

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :  
Plaintiff/Appellee : CASE NO.: 2007-1573  
Vs. : TRIAL CT. CASE NO.: CR2005-0069  
JOHN F. NORRIS : On Appeal from the Muskingum County  
Defendant/Appellant : Court of Appeals  
Case No. CT2007-0041

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STATE OF OHIO'S MOTION IN OPPOSITION TO JURISDICTION

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D. MICHAEL HADDOX  
Prosecuting Attorney  
Muskingum County, Ohio

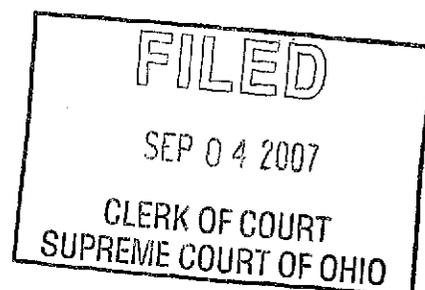
By

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Defendant, Pro Se



## STATEMENT OF THE CASE

Defendant-Appellant was indicted by the Muskingum County Grand Jury on a three (03) count indictment. On March 9, 2005 Defendant-Appellant entered a plea of not guilty to the following:

- 1) Possession of Drugs (Crack Cocaine) with forfeiture specification, a felony of the first degree
- 2) Possession of drugs (Cocaine )(Forfeiture Spec.), a felony of the first degree;
- 3) Having A Weapon Under Disability, a felony of the third degree

This matter came before the Court on May 15, 2005. After being advised by counsel, Defendant-Appellant entered a plea agreement with the Muskingum County Prosecutor. The Defendant-Appellant understood that in return for a plea of guilty, the State would recommend four years in prison on counts one and two to run consecutively to one another and one year on count three to run concurrent with counts one and two for a total of eight years. Defendant-Appellant changed or withdrew his not guilty plea and entered the agreed upon plea of guilty.

On March 9, 2005 while represented by counsel, a sentencing hearing was held. The Defendant was sentenced according to the terms of the plea agreement.

## STATEMENT OF FACTS

On March 5, 2005 Defendant-Appellant entered into a negotiated plea agreement with the State of Ohio. The terms of the agreement stated that in exchange for his guilty plea the defendant would receive a recommendation of eight (08) years in prison.

On June 11, 2007, Defendant-Appellant filed an appeal with the Fifth District Court of Appeals. This motion was dismissed due to it being filed more than two years after his conviction.

The issues presented in the case of State v. John Norris are void of great public interest and do not involve substantial constitutional or federal questions.

The Appellant is attempting to manipulate the judicial process after failing to meet the necessary deadlines for appeal at a lower level. The issues presented by Appellant are issues that could have been addressed at a lower level had the appellant met the filing deadline. However, the appellant failed to meet the filing deadline so he must now create an argument as to why his case should be heard. The manner in which he chooses to do this is under the guise that his case involves matters of great public interest and substantial constitutional or federal questions. The only facts before this court are that the appellant entered a guilty plea to multiple drug related offenses on March 5, 2005 that he was sentenced on March 9, 2005, and that an appeal to the Fifth Appellate District was dismissed on July 9, 2007 due to being filed untimely. Defendant now attempts to convince this Court that his case involves matters of great public interest and substantial constitutional or federal questions.

### **LAW AND ARGUMENT**

The Defendant-Appellant states that there are three critical reasons why this case should be accepted by this Court, however, none of them are of great public interest or involve substantial or constitutional questions.

The record is completely absent of anything indicating that trial counsel failed to inform Appellant of his appellate rights. The defendant claims that he did not know of his right to appeal but provides nothing to support that assertion. He attaches a letter from his counsel as an exhibit as evidence of this but the letter seems to indicate that the defendant was well aware of his rights but was advised that requesting a re-sentencing would be unwise.

Appellant's next reason for consideration by this Court is completely illogical and as such the State struggles to form a response. It appears that the Appellant's claim is that the Court of Appeals was required to grant him leave to file a delayed appeal. If that is in fact the Appellant's argument it is completely unsupported by law. The Court of Appeals correctly notes that the granting of a delayed appeal is within sound discretion of the trial court and that "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." (Exhibit A).

The Appellant's third reason that his case should be considered also lacks the necessary criteria to have this Court here his case. Appellant's third reason is based upon the Foster decision and the imposition of sentence. First, the Foster issues have already been addressed and no longer do those issues represent an issue of great public interest. Secondly, the Appellant entered into a negotiated plea and received exactly what he had agreed to in that plea agreement. Finally, the remedy that Appellant seeks (limiting his exposure on a re-sentencing) is not an available remedy.

### **CONCLUSION**

This case does not present any issues of great public concern nor does it involve any substantial constitutional or federal questions. As such, jurisdiction for this case should be denied.

Appellant's case is not of great public interest nor is there any constitutional or federal question at issue; therefore, Appellant's motion for jurisdiction should be denied.

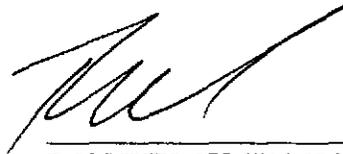


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**CERFICIATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion in Opposition was served upon Benjamin Hanning, Defendant/Appellant Pro Se, Noble Correctional Institution, 15708 McConnellsville Road, Caldwell, Ohio, 43724, by sending a copy by First Class U.S. Mail this 29<sup>th</sup> day of August 2007.



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