

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE
PETITION FOR A WRIT
OF HABEAS CORPUS

Case No. 03-CR-151

08-1896

PETITION FOR WRIT OF
HABEAS CORPUS

AMOS ABBE,
inmate number 458-931

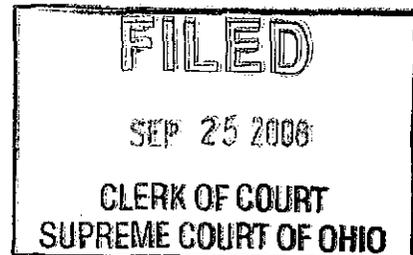
PETITIONER

vs.

JULIUS WILSON, WARDEN
RESPONDENT,

Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio
44901

AMOS ABBE 458-931
Petitioner, Pro Se
P.O. Box 8107
Mansfield, Ohio
44901



IN THE SUPREME COURT OF OHIO

IN THE MATTER OF

CASE NO. 03-CR-151

PETITIONER FOR A WRIT
OF HABEAS CORPUS

AMOS ABBE

inmate number 458-931

Petitioner,

To the Honorable Justices of the Supreme Court of Ohio:

The Petitioner, Amos Abbe, pro se, pursuant to Ohio Revised Code §2725.01, petitions this Honorable Court to grant him a Writ of Habeas Corpus, and states:

1. Petitioner, Amos Abbe, is a citizen of the State of Ohio, currently being held in Richland County, Ohio.
2. Petitioner is currently being unlawfully restrained of his liberty by Julius Wilson, the Warden of Richland Correctional Institution, without any legal authority, but under the color of a pretended commitment, a true copy of which is attached.
3. Richland Correctional Institution is located in Mansfield, Ohio, and is operated by the State of Ohio.
4. Petitioner is being held under prison inmate number A 458-931.
5. On the Petitioner, Amos Abbe, entered a guilty plea in the State of Ohio v. Amos Abbe. Case Number 03 CR 151, in the Wood County Court of Common Pleas, to a felony of the second degree, R.C.

The trial court imposed a sentence of four (4) years. The trial court did not impose a period of mandatory Post-Release Control. This sentence was appealed by the defendant under the Blakely v. Washington issue, but later dismissed by his own voluntary will for various reasons of his own.

6. On , the trial court did not impose a period of post-release control.
7. The Petitioner successfully completed his sentence, but was released and placed on post-release control for a mandatory period of three (3) years by the Ohio Adult Parole Authority on March 25, 2007.
8. On March 24, 2008, the Ohio Adult Parole Authority (A.P.A.), conducted a hearing pursuant to R.C. 2967.28. At the hearing the Petitioner was found to have violated the terms of his post-release control, and the A.P.A. Imposed a prison sentence of one hundred fifty three (153) days with continued supervision by the A.P.A., once the Petitioner was released. The Petitioner was given credit for twenty seven (27) days of incarceration. (See attached documents)
9. The Petitioner asserts that he is unlawfully restrained of his liberty and is entitled to a Writ of Habeas Corpus pursuant to R.C. 2725.01 et seq. Article 1 Section 9 of the Ohio Constitution, and the Fourteenth Amendment of the United States Constitution.
10. It is axiomatic that a court speaks through its journal. Kaine v. Marion Prison Warden (2000), 88 Ohio St. 3d 454,455 2000-Ohio-381, 727 N.E. 2D 907.
11. This Court has held that unless a trial court includes post release control into its original sentence, then the Ohio Adult Parole Authority is without authority to impose it. Woods v. Telb, 89 Ohio St. 3d 504, 2000-Ohio-171, 733 N.E. 2d. 1103 and Hernandez v. Kelly, 108 Ohio St. 3d. 395, 2006-Ohio-126, 844 N.E. 2d 301.
12. The Woods decision was reaffirmed in State v. Jordan, 104 Ohio St. 3d. 21, 2004-Ohio 6085, 817 N.E. 2d 864 at paragraph 19, and in Hernandez v. Kelly, 108 Ohio St. 3d. 395, 2006-Ohio-126, 844 N.E. 2d 301 at paragraph 27.
13. The State of Ohio agreed to the original sentence imposed in this case, i.e. four (4) years incarceration, no jail time credit, and no post release control.
14. If the State believed the sentence imposed was in error or contrary to law, then it could have appealed the sentence, R.C. 2953.08 (B)(2) and (E).
15. The States decision to agree to the sentence and not to appeal the sentence, waived any potential error or defect in the sentence. The Doctrine of Laches applies and the State is estopped from arguing the sentence is void.
16. Petitioner is serving no other sentence except the one imposed by the Adult Parole Authority for his

- violation of post release control. Petitioner is not facing any future sentence.
17. Petitioner has completed the sentence imposed by the trial court.
 18. The Ohio Adult Parole Authority did not have the authority to place the Petitioner on post release control, and did not have the authority to revoke such post release control, and did not have the authority to place petitioner in prison for one hundred fifty three (153) days.
 19. Petitioner incorporates by reference the Brief in Support of Petition for Writ of Habeas Corpus.
 20. The Petitioner must immediately be released from his confinement as it is without authority.
 21. In addition, the Petitioner must be released from any further obligation to the State of Ohio, as it relates to the underlying case.
 22. Petitioner seeks other relief as deemed appropriate by this Honorable Court.

Date: _____

Respectfully submitted,

Amos Abbe, Pro Se

A 458-931, Ri.C.I.

P.O. Box 8107

Mansfield, Ohio

44901

IN THE SUPREME COURT OF OHIO
CERTIFICATE OF PRO SE COUNSEL

Amos Abbe, Pro Se, hereby certifies that the facts stated and matters contained in the foregoing Petition for Writ of Habeas Corpus, and the accompanying Brief, are true to his knowledge, and that statements made on information and belief are true to the best of his knowledge and belief.

Date: _____

Respectfully submitted,

Amos Abbe, Pro Se

A 458-931, Ri.C.I.

P.O. Box 8107

Mansfield, Ohio

44901

IN THE SUPREME COURT OF OHIO

CERTIFICATE OF SERVICE

Amos Abbe, Petitioner, Pro Se, hereby certifies under penalty of perjury that on August 18, 2008, a true copy of the Petition for Writ of Habeas Corpus and Brief in Support of Petition, have been sent to the Clerk of Courts office of the Ohio Supreme Court, at 65 South Front Street, 8th Floor, Columbus, Ohio 43215-3431, by Certified United States Mail, from the Richland Correctional Institution.

Amos Abbe A 458-931

Petitioner, Pro Se

Ri.C.I. P.O. Box 8107

Mansfield, Ohio

44901

IN THE SUPREME COURT OF OHIO

AMOS ABBE,

Petitioner

v.

Case No. 03-CR-151

JULIUS WILSON, Warden

Respondent

BRIEF IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

Julius Wilson, Warden

Richland Correctional Institution

1001 Olivesburg Rd., P.O. Box 8107

Mansfield, Ohio 44901

Amos Abbe A 458-931

Petitioner, Pro Se

Ri.C.I. P.O. Box 8107

Mansfield, Ohio

44901

STATEMENTS OF QUESTIONS PRESENTED

1. WHETHER A PETITION FOR WRIT OF HABEAS CORPUS IS THE ONLY REMEDY AVAILABLE FOR THE PETITIONER?

Petitioner answers "yes".

2. WHETHER THE ADULT PAROLE AUTHORITY VIOLATED PETITIONER'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, BY IMPOSING A MANDATORY TERM OF POST RELEASE CONTROL UPON HIM, AFTER THE ORIGINAL STATED SENTENCE HAD EXPIRED, AND THE TRIAL COURT DID NOT IMPOSTE POST RELEASE CONTROL?

Petitioner answers "yes".

3. WHETHER THE ADULT PAROLE AUTHORITY VIOLATED THE SEPARATION OF POWERS DOCTRINE, AS WELL AS THE PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION LAWS, BY IMPOSING A PRISON SENTENCE FOR A VIOLATION OF POST RELEASE CONTROL?

