

IN THE SUPREME COURT OF OHIO

08-2496

State of Ohio,

Appellee,

vs.

Kenneth R. Hobbs II,

Appellant,

CASE NO. _____

On Appeal from the Miesgs County
Court of Appeals, Fourth
Appellate District

Court of Appeals Case No. 08-CA-4

Trial Case No. 07-CR-076

06-CR-091

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT KENNETH R. HOBBS II

Kenneth R. Hobbs II #567-153
Appellant-Defendant, Pro Se

Noble Correctional Institution
15708 McConnellsville Road
Caldwell, OH 43724

COUNSEL FOR APPELLANT

Miesgs County Prosecuting Attorney
Miesgs County Courthouse
P.O. Box 151
Pomeroy, OH 45769

COUNSEL FOR APPELLEE

FILED
DEC 30 2008
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

PAGE No.

Table of Contents.....i

Table of Authorities.....ii- iv

Explanation of why this case is a case of Public
or Great Interest and involves a Substantial
Constitutional Question.....1= 2

Statement of the Case and Facts.....2-3

Argument in Support of Propositions of Law.....4- 8

Proposition of Law No.I: Article I, Section 15 of the Ohio Constitution
provides that no person shall be imprisoned upon a debt.....4-8

Proposition of Law No.II: The Ohio Castle Doctrine provides that a person
has a right to protect his/her self and residence from intruder who
intends to commit a misdemeanor or felony offense, thus Appellant's
conviction for defending his home is unlawful.....8-12

Proposition of Law No.III: The right of access to the court is one
protected by the First, Fifth, and Fourteenth Amendments to the
United States Constitution, thus a defendant has a right to petition
the government (by way of the court) for redress of a Constitutional
violation and when that right is denied..... 12-14

Proposition of Law No.IV: The Sixth Amendment of the United States
Constitution provides a criminal defendant competent representation
throughout a criminal prosecution, thus if counsel is not functioning
in accordance with the Sixth Amendment, defendant is denied counsel
and Due Process of the law..... 15

Conclusion.....

Certificate of Service..... 16

Appendix

 Appeals Court Judgement Entry..... EX I

 West Virginia Attorney General November 18th, 2008
 Civil Judgement Entry..... EX II

 Ohio Attorney General. *Entry*..... EX III

 Miegs County Common Pleas Entry..... EX IV

[All judgement entries pertain to this case.]

TABLE OF AUTHORITIES

PAGE NO.

Ohio Revised Code Sections:	
2913.02.....	5
2725.01.....	8
Federal Code:	
Section 1994, Title 42 U.S.....	6
Rules of Professional Conduct:	
Rule 3.8.....	7
Ohio Constitution:	
Article I, Section 15.....	1,4,5,8,15
Ohio, Sub, S.B. 184 (CASTEL DOCTRINE).....	1,8,9,11
United States Constitution:	
Eighth Amendment.....	6
FIRST, FIFTH, SIXTH, FOURTEENTH AMENDMENTS.....	12,15
Cases:	
<u>Second Nat. Bank of Sandusky v. Becker</u> , 62 Ohio St. 289, 56 N.E. 1025, 51 L.R.A. 860.....	5
<u>Lougee v. State</u> , 11 O., 68 to 70.....	6
<u>In re J.C. Smith, On behalf, E.T.C., for Writ of Habeas Sheriff. In re Luezler, On behalf, E.T.C., for Writ of Habeas Corpus, v. Perry Sheriff</u> , 9 Ohio C.D. 778, 18 Ohio C.O. 826, 1899 WL 1275 (Ohio Cir.).....	6
<u>State v. Lamb</u> , 163 Ohio App.3d 290, 837 N.E.2d 833.....	6,7
<u>United States v. Reynolds</u> (1914), 235 U.S. 133, 138-147, 35 S.Ct. 86.....	6
<u>Bailey v. Alabama</u> (1911), 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed 191...	6
<u>Gen. Elec. Co. v. Internatl. Union United Auto., Aircraft & Agricultural Implement Workers</u> (1952) 93 Ohio App. 139, 158, 50 O.O 399, 108 N.E.2d 211.....	6
<u>Pollock v. Williams</u> (1944), 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095.....	6
<u>Smirnoff</u> , 84 Ohio St.3d at 168-169, 702 N.E.2d 423.....	8
<u>Hensley v. Mun. Court, San Jose Milpitas Judicial Dist. Santa Clara Cty.</u> , (1973), 411 U.S. 345, 351, 93 S.Ct. 1571, 36 L.Ed.2d 294.....	8
<u>Sub. S.B. 184</u> , (Castle Doctrine).....	8,9,11
<u>California v. Trombetta</u> , 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984).....	9
<u>State v. Thomas</u> (1999), 77 Ohio 3d. 323, 326.....	9

