Ohio Northern University Law Review

Volume 47 | Issue 2 Article 7

# State v. Chapman2020-Ohio-6730

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Recommended Citation
BuCher, Chloe () "State v. Chapman2020-Ohio-6730," *Ohio Northern University Law Review*: Vol. 47: Iss. 2, Article 7.
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# State v. Chapman
# 2020-Ohio-6730

## I. INTRODUCTION

According to the 2015 U.S. Census, less than fifty percent of custodial parents receive the full amount of child support that they are owed.[1] In Ohio, it is a felony to refuse to pay court-ordered child support payments.[2] *State v. Chapman*[3] is an unfortunate refusal to help rehabilitate an offender who was convicted of criminal nonsupport.[4] The majority required a direct relationship between a potential condition of the offender's community-control and the offender's crime, while courts historically have only required some link between them, fearing that offenders' fundamental rights will be infringed in the future.[5] Following this heightened requirement, instead of offenders paying for their crimes, the tax-payers of Ohio will.[6]

## II. STATEMENT OF FACTS

London Chapman was the father of eleven children who, after failing to pay child support owed to the mothers of these eleven children, was charged with criminal nonsupport.[7] Chapman was subsequently sentenced to community-control and would be subject to various conditions during the community-control period.[8] One of the conditions that Chapman was sentenced to follow was to "make all reasonable efforts to avoid impregnating a woman during the community-control period" or until he proved that he could support his existing children.[9]

Chapman appealed the sentence, claiming that the condition requiring that he take reasonable efforts to avoid impregnating a woman during his community-control period "violated his constitutional right to procreate."[10]

1. Frances Alonzo, *44 Percent of Custodial Parents Receive the Full Amount of Child Support*, UNITED STATES CENSUS BUREAU (Jan. 30, 2018), https://www.census.gov/newsroom/press-releases/2018/cb18-tps03.html.
2. OHIO REV. CODE ANN. § 2919.21(B) (West 2019).
3. Slip Opinion No. 2020-Ohio-6730.
4. *Id.* at ¶¶ 1, 29.
5. *Id.* at ¶ 24; State v. Jones, 49 Ohio St.3d 51, 53, 550 N.E.2d 469, 470 (1990).
6. *See infra* IV.B.4.
7. *Chapman*, 2020-Ohio-6730 at ¶ 2. As of 2018, when this case commenced at the trial court level, Chapman owed over $200,000 in arrearage. *Id.* at ¶ 38 (French, J., dissenting).
8. *Id.* at ¶ 2 (majority opinion).
9. *Id.* at ¶ 2. The other conditions imposed on Chapman included regular drug and alcohol screenings, maintaining verified employment, and paying restitution to the mother of his children that he owed the arrearage to. *Id.*
10. *Id.* at ¶ 3.



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Chapman also asserted that the condition was not reasonably related to the rehabilitative purpose of his community-control.[11] On appeal, the Ninth District Court of Appeals affirmed the permissibility of the community-control condition and determined that the condition satisfied the test for reasonableness that was established in *State v. Jones*.[12] The Court of Appeals then remanded the case back to the trial court to address the constitutionality of the condition.[13]

On remand, the trial court determined that the community-control provision requiring Chapman to avoid impregnating a woman was constitutional and was "narrowly tailored to serve the state's interest in preventing Chapman from fathering more children than he could support."[14] The trial court also justified the community-control condition because Chapman "continually failed to support children who by law he [was] required to support," and that the condition was directly related to Chapman systemically fathering children that he refused to support.[15] Again, Chapman appealed, making the same arguments that he made during his first appeal.[16] The Court of Appeals determined that strict-scrutiny analysis was not appropriate in this case and upheld the community-control provision because it had already determined that the provision was reasonably related to the rehabilitative purpose of community control.[17] Chapman then appealed to the Supreme Court of Ohio, which analyzed whether the community-control provision requiring Chapman to take reasonable precautions to prevent impregnating another woman breached Chapman's constitutional rights.[18]

## III. COURT'S DECISION AND RATIONALE

### *A. Majority Opinion by Justice DeWine*

The majority opinion struck down the community-control condition in question and remanded the case back down to the trial court for the imposition