Petitioner answers "yes".

STATEMENT OF THE CASE

A. STATEMENT OF PROCEEDING.

Petitioner/Defendant, Amos Abbe, entered a guilty plea in Wood County Court of Common Pleas, before the Honorable Judge Alan. R. Mayberry, for the charge of Felonious Assault, Ohio Revised Code 2903.11, a felony of the second Second Degree. On November 24, 2003 the Petitioner/Defendant was sentenced to be incarcerated in an Ohio State Correctional Institution as follows: "I am going to impose a sentence of four (4) years to the Ohio Department of Rehabilitation and Rehabilitation and Corrections." There was no mention of Post Release Control as part of the sentence nor was a mandatory term incorporated into the defendants journal entry.

B. STATEMENT OF FACTS

On March 25, 2007, the Petitioner, Amos Abbe, was released from his term of imprisonment, because his journalized definite sentence of four (4) years had expired. Petitioner signed his release papers and then was presented with a paper stating where and when to report to the local Adult Parole Authority (A.P.A.). The A.P.A. imposed a mandatory term of Post Release Control for five (5) years upon him. This was not imposed by the trial court at the sentencing hearing, nor was it incorporated into the judgment entries imposing his sentence.

On March 24, 2008, the A.P.A. held a hearing pursuant to Ohio Revised Code 2967.28, and the A.P.A. imposed a prison term of one hundred fifty three (153) days upon the Petitioner, with credit for twenty seven (27) days, and continued supervision upon release. This prison term was imposed for violations of Post Release Control conditions. Petitioner is currently serving this prison term imposed by the A.P.A. at the Richland Correctional Institution, in Mansfield, Ohio, under the supervision of Julius Wilson, Warden. Petitioner is being held under Inmate Number A 458-931.

ARGUMENTS

I. **A WRIT OF HABEAS CORPUS IS THE ONLY
REMEDY AVAILABLE TO THE PETITIONER,
SINCE HIS ORIGINAL SENTENCE HAS EXPIRED,
AND HE IS BEING UNLAWFULLY DETAINED.**

The Petitioner, Amos Abbe, who is currently incarcerated under Ohio Inmate Number A 458-931, asserts that he is unlawfully restrained of his liberty and is entitled to a Writ of Habeas Corpus, pursuant to Ohio Revised Code 2725.01, et seq., Article 1 Section 9 of the Ohio State Constitution and the Fourteenth Amendment of the United States Constitution.

The Ohio Revised Code 2725.01 states:

Persons entitled to a Writ of Habeas Corpus: Whoever are unlawfully restrained of his liberty, or entitled to the custody of another, which custody such person is unlawfully deprived, may prosecute a Writ of Habeas Corpus, to inquire into the cause of such imprisonment, restraint or deprivation.

In **Hernandez v. Kelly**, 108 Ohio St. 3d 395, 2006-OHIO-126, 844 N.E. 2d 301 at paragraph 9, the Supreme Court held that:

“ A Writ of Habeas Corpus is warranted in certain extraordinary circumstances where there is unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law.” **Johnson v. Timmerman-Cooper** (2001), 93 Ohio St. 3d 614, 616, 757 N.E. 2d 1153, quoting **Pegan v. Crawmer** (1996), 76 Ohio St. 3d 97, 99, 666 N.E. 2d 1091.

Petitioner is not challenging his sentencing entry, he is instead challenging the Ohio Adult Parole Authority's (A.P.A. herein), decision – not the Court's decision – to place him on Post Release Control (P.R.C. Herein), and the A.P.A.'s subsequent decision to sanction him to a term of imprisonment for violating the terms of that control. Therefore, a Writ of Habeas Corpus should lie to challenge certain decisions of the A.P.A., because

there is no remedy of appeal available. See **State ex rel. Jackson v. McFaul** (1995), 73 Ohio St. 3d 185, 187, 652 N.E. 2d 1, 1996-OHIO-412.

The Petitioner's journalized sentence expired on March 25, 2007, so he should be entitled to a Writ of Habeas Corpus to investigate the unlawful restraint of his liberty which was violated by the A.P.A. without due process of the law, seeing how he was not subject to P.R.C. In the first place, according to the journalized judgment entries of the trial court.

OHIO STATE CONSTITUTION ARTICLE 1: BILL OF RIGHTS, SECTION 9:

***Where a person is charged with any offense
for which the person may be incarcerated
***excessive bail shall not be required; nor
cruel and unusual punishment.

This is exactly what the A.P.A. did by imposing a prison term upon the Petitioner when the trial court did not follow the States sentencing statutes, such as statutory notification. A criminal defendant is entitled to due process in sentencing procedures, but when a sentencing statute is not followed it therefore violates the **Due Process** and **Equal Protection of the Laws**.

UNITED STATES CONSTITUTION AMENDMENT 14: Due Process and Equal Protection Laws.

**** Nor shall any state deprive any person of life, liberty
or property, without due process of law; nor deny to any
person within its jurisdiction the equal protection of the
laws."

So in the Petitioner's sentencing hearing when the Court decided to impose a prison sentence, it only states that the defendant/petitioner is to be incarcerated in an Ohio State Correctional Institution as follows: "I am going to impose a sentence of four (4) years to the Ohio Department of Rehabilitation and Rehabilitation and Corrections." It does not say anything about the mandatory term of three (3) years Post Release Control (P.R.C. Herein), that the Petitioner is now serving, because it was imposed by the A.P.A., not the trial court. In **Hernandez, supra**, paragraph 29, the Ohio Supreme Court stated:

"When a trial court makes an error in sentencing a defendant the usual procedure is for an appellate court to remand to the trial court for resentencing. In community control sentencing cases in which

the trial court failed to comply with [the statutory notice requirement], however, a straight remand can cause problems. Due to the particular nature of community control, any error in notification can not be rectified by 'Renotifying' the offender. When an offender violates community control conditions and offender was not properly notified of the specific term that would be imposed, an after-the-fact reimposition of community control would totally frustrate the purpose behind [statutory] notification, which is to make the offender aware before a violation. Consequently, where no such notification was supplied, and the offender appeals after a prison term is imposed under O.R.C. 2929.15 (B), the matter must be remanded to the trial court for resentencing under that provision with a prison term not an option. In this case, since the prison term has already been served, there will be no remand for sentencing." (Footnotes and citations omitted.) **State v. Brooks**, 103 Ohio St. 3d 134, 2004-OHIO-4746, 814 N.E. 2d 837 @ par. 33.

This is exactly the same as the Petitioner's case, therefore the Petitioner should be entitled to a Writ of Habeas Corpus, rather than a remand for resentencing to correct a sentencing error for two main reasons: (1) A remand would constitute Double Jeopardy since the Petitioner's only journalized sentence has already expired. (2) Because an after-the-fact notification of the Petitioner who has already served his four (4) year stated sentence, would circumvent the objective behind **R.C. 2929.14 (F)** and **R.C. 2967.28** to notify defendants of the imposition of P.R.C. At the time of their sentencing. Even in many cases the Ohio Court of Appeals have held that the proper way to correct a sentencing error would be to remand for resentencing. That is fine if the defendant would still be serving his or her actual sentence, but in this particular case the Petitioner's stated sentence has already expired. He finished it on March 25, 2007, so to remand him would actually be in violation of his rights, because under the **Double Jeopardy Clause**, he can not be sentenced twice for the same crime. **Hernandez v. Kelly**, supra, makes it clear that once a defendant has completed his or her prison sentence there can be no further correction or changes to the sentencing entry.

Ohio Revised Code 2725.02: Courts authorized to grant Writ, states:

The Writ of Habeas Corpus may be granted by the Supreme Court, Court of Appeals, Court of Common Pleas, Probate Court, or by a Judge of any such Court.

Ohio Revised Code 2725.06: Writ must be granted states:

When a petition for a Writ of Habeas Corpus is presented, if it appears that the Writ ought to issue, a court or judge authorized to grant the Writ must grant it forthwith.

