

CASE NO. 07-0533

IN THE SUPREME COURT OF OHIO

KHABIR A. TISDALE  
Petitioner - Appellant

v.

MICHELE EBERIN, Warden  
Respondent - Appellee

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**RESPONDENT-APPELLEE EBERIN'S  
MEMORANDUM IN OPPOSITION TO JURISDICTION**

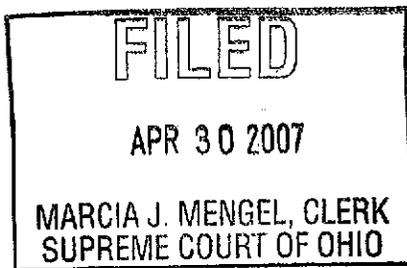
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Respectfully submitted,

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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
ISSUES .....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	4
1.    Tisdale is not entitled to habeas corpus relief based upon a direct appeal claim that fails to challenge the jurisdiction of the sentencing court.....	4
2.    Tisdale failed to attach copies of his commitment papers as required by Ohio Revised Code Section 2725.05(D) .....	5
STATEMENT OF NO SUBSTANTIAL CONSTITUTIONAL INTEREST .....	6
CONCLUSION .....	7
CERTIFICATE OF SERVICE .....	8
APPENDIX.....	9
Judgment Entry Columbiana County Common Pleas Court Case No. 04 CR 339 .....	A1
Judgment Entry Columbiana County Common Pleas Court Case No. 05 CR 179 .....	A5
Judgment Entry Columbiana County Common Pleas Court Case No. 05 CR 275 .....	A8
Judgment Entry Jefferson County Common Pleas Court Case No. 04 CR 35 .....	A12
Opinion and Journal Entry Court of Appeals, Seventh Appellate District Case No. 06 BE 63.....	A14

## TABLE OF AUTHORITIES

	<u>Page</u>
 <u>CASES</u>	
<i>Bloss v. Rodgers</i> (1992), 65 Ohio St.3d 145, 602 N.E.2d 602 .....	5
<i>Boyd v. Money</i> (1998), 82 Ohio St.3d 388, 696 N.E.2d 568.....	5
<i>Freeman v. Maxwell</i> (1965), 4 Ohio St.2d 4, 210 N.E.2d 885 .....	4
<i>Hairston v. Seidner</i> (2000), 88 Ohio St.3d 57, 723 N.E.2d 575.....	5
<i>Hammond v. Dallman</i> (1992), 63 Ohio St.3d 666, 590 N.E.2d 744 .....	5
<i>In Re Copley</i> (1972), 29 Ohio St.2d 35, 278 N.E.2d 358.....	4
<i>Jennings v. Jackson</i> (2004), 102 Ohio St.3d 164, 807 N.E. 2d 361 .....	4
<i>Majoros v. Collins</i> (1992), 64 Ohio St.3d 442, 596 N.E. 2d 1038 .....	4
<i>Russell v. Tate</i> (1992), 64 Ohio St.3d 444, 596 N.E.2d 1039.....	4
<i>State ex rel. Dozier v. Mack</i> (1999), 85 Ohio St.3d 368, 708 N.E.2d 712.....	5
<i>State ex rel. Rankin</i> (2003), 98 Ohio St.3d 476, 786 N.E. 2d 1286 .....	5
 <u>STATUTES</u>	
Ohio Revised Code Section 2725.04 .....	5
Ohio Revised Code Section 2725.05 .....	1, 4

CASE NO. 07-0533

IN THE SUPREME COURT OF OHIO

KHABIR A. TISDALE  
Petitioner - Appellant

v.

MICHELE EBERIN, Warden  
Respondent - Appellee

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ISSUES

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1. Whether Tisdale is entitled to habeas corpus relief based upon a direct appeal claim that fails to challenge the jurisdiction of the sentencing court.
2. Whether Tisdale attached copies of his commitment papers to his habeas petition as mandated by Ohio Revised Code Section 2725.05(D).

## STATEMENT OF THE CASE

Petitioner-Appellant Khabir A. Tisdale, #490-812 (hereinafter "Tisdale") is an inmate incarcerated in the Belmont Correctional Institution, St. Clairsville, Ohio. Respondent, Michele Eberlin (hereinafter "Respondent") is the Warden at that institution.

In Columbiana County Common Pleas Court case number 04CR-339, Tisdale pled guilty to two (2) counts of trafficking in drugs and one (1) count of attempted illegal conveyance of prohibited items onto grounds of a detention facility. On July 14, 2005, Tisdale was sentenced to a fifteen month term of incarceration. (Appendix A1, Case No. 04CR-339).

