

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ) Case No. 2020-0599  
)  
Plaintiff-Appellee, )  
) On Appeal from the  
) Lake County Court of Appeals,  
v. ) Eleventh Appellate District  
)  
)  
MANSON M. BRYANT )  
) Court of Appeals Case No. 2019-L-024  
Defendant-Appellant. )

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MOTION FOR RECONSIDERATION OF APPELLEE STATE OF OHIO

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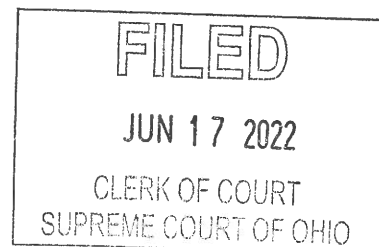
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*A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.*

Ohio Prof. Cond. R. 3.8, Cmt. 1

A prosecutor's duty is greater than an individual case; it requires the pursuit of fairness and justice within the criminal justice system. The Office of the Lake County Prosecuting Attorney is filing this motion for reconsideration and attached courtroom video pursuant to this duty as a minister of justice. Notwithstanding the length of Mansion Bryant's sentence, reconsideration of the above captioned case is imperative for two reasons:

1. to defend the integrity of Judge Eugene A. Lucci and all independent, impartial, and honorable trial court judges, and
2. to preserve decades of well-established sentencing law in the State of Ohio.

Now comes the State of Ohio, by and through Charles E. Coulson, Lake County Prosecuting Attorney, and Jennifer A. McGee, Assistant Prosecuting Attorney, and pursuant to S.Ct. Prac. R. 18.02, respectfully requests this Honorable Court reconsider its four-to-three decision in *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, which reversed and remanded the unanimous decision of The Eleventh District Court of Appeals. The appellate court previously affirmed the trial court's judgment increasing Bryant's sentence after finding that Bryant's outburst during sentencing demonstrated a lack of remorse.

The State contends that as ministers of justice, we are obligated to address the obvious error in the majority's opinion in order to protect the integrity of all trial court judges, as well as, decades of well-established sentencing law in the State of Ohio. The State submits the attached recorded video of Bryant's March 1, 2019 sentencing hearing<sup>1</sup> and, for the following reasons, requests this Honorable Court reconsider its decision in this matter.

The recording of Bryant's sentencing hearing demonstrates what actually occurred in the courtroom and belies the majority's conclusion that the judge's decision to revise Bryant's sentence was based on emotion and personal bias against the defendant.

Transcripts are not, for better or for worse, screenplays. They do not describe the

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<sup>1</sup> Due to the size of the file, the video is attached on the enclosed flash drive in two separate files. The first portion of the hearing is contained in the file named "Lucci 2-20190301-085812-092812" and the second portion of the hearing is contained in the file named "Lucci 2-20190301-092812-095812."

emotion, or lack thereof, in the written statements which appear in black and white on the transcript page. In a case of this type, the transcript of the record cannot convey the complete picture of the courtroom scene. That is precisely why “[r]eliance must be placed upon the fairness and objectivity of the presiding judge. *Fisher v. Pace*, 336 U.S. 155, 161, 69 S.Ct. 425, 428, 93 L.Ed. 569 (1949).

Prior to oral arguments in this case, the State unsuccessfully moved this Court to supplement the record with the certified video recording of Bryant’s outburst at his March 1, 2019 sentencing hearing. The reason for the request at that time was the State’s belief that the recording was necessary to demonstrate that the magnitude of any given situation is never adequately portrayed by the written transcript. While the transcript demonstrated the decipherable words stated by Bryant at the hearing, it did not demonstrate Bryant’s physical actions or overall demeanor, both of which were relevant to the issues raised in Bryant’s appeal.

The State now attaches the recording to this motion, not to show Bryant’s conduct, but rather, to demonstrate the trial judge’s demeanor at the hearing in response to Bryant’s outburst. It is the State’s position that the recording definitively shows that the trial judge did not allow his emotions to cloud his judgment. Even as Bryant screamed profanities and banged his hands on the jury box while deputies tried to constrain him, the judge’s demeanor remained calm and collected throughout the hearing as he continued to address

Bryant in a dignified manner.

