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

EMERGENCY MOTION FOR STAY

Dean Boland (0065693) (Counsel of Record)
18123 Sloane Avenue
Lakewood, Ohio 44107
216.529.9371 phone
866.455.1267 fax
dean@deanboland.com

COUNSEL FOR APPELLANT
DAVID HARRISON

Scott A. Longo, Special Prosecuting
Attorney, Auglaize County,
30 East Broad Street
14th Floor
Columbus, OH 43215

COUNSEL FOR APPELLEE
THE STATE OF OHIO

FILED
AUG 2 2 2008
CLERK OF COURT
SUPREME COURT OF OHIO

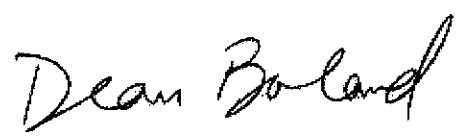
IN THE SUPREME COURT OF OHIO

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

EMERGENCY MOTION FOR STAY

Appellant, David Harrison, respectfully moves this Honorable Court for an order staying all proceedings involving Mr. Harrison relating to this case, including but not limited to, any registration or relocation requirements pursuant to Ohio Revised Code Sections 2950.04 et. seq. pending this Honorable Court's release of a decision in this case.

Respectfully submitted,



Dean Boland (0065693)
18123 Sloane Avenue
Lakewood, Ohio 44107
216.529.9371 phone
866.455.1267 fax

COUNSEL FOR APPELLANT,
DAVID HARRISON

MEMORADUM IN SUPPORT

During the pendency of this appeal, Harrison sought suspension of execution of his sentence pending this Court's ruling on the Merit Brief and his release on bond which went unchallenged by the State of Ohio. This Court granted a suspension of execution of sentence for Mr. Harrison ordering the Twelfth District Court of Appeals to set a reasonable bond. The State of Ohio in their motion sought an order of two hundred and fifty thousand ($250,000.00) dollars with an additional order that he immediately register as a sex offender implicitly arguing that such requirements applied to him as a result of this court's release of him and suspension of his sentence. (See, State's Memorandum on Reasonable Bond, Ex. "A".). Harrison received a personal recognizance bond from the Twelfth District with no such registration requirement as a condition of his bond. (See, Appellant's Bond, Ex. "B".). i.e. The state's assertion that he was required to register as a sex offender was rejected by the court of appeals.

On August 20, 2008, an Auglaize County Deputy Sheriff delivered to Mr. Harrison a letter from the Auglaize County Sheriff's Office requiring him to immediately make an appointment to register as a sex offender or face indictment for his failure to do so relating to his conviction in case number 2005 CR-10-099, the case that this Court is considering on appeal. (See, Letter from Auglaize County Sheriff's Department, Ex. "C".). The earliest such appointment provided to him by the Auglaize County Sheriff was 8:30 am on Wednesday, August 27, 2008. Mr. Harrison's counsel contacted Mr. Pierce to determine his intentions with regard to indictment. As of this writing, Mr. Harrison must register at that time to avoid being indicted for failure to register as is threatened by the Auglaize County Prosecutor's Office. On Thursday, August 21, 2008 contemporaneous with this memorandum's drafting, Mr. Harrison

received a call from the Auglaize County Sheriff's Department stating that they had received a call from Edwin A. Pierce, Auglaize County Prosecutor. Apparently, Mr. Pierce, the elected County Prosecutor in Auglaize monitors all sex offender registration appointments and contacts the Sheriff's offices when those appointments are not made to his specifications. He demanded that the previously scheduled registration occur no later than Monday morning. Mr. Pierce has not yet received notice from Appellant's counsel of the scheduled date and time. He was monitoring the situation personally. It is a transparent attempt that the Auglaize County Prosecutor's Office is making to prevent Mr. Harrison from seeking any form of redress from a court with competent jurisdiction on the registration issue. Mr. Harrison's registration requirements and any actions to force his relocation given the proximity of his home to a school or such other building should be stayed pending further action of this Honorable Court. If Mr. Harrison is successful in his appeal in this case and it is reversed and/or dismissed, he cannot be made to register as a sex offender on a dismissed case. It is clear from the manner in which this case has been handled that Mr. Harrison cannot seek review of this issue absent an emergency stay from this Honorable Court.

