

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

v.

NAWAZ AHMED

Appellant.

FILED
MAR 11 2008
CLERK OF COURT
SUPREME COURT OF OHIO

CASE NO: 2001-0871

Common Pleas Case: 99-CR-192

THIS IS A DEATH PENALTY CASE

MOTION TO CORRECT COURT ENTRY OF 03/02/2005
AND ISSUE A NEW ENTRY CONFORMING WITH TRUTH.

Now comes appellant Nawaz Ahmed and requests this Honorable court to correct the court entry filed 03/02/2005 in this case. The authority for this request is provided by S.Ct.Prac.Rule 11(1) and Rule 11(6) and S.Ct.Prac.Rule XIV(4).

1. The error in the court entry has come to light after a close examination of case dockets of all death penalty direct appeal cases filed in the Ohio Supreme Court. In every other case the notation on the docket is exactly the same as stated in the court entry denying the Application for Reopening. However, in this case the reason for denial appears to have been later changed in the court entry issued after the initial decision. The initial decision depicted by the Clerk's notation on the case docket says, " 03/02/05 Denied ". The Clerk takes this information when the order of the court says:

" IT IS ORDERED by the Court that the Application for reopening is denied. "

This correlation is confirmed by the research of all cases and has no exception in any other case except this case No. 2001-0871.

RECEIVED
MAR 11 2008
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2. In the few cases where Court order stated:

" IT IS ORDERED by the Court that the application for reopening is denied because appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R.XI(6)(A)."

The Clerks notation on the case docket reads:

" 12/12/07 Denied. Appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R.XI(6)(A)."

There is absolutely no departure or difference of reason for denial noted by the Clerk on the case docket and the language of the court entry in any other case except in case No. 2001-0871. This appears to be an error.

3. To prove the point stated in no.2 above, see the following case dockets and court entries in those cases.

State v. Cunningham, Case No. 2002-1377 denied on 08/29/07.

State v. Turner, Case No. 2003-0346 denied on 11/21/07.

State v. Bryan, Case No. 2001-0253 denied on 10/27/04.

State v. Cassano, Case No. 1999-1268 denied on 10/13/04.

4. To prove the point stated at no. 1 above, see the following case dockets and court entries in these cases.

State v. Bethel, Case No. 2003-1766 denied on 08/29/07.

State v. Johnson, Case No. 2004-1163 denied on 07/25/07.

State v. Drummond, Case No. 2004-0586 denied on 04/18/07.

State v. Craig, Case No. 2004-1554 denied on 02/28/07.

State v. Conway, Case No. 2003-1964 denied on 11/29/06.

State v. Jackson, Case No.2003-0137 denied on 10/04/06.
State v. Conway, Case No. 2003-0647 denied on 08/23/06.
State v. Hand, Case No.2003-1325 denied on 08/02/06.
State v. McKnight, Case No. 2002-2130 denied on 06/07/06.
State v. Brinkley, Case No. 2002-2032 denied on 10/05/05.
State v. Foust, Case No. 2002-1350 denied on 08/10/05.
State v. Leonard, Case No. 2001-1589 denied on 06/29/05.
State v. Fitzpatrick, Case No. 2002-0506 denied on 02/16/05.
State v. Jordan, Case No. 2000-1833 denied on 09/01/04.
State v. Scott, Case No. 2000-1001 denied on. 07/14/04.
State v. Taylor, Case No. 1999-0972 denied on 05/16/03.
State v. Coley, Case No. 1998-1474 denied on 03/04/02.
State v. Franklin, case No. 1998-2061 denied on 03/19/03.
State v. Jackson, Case No.1998-0726 denied on 01/16/02.
State v. Jones, Case No. 1998-1483 denied on 09/26/01.
State v. Tibbetts,Case No.1998-1970 denied on 12/05/01.
State v. Murphy, Case No.1998-1586 denied on 11/07/01.
State v.Stallings, Case No. 1998-0640/denied on 02/07/01.
State v. Johnson, Case No. 1998-1333 denied on 07/12/00.
State V. Madrigal, Case No.1997-0098 denied on 05/17/00.
State v. Cornwell, Case No. 1997-1390 denied on 02/02/00.
State v. Fears, Case No. 1998-0019 denied on 01/19/00.
State v. Stojetz, Case No. 1997-1111 denied on 08/18/99.
State v. Raglin, Case No. 1997-0141 denied on 03/03/99.
State v. Raglin, Case No. 1996-2872 denied on 03/03/99.
State v. Clemons, Case No. 1996-2790 denied on 03/03/99.
All of the above cases prove that Clerk never made any error or mistake
in making the correct notation of the decision by the court.