The attached video casts serious doubts on the majority's opinion, a decision that provided three reasons for finding that Bryant's sentence was retaliatory in nature and that the trial judge's finding regarding remorse was pretextual. In support of its opinion, the majority cites to the following: (1) the fact that the trial judge increased Bryant's sentence "without a moment's reflection;" (2) the majority's inability "to conceive any honest and logical assessment of Bryant's outburst that could be construed as being motivated by, or evincing, no remorse;" and (3) a 2008 journal article which theorizes that "[p]eople punish in proportion to the extent that transgressions make them angry." *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶¶ 26, 29, 30. The State will address each of the majority's reasons in turn.

**(1) The sentencing court had 21 days to contemplate an appropriate sentence in this case.**

The majority notes that "perhaps most concerning about the trial court's decision to increase Bryant's sentence is that without a moment's reflection, it added an additional six years onto a sentence that had already been imposed." *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶ 29. This position, however, disregards the fact, as discussed at oral arguments in this matter, that Bryant's initial sentence was the 28 years that he ultimately received, not the 22 years that the court imposed after Bryant expressed remorse at his sentencing hearing.

It must be acknowledged that prior to Bryant's allocution at sentencing, Bryant had, at no time, expressed any remorse for the offense. Bryant never demonstrated any regret for his behavior during or after the robbery was committed, upon his arrest, during his trial, or in postconviction motions filed by defense counsel on his behalf. Bryant was convicted on February 8, 2019 and sentenced on March 1, 2019. The sentencing court had 21 days to contemplate an appropriate sentence in this case.

Prior to Bryant's expression of remorse at sentencing, there were no factors present for the trial court to consider in mitigation of Bryant's sentence. The State submits that it was the six-year reduction from the initial 28-year-sentence, that was made after only "a moment's reflection" given Bryant's last-minute expression of remorse. Once Bryant demonstrated that his statement of remorse was disingenuous and made only in an effort to receive a lighter sentence, the trial court reverted Bryant's sentence back to the 28 years that was originally contemplated prior to Bryant's allocution.

Bryant's sentence demonstrates that the judge gave careful consideration to the sentencing factors enumerated in R.C. 2929.12 and the defendant's allocution as the law demands. While the trial court initially afforded deference to Bryant's statements of remorse, notably, the State did not. At sentencing, the State specifically noted that, despite Bryant's allocution, the State still believed that Bryant lacked genuine remorse for the offenses. (Sent. T.p. 15). The trial judge, however, gave Bryant the benefit of the doubt, and

*reduced* Bryant's total exposure to 22 years. The trial judge stated on the record that the initial finding of genuine remorse was the only factor that mitigated Bryant's sentence. (Sent. T.p. 22).

The foregoing demonstrates that it was, in fact, the six-year reduction from Bryant's 28-year-sentence that was made after only "a moment's reflection" given Bryant's last-minute expression of remorse. The trial court had the benefit of its prior knowledge of Bryant's criminal history and failed rehabilitative efforts, his propensity to be disrespectful to the tribunal, all of the details of the offenses derived from a trial that spanned four days, and 21 days between Bryant's conviction and sentencing to consider an appropriate sentence in this case. The revision to Bryant's sentence does not demonstrate that Bryant's sentence was retaliatory, but rather, that it was fashioned after careful consideration of R.C. 2929.11 and R.C. 2929.12.<sup>2</sup>

**(2) Nothing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.**

The majority disagrees with the trial court's findings relative to Bryant's lack of

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<sup>2</sup> Bryant could have received an additional 54 months on his sentence in this case if the trial judge had imposed maximum, consecutive sentences for each of Bryant's convictions. Notably, the trial judge imposed concurrent time for Bryant's convictions for Weapons Under Disability and Carrying Concealed Weapons. This also demonstrates careful consideration by the trial judge and not a retaliatory motive when sentencing Bryant as the evidence adduced at trial demonstrated that it was likely Bryant's co-defendant who physically yielded the gun during the burglary and robbery.

genuine remorse. When considering Bryant's purported remorse, the majority isolates Bryant's statements regarding his drug addiction and desire to rehabilitate himself from his entire allocution. *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶ 29. Then, the majority notes that Bryant's outburst is essentially on message with his prior sentiments regarding his desire to reform. *Id.* To reach this conclusion, however, the majority must disregard the bulk of Bryant's allocution.

Much of Bryant's allocution focused on his new-found respect for the criminal justice system. Bryant acknowledged his drug problem and told the judge that he could not continue to blame others for his bad behavior. (Sent. T.p. 10). He explained to the trial court that he had become jaded with the criminal justice system, but that having a trial had provided him with a new-found respect for the trial court and its players. (Sent. T.p. 10). Bryant then told the trial judge that he respected him and the decision the judge would make regarding his sentence. (Sent. T.p. 10).

