¶ 4. Lucas “acknowledged the existence of a temporary protection order that was in place against him [that] prohibited him from making phone calls to certain protected parties.” *Id.* at ¶ 5.

{¶ 3} The 35 calls were made between July 29, 2024, and August 6, 2024. *Id.* The dissenting opinion adopts Lucas’s explanation that he gave at his sentencing hearing—i.e., that there were so many calls because the jail’s phone system cut off the calls at 15 minutes and that the calls were voluntarily accepted by the victim. *See* dissenting opinion, ¶ 12; *see also* OT-25-002 at ¶ 14 (6th Dist. Apr. 10, 2026). This may be true, but we have no way of knowing because there was no evidence presented to show how the jail’s phone system worked or about whether the 15-minute cutoff accounted for the multiple calls made by Lucas to the protected person. And it is only fair to present the State’s side of the story presented at the sentencing hearing—i.e., “that during the phone calls, Lucas frequently acknowledged that there was a protection order in place and that he was making efforts to knowingly violate that order,” *id.* at ¶ 9. Moreover, “[t]he State opined that Lucas’s purpose in violating the order was ‘an attempt to manipulate prosecution,’ and the success of prosecution, in several other cases.” *Id.* Again, we have no evidence to support these statements, because they were made during the sentencing hearing and no evidence was admitted.

{¶ 4} Also left out of the dissenting opinion is the extent of Lucas’s criminal record. In addition to a prior conviction in 2015 for violating a protection order, *see id.* at ¶ 5, Lucas had what the court of appeals called an “extensive criminal history,” *id.* at ¶ 10, that included, by my count, 20 convictions since 2003 and multiple probation violations, *see id.* at ¶ 10-11. One would think that in considering an appeal regarding consecutive sentences, the defendant’s prior convictions would be an important consideration.

{¶ 5} More troubling than the dissenting opinion’s omissions regarding Lucas’s criminal history, in my view, is its failure to account for the procedural posture of Lucas’s appeal. Lucas is not asking us to review the Sixth District’s judgment in his direct appeal, in which the court of appeals affirmed his convictions, 2025-Ohio-5303 (6th Dist.). Lucas did not appeal that judgment to this court. Instead, Lucas is seeking review of the Sixth District’s denial of his application to reopen his appeal under App.R. 26(B). Understanding the standard for

considering applications to reopen under that rule is key to understanding why I believe that it is proper for the court to decline Lucas's appeal.

{¶ 6} App.R. 26(B)(1) allows a criminal defendant to “apply for reopening of the appeal from the judgment of conviction and sentence . . . based on a claim of ineffective assistance of appellate counsel.” Among other things, the application must include “[o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel's deficient representation.” App.R. 26(B)(2)(c). “The granting of an application for reopening is appropriate if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel.” App.R. 26(B)(5). If the application is granted, the case proceeds “as an initial appeal.” App.R. 26(B)(8).

{¶ 7} In his application to the Sixth District, Lucas included three assignments of error asserting that his appellate counsel was ineffective for various reasons. Relevant here is his third assignment of error, in which Lucas argued that his appellate counsel was ineffective for failing to challenge his sentences as contrary to law and unsupported by the record. For his application to be granted, Lucas needed “to demonstrate a ‘genuine issue’ as to whether there [was] a ‘colorable claim’ of ineffective assistance of appellate counsel,” *State v. Leyh*, 2022-Ohio-292, ¶ 21, quoting *State v. Spivey*, 1998-Ohio-704, ¶ 7. That is, he had to show a genuine issue that “(1) counsel's performance was objectively unreasonable and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.” (Cleaned up.) *State v. Clark*, 2025-Ohio-4410, ¶ 20, citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984). He could show neither.