<u>State v. Robbins</u> (1979), 58 Ohio St. 2d. 74, 12 O.O 3d. 84, 388 N.E.2d 755.....	10
<u>State v. Williford</u> (1990), 49 Ohio St.3d 247, 249, 551 N N.E.2d 1279, 1281.....	10
<u>Koss</u> , 49 Ohio St.3d at 216, 551 N.E.2d at 973.....	10
<u>State v. Thomas</u> , 77 Ohio St.3d 323, 673 N.E.2d 1339, 87 A.L.R. 5th 775, 1997-Ohio-269.....	9,10
<u>Griffith v. Kentucky</u> , 479 U.S. 314 (1987).....	11
<u>State v. Parks</u> , 494 U.S. 489 (1999).....	11
<u>Teague v. Lane</u> , 489 U.S. 288 (1989).....	11
<u>Bousley v. U.S.</u> , 523 U.S. 614 (1998).....	11
<u>Davis v. U.S.</u> , 417 U.S. 33 (1974).....	11
<u>Collins v. Youngblood</u> , 497 U.S. 37 (1990).....	11
<u>Buttler v. Mekellar</u> , 494 U.S. 407 (1990).....	12
<u>Goldfuss v. Davidson</u> , 79 Ohio St.3d 116 (1997).....	12
<u>State v. Willford</u> , 49 Ohio St.3d 247 (1990)..	12
<u>Allison v. Fiscus</u> , 156 Ohio St. 120 (1951).....	12
<u>Engle</u> , at 528, 660 N.E.2d 450.....	12
<u>State v. Mikulic</u> (1996), 116 Ohio App.3d 787, 790, 689 N.E.2d 116.....	12
<u>State v. Persons</u> , Miegs App. No 02CA6, 2003-Ohio-4213 at ¶12.....	12
<u>First, Fifth, and Fourteenth Amendments</u>	12
<u>Bounds v. Smith</u> , 430 U.S. 817 (1977).....	12
<u>Ohio Const. Art. I, Section 15</u>	1,4,5,8.15
<u>Hudson v. McMillian</u> , 503 U.S. 1, 112 S.Ct.995, 117 L.Ed.2d 156 (1992).....	13
<u>Johnson v. Avery</u> , 393 U.S. 483, 89 S.Ct 747, 21 L.Ed.2d 718 (1989).....	13
<u>Procunzer v. Martinez</u> , 416 U.S. 396, 40 L.Ed.2d 224, 94 S.Ct 1800 (1974).....	13
<u>Thornburgh v. Abbott</u> , 490 U.S. 401, 104 L.Ed.2d 224, 109 S.Ct 1874 (1989).....	13
<u>App. R. 4</u>	13

	<u>Page No.</u>
<u>Roe v. Flores-Ortega</u> , 528 U.S. 470, 476 (2000).....	14
<u>Rodriguez v. U.S.</u> , 395 U.S. 327 (1969).....	14
<u>Peguero v. United States</u> , 526 U.S. 23, 28 (1999).....	14
<u>Roe</u> , 528 U.S. at 477 (quoting) Peguero 526 U.S. at 28.....	14
<u>Strickland v. Washington</u> (1984), 466 U.S. 668, 104 S.Ct 2052, 2064, 80 L.Ed.2d 674, 693.....	15
<u>Hill v. Lockhart</u> (1985), 474 U.S. 52, 59, 106 S.Ct 366, 369, 370, 88 L.Ed.2d 203, 209, 210.....	15
<u>Castellanos v. U.S.</u> , 26 F.3d 717, 719 7th Cir. 1994).....	15
<u>Morris v. Wolfe</u>	15

EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION

It is unfair because the appellant specifically asked his attorney to file an appeal and/or Post-Conviction Relief on his behalf, and the attorney simply ignored his client and the Appellate Court refuses to read the evidence.

The attorney also coerced his client into pleading guilty when he was innocent, as no theft had occurred. A civil agreement had been agreed upon and the attorney failed to defend his client when the prosecutor used a year old dismissed assault case to arrest the appellant, then sought an illegal indictment against the defendant for a bankrupt company (See exhibits 2 and 3-the judgement entries of both the civil agreements).

Furthermore, the assault was the result of the appellant defending his home from an invader in the commission of a crime against the appellant's home and family (The Castle Law). The appellant has submitted evidence filed with the Common Pleas and Appellate courts displaying that the appellant was sentenced for a civil debt, clearly unconstitutional under Ohio Constitution Article I, Section 15, which is that there be no imprisonment for a debt. The defendant was sentenced on an assault charge involving his home being broken into by the alleged victim. This victim also confessed to his intent to set fire to the appellant's home, a case currently under investigation, and the house was burnt to the ground shortly after. Police reports were filed about the threat.

On December 3rd, 2007, the appellant entered a plea for 18 months prison and 18 months suspended. After being at the Correctional Reception Center in Orient, Ohio for about two weeks he received his sentence documentation from C.R.C. and notified his attorney, Chris Tenolgia, asking him to correct the error, to file an appeal and/or post-conviction relief. The attorney failed to do so and the appellant has been writing letters and filing motions ever

since to redress his constitutional rights to an appeal. The court of appeals is denying appellant due process to an appeal, thus, it is appropriate for this court to accept jurisdiction.

