

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
PLAINTIFF-APPELLEE,	:	CASE NO. 2020-0599
	:	
VS.	:	ON APPEAL FROM THE
	:	LAKE COUNTY COURT OF APPEALS,
MANSON M. BRYANT,	:	ELEVENTH APPELLATE DISTRICT,
	:	CASE NO. 2019-L-024
DEFENDANT-APPELLANT.	:	

---

**APPELLANT'S MEMORANDUM IN OPPOSITION  
TO APPELLEE'S MOTION FOR RECONSIDERATION**

---

Lake County Prosecutor's Office

Office of the Ohio Public Defender

Jennifer A. McGee (0096616)  
Assistant Prosecuting Attorney  
(Counsel of Record)

Max Hersch (0099043)  
Assistant State Public Defender  
(Counsel of Record)

105 East Main Street  
P.O. Box 490  
Painesville, Ohio 44077  
(440) 350-2683  
(440) 350-2585 – Fax  
Jennifer.McGee@lakecountyohio.gov

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 – Fax  
Max.Hersch@opd.ohio.gov

COUNSEL FOR STATE OF OHIO

COUNSEL FOR MANSON M. BRYANT

## MEMORANDUM IN OPPOSITION

### I. Introduction

At its core, the state's motion for reconsideration rehashes the arguments that this court rejected. The state also attempts—yet again—to have this court watch a video that has never been part of the record. But most importantly, the state identifies no “error in legal analysis” in the majority opinion. *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883, ¶ 39 (DeWine, J., concurring). For those reasons, this court should deny the state's motion for reconsideration. *See* S.Ct.Prac.R. 18.02 (“A motion for reconsideration shall not constitute a reargument of the case”).

### II. The video of Mr. Bryant's sentencing hearing has never been in the record

With its motion, the state included a video of Mr. Bryant's sentencing hearing. Essentially, the state argues that the transcripts do not adequately capture the exchange between Mr. Bryant and the trial judge. (June 17, 2022 Motion for Reconsideration at 1–2.) Thus, according to the state, viewing the video is necessary because its contents undermine the majority's opinion. (*Id.* at 3.)

This court should decline to consider the video for two separate but related reasons. First, nothing in S.Ct.Prac.R. 18.02 permits a party to offer off-the-record materials in support of a motion for reconsideration. The proper means for supplementing the record is through S.Ct.Prac.R. 15.08, which the state already attempted. *05/12/2021 Case Announcements*, 2021-Ohio-1580 (denying the state's April

14, 2021 Motion to Supplement the Record by a 5-2 vote). Second, since the video has never been part of the record, there is nothing for this court to “reconsider” concerning the video.<sup>1</sup>

### **III. This court should deny reconsideration**

On the first page of its brief, the state appeals to broad principles surrounding the prosecutor’s role in the justice system, the independence of the judiciary, and sentencing law in Ohio. (June 17, 2022 Motion for Reconsideration.) But rather than elaborating on those points, the state mostly repeats the arguments that this court already considered and rejected.

#### **A. It is of no consequence that Mr. Bryant’s sentence was not final when the trial court increased it by six years**

The state begins by contesting this court’s conclusion that the trial judge increased Mr. Bryant’s sentence by six years “without a moment’s reflection.” *State v. Bryant*, Slip Opinion No. 2022-Ohio-1878, ¶ 29. In essence, the state reiterates its position that because Mr. Bryant’s sentence was not final until the trial court entered a judgment entry, the court retained the authority to revise Mr. Bryant’s sentence until then. *Compare* June 17, 2022 Motion for Reconsideration at 3–5 *with Bryant* at ¶ 18. In a

---

<sup>1</sup> In making this argument, Mr. Bryant does not yield to the state’s descriptions of the video. Rather, what matters here is that the video has never been part of the record and that new materials cannot be offered with a motion for reconsideration. In other words, just as the video was not part of this court’s merits determination, it should not be a part of this court’s reconsideration.

single paragraph, this court rejected that argument, explaining that “even though a trial court may revise a sentence prior to its becoming final, the court may do so only for lawful reasons.” *Id.* at ¶ 23. Nothing in the state’s motion addresses this point.

