

IN THE SUPREME COURT OF OHIO

07-1573

John F. Norris,
Appellant,

vs.

State of Ohio,
Appellee.

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

Appeals Number CT2007-0041

Memorandum In Support Of Jurisdiction
Of Defendant-Appellant John F. Norris

John F. Norris
15708 McConnellsville Road
Caldwell, Ohio 43724

Counsel for Appellant, John F. Norris, pro se

vs.

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

Counsel for Appellee, State of Ohio

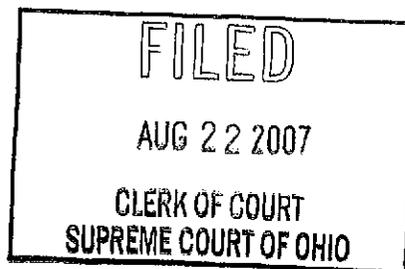


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Proposition of Law Number I: Because a criminal defendant in Ohio has a constitutional right to an appeal under Section 3, Article IV of the Ohio Constitution, an accused has a right to a remedy from the deprivation of the right to appeal. Section 16, Article I, Ohio Constitution, U.S.C.A. Const. Amends. V and XIV 3

Proposition of Law Number II: The sentence imposed is void pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, under Federal Law. Thus, Ohio's Sentencing Statutes are unconstitutional. Apprendi v. New Jersey, (2000), 530 U.S. 466; Ring v. Arizona, (2002), 536 U.S. 584; Blakely v. Washington, (2004), 124 S.Ct. 2531; United States v. Booker, (2005), 125 S.Ct. 738; State v. Foster (2006), 109 Ohio St.3d 1, 2006-Ohio-856; Cunningham v. California (2007), U.S. , 127 S.Ct. 856, 166 L.Ed.2d 856..... 5

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST
AND INVOLVES SUBSTANTIAL CONSTITUTIONAL AND FEDERAL QUESTION

This case presents at least three (3) critical questions for the future of indigent criminal defendants convicted in the State of Ohio felony charges by indictment, upon their guilty pleas secured through trial counsel.

To wit: Was the indigent criminal defendant denied due process of law?

- 1) When trial counsel failed to ensure the indigent defendant is fully aware of his appellate rights and fails to file the notice of appeal upon defendant's desire to appeal pursuant to Criminal Rule 32;
- 2) When defendant's trial counsel fails to consult him directly concerning his appellate options, and that being indigent the state must provide the cost occurred thereby;
- 3) When the trial court failed to submit the judicial factfinding to a jury or admittance from the defendant before departing from the minimum sentence pursuant to the Sixth and Fourteenth Amendments to the United States Constitution.

Accordingly, Defendant-Appellant asserts that the Fifth District Court of Appeals, Muskingum County, Ohio has deprived him of due process and equal protection of the Law when it entered a dismissal upon his motion for leave in which to file a delayed appeal as of right, and transcripts of the proceedings at state expense. See *Wolfe v. Randle*, 267 F.Supp.2d 743, 745 (S.D. Ohio 2003). Thus, federal law of which all state court judges are indeed "bound". See Article III of the United States Constitution.

Therefore, Defendant-Appellant asserts that this dismissal is a denial of not only due process of law, but also equal protection of law as well. Defendant-Appellant further asserts that portions of Ohio Sentencing Scheme has been rendered unconstitutional and the sentence imposed by the trial court is void, pursuant to the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. See *Blakely v. Washington*, (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403; *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856; *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621; *Cunningham v. California* (2007), _____ U.S. _____, 127 S.Ct. 856, 166 L.Ed.2d 856.

Wherefore, it is so prayed that this Honorable Court accepts jurisdiction and allow this case to be heard upon its merits and afford this offender the opportunity to present his claims fairly in this Court.

STATEMENT OF THE CASE AND FACTS

On March 9, 2005, Defendant John F. Norris was charged with Possession of Drugs (crack cocaine) with forfeiture specification, a felony of the first degree, and having a Weapon While Under Disability, a felony of the third degree, where defendant plead not guilty.

