

IN THE SUPREME COURT OF OHIO

08-1404

STATE OF OHIO, EX REL.,
DANIEL P. McKINNEY,

Appellant,

v.

DEFIANCE COUNTY COURT
OF COMMON PLEAS,

Appellee.

CASE NO.

On Appeal from the Defiance
County Court of Appeals,
Third Appellate District

Court of Appeals
Case No. 4-08-14

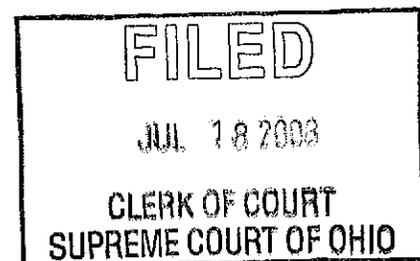
NOTICE OF APPEAL OF APPELLANT DANIEL P. McKINNEY

Daniel P. McKinney
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APPELLANT IN PRO SE

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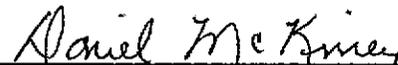


Notice of Appeal of Appellant Daniel P. McKinney

Appellant Daniel P. McKinney hereby gives notice of appeal to this Supreme Court of Ohio from the judgment of the Defiance County Court of Appeals, Third Appellate District, entered in Court of Appeals Case No. 4-08-14 on July 11, 2008.

This case originated in the Court of Appeals pursuant to S.Ct.Prac.R. II(A)(1), raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

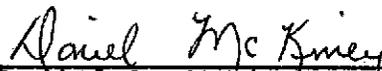


Daniel P. McKinney
P.O. Box 56 (468437)
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APPELLANT IN PRO SE

Certificate of Service

I hereby certify that a copy of this Notice of Appeal and relevant documentation was sent by ordinary U.S. Mail to counsel for appellee, Russell R. Herman (#0068709), Asst. Pros. Atty., 607 West Third St., Defiance, OH 43512, by deposit with the Lebanon Correctional Inst. legal mail staff, first class postage prepaid, on this 15th day of July, 2008.



Daniel P. McKinney
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IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

DEFIANCE COUNTY

STATE OF OHIO, EX REL.,
DANIEL P. MCKINNEY,

RELATOR,

v.

DEFIANCE CO. COURT OF
COMMON PLEAS,

RESPONDENT.

FILED
IN COURT OF APPEALS
DEFIANCE COUNTY, OHIO

CASE NO. 4-08-14

JUL 11 2008

Janice R. Fisher
CLERK OF COURTS

JOURNAL
ENTRY

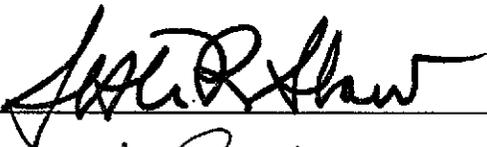
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This cause comes before the court upon Relator's motion for relief from judgment pursuant to Civ.R. 60(B)(3) and (5).

Upon consideration the court finds that, based upon vague and unsupported allegations of fraud and "subversion" by Respondent, Relator makes clear his disagreement with this court's judgment and asserts that his petition for writ of mandamus was wrongly dismissed and should have been granted. By so asserting, the court finds that the motion, in effect, seeks reconsideration of the judgment. It is well settled that Civ.R. 60(B) is not a substitute for appeal and a party may not merely reargue the same contentions that were rejected in the judgment. See *Elyria Twp. Bd. of Trustees v. Kerstetter* (1993), 91 Ohio App.3d 599. Respondent's judgment

denying Relator's petition for post conviction relief included sufficient findings of fact and conclusions of law. Accordingly, the motion is not well taken.

It is therefore **ORDERED** that Relator's motion for relief from judgment be, and the same hereby is, overruled.







JUDGES

DATED: July 11, 2008