In Columbiana County Common Pleas Court case number 05CR-179, Tisdale pled guilty to one (1) count of possession of drugs. On December 12, 2005, Tisdale was sentenced to a six (6) month term of incarceration, to be served concurrently with his case number 04CR-339 sentence. (Appendix A5, Case No. 05CR-179).

On May 8, 2006, in Columbiana County Common Pleas Court case number 05CR-275, Tisdale pled no contest to one (1) count of possession of drugs. Tisdale was then sentenced to a four year term of incarceration to be served consecutively with his sentence in case number 04CR-339. (Appendix A8, Case No. 05CR-275).

On June 26, 2006, in Jefferson County Common Pleas Court case number 04CR-35, Tisdale pled guilty to one (1) count of possession of drugs. Tisdale was then sentenced to a four year term of incarceration. (Appendix A12, Case No. 04CR-35).

Tisdale has chosen **not** to file a direct appeal with respect to **any** of his convictions.

This appeal evolves from a Tisdale habeas corpus petition that was filed in the

Court of Appeals for the Seventh Appellate District Court. Although not a model of clarity it appears that Tisdale believes that he was denied his right to a speedy trial with respect to his Jefferson County conviction in case number 04CR35 and his Columbiana County conviction in case number 05CR275. On March 6, 2007, the Court of Appeals denied Tisdale's habeas corpus petition. In so ruling the appellate court held that as a consequence of his failure to attach his commitment papers, Tisdale had failed to comply with the statutory requirements for the filing of a habeas petition, and that Tisdale's petition was further deficient in that it raised a claim that could have been litigated upon direct appeal. (Appendix A14 , Case No. 06BE63).

This appeal follows.

## ARGUMENT

1. ***Tisdale is not entitled to habeas corpus relief based upon a direct appeal claim that fails to challenge the jurisdiction of the sentencing court.***

Tisdale is not entitled to habeas corpus relief since he has failed to show that the sentencing court did not have jurisdiction over his person or over the subject matter of the action. The case law of Ohio is clear in enunciating the principle that if the Court which issued the process had jurisdiction over the subject matter and the person, then habeas corpus will not lie. *Freeman v. Maxwell* (1965), 4 Ohio St.2d 4, 210 N.E.2d 885. Specifically Ohio Revised Code Section 2725.05 provides with respect to habeas corpus that:

If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record and that court or magistrate had jurisdiction, to issue the process, render the judgment or make the order, the writ of habeas corpus shall not be allowed.

Habeas corpus relief is thus unavailable where the petitioner has been convicted of a crime and sentenced by a court of competent jurisdiction. *In Re Copley* (1972), 29 Ohio St.2d 35, 278 N.E.2d 358. Simply put, the "Great Writ" of habeas corpus is considered to be an extraordinary remedy, it is not intended to provide an alternative means for the litigation of a claim that Tisdale chose not to pursue on direct appeal. See e.g., *Jennings v. Jackson* (2004), 102 Ohio St.3d 164, 807 N.E. 2d 361, *Russell v. Tate* (1992), 64 Ohio St.3d 444, 596 N.E. 2d. 1039; *Majoros v. Collins* (1992), 64 Ohio St.3d 442, 596 N.E. 2d 1038.

The existence of an alternate remedy by which Tisdale could have litigated his instant allegations is enough to remove the claim from consideration in habeas corpus. Here, it cannot be seriously disputed that Tisdale could have asserted his speedy trial

claim on direct appeal. The question of whether an opportunity still exists to assert the claim is irrelevant since Tisdale could have previously taken advantage of it had he so desired. As recognized by this Court in *State ex rel. Rankin* (2003), 98 Ohio St. 3d 476, 478:

Rankin's claim fails because he had an adequate remedy by way of direct appeal....Rankin is, in effect, alleging error in the trial court's determination of his jail-time credit and not in the APA's alleged failure to properly credit his jail time. Alleged errors by way of the defendant's direct appeal of his criminal case. *State ex rel. Jones v. O'Connor* (1999), 84 Ohio St.3d 426, 704 N.E.2d 1223.

As such, habeas corpus does not lie with respect to Tisdale's habeas claim.

**2. *Tisdale failed to attach copies of his commitment papers as required by Ohio Revised Code Section 2725.04(D).***

Under Ohio Revised Code Section 2725.04(D), "[a] copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy \*\*\*." Failure to attach copies of the commitment papers (judgment entry of sentence, etc.) to the habeas corpus petition requires dismissal. *Boyd v. Money* (1998), 82 Ohio St.3d 388, 696 N.E.2d 568; *Bloss v. Rodgers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602; *Hammond v. Dallman* (1992), 63 Ohio St.3d 666, 590 N.E.2d 744. Where Petitioner has more than one pertinent conviction, he must attach all of his pertinent commitment papers to his habeas corpus petition. *Hairston v. Seidner* (2000), 88 Ohio St.3d 57, 723 N.E.2d 575; *State ex rel. Dozier v. Mack* (1999), 85 Ohio St.3d 368, 708 N.E.2d 712. Here, Tisdale failed to attach **any** documentation to his habeas corpus petition with respect to his Jefferson County conviction and sentence in case number 04CR35. As such, Tisdale's habeas petition was properly dismissed for failure to comply with the dictates of Ohio Revised Code Section 2725.04(D).