On May 18, 2005, defendant asked leave of Court to withdraw his former plea of not guilty and enter a plea of guilty to all counts contained in the indictment. On Count One (01) defendant was sentenced to four (4) years in prison, on Count Two (02) defendant was sentenced to four (4) years in prison, to be served consecutive to Count One (01), on Count Three (03) defendant was sentenced to one (01) year in prison to be served concurrent to Counts One (01) and Two (02).

Upon sentencing the Muskingum County Court failed to submit the judicial factfindings used to depart from the minimum sentence or to render the sentences consecutively to a jury and proved beyond a reasonable doubt or admittance from defendant.

Wherefore, defendant expressed his desire to appeal his sentence to his attorney and believed an appeal was filed. After, Defendant-Appellant's trial counsel failed to consult with him about his appellate rights, Defendant-Appellant filed a delayed appeal pursuant to App.R. 5, and said appeal was denied for failure to assert good cause for leave to file a delayed appeal.

Proposition of law I: Because a criminal defendant in Ohio has a Constitutional Right to an appeal under Section 3, Article IV of the Ohio Constitution an accused has a right to a remedy for the deprivation of the right to an appeal. Section 16, Article I, Ohio Constitution; U.S.C.A. Amends. V and XIV.

Due Process is offered when Defendant-Appellant pleads guilty is kept completely ignorant of his appellate rights. U.S.C.A. Amends V and XIV; Wolfe v. Randle, 267 F.Supp.2d 743, (S.D. Ohio 2993).

On May 18, 2005, Defendant-Appellant was sentenced to an enhanced sentence six (06) years beyond the statutory maximum authorized by the trial court to impose. The sentence imposed was based on the facts and findings that were not presented in the indictment, admitted by the defendant, nor proven by a jury beyond a reasonable doubt standards. Blakely v. Washington, (2004), 124 S.Ct. 2531, 2537.

Appellant did not know of his right to appeal, nor did trial counsel consult him directly concerning his appeal options, after Defendant-Appellant expressed his desire to appeal. See Exhibit A. response letter from trial counsel; Roe v. Flores-Ortega, (2000), 528 U.S. 470, 129 S.Ct. 1029. Moreover, Defendant-Appellant did not knowingly and intelligently waive his right to appeal. State v. Sims, (1971), 27 Ohio St.2d 79, 272 N.E.2d 87, 91. Wherefore, due process requires that the indigent Appellant be granted an delayed appeal as of right, Wolfe, supra.

The State of Ohio is constitutionally required to provide an effective remedy for vindicating the denial of federal constitutional rights. *Young v. Ragen*, (1949), 337 U.S. 235, 100 S.Ct. 2030; *Dayton v. Hill*, (1970), 21 Ohio St.2d 125, 256 N.E.2d 194.

The failure of the State of Ohio to provide an effective remedy for violations of the United States Constitution is, itself a denial of due process of law. *Frank v. Magnum*, (1915), 237 U.S. 309-335; *New York ex rel. Whitman v. Wilson*, (1943), 318 U.S. 688, 690. As all State Court Judges are indeed "bound" by federal law, its Constitution, and its treaties. See *Kelm v. Hyatt*, 44 F.3d 415, 420 (6th Cir. 1995); Article IV, U.S. Const.

Accordingly, the Fifth District Court of Appeals committed prejudicial reverseable error in denying the indigent Defendant-Appellant's motion for leave in which to file a delayed appeal, as of right, and transcripts of the proceedings at state's expense. See *Wolfe*, supra, at 750. To wit:

When a defendant pleads guilty he limits his options to appeal, but certain appellate avenues remain open. The Supreme Court has previously stressed that an indigent must be afforded certain procedural protections so that they may properly pursue their appellate rights. See, *Griffin*, 351 U.S. 12, 76 S.Ct. 585, right for an indigent defendant a transcript for pursuing their appeal; *Douglas*, 372 U.S. 353, 83 S.Ct. 814, indigent defendant has a right to counsel on their first appeal; *Evitts*, 469 U.S. 387, 105 S.Ct. 830, all defendants have the right to effective assistance of appellate counsel. These rights all propose that the defendant is informed of the appellate rights. Due Process is offended if a defendant who pleads guilty is not made aware of his right to appeal. This proposition is unaffected by the lack of an explicit constitutional requirement.