STATEMENT OF THE CASE AND FACTS

In July, 2004, Kenneth R. Hobbs II (herein after Petitioner), purchased Memory Gardens, a cemetery in Miesgs County, Ohio from the Roberts Group for the sum of \$200,000.00 dollars on a land contract.

In January, 2005, petitioner expanded his business and opened Beautiful Memories Monument Company.

March through October, 2006, Memory Gardens and Beautiful Memories Monument Company suffered financial crisis due to a fire (which destroyed records), and the high cost of Granite. Petitioner was forced to move to the Point Pleasant Office in West Virginia.

On December 15th, 2006, the Miesgs County Grand Jury returned a Two (2) count indictment against petitioner charging Felonious Assault in violation of R.C. §2903.11(A)(1) and §2903.11(A)(2), both felonies of the second degree. This indictment does not pertain to the instant request for writ of habeas corpus.

In January, 2007, the Point Pleasant and Beautiful Memories Monument Company was forced to close its doors, however, prior to the closing of the business's, petitioner went into negotiations with the West Virginia Attorney General's office to resolve his current debts and to refund customers that purchased monuments in Miesgs County, Ohio and the West Virginia that were not delivered.

In June, 2007, The Civil Agreement with the West Virginia Attorney General's office was complete (exhibit 2), however, prior to the completion of the Civil Agreement with West Virginia, petitioner was in negotiations with the Ohio Attorney General's office to afford to refund those who were not on the West Virginia Civil Agreement.

In July, 2007, petitioner was arrested and jailed on the assault indictment, titled secret indictment, Case No. 06-CR-091.

On October 11th, 2007, the Meigs County Grand Jury returned a One(1) count indictment against petitioner charging Grand Theft in violation of R.C. §2913.02, a second degree felony. Case No. 07-CR-076, which is the basis for the instant request for a writ of habeas corpus.

On December 3rd, 2007, petitioner entered guilty pleas to the amended charges of Aggravated Assault and Grand Theft, both felonies of the fourth degree. The State dismissed Count Two (2) of the indictment as it pertained to Felonious Assault.

In return for petitioner's guilty pleas to the two amended charges, the State recommended petitioner receive Two (2) Eighteen (18) months sentences on each count to run consecutively to each other. That upon petitioner's completion of the Eighteen (18) month prison term on the Aggravated Assault charge, petitioner be placed on community control sanctions for a period of Five (5) years on the Grand Theft charge. Following the recommendations, the trial court commenced sentencing which it imposed Two (2) Eighteen (18) month prison terms to run consecutive to each other and did not suspend the Grand Theft charge, however, prior to sentencing, petitioner's counsel stated several times that the Grand Theft charge is a civil matter and not a criminal offense.

On April 28th, 2008, petitioner's civil agreement with the State of Ohio Attorney General's office was complete and finalized (Exhibit 3-sentenced on December 10th, but petitioner was not present).

it is upon the above cause petitioner requests for a writ of habeas corpus.

In support of its position on these issues, the appellant presents the following arguments.

ARGUMENT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1: ARTICAL 1, SECTION 15 OF THE OHIO CONSTITUTION
PROVIDES THAT NO PERSON SHALL BE IMPRISONED FOR A DEBT.

Proposition of Law No. I: Counsel did not provide petitioner with adequate representation, thus trial court erred when it sentenced petitioner to serve a prison term upon a Grand Theft indictment when no theft offense occurred and prosecution committed prosecutorial misconduct when it obtained a indictment upon Grand Theft when the alleged offense, if any, is civil, not criminal.

In the instant case, petitioner owned and operated a Monument Company and over a course of time the company expanded, however, ^{KT} due to thefts, personnel mischief, a fire, and a few business mistakes, the company was forced to eventually close its doors. Petitioner knowing that he was a civil liability, went into an agreement with the State of West Virginia Attorney General's office to refund those individuals who did not receive the monuments that were ordered in Mieggs County, Ohio and the state of West Virginia.

Counsel, who subsequently represented petitioner in Mieggs County, Ohio upon the underlining Grand Theft charge, apparently knew that petitioner was charged upon a criminal act with no justification upon that charge and still pursued petitioner to enter a guilty plea to the Grand Theft charge when in fact it is not a criminal offense, if it is an offense at all, it is a civil matter in nature and petitioner's conviction upon Grand Theft is clearly a miscarriage of justice. Counsel stated at the CHANGE OF PLEA HEARING held November 19th, 2007 at T.p. 16-17, lines 19-11 that "It has become a civil issue in West Virginia. It's not a criminal...This is the only case...Judge, believe it or not, this is the only case, as I understand it, that my client is going to prison on. Everybody else has seen fit either to reduce this to a misdemeanor and or made it a civil penalty. So, if we're looking at the true scope of this, these are all contractual obligations that my client assumed with the other partners who were his co-contractors at the time these contracts were entered into," and again at nother CHANGE OF PLEA AND SENTENCING HEARING

held on December 3rd, 2007, T.p. 30, lines 10-12 that "there are multiple jurisdictions here with regard to this theft count that did not see as a crime, but in fact a civil case."