**STATEMENT OF NO SUBSTANTIAL CONSTITUTIONAL INTEREST**

This case does not present a substantial constitutional question or issue of great public interest.

**CONCLUSION**

For the foregoing reasons Respondent urges this Court to affirm the dismissal of Tisdale's petition for writ of habeas corpus.

Respectfully submitted,

MARC DANN (0039425)  
Attorney General



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Respondent-Appellee's Memorandum in Opposition to Jurisdiction has been forwarded to Khabir A. Tisdale, #490-812, Belmont Correctional Institution, 68518 Bannock Rd., P.O. Box 540, St. Clairsville, Ohio, 43950, via regular U.S. mail on this 30<sup>th</sup> day of April, 2007.

A handwritten signature in black ink, appearing to read "Stuart A. Cole", written in a cursive style.

STUART A. COLE (0020237)  
Assistant Attorney General

**APPENDIX**

	<u>PAGE</u>
Judgment Entry - <i>State v. Tisdale</i> Columbiana County Common Pleas Court Case No. 04 CR 339 .....	A1
Judgment Entry - <i>State v. Tisdale</i> Columbiana County Common Pleas Court Case No. 05 CR 179 .....	A5
Judgment Entry - <i>State v. Tisdale</i> Columbiana County Common Pleas Court Case No. 05 CR 275 .....	A8
Judgment Entry of Sentence - <i>State v. Tisdale</i> Jefferson County Common Pleas Court Case No. 04 CR 35 .....	A12
Opinion and Journal Entry - <i>Tisdale v. Eberlin</i> Court of Appeals, Seventh Appellate District Case No. 06 BE 63 .....	A14

ORIGINAL

IN THE COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO  
CASE NO. 04-CR-339

THE STATE OF OHIO

**FILED**  
CLERK OF COURT  
COLUMBIANA COUNTY  
COURT OF COMMON PLEAS  
JUL 15 2005

KHABIR A. TISDALE  
DOB: 2/14/81  
SSN: 148-74-6782

DEFENDANT )  
ANTHONY J. DATTILIO )  
CLERK ) (SIC)  
JUDGMENT ENTRY

This 14th day of July, 2005, this case is before the Court for sentencing pursuant to R.C. 2929.16. Assistant Prosecuting Attorney Nicholas Barborak appeared on behalf of the State of Ohio. The Defendant appeared in the custody of the sheriff with Attorney C. Joseph King. Michael Rosta of the Adult Probation Department appeared.

The Court has considered the record, the oral statements made by the defense counsel, the Defendant, and the State, the presentence report and any victim impact statement, and all reports provided to the Court in light of R.C. 2929.11 and R.C. 2929.12.

The Court finds that the Defendant has a history of criminal convictions and has not responded favorably to community control in the past. Further that he has a substance abuse problem that he has not addressed or sought help for. In weighing the purposes and principals of Section 2929.11 the Court finds that he is not amenable to community control sanctions and that a prison sentence is necessary.

A1

**EXHIBIT**  
**A**

1 Based on the above, the Defendant's request for community  
2 control is denied.

3 The Court finds that the Defendant has plead Guilty  
4 to: COUNT ONE: TRAFFICKING IN DRUGS, a violation of Section  
5 2925.03 (A)(2, a felony of the fifth degree; and COUNT TWO:  
6 TRAFFICKING IN DRUGS, a violation of Section 2925.03 (A)(2, a  
7 felony of the fifth degree; and COUNT THREE: ATTEMPTED ILLEGAL  
8 CONVEYANCE OF PROHIBITED ITEMS ONTO GROUNDS OF A DETENTION  
9 FACILITY, a violation of Section 2923.02 (A), a felony of the  
10 fourth degree.

