

IN THE SUPREME COURT OF OHIO

2007

**07-1912**

**BRIAN HANEY, INMATE #526-896  
LONDON CORRECTIONAL INST.  
P.O. BOX 69  
LONDON, OHIO 43140**

Case No.

**Petitioner,**

**-VS-**

**STEPHEN A. WOLAVE, JUDGE  
GREENE COUNTY COMMON PLEAS COURT :  
45 N. DETROIT STREET  
XENIA, OHIO 45385-2998**

**Respondent.**

**COMPLAINT FOR WRIT OF MANDAMUS**

Now comes the Petitioner, Brian Haney, pro se, who hereby respectfully moves this Supreme Court of Ohio pursuant to R.C. § 2731.02, for an order compelling Judge Stephen A. Wolave of the Greene County Common Pleas Court, to exercise judicial discretion by issuing a ruling on the Motions before that Court, requesting transcripts of the hearing to vacate or set aside sentence held on July 20, 2007, under Case No. 2006 CR 270 at the State's expense, for the purpose of Petitioner's pending appeal in the Second Appellate District Court of Appeals under Case No. 2007 CA 0071.

The Petitioner's reasons in support of his request to issue the writ against Judge Stephen A. Wolave is more clearly set forth in the attached memorandum and affidavit hereto.

Respectfully submitted,

*Brian Haney*  
Brian Haney, Inmate #526-896  
London Correctional Inst.  
P.O. Box 69  
London, Ohio 43140

**FILED**  
OCT 18 2007  
CLERK OF COURT  
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

STATEMENT OF THE FACTS AND CASE

On February 23, 2007, Brian Haney ("Petitioner") filed a petition for post-conviction relief pursuant to R.C. § 2953.21 with claims of ineffectiveness of counsel under Case No. 2006 CR 270 in the Greene County Common Pleas Court.

On July 20, 2007, Judge Wolaver of the Greene County Common Pleas Court held a hearing on the petition for post-conviction relief. Present in open Court were the Petitioner and his appointed counsel Tom Kollin, and the Assistance Prosecuting Attorney on behalf of the State of Ohio.

Judge Wolaver took testimony from Petitioner and former counsel who represented the Petitioner at the guilty plea hearing. On August 15, 2007, Judge Wolaver overruled Petitioner's post-conviction petition. On August 20, 2007, Petitioner's appointed counsel filed a timely notice of appeal and request for transcripts under Trial Case No. 2006 CR 270 and Appeal Case No. 2007 CA 0071 in the Greene County Clerk of Courts Office.

Appointed counsel was not going to be counsel on appeal and filed the notice of appeal and request for transcripts to protect Petitioner's rights to appeal and a copy of the July 20, 2007, transcripts of the hearing on the post-conviction petition.

Also, Petitioner not knowing his appointed counsel had protected his rights to appeal and rights to a copy of the transcripts at the State's expense, filed a pro se motion for the transcripts at the State's expense.

On October 5, 2007, appointed counsel Tom Kollin sent Petitioner a letter stating he did not have the July 20, 2007, transcripts of the post-conviction petition hearing, and that he did request it and, curiously, it was not prepared and sent to him. Also, appointed counsel stated in the letter that he asked Judge Wolaver to appoint appellate counsel, but that too was denied." *See Exhibit A, attached*

*hereto*. On October 12, 2007, the Petitioner received the Rule 11(B) Notification of the record for appeal being complete indicating a summary of docket and journal entries had been filed on August 21, 2007, and a copy of the transcripts of proceedings had been filed on August 24, 2007, with the Court of Appeals. *See Exhibit B, attached hereto.*

The Judge Wolaver of the Common Pleas Court has order the court report send Petitioner a copy of July 20, 2007, transcripts filed with the Second Appellate District Court of Appeals under Case No. 2007 CA 0071 on August 24, 2007, at the State's expense for the purpose of Petitioner using the transcripts to draft his pro se appellant's brief with the Court of Appeals.

