

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-180556
Plaintiff-Appellee,	:	TRIAL NO. B-9206287
vs.	:	<i>JUDGMENT ENTRY.</i>
JEFFREY WOGENSTAHL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jeffrey Wogenstahl appeals the Hamilton County Court of Common Pleas’s judgment denying his “motion for leave to file motion for new mitigation trial.” In his two assignments of error, he challenges the denial as improper and the constitutionality of Ohio’s death-penalty scheme.<sup>1</sup> We address together, and overrule, the assignments of error and affirm the judgment of the common pleas court.

In 1993, Mr. Wogenstahl was convicted of aggravated murder, kidnapping, and aggravated burglary, each with a capital specification, and the jury recommended that Mr. Wogenstahl receive the death penalty. Mr. Wogenstahl was

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<sup>1</sup> In his first assignment of error, Mr. Wogenstahl challenges the trial court’s denial of leave to file, but since the court addressed the merits of the motion, that is the focus of our decision.

ultimately sentenced to death on the aggravated murder charge and 15 to 25 years on each of the other two charges, to run consecutively. We affirmed his convictions and capital sentence on direct appeal, as did the Ohio Supreme Court. *See State v. Wogenstahl*, 1st Dist. Hamilton No. C-930222, 1994 WL 686898 (Nov. 30, 1994), *aff'd*, 75 Ohio St.3d 273, 662 N.E.2d 16 (1996). We also affirmed the overruling of Mr. Wogenstahl's three prior postconviction relief petitions. *State v. Wogenstahl*, 1st Dist. Hamilton No. C-970238, 1998 WL 306561 (June 12, 1998); *State v. Wogenstahl*, 1st Dist. Hamilton No. C-980175, 1999 WL 79052 (Feb. 19, 1999); *State v. Wogenstahl*, 2004-Ohio-5994, 970 N.E.2d 447 (1st Dist.).

On appeal now, Mr. Wogenstahl contends that the denying of his motion for leave to file a motion for a new mitigation trial constitutes error. The basis for Mr. Wogenstahl's motion is the United States Supreme Court's holding in *Hurst v. Florida*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). He argues that Ohio's statutory-death-penalty scheme is unconstitutional under the Supreme Court's holding in *Hurst*. The Ohio Supreme Court, however, already addressed the constitutionality of Ohio's death-penalty scheme in light of the United States Supreme Court's holding in *Hurst*. In *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462, 108 N.E.3d 56, the Ohio Supreme Court held that Ohio's death-penalty scheme survived constitutional scrutiny under *Hurst*.

In *Mason*, the court distinguished Ohio's death-penalty scheme from that of Florida's, which was deemed unconstitutional in *Hurst*. Importantly, Florida's capital-sentencing scheme violated the Sixth Amendment because it allowed the jury to render an "advisory sentence" based on consideration of "sufficient aggravating circumstances" regarding whether a defendant should be sentenced to death. *Hurst*

at 620, 622. Thus, the trial judge, and not the jury, was the ultimate finder of fact as to the “critical findings necessary to impose the death penalty.” *Id.* at 622.

Conversely, the Ohio Supreme Court found that Ohio’s R.C. 2929.03(B) requires that a jury must find a defendant guilty of at least one aggravating circumstance before proceeding to sentencing, where the jury can then recommend the death penalty. *Mason* at ¶ 32. Therefore, unlike the Florida statute, the Ohio statute requires the jury “to make this specific and critical finding.” *Id.* Thus, the Ohio Supreme Court concluded that “Ohio’s death-penalty scheme does not violate a defendant’s right to a trial by jury as guaranteed by the Sixth Amendment.” *Id.* at ¶ 43.

Based on the Ohio Supreme Court’s holding in *Mason*, the trial court did not abuse its discretion when it denied Mr. Wogenstahl’s motion. Being bound by the precedent of the higher court, the trial court was required to follow the higher court’s ruling, as are we. *See Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 29 (1st Dist.) (“the trial court had no authority to effectively overrule the Ohio Supreme Court”). Even if the trial court had improperly denied his motion for leave, Mr. Wogenstahl would still be unable to demonstrate prejudice due to the Ohio Supreme Court’s ruling in *Mason*, thus foreclosing any finding of reversible error here. *See Hines v. Amole*, 4 Ohio App.3d 263, 265, 448 N.E.2d (2d Dist.1982), citing *Elser v. Parke*, 142 Ohio St. 261, 51 N.E.2d 711 (1943) (“Reversible error can only be attained by prejudice that affects the substantial rights of the complaining party.”). Importantly, Mr. Wogenstahl does not attempt to distinguish *Mason* in any way, but instead appears to be preserving this argument for potential United States Supreme Court review.

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Therefore, we overrule Mr. Wogenstahl's two assignments of error and affirm the judgment of the trial court. Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., MYERS and BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on August 7, 2019

per order of the court \_\_\_\_\_.  
Presiding Judge