Accordingly, mandated that Defendant-Appellant be granted leave in which to file a delayed appeal as of right.

Proposition of Law II: The sentence imposed is void pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, under federal law. Thus Ohio's Sentencing Statutes are unconstitutional. *Apprendi v. New Jersey*, (2000), 530 U.S. 466; *Ring v. Arizona*, (2002), 536 U.S. 584; *Blakely v. Washington*, (2004), 124 S.Ct. 2531; *United States v. Booker*, (2005), 125 S.Ct. 738; *State v. Foster* (2006), 109 Ohio St.3d. 1, 2006-Ohio-856; *Cunningham v. California* (2007), ____ U.S. ____, 127 S.Ct. 856, 166 L.Ed.2d 856.

Defendant-Appellant's sentence was imposed in contravention of the Sixth Amendment to the United States Constitution, as articulated by the United States Supreme Court in *Blakely v. Washington*, 542 U.S. 296, and *United States v. Booker*, 543 U.S. 220.

A defendant convicted of two First-degree felonies and one Third-degree felony is entitled to the benefit of the purposes and principles of sentencing under R.C. 2929.11(A) and (B), which state:

(A) A court that sentence an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate to and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

Under R.C. 2929.14(A)(1), the presumptive sentence for a first degree felony violation is three years, and under R.C. 2929.14(A)(3) the presumptive sentence for a third degree felony violation is one year, in which Ohio appears to be unique in having a rule that sentences of imprisonment shall be served concurrently. See R.C. 2929.14(A); *Satte 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 factfinding must occur before consecutive sentences may be imposed under R.C. 2929.14(E)(4).

Defendant-Appellant plead guilty to two first degree felonies, and a third degree felony, and the trial court determined that an aggregate eight year prison term was warranted. The Judgment Entry sentencing John F. Norris did not identify any particular factors justifying a sentence beyond the concurrent minimum, instead relying upon that sentence that was agreeable to the prosecution and Mr. Norris by the plea agreement. Nowhere in the Judgment Entry of sentencing is any acknowledgement of a jury finding beyond a reasonable doubt judicial factfindings that warrant the trial court to depart from the minimum sentence. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473.

Mr. Norris thus received an eight year prison term upon Fifth, Sixth, and Fourteenth Amendment violations to the United States Constitution. The United States Supreme Court has recently held that only a jury may consider "any particular fact which the law makes essential to the punishment." *Blakely v. Washington* (2004), 452 U.S. 296; Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

"[W]hen a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all of the facts 'which the law makes essential to the punishment,' ...and the judge exceeds his proper authority." Blakely, 124 S.Ct. at 2537. The effect of this holding is that a court cannot sentence a defendant based on factors not found by a jury or within the purview of a jury's determination should the matter be plead before trial.

Blakely applies even though Mr. Norris pleaded guilty. Mr. Blakely had pleaded guilty. The Supreme Court held that the facts supporting Mr. Blakely's enhanced sentence "were neither admitted by [Mr. Blakely] nor found by a jury." Blakely, 124 S.Ct. at 2537. Mr. Norris never admitted to the factors the trial court used to impose his sentence, and thus his sentence is illegal.

