IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	CASE NO. 2011-0778
	:	
Plaintiff,	:	On Appeal from the Portage
	:	County Court of Common Pleas
	:	Case No. 95-CR-220
-v-	:	
	:	Pursuant to R.C. § 2953.73(E)(1)
TYRONE NOLING,	:	
	:	
Defendant.	:	
	:	**This is a capital case.**

Supplemental Brief of Appellant Tyrone Noling

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Supplemental Proposition of Law

Ohio Revised Code §2953.73(E)(1) violates Article IV, sections 2(B)(2)(c) and 3(B)(2) of the Ohio Constitution because under those constitutional provisions, the courts of appeals, not this Court, have jurisdiction to review final judgments in capital cases with the exception of direct appeals.

On March 7, 2012, this Court ordered the parties to submit supplemental briefs addressing whether, "[i]n light of *State v. Davis*, 131 Ohio St. 3d 1, 2011-Ohio-5028, [] R.C. 2953.73(E)(1), which confers jurisdiction on this court to consider Noling's appeal, is unconstitutional." For the reasons that follow, the answer is yes—R.C. §2953.73(E)(1) is unconstitutional.

A. The text of the Ohio Constitution, as interpreted in *State v. Davis*, requires that R.C. §2953.73(E)(1) be declared unconstitutional.

1. The Ohio Constitution and the appellate rights of capital defendants.

In 1994 Ohio voters passed Issue I, amending the Ohio Constitution to change the review procedure for capital cases. *State v. Smith*, 80 Ohio St. 3d 89, 95, 684 N.E.2d 668, 678 (1997). Before that amendment, a defendant sentenced to death had two direct appeals of right, one to the court of appeals and one to this Court. *Davis*, 131 Ohio St. 3d at 4, 959 N.E.2d 516, 519. Issue I was a result of the public's frustration with perceived delays in appeals of death penalty cases and its loss of confidence in the integrity of the death penalty system. *Smith*, 80 Ohio St. 3d at 95-96, 684 N.E.2d at 678-79. To alleviate this perceived problem, Issue I eliminated direct review by the court of appeals for capital defendants sentenced to death. Ohio Const. art. IV, §3(B)(2); Ohio Const. art. IV §2(B)(2)(c). The amended version of Ohio Const. art. IV, § 3(B)(2) now provides:

> Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the court of record inferior to the court of appeals within the district, except that courts of appeals *shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death.*

(emphasis added). Issue I also amended Ohio Const. art IV § 2(B)(2)(c) to read: "The supreme court shall have appellate jurisdiction . . . [i]n direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed." Thus the jurisdiction to hear direct review of death penalty cases was removed from the courts of appeals and placed solely with this Court by Issue I.

2. *State v. Davis* reiterates that section 3(B)(2) of the Ohio Constitution gives jurisdiction to the courts of appeals to review final judgments in capital cases except for direct appeals.

This Court held in *State v. Davis* that the language of the amended constitutional provisions "limits the jurisdiction of the Supreme Court to the appeal of a judgment sentencing a defendant to death." 131 Ohio St. 3d at 4, 959 N.E.2d at 520. In *Davis*, this Court considered whether, under the amended Ohio Const. art. IV, § 3(B)(2), it or the court of appeals had jurisdiction to review an appeal from a trial court's denial of a defendant's motion for new trial. *Id.* at 4-5, 959 N.E.2d at 519-20. In other words, did the language of Ohio Const. art. IV, § 3(B)(2) removing "review on direct appeal a judgment that imposes a sentence of death" from the jurisdiction of the courts of appeals, sweep so widely that it included review of a trial court's decision on a motion for new trial?

This Court concluded that the court of appeals, not it, had jurisdiction over the appeal of a trial court's denial of a motion for new trial because "[a] holding that the Supreme Court has exclusive jurisdiction over *all matters* relating to a death-penalty case would be contrary to the language of the constitutional amendments . . . " *Davis*, 131 Ohio St. 3d at 6, 959 N.E.2d at 521.

