

## **Court of Appeals of Ohio**

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# **PRESS RELEASE**

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### **FOR IMMEDIATE RELEASE**

### **Ohio Court of Appeals, Eighth Appellate District, Siting En Banc, Releases Major Sentencing Decisions**

**Cleveland, Ohio, May 31, 2005**— The Ohio Court of Appeals, Eighth Appellate District, announces the release of *State v. Lett*, Cuyahoga App. Nos. 84707 and 84729 and *State v. Atkins-Boozer*, Cuyahoga App. No. 84151, both involving major issues relating to Ohio's sentencing law. In opinions written by Judges Michael J. Corrigan and Colleen Conway Cooney, the Eighth District Court of Appeals, sitting en banc, has upheld the constitutionality of Ohio's sentencing scheme relating to nonminimum, maximum, and consecutive sentences. The full text of the opinions may be accessed from the Eighth District Court of Appeals' website located at:

[www.cuyahoga.oh.us/appeals](http://www.cuyahoga.oh.us/appeals).

### **Background**

In *Blakely v. Washington* (2004), \_\_\_ U.S. \_\_\_, 124 S.Ct. 2531, 159 L.Ed.2d 403, the United States Supreme Court held that the "statutory maximum" for sentencing purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. The United States Supreme Court ruled that to hold otherwise would violate an accused's Sixth Amendment right to have a jury decide factual issues at trial. The impact of that decision in the federal courts was to forbid judges from making factual determinations at sentencing that could increase an offender's sentence beyond the maximum sentence permitted by law on the facts alleged in the indictment. Ultimately, the United States Supreme Court overturned the mandatory use of the Federal Sentencing Guidelines.

As it relates to Ohio, significant questions have arisen as to whether judges can deviate from statutory preferences against the maximum prison term and against consecutive sentences for certain felonies. In order to impose the maximum sentence, trial judges in Ohio must make a finding that the offender either committed the worst form of the offense or posed the greatest likelihood of committing future crimes. The issue before the Eighth District Court of Appeals was whether these findings are unconstitutional under the *Blakely* decision because a judge, not the jury, makes them.

### **State v. Lett - Maximum Sentences**

Speaking for the majority in *State v. Lett*, Judge Michael J. Corrigan ruled that

the statutory findings required for imposing a maximum sentence do not violate an accused's right to a jury trial because those findings are in the nature of discretionary findings traditionally made by trial judges at sentencing.

Administrative Judge Patricia A. Blackmon and Judges Frank D. Celebrezze, Jr., Colleen Conway Cooney, Anthony O. Calabrese, Jr., Mary Eileen Kilbane, and Christine T. McMonagle concurred with Judge Corrigan on the issue of maximum sentences.

#### **State v. Lett - Consecutive Sentences**

Speaking for the majority in *State v. Lett* on the issue of consecutive sentences (sentences ordered to be served one after the other), Judge Michael J. Corrigan held that the imposition of consecutive sentences does not violate the *Blakely* decision because it does not increase an offender's sentence beyond the maximum sentence allowed by law.

Administrative Judge Patricia A. Blackmon and Judges Ann Dyke, Kenneth A. Rocco, Frank D. Celebrezze, Jr., James J. Sweeney, Colleen Conway Cooney, Anthony O. Calabrese, Jr., Mary Eileen Kilbane, and Christine T. McMonagle concurred with Judge Corrigan on the issue of consecutive sentences.

Judge Sean C. Gallagher concurred in judgment only as to the imposition of consecutive sentences, but dissented as to the constitutionality of consecutive sentences under portions of Senate Bill 2. Judge Diane Karpinski concurred with Judge Gallagher's dissenting opinion only to the extent that the statutes requiring findings for

consecutive sentences are unconstitutional.

### **State v. Atkins-Boozer - Nonminimum Sentences**

Speaking for the majority in *State v. Atkins-Boozer*, Judge Colleen Conway Cooney ruled, consistent with the court's en banc opinion in *State v. Lett*, that the findings required for imposing the nonminimum sentence do not violate an accused's right to a jury trial because those findings are in the nature of discretionary findings traditionally made by trial judges at sentencing.

Administrative Judge Patricia A. Blackmon and Judges Frank D. Celebrezze, Jr., Anthony O. Calabrese, Jr., Mary Eileen Kilbane, Christine T. McMonagle, and Michael J. Corrigan, concurred with Judge Cooney on the issue of nonminimum sentences.

### **Dissenting Opinions**

Judge James J. Sweeney, dissented from the majority opinion in both *Lett* and *Atkins-Boozer*, stating that he would find the imposition of maximum and nonminimum sentences required judges to engage in impermissible factfinding. Judges Ann Dyke, Diane Karpinski, Kenneth A. Rocco, and Sean C. Gallagher concurred with Judge James J. Sweeney on the issue of maximum and nonminimum sentences.

### **En Banc Issue**

In a matter related to the court's consideration of the matter en banc (meaning all twelve judges of the court hear the case rather than a panel of just three judges), Judge Sean C. Gallagher wrote a concurring opinion defending the Eighth District Court of

Appeals' use of its en banc policy. Judge Gallagher cited to the long history of en banc use in American jurisprudence and noted that it was used in courts having multiple members to resolve conflicts of opinions within those courts.

Administrative Judge Patricia A. Blackmon and Judges Frank D. Celebrezze, James J. Sweeney, Colleen Conway Cooney, Anthony O. Calabrese, Jr., Kenneth A. Rocco, Mary Eileen Kilbane, and Michael J. Corrigan concurred with Judge Sean Gallagher's concurring opinion.

Judge Diane Karpinski dissented from the use of the court's en banc procedure, saying that she believed it violated the Ohio Constitution which provides that a court of appeals panel shall consist of three judges. Judge Karpinski also objected to the particular use of the en banc procedure in the pending case, saying that it had been improperly invoked as there had been no express conflict as required by the procedure, merely the threat of an imminent conflict within the district. Judge Christine T. McMonagle concurred with Judge Karpinski's dissenting opinion only as it relates to whether the en banc process is constitutional.