

In The Supreme Court Of Ohio

Joe Z. Pressley, Jr.,
Appellant,

vs.

State of Ohio
Appellee.

07-1085

On Appeal from Muskingum
County Court of Appeals,
Fifth Appellate District
of Ohio

Appeals Number. CT06-0033

Memorandum In Support of
Jurisdiction of Defendant
Joe Z. Pressley, Jr.

Joe Z. Pressley Jr., 518-156
Noble Correctional Institution
15708 McConnelville Road
Caldwell, Ohio 43724

Counsel for Appellant, Joe Z. Pressley Jr., pro se

vs.

D. Michael Haddox
Muskingum County Prosecutor
27 North Fifth Street
Zanesville, Ohio 43701

Counsel for Appellee, State of Ohio

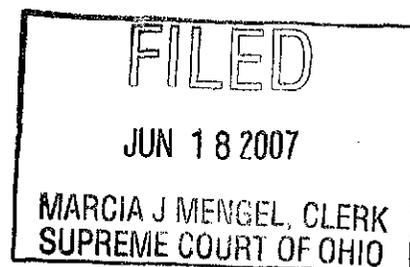


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Muskingum County, Ohio, Appeals No. CT06-0033

Sentencing Entry Appellant seeks to appeal

Expalnation Of Why This Is A Case Of Public Or Great General Interest
And Involves Substantial Constitutional And Federal Question

This case presents at least two (2) critical questions for the future of indigent criminal defendants convicted in the State of Ohio for felony charges by indictment, upon their guilty pleas secured through trial counsel.

To wit: Was the indigent criminal defendant denied due process and equal protection of the law and jury rights at sentencing and was the plea agreement and sentence breached?

1). When the trial failed to use the proper due process at sentencing to depart from the minimum and concurrent sentence.

2). When trial counsel counseled a defendant into a plea negotiation that was breached by the trial court.

Accordingly, Defendant-Appellant asserts that the Fifth District Court of Appeals, Muskingum County, Ohio has deprived him the right of the jury role during the sentencing phase., see *Blakely v. Washington*, (2004), 542 U.S. _____, 124 S.Ct. 2531, 159 L.Ed 2d 403., at the time of sentencing, and violated the Ohio Revised Code 2929.14(B) in regard to the purported time of the crime., see *Millar v. Florida* (1987), 482 U.S. 423, 432, 107 S.Ct. 2446, 96 L.Ed.2d 351., upholding the trial court's abuse of discretion in sentencing Defendant-Appellant considering Ohio Revised Code 2929.11 and 2929.12., sentencing Defendant-Appellant to an unconstitutional sentence., see *State v. Foster*, Ohio St.3d, 2006-Ohio-856, 97.

Also, Defendant-Appellant asserts that the Fifth District Court of Appeals, Muskingum County, Ohio upheld the trial court's breach of the agreed upon plea bargain., see *Santabello v. New York* (1971), 404 U.S. 257, 30 L.Ed.2d 427, 92 S.Ct. 495., negating the Fourteenth Amendment Right vindication.

Wherefore, it is so prayed this Honorable Court accepts jurisdiction and allow this case to be heard upon its merits and afford this Defendant-Appellant the opportunity to present his claim fairly in this court.

Statement Of The Case And Facts

Defendant-Appellant was indicted on September 14, 2005 and arraigned on September 21, 2005. A Motion to Suppress was filed on November 3, 2005, and a suppression hearing was held on November 14, 2005. A hearing was held on January 18, 2006 continuing the January 19, 2006 trial date. A hearing was held on February 2, 2006 setting a new trial date of February 28, 2006. Defendant-Appellant entered a guilty plea on February 27, 2006 and was sentenced on April 3, 2006.

Defendant-Appellant then filed a timely pro se notice of appeal on May 2, 2006 pursuant to App.R.13 Appellate counsel was appointed on June 8, 2006.