**PETITIONER WRIT SHOULD BE ISSUED AGAINST JUDGE WOLAVER**

1. Judge Wolaver under the circumstances of Petitioner case being on appeal in the Second Appellate District Court of Appeals under Case No. 2007 CA 0071, should be compel by this Court to issue in order immediately on both motions requesting transcripts of the July 20, 2007, at the State expense filed under Case No. 2006 CR 270 in the Common Pleas Court of Greene County, Ohio.

2. The Petitioner is representing himself on appeal pro se in the Second Appellate District Court of Appeals under Case No. 2007 CA 0071, and under the Ohio Supreme Court case law, he is clearly entitled to a one copy of the transcript at the State's expense.

The Ohio Supreme Court has held: The right to be furnished a transcript of evidence at the state expense has been limited to those cases wherein the indigent has an actual appeal pending. *State ex rel. Vaughn v. Reid Clerk of Courts, 173 Ohio St. 464, 466, 184 N.E.2d 101; State ex rel. Baines v. Parrino, Judge, 174 Ohio St. 531, 190 N.E.2d 571.*

3. The Petitioner has to request the Second Appellate District Court of Appeals for a sixty (60) day extension of time to file his pro se brief just because Judge Wolaver will not furnished him with one free copy of the transcript at the State's expense for the purpose drafting his brief on appeal.

WHEREFORE, Petitioner hereby request this Court of an order issuing a writ against Judge Wolaver compelling him to issue a ruling on the motions requesting transcripts and provide the Petitioner with one copy of the transcripts at the State's expense for the purpose of his pending appeal.

Respectfully submitted,

Brian Haney 526-896  
Brian Haney, Inmate # 526-896  
London Correctional Inst.  
P.O. Box 69  
London, Ohio 43140  
Petitioner, Pro Se

**AFFIDAVIT OF VERITY**

***State of Ohio, Madison County.***

I, Brian Haney, after being duly sworn accordingly to law, do hereby dispose and state the following is true and accurate to the best of my knowledge, in the forgoing writ of mandamus.

Brian Haney 526-896  
**AFFIANT**

***Sworn to and Subscribed to in my presence, a Notary Public, this \_\_\_ day of October 2007.***



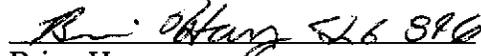
**GILBERT A. HURWOOD**  
Notary Public  
In and for the State of Ohio  
My Commission Expires 01/09/08

Gilbert A. Hurwood  
**NOTARY PUBLIC**

11/9/08  
**My Commission Expires**

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the forgoing was sent by regular U.S. Mail service, postage prepaid this 15<sup>th</sup> day of October 2007, to Stephen A. Wolaver of the Greene County Common Pleas Court., at 45 N. Detroit Street., Xenia, Ohio 43385.

  
Brian Haney

THOMAS M. KOLLIN  
Kollin@woh.rr.com

October 5, 2007

Mr. Brian Haney  
Inmate No. A526896  
P.O. Box 69  
State Route 56  
London, Ohio 43140

RE: State of Ohio v. Brian S. Haney  
Case No. 2006 CR 0270  
Greene County Court of Common Pleas

Dear Mr. Haney:

Unfortunately, I do not have the Transcript of your Petition for Post-Conviction Relief dated July 20, 2007. I did request it and, curiously, it was not prepared. I also asked that you be appointed counsel, but that too was denied. I have enclosed a copy of the only transcript that I have on file, the Transcript of Digital Recording Guilty Plea and Sentencing filed on October 23, 2006, a copy of the Request for Transcript, and a copy of the Criminal Docket Statement in regards to your case.

Good luck in your appeal, remember you can ask for a continuance.

If you have any questions please do not hesitate to contact me.

Very Truly Yours,

*[Dictated, but not read]*

Thomas M. Kollin

/dlr  
Enclosures

Exhibit (A)

FILED

2007 OCT 10 AM 10:35

CLERK OF THE COURT OF APPEALS  
SECOND APPELLATE DISTRICT  
GREENE COUNTY, OHIO

COURT OF APPEALS  
CLERK OF COURTS

Case No: 2007 CA 0071

STATE OF OHIO  
Appellee

vs.