11 It is the order of the Court that the Defendant be  
12 imprisoned in the LORAIN CORRECTIONAL FACILITY for the offense  
13 of: COUNT ONE: TRAFFICKING IN DRUGS, a violation of Section  
14 2925.03 (A)(2, a felony of the fifth degree, for a term of  
15 NINE (9) MONTHS; and COUNT TWO: TRAFFICKING IN DRUGS, a  
16 violation of Section 2925.03 (A)(2, a felony of the fifth  
17 degree, for a term of NINE (9) MONTHS; and COUNT THREE:  
18 ATTEMPTED ILLEGAL CONVEYANCE OF PROHIBITED ITEMS ONTO GROUNDS  
19 OF A DETENTION FACILITY, a violation of Section 2923.02 (A),  
20 a felony of the fourth degree, for a term of FIFTEEN (15)  
21 MONTHS, and he is ordered to pay the costs of this action.

22 These sentences may be served concurrently.

23 Defendant has spent ~~thirty~~ twenty-nine (29)  
24 days in the Columbiana County Jail for Case Number 04-CR-339.  
25 This credit includes jail time up to the date of this entry

1 and does not include any subsequent time awaiting conveyance  
2 to the reception facility.

3 It is the order of the Court that the Defendant be  
4 conveyed to the custody of the Ohio Department of  
5 Rehabilitation and Corrections forthwith.

6 The Defendant was advised:

7 1.) As part of this sentence the Parole Board may  
8 extend this prison term for certain violations of prison rules  
9 for up to one-half of the stated prison term. (R.C. 2965.11).

10 2.) Since the Defendant has been sentenced for a  
11 felony of the third, fourth or fifth degree the Defendant may  
12 be supervised by the Parole Board for a period of up to three  
13 (3) years after the Defendant leaves prison.

14 3.) If a period of supervision is imposed by the  
15 Parole Board or required to be imposed, and if the Defendant  
16 violates that supervision or a condition of post release  
17 control imposed by statute, the Parole Board may impose a  
18 prison term as part of this sentence of up to one-half of the  
19 stated prison term originally imposed.

20 4.) The Defendant may not ingest or be injected  
21 with a drug of abuse and must submit to random drug testing.  
22 The results of any drug test administered under this order  
23 must show that the Defendant did not ingest or was not  
24 injected with a drug of abuse.

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Defendant shall submit to DNA typing by the  
Columbiana County Sheriff's Office or the correctional  
facility.

Defendant's driver's license is suspended for  
fifteen (15) months on these charges.

Bond released.

  
\_\_\_\_\_  
DAVID TOBIN, JUDGE

DATE: July 14, 2005  
cc: John Gamble, Esq.  
C. Joseph King, Esq.  
Adult Probation Department  
Sheriff

STATE OF OHIO  
COLUMBIANA COUNTY

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT  
COPY OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE

July 26 2005

ANTHONY J. DATTILIO, CLERK OF COURTS

BY: Shirley Rumpel DEPUTY CLERK

AH

DEC 13 2005

1 DT:mjb

ANTHONY J. DATTILIO  
CLERK (SJC)

2 IN THE COURT OF COMMON PLEAS  
3 COLUMBIANA COUNTY, OHIO  
CASE NO. 05-CR-179

4 THE STATE OF OHIO )  
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THE STATE OF OHIO )  
PLAINTIFF, )  
VS. ) JUDGMENT ENTRY  
Khabir A. TISDALE )  
DOB: 2/14/81 )  
SSN: 148-74-6782 )  
DEFENDANT. )

10 This 12th day of December, 2005, this matter came  
11 before the Court for further hearing. The Assistant  
12 Prosecuting Attorney John Gamble appeared for the State of  
13 Ohio. The Defendant appeared in the custody of the sheriff  
with Attorney C. Joseph King.

14 Counsel for the Defendant advised the Court that the  
15 Defendant desired to withdraw his plea of "Not Guilty" and to  
enter a plea of "Guilty" to POSSESSION OF DRUGS, a violation  
of Section 2925.11 (A), a felony of the fifth degree.

16 The Court thereupon provided in writing to the  
17 Defendant an instrument entitled "Judicial Advice to the  
18 Defendant" and the Defendant filed a response to the Court's  
19 Advice. The Court further explained to the Defendant all of  
the constitutional rights he was waiving by changing his plea  
from "Not Guilty" to "Guilty."

20 The Court questioned the Defendant and finds that he  
21 has an intelligent understanding of the nature of the charge,  
the consequences of changing his plea, the maximum penalty  
22 thereof, that he is changing his plea voluntarily, and the  
Court permits him to withdraw his former plea of "Not Guilty."  
23 Defendant thereupon plead "Guilty" in open Court. The Court  
accepts said "Guilty" plea, finding it to be voluntarily and  
intelligently made.

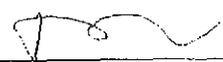
24 As part of the Felony Plea Agreement, this being a  
25 stipulated sentence, matter proceeded to sentencing.

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EXHIBIT  
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Defendant agreed to the forfeiture specification contained in the Indictment, and the State shall provide the Court with a judgment entry in that regard.