Defendant-Appellant was charged with (7) counts: Count One: trafficking in drugs (cocaine), Count Four: complicity to trafficking in drugs (cocaine) with a forfeiture specification, Count Seven: possession of drugs (crack cocaine), Count Eight: possession of drugs (cocaine), Count Nine: possession of drugs (crack cocaine), and Count Ten: having a weapon under disability (sentencing hearing 7.8) after a search warrant was granted based on three alleged controlled buys by a confidential informant in August and September 2005 from the Defendant-Appellant and a co-defendant. (Suppression Hearing 7.12)

The State of Ohio's plea negotiations were for eight (8) years in prison. However, the court did not follow the state's plea negotiation recommendation. (Sentencing Hearing T.7 Defendant-Appellant was sentenced to an aggregate prison term of thirteen (13) years as follows: Count One: eleven (11) months in prison, Count Four: three (3) years in prison, Count Six: five (5) years in prison, Count Seven: five (5) years in prison, Count Eight: eleven (11) months in prison, Count Nine: eleven (11) months in prison, and Count Ten: three (3) years in prison. (Sentencing Hearing T. 8-9, departing from the minimum without a jury finding the judicial fact findings beyond a reasonable doubt or admission by Defendant-Appellant. Ohio Revised Code 2929.14(B).

Counts One, Four, Six, Eight and Nine are to be served concurrently with each other and concurrently to all other counts. Count Seven and Ten are to be served consecutively to each other and to all other counts violating Ohio Revised Code 2929.14(E)(4). (Sentencing Hearing T.8-9)

Proposition of Law One: The Trial Court
abused its Discretion in sentencing
Defendant-Appellant considering
R.C.2929.11 and 2929.12

The State's plea negotiation were for an aggregate of eight (8) years. The Court, however, imposed an aggregate of thirteen (13) years. While the Court is not required to follow the state's plea negotiations, the Court is mandated to follow the sentencing guidelines of Ohio Revised Code 2929.11, 2929.12, and 2929.14(B). The length of the Appellant's prison sentence is greater than necessary for incapacitating the offender, deterring the offender and others from future crime, and rehabilitating the offender, and was acquired without submitting the judicial factfindings to a jury and proven beyond a reasonable doubt or admissions by Defendant-Appellant.

In the case of Akron v. Ragsdale (1978), 61 Ohio App.2d 107, the acceptance of a plea bargain rests in the discretion of the trial judge and, further, when a plea bargain is rejected the court should state reasons for rejections. The Akron court did state, by way of dicta, that when a recommended plea bargain is rejected the court ought to state reasons for rejection. However, the court went on to state further, "In some cases, however, the facts themselves speak so eloquently that no statement by the judge is required." (Akron, p. 109)

In this case, the Defendant-Appellant contends that the Court should have expressed reasons for rejecting the plea bargain. The facts in this matter clearly do not speak "so eloquently that no statement by the judge is required." As stated above, R.C.2929.11, 2929.12, and 2929.14(B) lists the factors that are to be considered in sentencing. These factors were not considered appropriately, and light of this specific case, were not so egregious to omit any requirement for the Court to cite its reasons for rejection.

Furthermore, according to *Santabello v. New York* (1971), 404 U.S. 257, 30 LEd.2d 427, 92 S.Ct. 495, when a plea induced by a promise or agreement of the prosecutor, such promise must be fulfilled. Ordinarily, the remedy for a breach of a plea bargain agreement is a matter lying within the sound discretion of the trial court and may be either rescission or specific performance, i.e. either allowing withdrawal of the negotiated plea or requiring the state to fulfill its end of the bargain. *State v. Mathews* (1982), 8 App.3d 145, 146; *Santabello supra*. Here, the Appellant's plea was induced by the promise of the prosecutor, but the Court did not fulfill the promise.

Proposition of Law Number II:
The Trial Court Abused Its Discretion
In Sentencing The Appellant To
Consecutive Terms of Prison Considering
R.C.2929.14(B)(4).

While other state courts have held that their statutes on consecutive sentences do not violate *Blakely*, Ohio appears to be unique in having a rule that sentences of imprisonment shall be served concurrently. See R.C.2929.41(A); *State v. Barnhouse*, 102 Ohio St.3d 221, 2004-Ohio-2492, 808 N.E.2d 874, at 11. R.C.2929.41(A) states,

"Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term."
(Emphasis added.)

Thus, except for certain enumerated statutes imposing nondiscretionary consecutive terms, judicial factfindings must occur before consecutive sentences may be imposed under R.C.2929.14(E)(4)., and these judicial factfindings must be submitted to a jury and proven beyond a reasonable doubt or admissions from Defendant-Appellant.

