



Cuyahoga County Reentry Review

House Bill 86 Becomes Law— Sentencing Reform in Ohio

By Luis Vazquez and Debra Matovic

On Tuesday July 12th, Governor Kasich and Northeast Ohio community leaders publicly embraced Ohio's new criminal sentencing reform law at Mt. Sinai Baptist Church on Woodland Ave. The new sentencing reform law, signed on June 30, 2011 by Governor John Kasich, will allow for more alternatives to incarceration for non-violent, low-level felony convictions. The new law also provides for treatment in lieu of conviction for some offenders whose drug abuse and mental illness may have contributed to their offense.

In addition to creating alternatives to prison, matching the penalties for crack and powder cocaine, and increasing felony status for theft related crimes from \$500 to \$1,000, the new law also allows future inmates to receive shorter sentences or a sentence reduction based on successful completion of educational and vocational opportunities and substance abuse and mental health programming. The sentence-reform law also permits the Ohio Department of Rehabilitation and

Corrections to petition for judicial release of inmates who have served 80% of their sentence, successfully completed rehabilitative programming, and have no incidents of violence while incarcerated.

In other words, this new law presents an opportunity to not only be strong on crime, but smart about it as well.

How will this affect the overall prison population? This reform is expected to reduce Ohio's prison population by 3,000 to 4,000 less inmates across the State. As Cuyahoga County accounts for twenty percent of the overall state prison population, we also experience nearly one-quarter of all former inmates released in Ohio returning to our community. With the signing of House Bill 86 into law, we can expect hundreds of lower-level offenders to remain in the community in addition to the thousands of formerly incarcerated citizens already returning to the City of Cleveland.

While community leaders and reentry ad-

vocates of Northeast Ohio certainly welcome and applaud this advancement in sentencing reform, there

are still some uncertainties that remain. According to William M. Denihan, CEO of the Alcohol, Drug Addiction and Mental Health Services Board of Cuyahoga County and Chair of the Reentry Coalition, it costs approximately \$5,000 per reentrant per year to provide necessary and adequate services. With the spike in population of returning prisoners to Cuyahoga County, it is estimated that we will need an additional \$5 million per year to adequately serve these men and women.

In collaboration with various community organizations and advocates, the Office of Reentry will continue to advocate for additional state funding to provide the programs and services necessary for successful reentry and rehabilitation.



Cleveland Heights Case Goes to Ohio Supreme Court: Justice Notes Collateral Sanctions

By Fred Bolotin, Esq.

In its unanimous ruling on a case that originated in Cleveland Heights, the Ohio Supreme Court not only removed a procedure barrier to the appeal of a criminal conviction, but gave public acknowledgement to the problem of collateral consequences associated even with a conviction on a minor offense.

In a concurring opinion in the case

of *Cleveland Hts. v. Lewis*, (Slip Opinion No. 2011-Ohio-2673), Justice Evelyn Lundberg Stratton explains the far reaching implications of having a criminal record—even if a person's only offense is a minor misdemeanor.

Although the Supreme Court's involvement in this case was strictly to resolve a procedural issue, it may impact many who seek to challenge a misdemeanor or conviction. The question before the Supreme Court was, "Whether an appeal is rendered moot when a misdemeanor defendant serves or satisfies his sentence after unsuccessfully moving for a stay of execution in the trial court, but without

seeking a stay of execution in the appellate court."

A case is deemed to be moot if the controversy that existed when a case was originally brought to a court no longer exists at the time the court would rule on it. For example, if a gay couple had filed a lawsuit, in January, claiming discrimination by the state of New York for forbidding them to marry, the case became moot when New York passed the law permitting same sex marriage in June.

It had long been established by common law that the mootness doctrine prevented an appellate court from making

Continued on page 3

In This Issue

Page 1...H.B. 86

Page 1...Ohio Supreme Court

Page 2...WREN

WREN: Women's Reentry Network

By Dani Lachina



Since its inception 17 years ago, the dedicated staff at The Women's Reentry Network (WREN) continues to provide holistic supportive services to the underserved and often misunderstood population of female offenders, their children, and other family members. By providing these services, which include therapeutic support groups, informational education groups and individual case management and crisis and abuse counseling, WREN has consistently boasted an exceptional 10 percent recidivism rate with their participants. The recidivism rate for female offenders in Ohio is estimated to be around 60 percent. WREN serves about 200 clients a year.