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11. *Chapman*, 2020-Ohio-6730 at ¶ 3.
12. *Id.*; State v. Jones, 49 Ohio St.3d 51, 53, 550 N.E.2d 469, 470 (Ohio 1990).
13. *Chapman*, 2020-Ohio-6730 at ¶ 3.
14. *Id.* at ¶ 4. On remand, the trial court found several instances where other trial courts successfully limited fundamental rights using community-control conditions. *Id.* The trial court also opined that there were several reasonable efforts that Chapman could make to avoid impregnating a woman but did not specifically enumerate any of these methods. *Id.*
15. *Id.* at ¶ 32 (French, J., dissenting). The trial court also stated that the rehabilitative purpose of the provision was to put Chapman is the best position possible to support the children that he already has and highlighted that he only had to make reasonable efforts to avoid impregnating another woman and various events that would lead to the anti-procreation provision being lifted. *Id.*
16. *Id.* at ¶ 5.
17. *Id.* The Court of Appeals did not review the constitutionality of the community-control provision because it was barred by res judicata from doing so. *Id.*
18. *Chapman*, 2020-Ohio-6730 at ¶ 6.

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of Chapman's final sentence.[19] Justice DeWine first began by determining whether strict scrutiny would be appropriate in this instance.[20] Under Ohio Revised Code section 2929.15(A)(1), courts have broad discretion in their ability to impose various sanctions on convicted offenders.[21] Courts will not abuse their broad discretion so long as the condition is "reasonably related to the probationary goals of doing justice, rehabilitating the offender, and insuring good behavior."[22]

Justice DeWine determined that individuals who are serving a sentence via community-control have their fundamental liberties limited in a manner similar to offenders who are imprisoned.[23] Historically, courts have not employed strict-scrutiny analysis when analyzing criminal punishments because it is inherent that an offender's fundamental rights will be limited as a result of criminal punishment.[24] Upon the conclusion that courts traditionally do not employ a strict-scrutiny analysis in cases involving criminal punishments, Justice DeWine determined that an offender's fundamental rights can be limited via community-control so long as the provisions are related to the statutory goals of community-control and the conditions are not overly broad.[25]

After determining the proper standard of review, the majority went on to apply the reasonable-relationship test to determine whether the community-control provision requiring Chapman to take reasonable measures to prevent the impregnation of another woman was reasonably related to the offenses for which he was convicted.[26] In reviewing the requirements of the *State v. Jones* test, the Court noted that when trial courts depart from the recommended community-control provisions during sentencing, the trial court should take care not to impose too severe of a punishment such that the offender's liberty is not limited more than necessary to reach the goal of said community-control.[27] Justice DeWine relied on *State v. Talty*[28] as an example

19. *Id.* at ¶ 29.

20. *Id.* at ¶ 7.

21. *Id.*

22. *Id.* at ¶ 8. Justice DeWine noted that community-control is treated like probation in Ohio and should be reviewed as such. *Id.* at ¶ 8 n.1.

23. *Chapman*, 2020-Ohio-6730 at ¶ 11. "[W]hen a person has broken the laws of society and has been afforded due process of the law, the government may legitimately deprive the person of his liberty." *Id.* at ¶ 13.

24. *Id.* at ¶ 14.

25. *Id.* at ¶ 16.

26. *Id.* at ¶ 17. Justice DeWine argued that trial courts should not concern themselves with the impact on fundamental rights when sentencing offenders because certain restrictions imposed for community-control and other sentencing forms must be "tailored to the rehabilitation of the offender." *Id.* at ¶ 18.

27. *Id.* at ¶ 19. Community-control conditions "cannot be overly broad so as to unnecessarily impinge upon the [offender's] liberty." State v. Jones, 49 Ohio St.3d 51, 52, 550 N.E.2d 469, 470 (1990).

28. 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201.