The Ohio Supreme Court have held previously that R.C.2929.14(E)(4) and 2929.19(B)(2)(c) require courts that impose consecutive sentences to make the statutorily enumerated findings and to give reasons at the sentencing hearing to support those findings for review on appeal. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473.

The law disfavors consecutive sentencing for more than one felony. "The imposition of consecutive sentences... must be justified by extraordinary circumstances." *State v. DeAmiches*, 2001 WL 210020, at 11 (Ohio Ct.App. 8th Dist. Cuyahoga County 2001) Ohio Revised Code 2929.14(E) sets forth the findings that a court must make in order to impose consecutive sentences. A defendant may seek leave to appeal from the imposition of consecutive sentences when the aggregate of the sentences exceeds the maximum sentence allowed under R.C.2929.14(A) for the most serious offense for which the defendant was convicted.

Here, the most serious offenses are Count Six (6) (Complicity to trafficking in Drugs [Crack Cocaine] with forfeiture specification) and Count Seven (7) (Possession of Drugs [Crack Cocaine]), both felonies of the first degree. The aggregate sentence that the court imposed was thirteen (13) years. A felony of the first degree has a sentencing range of 3, 4, 5, 6, 7, 8, 9, and 10 years under most circumstances. An aggregate sentence of thirteen (13) years is over the maximum ten (10) year sentence for a felony of the first degree. However, the state's offer of eight (8) years is not.

The court imposes sentences contrary to law if the court requires the defendant to serve sentences consecutively without first finding one of the three requirements found in R.C.2929.14(E)(3) or the court erroneously concluded that one of these three findings were present.

Here, the sentence is contrary to law, as the consecutive sentences of Defendant-Appellant is not supported in the record and is not consistent with other sentences of defendants convicted of similar conduct. But, *State v. Foster* (2006) 109 Ohio St.3d 1, 2006-Ohio-856, held that Ohio's sentencing guidelines are Blakely-deficient. (*Foster* p. 25). When a sentence is deemed void, the ordinary course is to vacate that sentence and remand to the trial court for a new sentencing hearing. See, e.g., *State v. Jordan*, 404 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, at 23 where a sentence is void because it does not contain a statutorily mandated term, then the proper remedy is to resentence the offender. In fact, the cases of *Foster*, *Quinones*, and *Adams* were sent back to the trial courts for resentencing in light of the court's remedial severance and interpretation of Ohio's felony-sentencing statutes. (*Foster*, p. 32; *State v. Quinones*, 105 Ohio St.3d 1401, 2005-Ohio-286, 821 N.E.2d 102; *State v. Adams*, Lake App.No. 2003-L-110, 2005-Ohio-1107, 2005 WL583797, at 69).

The court continues in Foster, that these cases and those pending on direct review must be remanded to trial courts for new sentencing hearings not inconsistent with this opinion. As stated by the court:

We do not order resentencing lightly. Although new sentencing hearings will impose significant time and resource demands on the trial courts within the counties, causing disruption while cases are pending on appeal, we must follow the dictates of the United States Supreme Court. Ohio's felony sentencing code must protect Sixth Amendment principles as they have been articulated. (Foster, p. 30)

Conclusion

Accordingly, the Fifth District Court of Appeals has totally disregarded clearly established federal laws and Supreme Court jurisprudence, as well as the constitutional challenge to Ohio's Sentencing Statutes. Unless this court signals to the lower courts that it will consistently enforce all rules and not thwart the will of the legislative Branch by ignoring mandatory sections of law.

In addition this case presents a Constitutional sentencing question, raised and established as a concern to the United States Supreme Court that will undoubtedly become an issue through-out Ohio's criminal justice system.

Wherefore, this Court should accept jurisdiction over this case, and appoint counsel for this indigent Defendant-Appellant in pro se so that these important issues may be resolved for similar offenders in the state's criminal justice system.

Respectfully submitted,

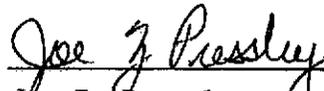

Joe Z. Pressley pro se

15708 McConelsville Road
Caldwell, Ohio 43724

Certificate of Service

I certify that a copy of this Memorandum In Support of Jurisdiction was sent by ordinary U.S. Mail delivery to the Muskingum County Prosecutor's office at 27 North Fifth Street, Zanesville, Ohio 43701 on this 11 day of June, 2007.