As reentry advocates in Cuyahoga County, we can easily discuss the countless challenges that returning prisoners face upon reentry: finding housing, securing employment, receiving treatment, complying with conditions of parole supervision and so on. However, much of the research, discussion and programming are focused on males simply because they are incarcerated in greater numbers. According to the Ohio Department of Rehabilitation and Corrections 2008 Prison Releases Report, the majority of citizens returning to Cuyahoga County from state prisons are African-American males.¹

However, it must not continue to go unnoticed that female incarceration rates throughout the United States have skyrocketed in the last three decades. The Institute on Women & Criminal Justice reports that the female prison population grew by 832% from 1977 to 2007 and that minority women are disproportionately represented in prison. Additionally, reentry advocates believe that African-American women face even greater, more complex challenges in reentry than perhaps any other incarcerated population. In fact, because much research has demonstrated that the rehabilita-

tive and reentry needs for women are inherently different than they are for men, the Women's Reentry Network (WREN) was launched.

According to Barbara Wilson, LSW at the Women's Reentry Network (WREN), in addition to the basic challenges of community reintegration, incarcerated African-American women are often mothers, primary care givers, and heads of households before they become offenders. While 70% of incarcerated women have children, about 89% have children under the age of twelve. Once they become offenders, their children become displaced and languish in foster care, awaiting their mothers' release from prison or become permanently severed from their families—a circumstance that Attorney Melanie GiaMaria, veteran group facilitator for WREN at the Cuyahoga County jail has so often observed.

GiaMaria also notes that roughly 70 to 90 percent of incarcerated women have been sexually assaulted in their lives and few have had any sort of therapy. Also, many of the 300 women currently incarcerated in the Cuyahoga County jail are living with an undiagnosed mental illness. It has been recognized that prior to incarceration, these women most likely self-medicated with drugs and alcohol, a practice that typically leads to an offense, as the majority of crimes that send females to prison are drug related. Another distinct yet all too familiar challenge female ex-offenders experience is the banishment from their families. According to WREN's observations, male offenders tend to have more support from their families while incarcerated and upon release, as they have regular visits from their families and children. In contrast, females have very rare visitation from their family and barely see their children while incarcerated. Upon release, they seldom have a relative who will open their home to them the same way they do with men, thus

presenting even greater psychological trauma of rejection and dislocation to female offenders.

According to Mary Kozina, Executive Director at WREN, formerly incarcerated women need strong emotional support and healing before they can acquire jobs, embark on vocational training, and access additional resources. WREN offers these services in an environment where women can begin the process of rebuilding their lives, reconnecting with family, and reclaiming their place as productive members of the community.

The Office of Reentry continues to applaud the important work of the Women's Reentry Network (WREN) and recognizes the crucial role that they play in the reentry advocacy network of service providers here in Cuyahoga County. WREN is a program of Community Reentry and Lutheran Metropolitan Ministry.

For more information on their programming, please contact Mary Kozina at 216.696.7535.

¹ODRC Bureau of Research. *A Profile of 2008 Releasees, Sorted by County of Commitment*. 2010 <www.drc.ohio.gov/web/research2.htm>

²Women's Prison Association Institute on Women & Criminal Justice. *Quick Facts: Women & Criminal Justice*. 2009 <www.wpaonline.org>

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LUNDBERG STRATTON, J., concurring.

While I concur in the majority's decision, I write separately to highlight the extent of the collateral consequences of a misdemeanor conviction in today's world.

Employment rights may be affected, including the ability to obtain and maintain licenses for dozens of activities from teaching (R.C. 3319.31 and 3319.39(B)(1)), to practicing law (Gov. Bar R. 1), to auctioneering (R.C. 4707.02), to transporting inmates (Ohio Adm. Code 5120:1-1-35(G)), to embalming (R.C. 4717.14), to cosmetology (Ohio Adm. Code 4713-1-07) to operating bingo games (R.C. 2915.09), and everything in between.

In addition to affecting licensure and employment, misdemeanor convictions also affect civil, political, and legal rights. This category of collateral consequences includes effects on qualifications for approval as an adoptive parent (Ohio Adm. Code 5101:2-48-10) or foster caregiver (Ohio Adm. Code 5101:2-7-02) and loss of rights related to firearms (R.C. 2923.13).

In addition to these direct consequences, there are also dozens of provisions of the Ohio Revised Code that use a prior misdemeanor conviction to enhance the severity of a later criminal charge or penalty. Examples of misdemeanors that can result in penalty enhancement include nonsupport (R.C. 2919.21(G)(1)), gambling (R.C. 2915.02(F) and 2915.03(B)), telecommunications harassment (R.C. 2917.21(C)(2)), and election falsification (R.C. 3599.11(B)(2) and (C)).

