

In The Supreme Court of Ohio

State Of Ohio, :
Appellee, :
-Vs- : Case No.: 05-2364
Kerry Perez, :
Appellant. : **This Is A Capital Case.**

On Appeal From the Court of
Common Pleas of Clark County
Case No. 03-CR-1010

Appellant's Motion to Strike Appellee's Trial Transcript Summary

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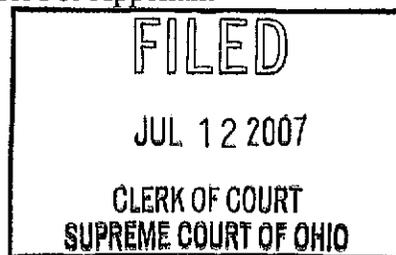
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Case No.: 05-2364
-vs- : Appeal from Clark County Court
KERRY PEREZ, : of Common Pleas
: Case No. 03-CR-1010
Appellant. : **This is a capital case.**

Appellant's Motion to Strike Appellee's Trial Transcript Summary

Appellant Kerry Perez, through counsel, moves this Court to strike Appellee's Trial Transcript Summary which was filed as Exhibit A to Appellee's Merit Brief. The reasons for this request are explained in the attached Memorandum.

Respectfully submitted,

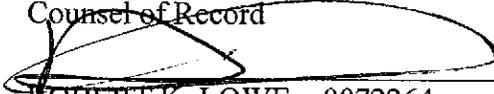
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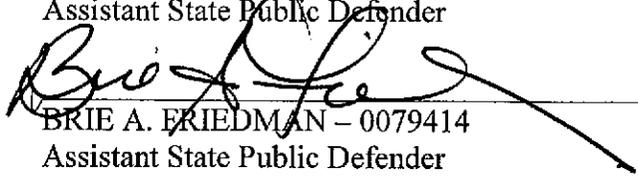

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COUNSEL FOR APPELLANT

MEMORANDUM

On February 5, 2007, Appellant Kerry Perez filed a Merit Brief with this Court. Appellee filed its brief in response on June 25, 2007. Attached to Appellee's Brief, as Exhibit A, was a transcript summary. This "transcript summary" consists basically of 38 pages of counsel's transcript notes. Appellee's notes should not be part of the state court record. Attaching a summary of the transcript to a merit brief is wholly inappropriate and does not comport with this Court's rules of filing. Therefore, Perez respectfully requests that this document be struck from the record.

Supreme Court Practice Rule VI lists the information that should be contained in a brief. Among the things listed is a statement of facts with page references. Rule VI also lists the documents to be included in an appendix to the brief. These listed documents are generally information that is neutral to the case such as the notice of appeal, the judgment or order from which the appeal is taken, and constitutional provisions. Rule VI does not provide for the filing of a party's summary of the transcript as part of the appendix to a brief.

Highlighting facts that are relevant to a party's position is appellate advocacy and should not appear in an ostensibly neutral attachment to a party's brief. Perez's trial transcript is approximately 2,000 pages, yet Appellee's summary is only 38 pages. Appellee's summary consists of selected portions of and facts from the transcript and does not give an accurate or complete view of the record in this case. It is a one-sided interpretation of the transcript. The proper means for Appellee to focus the Court's attention to certain portions of the transcript is for Appellee to highlight those portions and facts, along with the relevant transcript cites, in its merit brief.

Although the Supreme Court Practice Rules do not specifically prohibit the inclusion of a summary of the transcript in the appendix, this Court should take the position that such a filing is prohibited. If both parties are able to submit summaries of transcripts and arguments as part of the appendix to a brief, it could result in appendices that contain argument, under the guise of neutral information, that a party wishes to highlight for the court. This information should be contained in the merit brief. The use of “transcript summaries” in the appendix to a brief is a subversive attempt to insert partisan argument into this Court’s review of the record.

Moreover, the filing of a summary of a transcript has implications beyond death penalty cases. Allowing such filings could lead to a circumvention of this Court’s page limits by allowing a party to summarize the facts of a case primarily in the appendix rather than in the body of the brief.

Perez is mindful of the fact that this Court complies with its obligation to review the record in its entirety and that this Court can make its own independent assessment of the facts despite Appellee’s filing of a summary. However, Appellee’s filing of a summary of the transcript was a blatant attempt to focus this Court’s attention on those facts that Appellee feels support the arguments in its brief and should not be made a part of the record of this case.

For the reasons set forth above, Appellee’s Trial Transcript Summary, filed as Exhibit A to Appellee’s Merit Brief, should be stricken from the record.

Respectfully Submitted,

DAVID H. BODIKER – 0016590
Ohio Public Defender



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Counsel of Record



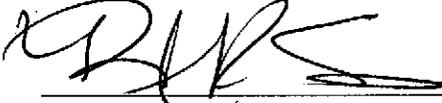
ROBERT K. LOWE – 0072264
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLANT'S MOTION TO STRIKE APPELLEE'S TRIAL TRANSCRIPT SUMMARY was forwarded by regular U.S. Mail to the County Prosecutor, 50 E. Columbia Street, Springfield, Ohio, 45502, this 12th day of July, 2007.



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COUNSEL FOR APPELLANT