Here again the Supreme Court held in; **State ex rel. Carter v. Ohio A.P.A.**, (OHIO 08-30-2000), 89 Ohio St. 3d 496, 733 N.E. 2d 609, 2000-OHIO-226:

"Habeas Corpus, not Mandamus is the proper action through which to seek release from prison."

The OHIO STATE CONSTITUTION, Article IV: Judicial, Section 2-

The supreme Court, as summarized below states:

(B) (1) "The Supreme Court has original jurisdiction in the following: (c) Habeas Corpus

In **Hernandez**, supra, paragraph 30, the Supreme Court stated:

It's axiomatic that "[a] court of record speaks only through its journal entries. **STATES ex. rel. GEAUGA CITY Bd. Of COMMRS. v. MILLIGAN**, 100 Ohio St. 3d 366, 2003-OHIO-6608, 800 N.E. 2d 361, 20: **KAINE MARION PRISON WARDEN**, (2000), 88 Ohio St. 3d 454, 455, 727 N.E. 2d 907 (Nothing this axiom in a Habeas Corpus case.)

Here, the trial court's sentencing entries specified only Abbe's four (4) year sentence, which he completed on March 25, 2007. Because his only journalized sentence has now expired, Habeas Corpus is the only appropriate remedy. See **MORGAN v. OHIO ADULT PAROLE AUTHORITY** (1994), 68 Ohio St. 3d 344, 346, 626 N.E. 2d 939, ("Habeas Corpus is available where an individuals maximum sentence has expired and he is being held unlawfully"); **HEDDLESTON v. MACK** (1998), 84 Ohio St. 3d 213, 214, 702 N.E. 2d 1198.

Therefore the Petitioner asserts that the Ohio Adult Parole Authority, abused its discretion and violated rights secured by the Constitution of Ohio and of the United States. The result of these actions, being the wrongful imprisonment of the Petitioner, and he therefore should be entitled to a Writ of Habeas Corpus.

II. ADULT PAROLE AUTHORITY VIOLATED PETITIONERS RIGHTS TO DUE PROCESS AND EQUAL PROTECTIONS OF LAWS, BY IMPOSING MANDATORY TERM OF POST RELEASE CONTROL UPON HIM, AFTER THE ORIGINAL

**STATED SENTENCE HAD EXPIRED, AND THE TRIAL
COURT DID NOT IMPOSE POST RELEASE CONTROL
AS PART OF PETITIONER'S ORIGINAL SENTENCE.**

The trial court did not impose mandatory P.R.C. upon the Petitioner as part of his original sentence, nor did the trial court incorporate such period of three (3) years P.R.C. in the judgment entries filed by that court. Therefore, P.R.C. is not part of the Petitioner's sentence, because the trial court failed to comply with the terms of statutory sentencing obligations and statutory notifications which are mandated in the State of Ohio. According to **R.C. 2901.04 (A)**;

Courts do not have the authority to ignore the plain and unambiguous language of a Statute under the guise of either statutory interpretation or liberal construction, in such a situation, the courts must give effect to the words utilized.

Here in the Petitioner's case, the statutory sentencing obligations of **R.C. 2929.19 (B)(3)(c) and (e)**, were not upheld and therefore the Petitioner should not have been placed on P.R.C. after his release from prison on March 25, 2007.

O.R.C. Ann. 2929.19 (B)(3)(c) and (e):

Require the trial court to "notify" an offender who is being sentenced to a first or second degree felony that a period of P.R.C. will be imposed upon the offender's release from prison ***.

In **Hernandez**, supra, paragraph 14, the Supreme Court stated:

"In order to properly impose sentence in a Felony case, a trial court must consider and analyze numerous sections of the Revised Code to determine applicability and must provide notice to offender at sentencing hearing and incorporate that notice into its journal entry" (**see also STATE JORDAN,**) 104 Ohio St. 3d 21, 2004-Ohio-6085, 817 N.E. 2d 864, 9. More pertinently, "when sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about P.R.C. and is further required to incorporate that notice into its journal entry imposing sentence." **STATE v. JORDAN**, Id. At paragraph one of the syllabus.

The trial court in Abbe's case committed error because it did not notify him at his sentencing hearing that he would be subject to a term of mandatory P.R.C. into its journal entries imposing sentence.

IN Hernandez, supra, at paragraph 18, the Ohio Supreme Court stated that:

“Nothing in **R.C. 2967.28** authorizes the A.P.A. to exercise its P.R.C. control authority, if the P.R.C. is not imposed by the trial court in its sentence.” See, e.g., **R.C. 2929.14 (F)** (“If a court imposes a prison term of a type described in division (B) of section **2967.28** of the Revised Code, it shall include in the sentence a requirement that the offender be subject to a period of P.R.C. after the offenders release from imprisonment, in accordance with that division.”) **Woods v. Telb** (2000), 89 Ohio St. 3d 504, 512, 733 N.E. 2d 1103 (“P.R.C. is part of the original judicially imposed sentence.”)

Here the trial court failed to comply with its clear duty to advise Abbe of the statutory required P.R.C., and the statutory notification of the required mandatory term of P.R.C. The language of an unmistakably mandatory character requiring that certain procedures “shall”, “will”, or “must” be employed when imposing a prison sentence at the sentencing hearing. If they are not upheld then it becomes an error in sentencing. Therefore the trial court erred in sentencing the Petitioner, when it did not comply with the mandates of statutory notification in accordance to **R.C. 2929.19 (B)(3)(c)**. In **State v. Jordan**, supra, paragraph 16 quoting, **State v. Comer**, 99 Ohio St. 3d 463, 2003-OHIO-4165, 793 N.E. 2d 473, 20 &21 it states:

“**R.C. 2929.19** clearly prescribes what a trial Judge must do and say at a felony sentencing hearing. The Supreme Court also determined that requiring these statutory obligations to be satisfied at the sentencing hearing ‘comportes with case law and with the purpose and intent of S.B.2.’ See also **State v. Brooks**, 103 Ohio St. 3d 134, 2004-OHIO-4746, 814 N.E. 2d 837.

Where the intent of a statute is clear, it must be enforced as written. Not to do so would be to rewrite a statute that is clear on its face. Here again, the trial court erred by failing to notify the petitioner of the required mandatory term of P.R.C. at the sentencing hearing.

In light of the mandatory language of **R.C. 2929.19**, the Eighth District Court of Appeals has consistently held that:

“the trial court has a mandatory duty at the sentencing hearing to notify the defendant that he or she is subject to P.R.C.” See **State v. Huber**, Cuyahoga App. No. 80616, 2002-OHIO-5839; **State v. Bryant**, Cuyahoga App. No. 78941, 2002-OHIO-2136; **State v. Rashad** (Nov. 8, 2001), Cuyahoga App. No. 79051, 2001 OHIO App. Lexis 4995; **State v. Wright** (Sept. 28, 2000), Cuyahoga App. No. 77748, 2000-OHIO App. Lexis 4482; **State v. Shine** (April 29, 1999), Cuyahoga App. No.

Further decisions of the Eighth District Court of Appeals set forth in cases such as **State v. Newman** (Jan. 31, 2002), Cuyahoga App. No. 80034, 2002-OHIO-328. Based upon this authority, since the trial court failed to mention the mandatory requirements of P.R.C. as set forth in the **R.C. 2929.19 (B)(3)(c)**, it is not a part of appellant's sentence.