DAVID TOBIN, JUDGE

DATE: December 12, 2005  
cc: John Gamble, Esq.  
C. Joseph King, Esq.  
Adult Probation Department  
Sheriff

*Clerk*

STATE OF OHIO  
COLUMBIANA COUNTY ss)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE

*December 21 20 05*

ANTHONY J. DATTILIO, CLERK OF COURTS

BY: *Shirley Lump* DEPUTY CLERK

*AG*

1 IT IS THEREFORE THE ORDER OF THIS COURT that the  
2 Defendant be sentenced to the LORAIN CORRECTIONAL INSTITUTION  
3 for POSSESSION OF DRUGS, a violation of Section 2925.11 (A),  
4 a felony of the fifth degree for a term of SIX (6) MONTHS and  
5 he is ordered to the pay the costs.

6 This sentence shall be served concurrently with the  
7 Defendant's sentence in 04-CR-339.

8 The Defendant was advised:

9 1.) As part of this sentence the Parole Board may  
10 extend this prison term for certain violations of prison rules  
11 for up to one-half of the stated prison term. (R.C. 2965.11).

12 2.) Since the Defendant has been sentenced for a  
13 felony of the third, fourth or fifth degree the Defendant may  
14 be supervised by the Parole Board for a period of up to three  
15 (3) years after the Defendant leaves prison.

16 3.) If a period of supervision is imposed by the  
17 Parole Board or required to be imposed, and if the Defendant  
18 violates that supervision or a condition of post release  
19 control imposed by statute, the Parole Board may impose a  
20 prison term as part of this sentence of up to one-half of the  
21 stated prison term originally imposed.

22 4.) The Defendant may not ingest or be injected  
23 with a drug of abuse and must submit to random drug testing.  
24 The results of any drug test administered under this order  
25 must show that the Defendant did not ingest or was not  
injected with a drug of abuse.

Defendant has spent 162 days in the Columbiana  
County Jail for Case Number 05-CR-179. This credit includes  
jail time up to December 12, 2005, which does not include any  
subsequent time awaiting conveyance to the reception facility.

It is the order of the Court that the Defendant be  
conveyed to the custody of the Ohio Department of  
Rehabilitation and Corrections forthwith.

Defendant shall submit to DNA typing by the  
institution.

Bond released.

Defendant's driver's license is suspended for six  
(6) months beginning July 4, 2005.

ORIGINAL

FILED

COLUMBIANA COUNTY  
COURT OF COMMON PLEAS

MAY 09 2006

ANTHONY J. DATTILIO  
CLERK (SJC)

1 DT:mjb

2 IN THE COURT OF COMMON PLEAS

3 COLUMBIANA COUNTY, OHIO

4 CASE NO. 05-CR-275

5 THE STATE OF OHIO )

6 PLAINTIFF, )

7 VS. )

JUDGMENT ENTRY

8 KHBAIR A. TISDALE )

9 DOB: 2/15/81 )

10 SSN: 148-74-4782 )

11 DEFENDANT. )

12 This 8th day of May, 2006, this case came on for  
13 trial by jury. Assistant Prosecuting Attorney John Gamble  
14 appeared on behalf of the State of Ohio. The Defendant  
15 appeared in the custody of the sheriff with Attorney Carl  
16 Joseph King.

17 Defendant orally requested a continuance to hire  
18 private counsel to represent him in this matter, which the  
19 Court denied.

20 The Defendant renewed his request for a continuance,  
21 which the Court denied.

22 Prospective jurors were sworn on voir dire, and jury  
23 selection was begun.

24 A morning recess was had, after which the Defendant  
25 orally requested that his case be dismissed based on a  
violation of his speedy trial rights, which the Court denied.

After the Court's denial of the Motion to Dismiss  
Defendant waived this right to trial by jury and informed the  
Court it was his desire to withdraw his plea of "Not Guilty"  
and to enter a plea of "No Contest" to the Indictment.

The Court questioned the Defendant and finds the  
Defendant has an intelligent understanding of the consequences  
of his plea, the rights he is waiving, the nature of the  
charge, the maximum penalty thereof, and that he is changing



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1 his plea voluntarily, and the Court permits him to withdraw  
2 his former plea of "Not Guilty."

3 Defendant thereupon pled "No Contest" in open Court  
4 to the Indictment, charging him with POSSESSION OF DRUGS, a  
5 violation of Section 2925.11 (A), a felony of the second  
6 degree. The Court accepts the Defendant's "No Contest" plea,  
7 finding it to be voluntarily and intelligently made.