Normally, a motion for stay operates as the main action postponed, rather than, an offshoot of the main action. See, Community First Bank & Trust v. Dafoe, 108 Ohio St.3d 472 (2006). This issue was recently addressed in State v. Weist, 2008-Ohio-4006 (2nd Dist. August 8, 2008). In that case, the Second District Court of Appeals suggested that the appropriate remedy for staying registration was a declaratory judgment action. However, in Weist, there was no main action pending before the court of appeals, merely, the denial of the stay. Weist was not challenging his conviction. Weist also involved a plea agreement which did not include language regarding registration. This case in distinguishable from Weist on that basis. Weist

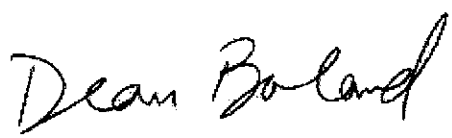
held that the court of appeals was without jurisdiction to rule on the merits of the appeal, given that, there was no final appeallable order. The appeal was dismissed.

In contrast, this Court, however, does have the original action pending. It could be argued that a declaratory judgment action would be the appropriate avenue to resolve this circumstance. However, the current time constraints involved in filing a declaratory judgment seeking to enjoin Sheriff, Allen F. Solomon from enforcing the registration duties of Mr. Harrison and responding to a potential indictment do not provide for the filing and ruling upon such an action by August 27, 2008. In this case, at the trial level, a motion to change venue was granted moving the trial to Madison County out of Auglaize County citing prejudicial pre-trial publicity. Auglaize County would not now be a proper venue for the declaratory judgment action either. Therefore, following its filing, a motion for change of venue would have to be filed and ruled upon prior to it moving forward. The fact that this Honorable Court now has jurisdiction over the original conviction from which the registration duties stem creates an unusual situation where the declaratory judgment appears inappropriate. This Honorable Court should grant the stay of any proceedings relating to case number 2005 CR-10-099, be they civil or criminal, while the main issues are determined. It is the most efficient use of judicial resources given the particular facts of this case. The registration requirement issues would and will be resolved after this Honorable Court issues its opinion. It is a waste of judicial resources to litigate issues relating to or stemming from this main action and further, forcing registration where, depending upon the outcome of the litigation, the registration requirement may be moot. Without a stay, Harrison will face the ramifications of a sex offense allegation in this case and it will impact his ability to seek gainful employment at a later date. To force registration at this point arguably thwarts the intent of this Court's suspension of the execution of Harrison's

sentence. In addition, since the court of appeals was asked to include registration as a sex offender as a condition of Mr. Harrison's bond, and conspicuously declined to do so, the State is also seeking to bypass the intent of the court of appeals in issuing its bond and related conditions. The state of Ohio is barred from arguing that Mr. Harrison is required to register or can be made to face the penalties of failing to register by the doctrine of res judicata. That issue was raised by the state in its memorandum in support of bond and rejected by the Court of Appeals.

WHEREFORE, for the reasons set forth above, Appellant respectfully requests this Honorable Court stay all proceedings related to this case, including but not limited to, actions which may arise from his perceived registration requirements or perceived failure to comply with those registration requirements which are civil in nature and any criminal actions which may sprout therefrom.

Respectfully submitted,



Dean Boland (0065693)
18123 Sloane Avenue
Lakewood, Ohio 44107
216.529.9371 phone
866.455.1267 fax

COUNSEL FOR APPELLANT,
DAVID HARRISON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing MOTION FOR STAY has been served via regular U.S. mail on the following person on August 21, 2008.