Respectfully submitted



Joe Z. Pressley pro se
15708 McConnelville Road
Caldwell, Ohio 43724

In The Supreme Court of Ohio

State of Ohio

Plaintiff-Appellee,

vs.

Joe Z. Pressley

Defendant-Appellant

On Appeal from Muskingum
County Court of Appeals
Fifth Appellate District
Court of Ohio

Appeals Number CT06-0033

Trial Number CR2005-0259

Appendix of Memorandum In Support Of Jurisdiction
of Defendant-Appellant Joe Z. Pressley

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS
MAY - 2 2007
MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOE Z. PRESSLEY, JR.

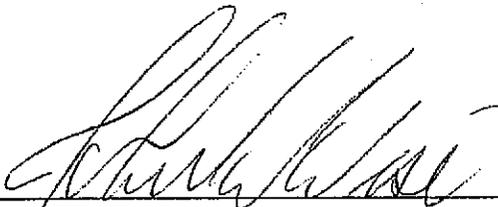
Defendant-Appellant

JUDGMENT ENTRY

Case No. CT2006-0033

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.

Costs to appellant.

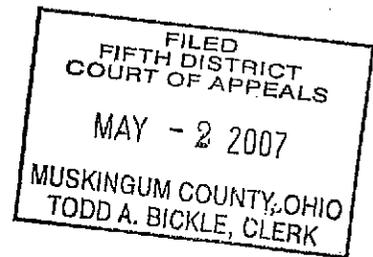


W. Scott A.

William B. Johnson

JUDGES

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT



STATE OF OHIO

Plaintiff-Appellee

-vs-

JOE Z. PRESSLEY, JR.

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. CT2006-0033

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. CR2005-0259

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

D. MICHAEL HADDOX
PROSECUTING ATTORNEY
JAMES E. WORKMAN, JR.
ASSISTANT PROSECUTOR
27 North Fifth Street, P. O. Box 189
Zanesville, Ohio 43702-0189

For Defendant-Appellant

COLE J. GERSTNER
320 Main Street
Post Office Box 190
Zanesville, Ohio 43702-0190

Wise, J.

{¶11} Appellant Joe Z. Pressley appeals his felony sentences following a multi-count conviction in the Muskingum County Court of Common Pleas. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶12} In the late summer of 2005, the Muskingum County Sheriff's Department, with the assistance of a confidential informant, made several controlled buys of cocaine and crack cocaine at the Zanesville residence of appellant and his co-defendant, Marla Rush.

{¶13} In September 2005, appellant was indicted on ten felony counts, including drug trafficking, drug possession, and having a weapon while under disability. At his arraignment on September 21, 2005, appellant pled not guilty to all charges. After unsuccessfully seeking suppression of certain evidence against him, appellant entered a guilty plea to seven counts on February 27, 2006.

{¶14} On April 3, 2006, appellant was sentenced to an aggregate prison term of thirteen years, as follows:

{¶15} Count 1: Trafficking in Cocaine (F5): Eleven months.

~~{¶16} Count 4: Complicity to Trafficking in Cocaine (F3): Three years.~~

{¶17} Count 6: Complicity to Trafficking in Crack Cocaine (F1): Five years.

{¶18} Count 7: Possession of Crack Cocaine (F1): Five years.

{¶19} Count 8: Possession of Cocaine (F5): Eleven months.

{¶110} Count 9: Possession of Crack Cocaine (F5): Eleven months.

{¶111} Count 10: Having a Weapon While Under a Disability (F3): Three years.

{¶12} Counts 1, 4, 6, 8, and 9 were ordered to run concurrently with each other; Counts 7 and 10 were ordered to run consecutively.

{¶13} On May 2, 2006, appellant filed a notice of appeal. He herein raises the following two Assignments of Error:

{¶14} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT CONSIDERING RC 2929.11 AND 2929.12.

{¶15} "II. THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING THE APPELLANT TO CONSECUTIVE TERMS OF PRISON CONSIDERING RC 2929.14(E)(4)."

I.

{¶16} In his First Assignment of Error, appellant maintains the trial court abused its discretion in sentencing appellant under R.C. 2929.11 and 2929.12. We disagree.

