

IN THE OHIO SUPREME COURT

07-0089

STATE OF OHIO

Respondent-Appellee,

v.

TONY R. GROSS

Petitioner-Appellant.

Supreme Court Case No.

Appeal's Court Case No. CT2006-0006

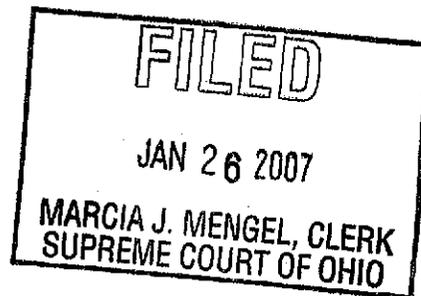
Trial Court Case No. CR94-0140

**STATE'S RESPONSE TO DEFENDANT/APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION**

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**STATE'S RESPONSE TO DEFENDANT/APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION**

State of Ohio v. Tony Gross presents no issues involving a substantial constitutional question nor is it of great public interest.

Appellant missed his direct appeal deadline and is now simply trying to find some way to bring another issue before the Court. Appellant through his previous counsel dismissed a direct appeal and Appellant then failed to file a new appeal within the appropriate time frame. Appellant admits that he was advised by counsel that "he had no meritorious issues, she could, in good conscious, present on appeal". (Appellant's Statement of Case and Facts, p.2) Now, defendant claims that he was not informed that this action affected other legal proceedings and as such he should be granted an extension or allowed to file his appeal out of time. The Fifth District Appellate Court ruled in addressing this issue that good cause did not exist for untimely filing. (Fifth District Court of Appeals Judgment Entry dated 9/25/06, p.2). As a result there were no grounds to allow for an untimely appeal. In addition the Court noted that Appellant admitted to knowing of the impact of the initial dismissal of the appeal in January of 2006 but still did not file an application with the Court until August.

As for this case being a matter of great general and public interest, the Appellant provides nothing but speculation. The Appellant seems to believe that because his crime

involved the murder of a law enforcement officer that he is entitled to some extra measure of justice. Certainly, that is not the case. The murder of a police officer will always result in media coverage but that alone is insufficient to make it a matter of great general or public interest from a legal viewpoint. Appellant, aside from his own over inflated sense of worth, provides no reason that is legally significant to make this case a matter of great general or public interest.

**THE APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED
BY THE FIFTH DISTRICT COURT OF APPEALS**

Due Process of Law is not violated by a Court when it refuses to find that an attorney acted incompetently when she refused to file an appeal that was not meritorious nor could it be filed in good conscious. Appellant alleges that his appellate attorney's refusal to file a frivolous appeal resulted in ineffective assistance of counsel and that the Fifth District Court's decision indicating that it was not, violates his due process. This simply is not, nor can it ever be, the law. Attorneys are duty bound to represent clients in a competent and professional manner. Attorneys are also duty bound to only proceed with cases, arguments and motions which are meritorious and can be litigated in good faith. The Appellant is asking that this Court change those rules. This simply cannot be done. Appellant is seeking a ruling from this Court that would allow him to present the same frivolous, unconscionable arguments an attorney would be disciplined for. Due Process protects individual rights. Filing a frivolous, non-meritorious appeal is not one of those protected rights. The Appellant has had his day (days) in court and has not suffered any violation of his due process rights.

To the contrary; all possible legal issues that have existed or could possibly have existed or even remotely could have been presented in good faith have been litigated and addressed. Appellant continues to file new appeals and claims of right as soon as he is unsuccessful in whatever appeal or post conviction he has previously filed. Assuming he

is unsuccessful with this appeal he will no doubt file some further motion or appeal on some other grounds either in this Court or another. Appellant first victimized the Lutz family over twelve years ago and continues to do so through frivolous motions and appeals. The Appellant's actions were callous and wanton then and continue to be so now. Each time Appellant files a motion or appeal the Lutz family has to be notified and reminded, as if they do not think about it everyday, of the tragedy that they have had to endure. Tony Gross is as self-centered today as he was the night he murdered Deputy Lutz. He cares only about himself and not how his actions affect others. Tony Gross has had considerable time to reflect upon his life and actions while incarcerated but has instead used his time to learn to manipulate a system that is supposed to protect victims and give them a sense of closure. Tony Gross would have this Court believe that the justice system and society have failed Tony Gross but it is, in fact, Tony Gross that has failed society and the justice system. For all that is great about the rights we enjoy there are still adjustments to be made. Tony Gross will no doubt continue victimizing the Lutz family and the justice system but that does not mean that any of the issues he presents will ever have merit. At this point the Appellant must believe that he can gain some

concession by being a thorn in the side of justice, but he is wrong. The State will continue to oppose whatever frivolous motions Appellant continues to file. There have been no Due Process violations of the Appellant's rights and the State would respectfully request that Appellant's motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon Appellant, Tony R. Gross, A-336-748, P.O. Box 120, 5787 St. Rt. 63, Lebanon, Ohio 45036, by regular U.S. Mail, postage prepaid, on this 23rd day of January, 2007.



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