These statements are absolutely in contrast with Bryant's sentiments during his subsequent outburst after receiving his sentence. Bryant blatantly disrespected the trial court and its players in the courtroom. In addition to Bryant's offensive language, the video attached demonstrates that Bryant disregarded instruction from his defense counsel, was aggressive with deputies, and repeatedly banged on the jury box. Bryant's defense counsel even jumped out of the way fearing physical violence from the defendant. Bryant's



outburst demonstrated that he was still continuing to blame others for his bad behavior—it was not Bryant’s criminal conduct that warranted the 22-year sentence, but rather, the fact that the trial judge was racist and never gave him a chance. (Sent. T.p. 21-22). Bryant did not, in fact, respect the trial judge or his decision regarding Bryant’s sentence, as it was not the sentence that Bryant felt he deserved. (Sent. T.p. 21-22).

While the majority finds Bryant’s pleas for probation and rehabilitation compelling, it must be acknowledged that this particular defendant, whose history was well-known to the sentencing judge, has had numerous opportunities to reform. Bryant’s criminal history, as detailed in the presentence report included in the record, demonstrates that Bryant had not be able to conform to the conditions of his community control sanctions in the past and had numerous failed attempts at treatment for his drug addiction.

The trial judge noted this at sentencing, stating that Bryant had rehabilitation failures after previous convictions and delinquency adjudications, and had failed to respond in the past to probation or post-release control. (Sent. T.p. 19). Bryant’s presentence report shows a criminal history that spans 20 years and includes numerous convictions relating to drugs and offenses of violence. (PSR 3-10). There are more than a dozen probation terms and at least six attempts at treatment noted in the report as well. (PSR 3-10). The courts in Lake County have certainly given Bryant a chance to rehabilitate himself despite his claims at sentencing to the contrary.

The record of Bryant's sentencing hearing demonstrates that it was Bryant's statements regarding his new found respect for the criminal justice system that compelled the trial court to find that Bryant had expressed a "certain amount of remorse" for the offenses. (Sent. T.p. 19). In addition to being familiar with Bryant's criminal history and failed rehabilitative efforts, the trial court was also well aware of Bryant's past behavior in the courtroom. The judge noted on the record that Bryant had been disrespectful to the trial court in the past. (Sent. T.p. 26). Bryant also admitted that he had become jaded with the criminal justice system after a lifetime of bad decisions. (Sent. T.p. 10).

Given this history, the judge initially afforded Bryant some mitigation at sentencing due to his changed conduct at the hearing. Then, when Bryant demonstrated that he clearly was not taking responsibility for his bad behavior and that he did not have respect for the criminal justice system as he had just moments earlier feigned during allocution, the judge logically revised his previous finding.

Despite this Court's holding in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, the majority reweighs the arguments presented regarding remorse and substitutes its judgment for that of the trial court's, finding it "ironic for the trial court to view Bryant's outburst as an indication that he is likely to commit future crimes \* \* \*." *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶ 30. The majority holds that no provision in the sentencing statutes authorizes a trial court to consider a defendant's outburst or that

a defendant expressed himself in a profane and offensive way when sentencing. *Id.* at ¶ 26. R.C. 2929.12, however, states that the sentencing court shall consider the enumerated factors listed in the code that apply to the offender *and any other relevant factors*. Essentially, the majority has concluded that a defendant's conduct in the courtroom cannot be a relevant factor when fashioning an appropriate sentence.

The State, however, submits that a defendant's conduct in the courtroom can be directly related to a defendant's propensity to recidivate, and therefore, cannot be categorically excluded from consideration at sentencing. If a defendant cannot control himself in the courtroom, it logically follows that he may not be capable of controlling himself in free society. When a defendant demonstrates an utter lack of respect for authority and a court of law, it is more likely that the defendant will not respect authority and conduct himself in accordance with the law upon release.

It is Ohio's trial courts that are in the better position to fashion a sentence that best achieves the purposes and principles of sentencing in R.C. 2929.11. R.C. 2929.12 sets forth a nonexclusive list of factors that trial courts must consider in the process of felony sentencing but also grants trial courts the discretion to consider any other factors that are relevant to achieving those purposes and principles of sentencing. R.C. 2929.12. Under R.C. 2929.12, trial courts are permitted to contemplate any other circumstances or factors that are relevant to achieving the purposes and principles of sentencing and are provided

significant discretion in determining the weight to be assigned to these and other statutory factors.