In **Blacks Law Dictionary**, Sixth Edition, copyright 1990 on page 962, Mandatory Statute is defined as:

Generic term describing statutes which require and not merely permit a course of action. They are characterized by such directives as "shall" and not "may". A "mandatory" provision in a statute is one the omission to follow which renders the proceedings to which it relates void, ***. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory, **Kavanaugh v. Fash**, C.C.A. OLK., 74 F. 2d 435, 437; ***...Mandatory Statutory provision is one which must be observed,***. **State ex rel. Dworken v. County**, 131 Ohio St. 23, 1 N.E. 2d 138, 139, 5 O.O. 291

In **Woods v. Telb**, 89 Ohio St. 3d 504, 733 N.E. 2d 1103, the Supreme Court detailed the Constitutional significance of a trial court imposing P.R.C. in its sentence. They stated that:

"because the Separation-of-Powers Doctrine precludes the executive branch of government from impeding the judiciary's ability to impose a sentence, the problem of having the A.P.A. impose P.R.C. at it's discretion is remedied by a trial court incorporating P.R.C. into its original sentence. *Id.* At 512-513, 733 N.E. 2d 1103. "Consequently, unless a trial court includes P.R.C. in its sentence, the A.P.A. is without authority to impose it." (Emphasis added.)

Therefore, it was never stated at the sentencing hearing. This now becomes a violation of the petitioner's constitutional rights. In **State v. Jordan**, *supra*, at paragraph 6, the Supreme Court stated:

"As a general rule, a court speaks only through its journal. **Kaine v. Marion Prison Warden**, (2000), 88 Ohio St. 3d 454, 455, 727 N.E. 2d 907; **Schenley Kauth** (1953), 160 Ohio St. 109, 510.0. 30, 113 N.E. 2d 625, paragraph one of the syllabus ("A court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum"). "Were the rule otherwise it would provide a wide field for controversy as to what the court actually decided." **Indus Comm. v. Musselli** (1921), 102 Ohio St. 10, 15, 130 N.E. 32

Here the petitioner is once again, not challenging his sentencing entry, he is only showing why he should

have never been placed on P.R.C. in the first place. The petitioner is simply asking that his 2003 sentencing entry-- which says nothing about a mandatory P.R.C.-- be enforced as written. If anything it is the government that now seeks to upset the finality of the trial court's order. Which violates the petitioner's constitutional right to Due Process and Equal Protection of the Laws.

Criminal Rule 32 (C) states:

"A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal." See also **State ex rel. White v. Junkin**, 686 N.E. 2d 267 (Ohio 1997).

Therefore, it must be upheld as stated, the petitioner was sentenced to a definite term of four-years in prison, no mention of mandatory P.R.C. as required for a conviction of a second degree felony as part of the actual sentence. So now we have the problem of the petitioner's Constitutional rights being violated by the A.P.A. for imposing a term of P.R.C. upon him after his release from prison, because the Supreme Court held in **State v. Jordan**, supra, that:

"A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence.***. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." (Emphasis added).

United States Constitution Amendment Fourteen: Due Process and Equal Protection. A due process violation occurred when the Court of Common Pleas did not advise the petitioner of mandatory P.R.C. that would accompany his prison sentence, it does not entitle the Petitioner to plea anew but rather, fundamental fairness could be achieved by eliminating mandatory P.R.C. term so that sentence compares with the petitioner's judgment entries.

One of the main goals in **Senate Bill 2**, was "truth in sentencing" meaning that the sentence imposed by the trial judge is the sentence that is to be actually served, unless a judge alters it. In this case the petitioner was not notified of the required mandatory term of P.R.C. at the sentencing hearing, nor was it incorporated into any of his judgment entries stating his actual sentence. The A.P.A. took it upon themselves to impose P.R.C. after the petitioner's release from prison. The Court of Appeals has held time and time again that: "the mere fact that the A.P.A. is performing the functions that were not contemplated by the trial court in its sentence, denies an

offender his Due Process rights.

Ohio Constitution Article 1: Bill of Rights, Section 9: "nor cruel and unusual punishment inflicted".

The petitioner is still being punished by the A.P.A. for his original criminal charge, which the petitioner has already been convicted for, and more importantly, he has already served his entire stated sentence.

Failing at the sentencing hearing to advise defendant who pleaded guilty to a Felonious Assault that he faced a mandatory three years of P.R.C. was error. (See **State v. Hofmann** Ohio App. Sixth Dist. Erie 12-10-2004), No. E-03-057, 2004-Ohio-6655, 2004 WL 2848938 unreported.

The Supreme Court has already held in **State v. Beasley** (1984), 14 Ohio St. 3d 74, 75, 14 OBR 511. 512, 471 N.E. 2d 774, 775 and in **State v. Ramey**, supra,

***... A sentence is rendered void when there is an attempt by the "court to disregard statutory requirements when imposing a sentence."

In **State v. Beasley**, supra, The United States Supreme Court addressed the question of statutes similar to the one posed in the case at bar in **Exparte United States** (1916), 242 U.S. 27, 37 S.Ct. 72, 61 L. Ed. 129. In that case the court denied a trial judge the power to indefinitely suspend a mandatory prison sentence. The court reasoned that it is the function of a court to construe statutes, not to defeat them. The Ohio Supreme Court held that:

"we recognize that the suspension of a correctly imposed sentence is different from the failure to impose a required sentence; however, the end results are the same. Both actions circumvent statutory sentencing requirements. Just as the United States Supreme Court has prohibited circumvention of statutory sentencing requirements by indefinitely suspending a sentence, we feel that, that court would prohibit circumvention of a statutory sentencing requirement by the trial court's failure to originally impose a correct sentence."

The function and duty of a court is to apply the law as written. **R.C. 5145.01**, states:

"that the court shall impose no term of imprisonment" *** less than the minimum term provided [by statute] for such felony".

The Supreme Court in **Colegrove v. Burns** (1964), 175 Ohio St. 437, 438, 195 N.E. 2d 811 [250.0.2d.447], described the role of a trial judge in sentencing a convicted criminal:

**** Crimes are statutory, as are the penalties therefore, and the only sentence which a trial judge may impose is that provided for by a statute ***. A court has no power to

to substitute a different sentence for that provided for by law.”

Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void. The trial court disregarded the statute and imposed only the definite term of imprisonment, I.e. four (4) years, the trial court did not impose a mandatory term of three (3) years P.R.C. as provided for by the statute. In doing so, the trial court erred in sentencing and the Petitioner's sentence therefore, must be considered void.

Hernandez, supra, makes it clear that once a defendant has completed his or her prison sentence, there can be no further corrections or changes to the sentencing entry. Also see **State v. Finger**, Cuyahoga App. No. 80691, 2003-OHIO-402, 2003 WL 194773, at paragraph 101:

A Cuyahoga County petit jury returned verdicts finding Elven Finger guilty of three counts of felonious assault, all felonies of the second degree; for these offenses, **R.C. 2967.28 (B)(2)** specifies a three (3) year period of mandatory P.R.C. Although the trial court did not notify Finger at the sentencing hearing that mandatory P.R.C. would be part of his sentence, the court included it in the sentencing entry. Because the trial court did not notify Finger about P.R.C. at the sentencing hearing, upon review, the appellate court ordered that P.R.C. was not part of his sentence.

The Supreme Court stated in **Jordan, supra**, at paragraphs 23; 26; and 27:

“Because a trial court has a statutory duty to provide a notice of P.R.C. at the sentencing hearing, any sentence imposed without such notification is contrary to law.” As a general rule, if an appellate court determines that a sentence is clearly and convincingly contrary to law, it may remand for resentencing. See **R.C. 2953.08 (G)(2)**. Furthermore, where a sentence is void because it does not contain a statutory mandated term, the proper remedy is likewise to resentence the defendant. See **State v. Beasley** paragraph 26: The courts duty to include a notice to the offender about P.R.C. at the sentencing hearing is the same as any other statutorily mandated term of a sentence. And based on **Beasley**, a trial courts failure to notify an offender at the sentencing hearing about P.R.C. is error. Paragraph 27: Accordingly, when a trial court fails to notify an offender about P.R.C. at the sentencing hearing but incorporates that notice into its journal entry imposing sentence, it fails to comply with the mandatory provisions of **R.C. 2929.19 (B)(3)(c) and (d)**, and therefore, the sentence must be vacated and the matter remanded for sentencing.