In addition to collateral consequences under state law, a misdemeanor conviction can lead to many consequences under federal law, such as loss of financial aid for education (Section 1091(r), Title 20, U.S. Code), ineligibility for public housing (Sections 5.854, 5.855, and 960.203, Title 24, C.F.R.), and effects on immigration status (Sections 1182(a)(2) and 1227(a)(2)(A)(iii), Title 8, U.S. Code) and government employment (Section 44936, Title, U.S. Code).

In addition to the government realm, collateral consequences can also arise in the private realm. Because anyone may obtain the criminal history of another under Ohio Adm. Code 109:5-1, private employers, landlords, insurers, educational institutions, and others may obtain information on misdemeanor convictions and use it in their decision-making processes.

Gone are the days when a misdemeanor conviction resulted in little or no real collateral consequences. Rather, the collateral consequences resulting from a misdemeanor conviction today are real and significant. Accordingly, I concur in the judgment of the majority in holding that the completion of a misdemeanor sentence will not make an appeal moot if the appellant sought a stay.

MCGEE BROWN, J., concurs in the foregoing opinion.

We want to hear from you... Your comments are important to us.

Write to us at

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Cleveland Heights Case Goes to Ohio Supreme Court... *Continued from Front cover*

a ruling on a case if the defendant voluntarily had completed his sentence prior to a ruling on the appeal, based on the notion that no ruling by the appellate court could undo what has been done or take away a prison term that was already served. Once the sentence is completed, no real controversy remains.

In 1994, "recognizing the various statutory and societal consequences attaching to a felony conviction," the Ohio Supreme Court, in *State v. Golston* (1994), ruled that "challenging a felony conviction is not moot even if the entire sentence has been satisfied before the matter is heard on appeal."

The court, however, continued its more restrictive interpretation of the mootness doctrine when dealing with misdemeanors and the appellant voluntarily completed the sentence and in which no collateral consequences resulted from the conviction.

In the recently decided case, the Supreme Court recognized that it had "not yet considered what it means to 'voluntarily' complete a sentence for purposes of the mootness doctrine" Lewis was convicted of obstructing official business by refusing to answer questions that the police asked Lewis about his daughter. He was sentenced to a suspended term of three days in jail, placed him on inactive probation for six months, and imposed a \$100 fine and court costs, which he paid.

Lewis filed a motion the next day to stay the execution of the sentence, informing the court of his intention to appeal. His

motion was denied. He proceeded to file an appeal in the Eighth District Court of Appeals, but did not specifically request a stay of execution from the appellate court. Since he had paid the fine and court costs and inactive status of his probation, his sentence was completed while his appeal was still pending.

The Eighth District Court of Appeals reversed Lewis' conviction on the grounds that the conviction was not supported by the evidence. Simply refusing to answer questions by the police did not constitute an "affirmative action to impede the investigation," and the police officer admitted that Lewis's refusal to answer his questions had not prevented him from performing his duties."

The court, however, raised the issue of mootness. It ruled that, although Lewis did not demonstrate that he would suffer any collateral consequence, the fact that he asked the trial court for a stay of execution indicated that he had not served his sentence voluntarily. This decision conflicted with those of the Courts of Appeals from at least two other districts. Noting this conflict, the Court of Appeals asked the Supreme Court of Ohio to resolve this difference, so there would be one rule throughout the state.

Although the Ohio Supreme Court is not bound by decisions from courts in other states, it did use a 2009 decision in Louisiana (*State v. Malone*) in formulating its decision. The Louisiana court determined "that completion of the sentence is not voluntary and will not moot the appeal if the

circumstances show that the appellant did not intend to 'acquiesc[e] in the judgment or abandon [the] right to review'."

The Ohio Supreme Court ruled that Lewis' appeal of the court's finding of guilt and his motion to the trial court for a stay of execution demonstrated "that Lewis neither acquiesced in the judgment nor abandoned the right to appellate review. Therefore, it cannot be said that he voluntarily completed the sentence imposed by the court, and his appeal did not become moot." In other words, just because he paid his fine and costs, and the period of inactive probation had ended, Lewis, as evidenced by his appeal, could not be said to have completed his sentence voluntarily. Therefore, the Supreme Court said, the appellate court was correct in considering his case.

The full implications of this decision are yet to be determined. It could be argued that the filing of an appeal of a conviction would be enough, by itself, to demonstrate non-acquiescence and that completion of the sentence imposed was non-voluntary. Justice Lundgren Stratton's concurrence could be used as a basis for any appellant to claim the existence of collateral consequences, thus preventing the appeal from being declared moot.

At the very least, this case will preserve the right to appeal for many convicted of even minor misdemeanors, and gives official credence to the extent of collateral consequences suffered by anyone characterized as an ex-offender.

COMMENTS OR SUGGESTIONS:

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We want to hear from you...
Your comments are important to us.

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