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of fundamental liberties that were overbroad and not narrowly tailored to the goals of an offender's community-control sentence.[29]

The Court first identified Chapman's crime, criminal nonsupport, and the crime's relationship with the community-control condition imposed.[30] Justice DeWine pointed out that under Ohio Revised Code section 2929.21(D), an offender is excused from paying the full amount of their court-ordered child support payments so long as the offender pays within their means, and argued that this means that an offender's ability to pay the full amount of a court-ordered child-support amount is not related to the number of children that the offender has.[31] The majority also noted that an increase in Chapman's support obligation that would be created by the birth of another child would have little effect on him paying a court-order child support payment.[32]

Justice DeWine concluded by listing various provisions of community-control that would be reasonably related to his criminal nonsupport conviction.[33] The majority ordered the trial court on remand to remove the "anti-procreation" provision and impose other conditions such as those listed in the opinion.[34]

### *B. Dissenting Opinion by Justice French*

The dissenting opinion penned by Justice French agreed that the proper test to apply in this matter was the test from *State v. Jones* and that an offender's fundamental liberties may be limited by community-control conditions that aid "the statutory goals of community-control and are not overbroad."[35] Justice French disagreed with the outcome of the majority's holding because she felt that the majority created an additional requirement for analyzing community-control conditions, and instead should have applied the *Jones* test as-is and would have upheld the anti-procreation community-control condition imposed by the trial court.[36]

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29. *Chapman*, 2020-Ohio-6730 at ¶ 21. *Talty* involved a case where the offender was sentenced to community-control with a provision requiring that he make reasonable efforts to "avoid conceiving another child" after being convicted of two counts of criminal nonsupport. *Talty* at ¶¶ 1-2, 4. The Supreme Court of Ohio determined that this community-control provision was overbroad because there was no escape hatch available to the offender which would make it lawful for him to impregnate a woman during his community-control period. *Talty* at ¶ 25.

30. *Chapman*, 2020-Ohio-6730 at ¶ 24.

31. *Id.* at ¶¶ 24-25.

32. *Id.* at ¶ 26.

33. *Id.* at ¶ 27. Examples provided by Justice DeWine included participation in job training, placement in that ensured Chapman was working and garnishment of his wages, financial planning and management training, and restrictions on spending. *Id.*

34. *Id.* at ¶ 28.

35. *Chapman*, 2020-Ohio-6730 at ¶ 30 (French, J., dissenting).

36. *Id.*

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Relying on the *Jones* test, Justice French argued that all three requirements were met, especially the requirement that the community-control condition be reasonably related to the statutory goals of community-control.[37] Specifically, Justice French pointed out that the test merely requires that a community-control condition carry "some relationship to the crimes of which the offender was convicted," not the particular crimes that required the imposition of community-control.[38]

Justice French also suggested that the anti-procreation provision at issue was reasonably related to rehabilitating Chapman because the provision required Chapman to take measures that would make it more likely for Chapman to be able to meet his existing obligations before taking on the additional financial obligations of another child's support requirements.[39] Finally, Justice French concluded by stating that the community-control condition was not overbroad because Chapman only needed to make a reasonable effort not to impregnate another woman after exhibiting "egregious and systemic" disregard for "child-support obligations."[40] Justice French would have affirmed the judgment of the Ninth District Court of Appeals.[41]

## IV. Analysis

### *A. Introduction*

*State v. Chapman* was incorrectly decided, in part. Courts have never utilized a strict-scrutiny analysis when determining the reasonableness of a community-control or parole condition and this was not done in this case.[42] What should have been different in this case was the application of the test for reasonableness found in *State v. Jones*.[43] If Justice DeWine would have looked for some relationship between Chapman's anti-procreation community-control condition and his criminal nonsupport convictions, instead of a direct relationship between the two, Justice DeWine would have

37. *Id.* at ¶¶ 35-36.
38. *Id.* at ¶ 36. "It is difficult to imagine how fathering dependents that the law mandates chapman to support does not have some relationship to the criminal act of ailing to pay court-ordered support for his dependents." *Id.* Additionally, Justice French criticized the majority for misinterpreting the relevant statute and pointed out that Ohio Revised Code section 2919.21(A)(2) does indeed criminalize an individual's failure to pay their court-ordered child support and that the provision at issue in this case "seeks to prevent Chapman from having additional children who he will not support." *Id.*
39. *Id.* at ¶ 37.
40. *Chapman*, 2020-Ohio-6730 at ¶ 38.
41. *Id.* at ¶ 39.
42. *See infra* IV.B.1.
43. *See infra* IV.B.2.

upheld the condition and Chapman would be required to take reasonable measures not to procreate during his community-control period.[44]