To incarcerate petitioner for a civil obligation unquestionably violated Section 15, Article I of the Ohio Constitution, which provides:

"No person shall be imprisoned for a debt in any civil action, on mesne or final process, unless in cases of fraud."

This constitutional provision does apply to the instant case. This case proceeded by way of a Grand Jury indictment for a violation of R.C. §2913.02, Grand Theft, a felony of the second degree. The petitioner, therefore, is serving a sentence for the violation of a criminal statute, and is being imprisoned for a debt in a "civil action" as is prohibited by Section 15, Article I of the Ohio Constitution. Theft is defined in O.R.C. §2913.02 as follows:

"(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over the property or service in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat."

It was held in Second Nat. Bank of Sandusky v. Becker, 62 Ohio St. 289, 56 N.E. 1025, 51 L.R.A. 860; that money obligations resting upon contract, express or implied, and judgements rendered thereon, are debts within the purview of Section 15 of the Bill of Rights, which forbids imprisonment for debt in civil actions.

Unquestionably clear authority to imprison to enforce the collection of a debt of any description must be found in the law; otherwise such

imprisonment will be unlawful. Lougee v. State, 11 O., 68 to 70. (Quoting In Re J.C. Smith, on behalf, etc., for a writ of habeas corpus, v. Perry, Sheriff, In Re Luezler, on behalf, etc., for a writ of habeas corpus, v. Perry, Sheriff, 9 Ohio C.D. 778, 18 Ohio C.C 826, 1899 WL 1275 (Ohio Cir.).

By the same token, to imprison a defendant for failure to work to satisfy a civil obligation is equally impermissible. State v. Lamb, 163 Ohio App. 3d 290, 837 N.E.2d 833. Likewise, and analog to present case, a creditor may not resort to a criminal contempt proceeding to punish a debtor who fails to abide by a prior agreement to work to satisfy a debt, he cannot be arrested and punished if he later changes his mind and refuses to labor. United States v. Reynolds, (1914), 235 U.S. 133, 138-147, 35 S.Ct. 86, 59 L.Ed. 162; see also, Bailey v. Alabama (1911), 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 191 (holding that a person cannot be exposed to a criminal conviction simply for failing or refusing to perform an agreement for personal services to satisfy a civil debt); Gen. Elec. Co. v. Internatl. Union United Auto., Aircraft & Agricultural Implement Workers (1952), 93 Ohio App. 139, 158, 50 O.O. 399, 108 N.E.2d 211 ("[I]t is clear beyond cavil that any attempt by this or any other American Court to compel a person to labor against his will except as a punishment for crime would be utterly void under the XIIIth Amendment of the Constitution of the United States"). [W]hatever of social value there may be, and of course it is great, in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service." Pollock v. Williams (1944), 322 U.S. 4, 18, 64 S.Ct. 792, 88 L.Ed. 1095. Thus, "no state can make * * * criminal sanctions available for holding unwilling persons to labor." Id.; see also, Section 1994, Title 42, U.S. Code ("[A]ll acts, laws, resolutions, orders, regulations, or usages of any Territory or State *

* * by virtue of which any attempt shall hereinafter be made to * * * enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void"). (quoting State v. Lamb, 163 Ohio App. 3d 290, 837 N.E.2d 833). See also, Baldwin's Ohio Practice Criminal Law s 114:2, s 114:2. Criminal and civil contempt (2008); OH Jur. 3d Criminal Law s 3984, s 3984, Liability of defendant (2008).

Additionally, the prosecutions intent regarding this matter cannot be overlooked. Under Rule 3.8 of the Rules of Professional Conduct of this State, "a prosecutor may not:

(a) Pursue or prosecute a charge that the prosecutor knows is not supported by probable cause;..."

Moreover, the prosecutor, based upon a license to practice law in this State, is presumed to know the law. In this light, it would be implausible to argue that the prosecutor was without knowledge that the alleged theft count had been resolved months prior to the insurance of the indictment through the state of West Virginia Attorney General's office.

The prosecutor knew or should have known in through investigation of this case, and within the prosecutor's knowledge of the law of this state, that in fact the pursuit and subsequent conviction of petitioner is a conviction based upon a case whereat the prosecutor chose not to raise to the level of professionalism and dismiss the theft count, however, chose to violate petitioner's Due Process rights through prosecutorial misconduct thereof.