{¶17} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Ohio Supreme Court found certain provisions of Ohio's sentencing statute unconstitutional, in light of *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403. Appellant in the case sub judice was sentenced in the post-*Foster* era. In *State v. Firouzmandi*, Licking App.No. 2006-CA-41, 2006-Ohio-5823, we recognized that the *Foster* Court's removal of R.C. 2953.08(G)(2) from the statutory sentencing scheme eliminated the clear and convincing standard and left a void concerning the applicable standard of review in sentencing matters. *Id.* at ¶ 37, citing *State v. Windham*, Wayne App.No. 05CA0033, 2006-Ohio-1544 at ¶ 11. Because *Foster* "vest[ed] sentencing judges with full discretion" in sentencing (*Foster* at ¶ 100), we review felony sentences under an abuse of discretion standard. *State v. Coleman*, Lorain App.No. 06CA008877,

2006-Ohio-6329. However, post-*Foster*, trial courts are still required to "consider" the general guidance factors contained in R.C. 2929.11 and R.C. 2929.12 in their sentencing decisions. See *State v. Diaz*, Lorain App. No. 05CA008795, 2006-Ohio-3282, ¶ 8.

{¶18} Appellant, while recognizing that the trial court is not bound by them, asserts that the State's plea negotiations in the case sub judice were for an aggregate of eight years, as opposed to the thirteen years appellant received. He also notes that he took full responsibility for his actions and apologized to the court and all concerned. Tr. at 5-6. In light of the factors under R.C. 2929.12(B), appellant urges that this case did not involve physical or mental injury to a victim or serious physical, psychological, or economic harm. He points out that appellant did not hold a position of trust or public office, and that there was no showing of organized criminal activity. Appellant notes that he was not motivated by prejudice, and the offenses did not involve a family or household member.¹ Finally, appellant maintains that the factors for considering whether an offender's conduct is less serious than conduct normally constituting the offense (R.C. 2929.12(C)) and the factors for considering likelihood or unlikelihood of recidivism (R.C. 2929.12(D) and (E)) weigh in his favor.

{¶19} Nonetheless, as the trial court noted on the record, appellant has been previously convicted and sentenced to five to twenty-five years for attempted murder, and five to fifteen years for felonious assault. Tr. at 7-8. Both of those crimes had involved the use of a weapon. *Id.* In the present case, appellant forfeited a Mossberg sawed-off shotgun found in the residence as part of his sentence. Upon review, we are

¹ The record before us is sparse as to Marla Rush's involvement in the drug bust.

unpersuaded the trial court abused its discretion in sentencing appellant under the guidelines of R.C. 2929.11 and 2929.12.

{¶20} Appellant's First Assignment of Error is overruled.

II.

{¶21} In his Second Assignment of Error, appellant argues the trial court abused its discretion in ordering consecutive sentences in this case. We disagree.

{¶22} In *Firouzmandi*, supra, we concluded that post-*Foster*, an appellate court reviews the imposition of consecutive sentences under an abuse of discretion standard. *Id.* at ¶ 40. An abuse of discretion implies the court's attitude is "unreasonable, arbitrary or unconscionable." See *State v. Adams* (1980), 62 Ohio St.2d, 151, 157.

{¶23} Upon review of the sentencing hearing transcript and the subsequent judgment entry in this matter, this Court is not persuaded that the trial court acted unreasonably, arbitrarily, or unconscionably, or that the trial court otherwise abused its discretion in ordering the sentences for counts seven and ten to be served consecutively to each other and to the remaining concurrent counts.

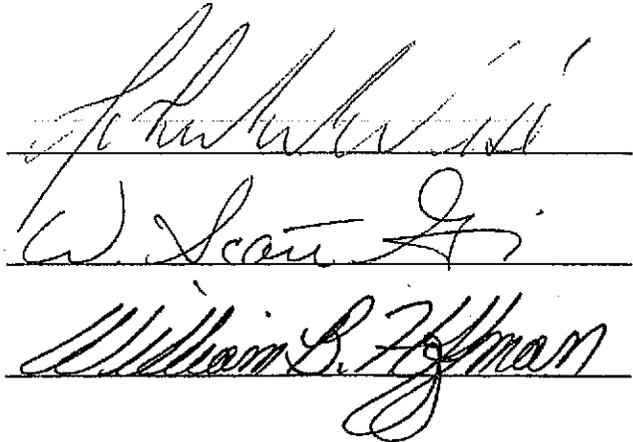
{¶24} Appellant's Second Assignment of Error is therefore overruled.