8 Based on the Indictment, information contained in  
9 the Court's file, the Bill of Particular, the evidence  
10 produced at the hearing on the Defendant's Motion to Suppress,  
11 and the exhibits marked by the State of Ohio, the Court finds  
12 the Defendant "Guilty" of POSSESSION OF DRUGS, a violation of  
13 Section 2925.11 (A), a felony of the second degree, and  
14 further finds that the amount of cocaine exceeds ten grams but  
15 is less than twenty-five grams.

16 The Defendant being presently incarcerated out of  
17 this Court in Case No. 04-CR-339, and a presentence  
18 investigation having been prepared in that case, the matter  
19 proceeded to immediate sentencing by agreement of counsel and  
20 the Defendant.

21 The Defendant requested a recess until 1:30 p.m. for  
22 sentencing to allow his family time to be present and to have  
23 witnesses present. The Court grants the Defendant's request.

24 Trial resumed. Same appearances.

25 It is the order of the Court that the Defendant be  
imprisoned in the LORAIN CORRECTIONAL FACILITY for the offense  
of POSSESSION OF DRUGS, a violation of Section 2925.11 (A), a  
felony of the second degree, for a term of FOUR (4) YEARS.

Defendant is ordered to pay a fine of \$7,500, which  
is suspended, based on the Defendant's indigency.

This sentence shall be served consecutively with the  
Defendant's sentence in Case No. 04-CR-339.

Defendant's driver's license is suspended for one  
(1) year, effective May 8, 2006.

Defendant is ordered to pay the costs of this  
action, which are deferred until he is released from prison.

1 Defendant has served three hundred eight (308) days  
2 in the Columbiana County Jail for Case Number 05-CR-275. This  
3 credit includes jail time up to May 8, 2006, and does not  
4 include any subsequent time awaiting conveyance to the  
5 reception facility.

6 It is the order of the Court that the Defendant be  
7 conveyed to the custody of the Ohio Department of  
8 Rehabilitation and Corrections forthwith.

9 The Defendant was advised:

10 1.) As part of this sentence the Parole Board may  
11 extend this prison term for certain violations of prison rules  
12 for up to one-half of the stated prison term. (R.C. 2965.11).

13 2.) Since the Defendant has been sentenced for a  
14 felony of the first/second degree, or a felony sex offense, or  
15 a felony of the third degree in the commission of which the  
16 Defendant caused or threatened to cause physical harm to a  
17 person, the Defendant will be supervised by the Parole Board  
18 after the Defendant leaves prison for a period of up to five  
19 (5) years.

20 3.) If a period of supervision is imposed by the  
21 Parole Board or required to be imposed, and if the Defendant  
22 violates that supervision or a condition of post release  
23 control imposed by statute, the Parole Board may impose a  
24 prison term as part of this sentence of up to one-half of the  
25 stated prison term originally imposed.

1 The Defendant may not ingest or be injected  
2 with a drug of abuse and must submit to random drug testing.  
3 The results of any drug test administered under this order  
4 must show that the Defendant did not ingest or was not  
5 injected with a drug of abuse.

6 Defendant shall submit to DNA typing by the Lorain  
7 Correctional Institution.

8 Defendant informed the Court that it was his desire  
9 to appeal the Court's decision on his Motion to Suppress and  
10 his Motion to Dismiss, and the Defendant was advised of his  
11 rights on appeal.

12 Based on the Defendant's indigency the Court will  
13 appoint counsel to handle this appeal. A Notice of Appeal  
14 shall be filed on the Defendant's behalf on or before June 7,  
15 2006. This does not preclude him from hiring private counsel  
16 to handle this appeal, and if one is retained they shall file  
17 a Notice of Appearance.

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Bond released.



DAVID TOBIN, JUDGE

DATE: May 8, 2006

cc: John Gamble, Esq.  
Carl Joseph King, Esq.  
Adult Probation Department  
Sheriff  
Clerk

All

*ains*

*BELI #490812*

IN THE COMMON PLEAS COURT OF JEFFERSON COUNTY, OHIO *(Added Sentence)*

STATE OF OHIO )  
 )  
 Plaintiff )  
 )  
 -vs- )  
 )  
 KHBAIR AM-JAID TISDALE )  
 )  
 Defendant )

JUDGMENT ENTRY OF  
SENTENCE  
  
Case No: 04-CR-35  
  
JOSEPH J. BRUZZESE, JR.,  
JUDGE

FILED  
IN COMMON PLEAS COURT  
JEFFERSON COUNTY, OHIO  
  
JUN 30 2006  
  
JOHN A. CORRIGAN  
CLERK

\*\*\*\*\*

On June 26, 2006, Defendant's sentencing hearing was held pursuant to R.C.2929. Court Reporter Susan Schweiss, Defense Attorney Costa Mastros, and the State's Attorney Thomas R. Straus, through his assistant Samuel A. Pate, were present, as was the Defendant who was afforded all rights pursuant to Criminal Rules 11 and 32. The court has considered the record, the oral statements, and the agreed recommendation of sentence, as well as the Purpose and Principles of sentencing under R.C.2929.11, and has balanced the seriousness and recidivism factors under R.C.2929.12 all discretionary and non-mandatory factors.

