IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Appellee, v. DAVID HARRISON, Appellant.	Supreme Court Case No.: 08-0331 On Appeal from the Madison County Court of Appeals, Twelfth Appellate District Case No.: CA2006-08-028

APPELLANT DAVID HARRISON'S MOTION TO SUSPEND EXECUTION OF SENTENCE

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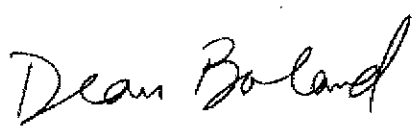
MOTION TO SUSPEND EXECUTION OF SENTENCE AND SET BOND PENDING APPEAL

Now comes Appellant, David Harrison, by and through undersigned counsel and pursuant to Supreme Court Rule XIV, Section 4(A), and hereby respectfully requests this Honorable Court to suspend the execution of his sentence and grant him an appeal bond in this matter. Appellant's reasons for said relief are more fully explained below.

Respectfully submitted,



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MEMORADUM IN SUPPORT

I. BACKGROUND

This court accepted this matter upon the memorandum in support of jurisdiction filed by Appellant. That memorandum demonstrated the extra-jurisdictional conduct by the Auglaize County Court of Common Pleas in detail. The State of Ohio presented no case or statutory law that expanded the Auglaize County Court of Common Pleas' jurisdiction to include accepting plea withdrawals after the expiration of a defendant's sentence.

"Subject matter jurisdiction cannot be waived and where judicial tribunals have no jurisdiction of the subject matter, their proceedings are absolutely void." State ex rel. Tubbs Jones v. Suster, 84 Ohio St.3d 70 (1998). Harrison's plea withdrawal was void. Id. The State has offered on case or statutory law in its memorandum to contradict this court's statement of the law in Suster.

With his plea withdrawal obviously being void, his subsequent trial was as clear a violation of the Double Jeopardy Clause as can be had in our justice system.

> An accused has the right to know when the accusations against him are at an end and not have a hanging sword of justice hovering over his neck and be unable to determine when his case has been finally adjudicated. It is unusual justice to receive a sentence and then more than a week later be hauled in and presented again, and again faced with a new trip to a penal institution. The administration of justice requires careful, considerate, deliberate determinate and final decision. Common to all systems of jurisprudence is the maxim that there be a finality to judicial proceedings. [Citation omitted.] 'That no one shall be put in jeopardy twice for the same offense is a universal maxim, thought worthy to be incorporated, to a certain extent, into the constitution of the United States; and that an acquittal or conviction by a court having jurisdiction, on a sufficient indictment or information, is in all cases [whatsoever] a bar, is equally clear.' [Citation omitted.] * * * If questions once tried and determined could be again agitated, at the option of the parties, one main object of any administration of justice would be defeated. The function of courts is to settle

> controversies according to law. The object of settlement is secured by the principle of finality of judgments. State v. James No. WD-85-59 (Wood County, Ohio, June 13, 1986).

Again, the State of Ohio offers no case or statutory law that contradicts or otherwise supercedes the Double Jeopardy Clause of the Ohio and Federal constitution nor contradicts this eloquent statement of that right in James.

II. LAW AND ARGUMENT

Criminal Rule 46 and Appellate Rule 8 provide for the release on bail and suspension of execution of a defenant's sentence pending appeal. Courts have full discretionary power to grant appeal bonds. Coleman v. Gettrick, 2 Ohio St. 2d 177, 180 (1965). In determining whether or not to grant such a bond and suspend the execution of sentence, the general rules on bail set for in Criminal Rule 46 apply.

Criminal Rule 46 addresses several factors for a court to consider in determining the types, amounts, and conditions of bail, including, but not limited to the following: (1) the nature and circumstances of the crime; (2) the weight of the evidence against the defendant; (3) the confirmation of the defendant's identity; (4) the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, prior record, record of appearance at court proceedings or of flight to avoid prosecutor; and (5) whether the defendant is on probation, a community control sanction, parele, post-release control, or bail.

Here, Appellant reported to every one of his previous court dates in the instant matter. Appellant has resident in Auglaize County for many years and has strong familial ties to that community. He is a lifetime resident of Ohio and so are his siblings. Appellant is married to Vicki Harrison ; the two (2) have been happily married for twenty-two (22) years. In addition to

his wife, he has one (1) child. If released, Appellant would reside in Auglaize County, Ohio with his wife.

Appellant is not a flight risk. He was gainfully employed at the Wapakoneta Police Department for twenty-five (25) years preceding his incarceration in the instant matter. Thirteen (13) of those years he was the police chief. He retired from his position as Chief of Police in 2002. He holds a bachelors of science degree in criminal justice. And prior to his employment with the Wapakoneta Police Department, he served our country as an enlisted soldier during the Vietnam War. He also held possitions at other military bases as a civilian police officer. He served Wapakoneta and our Country with honor for many years. Appellant has no prior criminal record.

He has a medical condition which makes it unlikely he would flee this jurisdiction. He suffers from high blood pressure. Additionally, since Appellant's incarceration on the instant offenses, his father has delcined in health from congestive heart failure. Appellant's father has had numerous medical issues with infections in his lungs, pneumonia, and complications from surgery. He can no longer eat solid foods and is sustaing life on a feeding tube. If that were not enough, while hospitalized, his father developed a staph infection which resulted in the amputation of his left leg below the knee.

His family, not unlike many Americans, is suffering this recent spike in gasoline prices and cannot afford to visit him given the current location of his institution. It is vitally important to maintain contact with friends and family while incarcerated not only for the inmates emotional, mental, and physical well-being, but for later success once reintegration into society is to occur.

Finally, the state of Ohio has no argument that the Hernandez case does not apply to this

matter. It has also not contested the state of the law on jurisdiction or double jeopardy. The likelihood of Appellant's success in this matter is also a factor the court should weigh in granting him a reasonable bond pending the appeal to the Ohio Supreme Court. It is in the interests of justice to allow his release on bond pending the outcome of this Appeal, thereby, suspending the execution of sentence.

WHEREFORE, for the reasons set forth above, Appellant respectfully requests this Honorable Court suspend execution of his sentence pending appeal and an create an order setting forth bond in this matter.

Respectfully submitted,

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COUNSEL FOR APPELLANT,
DAVID HARRISON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing MOTION TO SUSPEND EXECUTION OF SENTENCE AND SET BOND has been served via regular U.S. mail on the following person on June 29, 2008.

Scott A. Longo,
Special Prosecuting Attorney
Auglaize County
30 East Broad Street
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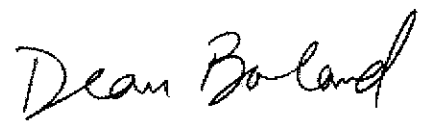
Columbus, OH 43215



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