*B. Proper Limitation on Reproductive Rights*

*1. Proper Standard of Review*

It simply cannot be denied that procreation is a constitutionally protected fundamental right.[45] But something to be considered is how much courts may limit an offender's fundamental rights when they have been sentenced to community-control.[46] Historically, courts have recognized that when an offender is properly sentenced, their fundamental rights are impinged as a result of their imprisonment, which is justified by the objectives of our justice system.[47] Courts also treat imprisonment and community-control sanctions synonymously; therefore, offenders sentenced to community-control conditions may rightfully expect limitations of certain fundamental rights.[48]

The right to procreation is included within privacy rights,[49] which are a subsection of fundamental rights.[50] While the limitation on fundamental rights typically is reviewed using a strict-scrutiny analysis, privacy rights have not been reviewed using this heightened level of review, when courts are reviewing the limitation on the right to privacy of convicted offenders.[51] Why would a court start employing a heightened level of scrutiny now, after many offenders before Chapman have not been extended this level of scrutiny? The answer is simple: a court would not because precedent allows courts to limit an offender's fundamental rights during sentencing so long as the limitation furthers the state's goals for rehabilitation.[52]

As established, Chapman's fundamental right to procreation was being limited by the trial court's community-control condition that required him to

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44. *See infra* IV.B.3.

45. Evelyn Holmer, Note, *How Ohio v. Talty Provided for Future Bans on Procreation and the Consequences that Action Brings: Ohio v. Talty: Hiding in the Shadow of the Supreme Court of Wisconsin*, 19 J.L. & HEALTH 141, 145 (2004). *See also* Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) ("Marriage and procreation are fundamental to the very existence and survival of the race.").

46. *Chapman*, 2020-Ohio-6730 at ¶ 10.

47. Pell v. Procunier, 417 U.S. 817, 822 (1974).

48. Morrissey v. Brewer, 408 U.S. 471, 480 (1972) (discussing that offenders serving a probationary sentence are subject to "conditional liberty.").

49. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) ("If the right of privacy means anything, it is the right of the individual . . . [to decide] to bear or beget a child.").

50. Griswold v. Connecticut, 381 U.S. 479, 485 (1965).

51. *See Chapman*, 2020-Ohio-6730 at ¶ 15. "[P]rivacy rights . . . have never been subject to a strict-scrutiny analysis when limited by a probation condition." *Id. See also* Andrea W. Francher, Note, *Thinking Outside the Box – A Constitutional Analysis of the Option to Choose Between Jail and Procreation*, 19 QUINNIPIAC PROB. L.J. 328, 340 (2006) ("[S]trict scrutiny is not applicable when a probation condition infringes on a fundamental right.").

52. U.S. v. Knights, 534 U.S. 112, 119 (2001).

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take reasonable steps to prevent impregnating a woman during the community-control period.[53] While the limitation on a fundamental right would typically require a reviewing court to employ a strict-scrutiny analysis, because Chapman's fundamental right was being limited by a criminal sentence, a reviewing court, like the Supreme Court of Ohio, would only be required to ensure that the limitation on Chapman's fundamental right would further the state's goals for rehabilitation.[54] Given that Justice DeWine refused to employ a strict-scrutiny analysis, the majority, in this case, used the correct standard of review – reasonableness.[55]

*2. Review of the State v. Jones Test and Its Application*

Both the majority and the dissent identify the test from *State v. Jones* as the proper standard for a court to utilize when reviewing whether a condition of an offender's community-control is reasonably related to the offender's rehabilitation.[56] This test requires the reviewing court to "consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation."[57]

In *Jones*, the offender was restricted from associating with minors during his probationary period after being convicted of contributing to the delinquency of a minor.[58] The offender in *Jones* argued that this condition was overbroad and an impingement of his right to privacy.[59] The *Jones* court ruled that a "common sense reading" of the condition in contention was reasonably related to the offender's crime and his rehabilitation.[60] Specifically, the *Jones* court noted that while the condition was not directly related to the criminal conduct exhibited by the offender, the condition related to the offender's potential future criminal conduct and served the state's goals of rehabilitation.[61] Following this analysis, the court in *Jones* upheld the imposition of the condition of the offender's probation.[62]

In *State v. Talty*, the Supreme Court of Ohio reviewed a community-control condition that required the offender to make all reasonable efforts to not conceive another child during his probationary period after being