5. UNTIMELY-DEFAULT NOT UNIFORMLY AND EQUALLY APPLIED

The Ohio Supreme ^{court} fail to follow a uniform and equal standard or measure to apply the "untimeliness-default" provisions of S.Ct.Prac. Rule 11(6)(A) and App.Rule 26(B)(1) in all cases. The selective use of Rule 11(6)(A) untimely or "90-days filing" provision renders the Rule or its application to Appellant Ahmed Unconstitutional. The 90-day filing provision is arbitrary, vague and ill-defined as court has never defined what constitutes a "good cause" and this provision is discriminately applied to cases which Justices do not want to hear or do not politically feel good for their political image or suited for their reelection to the Court or ~~are~~ DEEMD politically unpopular.

5.1. Such selective application of the 90-day filing requirement also contradict the clear holdings of the UnitedStates Supreme Court cases:

" The procedural-default applied against claims filed by an Appellant/Petitioner must be "regularly followed" and evenhandedly applied to all similar claims" and the provision of the rule must be firmly established and regularly followed at the time it was applied to the Appellant's claims".

Ford v. Georgia, 498 U.S. 411 (1991); Dugger v. Adams, 489 U.S. 401, 410, n.6. (1989); Hathorn v. Loyorn, 457 U.S. 255,263 (1982); Warner v. United States, 975 F.2d 1207,1213(6th Cir. 1992); Byrd v. Collins, 209 F.2d 486,521 (6th Cir. 2000); Maes v. Thomas, 46 F.3d 979, 986 (10th Cir.); Oliver v. Moore, 2005 U.S. Dist.LEXIS 15223 (U.S. Dist. S.D. April 28,2005);

5.2.OHIO Supreme Court delibrately and intentionally avoided to apply the 90-day filing requirement of S.Ct.Prac.Rule 11(6)(A) in these cases:

State v. White, Case No. 1996-2029, decided on/denied on 08/02/2000;
(Application filed 742 days after denial of Appeal).

State v. White, Case No. 1996-2509, denied on 08/02/2000;
(Application filed 742 days after denial of Appeal)

State v. Hartman v. Case No. 1998-1475 , denied on 03/20/2002;
(Application filed 107 days after denial of Appeal)

State v. Carter, 1998-0921. case, denied on 03/19/2003;
(Application filed 854 days after denial of Appeal)

State v. Issa, Case No. 1998-2449, denied on 09/24/2003;
(Application filed 601 days after denial of Appeal)

State v. Cowans, Case No. 1997-1312, denied on 08/04/2004;
(Application filed 1,556 days after denial of Appeal)

State v. Franklin, Case No. 1998-2061 denied on 08/04/2004;
(Application filed 520 days after denial of Appeal)

State v. Monroe, Case No. 2002-2241 denied on 05/10/2004;
(Application filed 237 days after denial of Appeal)

State v. Jackson, Case No. 2002-1604 denied on 08/02/2006;
(Application filed 152 days after denial of Appeal)

State v. Getsy, Case No. 1996-2346 denied on 11/22/2006;
(Application filed 630 days after denial of Appeal).

The above cases show that Ohio Supreme Court has been very selective, discriminatory and arbitrary in enforcing the 90-days filing provision of S.Ct.Prac.Rule 11(6)(A) in all similarly situated cases and on same or similar claims of ineffective-appellate-counsel. The court single~~ly~~ but certain cases where it apply the 90-days filing provision.

Wherefore, court's actions are unconstitutional and violates the equal protection of laws and also violates procedural due process rights. Court violates 5,6,8,9,14 amendments to US Constitution in its arbitrary enforcement of 90-day filing requirements against only THREE applicants when it ignored all Ten Appellants listed above.

