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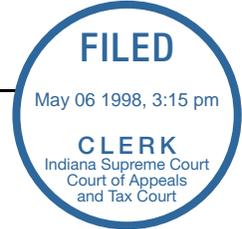
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**IN THE  
INDIANA SUPREME COURT**

J.H.,	)	
Appellant (Defendant below),	)	Supreme Court No.
	)	18S05-9802-PC-103
v.	)	
	)	Court of Appeals No.
STATE OF INDIANA,	)	18A05-9611-PC-484
Appellee (Plaintiff below).	)	
	)	

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APPEAL FROM THE DELAWARE SUPERIOR COURT  
The Honorable Richard A. Dailey, Judge  
Cause No. 18D02-9210-CF-73

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**ON PETITION TO TRANSFER**

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May 6, 1998

SULLIVAN, Justice.

In accordance with our decision today in State v. Mohler, No. 87S01-9709-PC-497 (Ind. May 6, 1998), we conclude that the new rule of law announced in Bryant v. State, 660 N.E.2d 290 (Ind. 1995), cert. denied, 117 S.Ct. 293 (1996), is not retroactive under

Daniels v. State, 561 N.E.2d 487 (Ind. 1990), and so does not entitle J.H. to post-conviction relief.

### Background

On October 9, 1992, the State charged J.H. (“J.H.”) with possession of cocaine,<sup>1</sup> carrying a handgun without a license,<sup>2</sup> resisting law enforcement,<sup>3</sup> and being a habitual offender.<sup>4</sup> On February 11, 1993, the Indiana Department of Revenue assessed J.H. a Controlled Substance Excise Tax (“CSET”).<sup>5</sup> The trial court entered a judgment of civil forfeiture against J.H. for \$5671.47 and his handgun on March 4, 1993. On August 3, 1993, a jury convicted J.H. on all charges. This Court affirmed J.H.’s convictions on direct appeal. J.H. v. State, 642 N.E.2d 1368 (Ind. 1994). J.H. did not petition the U.S. Supreme Court for certiorari.<sup>6</sup>

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<sup>1</sup> Ind. Code § 35-48-4-1 (1988 & Supp. 1990).

<sup>2</sup> Ind. Code § 35-47-2-1 (1988).

<sup>3</sup> Ind. Code § 35-44-3-3 (1988).

<sup>4</sup> Ind. Code § 35-50-2-8 (1988 & Supp. 1990).

<sup>5</sup> Ind. Code §§ 6-7-3-1 to -17 (Supp. 1992).

<sup>6</sup> J.H.’s convictions and sentence became final when he did not file a petition for certiorari within ninety days of this Court’s decision in J.H. v. State, 642 N.E.2d 1368 (Ind. 1994). See Caspari v. Bohlen, 510 U.S. 383, 390 (1994).

On July 22, 1996, J.H. filed a petition for post-conviction relief claiming that his conviction for possession, assessment of the CSET, and civil forfeiture of his handgun violated double jeopardy protections. The post-conviction court denied J.H.'s petition. J.H. appealed. In a memorandum decision, the Court of Appeals reversed the post-conviction court's denial of relief, holding that the post-conviction court erred in not applying retroactively the rule announced in Bryant, 660 N.E.2d 290 (holding that because CSET is punishment, the Double Jeopardy Clause bars criminal prosecution for the underlying drug offense after CSET has been assessed).<sup>7</sup> J.H. v. State, No. 18A05-9611-PC-484 (Ind. Ct. App. Dec. 30, 1997).

### Conclusion

Having granted transfer, we vacate the opinion of the Court of Appeals pursuant to Ind.Appellate Rule 11(B)(3) and affirm the post-conviction court's denial of relief for the reasons set forth in State v. Mohler, No. 87S01-9709-PC-497 (Ind. May 6, 1998), also decided today.

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<sup>7</sup> The Court of Appeals did not address J.H.'s argument that the conviction and civil forfeiture together violated the Double Jeopardy Clause. United States v. Ursery, 116 S.Ct. 2136 (1996), seems to make clear that they did not.

SHEPARD, C.J., and DICKSON, SELBY, and BOEHM, JJ., concur.