{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas, Muskingum County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.



JUDGES

JWW/d 420

Atty
Bryan

2006 MAY 10 AM 9:58
CLEVA

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

STATE OF OHIO	:	CASE NO.: CR2005-0259
Plaintiff,	:	JUDGE: KELLY J. COTTRILL
vs.	:	CHARGE: 1) Trafficking in Drugs (cocaine) with forfeiture specification F/5
	:	4) Complicity to Trafficking in Drugs (cocaine) with forfeiture spec. F/3
JOE Z. PRESSLEY, JR.	:	6) Complicity to Trafficking in Drugs (crack cocaine) w/forfeiture spec. F/1
Defendant.	:	7) Possession of Drugs (crack cocaine) F/1
	:	8) Possession of Drugs (cocaine) F/5
	:	9) Possession of Drugs (crack cocaine) F/5
	:	10) Having a Weapon While Under Disability F/3
	:	ORC: 1) 2925.03(A)(1) Spec. 2925.42 et seq.
	:	4) 2923.03(A)(3) Spec. 2925.42 et seq.
	:	6) 2923.03(A)(3) Spec. 2925.42 et. seq.
	:	7) 2925.11(A)
	:	8) 2925.11(A)
	:	9) 2925.11(A)
	:	10) 2923.13(A)(2)

AMENDED ENTRY

NOTE: The sole purpose of this entry is to address the vehicle forfeiture.

Now comes the Prosecuting Attorney for Muskingum County, on behalf of the State of Ohio, and the Defendant appearing before the Court on September 21, 2005 being represented by Attorney Michael Bryan, appearing before Judge Cottrill, charging him with:

- 1) Trafficking in Drugs (cocaine)with forfeiture specification, a felony of the fifth degree
- 4) Complicity to Trafficking in Drugs (cocaine) with forfeiture spec., a felony of the third degree
- 6) Complicity to Trafficking in Drugs(crack cocaine) w/forfeiture spec., a felony of the first degree
- 7) Possession of Drugs (crack cocaine), a felony of the first degree
- 8) Possession of Drugs (cocaine), a felony of the fifth degree
- 9) Possession of Drugs (crack cocaine), a felony of the fifth degree
- 10) Having a Weapon While Under Disability, a felony of the third degree

The Defendant waived the reading of the indictment, the time and manner of service of the indictment, and any defects therein, and for plea thereto said he was not guilty.

Bond was continued as previously set (\$200,000 cash, property, or surety). Defendant was remanded to the custody of the Sheriff.

The case was assigned to the docket of Judge Cottrill.

Thereafter, the Defendant being before the Court on the 27th day of February 2006, being represented by his counsel, his constitutional rights being fully explained to him by the Court in accordance with the Ohio Rules of Criminal Procedure, asked leave of Court to withdraw his former plea of not guilty and enter a plea of guilty as charged in the indictment; which plea was accepted by the Court. Sentence, however, was deferred and a presentence investigation was ordered conducted by the Adult Probation Department.

Thereafter, on April 3, 2006 this matter was again before the Court for sentencing. The defendant was present with his counsel; Assistant Prosecuting Attorney James E. Workman, Jr. represented the State of Ohio. The Defendant was afforded all of his rights pursuant to Criminal Rule 32. The Court had considered the record, all statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11, and its balance of seriousness and recidivism factors under Ohio Revised Code §2929.12.

The Court finds that the Defendant has been convicted of:

- 1) Trafficking in Drugs (cocaine) with forfeiture specification, a felony of the fifth degree in violation of ORC Section 2925.03(A)(1);
- 4) Complicity to Trafficking in Drugs (cocaine) with forfeiture spec.; a felony of the third degree in violation of ORC Section 2923.03(A)(3);
- 6) Complicity to Trafficking in Drugs (crack cocaine) w/forfeiture spec., a felony of the first degree in violation of ORC Section 2923.03(A)(3);
- 7) Possession of Drugs (crack cocaine), a felony of the first degree in violation of ORC Section 2925.11(A);
- 8) Possession of Drugs (cocaine), a felony of the fifth degree in violation of ORC Section 2925.11(A);
- 9) Possession of Drugs (crack cocaine), a felony of the fifth degree in violation of ORC Section 2925.11(A);
- 10) Having a Weapon While Under Disability, a felony of the third degree in violation of ORC Section 2923.13(A)(2);

The Court inquired of the defendant if he knew of any reason why he should not be sentenced or if he wished to address the Court. The defendant having nothing further, the Court proceeded to sentencing. The Court is not inclined to follow the plea negotiation recommendations.