“The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations.” *State v. Jenkins*, 15 Ohio St.3d 164, 222, 473 N.E.2d 264, 313 (1984). “In order to have an abuse of that choice, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias.” *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 662 N.E.2d 1, 3 (1996).

“[J]udges are presumed to know the law and expected to consider only relevant material, and competent evidence during their deliberations.” *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624, 779 N.E.2d 1017, ¶ 57. It is well established that “[a] trial judge’s opinions of law, even if erroneous, are not by themselves evidence of bias or prejudice \* \* \*.” *In re Williams-Byers*, 157 Ohio St.3d 1245, 2019-Ohio-4742, 136 N.E.3d 531, quoting *In re Disqualification of Kimmel*, 36 Ohio St.3d 602, 522 N.E.2d 456 (1987).

It is apparent that the majority disagrees with the trial court’s conclusion that Bryant’s outburst was indicative of a lack of remorse and demonstrated an increased likelihood of recidivism, but that difference in opinion should not equate to a determination that the trial court’s exercise in discretion was based on improper bias and prejudice

towards the defendant. Under the law, trial courts are permitted to consider any relevant factor when sentencing. Here, the trial court believed that Bryant's outburst demonstrated a likelihood that Bryant would reoffend upon release, and even if the majority disagrees with that finding, deference should be given to the trial court's conclusion given the fact that the sentencing court was in a better position to make that determination.

**(3) An independent, impartial, and honorable judiciary is indispensable to justice in our society and unrelated anecdotal studies do not demonstrate actual bias in this case.**

Finally, in support of its position that the trial court's finding was pretextual, the majority offers an article written by experimental psychologist Joshua D. Greene as objective evidence that the trial court's decision to increase Bryant's sentence was not based on a genuine finding that Bryant displayed no remorse, but rather, was motivated by the trial judge's desire to punish Bryant for his offensive outburst in the courtroom. *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, fn. 2. Greene's study concludes that deontological judgments claim to be based in reason, but instead, are typically emotionally driven judgments which are then rationalized after the fact. The majority cites this article to demonstrate that although the trial judge accredited the change in Bryant's sentence to a lack of remorse, an enumerated factor under R.C. 2929.12, that finding was merely pretextual.

By accepting this conclusion, the majority calls into question the entire criminal justice system. An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge is presumed, unless there is actual compelling evidence demonstrating

otherwise, to be fair and impartial. *In re Disqualification of Kilpatrick*, 47 Ohio St.3d 605, 606, 546 N.E.2d 929, 930 (1989). Under the majority's new standard applied in *Bryant*, trial judges are presumed, given anecdotal evidence, to be driven by their emotions and a desire to punish, rather than by logic and reason.

Accepting this as true, no jurist would be immune from an allegation that their reasoning under the law was simply a pretextual justification for an emotional desire to punish based on their belief of wrongdoing. As a practical matter, a dissatisfied party could accuse the majority in this case of doing the same. One could argue that despite the ability to do so under the law, the majority believed it was wrong for the trial judge to revise Bryant's sentence after his outburst in the courtroom and therefore, the majority subsequently provided a pretextual justification—the trial court's bias—to support overturning Bryant's sentence.

Prior to the majority's holding, the law presumed that judges were impartial. It was well settled that a "presumption of impartiality" was "accorded all judges." *In re Hendon*, 156 Ohio St.3d 1203, 2018-Ohio-5458, 123 N.E.3d 1044. "A judge [wa]s presumed to follow the law and not to be biased, and the appearance of bias or prejudice must [have] be[en] compelling to overcome these presumptions." *Id.*

The State submits that a 2008 journal article, completely unrelated to the trial court in this matter, is not compelling evidence of actual prejudice or bias. The majority's projected

assumptions do not meet the standard previously set forth by this Court. Trial courts should be afforded the presumption of impartiality accorded to all judges absent compelling evidence of bias or prejudice, even when appellate courts are dissatisfied with the outcome in the case. Here, despite the majority's dissatisfaction with the trial court's modification of Bryant's sentence after his outburst in the courtroom, there is no compelling evidence of bias or prejudice on behalf of the sentencing judge.