So here we see that the statutory language of **R.C. 2967.28 (B)** and **R.C. 2929.19 (B)(3)(c)** indicates that the trial court has no discretion regarding the imposition of P.R.C., which therefore means that the trial court

* must state it along with the sentence it is imposing, and must include it in the judgment entry imposing sentence. But here lies yet another problem of great concern, if the Petitioner were to be remanded for resentencing this would not violate the **Double Jeopardy Clause** of both the **Ohio** and the **United States Constitutions**, as well as the Petitioner's rights to **Due Process** and **Equal Protection** of the laws because the trial court did not follow the mandatory sentencing statutes.

Ohio Constitution: Article 1, Section 10 reads:

"No person shall be twice put in jeopardy for the same offense."

United States Constitution: Amendment 5:

Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;

The Double Jeopardy Clause affords defendants three basic protections:

- (1) ***, and
- (2) it protects against second prosecution for the same offense after conviction and;
- (3) it protects against multiple punishments for the same offense.

To remand and resentence the Petitioner would truly constitute Double Jeopardy, because this would be the second sentence for the same crime that he was already convicted for on November 24, 2003, and has since already served his original stated prison term that expired on March 25, 2007. P.R.C. was not part of the originally stated prison sentence, therefore, the trial court disregarded the States Statutes in sentencing, by not imposing P.R.C. upon the Petitioner, and secondly by not including the notification of a term of mandatory P.R.C. in its judgment entries imposing his actual sentence.

There was no statutory notification at the Petitioner's sentencing hearing that he would be subject to a mandatory term of P.R.C. upon his release from prison, and that his liberty would continue to be restrained after serving his original stated prison sentence, nor was it incorporated into the judgment entries imposing the actual sentence. The trial court had ample opportunity to correct their mistake, but still disregarded it.

The trial court never even tried to correct their error in sentencing. Therefore, because of this fact, the A.P.A. has abused its authority and violated rights secured by the Constitution of the United States and the State of Ohio, by placing the Petitioner on a mandatory three (3) year term of P.R.C. upon his release from prison in March of 2007. Therefore the Petitioner should be released from any further supervision of the Adult Parole

Authority.

III. ADULT PAROLE AUTHORITY VIOLATED THE SEPARATION OF POWERS DOCTRINE BY IMPOSING A PRISON SENTENCE ON THE PETITIONER FOR A VIOLATION OF THE TERMS OF P.R.C. THAT WAS IMPOSED BY THE A.P.A., AND NOT THE TRIAL COURT.

Petitioner was sanctioned by the A.P.A. on March 24, 2008, for a violation of P.R.C., which was imposed upon him by the A.P.A., upon his release from prison on March 25, 2007. The Supreme Court already held:

“That the A.P.A. does not have the authority to impose P.R.C., unless it is imposed by the trial court at sentencing and is incorporated into its journal entry imposing sentence.”
Hernandez, supra, at paragraph 20.

Here the trial court did not impose P.R.C. into its original stated sentence, nor did the court impose the required mandatory term of P.R.C. as a result of the second degree felony conviction that the Petitioner was sentenced for. So, therefore, the A.P.A. did not have the right or authority to impose a prison sentence upon the Petitioner for a violation of that unlawful control. Here again, the A.P.A. is an executive branch of government not a judicial branch which makes the prison sentence for a violation unconstitutional, which violates the Petitioner's rights. The A.P.A. abused the Petitioner's rights of Due Process and Equal Protection of Laws, as well as the Separation of Powers Doctrine, by imposing such a prison term upon him.

The revocation of Petitioner's P.R.C. for a violation, constitutes the due process and equal protection clauses, because, being that he was not sentenced to P.R.C., the terms of that erroneously imposed supervision would be void. Due Process laws state: “that no person be deprived of life, liberty, or property, without due process of law***”. In **Woods v. Telb, supra**, the Supreme Court stated:

“We detailed the constitutional significance of a trial court including P.R.C. in its sentence. We stated that because the Separation of Powers Doctrine precludes the executive branch of government from impeding the judiciary's ability to impose a sentence, the problem of having the A.P.A. impose P.R.C. into its original

sentence. Id at 512-513, 733 N.E. 2d 1103. Consequently unless a trial court imposes P.R.C. in its sentence, the A.P.A. is without authority to impose it.”

So now we see that both the Supreme Court and the Appellate Courts have upheld the decisions that the A.P.A. lacks authority to impose P.R.C. on a person unless it is stated by a judge. Now the prison sentence that the Petitioner is serving for a violation of P.R.C. is actually in violation of the Separation of Powers Doctrine, because it was not imposed by a judicial branch of government, nor did the judicial branch give the authority to the A.P.A. to impose such a sentence. The Petitioner's prison sentence by the A.P.A. was erroneously imposed, because the trial court did not comply with the mandates of statutory notification in accordance with **R.C.**

2929.19 (B)(3)(c).

The trial court never notified the Petitioner that his liberty would continue to be restrained by the A.P.A. after he finished his originally stated prison sentence of four (4) years as required by the **Ohio Senate Bill 2**, found in Anderson's Ohio Criminal Practice and Procedure:

Senate Bill 2 Outline:

VIII Sentencing Hearing:

(3) Duties in imposing a prison term:
If the court imposes a prison term it shall notify the offender of the following [R.C. 2929.19 (B)(3)]:

(b) If for an F1, F2, F3 with physical harm caused or threatened other than for a sex offense, or for a felony sex offense, a period of P.R.C. (R.C. 2967.28) must follow the offender's release from prison, and for a violation, the Parole board can impose a residential sanction which includes a new 9 month prison term.

Failure to notify Petitioner that he would be subject to a mandatory term of P.R.C. after his release from prison constituted prejudicial and reversible error. Therefore, due to the mandatory nature of P.R.C. in the Petitioner's case, its omission by the trial court in the original sentence makes the sentence statutorily incorrect. Because of this the A.P.A. violated the Petitioner's rights by imposing a prison sentence upon him. In **State ex rel. Johnston v. Taulbee**, Ohio, 423 N.E. 2d 80, 83, syllabus by the court stated:

1) The administration of justice by the judicial branch of the government can not be impeded by other branches of the government in the exercise of the syllabus in **State ex rel. Foster v. Bd. Of County Commrs.**, 16 Ohio St. 2d 89, approved and followed.)

2) Courts of general jurisdiction whether named in the

Constitution or established pursuant to the provisions thereof, possess all power necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and can not be directed, controlled or impeded therein by other branches of the government. (paragraph two of the syllabus in **State Bd. Of County Commrs.**, 16 Ohio St. 2d 89, approved and followed.)

P.R.C. as well as the old "bad time" statute impermissibly permits the A.P.A. to "determine whether to impose a sentence", **R.C. 2967.11 (B) and R.C. 2967.28 (D)(1) and (2)** permits the A.P.A. to place certain restrictions upon an inmate, but the General Assembly carefully noted that this only occurs "[A]s part of" the prisoner's original sentence – which is imposed by the judicial branch. In **State ex rel. Bray v. Russell**, 729 N.E. 2d 359 (OHIO 2000), the Supreme Court says:

The people adopted the Ohio Constitution not the legislative, executive, or judicial branches of government. In **Zanesville v. Zanesville Tel & Tel. Co.**, (1900), 63 Ohio St. 442, 451, 59 N.E. 109, 110, this court stated: "The distribution of the powers of government, legislative, executive, and judicial, among three co-ordinate branches, separate and independent of each other, is a fundamental feature of our system of constitutional government. In the preservation of all the rights, civil and political, of the individuals, secured by our free form of government; and it is held that any encroachment by one upon the other is a step in the direction of arbitrary power." ***The reason legislative, executive, and judicial powers are separate and balanced is to protect the people, not to protect the various branches of government.