6. THE 6TH CIRCUIT COURT OF FEDERAL APPEALS FINDS APPLICATION OF TIMELINESS-DEFAULT IN DEATH PENALTY CASES AS "FLUCTUATING" UNDER APP.RULE 26(B).

The Court of Federal Appeals for the 6th Circuit has found after an exhaustive research and study of Ohio Death Penalty cases filed under App.Rule 26(B) raising ineffective-appellate-counsel claims. That OHIO Supreme Court has given "fluctuating-treatment" to enforcement of 90-days filing requirement of App.Rule 26(B)(1). See Franklin v. Anderson, 434 F.3d 412,421 (6th Cir. January 9,2006)(Ohio Supreme Court has given 'fluctuating-treatment' to enforcing 90-days filing deadline of App.Rule 26(B)(1). The state courts have not regularly followed and enforced the Rule's timeliness requirement. The Ohio Supreme Court's treatment of the App.Rule 26(B) applications does not constitute"an occasional act of grace" in excusing the Rule's requirements in these capital cases) citing Hutchison v. Bell, 303 F.3d 720, 737 (6th Circuit, Ohio 2001). Coleman v. Mitchell, 268 F.3d 417, 429 (6th Cir. Ohio 2001) (nor is Ohio Supreme Court applying clearly delineated exception to the timeliness requirement in these capital cases). See Hutchison, 303 F.3d at 738-39.

The Franklin, court analysed the cases from 2000 to 2004 and found numerous cases appealed to the Ohio Supreme Court from lower Appellate courts where OHIO Supreme court performed merit review of claims and ignored the untimeliness-provision relied upon by the lower courts. See also Parker v. Bagley, 2006 U.S. Dist.LEXIS 63489 (N.D. Ohio sept. 6,2006) discussing the Franklin v. Anderson, supra, finding of the "fluctuating treatment". Wherefore, S.Ct.Prac.Rule 11(6)(A) timeliness requirement of 90-day filing was not "firmly established and regularly followed" by the OHIO Supreme Court in its arbitrary application to Ahmed.

7. THE PENDING MOTION FOR RECONSIDERATION TOLLED THE 90-DAY PROVISION OF S.Ct.Prac.Rule 11(6)(A) IN THE CASE OF APPELLANT.

Appellant filed a timely Motion For reconsideration on 9/2/04 in this case and further amended it on 9/7/04, because of the limitations imposed upon the inmate-Free-letter by which three-part Motion was mailed to court by appellant. The Motion was denied on 10/27/04. See State v. Ahmed, 103 Ohio St.3d 1496(Ohio, October 27,2004);

Such a Motion is part of direct Appeal as defined by ORC 2505.01(A), and also by S.Ct.Prac.Rule 11(4) and caselaw about the "Appellate Jurisdiction" over the Direct Appeal until the time of issue of Mandate. The filing of Notice of Appeal and time of issue of Mandate are the two timelines defining the "Appellate Jurisdiction over the Appeal" under Ohio Law. Loos V. Wheeling & Lake Erie Ry., 134 OS 321(1938); See ORC 2505.39 " shall send a mandate to the lower court". The Mandate was issued on 10/27/04 in this case. Wherefore, the 90-day time to file the Application for reopening began from the time Mandate was issued and not from the "date of entry of Judgment" on 08/25/04. The "date of entry of Judgment of the Supreme Court" applies only to those cases in which appellant did not file a Motion for reconsideration. See similar interpretation of "Direct Appeal" by U.S. Supreme Court Rule 13.3 and 28 USC 2101, and caselaw about the "time to seek review by Petition for writ of certiorari".

In cases in which no reconsideration is requested the 90-days filing requirement of S.Ct.Prac.rule 11(6)(A) begins from the time of "entry of judgment of the supreme Court". However, for cases in which a reconsideration is requested, the time of entry of Judgment begins from the denial of reconsideration and not before. See Morgan v. Pads,

104 Ohio St.3d 142, Id.at P18-19.

By this interpretation of S.Ct.Prac.Rule 11(6)(A), this Appellant was required to file his Application for reopening on or before 01/25/05. The Application filed on 12/21/2004 was not UNTIMELY and did not violate the 90-days filing deadline of Rule 11(6)(A). The Court's finding of untimeliness is factually wrong and must be corrected. The Court entry of 03/02/2005 must be corrected to show this fact, in order for the court's entry/order to conform with the Clerk's notation on the case docket 2001-0871.