The remedy that was adopted by the Ohio Supreme Court in *State v. Foster* (2006), 109 Ohio St.3d 1, 2006-Ohio-856, is not analogous to the United States Supreme Court's resolution in *United States v. Booker* (2005), 543 U.S. 220. In *Booker*, only a limited portion of the federal sentencing statute was severed, and the significant parts of the statute designed to effect Congressional intent were maintained. As *Foster* notes, the Court severed the subsection that "'require[d] sentencing courts to impose a sentence within the applicable Guideline range ... and the provision that set forth standards of review on appeal.'" *Foster* at n. 97, quoting *United States v. Booker*, 543 U.S. at 259. But the *Foster* opinion failed to discuss the fact that the majority of the federal sentencing statute was left intact in order to insure that the intent of the statute was preserved. *United States v. Booker*, 543 U.S. at 259-261.

The *Booker* majority explained that even without the mandatory provision, sentencing courts would still be required to consider the "Guidelines sentencing range established for ...the applicable category of offense committed by the applicable defendant." *United States v. Booker*, 543 U.S. at 259-260, internal citations omitted. And the Court did not sever 18 U.S.C. 3553(c)(2), which requires the sentencing court to state its reasons for departing from the

guidelines. Consequently, although the four separate standards of appellate review were severed, the statute as amended set forth an implicit standard of review--i.e., whether the imposed sentence was reasonable. *United States v. Booker*, 543 U.S. at 260, 261.

By contrast, the severance employed in *Foster* cut a large portion of Ohio's sentencing statutes. And by doing so, this Court eliminated the ability of an appellate court to effectively review a sentence. The severance also disposed of any real chance of accomplishing the legislature's goal of establishing uniformity and proportionality in Ohio's criminal sentencing scheme. R.C. 181.24(B)(1)-(3). See, also, Griffin & Katz, *Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan*, 53 Case W. Res. L. Rev. 1, 12 (Fall, 2002) ("[c]onsistency and proportionality are hallmarks of the new sentencing law").

Recently, The United States Supreme Court held that a state court cannot apply the *Booker* severance to state sentencing statute in the manner that the Ohio Supreme Court applied *Booker* to Ohio's statutes. In *Cunningham v. California* (2007), ____ U.S. ____, 127 S.Ct. 856, 166 L.Ed.2d 856, the Court found that California's application of the *Booker* severance remedy to the California sentencing findings was inapplicable. The Court found that California's attempt to compare its sentencing scheme with *Booker* is "unavailing," for the same reasons that Mr. Norris argues that Ohio's *Booker* application is unavailing. *Cunningham*, 127 S.Ct. at 870.

In *Cunningham*, the Supreme Court found that California's sentencing scheme, "does not resemble the advisory system the *Booker* court had in view.*** Factfinding to elevate a sentence from 12 to 16 years, our decisions make plain, falls within the province of the jury employing a beyond-a-reasonable doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies." *Cunningham*, 127 S.Ct. at 870. Similarly, in Ohio, facts used to elevate statutorily mandated minimum, concurrent sentences to a higher sentence within the range, or to consecutive sentences, must be found by a

jury or admitted by the defendant.

In *People v. Black*, the California Supreme Court held that that state's sentencing system was not unfair to defendants, because they "cannot reasonable expect a guarantee that the upper term will not be imposed" given judges 'broad discretion to impose an upper term or to keep their punishment at the middle term. *Cunningham*, 127 S.Ct. at 869, quoting *People v. Black* (2005), 35 Cal.4th 1238, 1258-1259, 113 P.3d 534. The California Supreme Court had examined the state sentencing scheme and was satisfied tha tCalifornia did not implicate the concerns underlying the Sixth Amendment's jury trial guarantee. The United States Supreme Court in *Cunningham* stated that regardless, United States Supreme Court pronouncements could not be ignored, and "leave no room for such an examination." *Cunningham*, 127 S.Ct. at 869. Because California's system allocated to judges sole authority to find facts permitting the imposition of an upper term sentence, the system violated the Sixth Amendment. *Id.* at 870.