IT IS, THEREFORE, ORDERED that the defendant is sentenced to an aggregate prison term of thirteen (13) years as follows:

- Count One – eleven (11) months in prison
- Count Four – three (03) years in prison
- Count Six – five (05) years in prison
- Count Seven – five (05) years in prison
- Count Eight – eleven (11) months in prison
- Count Nine – eleven (11) months in prison
- Count Ten – three (03) years in prison

Counts One, Four, Six, Eight, and Nine are to be served concurrently with each other and concurrently to all other counts; Counts Seven and Ten are to be served consecutively to each other and to the other counts.

IT IS FURTHER ORDERED that the following items listed in the forfeiture specification(s) of the indictment be forfeited to the Muskingum County Sheriff's Office for departmental use or to be destroyed:

- 1) Mossberg model 500A shotgun, serial #K995517 and five (5) slugs

IT IS FURTHER ORDERED that the following items listed in the forfeiture specification(s) of the indictment be forfeited to the Muskingum County Sheriff's Office for departmental use or to be sold or destroyed:

- 2) Hewlett-Packard model #A1013W computer
- 3) One (01) monitor
- 4) One (01) set of speakers
- 5) One (01) cable modem
- 6) Three (03) silver Samsung cellular telephones
- 7) One (01) black and silver Motorola cellular telephone
- 8) Sentry safe, serial #AR229900, and 11 keys

IT IS FURTHER ORDERED that the following items listed in the forfeiture specification(s) of the indictment be forfeited to the Muskingum County Sheriff's Office – Drug Unit to be destroyed as forfeited contraband:

- 9) Altoids tin containing crack cocaine

- 10) One (01) red and gray soft cooler containing multiple bags of crack cocaine and powder cocaine
- 11) One (01) tan bag containing one bottle of Inositol and one metal screen with residue
- 12) Nine (09) six pill bottles containing miscellaneous pills
- 13) One (01) bag of crack cocaine
- 14) One (01) box of sandwich baggies
- 15) One (01) pill bottle containing miscellaneous pills

IT IS FURTHER ORDERED that the following items listed in the forfeiture specification(s) of the indictment be forfeited to be divided equally between the Muskingum County Prosecutor's Office and the Muskingum County Sheriff's Office – Drug Unit:

16) One Thousand, Six Hundred, Fifty-three and 85/100 Dollars (\$1,653.85) in U.S. currency

IT IS FURTHER ORDERED that the 1993 Cadillac Sedan Deville, Ohio Registration DNL6935, VIN #1G6CD53BOP4315916 is forfeited to the Muskingum County Sheriff's Department to be disposed of pursuant to Ohio Revised Code Section 2925.44. Further, pursuant to the sentencing and conviction of the above-named defendant, the Clerk of Courts is hereby ORDERED to issue title to said forfeited vehicle to the Muskingum County Commissioners for use by the Muskingum County Sheriff.

The defendant is granted credit for time served and shall pay the costs of this action. Further, Defendant is not to be considered for any Intensive Prison Programs.

The Court further notified the Defendant that "Post Release Control" is mandatory in this case up to a maximum of five (05) years as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code §2967.28. The Defendant is ordered to serve as part of this sentence any term for violation of that post-release control.

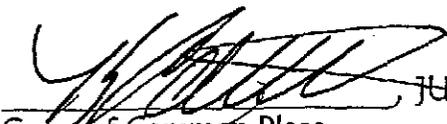
The Defendant is therefore, ORDERED conveyed to the custody of the Ohio Department of Rehabilitation.

Credit of -159- days is granted as of February 27, 2006 as follows:

Muskingum County Jail: 09/06/2005 to 04/03/2006

along with future custody days while the defendant awaits transportation to the appropriate State Institution.

The Clerk is ORDERED to make a record in this case.


JUDGE
Court of Common Pleas
Muskingum County, Ohio