8. DENIAL OF ADEQUATE TIME TO RESEARCH, PREPARE AND FILE APPLICATION

The Ohio Supreme Court knows that Appellant Ahmed claimed and case record showed that Ahmed had his own funds and was found "not-indigent" by the trial Court at every stage of the proceedings, including the final order of 2/02/2001 in case 99-CR-192 Belmont County Common Pleas Court. Appellant Ahmed made the same claimed right to counsel for filing the Application for reopening on 08/27/04 in his Pro se Motion For Appointment of Counsels. The Motion was granted on 09/21/2004 as the court appointed two attorneys for this very purpose. See State v. Ahmed, 103 Ohio St.3d 1450 (Ohio , September 21,2004).

Why it took 30 days for the Ohio Supreme Court to rule upon the Motion for Counsels for filing Application For reopening? This time-lost is directly attributed to OH Supreme Court and STATE of OHI-O which has prevented Appellant Ahmed^{the} use of his own funds without any due-process hearing, thus preventing Ahmed representation of Counsels of Choice. It is a structural-error and requires reversal. See United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct. 2557 (June 26,2006).

"Where right to be assisted by counsel of one's choice is wrongly denied, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is complete where a defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice--- ~~right to effective counsel~~ which is the right to a particular lawyer regardless of comparative effectiveness--- with the right to effective counsel-- which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed."

United States v. Gonzalez-Lopez, 548 U.S. 140(2006) at HN3.

"the structural errors include the denial of counsel, ^{denial of} the right to self representation, the denial of the right to public trial, and the denial of the right to trial by jury by giving of a defective reasonable doubt instruction."

All of these structural errors are raised in the Application for reopening filed by Appellant Ahmed. The court did not want to look upon the merits of any of these structural-errors, because it could not hide behind the "proof of prejudice" as the prejudice is presumed in all these errors. So the Justices of Ohio Supreme Court invented a false escape from its duty to perform a merit review of the Application, as it wrongly concluded that Application was filed outside the 90-days filing deadline imposed by S.Ct.Prac.Rule 11(6)(A). When infact, the Application was filed prematurely and ahead of time and it claimed that "Application is Timely" at the very firstpage.

As if Court did not want to allow full time to Appellant to research and prepare the Application, Court totally ignored the 30 days late notification of appointment of counsels as "good cause" also pled by the counsels, as an alternative ground. Although they also cited some of the cases in which OHIO Supreme Ct.had not enforced the

90-days timeliness requirement of the Rule. The court simply ignored its duty to evaluate the "good cause" pled by the Appellant Ahmed, as if it did not exist or had no legal value when S.Ct.Prac.Rule 11(6)(A), and (B)(2) required that "good cause" be pled and shown.

9. PREVENTING APPELLANT FROM HIRING COUNSELS OF HIS CHOICE IS IN ITSELF A GOOD-CAUSE FOR EXCUSE OF ANY PURPORTED DEFAULT.

Even when Ahmed has proven that he filed a premature application for reopening on 12/21/04 when due date for filing was 01/25/05. Even if any untimeliness can be presumed by the Ohio Supreme Court, it is further excusable as "good cause" under the US Supreme Court precedence in Murray v. Carrier, 477 U.S. 478 (1986) and other cases.

" Some interference by officials made compliance impracticable" Brown v. Allen, 344 U.S. 443, 486 (1953)..."

The fact that Ahmed is prevented from use of his own funds by the Prosecutor and trial Judge whose bias and Prejudice is a claim raised in the Application, and by the Ohio Supreme Court, as it took 30 days to provide counsels to Ahmed, are "interferences by Ohio Officials which made the filing of application impracticable". Murray v. Carrier, 477 U.S. 478 (1986).