In our constitutional scheme, the judicial power resides in the judicial branch. **Section 1, Article 4 of the Ohio Constitution.** The determination of guilt in a criminal matter and the sentencing of a defendant convicted of a crime are solely the province of the judiciary. See **State ex rel. Atty. Gen. v. Peters** (1885), 43 Ohio St. 629, 648, 4 N.E. 81, 86. See also, **Stanton v. Tax Comm.** (1926), 114 Ohio St. 658, 672, 151 N.E. 760, 764 (" the primary functions of the judiciary are to declare what the law is and to determine the rights of the parties conformably thereto."); **Fairview v. Giffie** (1905), 73 Ohio St. 183, 190, 76 N.E. 865, 867 (" it is indisputable that it is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and applying the law to the facts, to render a final judgment.")

So here again we see that this is no less than the executive branch, acting as judge, prosecutor and jury,

by imposing a prison sentence on the Petitioner, that was not imposed by the trial court. So now the Adult Parole Authority has intruded well beyond the defined role of executive branch as set forth in our constitution. The court in **State v. Jones** (Sept. 2, 1999), Cuyahoga App. No. 74247, unreported, remarked:

"The General Assembly has created an independent quasi-judicial branch of government within the prison system. Article 4, Section 1 of the Ohio Constitution mandates that the judicial power shall vest in specifically named courts. The Parole Board is not one of them."

Therefore, the courts have already upheld: "That the A.P.A. lacks authority to impose P.R.C. when the trial court did not." Nothing in **Ohio Revised Codes 2929.19 or 2967.28** gives the A.P.A. this authority.

Reasonable minds are left but one conclusion. The A.P.A. has abused its discretion and violates rights secured by the Constitution of the United States and the State of Ohio. The results of this action being the wrongful imprisonment of hundreds of men and women, including this Petitioner, under its control.

Here we see in the case of the Petitioner, that the executive branch officials (Ohio Adult Parole Authority), tried, convicted and imposed (sentenced) the Petitioner to a prison term for a violation of his so called P.R.C., which was unlawfully imposed upon him after the expiration of his originally stated prison term. And that said P.R.C. was not imposed by the trial court in that sentence. (See exhibits ??) So therefore, the A.P.A. has violated the Constitutional Doctrine of Separation of Powers, as well as Due Process and Equal Protection of Laws of this Great State and Country.

CONCLUSION

When the General Assembly adopted Am. Sub. S.B. No.2, in 1996, it created major changes in the premise of felony sentencing in Ohio. 146 Ohio Laws, Part IV, 7136. As part of the General Assembly's goal of achieving "truth in sentencing", the new felony sentencing law was intended to ensure that all persons with an interest in a sentencing decision would know precisely the sentence a defendant is to receive upon conviction for committing a felony. The goal is that when the prosecutor, the defendant and the victims leave the courtroom following a sentence hearing, they know precisely the nature and duration of the restrictions that have been imposed by the trial court on the defendant's personal liberty. Confidence in respect for the criminal justice system flow from belief that courts and officers of the courts perform their duties pursuant to established law. In this case, neither the trial judge, the prosecutor, nor the defense counsel advised the petitioner/defendant at the

hearing that his liberty would continue to be restrained, after he served his sentence. That omission not only violated the statute, but the spirit of the changes in criminal sentencing underlying Senate Bill 2.

The A.P.A. has exceeded or abused its authority, it has for all practical purposes, assumed the role prescribed by law, reserved for the legislative and judicial branches. "Arbitrary power and the rule of the constitution can not both exist. They are antagonistic and incompatible forces... To escape assumptions of such powers on part of the three primary departments of the government is not enough. Our institutions must be kept free from the appropriation of unauthorized power by lesser agencies as well. And if the various administrative bureaus and commissions... are permitted to extend their powers by encroachments- even petty encroachments- upon the fundamental rights, privileges and immunities of the people, we shall in the end... become submerged by a multitude of minor invasions of personal rights less destructive, but no less violative of constitutional guarantees." As quoted in the American Legal Quotations [Shapiro, Fred R., Oxford University Press, New York, 1993, Page 5 (Citing George Sutherland)].

As a result of the violations which have occurred, the Ohio Adult Parole Authority violated the petitioner's rights by placing him on a mandatory term of post release control, and by sending him to prison for violating the terms of said control.

Therefore, the Adult Parole Authority was not authorized to put petitioner on a mandatory term of P.R.C. and then sanction him for violating the terms of that control in absence of appropriate notification of P.R.C. by the trial court. In that, petitioner's journalized sentence has expired, Abbe should be entitled to a Writ of Habeas Corpus and released from prison and from further post release control under the supervision of the Ohio Adult Parole Authority.

RELIEF SOUGHT

WHEREFORE, Petitioner, Amos Abbe, moves this Honorable Court to grant the following relief:

- A) Petitioner requests that this court accept jurisdiction over this case, so that the important issues presented will be reviewed on the merits, and
- B) Require the Respondent to answer the allegations in this Petition and the Brief in Support, and
- C) Hold such evidentiary hearing as this court may deem necessary and appropriate, and
- D) Issue an Order that this court will grant a Writ of Habeas Corpus, freeing the petitioner from his unlawful confinement, and from any further supervision by the Ohio Adult Parole Authority.
- E) And any other relief that this Honorable Court deems appropriate.

Respectfully Submitted,

Date August 18, 2008

Amos Abbe #458-931

Petitioner, Pro-se

PO Box 8107 Ri.C.I.

Mansfield, Ohio

44901

IN THE SUPREME COURT OF OHIO
CERTIFICATE OF PRO SE COUNSEL

Amos Abbe, Petitioner, Pro Se, hereby certifies that the statements of facts in the accompanying Brief in Support, are true to his knowledge, and that statements made on information and belief are true to the best of his knowledge and belief.

Date August 18, 2008

Respectfully Submitted,

Amos Abbe

Petitioner, Pro-Se

IN THE SUPREME COURT OF OHIO

CERTIFICATE OF SERVICE

Amos Abbe, Petitioner, Pro Se, hereby certifies under penalty of perjury that on August 18, 2008, a true copy of the Petition for Writ of Habeas Corpus and the Brief in Support of Petition for Writ of Habeas Corpus, have been sent to the Clerk of Courts Office of the Ohio Supreme Cort, at 65 South Front Street, 8th Floor, Columbus, Ohio 43215-3431, by Certified United States Mail, from the Belmont Correctional Institution.

Amos Abbe, 458-931

PO Box 8107 Ri.C.I.

Mansfield, Ohio

44901

APPENDIX

A. Judgment Entry from Wood County Common Pleas
Court (11-24-2003)A1-A2

B. Ohio Adult Parole Authority, Sanction Receipt
Dated: (03-24-2008)B1

C. Verification and AffidavitC1

FILED
WOOD COUNTY CLERK
COURT

2003 NOV 26 A 9:40

REBECCA E. BHAER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

v.

Amos N. Abbe,

Defendant.

Case No. 03 CR 151

**JUDGMENT ENTRY ON
SENTENCING F-1 OR F-2**

PRISON

JUDGE ALAN R. MAYBERRY

November 24, 2003

This cause was before the Court on this 24th day of November 2003, for sentencing. The Defendant entered a guilty plea to the offense of Felonious Assault, a violation of R.C. 2903.11, a felony of the second degree. Present at sentencing were Paul Dobson, Assistant Prosecuting Attorney, on behalf of the State of Ohio and the Defendant with his counsel, Adrlan Cimerman, Esq.

Counsel for Defendant spoke to the Court on behalf of his client. The victim's father was also present and made a statement to the Court. The Prosecutor recommended four years in the Ohio Department of Rehabilitation and Corrections with no contact with the victim or witnesses of this offense. This is an agreed upon sentence and part of the plea agreement. Upon inquiry of the Court, the Defendant made a statement prior to the imposition of sentence.

JOURNALIZED

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Board pursuant to R.C. 2967.28. If the Defendant violates a post release control sanction, the Adult Parole authority, or the Parole Board may impose a more restrictive sanction, may increase the duration of the post release control or may impose a prison term, which may not exceed nine (9) months. The maximum cumulative prison term imposed for violations during post release control may not exceed one-half of the stated prison term. Further, if the violation of the sanction is a felony, the Defendant may be prosecuted for the felony and, in addition, the Court may impose a prison term for the violation. The Defendant is ordered to serve as a part of this sentence any term of post release control imposed by the Parole Board and any prison term for violation of the post release control conditions.