2006 JUL 11 AM 7:30  
NOTICE TO SEALS  
IN RE: [unclear]

OFFENSE

The court finds that the Defendant has been convicted upon his plea of guilty to the following offense:

**EXHIBIT**  
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Count 1: Possession of Drugs F-2 R.C.2925.11(A) &  
To wit: Heroin, exceeding 100 unit doses (C)(6)(d)  
Committed February 5, 2004  
  
Forfeiture Specification for \$590.00 in cash

DISCRETIONARY FINDINGS

- 1. Count 2 was the subject of a Nolle Prosequi as being duplicative of Count 1.
- 2. The parties have entered into an agreed recommendation of sentence which is being

followed by the Court.

*A12*

State of Ohio SS  
John A. Corrigan, Clerk of Courts  
I hereby certify that the annexed writ is  
a true copy of the original  
John A. Corrigan, Clerk of Courts  
*[Signature]*

SENTENCE

Defendant is sentenced to four (4) years in prison, all of which is mandatory.

Defendant shall forfeit \$590.00 in cash to the Ohio State Highway Patrol Post 41 in Wintersville, Ohio.

Defendant has been given notice of his lifetime weapons disability under R.C.2923.13.

On June 26, 2006 Defendant was informed by the Court in open Court at his sentencing hearing that he is subject to Post Release Control for a period of three (3) years beginning upon his release from prison all of which is mandatory pursuant to Ohio Revised Code Section 2967.28(B).

Defendant is therefor ordered conveyed to the custody of the Lorain Correctional Institution in Grafton, Ohio forthwith. Credit for 80 days is granted as of June 29, 2006 along with future custody days while Defendant awaits transportation to Lorain. Defendant is employable and is able to pay Court costs and shall pay costs of this action and Court Appointed Counsel Costs as well all fees permitted pursuant to R.C.2929.18(A)(4).

*Joseph J. Bruzese, Jr.*

JUDGE JOSEPH J. BRUZZESE, JR

Copies to:

- Attorney Samuel A. Pate, Assistant Prosecutor
- Attorney Costa D. Mastros
- Defendant Khbair Am-Jaid Tisdale
- Ted Kostecki, Adult Probation Department
- Lorain Correctional Institution
- Sheriff
- Court

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te of Ohio SS  
 of Jefferson  
 A. Corrigan, Clerk of Courts  
 by certify that the annexed writ is  
 copy of the original  
 Corrigan, Clerk of Courts  
*Dirin A. Wilson* Deputy

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

NO

FILED  
COURT OF APPEALS

*06-BEL3*

SEVENTH DISTRICT

RANDY L. MARPLE  
CLERK OF COURTS, BELMONT CO.

MAR 6 2007

KHABIR A. TISDALE

)

CASE NO. 06 BE 63

PETITIONER

)

)

VS.

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)

OPINION AND  
JOURNAL ENTRY

MICHELE EBERLIN, WARDEN  
BELMONT CORRECTIONAL  
INSTITUTION

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RESPONDENT

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)

CHARACTER OF PROCEEDINGS:

Petition for Writ for Habeas Corpus

JUDGMENT:

Dismissed.

APPEARANCES:

For Petitioner:

Khabir A. Tisdale, Pro-Se  
#A490-812  
Belmont Correctional Institution  
P.O. Box 540  
St. Clairsville, Ohio 43950-0540

For Respondent:

Atty. Marc Dann  
Attorney General of Ohio  
Atty. Stuart A. Cole  
Assistant Ohio Attorney General  
Corrections Litigation Section  
150 E. Gay Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215-6001

JUDGES:

Hon. Cheryl L. Waite  
Hon. Gene Donofrio  
Hon. Mary DeGenaro

Dated: March 6, 2007

*A14*

PER CURIAM.

{11} Petitioner, Khabir A. Tisdale, has filed a petition for writ of habeas corpus with this Court. He is an inmate incarcerated in the Belmont Correctional Institution, St. Clairsville, Ohio. Respondent, Michele Eberlin, is the warden at that penal institution. Petitioner was convicted of attempted illegal conveyance of prohibited items and drug trafficking in Columbiana County in Case No. 04CR339, and received a fifteen-month prison sentence. He also pleaded guilty to one count of possession of drugs in Columbiana County in Case No. 05CR179, and received a sixth-month prison term. He further pleaded no contest to one count of possession of drugs in Columbiana County in Case No. 05CR275 and was sentenced to four years in prison. In addition, he pleaded guilty to one count of possession of drugs in Jefferson County in Case No. 04CR35 and received a sentence of four years in prison. Petitioner did not file a direct appeal to any of these convictions and sentences. He is now challenging his incarceration for two of these convictions based on a speedy trial error.