10. PLEADING MERITORIOUS CLAIMS ALSO EXCUSES ANY PURPORTED DEFAULT

The S.Ct.Prac.Rule 11(6)(B)(3) requires that all New Proposition of Law be raised which were previously not considered on the merits. Ahmed raised 14 New Propositions of Law which were not considered before on the Merits as the court appointed public defenders failed to raise them. S.Ct.Prac.Rule 11(6)(E) provides that "The Application for reopening shall be granted if there is a genuine issue as to whether the appellant

was deprived of the effective assistance of counsel on appeal."

This provision as interpreted by the OHIO Court of Appeals and applied to various cases in which relief was granted reads:

" This court, however, on numerous occasions has overlooked App.Rule 26(B) procedural deficiencies to reach the merits of an application for reopening... Thus an application for reopening with merits should supersede any procedural deficiencies of the application."See State v. Manos, 1994 Ohio App.LEXIS 436 (February 22, 1994) unreported, reopening granted (September 13, 1996); State v. Smiley, 1998 Ohio App. LEXIS 1886;

A similar statement is found in State v. Cheuk Fung, 2002 Ohio App.LEXIS 4689 (8th Ohio App. June 6, 2002) saying:

" App.Rule 26(B)(5) further provides that "an application for Reopening shall be granted if there are a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal". In the matter sub judice, it would be unjust if we denied Chu's application because of a procedural defect [of filing later than the 90-days deadline of App.Rule 26 (B)(1).].

Moreover, such decision is consistent with our previous holdings. See State v. Manos, No. 64616; State v. Smiley, No. 72026, reopening granted (April 22,1998). ..

We agree with the State of Ohio that they application is untimely and Chu has failed to assert any good cause for his untimely filing. However, this court has previously overlooked App.Rule 26 (B) procedural deficiencies to reach the Merits of an application for reopening.

Accordingly, the application is granted..."

State v. Chu and Cheuk Fung, 2002 Ohio App. LEXIS 4689 (June 6,2002).

Ohio Supreme Court has totally ignored its duty to perform the Meritreview of the Application filed by Ahmed and has hidden behind a false and wrong finding that Application was filed outside the 90-day deadline of the S.Ct.Prac.rule 11(6)(A). The court entry of 03/02/2005 must be corrected and all claims of ineffective appellate counsel must be considered on Merits as most claims do not require any proof of Prejudice under the law because of structural-errors or prejudice is presumed in violation of speedy trial right ~~violation~~ as the delay occurred due to

the violation of another Constitutional Right to selected counsel under the 6th Amendment to US Constitution. And also because delay exceed seventeen months when prejudice is presumed after one year delay.

"A criminal defendant may not be deprived of a speedy trial because of the prosecution or defense is lazy or indifferent or because prosecution seeks to harass the defendant rather than bring him fairly to justice. Nor may counsel effectively WAIVE His Client's rights where record reveals that later was victim of inadequate representation." See HN 8 in,

Townsend v. The superior Court of Los Angeles County, 15 Cal.3d 774, 543 P.2d 619 (December 24, 1975) as cited by the Ohio Supreme Court in State v. McBeen, 54 Ohio St.2d 315 (Ohio, May 31, 1978) at 596 and HN4.

When it is established that Appellant Ahmed was denied his 6th Amendment Right to hire and representation by counsel of choice, any delay in trial is directly attributed to the denial of this constitutional right under the 6th amendment. It is state of Ohio which caused the delay in trial by harrasing Ahmed and denying him use of his own funds from 9/13/99 by illegal use of abated divorce case 99-DR-40 restraining all financial institutions holding funds of Ahmed from releasing any funds to Ahmed. See many pro se claims in postconviction and further same claims in Motion for reconsideration and also in Motion Pleadings in trial court and in the Ohio Supreme Court and also Second proposition of law in Application for reconsideration. All these claims of denial of funds also claim that Ahmed was denied right to hire and representation by selected counsels of choice. Trial Court indulged in gaining control over the funds of Ahmed with Sheriff, in local banks and even those funds which were outside Ohio and ^u court of common pleas lacks Jurisdiction over funds in financial institutions outside Ohio. Trial Court also lacked Subject-matter and patent and unambiguous jurisdiction in directing probate court not to release any funds to Ahmed in conservatorship case 00-GD-40 in Belmont County.RC 2101.24;