The Court informs the Defendant that he is eligible to apply for judicial release from prison, but if eligible, the Court may not grant such release.

The Defendant is given credit for jail time served pursuant to R.C. 2967.191. The Court has been informed that the Defendant has been incarcerated for 239 days in the Wood County Justice Center as of the date of sentencing

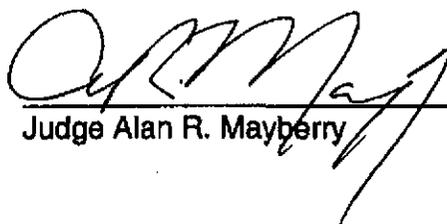
IT IS FURTHER ORDERED that the Defendant shall pay a fine of \$5,000.00. Defendant is ordered to pay the costs of this prosecution. Judgment is awarded for costs and execution awarded. Bond released.

IT IS FURTHER ORDERED that Count 1 of the Indictment: Attempted Murder, a violation of R.C. 2923.02 & 2903.02(A), is dismissed.

Defendant is remanded to the custody of the Wood County Sheriff to await transportation to the Correction and Reception Center, Orient, Ohio.

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DEC 01 2003



Judge Alan R. Mayberry

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CERTIFICATE

The undersigned mailed or delivered a copy of this judgment entry to Paul Dobson, Assistant Prosecuting Attorney, Adrian Cimerman, Esq., Adult Probation Department and the Wood County Sheriff.

11/26/03

Junda Culley

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In determining the sentence, the record, all oral and written statements, the presentence report, the victim impact statement, the purposes and principles of sentencing as well as the seriousness and recidivism factors were carefully reviewed.

The Court finds that a mandatory prison sentence under R.C. 2929.13(F) is not required for this offense. However, pursuant to R.C. 2929.14(D), this is an offense which is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing.

Upon application of the factors under R.C. 2929.12, the Court finds that a community control sanction or a combination of community control sanctions would demean the seriousness of the offense because one or more factors under R.C. 2929.12 indicate the Defendant's conduct was more serious than conduct normally constituting the offense.

Further, the Court finds that the minimum sentence would demean the seriousness of the Defendant's conduct and would not adequately protect the public from future crime by the Defendant.

Therefore, the Court finds that the presumption in favor of a prison sentence has not been overcome and that a prison term is consistent with the purposes and principles of sentencing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that for the offense of Felonious Assault, a violation of R.C. 2903.11, a felony of the second degree, the Defendant is sentenced to a term of four (4) years in the Ohio Department of Rehabilitation and Corrections.

JOURNALIZED

DEC 01 2003

POST RELEASE CONTROL

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The Defendant will be subject to Post Release Control as well as the consequences for violating the conditions of post release control imposed by the Parole



Ohio Department of Rehabilitation and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

Ted Strickland, Governor

www.drc.state.oh.us

Terry J. Collins, Director

Friday, March 21, 2008 12:03 PM

>>>> SANCTION ORDER <<<<

UNIT: Elyria III
DATE OF HOLD : 2-27-08
WHERE CONFINED : Local
RECEPTION CENTER: Local

DATE OF HEARING: 3-24-08
TOTAL PRISON TERM SANCTION: 730
PRISON SANCTION USED: 0
TOTAL JAIL TIME: 27
PRISON SANCTION AVAILABLE: 703
SANCTION IMPOSED: 153
SOCIAL SECURITY NUMBER: 289-82-2973

INSTITUTION: Warden Central
DATE OF BIRTH: 05/22/1984

ABBE, AMOS N, NO. A458931, was serving a sentence of confinement in a state correctional institution operated by the Department of Rehabilitation and Correction, and was released to post-release control on 3-25-07 under the supervision of the Ohio Adult Parole Authority. On 3-24-08 a hearing was held as pursuant to Section 2967.28 of the Revised Code.

27 Available days previously served in local custody credited in JLS on 3-21-08.

As a result of a finding of guilt on Rule(s) # 3, 6, a prison term of 153 days shall be served.

The prison term shall begin effective 3-25-08

Upon release, report in person, to PO Wilson
at EDD, Depew, OH

Additional sanctions: see Sumatra receipt

CC: Offender
Unit
Parole Board
APA Field Services

BY [Signature]
HEARING OFFICER
[Signature]
Print Last Name



ADULT PAROLE AUTHORITY Sanction Receipt

Name: AMOS ABBE	Offender #: A458-931
-----------------	----------------------

III. It has been determined that you are guilty of violating a condition(s) of your release. The following will be imposed:

A. Revocation of release. You are further notified that you will be returned to the appropriate Department of Rehabilitation and Correction institution as soon as practical where you will be notified of any future release consideration hearings.

See "Sanction Order"

C. Incorporate sanction receipt dated: _____

D. Other Sanction:

to report as instructed

Hearing Officer: <i>[Signature]</i>	Date: 3-25-02
-------------------------------------	---------------

I have read (been read) and understand the foregoing

Offender Signature: <i>[Signature]</i>	Date:
----------------------------------------	-------

I certify that this notice was hand-delivered to the above on:

Date: 3-25-02	Time: 2:30
Witness Signature: <i>[Signature]</i>	Date: 3-25-02

II. Summary of evidence used in arriving at findings:

Yves admitted and then he based on the following. Offender admitted that he was in the state of Missouri upon possession of the P.V. Also a search of his residence revealed a B.S. gun that resembled the automatic pistol.

Hearing Officer Signature:

Mark Rom

I have read (been read) and understand the foregoing.

Offender Signature:

J. Henderson

Inmate #:

Date:

I certify that this notice was hand-delivered to the above on

3/25/08

at

12:30pm

Date

Time

Witness Signature:

[Signature]

Date:

3/24/08

1 THE COURT: Mr. Cimerman,
2 ready on O3CR151 State of Ohio versus Amos Abbe?

3 MR. CIMERMAN: Yes, Your
4 Honor.

5 THE COURT: We're here
6 today for sentencing, the defendant having
7 previously been convicted on count 2 of the
8 indictment charged with the offense of felonious
9 assault violation of 2903.11 of the Revised Code
10 felony of the second degree. Court has reviewed
11 the pre-sentence investigation. Have counsel had
12 a chance to review it?

13 MR. CIMERMAN: I have, Your
14 Honor.

15 MR. DOBSON: Yes, Your
16 Honor, thank you.

17 THE COURT: Okay. Any
18 objection to that report?

19 MR. CIMERMAN: No.

20 MR. DOBSON: No.

21 THE COURT: Mr. Cimerman,
22 the Court would be happy to hear what you have to
23 say.

24 MR. CIMERMAN: Your Honor, as
indicated I have an opportunity to review the

1 MR. CIMERMAN: Correct.

2 MR. DOBSON: Your Honor, it
3 is an agreed upon recommendation, yes, sir.

4 THE COURT: Okay. Mr.
5 Dobson.

6 MR. DOBSON: Your Honor, as
7 Mr. Cimerman has indicated, the State would
8 recommend that the Court impose four years in the
9 Ohio Department of Rehabilitation and Corrections.

10 We would ask in addition to that the Court
11 indicate that the defendant is not to have any
12 contact with the victim Brian Lilly or the
13 witnesses in this case, particularly Pamela
14 Schilens. Your Honor, we believe that despite the
15 fact that it doesn't appear the defendant has any
16 serious or have any prior juvenile record,
17 according to the pre-sentence report, and no real
18 adult record, we believe that the circumstances of
19 this particular case and Mr. Abbe's statement in
20 the pre-sentence investigation certainly argue for
21 a more substantial sentence than the minimum two
22 year sentence.