The U.S. Supreme Court in *Cunnigham* stated that a sentencing court's*** broad discretion to decide what facts may support an enhanced sentence, or to determine whether an enhance sentence is warranted in any particular case, does not shield a sentencing system from the force of our decisions. If the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied." *Id.* at 869, quoting *Blakely*, 542 U.S. at 305. "It is comforting, but beside the point, that California's system requires judge-determined DSL sentences to be reasonable. Booker's remedy for the Federal Guidelines, in short, is not a recipe for rendering our Sixth Amendment case law toothless." *Cunningham*, 127 S.Ct. at 870. The severance that the Ohio Supreme Court employed in *Foster* gives sentencing courts unbridled discretion.

The Foster decision left intact R.C. 2929.11 and 2929.12, but as Cunningham demonstrates, that is not enough. Foster essentially amended Ohio sentencing statutes by raising prison term beyond what is required by the United States Supreme Court's Booker and Blakely pronouncements.

Accordingly, the sentence imposed by the trial court is illegal and void pursuant to the United States Constitution, and clearly established federal law.

CONCLUSION

Mr. Norris sentence should be reversed, and this case remanded for a new sentencing hearing, with instructions on remand that any new sentence shall not exceed the minimum for two First-degree felonies, three years in prison, and a Third degree felony, one year in prison, to be served concurrently.

Respectfully submitted

John Norris
John F. Norris, pro se
15708 McConnelsville 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 16 day of August, 2007.

John Norris
John F. Norris

IN THE SUPREME COURT OF OHIO

John F. Norris,
Appellant,

vs.

State of Ohio,
Appellee.

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

Appeals Number CT2007-0041

Memorandum In Support Of Jurisdiction
Appendix

LAW OFFICES
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ROSS L. JOHNSTON (RETIRED, 1999)

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OF COUNSEL
WAYNE W. PHILLIPS, II

May 5, 2006

John Norris A-496955
NOBLE CORRECTIONAL INSTITUTION
15708 McConnelsville Road
Caldwell, OH 43724

Dear John:

I have read your letter, received May 3rd. It is true that Muskingum County, as well as all counties, operated under an unconstitutional statute. The Ohio Supreme Court ruled that you would be entitled to a resentencing hearing. The bad part about that decision, however, is that it states that the Court can choose from any of the range of penalties and can make any of them consecutive rather than concurrent. That case State v. Foster also said that in a resentencing a person can get a greater sentence than they got before. You asked how does the State intend to vindicate my rights? As I indicate to you, the recent decision from the Supreme Court says that you may be able to get a new sentencing hearing. I have enclosed the Foster decision. I believe that under that decision, if you would get a resentencing hearing, that Judge Cottrill would be your judge (he was the successor for Judge Zwelling), and that he would be able to sentence you to even more than you got before. I think this is an unacceptable risk.

If you have any other questions, let me know.

Sincerely,



Cole J. Gerstner

CJG:dkp
enc

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN F. NORRIS

Defendant-Appellant

CASE NO. CT07-0041

JUDGMENT ENTRY

16/377

FILED
FIFTH DISTRICT
COURT OF APPEALS
JUL - 9 2007
MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

This matter came before the Court for consideration of Appellant's pro se motion to file a delayed appeal pursuant to App.R. 5(A). A response in opposition was filed by the State.

On March 9, 2005, Appellant pled guilty to and was sentenced for one count of Possession of Drugs (crack), in violation of R.C. 2925.11, a felony of the first degree, one count of Possession of Drugs (cocaine), in violation of R.C.2925.11, a felony of the first degree, and one count of Having a Weapon While Under Disability, a felony of the third degree.

Appellant was sentenced to serve a total of eight years in prison. He was sentenced to four years on counts one and two, to be served consecutive to one another, and one year on count three, which was to be served concurrent to counts one and two. Appellant failed to file a timely appeal as of right from the trial court's conviction and sentence and now seeks leave to file a delayed appeal. Appellant argues that he expressed a desire to appeal to his trial

counsel and believed that one was filed. The Court notes that the Appellant entered into a plea agreement wherein he waived his right to have a presentence investigation conducted and acknowledged that because he was waiving this right, he would not be eligible for judicial release. In short, the Appellant knew he was going to receive a prison sentence. The sentence received by the Appellant was within the range provided for by law.