Many Attorneys from Columbus, Ohio wanted to represent Ahmed based upon the Franklin County fees schedule of \$ 13,500.00 per counsel. See Two Columbus, Ohio Attorneys were already representing another capital defendant in adjoining county (Jefferson County) in Steubenville, Ohio at fee schedule of \$ 13,500 per attorney. It was widely reported in the local newspaper. Ahmed read and so did the prosecutor. Prosecutor used the same information to claim at the November 29, 1999 hearing:

" This defendant is not indigent; he has substantial assets ... we have done a survey, and we find that in Franklin County, there are dozens of attorneys available and qualified who will take cases of this nature in the neighbourhood of \$ 12,000 to \$ 13,000."

(See Prosecutor, Mr. Pierce at page 7 of 11/29/99 hearing); Attorney Shoemaker and Attorney Brian Rigg both sent a written letter to Trial Judge Jennifer Sargus asking that they be sent \$ 27,000 for representation of Ahmed as selected counsels. Judge refused to transfer \$ 27,000 of defendant's own funds to these attorneys and imposed conditions that such funds will be placed with Clerk of Courts and not directly released to the attorneys, or the funds will be placed in the conservatorship created in the probate Court, Belmont County. See transcript of Phone Conference on 05/24/2000;

Ahmed had more than enough funds to hire private selected attorneys but was denied access and free use of any of his funds, or right to contract, transfer, commit funds. See Docket entry of 11/24/99 Doc.# 20 Sherrif has over \$ 14,500 of Ahmed and Conservator had over \$18,000 . See State v. Ahmed, 103 Ohio St.3d 27^{at p16} (Ohio, 2004) and doc.# 122 of 09/28/2000 and Doc.# 105 of 08/29/2000 and Doc.# 98 of 06/14/200 and doc.# 231 of 01/31/2001 and doc.# 136 of 11/29/2000.

Trial Judge asked Attorney Carpino to file appearance to represent defendant Ahmed in docket entry of 12/13/2000, Doc.# 141 and Carpino signed a written contract with Ahmed and filed a document signed by both

titled "Authority For Representation, and Removal of Court Appointed Attorneys FILED". Doc.# 153 dated 12/21/2000. Yet Attorney Carpino was not provided \$ 3000 by the trial Judge even when Motion was signed by defendant and Attorney Carpino both and filed on 12/28/2000 and on 01/03/2001. See Doc.# 151, # 178 and others. Attorney Carpino was not allowed to use \$ 3000 out of the defendants funds because trial Judge invented another corrupt scheme to remove Attorney Carpino in a sham hearing where defendant Ahmed was not represented and not allowed to speak on record. See Hearing of 01/08/2001 conducted when trial Judge Jennifer sargus was facing affidavit of Disqualification before Chief Justice.

" A defendant has an absolute Constitutional right to counsel of choice but petitioner's exclusion from the decision as to who would represent her in a capital case nontheless implicates due process rights.

... 'On trial of her life, appointment of lawyer she did not want, the petitioner needed a lawyer whom she could trust, with whom she could communicate freely, who would be her friend, her sagacious conselor. As her subsequent unhappy relationship with appointed counsels demonstrates, he was none of these but an incubus she sought to rid herself of".

(Opinion by Judge John T.Noonan in Bradley v. Henry, 9th Cir. No. 04-15919 , 6/22/05);

" The same court first concluded that in-chamber conference constituted a critical stage in the prosecution [where decision to deny counsel of choice and appointment of counsels was made by the trial judge, without the presence of defendant or her selected counsel who would argue against the removal of her selected counsel]".

Judge Ferguson ,concurring wrote:

"Petitioner was deprived of due process and also of her sixth amendment right to select counsel of her choice."

Bradley v. Henry, No. 04-15919, 06/22/05 (9th Cir. 2005).