53. *Chapman*, 2020-Ohio-6730 at ¶ 1.
54. *Knights*, 534 U.S. at 119.
55. *Chapman*, 2020-Ohio-6730 at ¶ 16.
56. *Id.* at ¶¶ 17, 30.
57. State v. Jones, 49 Ohio St.3d 51, 53, 550 N.E.2d 469, 470 (1990).
58. *Id.* at 53.
59. *Id.* at 53.
60. *Id.* at 54-55.
61. *Id.* at 54.
62. *Jones*, 49 Ohio St.3d at 55.

convicted of criminal nonsupport.[63] The *Talty* court chose to apply the test established in *Jones*, to determine whether this condition of the offender's community-control was reasonably related to the "statutory ends of probation."[64] The court in *Talty* ruled that so long as a condition is not overbroad, in conjunction with meeting the requirements of the *Jones* test, a community-control condition will be reasonable.[65] After considering the trial court's goals when sentencing the offender in *Talty*, the court held that the condition was overbroad because the offender was not given an escape-hatch if his conduct – not paying his child support obligations – were to change.[66] The case was then remanded to the trial court so the inappropriate condition could be removed from the offender's community-control sentence.[67]

Simply put, the *Jones* test is straightforward. The court utilizing the standard should take the requirements of an offender's community-control conditions at face-value and should employ a plain reading of the requirements of the *Jones* test.[68] The sanction imposed on the offender does not have to be directly related to the conduct leading to their conviction but must serve the state's objectives for rehabilitating the offender.[69]

### *3. Justice DeWine Misunderstood the Relationship Requirement from Jones*

Upon review of the *Jones* test and specific applications of that test, it is clear that the majority in *Chapman* misapplied the *Jones* standards and attempted to append an additional requirement to similar analyses in the future.[70] Plainly stated, the *Jones* test does not require the court to apply the test to consider a direct relation between the intended community-control condition and the crime committed by the offender, as Justice DeWine did in *Chapman*.[71] Instead, the test only requires that there be some relation between the sentence and the crime.[72]

Justice DeWine should have found that the community-control condition requiring Chapman to take reasonable measures to prevent his impregnation

63. State v. Talty, 103 Ohio St.3d 177, 177-78, 2004-Ohio-4888, 1, 4, 814 N.E.2d 1201, 1202.
64. *Talty* at ¶ 16.
65. *Talty* at ¶ 16. An offender that can provide alternative conditions that would lead to the same result as the condition in contention, "a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard. *Talty* at ¶ 15.
66. *Talty* at ¶ 20.
67. *Id.* at ¶ 25.
68. State v. Jones, 49 Ohio St.3d 51, 54, 550 N.E.2d 469, 472 (1990).
69. *Id.* at 54-55.
70. *See* State v. Chapman, Slip Opinion No. 2020-Ohio-6730, ¶ 30 (2020) (French, J., dissenting) ("[T]he majority now requires an amorphous more exacting justification for the community-control condition at issue.").
71. *Id.* at ¶¶ 24-28 (majority opinion).
72. *Jones*, 49 Ohio St.2d at 54.

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of a woman was reasonably related to his rehabilitation.[73] According to Ohio Revised Code section 2929.11, the goals of felony sentencing in Ohio are to protect society from the offender committing future crimes, to discipline, and effectively rehabilitate the offender using the least state resources possible.[74] Considering the first requirement of the *Jones* test, one could easily say that preventing an offender from procreating would require their monetary resources, thus making it difficult for the offender to stay on top of the existing child-support payments that have already required their enforcement.[75] An anti-procreation community-control condition would encourage the offender to become current on their obligations instead of continuing to disregard them.[76] Why would an offender be incentivized to attempt to come in compliance with their child-support obligations if they felt they would just continue to be punished in the future if they should be put into a spot where they could not support their children again?

The Court should have found that Chapman's offense and the community-control condition requiring him to take reasonable steps to not impregnate a woman was reasonably related to his criminal nonsupport convictions.[77] According to Ohio Revised Code section 2919.21(B), it is illegal to fail to pay court-ordered child support.[78] Applying the second prong of the *Jones* test, it is difficult to see how a sentence that requires an offender to take reasonable measures not to become responsible for another child-support payment is not related, if not directly so, to a conviction resulting from not paying child-support obligations.[79] Something to consider specifically in *Chapman* is that there were eleven children that Chapman was refusing to support.[80] It does not make practical sense to require someone to pay for another child's support when they already refuse to support their existing children.