Whether to grant or deny leave to file a delayed appeal is in the sound discretion of the appellate court. *State v. McGahan* (1949), 86 Ohio App. 283, 88 N.E.2d 613. A delayed appeal should be granted where it appears on the face of the record the overruling of such motion would result in a miscarriage of justice. *State v. Bendnarik* (1954), 101 Ohio App. 339, 123 N.E.2d 31. "Lack of effort or imagination, and ignorance of the law, are not such circumstances and do not automatically establish good cause for failure to seek timely relief". *State v. Reddick* (1995), 72 Ohio St.3d 88, 1995-Ohio-249, 647 N.E.2d 784.

One of the factors which may be considered by the Court, and which shows a lack of effort on the part of this Appellant, is the nature and degree of untimeliness for the delay. In this case, Appellant pled and was sentenced more than two years ago. Appellant has failed to establish good cause for his failure to seek timely relief sufficient for this Court to grant leave to file a delayed appeal. For this reason, Appellant's application is denied and the cause is hereby dismissed

APPLICATION FOR LEAVE TO APPEAL DENIED.

CAUSE DISMISSED.

COSTS TAXED TO APPELLANT.

IT IS SO ORDERED.

Julius D. ...

JUDGE

[Handwritten Signature]

JUDGE

William B. Hoffman

JUDGE

Atty

2005 MAR 20 AM 10:45
CLERK

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

STATE OF OHIO	:	CASE NO.: CR2005-0069
Plaintiff,	:	JUDGE: Howard S. Zwelling
vs.	:	CHARGE: 1) Possession of Drugs (crack cocaine) w/forfeiture spec. F/1
	:	2) Possession of Drugs (cocaine) w/forfeiture spec. F/1
	:	3) Having a Weapon While Under Disability F/3
JOHN F. NORRIS	:	
Defendant.	:	ORC: 1,2) 2925.11(A) Spec. 2925.42 et seq 3) 2923.13(A)(3)

ENTRY

Now comes the Prosecuting Attorney for Muskingum County, on behalf of the State of Ohio, and the Defendant appearing before the Court on March 9, 2005 being represented by Attorney Cole J. Gerstner, appearing before Judge Zwelling, charging him with:

- Count One – Possession of Drugs (crack cocaine) with forfeiture specification, a felony of the first degree
- Count Two – Possession of Drugs (cocaine) with forfeiture specification, a felony of the first degree
- 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 (\$250,000 cash, property or surety). The defendant was remanded to the custody of the Sheriff.

The case was assigned to the docket of Judge Zwelling.

Thereafter, the Defendant being before the Court on May 18, 2005, 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 to all counts contained in the indictment. Further, the Defendant asked to waive the presentence investigation and proceed to sentencing. Defendant was advised by the Court and acknowledged on the record that by waiving the presentence investigation he would not be eligible for judicial release.

The Defendant was afforded all of his rights pursuant to Criminal Rule 32. The Court considered the record and the plea negotiations in this matter, and then inquired of the Defendant if he knew of any reason why judgment should not be pronounced against him, or if he had anything further to say; the Defendant had nothing further. Thereafter, the Court proceeded to sentencing.

The Defendant has been convicted of:

1) Possession of Drugs (crack cocaine) with forfeiture specification, a felony of the first degree in violation of O.R.C. Section 2925.11(A), pursuant to O.R.C. Section 2925.11(C)(4)(e) and the sentencing guidelines of O.R.C. Section 2929.13 subject to a mandatory prison term

2) Possession of Drugs (cocaine) with forfeiture specification, a felony of the first degree in violation of O.R.C. Section 2925.11(A), pursuant to O.R.C. Section 2925.11(C)(4)(e) and the sentencing guidelines of O.R.C. Section 2929.13 subject to a mandatory prison term