Scott A. Longo,
Special Prosecuting Attorney
For Auglaize County
30 East Broad Street
14th Floor
Columbus, OH 43215

Edwin A. Pierce
Auglaize County Prosecutor
Auglaize County Prosecutor's Office
P.O. BOX 1992
Wapakoneta, Ohio 45895

Dean Boland (0065693)
18123 Sloane Avenue
Lakewood, Ohio 44107
216.529.9371 phone
866.455.1267 fax

COUNSEL FOR APPELLANT,
DAVID HARRISON

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
MADISON COUNTY, OHIO

STATE OF OHIO	)	Supreme Court Case No. 2008-0331
	)	Appeals Case No. CA2006-08-028
	)	Common Pleas No.2005 CR-10-099
Appellee,	)	
-vs-	)	**APPELLEE'S MEMORANDUM ON APPEAL BOND**
DAVID L. HARRISON	)	
Appellant.	)	

FILED
In The Court of Appeals
Madison County, Ohio
AUG 11 2008
Marie Parks
Clerk of Courts

Now comes the State of Ohio, by and through the Special Prosecuting Attorney, and hereby submits its memorandum on setting an appeal bond in this matter.

On August 6, 2008, the Ohio Supreme Court granted Appellant's Motion for Stay of Execution of Sentence and for Appeal Bond, ordering the Twelfth District Court of Appeals to set a reasonable bond within ten (10) days of the Order.

In considering the appropriate amount for an appeal bond, Criminal Rule 46 (C) provides guidance:

> (C) *Factors.* -- In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:
>
> (1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;
>
> (2) The weight of the evidence against the defendant;
>
> (3) The confirmation of the defendant's identity;

EXHIBIT
tabbies
A

> (4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;
>
> (5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

In reviewing these factors, the State of Ohio contends that the Appellant, David Harrison, does pose a risk for flight.

As to the first factor, Harrison was convicted of fifteen (15) counts of Illegal Use of a Minor in Nudity Oriented Material or Performance, in violation of O.R.C. §2907.323 (A)(1), all felonies of the second degree. In addition, he was convicted of two (2) counts of Unauthorized Use of Computer, Cable, or Telecommunication property or service, in violation of O.R.C. § 2913.04 (B), felonies of the fifth degree, and one (1) count of Theft in Office, in violation of O.R.C. § 2921.41 (A)(1), a felony of the fifth degree. His conviction for these offenses came after he voluntarily withdrew his guilty plea to a Bill of Information, charging lower level felonies, for which he had served one (1) year in prison.

His new convictions resulted in a six (6) year prison sentence and mandatory five (5) years post-release control. Had the mandatory five (5) years post-release control been properly imposed upon his release from incarceration and he not violated any terms or conditions, Harrison would have approximately only nine (9) more months to serve under post-release control. Instead, Harrison has served a little over two (2) years of the six (6) year prison sentence, as well as still having the mandatory five (5) years post-release control. Accordingly, Harrison has every reason to flee from this jurisdiction, facing incarceration and supervision for another nine (9) years, as opposed to nine (9) months.

The second and third factors for this Court to consider are the weight of the evidence against Harrison and confirmation of his identity. This Court has already affirmed the decision of the jury's guilty verdicts on direct appeal in this case. Therefore, the weight of the evidence against Harrison and confirmation of his identity have already been established.

The fourth factor for the Court to consider is "family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution." The State does not dispute that Harrison has considerable family ties to the Wapakoneta area, an established residence in the community, a good record for appearing in court and a lack of a prior record. The State does dispute Harrison's assertions as to his employment, financial resources and mental conditions.

Harrison, in his Motion before the Ohio Supreme Court, touts his lengthy service with the Wapakoneta Police Department as an office and as the Chief of Police for thirteen (13) years. He also proudly explains his retirement in May of 2003 after serving his community. What Harrison fails to explain in detail is that the circumstances that gave rise to his prosecution were also the circumstances that prompted his unannounced, unplanned retirement. The day that a tape recorder, belonging to Harrison, was found in the ladies' locker room of the Wapakoneta Police Department recording the ladies' use of the facilities, Harrison abruptly announces his retirement, effective immediately. Harrison assumed that if he "retired," that any investigation into his actions would cease. Unfortunately for Harrison, his spontaneous retirement did not halt the investigation, which led to a search of his work and home computers, revealing thousands of images of child pornography.