Finally, Justice DeWine should have recognized that Chapman's conduct, present and future, was related to the community-control requirement that he attempt to not impregnate a woman during his community-control period.[81] Specifically, the *Jones* test requires "some relationship" between the criminal conduct and the community-control

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73. *Chapman*, 2020-Ohio-6730 at ¶ 33; *Id.* at 53.

74. OHIO REV. CODE ANN. § 2929.11(A) (West 2018).

75. *Jones*, 49 Ohio St.2d at 53.

76. Sara C. Busch, Note, *Conditional Liberty: Restricting Procreation of Convicted Child Abusers and Dead Beat Dads*, 56 CASE W. RES. L. REV. 479, 493 (2005).

77. *Chapman*, 2020-Ohio-7830 at ¶ 33; *Jones*, 49 Ohio St.2d at 53.

78. OHIO REV. CODE ANN. § 2919.21(B) (West 2019). If a defendant can prove it is not within their means to pay the court-ordered support, they have an affirmative defense to this charge. *Id.* at § 2919.21(D).

79. *Jones*, 49 Ohio St.2d at 53.

80. *Chapman*, 2020-Ohio-6730 at ¶ 1.

81. *Id.* at ¶ 36 (French, J., dissenting); *Jones*, 49 Ohio St.2d at 53.

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condition.[82] As the *Chapman* dissent argues, it is hard to envision a scenario where continuing to add to the number of children requiring support is not related to a criminal conviction resulting from refusing to pay one's child support obligation.[83] Who is to say that Chapman would support a twelfth child should one come to be?

#### *4. Effects of the Decision*

There is one clear outcome from *Chapman*: it is now even more difficult for trial courts in Ohio to try to sentence relevant offenders to community-control conditions that prevent them from procreating.[84] While the precedent created by this case is already being followed, what could this mean for society going forward?

Something to consider should be the concept that there is a high potential for children to become a burden on the state.[85] Without limitations on the procreative rights of those who have demonstrated that they refuse to be responsible for their children, society will be the brunt of this decision because children who are not financially supported by their parents require public assistance.[86] Why should this burden be put on tax-payers?

## V. CONCLUSION

While the test for the reasonableness of a community-control condition was appropriately found in *Jones*, *Chapman* is an example of an unfortunate misapplication of this standard.[87] It is now even more difficult for trial courts in Ohio to attempt to limit the number of children being born to individuals who refuse to support their existing children, and unfortunately, it will be the tax-payers of Ohio who pay the price for this.[88] Instead of upholding a perfectly reasonable requirement on an offender, the *Chapman* majority chose to create an even more stringent requirement that community-control conditions be directly related to the crimes requiring the punishment.[89] While it is important that the offenders in Ohio not be over-sentenced, it is also important that they be rehabilitated, be punished in proportion with the

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82. *Chapman*, 2020-Ohio-6730 at ¶ 36.

83. *Id.*

84. *See generally Chapman*, 2020-Ohio-6730. *See also* State v. Anderson, 2020-Ohio-6910 (2020) (remands case involving an anti-procreation community-control condition).

85. Busch, *supra* note 76, at 495 ("Without an anti-procreation condition, existing and future children of probationers, as well as society, will be forced to bear the cost of consistently irresponsible individuals.").

86. A. Felicia Epps, *Unacceptable Collateral Damage: The Danger of Probation Conditions Restricting the Right to Have Children*, 38 CREIGHTON L. REV. 611, 655 (2005) (listing various alternatives to an anti-procreation parole condition.).

87. State v. Jones, 49 Ohio St.2d 51, 53, 550 N.E.2d 469, 470 (1990).

88. *See supra* IV.B.4.

89. *Chapman*, 2020-Ohio-6730 at ¶ 30 (French, J., dissenting).

severity of their crime, and learn from their sentence so that they do not commit the crime again in the future.[90]

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90. *See* OHIO REV. CODE ANN. § 2929.11(A) (West 2019).