{12} Respondent has filed a motion to dismiss the petition, first arguing that Petitioner has not satisfied the requirements for filing a habeas petition as set forth in R.C. §2725.04. Specifically, Petitioner failed to file copies of all his commitment papers, as required by R.C. §2725.04(D): "A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear." There are no commitment papers relating to Jefferson

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County Case No. 04CR35, which is clearly a significant part of the subject matter of this petition for writ of habeas corpus. Failure to attach copies of all pertinent commitment papers requires dismissal of the petition. *Boyd v. Money* (1998), 82 Ohio St.3d 388, 696 N.E.2d 568; *Hairston v. Seidner* (2000), 88 Ohio St.3d 57, 723 N.E.2d 575. Respondent is correct, and this petition must be dismissed.

{13} Furthermore, in order for a prisoner to be entitled to a writ of habeas corpus, he must be able to prove he or she is being held by virtue of a judgment that was beyond the scope of the jurisdiction of the court that entered the judgment. R.C. §2725.05; *Wireman v. Ohio Adult Parole Auth.* (1988), 38 Ohio St.3d 322, 528 N.E.2d 173. The writ must be denied where the inmate is not challenging the jurisdiction of the sentencing court. *Id.* Habeas relief is not a substitute for a direct appeal, and issues that could have been raised during direct appeal are generally waived for purposes of habeas proceedings. *In re Piazza* (1966), 7 Ohio St.2d 102, 103, 218 N.E.2d 459.

{14} Petitioner is raising a speedy trial issue. The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to a speedy trial by the state. *Klopper v. N. Carolina* (1967), 386 U.S. 213, 222-223, 87 S.Ct. 988, 18 L.Ed.2d 1. Section 10, Article I of the Ohio Constitution also provides for a speedy public trial. *State v. Ladd* (1978), 56 Ohio St.2d 197, 200, 10 O.O.3d 363, 383 N.E.2d 579. Various statutory speedy trial rights also exist. Petitioner is claiming a speedy trial right arising out of R.C. §2941.401, which states in part:

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{15} "When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance." R.C. §2941.401 further states that: "If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice."

{16} Petitioner contends that his speedy trial rights were violated in Jefferson County Case No. 04CR35 and Columbiana County Case No. 05CR275 because these two cases were not tried within the 180-day time period set forth in R.C. §2941.401. In rebuttal, Respondent contends that speedy trial issues must be resolved in direct appeal and that Petitioner cannot use habeas corpus proceedings as a substitute for direct appeal. Respondent is correct. The specific issue that Petitioner raises could have been reviewed on direct appeal. See, e.g., *State v. Roulette*, 163 Ohio App.3d 775, 2005-Ohio-5435, 840 N.E.2d 645. Speedy trial issues are regularly reviewed on direct appeal, and that is where such errors must be

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reviewed. *Travis v. Bagley* (2001), 92 Ohio St.3d 322, 323, 750 N.E.2d 166. It is true that R.C. §2941.401 discusses how a court might lose jurisdiction over certain criminal charges that are brought while a defendant is serving a term of incarceration on other charges, but that is a question that can only be resolved after a court has obtained proper jurisdiction over a criminal case. Once a court exercises jurisdiction in a criminal case, the defendant may move for dismissal under R.C. §2941.401 or for any other reason, and any errors involving the court's interpretation or application of R.C. §2941.401 may be reviewed on direct appeal. Extraordinary relief such as a writ of mandamus or habeas corpus is not available to compel a court to dismiss charges pursuant to R.C. §2941.401 because there is a clear and adequate remedy at law to resolve the matter. *State ex rel. Bowling v. Court of Common Pleas of Hamilton County* (1970), 24 Ohio St.2d 158, 265 N.E.2d 296.

{17} Petitioner has failed to follow the statutory requirements for filing a petition for writ of habeas corpus, and has raised an issue that cannot be addressed in habeas corpus proceedings. For these reasons, the petition is hereby dismissed.

{18} Costs taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

*C. L. Waite*  
 \_\_\_\_\_  
 CHERYL L. WAITE, JUDGE

*Gene Donofrio*  
 \_\_\_\_\_  
 GENE DONOFRIO, JUDGE

*Mary DeGenaro*  
 \_\_\_\_\_  
 MARY DeGENARO, PRESIDING JUDGE

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