Notably, the majority, dissent, and both parties in this matter all agree on one issue: Bryant could have been held in contempt for his conduct in the courtroom at sentencing. *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶¶ 1, 14, 16, 35. The majority, however, fails to explain why a trial judge with presumed bias and prejudice against a defendant would not need to disqualify themselves from a contempt proceeding. If the trial judge is biased against the defendant in sentencing him after his offensive outburst in the courtroom, would it not follow that the action of charging Bryant with an additional offense, albeit warranted, would have also been the result of the judge's inability to control his emotions and in contrast to sound and just decision-making?

"A judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (Internal quotations omitted). *Blackwell v. Wynn*, 11th Dist. Ashtabula No. 2019-A-0048, 2020-Ohio-1438, ¶ 10. "[A] judge is disqualified where he has a personal bias or prejudice concerning a party \* \* \*." *Id.* Here, the majority's presumption

that the sentencing judge became offended and punished Bryant out of anger for his offensive conduct creates a precedent that could force trial court judges to recuse themselves anytime a defendant has an outburst in their courtroom. Surely it should not be presumed that a trial court is acting with bias and prejudice every time a defendant acts offensively.

Absent the assumption that the trial judge's findings were unlawful and merely pretextual, the majority lacks authority to reverse Bryant's sentence. Pursuant to R.C. 2953.08(G)(2), the General Assembly has limited the authority of appellate courts to review a felony sentence and does not afford appellate courts the authority to review a trial court's determination of the R.C. 2929.11 and R.C. 2929.12 sentencing factors. This Court's holding in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649 prohibits an appellate court from vacating a sentence based on its belief that the sentence is not supported by the record. That, however, is precisely what has occurred in this case.

Given the majority's holding, any bare allegation of pretextualism would allow a defendant to defeat this Court's holding in *Jones*. In the case sub judice, Bryant never even alleged that the sentencing court's finding regarding his remorse was pretextual. The majority, sua sponte, raised the argument and determined as much, pointing to the fact that Bryant's sentence was increased after his outburst as definitive evidence that the trial court's legal reasoning was provided only to conceal the trial court's true intentions or motivations for punishing Bryant's lack of respect for the court.



Despite the Court's holding in *Jones*, the majority reweighs the arguments presented regarding remorse and substitutes its judgment for that of the trial court's. Notably, even prior to *Jones*, it was well-settled that appellate courts afforded deference to the trial courts when sentencing because trial courts are in a better position to observe a defendant's demeanor and sincerity regarding remorse and to judge a defendant's dangerousness and chances of recidivism. *State v. Johnson*, 11th Dist. Lake No. 2004-L-195, 2005-Ohio-6897, ¶ 14; *State v. Noble*, 3rd Dist. Logan No. 8-14-06, 2014-Ohio-5485, ¶ 9.

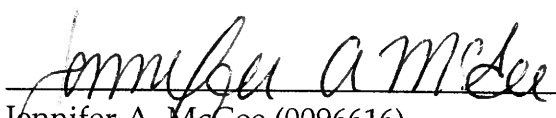
The State submits that the recording of Bryant's sentencing hearing demonstrates what actually occurred in the courtroom. The majority made an obvious error when it concluded that the judge's decision to revise Bryant's sentence was based on emotion and personal bias against the defendant. The record in this case did not convey the complete picture of the courtroom scene, which is precisely why deference is afforded to trial courts who are better positioned to fashion a sentence that best achieves the purposes and principles of sentencing. Based on the foregoing, it is imperative that this Honorable Court reconsider its decision in this matter and affirm the trial court's revision to Bryant's sentence based on its finding that Bryant lacked genuine remorse.

CONCLUSION

For the reasons discussed above, the State of Ohio, Plaintiff-Appellee respectfully requests that this Honorable Court reconsider its decision in *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878.

Respectfully submitted,

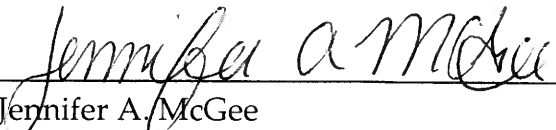
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PROOF OF SERVICE

A copy of the foregoing Motion for Reconsideration and attachment were sent by regular U.S. Mail, postage prepaid, to counsel for Appellant, Max Hersch, Esquire, Assistant State Public Defender, Office of Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, this 17th day of June, 2022.

  
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JAM/klb