To reach this conclusion, this Court found that the language of Issue I "limits the jurisdiction of the Supreme Court to the appeal of a judgment sentencing a defendant to death." *Davis*, 131 Ohio St. 3d at 4, 959 N.E.2d at 519. In other words, the Ohio Constitution confers exclusive jurisdiction of death penalty cases on this Court only as to the appeal of a judgment sentencing a defendant to death, meaning to a capital defendant's direct appeal as of right from his convictions and death sentence. *Id.* at 4, 959 N.E.2d at 520.

The jurisdictional exception carved out by Issue I is a narrow one. Given that, this Court found that the "wording of Section 3(B)(2) supports the conclusion that an appellate court has the jurisdiction to review final judgments rendered in such a proceeding"—proceedings other than direct appeals from a judgment that imposes death. *Id.* at 6, 959 N.E.2d 521. This Court reasoned that to find that it should hear all such appeals would be contrary to the language of the constitutional amendments and would also cause additional delay thereby thwarting the purpose of Issue I. *Id.* Thus, under the Ohio Constitution, courts of appeal have jurisdiction over all other appeals in death penalty cases. *See id.* at 6, 959 N.E.2d at 521 ("We see no reason why the courts of appeals may not currently entertain all appeals from the denial of postjudgment motions in which the death penalty was previously imposed.").

3. In light of *State v. Davis*, R.C. §2953.73(1) is unconstitutional.

The present appeal is not a direct appeal from Noling's conviction and death sentence, but rather is one of the numerous postjudgment motions to which jurisdiction is properly before the courts of appeals. Therefore, pursuant to the Ohio Constitution, the court of appeals has jurisdiction to hear this appeal. *Id.* at 4, 959 N.E.2d at 520.

Revised Code §2953.73(E) sets out the mechanisms for appealing the denial of an application for DNA testing made pursuant to Ohio's post-conviction DNA testing statute.

However, section (E)(1) provides that a death-sentenced applicant can appeal only by seeking leave of this Court to hear his appeal. This does not comport with Ohio's Constitution. Section (E)(1) specifically states that "[c]ourts of appeals do not have jurisdiction to review any rejection if the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing." R.C. §2953.73(E)(1).

The appeal from the denial of an application for DNA testing is not an "appeal of a judgment sentencing a defendant to death." It is exactly the type of appeal that this Court held, and the Ohio Constitution provides, must be heard by the courts of appeals. Revised Code §2953.73(E)(1) strips the courts of appeals of jurisdiction vested in them by the Ohio Constitution. The Statute is "contrary to the language of the constitutional amendments . . . " *Davis*, 131 Ohio St. 3d at 7, 959 N.E2d at 521 and cannot stand.

B. Severance cannot be limited solely to R.C. §2953.73(E)(1) because, standing alone, (E)(2) violates the United States Constitution's Equal Protection Clause.[1]

If subsection (E)(1) alone is stricken as unconstitutional, that action will leave Noling with no means to appeal the denial of his DNA application. This is so because the plain language of subsection (E) limits a defendants' rights to appeal a denial of a DNA application to

[1] Noling challenged the constitutionality of the appeals provisions of R.C. §2953.73 in the appeal of the denial of his first DNA application. He raised the issue before this Court in a Memorandum in Support of Jurisdiction. *See* Memorandum in Support of Jursdiction, *State v. Noling*, No. 09-0773 (and before the Eleventh District Court of Appeals in Case No. 2009-PA-00025. Noling filed an appeal in the Eleventh District at that time believing that the provision leaving him only a discretionary appeal with this Court was unconstitutional. The Eleventh District found that it did not have jurisdiction and dismissed the appeal *State v. Noling*, No. 2009-PA-00025, 2009 Ohio App. LEXIS 3246 (Portage Ct. App. July 31, 2009), and this Court did not accept jurisdiction, *State v. Noling*, 126 Ohio St. 3d 1582, 934 N.E.2d 355 (2010). This Court cannot undertake consideration of the constitutionality of (E)(1) without considering the implications of allowing (E)(2) to stand as a bar to all capital defendants appeals in DNA litigation. Under the current statute, Noling has *at least a chance of an appeal.* Striking (E)(1) without addressing the constitutional implications of leaving (E)(2)'s limitation of appellate rights to solely non-capital defendants would strip even the slim chance of an appeal from capital defendants.

those avenues delineated in subsection (E)(1), addressing the appellate rights of capital defendants, and subsection (E)(2), addressing the appellate rights of non-capital defendants.[2] Thus, if this Court finds that R.C. §2953.73(E)(1) is unconstitutional, it must then consider the constitutionality of subsection (E)(2). That subsection, *insofar as it applies only to applicants who are not under sentences of death*, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and must be stricken.