3) Having a Weapon While Under Disability, a felony of the third degree in violation of O.R.C. Section 2923.13(A)(3), pursuant to the sentencing guidelines of O.R.C. Section 2929.13(C) with no presumption

IT IS, THEREFORE, ORDERED that the Defendant is sentenced to an aggregate prison term of eight (08) years as follows:

COUNT 1 – Four (04) years in prison

COUNT 2 – Four (04) years in prison, to be served consecutive to Count 1

COUNT 3 – One (01) year in prison to be served concurrent to Counts 1 and 2

IT IS FURTHER ORDERED that Defendant receive a mandatory fine of \$10,000 on each of Counts 1 and 2. However, all fines are waived due to Defendant's indigency and affidavit thereof.

IT IS FURTHER ORDERED that Defendant's driver's license be, and it hereby is, suspended for a period of four (04) years. The Clerk of Courts shall cause the necessary documentation to be forwarded to the Bureau of Motor Vehicles.

IT IS FURTHER ORDERED that all items listed in the forfeiture specification of the indictment be forfeited to the State of Ohio to use, sell, or destroy as forfeited contraband. To-wit:

Uniden Scanner 85089649

box of baggies

Motorola I710 cell phone with charger

Radio Shack Scanner C042952

Virgin Mobile cell phone

Ohaus scales

4 boxes of sandwich bags

Uniden Scanner 65067958

7 boxes of sandwich bags

2 packages of scrub pads

surveillance camera

Radio Shack Scanner 75017865

Panasonic DVD video camera E233915
Nokia cell phone
Sprint cell phone with charger
DVDR
Nextel cell phone with charger
Motorola V400 cell phone
Bearcat 5 scanner P1281
Radio Shack Scanner C124551
Video switcher
DVD-R
Duraband T.V. with remote V35466588
Sanyo Flat screen TV with remote B3410202520 with unknown box
2 video surveillance cameras
JVC TV 32" AV-32533
Kenwood Receiver 80901465
Curtis-Mathis DVD player 01051313011375
Emerson VCR 421322589
Kenwood surround sound system
6 speakers with cables
2 video cameras with power supply
Emerson TV-VCR R15222791
brown purse
plastic jug
purple felt bag
brown holster

IT IS FURTHER ORDERED that the following items listed in the forfeiture specification of the indictment, be forfeited to be shared equally between the State of Ohio and the Muskingum County Sheriff's Office, Narcotics Unit:

\$9.77
\$452.00 in U.S. currency
\$1,571.00 U.S. currency
\$40.00 in U.S. currency
\$608.32
\$22.01

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

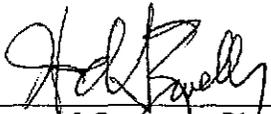
H&R .22 mag. AY090116 with 6 bullets
box of Winchester 9mm bullets
box of 7 boxes of 9mm bullets
plastic baggie of .22 LR bullets
brown bottle of Inositol
2 boxes of .22 bullets

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 and Correction. The Defendant is granted credit for time served, and shall pay the costs of this prosecution.

The Defendant is granted jail credit of -35- days through May 18, 2005 plus any additional days from the date of sentencing to the date of transport.

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



JUDGE
Court of Common Pleas
Muskingum County, Ohio

AFFIDAVIT

STATE OF OHIO,)
COUNTY OF MUSKINGUM)ss:

The undersigned, being first sworn according to law, and states that the defendant has been incarcerated in the Muskingum County Jail _____ days from the date of sentence to the date of his transport to the institution.

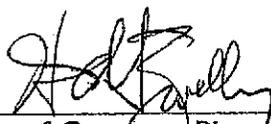
Further Affiant sayeth naught.

Sworn to and subscribed in my presence this ____ day of _____, 2005.

NOTARY PUBLIC

IT IS SO ORDERED.

The Clerk shall make a record in this matter.


_____, JUDGE
Court of Common Pleas
Muskingum County, Ohio