Additionally, as the Chief of Police, the evidence at trial established his theft from the City of Wapakoneta in terms of hours spent using work computers to create false images of co-workers, some in graphic displays of nudity; hours spent searching the Internet for child pornography; hours spent on eBay bidding on items; etc. Evidence at trial established Harrison's sexual obsession with a co-worker, Stacy Armaly, who still works at the Wapakoneta Police Department with Harrison's wife, Vicky, who, notably, was not the subject of any of his graphic creations.

Also purported at trial, testimony was offered to suggest that Harrison suffers from deep depression, which caused him to commit the aforementioned acts. Harrison failed to mention that in his Motion to the Ohio Supreme Court. Rather, Harrison suggests that his high blood pressure will make it unlikely that he would be a flight risk.

Finally, although still receiving a pension, Harrison has not presented what financial resources he would be able to access to secure a bond. Harrison suggests that rising gas prices will prevent him from fleeing the jurisdiction. The State contends that gas prices are hardly a deterrence when facing nine (9) more years of combined incarceration and supervision.

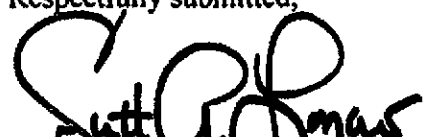
Based upon the foregoing, the State of Ohio asks this Court to set bond at $250,000 cash or surety, with the following conditions:

1. David Harrison shall not have contact with the members of the Wapakoneta Police Department, excluding his wife, Vicky Harrison, unless there arises a situation where emergency assistance is required.

2. David Harrison shall register with the Auglaize County Sheriff's Office as a Tier II Sex Offender, as required by law, within three (3) days of his release from prison, should he post a bond in this matter. Additionally, David Harrison would be subject to the same terms and conditions as other registered sex offenders, including but not limited to, the 1000 foot residency restriction provided under O.R.C. 2950.034.

3. And pursuant to Criminal Rule 46, David Harrison shall prosecute the appeal without delay and abide by the judgment and sentence of the court.

Respectfully submitted,

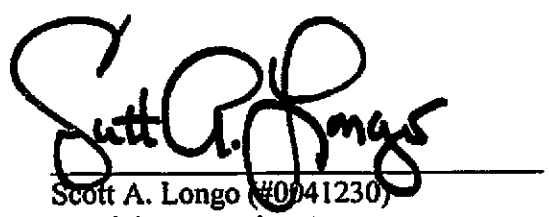


SCOTT A. LONGO (#0041230)
Special Prosecuting Attorney
Auglaize County
Ohio Attorney General's Office
30 East Broad Street 14th Floor
Columbus, Ohio 43215
(614) 644-0729
(614) 466-6172 (fax, before 4:30 p.m.)

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Appellee's Memorandum on Appeal Bond was sent by regular U.S. Mail service on this 11th day of August, 2008 to:

Dean Boland
Attorney at Law
18123 Sloane Avenue
Lakewood, Ohio 44107



Scott A. Longo (#0041230)
Special Prosecuting Attorney

IN THE COURT OF APPEALS OF MADISON COUNTY, OHIO

STATE OF OHIO,	:	CASE NO. CA2006-08-028
Appellee,	:	OHIO SUP. CT. NO. 2008-0331
vs.	:	ENTRY SETTING APPEAL BOND
DAVID L. HARRISON	:	
Appellant.	:	

On August 6, 2008, the Supreme Court of Ohio ordered this court to set a reasonable appeal bond for appellant, David L. Harrison, within 10 days. The parties have filed memoranda on this issue, and the court now makes the following orders: Appellant's sentence shall be STAYED for the duration of his appeal to the Ohio Supreme Court upon posting a $250,000 personal recognizance bond with the clerk of the Madison County Court of Common Pleas. Appellant shall be released on his personal recognizance subject to the condition that he pay the amount of $250,000 if he fails to appear pursuant to the terms of his personal recognizance agreement. Bond shall continue until appellant's present appeal before the Supreme Court of Ohio is resolved.

