

**OHIO CHIEF PROBATION OFFICER'S ASSOCIATION  
LEGISLATIVE COMMITTEE  
LEGISLATIVE AND JUDICIAL AFFAIRS UPDATE  
(As of 02/21/2008)**

-THE LEGISLATIVE COMMITTEE WELCOMES QUESTIONS, BUT PLEASE REMEMBER THAT YOUR LEGAL COUNSEL OR COURT'S INTERPRETATION IS CONTROLLING, PARTICULARLY REGARDING CASE LAW ANALYSIS.

***OHIO SUPREME COURT***

**Hyle v. Porter            2006-2187            1<sup>st</sup> Dist., Hamilton Co.            6-1 decision**

***Facts***

In 2003, the General Assembly passed 2950.031 (now re-codified as 2950.034), which prohibited persons who have been convicted of sexually oriented offenses from living within 1000 feet of school premises. Porter was convicted of sexual imposition in 1995 and sexual battery in 1999. The Court classified him as a sexually oriented offender, subject to registration requirements. Porter and his wife purchased a home in 1991 that was within 1000 feet of a school. A township legal officer sought a permanent injunction prohibiting Porter from living in the residence. The Trial Court issued the injunction and the 1<sup>st</sup> District Court of Appeals affirmed. The matter was in conflict with other decisions and certified to the Supreme Court of Ohio.

***Holding***

The Court found that 2950.031 *does not apply* to an offender who bought his home and committed his offense before the effective date of the statute.

***Analysis***

This is a limited decision. The Court found that the law did not expressly state that the bill was to be applied retroactively. The Revised Code states that a statute is presumed to be prospective in its operation unless expressly made retrospective. The Court does not address the constitutionality of the bill, stating "We do not address the question of constitutional retroactivity unless and until we determine that the General Assembly expressly made the statute retroactive." As the statute was silent on the question of retroactive application, the Court must apply the statute prospectively only.

Opinion: <http://www.supremecourtofohio.gov/rod/docs/pdf/0/2008/2008-Ohio-542.pdf>

***Facts***

Sarkozy was indicted on multiple charges in 2005. He ultimately entered a plea to one count of attempted murder with all specifications, aggravated robbery and kidnapping. During the plea, the Court did not inform Sarkozy that PRC would be part of the sentence imposed, the length of PRC or the consequences for violating PRC. Sarkozy attempted to withdraw his plea at sentencing, but was denied. The Court imposed 27 years imprisonment and five-years of PRC. The Court of Appeals affirmed the convictions, but remanded for re-sentencing in light of the Foster decision. The Supreme Court of Ohio accepted the case on a discretionary appeal.

***Holding***

If a trial court fails during a plea colloquy to advise the Defendant that the sentence will include a mandatory term of post-release control, the Defendant may dispute the knowing, intelligent and voluntary nature of the plea either by filing a motion to withdraw the plea or upon direct appeal. If a trial court fails during the plea colloquy to advise a defendant that the sentence will include a mandatory term of PRC, the Court fails to comply with Criminal Rule 11, and the reviewing court must vacate the plea and remand the cause.

***Analysis***

A plea in a criminal case must be knowing, intelligent and voluntary. Failure on any of those points renders the plea unconstitutional. Criminal Rule 11 prohibits a Court from accepting a guilty or no contest plea without first addressing the Defendant and ..... determining that the Defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the Defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

The state argued that Sarkozy had waived his rights by not addressing the omission in his motion to withdraw his plea. The Supreme Court disagreed. It noted that Sarkozy could not have raised the court's failure until he was aware of the failure and that awareness did not occur until the sentencing hearing.

The State also argued that the Court had substantially complied with Criminal Rule 11. Again the High Court disagreed. The Supreme Court of Ohio noted that the trial court did not merely misstate the length of PRC or whether or not PRC was mandatory or optional. The Court failed to mention PRC at all during the plea hearing. Because the trial court failed to inform the Defendant of the mandatory term of PRC, which was part of the maximum sentence, the Court did not meet Criminal Rule 11's requirements. After reviewing the totality of the circumstances, the Court found that Sarkozy could not have subjectively understood that PRC was part of his sentence when the trial court failed to so advise him during the plea colloquy.

Opinion: <http://www.supremecourtsohio.gov/rod/docs/pdf/0/2008/2008-Ohio-509.pdf>

## **ADAM WALSH INTERPRETATION**

[Please find attached a journal entry from Athens County \(click hyperlink for info\)](#) determining that "county of residence" for inmates is the county where they are incarcerated for purposes of the re-classification challenge hearings.

This was graciously provided by Erin Rosen, General Counsel for OHLEG with Attorney general Marc Dann's Office.

Respectfully Submitted;

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