Yet, Ohio Supreme Court do not see any violation of 6th amendment rights of Appellant Ahmed raised in 14 Propositions of Law in Application for reopening which OPD stooges appointed for appeal delibrately avoided to raise even when Ahmed asked them and wrote letters about all these claims. They were simply part of wider decision to deprive Ahmed his

Constitutional Rights to selected counsels at trial and Appeal. The Ohio Supreme Court has been part of the same conduct of depriving Ahmed selected counsels of choice when it removed the selected counsels and directed the same trial judge to appoint or reappoint the state public defenders in December/^{05,}2001. Ahmed opposed the removal of selected counsels in a written motion and asked court to require the attorneys to provide written proof of their reasons for withdrawal. By failuer of Ohio Supreme Court to conduct a hairing also resulted in Attorney Mancino keeping the \$ 5000.00 paid to him as advance-retainer for appellate level representation, which he has not returned to date. When he only filed a Notice of appeal and a Motion to withdraw and did nothing else in the case as record was filed after his motion to withdraw signed on 10/28/2001. He had not even read any record or received any part of record before that date.

Ohio Supreme Court in its order of 12/05/2001 failed to allow Appellant Ahmed to arrange another selected counsel of choice including Attorney Carpino who was declared selected Counsel for appeal at the sentencing hearing/^{on 02/02/2001}and was representing defendant in Crim.Rule 33 Motion for New trial in the trial Court when he was again removed by trial Judge by a false entry of 02/08/2001 Doc.# 254. The entry was never served upon Ahmed and his selected appeal-attorney Carpino. Thus denying Ahmed any legal recourse but be subjected to appellate representation by OPD attorneys, Ahmed sought to remove and asked their briefs be striken of record in case 2001-0871 and Appellant allowed time to arrange selected counsels of choice for appeal by use of his own funds. See Motions filed in OH Supreme Ct. on 04/24/2002, denied on 06/12/2002 and another Motion seeking the same filed on 05/21/02 denied on 06/14/02 and another Motion to order release of funds filed on 07/15/02 and ordered striken by court on 08/16/02.

Ahmed also raised the same claims in pro se amendments to postconviction claiming denial of selected counsels of choice and specifically twice illegal and corrupt removal of Attorney Joseph Carpino as selected trial and selected appeal counsel. Yet, Ohio Supreme Court, and the 7th District Court of appeals, and trial Court did not see a merit in any of those claims. Just as Ohio Supreme Court Justices may not have read the same claims raised in pro se Motion for Reconsideration and again in the Application For reopening.

" The sixth amendment right to counsel of choice commands not that a trial be fair but that a particular guarantee of fairness be provided---towit, that accused be defended by the counsel he believes to be best." HN2

United states v. lopez, 548 U.S. 140 at HN 2.

The US Supreme Court held at (a):

"... The court rejects the Government's contention that the violation is not "complete" unless the defendant show that substitute counsel was ineffective within the meaning of Strickland v. Washington, 466 U.S. 668, 691-696--i.e. that his performance was deficient and the defendant was prejudiced by it....or the defendant can demonstrate that substitute counsel's performance, while not deficient, was not as good as what his counsel of choice would have provided, creating a "reasonable probability that ... the result... would have been different, Id.,at 694.

To support this proposition, the Government emphasizes that the the right to counsel is accorded to ensure that the accused received a fair trial... and asserts that a trial is not unfair unless a defendant has been prejudiced.

The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided--to wit, that the accused be defended by the counsel he believes to be best cf. Crawford v. Washington, 541 U.S. 36,61.

United states v. Lopez, 548 U.S. 140, 126 S.Ct.2557, 165 L.Ed.2d 409, 404. (Justice Scalia delivered the opinion of the court, in which Stevens, Souter, Ginsburg, and Breyer, JJ joined.).

Wherefore, any holding by OH Supreme Court to the contrary, or claiming that evidence was substantial hold no validity in light of the above decision of the United States Supreme Court. Ahmed's postconviction claims were not heard after this decision, as such Courts failed to adhere to this decision of the highest court of the land.

However, this law is not new as it is given in many other decisions of the U.S. Supreme Court and of the 6th Circuit decision in Wilson v. Mintzes, 761 F.3d 275 (1985) upon which Attorney Carpino relied and even included the photocopy of pages in his Motion for new trial. The same case is also cited by Appellate counsels in Appellant's Merit brief as the court had held:

" two-prong performance prejudice Strickland test is not applicable to cases involving requests for substitution of counsel..."

Wilson v. Mintzes, supra,

"when an accused is financially able to obtain an attorney, choice of counsel to assist him rests ultimately in his hands and not in the hands of the state."USCA Const.Amend 6. Id.,at P5.

