

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     12CA010320

Appellant

v.

JENNIFER OCASIO

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     11CR083421

Appellee

DECISION AND JOURNAL ENTRY

Dated: September 30, 2013

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HENSAL, Judge.

{¶1} The State of Ohio appeals an order of the Lorain County common pleas court that dismissed the criminal charge that was pending against Jennifer Ocasio. For the following reasons, this Court affirms.

I.

{¶2} On August 25, 2011, the Grand Jury indicted Ms. Ocasio for theft in office under Section 2921.41(A)(2) of the Ohio Revised Code. In September 2011, Ms. Ocasio moved for acceptance into the Lorain County Court of Common Pleas Diversion Program. The trial court ordered a preliminary investigation and, subsequently, granted her motion over the State’s objection. On November 29, 2012, the trial court found that Ms. Ocasio had “successfully completed the period of rehabilitation” and, therefore, dismissed the case “pursuant to R.C. 2951.041(E).” The State has appealed, assigning two errors, which we will address together.

## II.

## ASSIGNMENT OF ERROR I

THE TRIAL COURT IMPROPERLY DISMISSED MS. OCASIO'S INDICTMENT UPON COMPLETION OF THE LORAIN COUNTY COURT OF COMMON PLEAS DIVERSION PROGRAM AS ONLY A PROSECUTING ATTORNEY HAS THE AUTHORITY TO ESTABLISH A PRE-TRIAL DIVERSION PROGRAM.

## ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN STRUCTURING THE LORAIN COUNTY COURT OF COMMON PLEAS DIVERSION PROGRAM TO REMOVE ONE OF THE ESSENTIAL PARTIES TO THE CASE AND TO VIOLATE THE CONSTITUTIONAL CONCEPT OF SEPARATION OF POWERS.

{¶3} In its first assignment of error, the State argues that the trial court incorrectly dismissed Ms. Ocasio's case after placing her into the court's pretrial diversion program. It argues that the court did not have authority to create a diversion program and that, under Revised Code Section 2935.36, only prosecuting attorneys have authority to create such programs. In its second assignment of error, the State argues that the trial court's diversion program is unconstitutional because it violates the separation of powers doctrine.

{¶4} This case presents the same issues as *State v. Wagner*, 9th Dist. Lorain No. 12CA010199, 2013-Ohio-2036, which this Court recently decided. In that case, the trial court granted James Wagner's motion for acceptance into the Lorain County common pleas court's diversion program over the State's objection. After Mr. Wagner successfully completed the program, the court dismissed the charges pending against him "[p]ursuant to R.C. 2951.041[.]" *Id.* at ¶ 3. On appeal, the State, as in this case, argued that the trial court did not have authority to create a diversion program and that the program violated the separation of powers doctrine. This Court, however, noted that the trial court had dismissed the charges against Mr. Wagner under Revised Code Section 2951.041. *Id.* at ¶ 4. We noted that the State had not argued that

the trial court improperly applied Section 2951.041 or contested its constitutionality. *Id.* at ¶ 4, 7. We, therefore, concluded that the State had failed to establish that the trial court improperly dismissed the charges. *Id.* at ¶ 5, 8.

{¶5} “It is well settled that ‘a trial court speaks only through its journal entries.’” *State v. Mercer*, 9th Dist. Summit No. 26361, 2013-Ohio-1527, ¶ 30, quoting *State v. Leason*, 9th Dist. Summit No. 25566, 2011-Ohio-6591, ¶ 8. In this case, as in *Wagner*, the trial court dismissed the charges against Ms. Ocasio “pursuant to R.C. 2951.041[.]” In its appellate brief, the State has not contested the trial court’s application of Section 2951.041 or the statute’s constitutionality. Accordingly, it has not established that the court improperly dismissed the charges against her. *Wagner* at ¶ 5, 8. The State’s first and second assignments of error are overruled.

### III.

{¶6} The State has not established that the trial court improperly applied Revised Code Section 2951.041 or that Section 2951.041 is unconstitutional. The judgment of the Lorain County common pleas court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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JENNIFER HENSAL  
FOR THE COURT

BELFANCE, P. J.  
CONCURS.

CARR, J.  
DISSENTING.

{¶7} I respectfully dissent for the reasons I articulated in *State v. Davis*, 9th Dist. Lorain No. 12CA010272, 2013-Ohio-3966, ¶ 10-15 (Carr, J., dissenting).

APPEARANCES:

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellant.

PAUL R. ST. MARIE, Attorney at Law, for Appellee.