

MOTION TO DECLARE INDIGENCY

Defendant-Appellant Jermaine Baker now moves this Honorable Court to declare Defendant Jermaine Baker indigent and to waive the filing fee. At the trial court level, the trial court found Jermaine Baker to be indigent and appointed counsel to represent him at trial.

After a jury verdict of conviction, and sentence of 32 years incarceration, the trial court once again found Jermaine Baker to be indigent and appointed counsel to represent him on direct appeal. (See Exhibit A, July 2, 2007 journal entry, attached.)

Once an appeal was perfected to the Ninth District Court of Appeals, appointed counsel filed a new affidavit of indigency and copy of Defendant's inmate account, as required by Ninth District Local Rule 2(C), which states in pertinent part:

*** * *the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate of the superintendent or other appropriate officer of the institution setting forth the amount of available funds, if any, that the inmate has on deposit with the institution.**

In the procedural history of the instant case, the appellate court refused to waive the filing fee because Jermaine Baker had 139 dollars in his inmate account. (See Exhibit B, attached motion to waive filing fee, filed on August 8, 2007)

Counsel argued to the Ninth District that \$139.00 still rendered Jermaine Baker indigent and the filing fee should be waived, but the Ninth District disagreed. (See Exhibit C, attached ruling August 15, 2007)

This Supreme Court has previously found Jermaine Baker to be indigent, in a separate case involving Defendant Baker, OSC 2007-1184; this Court has also appointed counsel for Jermaine Baker when the Ninth District Court of Appeals asserted that it lacks constitutional authority to appoint counsel for an indigent appellant, and can only appoint counsel for an indigent appellee. (See attached Exhibit D, ruling from Ninth District Court of Appeals, Sept.

10, 2007 stating that the Court can only appoint counsel "where this Court's order is being defended by a defendant or upon remand from the Supreme Court* * * *")

Counsel now asks this Court to re-declare Jermaine Baker indigent for the purpose of this appeal, to waive the filing fee, and to appoint counsel to represent him before this Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Motion to Declare Indigency was sent via regular U.S. mail to the Office of to Summit County Prosecutor 53 University Avenue, Akron, Ohio 44308 on this 4 day of June, 2008.



DONALD GALLICK (OH - 0073421)
ATTORNEY FOR APPELLANT

Attachment not scanned

IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO

STATE OF OHIO,)	C.A.
)	
Plaintiff-Appellee,)	Trial Court CR 07-01-0186 (A)
)	
v.)	<u>MOTION TO WAIVE FEES</u>
)	
JERMAINE BAKER,)	
)	
Defendant-Appellant.)	

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Now comes Defendant, by and through counsel, and files this motion to waive the filing fee in the instant appeal. Attached is a copy of an affidavit of indigency and an inmate account balance.

Respectfully submitted,



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CLERK OF COURT
SUMMIT COUNTY
107 AUG - 8 10 07
STATE OF OHIO

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Motion to Waive Fee, Affidavit in Support, and attached account statement, was sent by regular U.S. mail to the office of Sherri Bevan Walsh, Summit County Prosecutor, 53 University Avenue, Akron, Ohio 44308 on this eighth day of August 2007



DONALD GALLICK (OH - 0073421)
ATTORNEY FOR APPELLANT



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STATE OF OHIO)
)
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO)

C.A. NO. 23713

2007 SE 19 11:19:10

Appellee)

v.)

SUMMIT COUNTY
CLERK OF COURTS

JERMAINE C. BAKER)

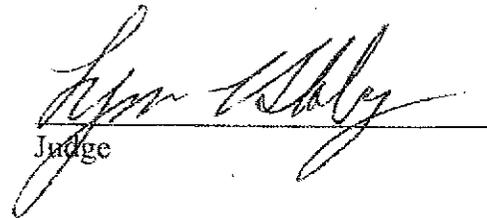
Appellant)

JOURNAL ENTRY

Appellant has filed a second motion for appointment of counsel to represent him in his appeal to the Supreme Court of Ohio. Although his prior motion was denied, appellant states that the Supreme Court has now accepted jurisdiction over the instant appeal and on that basis reiterates his motion for appointment of counsel.

Pursuant to the Rules of Practice of the Supreme Court of Ohio, Sec. II(2)(D)(2) and Sec. III(7), this Court has jurisdiction to appoint counsel for an appeal to the Supreme Court in two instances: 1) where this Court's order is being defended by a defendant, or 2) upon remand and order from the Supreme Court to do so. Here, neither circumstance applies. Therefore we are without jurisdiction to appoint counsel in this matter.

The motion is denied.



Judge

THE OHIO LEGAL BLANK CO., INC.
EXHIBIT
D