1. Standing alone, R.C. §2953.73(E)(2) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

"The Equal Protection Clause commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.'" *Vacco v. Quill*, 521 U.S. 793, 799 (1997) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33 (1973)). To establish an Equal Protection Clause violation, it must be demonstrated "that the government treated [Noling] disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *Club Italia Soccer v. Shelby*, 470 F.3d 286, 298 (6th Cir. 2006) (citations omitted); *see also Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011). Noling's equal protection claim is based upon the third ground—it is not rationally related to a legitimate state interest.[3]

Noling satisfies the first of the two-part inquiry: he is similarly situated with non-capital defendants who are appealing a denial of an application for DNA testing pursuant to R.C. §2953.73. *See Perry v. McGinnis*, 209 F.3d 597, 601 (6th Cir. 2000) (citing *Ercegovich v.*

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[2] R.C. §2953.73(E) uses the term "offender" rather than "defendant."

[3] This Court should engage in strict scrutiny in assessing the equal protection violation since the challenge implicates a fundamental right, the right of access to the court. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 312 (1976); *Bounds v. Smith*, 430 U.S. 817, 828 (1977). However, the State cannot even meet the lowest level of scrutiny, rational basis, and that level will be used for the purpose of this argument.

Goodyear Tire & Rubber Co., 154 F.3d 344, 352 (6th Cir. 1998) (explaining that in assessing the "similarly situated" inquiry, "courts should not demand exact correlation, but should instead seek relevant similarity")). Yet the statute, with section (E)(1) severed, would treat death-sentenced and non-death-sentenced offenders disparately—allowing non-death-sentenced offenders an appeal of right to the court of appeals while giving death-sentenced offenders no appellate process. R.C. §2953.73(E)(2).

In *State v. Smith*, 80 Ohio St. 3d 89, 95-96, 684 N.E.2d 668, 678-79 (1997), this Court considered the elimination of one tier of appellate review for capital defendants under the rational basis review standard and found that "[t]he state has a direct, legitimate and compelling interest in ensuring that the final judgments of its courts are expeditiously enforced." *Id.* at 101, 684 N.E.2d at 682. Issue I, directed at reducing delay, did not run afoul of the Equal Protection Clause because it streamlined the appellate process, rather than eradicating it. *Id.* In this instance, the State presumably retains its legitimate interest in ensuring expeditious enforcement of its judgments. While the State interest is legitimate, the means are not rational. The statutory provision at issue here is qualitatively different from *Smith*. If this Court severs section (E)(1) and permits section (E)(2) to stand, it will leave death-sentenced defendants ***no*** appeal when their DNA applications are denied while non-capital defendants retain an appeal of right to the court of appeals. While cutting out one of two levels of appeals of right for death-sentenced defendants may have been a justifiable means to reach the legitimate goal of streamlining the appellate process for capital cases, cutting out all appeals certainly is not. Leaving no appellate process for capital offenders while affording a multi-layered appellate process for non-capital offenders is not streamlining—it is an elimination of due process.

Moreover, eliminating what was an extra layer of appeals of right as compared to what was available to non-capital defendants was rationally related to streamlining the capital appellate process so that it was more similar to the usual appellate process. But here, should (E)(2) remain intact, the statute will have eliminated all appeals—not just streamlining the appellate process for capital defendants, but doing away with it in the vast majority of cases. Revised Code §2953.73(E)(2), standing alone, thus goes well beyond the purpose of eliminating extra appeals in capital cases.

