

IN THE SUPREME COURT OF OHIO  
APPEAL FROM THE COURT OF APPEALS OF SANDUSKY COUNTY, OHIO

06-2402

STATE OF OHIO,

Supreme Court  
Case No. \_\_\_\_\_

Plaintiff-Appellee,

Court of Appeals  
Case No. S-03-008

vs.

MICHAEL A. LATHER, JR.,

Appeal from the Sixth District Court  
of Appeals, County of Sandusky  
State of Ohio

Defendant-Appellant.

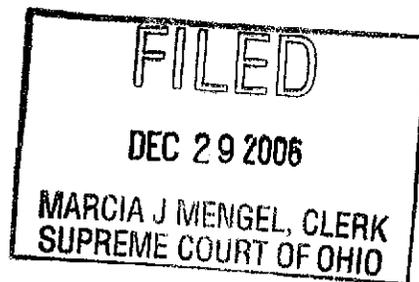
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NOTICE OF APPEAL

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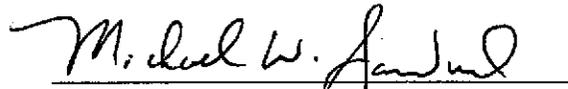


**NOTICE OF APPEAL OF APPELLANT MICHAEL A. LATHER, JR.**

Appellant Michael A. Lather, Jr., hereby gives Notice of Appeal to the Supreme Court of Ohio from the Judgment of the Sandusky County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. S-03-008 on November 14, 2006 (copy attached).

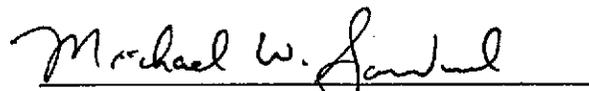
This case originated in the Court of Appeals by Motion following the prior decision of the Ohio Supreme Court in Case No. 05-0400, and involves a felony and raises a substantial constitutional question and is one of public or great general interest.

Respectfully Submitted,

  
Michael W. Sandwisch  
Attorney for Defendant - Appellant  
Michael A. Lather, Jr.

**PROOF OF SERVICE**

This is to certify that a copy of the foregoing was mailed by regular United States Mail to the office of the Sandusky County Prosecuting Attorney, Attn: Mr. John Kolesar, 100 North Park Avenue, Fremont, Ohio 43420, on December 29, 2006.

  
Michael W. Sandwisch  
Attorney for Defendant-Appellant  
Michael A. Lather, Jr.

SANDUSKY COUNTY  
COURT OF APPEALS  
FILED

NOV 14 2006

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
SANDUSKY COUNTY

WARREN P. BROWN  
CLERK

State of Ohio

Court of Appeals No. S-03-008

Appellee

Trial Court No. 01-CR-726

v.

Michael A. Lather

DECISION AND JUDGMENT ENTRY

Appellant

Decided: NOV 14 2006

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Defendant-appellant, Michael A. Lather, Jr., has filed a motion requesting that this court now address his Assignments of Error Nos. 2 through 4 which, in our February 18, 2005 decision and judgment entry, we determined were moot based upon our disposition of appellant's first assignment or error. Appellant's request is based upon the September 13, 2006 judgment of the Supreme Court of Ohio which reversed our decision.

Although the court remanded the matter to this court (presumably to enter the judgment on the docket), the court did not direct us to rule on the assignments of error that had not been addressed. See *State v. Hill*, 92 Ohio St.3d 191, 204, 2001-Ohio-141; *Vance v. Consol. Rail Corp.*, 73 Ohio St.3d 222, 234, 1995-Ohio-134; *State ex rel. Paluf*

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v. *Feneli*, 69 Ohio St.3d 138, 1994-Ohio-325. Moreover, the court issued a mandate to the Sandusky County Court of Common Pleas to "carry th[e] judgment into execution \* \* \*." A mandate has been defined as not merely a suggestion or request, "it is a command or order which the issuing court has authority to give, and the receiving court is bound to obey. It directs what action is to be taken." *First Bank of Marietta v. Roslovic & Partners, Inc.* (2000), 138 Ohio App.3d 533, 539.

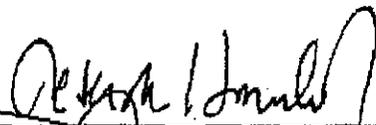
Based on the foregoing, because the Supreme Court of Ohio failed to direct this court to rule on the assignments of error not addressed and because it issued a mandate to the Sandusky County Court of Common Pleas to execute the judgment, we lack jurisdiction to further consider the matter. Appellant's motion is not well-taken and it is denied.

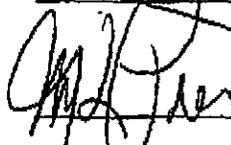
Peter M. Handwork, J.

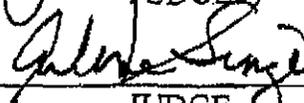
Mark L. Pietrykowski, J.

Arlene Singer, P.J.

CONCUR.

  
\_\_\_\_\_  
JUDGE

  
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JUDGE

  
\_\_\_\_\_  
JUDGE

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