In the instant case, petitioner owned and operated his business with the up most loyalty and respect to his customer's with no intention to deprive or engage in any criminal activity that would constitute an alleged theft offense. Furthermore, counsel for petitioner stated on many different occasions that the criminal offense of Grand Theft is a

civil matter. On this point, it is beyond any belief that counsel for petitioner would permit a guilty plea knowing that to incarcerate petitioner upon a debt is clearly in violation of constitutional principles. Additionally, it is even more unbelievable that the prosecutor in this case pursued criminal charges and a conviction that is clearly in violation of this states Constitution, Article I, Section 15.

Petitioner's deprivation of liberty is sufficient to warrant extraordinary relief in habeas corpus. See, e.g. Smirnoff, 84 Ohio St.3d at 168-169, 702 N.E.2d 423. R.C. §2725.01 provides, "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody of such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." Additionally, "[s]ince habeas corpus is an extraordinary remedy whose operation is to a large extent uninhibited by traditional rules of finality * * *, its use has been limited to cases of special urgency, leaving more conventional remedies for cases in which the restraints on liberty are neither severe nor immediate." (Emphasis added.) Hensley v. Mun. Court, San Jose Milpitas Judicial Dist. Santa Clara Cty. (1973), 411 U.S. 345, 351, 93 S.Ct. 1571, 36 L.Ed.2d 294.

The fact that petitioner is being held in custody upon poor business decisions, with no intentions to commit a theft offense or to defraud his one time customers, the request for writ of habeas corpus should be granted, thus this court should accept jurisdiction.

Proposition of Law No. II: The Ohio "Castle Doctrine" (Sub.S.B. 184) provides that a person has a right to protect his/her self and residence from an intruder who intends to commit a misdemeanor or felony offense, thus Apellant's conviction for defending his home is unlawful.

In this case, even before the implimentation of the Castle Doctrine. This **appellant** still had a case because the Hobbs family had been filing police reports in order to protect themselves due to several months of menacing, death threats, and thefts. However, attorney for the defense failed to secure this exculpatory and mitigating evidence. The prosecution was also aware of this evidence and failed to provide it.

As shown in the transcripts of November 19th, 2008. Transcripts the appellant has recently aquired after 10 months of requests to no avail, but no is unable to submit because the appellate court won't accept them. Defense counsel did request both the previous police reports and the witness statements of the night in question, but they were never provided.

The original assault charge was dismissed in 2006; then used as additional leverage against the defendant when his company went bankrupt and the prosecution desired an indictment. Both cases never should have been in criminal court to begin with. The police and witness reports clearly prove the **appellant** was attacked by the alleged victim involving a home invasion, yet the defense counsel failed again to properly represent his client.

The Due Process clause guarantees criminal defendants the right to be afforded a meaningful opportunity to present a complete defense. California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984). "[A] person who, through no fault of her own, is assaulted in her home may stand her ground, meet force with force, and if necessary, kill her assailant, without any duty to retreat." (Emphasis added) State v. Thomas (1977), 77 Ohio St.3d 323, 326. The Ohio Supreme Court's language is consistent with its statement of the general elements of self-defense. To establish self-defense, a defendant must prove the following: (1) the defendant was not at fault in creating the confrontation;(2) the defendant had a genuine belief that he/she was in imminent danger of death or great bodily harm and that his/her sole avenue of escape from danger required the use of such force; and (3) the defendant must not have violated any duty to retreat. State v. Robbins (1979), 58 Ohio St.2d 74,

paragraph two of the syllabus. Accordingly, in Robbins, the court made clear that a defendant may not raise a claim of self-defense if he/she is at fault in creating the confrontation. As stated by the Thomas court, the Castle Doctrine only applies if the defendant is not at fault. As stated above, the second element of the affirmative defense of self-defense requires the defendant to prove that she/he had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape was the use of force. State v. Willford (1990), 49 Ohio St.3d 247, 249, 551 N.E.2d 1279, 1281, citing State v. Robbins (1979), 58 Ohio St.2d 74, 12 O.O.3d 84, 388 N.E.2d 755, paragraph two of the syllabus.

"In determining whether the defendant had reasonable grounds for an honest belief that she was in imminent danger, you must put yourself in the position of the defendant. You must consider the conduct of [the assailant] and determine if such acts and words caused the defendant to reasonably and honestly believe that she was about to be killed or to receive great bodily harm.'" (Emphasis added) Koss, 49 Ohio St.3d at 216, 551 N.E.2d at 973. (quoting State v. Thomas, 77 Ohio St.3d 323, 673 N.E.2d 1339, 67 A.L.R. 5th 775, 1997 -Ohio- 269). In the instant case, Appellant has provided numerous criminal complaints with the Pomeroy police department against the alleged victim (Allen Young). The alleged victim has on a continued basis threatened the appellant and appellant's wife with bodily harm, including threatening to burn Appellant's home down. On July 22nd, 2006, at 2:00am, appellant and his wife (Vickie Hobbs) returned home to their residence to find that all the doors to their home were open and the dog was off its chain and barking in the darkness, however, given the darkness, the appellant could only follow the sounds in which the dog was barking. Upon further investigation, appellant walked the length of his property yelling to see if someone was in the field and subsequently, found the dog, however, out of no where, from behind the condemned abandoned trailer adjacent to the appellant's property, the alleged victim appeared and took several swings at the appellant and picked up a trash can and threw it at appellant. The appellant