BRIAN HANEY  
Appellant

**Rule 11(B) Notification  
Record for Appeal is Complete**

To:  
BRIAN HANEY  
#526-896  
PO BOX 69  
LONDON OH 43140

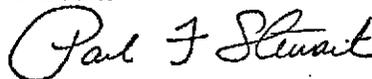
Pursuant to App R. 11(B), you are hereby notified that the record for appeal is complete.

Accordingly, your attention is directed to the rules of appellate procedure on the second page of this notification.

Sincerely,

Terri A. Mazur  
Clerk of Courts

By



Deputy Clerk of Courts

Summary of docket and Journal Entries filed: AUGUST 21, 2007  
Transcript of Proceedings filed: AUGUST 24, 2007  
Copy to Court of Appeals

Exhibit (B)

In compliance with the Ohio Rules of Appellate Procedure, your attention is directed to the following rules:

App. R. 18(A) Time for Serving and Filing Briefs. Except as provided in Rule 14(C) the appellant shall serve and file his brief **within twenty days after the date on which the clerk has mailed the notice required by Rule 11(B)**. The appellee shall serve his brief **within twenty days after service of the brief of the appellant**. The appellant may serve and file a reply brief **within ten days after service of the brief of the appellee**. (Emphasis Added)

App. R. 14(B) Enlargement or Reduction of Time. The court for good cause shown may upon motion enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time.

Local Rule 2.22 Briefs: Extension of time. A request for an extension of time within which to file a brief shall be made by written motion, filed with the Clerk of Courts prior to the due date of the brief, supported by a memorandum stating with specificity the reasons for the request and establishing good cause for an extension.

App. R. 18(C) Consequence of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, **the court may dismiss the appeal**. If an appellee fails to file his brief within the time provided by this rule, or within the time as extended, **he will not be heard at oral argument except by permission of the court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action**. (Emphasis Added)

**NOTE: FAILURE TO COMPLY WITH THE ABOVE PROCEEDINGS MAY RESULT IN THE APPEAL BEING DISMISSED BY THE COURT OF APPEALS. SUA SPONTE**

FILED

2007 AUG 20 PM 4:02

COURT OF APPEALS  
CLERK OF COURTS

FILED

2007 AU 20 PM 4:03

TERRI A. MAZUR, CLERK  
COMMON PLEAS COURT  
GREENE COUNTY, OHIO

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO  
CRIMINAL DIVISION

2007CA0071

STATE OF OHIO,

Plaintiff,

v.

BRIAN HANEY,

Defendant.

) CASE NO.: 2006 CR 270

) Judge Wolaver

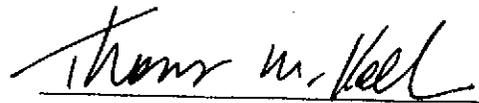
) REQUEST FOR TRANSCRIPT

TO THE COURT REPORTER OF JUDGE WOLAVER:

Please prepare and file a transcript of all the proceedings herein to include the hearing to vacate or set aside sentence held on July 20, 2007, for use in an Appeal, and provide Counsel for Defendant (on Appeal) with a copy of the same in accordance with the Order and Authorization of the Court. Defendant is incarcerated and appears indigent. Accordingly please waive the costs of preparing the transcripts or in the alternative attribute costs to court services.

COPY

Respectfully submitted,

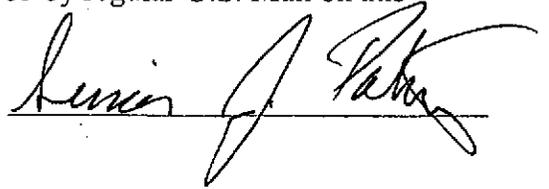


THOMAS M. KOLLIN (0066964)  
Cicero & Kollin, PLL  
500 E. Fifth Street  
Dayton, Ohio 45402  
(937) 424-5390  
Fax (937) 424-5393  
ATTORNEY FOR DEFENDANT

Exhibit (C)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded to Assistant Prosecuting Attorney, David Hayes, 61 Greene Street, Xenia, Ohio, 45385 by regular U.S. Mail on this 20<sup>th</sup> day of August, 2007.

  
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