{¶ 8} Citing its decision in *State v. Hammons*, 2024-Ohio-6128 (6th Dist.), the court of appeals concluded that “a trial court [is] not obligated to consider the aggregate length of sentences or the proportionality of that aggregate sentence to the offenses when making its findings pursuant to R.C. 2929.14(C)(4).” OT-25-002 at ¶ 42 (6th Dist. Apr. 10, 2026), citing *State v. Gwynne*, 2023-Ohio-3851. Thus, appellate counsel's performance was not “objectionably unreasonable” for not making an argument that the court of appeals had already rejected. And given the Sixth District's precedent, there was not a reasonable probability that the outcome of the proceedings would have been different had appellate counsel made the argument.

{¶ 9} Despite the court of appeals’ proper resolution of Lucas’s application for reopening, the dissenting opinion would accept jurisdiction over his first proposition of law, which challenges whether the court of appeals erred by “holding that trial courts are not obligated to consider the aggregate length and proportionality of consecutive sentences.” Yet another thing left unmentioned in the dissent is that we recently (less than a month ago) decided that issue. *See State v. Polizzi*, 2026-Ohio-2588. Nothing in this case presents a compelling reason for us to address an issue that this court has so recently resolved.

{¶ 10} I therefore concur in the court’s decision to decline jurisdiction.

BRUNNER, J., concurring in part and dissenting in part.

{¶ 11} I respectfully dissent from the court’s decision to deny review of appellant Dustin Lucas’s first proposition of law. I would accept jurisdiction over that proposition of law for the reasons I stated in my dissenting opinion in *State v. Gwynne*:

R.C. 2929.14(C)(4)’s command that sentencing courts find that ‘consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public’ means that sentencing courts must be able to articulate that the consecutive sentences, in the aggregate and as they will actually be imposed, are not disproportionate to the seriousness of the conduct and the danger to the public.

2023-Ohio-3851, ¶ 81 (Brunner, J., dissenting).

{¶ 12} Lucas was convicted on 35 fifth-degree felony counts of violating a protection order under R.C. 2919.27(A)(1) for making 35 phone calls from jail to a protected person. Violating a protection order is a felony-level offense when that violation is predicated on prior similar conduct. *See* R.C. 2919.27(B)(3)(a) through (c). In Lucas’s case, however, the jail’s telephone system imposed 15-minute limits on the length of phone calls. For each call there is an automatic cutoff imposed by the jail’s telephone system. This affected the number of calls Lucas made to the victim (i.e., the identical violating offenses), inflating their number. Each of the 35 calls Lucas made from the jail that were voluntarily accepted by the protected person. With each of the offenses being charged at the fifth-degree felony level, the trial court in its

discretion imposed a minimum six-month sentence on each of the 35 counts, to be served consecutively, for an aggregate prison term of 17.5 years in prison. Even with Lucas's multitude of low-level past convictions, that sentence is excessive. As such, a nearly 20-year sentence for making telephone calls has resulted in a higher sentence than one might serve for felony murder. *See* R.C. 2929.02(B)(1) (providing that, subject to certain exceptions, the sentence for murder under R.C. 2903.02 is 15 years to life in prison).

{¶ 13} Lucas's sentence certainly has the appearance of being drastically disproportionate to the seriousness of his conduct and the danger he likely imposes to the public, *see* R.C. 2929.14(C)(4), and, at the jurisdictional stage, his sentence should pique our interest in reviewing Lucas's appeal of the judgment of these 35 felony convictions under his first proposition of law. Article IV, Section (2)(B)(2)(b) of the Ohio Constitution, permits us to accept jurisdiction for any felony case.

{¶ 14} To the ordinary observer, the extended length of Lucas's sentence appears as a ridiculous waste of public resources, and one for which this court now becomes responsible for permitting to exist. By not reviewing Lucas's first proposition of law to determine whether his counsel at either level of prior adjudication was ineffective in his legal assistance to Lucas we cause harm to the public's confidence in the state's judiciary. For this reason, I strenuously but respectfully dissent from the court's decision to not accept review of Lucas's first proposition of law.