in retaliation, blocked the punches with his forearm. The alleged victim fell to the ground several times drunk, and in the course of the commotion, allegedly broke his arm. Prior to this incident, appellant's wife called the Pomeroy police department. Upon arrival, the officer's arrested appellant upon the statement of the alleged victim for hitting the alleged victim with a crow bar when no weapon was used. Weather a weapon was used or not, appellant had every conceivable right to protect his home and himself in light of the threats of physical harm and the burning of appellant's residence by the slleged victim. As a matter of fact, appellant's home was burned to the ground after this incident occurred.

Sub.S.B. 184, also know as the **CASTLE DOCTRINE**, provides that a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so, entered the residence or vehicle occupied by the person using the defensive force.

The retroactive application of Sub S.B. 184, is applicable to the instant case. When a decision results in a new rule, that rule applies to all criminal cases still pending on direct review. Griffith v. Kentucky, 479 U.S. 314 (1987). New substantive rules generally apply retroactively. This includes constitutional determinations that place conduct or persons beyond the state's power to punish. See Saffle v. Parks, 494 U.S. 484 (1990); Teague v. Lane, 489 U.S. 288 (1989). Such rules apply retroactively becuase they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him. Bousley v. U.S., 523 U.S. 614 (1998); Davis v. U.S., 417 U.S. 33 (1974). Also, "ounce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that is be applied retroactively to all who are similarly situated." Collins v. Young Blood, 497 U.S. 37 (1990); Teague v. Lane, 489 U.S.

288 (1989); Butler v. Mekellar, 494 U.S. 407 (1990).

In the instant case, appellant had the right to use as much force as was necessary to defend himself against an attack. The degree of force permitted depends upon what is reasonably necessary to protect the individual from the imminent use of unlawful force or to protect the individual's property. Goldfuss v. Davidson, 79 Ohio St.3d 116, (1997); State v. Williford, 49 Ohio St.3d 247, (1990); Allison v. Fliscus, 156 Ohio St. 120, (1951).

Appellant asserts that his plea of guilty was entered upon incorrect legal advice. A defendant does not enter a knowing, intelligent or voluntary guilty plea if the plea is premised on incorrect legal advice. Engle, at 528, 660 N.E.2d 450; State v. Mikulic (1996), 116 Ohio App.3d 787, 790, 689 N.E.2d 116; State v. Persons, Miags App. No. 02CA6, 2003-Ohio-4213, at ¶12. Appellant asserts that his trial counsel was ineffective for failing to advise him of potential defenses to the charges he was facing.

Accordingly, this court needs to take jurisdiction of the instant appeal and render a judgement in this case in the alternate, reverse the Court of Appeals judgement with an order to hear this case.

Proposition of Law No. III: The right of access to the court is protected by the First, Fifth, and Fourteenth Amendments to the United States Constitution, thus a defendant has a right to petition the government (by way of the court) for redress of a constitutional violation and when that right is denied, defendant's fundamental rights are denied.

The first Amendment protects the confidentiality of correspondence between defendants and attorneys. The fifth and fourteenth Amendments give defendants the right to access the courts as a matter of due process. The concept of court access for defendants has been interpreted and re-interpreted by various courts. Id. Bounds v. Smith, 430 U.S. 817 (1977), the United States Supreme Court determined that defendants have a fundamental constitutional right to access to the courts. Specifically, the right that Bounds acknowledged was the right of access to the courts.

Without the ability to access the courts, a defendant cannot protect himself from violations of any of his constitutional and civil rights.

In the case at bar, appellant is clearly being denied access to the court. Appellant is being held of his liberty in violation of Article I, Section 15 of the Ohio Constitution. Furthermore, counsel knew at the time and prior to appellant entering his guilty pleas that the Grand Theft count is not a criminal offense but a civil proceeding and still preserved appellant to enter his guilty plea. See Proposition of Laws I, II, IV.

For the Fourth Appellate District Court of Appeals ordering the clerk of courts not to accept any motions or pleadings in the instant case, the court has denied appellant his fundamental right to access to the courts. In Hudson v. McMillan, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), the United States Supreme Court held:

"The right to file for legal redress in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. In as much as one convicted of a serious crime and imprisoned usually is divested of the franchise, the right to file a court action stands....as his most 'fundamental political right, because preservative of all rights.'"

