

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

vs.

NAWAZ AHMED

Appellant.

CASE NO: 2001-0871

Common Pleas case: 99-CR-192

THIS IS A DEATH PENALTY CASE

MOTION FOR REAPPOINTMENT OF COUNSELS
FOR REOPENING APPEAL

1. Now comes Appellant Nawaz Ahmed, and moves this Honorable Court for reappointment of two counsels who were earlier appointed for representation of this non-indigent appellant for the purpose of filing and arguing at hearing, discovery, and Appeal reopening in this case. Because this Appellant has never been found to be an indigent by any Ohio Court, he has a Constitutional and inherent right to be represented by counsels of his choice under the 5th,6th,8th,9th,10th and 14th amendments to the United sates constitution and similar provisions of the Ohio Constitution.

2. For purpose of this proceeding Appellant has his own funds but Belmont County Prosecutor and Sheriff and Courts continue to deny Appellant return of his Property including the over \$ 14,000.00 taken from Appellant at the time of his arrest. See Ahmed's filings in this case on 10/27/04 making the same claims to his own funds, and also on 07/15/02 "pro Se Motion to order release of funds and prohibit State from denying appellant right to retain counsel of choice", and other Motions filed on 5/6/02 and 5/21/02.

FILED
FEB 07 2008
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
FEB 07 2008
CLERK OF COURT
SUPREME COURT OF OHIO

3. An affluent defendant-Appellant always has right to counsel under the U.S. Constitution 6th amendment irrespective of the type of criminal litigation, be it Trial, Appeal, Post-Conviction or any Collatral criminal or civil proceeding. No court of the Land has ever denied an affluent defendant-Appellant exercise of this inherent and natural right starting from the early days of magna carta and King's Court or the Common Law courts in England and in the United Sates and ohio.

" Due process seeks to prevent Government from arbitrarily depriving any person of his property."

Sensenbrenner v. crosby, 37 Ohio St.2d 43(Ohio 1974).

"When a court Rule or Satatute conflicts with a Constitutional provision the later must prevail." In re black, 36 Ohio St.2d 124(OH 197

The Ohio Court of Appeals, tenth Appellate district has held:

" There is an inherent right to Counsel as to all matters be it civil or criminal [when one can pay for the services].

Seigwald v. Curry, 40 Ohio App.2d 313(Ohio App. 10 Dist. 1974).

This Court has found that Appellant had on him 15 traveller checks totalling \$ 7,500, and \$ 6,954.34 in Cash. See P-16, at State v. Ahmed, 103 Ohio St.3d 27 (Ohio 2004). Ahmed has also filed the list of his financial institutions alongwith the approximate deposits in case No. 08-020 in this Court.as an Exhibit to Affidavit In Support of Complaint.

4. The Belmont County Prosecutor and sheriff continue to prohibit the Wesbanco Bank, Inc. Wheeling, WV from releasing the funds of Ahmed in IRA account when IRA funds are exempted from any and every judgment, execution, levy, attachment, ~~re~~straining orders under ORC 2329.66(A) (10)(c) and also exempt under ORC 2329.69 "exemptions Apply to All Courts"

The United/^States Supreme Court in James v. Strange, 92 S.Ct.2027(1972) has prohibited the sates from denying even indigent defendants any exemptions which are available to any other person under the civil laws. The Court also found that if any Statute or Rule of Court prohibits such exemptions to criminal defendants, such law is unconstitutional, as violative of equal protection of laws, and equal protection clause of 14th amendment to U.S. Constitution.

5. In the Fuller v. Oregon, 94 S.Ct. 2116 (1974) the U.S. Supreme Court also held that , " statutes cannot chill the assertion of constitutional rights by penalizing those who chose to exercise them," citing United sates v. Jackson, 390 U.S. 570. By same analagy S.Ct.Prac.Rule 11(6) may not chill the constitutional right to counsel of this non-indigent Appellant byState preventing him from pre-arrest and at every stage of the criminal proceedings against him,^{from}using his own personal funds with full liberty, freedom and choosing and without any kind of State or Court interferences^{by},/indignitities of the restraining orders or judgments when this Appellant has never been afforded any due process hearing in the matters of his own personal funds in any court.

6. In the Lawrence v. Florida, 127 S.Ct. 1079 the U.S. Supreme Court has very clearly signalled that even in the post-conviction-collatral proceedings theState cannot prohibit or prevent a non-indigent defendant from hiring his own counsel,

"... State prevented him from hiring his own attorney or from representing himself."

After appointing counsels, this court must set very clear deadlines to be followed by the counsels as a^{pre-}condition of their appointment. However, court must afford counsels full time for briefing as allowed under the amended S.Ct.Prac.R.19(5) allowing full 180 days to file

Merit Brief and similar other timing provisions. The full time is needed because of over 14 Propositions of Law raised. It also show that appellate counsels were ineffective in not asking for supplementary briefing to raise these propositions of law when additional 30 days became available under Rule 19(5) amendment effective July 1,2004.

7. This court has allowed additional time to those appellants whose cases were pending when amendments to s.Ct.Prac.R.19(5) became effective. This appellant was denied such additional time for Merit briefing. See cases Sate v. Brown, No. 05-749; State v. Mundt, No. 05-192; State v. drummond, No. 04-586; State v. Koliser, Jr. No. 03-2165 and may be some more.

CONCLUSION

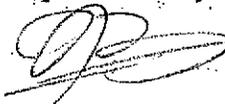
Appellant Requests that this court either direct to Sheriff to release the funds of appellant so that he can employ counsels of choice by use of those funds, or in the alternative, appoint these following attorneys in this proceeding,

Attorney John P. Parker^{ESQ} and Attorney Thomas Rein,^{ESQ} of Cleveland, Ohio.

If these attorneys are not available to accept court appointment or have scheduling conflicts with other deadlines. Then Court may reappoint the Attorney Michael Benza^{ESQ} and Attorney Alan Rossman,^{ESQ} of Cleveland, OH. Because both of these attorneys were appointed before and they filed the Application For reopening and Affidavit supporting it. Similarly, must inquire from these attorneys about their current caseload and any deadlines in other cases and if they are willing to accept the court appointment and meet all filing deadlines in this case.

Attorneys will need additional time to secure record for them and their needs and also arrange refiling of entire record from the trial Court. Because this court had allowed the record to be retained during the pendency of the proceedings about Application For reopening in the OH Supreme Court. That record was returned to the trial court on 3/10/04 by the Clerk of Supreme Court.

Respectfully Submitted,



NAWAZ AHMED

A404-511,OSP.

878 Coitsville-Hubbard Road

Youngstown, Ohio 44505.

PROOF OF SERVICE:

certified that a copy of the foregoing was served upon the Belmont County Prosecutor Christopher berhalter at 147 A West main Street, St.Clairsville, Ohio 43950 by regular mail on 2-5-08 .



NAWAZ AHMED