IT IS SO ORDERED.

H. J. Bressler,
Administrative Judge

James E. Walsh, Judge

EXHIBIT A

EXHIBIT
B

RECOGNIZANCE OF ACCUSED
(R.C. 2937.31 & 2937.44)

THE STATE OF OHIO

VS

DAVID HARRISON

COMMON PLEAS COURT
MADISON COUNTY, LONDON, OHIO

CASE NO. CA2006-08-028

THE STATE OF OHIO, MADISON COUNTY, OHIO:SS

BE IT REMEMBERED, that on this _____ day of AUGUST, 2008 [redacted], personally appeared before me, [redacted] the following named persons DAVID HARRISON [redacted] _____ who jointly and severally acknowledged themselves to owe the State of Ohio the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS to be levied on their goods and chattels, lands and tenements and secured in the following manner:

( ) Surety (Bonding Company)
(XX) Personal Signature
( ) Personal Signature and co-signed
( ) Deposit of 10% of Total Bond-Amount of Deposit $_____)
(90% Refundable on final determination)
( ) Cash
( ) Real Property (Value of unencumbered property in excess of twice amount of bond)

Property described as follows:

THE CONDITION OF THIS RECOGNIZANCE is that if the above named defendant shall personally appear before this Court of Common Pleas, Madison County, Ohio, if required, in this matter on such day and from day to day, from term to term, thereafter as directed by these Courts and not depart without permission of the Court UNDER PENALTY OF SECTIONS 2937.29 and 2937.99 of the OHIO REVISED CODE, until such case is finally completed. Upon final determination and provided that all conditions have been met, then this Recognizance shall be void, otherwise it shall be and remain in full force and virtue in law.

THE SUMMARY OF INFORMATION AND CONDITIONS OF BOND completed by (or on behalf of) the above named defendant in application for this Bond, as required by Criminal Rule 46, is hereby made a part of this document by reference herein.

Co-Signers(s)	Defendant
NAME	NAME
STREET	STREET
CITY STATE ZIP	CITY STATE ZIP

TAKEN AND ACKNOWLEDGED BEFORE ME on the above written date.

_____ CLERK

EXHIBIT A

_____ DEPUTY

Auglaize County Sheriff's Office
1051 Dearbaugh Avenue
P.O. Box 26
WAPAKONETA, OHIO 45895

Allen F. Solomon
Sheriff

S.O. Phone	419-738-2147
S.O. Phone	419-394-5227
Detectives Phone	419-738-8241
S.O. Fax	419-738-4856
Corrections Phone	419-738-8914
Corrections Fax	419-738-6438
E-mail	sheriff6@bright.net

Date: August 20, 2008

David L. Harrison
402 Defiance St.
Wapakoneta, Ohio 45895

Sir,

As you have been convicted and classified as a Tier II Sex Offender, you must periodically verify your address and other information. You were required to verify your current address and information with the Sheriff of Auglaize County or the person he has designated by August 18, 2008 and you failed to do so. You need to immediately make contact with the Auglaize County Sheriff's Office and speak with Neal, Brian or Lisa to make arrangements to verify your current residence address and information.

Auglaize County Sheriff's Office
1051 Dearbaugh Ave.
Wapakoneta, Ohio 45895
419-739-6565

Registration is by appointment only, Call Neal, Brian or Lisa to set up appointment.

Failure to timely register your current residence address is a felony offense:

If you verify your current residence address with the sheriff or the person he has designated, immediately, you will not be prosecuted for failure to timely verify your current residence address. If you do not verify your current residence address with the sheriff or the person he has designated, immediately, you may be arrested and prosecuted for failure to timely verify a current residence address. Please comply with this notice to avoid these sanctions.

Sincerely,

Auglaize County Sheriff's Office

EXHIBIT
tabbies
C