There are no differences between capital and non-capital inmates that would justify the disparate treatment of the two groups. If anything, capital defendants are entitled to more process, not less. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion) (footnote omitted) ("Because of the qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case."). Yet, similarly situated defendants, all challenging their convictions through the same mechanism, and all claiming their innocence, would not similarly treated. In fact, non-capital defendants are provided with more process than those who are sentenced to death. Leaving death-sentenced defendants with no appeal of right fails even under a rational basis analysis; Revised Code §2953.73(E)(2) cannot pass constitutional muster should this Court strike subsection (E)(1).[4]

Allowing (E)(2) to stand also appears to be inconsistent with the intent of the General Assembly. Clearly the legislature intended capital defendants to have some forum to litigate the denial of a DNA application, albeit discretionary, as evidenced by subsection (E)(1). Allowing

[4] In fact, Noling would argue the statute as originally written creates an Equal Protection Clause violation that does not pass constitutional muster by providing only a discretionary appeal to capital defendants denied DNA testing while affording a mandatory appeal to those not sentenced to death.

(E)(2) to stand as a bar to capital defendants obtaining any appeal of the denial of their DNA application would be inconsistent with that intent.

Insofar as it applies only to non-capital defendants, R.C. §2953.73(E)(2) violates the Equal Protection Clause and cannot stand.

2. Proper severance can preserve the DNA testing statute while removing the unconstitutional portions of R.C. §2953.73(E).

This Court presumes that "compliance with the United States and Ohio Constitutions is intended and that that an entire statute is intended to be effective. *State v. Foster*, 109 Ohio St. 3d 1, 28, 845 N.E.2d 470, 496 (2006) (citing R.C. §§1.47(A) and (B)). Also, if a provision of a statute is found to be invalid, "the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application . . . " R.C. §1.50. To this end, the offending portions of R.C. §2953.73(E) should be severed from the rest of the statute.

The test for severance is set out in *Geiger v. Geiger*, 117 Ohio St. 451, 466, 160 N.E. 28, 33 (1927). To determine if severance is appropriate, three questions must be answered:

> (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself?
>
> (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out?
>
> (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?

Id.

Here, excising the offending parts of subsection (E), as follows, is the appropriate remedy:

> (E) A judgment and order of a court entered under division (D) of this section is appealable only as provided in this division. If an eligible offender submits an application for DNA testing under section 2953.73 of the Revised Code and the court of common pleas rejects the application under division (D) of this section, ~~one of the following applies:~~
>
> ~~(1) If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may seek leave of the supreme court to appeal the rejection to the supreme court. Courts of appeals do not have jurisdiction to review any rejection if the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing.~~
>
> ~~(2) If the offender was not sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing,~~ the rejection is a final appealable order, and the offender may appeal it to the court of appeals of the district in which is located that court of common pleas.

R.C. §2953.73(E).

Removing the offending language from the statute does not affect the remaining subsections nor does it "detract from the overriding objectives of the General Assembly" as the mechanism for obtaining DNA testing for eligible inmates remains. *See Foster*, 109 Ohio St. 3d at 29, 845 N.E. 2d at 498. Moreover, there is no need to insert words or terms to give effect to the remaining portions of the statute. Thus, severance of the unconstitutional portions of subsection (E) comports with the requirements of *Geiger*.

This severance would provide a constitutional result, giving all applicants for DNA testing under R.C. § 2953.73(E) the ability to appeal the denial of an application to the courts of appeals. *See State v. Sterling*, 113 Ohio St. 3d 255, 262, 864 N.E.2d 630, 636 (2007).

C. Conclusion

Noling respectfully requests that this Court sever the unconstitutional portions of subsection (E) from R.C. §2953.73. Noling further asks that this Court transfer Noling's appeal to the Eleventh District Court of Appeals to review the final appealable order denying his application for DNA testing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Brief of Appellant Tyrone Noling was delivered by U.S. Mail to Victor V. Vigluicci, Prosecuting Attorney, 241 South Chestnut Street, Ravenna, OH 44266 and to Mike DeWine, Ohio Attorney General, DNA Testing Unit, 150 East Gay Street, 16th Floor, Columbus, OH 43215 on this 27th day of March 2012.