Citing Flanagan v. United States, 465 U.S. 259,104 S.Ct.1051, 1056, and Illinois v. Allen, 397 U.S. 337, 350-51(1970).

Wherefore, U.S. Supreme Court has not made any new rule or issued a decision which departs from previous holdings but it simply reconfirmed that wrongful deprivation of counsel of choice is unquestionably a structural error.

Based upon this holding,OH Supreme Court can not escape its duty to read the Proposition of Law No.1 and 2 and all others and hold a hearing to establish the "reason for delay of trial" directly ^{the} cause of deprivation of counsel of choice in this case. Prejudice is obvious when purported appointed counsels were not appointed in the presence of Ahmed or accepted by Ahmed as he sought their removal at every opportunity. Ahmed filed a list of 61 witnesses and counsels were not able to locate any witnesses including those who actually showed up at the Court like Ms. Bushra Malik who came with her husband, still defense counsels failed to call her to testify nor talked to her but went for a lavish lunch at the mall when prosecutor talked to her during the lunch recess,prosecutor asked from the court. *See Trial TP 442.*

The list included witnesses from the local area and adjoining city, Wheeling, WV and was made part of trial record as "Joint Exhibit 1". See Transcript of voir dire at page 1-2.

Ohio Supreme Court either did not see the list or list was not submitted with other exhibits as it is not listed among other trial exhibits. Most of the witnesses have either died or moved out of country, changed states, cities, jobs, locations, houses, addresses, phones and are not locatable, including those two who lived with Ahmed during the summer of 1999 and two children of Ahmed who were eye witnesses and alibi. Similarly, computer records have become unavailable due to mergers, bankruptcy of the employer of Ahmed and charge card companies as Ahmed used his charge cards and those usages establish an alibi. Similarly memories have dimmed and social contacts lost and affiliations weakened and people have "moved-on" with their lives and not willing to provide any evidence even if locatable, which most of them are not. Wherefore, extreme prejudice to defendant-appellant could not be avoided as the trial Court, Ohio Supreme Court refused to provide relief when due and proper as to time. The US census data show that new immigrants are the most mobile segment of U.S. Population and hard to locate. The most witnesses for defense were new immigrants as Ahmed belonged to an immigrant community. It was all lost upon the fools and stooges Public defenders of Belmont County and appointed counsels as they have never taken any interest to investigate the case, locate witnesses or preserve evidence including all the property of Ahmed lost due to inability of Ahmed to pay rent at the marital house and the apartment. All property of Ahmed was set-off and thrown away without any information to Ahmed because trial judge refused to allow Ahmed use of his own funds and the probate court was simply not interested to include that property

under the conservatorship of Ahmed. The probate Judge like trial Judge was only after hard-cash and encashed even those accounts not within the Jurisdiction of the Belmont County probate Court, as the most retirement accounts in wall-street firms and banks, insurance companies and stocks and bonds and other banks in other states. The damage to ahmed in every-way has been full and irreversalble thus permanantly prejuducial.

CONCLUSION

OH Supreme Court must correct its entry of 02/03/2005 as established above and perform a full merit review of all propositions of law as filed on 12/21/04 and refiled on 01/17/08. After such review of merits then/~~the~~^{the} court should/^{issue}a new entry, order, decision in this matter.

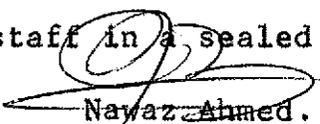
Respectfully Submitted,



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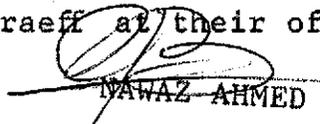
PROOF OF SERVICE:

certified that a copy of the ~~following~~ foregoing was served by regular US Mail upon Prosecutor Christopher Berhalter at 147 West Main Street, St.Clairsville, OH 43950 on 03/07/2008 by handing over to the OBP mail staff in a sealed envelope, postage prepaid.



Nawaz Ahmed.

A carbon copy of the same is served upon Attorney Kieth Yeazel and Attorney David Graeff at their official mailing address.



NAWAZ AHMED