23 Your Honor, the defendant's statement in the
24 pre-sentence investigation which appear to me to
indicate that this was an entirely an accident

1 that the victim fell on the knife as it was lying
2 on the ground. And that the defendant was
3 surrounded by several of the victim's friends at
4 the time that the incident occurred or the time
5 the fight occurred, and also that he assisted the
6 victim to the Waffle House are not supported by
7 the evidence. The pre-sentence investigation and
8 the evidence bear out clearly that the victim was
9 stabbed at least four times which would not be
10 consistent with him falling on the knife. All of
11 the witnesses testified that they had left the
12 area before there was any actual fight or physical
13 confrontation between the defendant and the
14 victim. And the witnesses at the Waffle House
15 indicated that they didn't see anybody come in or
16 assist the victim at all. As a matter of fact
17 they indicated that when he first came in they
18 thought this was a joke because of the amount of
19 blood that was being spread until they realized
20 that it was the fact of the case.

21 Your Honor, the statements are made not to or
22 made simply to indicate that this offense rises to
23 the level of the Court imposing the minimum two
24 year prison sentence in this case and that a four
year sentence is appropriate for the defendant to

1 hopefully during that time period realize the
2 seriousness, incredible seriousness of his actions
3 in stabbing the victim of this offense several
4 times.

5 Further, Your Honor, it's my understanding
6 that the father of the victim -- the victim does
7 not wish to make a statement, but the father of
8 the victim has asked for an opportunity to make a
9 statement to the Court.

10 THE COURT: Very well.

11 MR. LILLY: Your Honor,
12 I'm Richard Lilly. I'm the father of the victim.
13 And I just want to say that it was late on
14 Saturday night we got a phone call at four o'clock
15 in the morning stating my son was life flighted
16 and 100 miles away. We live in North Olmsted,
17 Ohio. We had no clue to what his -- the extent of
18 his injuries were. They had to drive that 100
19 miles. Before about half way there we finally
20 called and found out, you know, what are --
21 whether it was critical or stable. When we got
22 there, we found out he was stabbed a total of five
23 times, Your Honor. And there was two in the side,
24 one cut his spleen, and then after that my son
rolled over and he was stabbed in the groin area

1 and then Mr. Abbe went for his face. He put up a
 2 block with his arm and he was stabbed in his arm,
 3 and from the witnesses talking to the witnesses
 4 after that, I heard that my son was saying, "Dude,
 5 that is enough. You stabbed me enough" and Mr.
 6 Abbe stated, "I have no heart," and stabbed him in
 7 the chest and collapsed his lung. And I took that
 8 week off, and he was in intensive care for three
 9 days, and it was finally fifth or sixth day before
 10 he could finally get out of bed and start walking
 11 again, and he was in the hospital a total of seven
 12 and there was, you know, still a lot of pain after
 13 that and everything. My son was ready to go in
 14 the army at the time. He was working out and
 15 everything. And of course that went down the
 16 tubes, and I just hope this never happens to
 17 anybody else's family like I had to go through.
 18 Thank you. That's all I wanted to say. Thank
 19 you.

20 THE COURT: Thank you.

21 Anything further, Mr. Dobson?

22 MR. DOBSON: No, Your

23 Honor, nothing from the State, Your Honor, thank
 24 you.

THE COURT: Mr. Abbe, is

1 there anything you want to tell the Court before I
2 pass sentence?

3 THE DEFENDANT: Yes, Your
4 Honor. Now that we're in this courtroom, and I
5 have a chance to be in front of his family I just
6 like to apologize for what happened. I did not
7 mean for it to get that serious, nor did I mean
8 for a fight to get started that night. I was just
9 looking for a good time and it wasn't and I know
10 that my apology probably is not good enough, but I
11 just hope that you can accept my apology. I'm
12 sorry that it ever happened. That's all, Your
 Honor.

14 THE COURT: Thank you, Mr.
15 Abbe. The Court has to consider certain statutory
16 factors in determining an appropriate sentence and
17 in addition to the report that's been prepared for
18 me by the Adult Probation Department. In
19 reviewing those factors the Court finds first of
20 all that this being a felony of the second degree,
21 there is a presumption in favor of a prison term.
22 The Court also finds that in considering the
23 recidivism factors that the Court finds there a
24 failure to acknowledge a pattern of drug or
 alcohol abuse that's related to this offense is a

1 recidivism factor that makes recidivism more
2 likely.

3 In looking at the flip side of that coin the
4 Court finds that the lack of any, of a substantial
5 criminal record in other words being law abiding
6 for a significant number of years is a factor that
7 goes against recidivism being likely, as well as,
8 at least what is contained in the report the
9 remorse that you've expressed for just today. The
10 Court also has to consider certain seriousness
11 factors and certainly the victim suffered serious
12 physical harm, having been life flighted, and with
13 a punctured spleen and collapsed lung and in
14 intensive care for three days certainly
15 demonstrates to the Court that this is more
16 serious, more serious than just the typical case.

17 Mr. Abbe, the probation department report
18 indicates to me at least one thing that's very
19 disturbing to me or two things I should say. If
20 you care to respond to them, I'd be happy to hear
21 what you have to say about them. One is you went
22 out that night and were displaying a knife and
23 talking about or flashing this knife around before
24 anything happen. You have anything to say about
 that?

1 don't feel that, you know, prison is good for
2 anybody, but I'm going to use this as an
3 opportunity to finish my GED. I've been working
4 on it since I've been in the Wood County Justice
5 Center, and also I'm going to take the time while
6 I'm down in ODRC to attend some other classes and
7 get certified and I've completed the anger
8 management class and drug and alcohol class with
9 certification since I've been here.

10 THE COURT: Okay.

11 Appreciate those remarks. Thank you. As I said I
12 consider all these things that I talked about
13 here, and in addition the recommendation of the
14 State of four years and your attorney of a four
15 year sentence and find that a sentence involving
16 the minimum sentence would demean the seriousness
17 of this offense and not adequately deter the
18 offender or protect the public; therefore, I am
19 going to impose a sentence of four years to the
20 Ohio Department of Rehabilitation and
21 Rehabilitation and Corrections, and is there any
22 restitution figure, Mr. Dobson? I had been
23 informed that all has been taken care of by
24 Victims of Crime?

MR. DOBSON: That's my

1 understanding as well, Your Honor, from the victim
2 -- had been taken care of by Victims of Crime.

3 THE COURT: Okay. I am
4 going to impose a \$5,000 fine and advise you, Mr.
5 Abbe, that you have the right to an appeal. There
6 maybe something that happened during these
7 proceedings or prior proceeding that would give
8 you cause to appeal this Court's sentence, and
9 afford you an opportunity to have an attorney
10 appointed if you cannot afford one to represent
11 you for those purposes, to have a transcript
12 provided to you free of charge to consider that as
13 well. There is a matter of count 1 of the
14 indictment that remains.

15 MR. DOBSON: At this time,
16 Your Honor, would State would move to dismiss
17 count 1.

18 THE COURT: No objection.
19 I assume --

20 MR. CIMERMAN: No, Your
21 Honor.

22 THE COURT: Count 1 will
23 be dismissed at this time.

24 MR. CIMERMAN: Thank you.

THE COURT: Anything

1 further?

2 MR. DOBSON: Nothing from
3 the State, Your Honor.

4 THE COURT: Thank you.

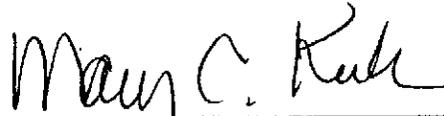
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7 (Conclusion of this proceeding.)

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C-E-R-T-I-F-I-C-A-T-E

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4 I, Mary C. Kirk, Official Court Reporter in and
5 for Wood County, Ohio, duly appointed therein, do
6 hereby certify that the foregoing, consisting of 14
7 pages, is a true and correct transcription as
8 transcribed by me, with the use of computer-aided
9 transcription, of the proceedings conducted in said
10 court on the 24th day of November, 2003 before the
11 Honorable Alan R. Mayberry, Judge of said court; and I
12 do further certify I was personally present in the
13 courtroom during all of the proceedings so
14 transcribed.
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Mary C. Kirk, RPR
Official Court Reporter