**B. *Jones* does not bar review here**

Next, the state argues that this court’s decision in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, should have mandated affirmance. (June 17, 2022 Motion for Reconsideration at 5.)

But before addressing *Jones* for the first time,<sup>2</sup> the state spends about three pages explaining why it believes that Mr. Bryant’s outburst displayed a lack of remorse and why the trial court was correct to so conclude. (*Id.* at 5–8.) This is no different from the state’s merit-brief argument that this court analyzed and rejected. *Bryant* at ¶ 24–31.

Then, once the state reaches its objection to how this court applied *Jones*, the state does not engage with this court’s conclusion that Mr. Bryant’s claim remains reviewable. (June 17, 2022 Motion for Reconsideration at 8–11.) Instead, it characterizes the majority’s reasoning as a mere “difference in opinion” with the trial court. (June 17, 2022 Motion for Reconsideration at 10.)

---

<sup>2</sup> *Jones* was decided after briefing was completed in this case. *Bryant* at ¶ 19, fn. 1. Although the state submitted *Jones* as supplemental authority, it “did not mention or otherwise make use of this authority at oral argument,” leaving this court to discern its “apparent suggestion that [Mr.] Bryant’s claim may be unreviewable in light of *Jones*.” *Bryant* at ¶ 19.

What is more, *Jones* is a two-year-old decision that, before *Bryant*, was cited only once in a majority opinion of this court—in a case that presented the same issue. *State v. Toles*, 166 Ohio St.3d 397, 2021-Ohio-3531, 186 N.E.3d 784. One of the justices in the *Jones* majority also forecasted that there could be discrete sentencing issues that arise under R.C. 2929.11 and 2929.12 that remain reviewable. *Jones* at ¶ 47 (Fischer, J., concurring). That is what happened here.

At bottom, the state does not explain why this court was wrong to find that Mr. Bryant's case was "markedly different" from *Jones*, nor does it contest that the holding of *Jones* was "narrow." *Bryant* at ¶ 22. There was no legal error.

### **C. The Greene study supports the majority's conclusion**

Finally, the state disapproves of this court's decision to cite a study that examines the role of emotion in punishment. In doing so, the state exaggerates the scope of this court's holding. First, the state accuses the majority of "call[ing] into question the entire criminal justice system." (June 17, 2022 Motion for Reconsideration at 11.) Next, the state suggests that the *Bryant* majority overruled the presumption of impartiality. (*Id.* at 12–13.) This court said no such things.

Rather, this court cited the Greene study to show how people responsible for meting out punishment are influenced by emotion—particularly anger and outrage. *Bryant* at ¶ 30, fn. 2. Here, the trial court increased Mr. Bryant's sentence by six years in response to his outburst, which was "directed solely at the trial-court judge." *Id.* at ¶ 25.

Given this context, the study supports this court's conclusion that the trial court's decision was not reasoned, "but was instead motivated by a desire to punish [Mr.] Bryant for his transgression." *Id.* at ¶ 30, fn. 2.

Nothing in this court's opinion casts doubt on a trial court's authority to issue in-range sentences, so long as the court does not "impose[] a sentence based on factors or considerations that are extraneous to those that are permitted by R.C. 2929.11 and 2929.12." *See id.* at ¶ 22. The state's concerns about the breadth of *Bryant* are misplaced.

#### **IV. Conclusion**

The state identifies no legal error in the majority's opinion. Nor does it engage with this court's assessment of the state's merit-brief arguments. As a result, this court must deny the state's motion for reconsideration.

Respectfully submitted,

Office of the Ohio Public Defender

/s/ Max Hersch

Max Hersch (0099043)

Assistant State Public Defender

250 East Broad Street, Suite 1400

Columbus, Ohio 43215

(614) 466-5394

(614) 752-5167 – Fax

Max.Hersch@opd.ohio.gov

COUNSEL FOR MANSON M. BRYANT

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLANT'S MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION FOR RECONSIDERATION** was forwarded by electronic mail to Jennifer A. McGee, Assistant Prosecuting Attorney, Lake County Prosecutor's Office, Jennifer.McGee@lakecountyohio.gov, on this 23rd day of June, 2022.

/s/ Max Hersch

Max Hersch (0099043)  
Assistant State Public Defender

COUNSEL FOR MANSON M. BRYANT

#1602727