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Appendix to Supplemental Brief of Appellant Tyrone Noling

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AMENDMENT XIV, UNITED STATES CONSTITUTION

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through File 88
*** Annotations current through January 9, 2012 ***

OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

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ORC Ann. 1.47 (2012)

§ 1.47. Intentions in the enactment of statutes

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

(C) A just and reasonable result is intended;

(D) A result feasible of execution is intended.

Current through Legislation passed by the 129th Ohio General Assembly
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OHIO REVISED CODE GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION
CONSTRUCTION

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ORC Ann. 1.50 (2012)

§ 1.50. Severability of Code section provisions

If any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
POSTCONVICTION DNA TESTING FOR ELIGIBLE OFFENDERS

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ORC Ann. 2953.73 (2012)

§ 2953.73. Submission of application; response; court determination as to whether to accept or reject application; appeals

(A) An eligible offender who wishes to request DNA testing to be conducted under *sections 2953.71* to *2953.81 of the Revised Code* shall submit an application for DNA testing on a form prescribed by the attorney general for this purpose and shall submit the form to the court of common pleas that sentenced the offender for the offense for which the offender is an eligible offender and is requesting DNA testing.

(B) If an eligible offender submits an application for DNA testing under division (A) of this section, upon the submission of the application, all of the following apply:

(1) The eligible offender shall serve a copy of the application on the prosecuting attorney and the attorney general.

(2) The application shall be assigned to the judge of that court of common pleas who was the trial judge in the case in which the eligible offender was convicted of the offense for which the offender is requesting DNA testing, or, if that judge no longer is a judge of that court, it shall be assigned according to court rules. The judge to whom the application is assigned shall decide the application. The application shall become part of the file in the case.

(C) If an eligible offender submits an application for DNA testing under division (A) of this section, regardless of whether the offender has commenced any federal habeas corpus proceeding relative to the case in which the offender was convicted of the offense for which the offender is an eligible offender and is requesting DNA testing, any response to the application by the prosecuting attorney or the attorney general shall be filed not later than forty-five days after the date on which the eligible offender submits the application. The prosecuting attorney or the attorney general, or both, may, but are not required to, file a response to the application. If the prosecuting attorney or

the attorney general files a response under this division, the prosecuting attorney or attorney general, whoever filed the response, shall serve a copy of the response on the eligible offender.

(D) If an eligible offender submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. The court shall expedite its review of the application. The court shall make the determination in accordance with the criteria and procedures set forth in *sections 2953.74* to *2953.81 of the Revised Code* and, in making the determination, shall consider the application, the supporting affidavits, and the documentary evidence and, in addition to those materials, shall consider all the files and records pertaining to the proceedings against the applicant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript and all responses to the application filed under division (C) of this section by a prosecuting attorney or the attorney general, unless the application and the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. The court is not required to conduct an evidentiary hearing in conducting its review of, and in making its determination as to whether to accept or reject, the application. Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in *sections 2953.71* to *2953.81 of the Revised Code*. The court shall send a copy of the judgment and order to the eligible offender who filed it, the prosecuting attorney, and the attorney general.

(E) A judgment and order of a court entered under division (D) of this section is appealable only as provided in this division. If an eligible offender submits an application for DNA testing under *section 2953.73 of the Revised Code* and the court of common pleas rejects the application under division (D) of this section, one of the following applies:

(1) If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may seek leave of the supreme court to appeal the rejection to the supreme court. Courts of appeals do not have jurisdiction to review any rejection if the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing.

(2) If the offender was not sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the rejection is a final appealable order, and the offender may appeal it to the court of appeals of the district in which is located that court of common pleas.

(F) Notwithstanding any provision of law regarding fees and costs, no filing fee shall be required of, and no court costs shall be assessed against, an eligible offender who is indigent and who submits an application under this section.

(G) If a court rejects an eligible offender's application for DNA testing under division (D) of this section, unless the rejection is overturned on appeal, no court shall require the state to administer a DNA test under *sections 2953.71* to *2953.81 of the Revised Code* on the eligible offender.

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CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

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Oh. Const. Art. IV, § 2 (2012)

§ 2. The supreme court

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B) (1) The supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained,

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B) (4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.

Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through File 88
*** Annotations current through January 9, 2012 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

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Oh. Const. Art. IV, § 3 (2012)

§ 3. Court of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.