A prisoner's right of access to the courts may neither be denied nor obstructed. See, Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed2d 718 (1969). "The constitutional guarantees of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights... regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." Procunrer v. Martinez, 416 U.S. 396, 40 L.Ed2d 224, 94 S.Ct. 1800 (1974); See, also, Thornburgh v. Abbott, 490 U.S. 401, 104 L.Ed.2d 224, 109 S.Ct. 1874 (1989).

Additionally, appellant requested counsel to file a notice of appeal, however, months after requesting counsel to file the notice of appeal, counsel wrote appellant stating that this is the first time you have requested to file a Notice of Appeal, and now that the 30-day prior to file has expired, you will need to file a delayed appeal. Counsel was advised by appellant

well before the 30-day prior expired to file a Notice of Appeal pursuant to APP.R. 4 however, counsel did not. A lawyer who disregards specific instructions from a defendant to file a Notice of Appeal acts in a manner that is professionally deficient. Citing Roe v. Flores-Ortega, 528 U.S. 470, 476 (2000); Rodriguez v. United States, 395 U.S. 327 (1969); See, also, Peguero v. United States, 526 U.S. 23, 28 (1999). In Row, the Supreme Court pointed out that if counsel does not "file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have merit." Row, 528 U.S. at 477 (quoting Peguero, 526 U.S. at 28. The court explained:

"This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a Notice of Appeal is purely ministerial task, and the failure to file reflects inattention to the defendant's wishes."

Therefore, whether or not counsel reasonably believed that there was no basis for an appeal in this case is not a factor to consider in determining whether appellant had merit to the issues presented, however, the issues that are present are issues that require adjudication.

Appellant has not presented self-serving to the court of appeals. Appellant served upon the court of appeals factual evidence in form of documents, and the actual letter from counsel who did not file the notice of appeal as requested by appellant.

In the instant case, Appellant was diligent in seeking to develop the facts underlying his claims that counsel's ineffective performance deprived him of his constitutional right to appeal and his other claims. See Propositions of Laws No.s I, II, and IV. The court of appeals erroneous decision to bar appellant from seeking redress upon his constitutional claims, denied appellant due process.

Therefore, this court should accept jurisdiction and hear this case and render judgement accordingly.

Proposition of Law No. IV: The Sixth Amendment of the United States Constitution provides a criminal defendant competent representation throughout a criminal prosecution, thus if counsel is not functioning in accordance with the Sixth Amendment, defendant is denied counsel and Due Process of the law.

The Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed2d 674 test was applied to guilty pleas in Hill v. Lockhart (1985), 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed2d 203. First, the defendant must show that counsel's performance was deficient. See, Proposition of Laws I, II, III; Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed2d at 693; Hill, 474 U.S. at 57, 106 S.Ct. at 369, 88 L.Ed.2d at 209. Second, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. See Proposition of Laws I, II, III; Hill, 474 U.S. at 59, 106 S.Ct. at 370, 88 L.Ed.2d at 210; See Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693.

The defendant has shown counsel's performance was extremely deficient. From the beginning the appellant has maintained his innocence, even saying to counsel 30 seconds before signing plea, "But, I'm innocent," and counsel replied, "That's what you keep saying." Defense counsel also seems to know the prosecutions case is faulty, stating on the record that the defendant was being menaced and harrassed by the alleged victim, yet failed to secure the exculpatory evidence that the defendant informed him of. The many police reports and witness statements proving the defendant's innocence.

Furthermore, the federal constitutional courts have frowned on this type of counseled behavior and the seventh circuit also agrees and even said, "every court of appeals that has ever addressed the issue has all held that a lawyer's failure to appeal a judgement in disregard to the defendant's request 'is' ineffective assistance of counsel, regardless of whether the appeal would have been successful 'or' not." Castellanos v. United States, 26 F.3d 717, 719 (7th Cir. 1994).

Therefore, as stated in Morris v. Wolfe, "failure of an attorney to file a timely appeal, after being instructed or even requested to do so by defendant constitutes ineffective assistance of counsel."

Based on the advise of defendant's counsel, which was no advise at all, the defendant did not knowingly and intelligently enter into a guilty plea, but was instead coerced into signing by his own counsel.

CONCLUSION

Given the arguments, facts, and the court of appeals erroneous decision to bar appellant from seeking review of his constitutional protected rights, this court should accept jurisdiction and hear the merits of this appeal.

Respectfully Submitted,

Kenn Hobbs II

Kenneth R. Hobbs #567-153
Appellant-Defendant, Pro Se
Noble Correctional Institution
15708 McConnelville Road
Caldwell, OH 43724

CERTIFICATE OF SERVICE

I hereby certify that a copy of the memorandum in support of jurisdiction was sent by regular U.S. Mail to the Meigs County Prosecutor at: _____

TO THE MEIGS COUNT PROSICUTER COMPLIMENTS OF THE CLERK OF COURTS PO BOX 151 POMEROY, OHIO 45769

AND THE SUPREME COURT

on this 19 day of Dec, 2008.

