

OHIO COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT

State v. Riebe

2023-Ohio-1948 (Ohio Ct. App. 2023) · No. 2023-G-0014 · Decided June 12, 2023

SUMMARY

The Ohio Eleventh District Court of Appeals sua sponte dismissed the State’s appeal from judgments involving misdemeanor OVI convictions and intervention in lieu of conviction. The court held that the State was required to obtain leave to appeal under Ohio Revised Code section 2945.67 and Appellate Rule 5(C), and that its failure to do so deprived the court of jurisdiction.

CASE DETAILS

COURT	Ohio Court of Appeals, Eleventh Appellate District
WRITING FOR THE COURT	Eugene A. Lucci; Mary Jane Trapp; Matt Lynch
JURISDICTION	Ohio
DECIDED	June 12, 2023
DOCKET	2023-G-0014
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed the trial court's April 14, 2023 judgment of conviction and order granting intervention in lieu of conviction without first requesting leave to appeal under App.R. 5(C).
STANDARD OF REVIEW	The court reviewed its appellate jurisdiction de novo under R.C. 2945.67 and App.R. 5(C).
PRECEDENTIAL VALUE	published and precedential
PARTIES	State of Ohio v. Matthew J. Riebe

TOPICS

- appellate jurisdiction
- appellate procedure
- criminal procedure
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the State could appeal the trial court's April 14, 2023 judgments as a matter of right under R.C. 2945.67.
2. Whether the State's failure to request leave to appeal under App.R. 5(C) deprived the appellate court of jurisdiction.

HOLDINGS

1. Neither the judgment sentencing Riebe on the misdemeanor OVI charges nor the judgment granting intervention in lieu of conviction qualified as an order appealable by the State as a matter of right. Both fell within the category of 'any other decision' for which leave to appeal is required.
2. Because the State did not request leave to appeal under App.R. 5(C), the court lacked jurisdiction over the appeal and dismissed it sua sponte.

KEY QUOTATIONS

“We find that neither judgment qualifies as one which can be appealed by the state as a matter of right. Rather, they fall under the category of “any other decision” for which leave is required.” (at 2)

“The appeal is dismissed, sua sponte.” (at 3)

FACTUAL BACKGROUND

The trial court sentenced Riebe after he pleaded no contest to two misdemeanor OVI charges. It separately granted intervention in lieu of conviction on charges of improperly handling firearms in a motor vehicle and endangering children, bifurcating those counts from the OVI counts for sentencing purposes. The State appealed the judgments but did not request leave to appeal.

PROCEDURAL HISTORY

Riebe entered no-contest pleas to two misdemeanor OVI counts and guilty pleas to charges of improperly handling firearms in a motor vehicle and endangering children. The trial court imposed sentence on the OVI counts and granted intervention in lieu of conviction on the other counts. The State appealed, asserting that the bifurcation of the charges violated statutory intervention requirements and the One Document Rule, but did not seek leave to appeal.

DISPOSITION

dismissed

CASES CITED

- State v. Mitchell, 6th Dist. Lucas No. L-03-1270, 2004-Ohio-2460
- State v. Kole, 11th Dist. Ashtabula No. 99-A-0015, 2000 WL 1460031 (Sept. 29, 2000)