

IN THE SUPREME COURT OF OHIO

08-0331

STATE OF OHIO

Appellee

v.

DAVID HARRISON

Appellant

On appeal from the Madison County
Court of Appeals
Twelfth Appellate District

Court of Appeals
Case No. CA 2006-08-028

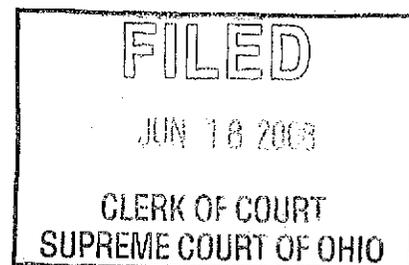
APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL

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LAW AND EXPLANATION

Pursuant to Supreme Court Rule V, Section 6, Harrison requests the record in this matter be supplemented with a copy of the docket, all motions, notices, court orders and other pleadings filed in Case Number 2003-CR-0083 in the Auglaize County Court of Common Pleas. Appellant also requests that all transcripts produced during any hearing in case number 2003-CR-0083 in the Auglaize County Court of Common Pleas also be included in the record of this case on appeal.

On June 17, 2003, Harrison plead guilty to 5-count information arising from events occurring earlier in 2003. He did so in case number 2003-CR-0083 in Auglaize County. He was sentenced to a year in prison and informed he faced up to 3 years of post release control in that case. (Appendix A to Memorandum in Support of Jurisdiction). He served his entire sentence and no post release control (PRC) was imposed on him by the Adult Parole Authority prior to his release from prison on July 26, 2004. Seven months after the expiration of his sentence, the trial court in case number 2003-CR-0083 scheduled a re-sentencing to correct an error in his sentence which should have included a mandatory 5 years of PRC. (Appendix B). Harrison's objections to the scheduled re-sentencing were rejected by the trial court.

The trial court in case number 2003-CR-0083 informed Harrison it would re-sentence him or it would accept his plea withdrawal. Harrison's plea withdrawal was accepted by the court in case number 2003-CR-0083 on March 29, 2005. (See Appendix D to Memorandum in Support of Jurisdiction). The transcript of that plea hearing is relevant to the matter accepted by the Supreme Court in this case. (See Chart on p.3 of Memorandum in Support of Jurisdiction).

The information, plea agreement, plea hearing, sentencing hearing and re-sentencing

hearing transcripts are also relevant to the issues in this matter before the court. The trial court in case number 2003-CR-0083 exercised or attempted to exercise jurisdiction the basis for which was laid on the record of that case at various hearings and in the Third District Court of Appeals' rulings regarding same prior to and following Harrison's serving of his journalized sentence to expiration.

There are double jeopardy issues accepted by the court within Harrison's Memorandum in Support of Jurisdiction. Those issues are directly related to the charges for which he plead guilty in case number 2003-CR-0083 (original case) and those for which he was indicted in case number 2005 CR-10-099 (current case). The 2005 CR-10-099 case was originally set in Auglaize county, but was eventually transferred to Madison County resulting in the conviction also involved in this case. It is critical that the court understand the charges, proceedings, statements on the record, motions filed, plea agreements reached, charges dismissed, sentences, etc. that are documented in the record of case number 2003-CR-0083. Case number 2003-CR-0083 was dismissed by Appellee prior to filing the indictment in 2005 CR-10-099.

The state is not prejudiced in any way by the inclusion of this obviously relevant information from the former case from which the original jurisdictional issues, accepted by this court, arose.

Of the propositions of law accepted by the court, the following directly involve a consideration of both case number 2003-CR-0083 (the original case) and 2005 CR-10-099 (the current case).

Proposition of Law 2: In light of this court's rule in Hernandez, once a defendant's sentence has expired, a trial court does not have jurisdiction to accept a plea withdrawal by the defendant in the case related to the expired sentence and any such purported acceptance is void.

This proposition concerns the acceptance of a plea withdrawal in case number 2003-CR-0083.

Proposition of law 3: A defendant's Double Jeopardy rights are violated by a trial on charges arising from the same set of facts and circumstances as a case in which the defendant plead guilty to an information in exchange for dismissal of all remaining charges and served his complete sentence.

This proposition involves a consideration of the charges to which Harrison plead guilty and served prison time in relating to case no. 2003-CR-0083 compared to the charges contained in the state's subsequent indictment of Harrison in case no. 2005-CR-10-099.

Proposition of law 4: A 2005 court of appeals decision as to a trial court's jurisdiction to re-sentence a defendant whose journalized sentence had expired, voided by this court in Hernandez, cannot still remain the "law of the case" or *res judicata* for a defendant in 2007 arguing an improper exercise of jurisdiction by that same trial court pursuant to the 2006 rule announced in Hernandez.

This proposition involves a comparison of the continued viability of an appellate court decision relating to case number 2003-CR-0083 as it relates to another appellate court's decision regarding the same defendant and charges relating from the same events as they unfolded in case number 2005-CR-10-099.

CONCLUSION

For the reasons set forth above, Harrison respectfully requests this court grant his motion to supplement the record in this matter and order the Auglaize County Clerk of Courts prepare and transmit to this court the complete record, including all appellate filings and orders, in case number 2003-CR-0083 as it is necessary for consideration of several of the propositions of law currently accepted by this court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served via ordinary U.S. Mail, postage prepaid, this 14th day of June, 2008 upon the following:

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