Kenn Hobbs II

Kenneth R. Hobbs II #567-153
Appellant-Defendant, Pro Se

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

FILED
MARLENE HARRISON
CLERK OF COURTS
MEIGS COUNTY, OHIO

NOV 18 2008

COURT OF APPEALS

State of Ohio, : Case No. 08CA4
Plaintiff-Appellee, : ENTRY
v. :
Kenneth R. Hobbs II, :
Defendant-Appellant. :

Kenneth R. Hobbs II has filed a "Petition for Replacement of Current Attorney," "Request for Constitutionality Redress," "Petition for Transcripts," "Motion to Correct the Record," and a document entitled "Sentence Unauthorized by Law." Because we denied appellant leave to file a delayed appeal on June 4, 2008, this court no longer has jurisdiction over this matter. **All REQUESTED RELIEF IS DENIED.**

Furthermore, since denying Hobbs leave to file a delayed appeal, he has filed numerous, often repetitive, motions, petitions, etc., all of which we have denied as being meritless. The jurisdiction of this court over this case has ended, and no purpose would be served by allowing Hobbs to make further filings in this matter. Accordingly, we **ORDER** the Meigs County Clerk to not accept any further filings from Hobbs with respect to this case, and this court will not consider any further filings by Hobbs in the event they are inadvertently accepted for filing. See *Smith v. Ohio Dept. of Human Services* (1996), 115 Ohio App.3d 755)

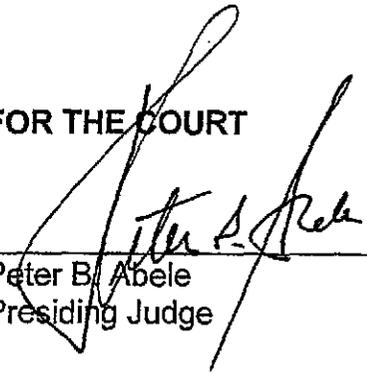
The clerk is **ORDERED** to serve all counsel of record at their last known addresses. The clerk is further **ORDERED** to serve Hobbs by certified mail, return

receipt requested. If returned unserved, the clerk shall serve Hobbs by ordinary mail.

IT IS SO ORDERED.

Kline, J., McFarland, J.: Concur.

FOR THE COURT



Peter B. Abele
Presiding Judge

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

PHYSICAL ADDRESS:
812 Quarrier St.
Charleston, WV 25301

MAILING ADDRESS:
P. O. Box 1789
Charleston, WV 25326-1789

E-Mail: ccustomer@wvago.gov
<http://www.wvago.us>



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

Consumer Protection
and Antitrust Division
(304) 558-8986

Preneed Funeral Services
(304) 568-8986

Consumer Hotline
1-800-368-8986

FAX: (304) 558-0184

June 18, 2007

Ken Hobbs
Vickie Hobbs
4012 Northwest 33rd Street
Oklahoma City, OK 73112

Re: Assurance of Discontinuance between Attorney General of West Virginia
and Beautiful Memories Monuments

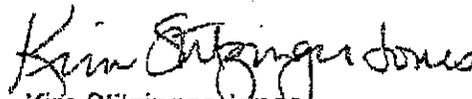
Dear Mr. Hobbs:

Please find enclosed one signed original of the Assurance of Discontinuance reflecting the agreement that has been reached between the Attorney General of West Virginia and Beautiful Memories Monuments.

Please be advised that we have received additional consumer complaints with refunds due of \$13,577.43. The total as of today is \$43,576.81.

Thank you in advance for your continuing cooperation in this matter.

Very truly yours,


Kim Stitzinger Jones
Assistant Attorney General

KSJ/arv
Enclosure

EXHIBIT 4
12/14/03

BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

IN THE MATTER OF:

KEN HOBBS, OWNER
VICKIE HOBBS, OWNER
BEAUTIFUL MEMORIES MONUMENTS

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Ken and Vickie Hobbs, Owners of Beautiful Memories Monuments formerly located in Point Pleasant, West Virginia and Pomeroy, Ohio, which may be subject to an order by the Attorney General or by a court of law. In accordance with W. Va. Code § 46A-7-107, Beautiful Memories Monuments ("BMM"), without in any way admitting that any of its prior practices were in violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W Va § 46A-1-101 et seq., or other applicable state and federal laws, has consented to observe the following terms, conditions, and agreements in the future conduct of its business from and after the date of this **ASSURANCE OF DISCONTINUANCE**.

BACKGROUND

1. Beautiful Memories Monuments maintained business offices at 2411 Jackson Avenue, Point Pleasant, WV 25550, and 1747 Chester Road, Pomeroy, OH 45769.
2. Ken and Vickie Hobbs, at all times pertinent hereto, were the owners and operators of both locations of BMM.
3. BMM was engaged in the business of selling and setting monuments.

4. Currently Ken and Vickie Hobbs reside at 4012 Northwest 33rd Street, Oklahoma City, OK 73112.

5. The business activities of BMM and its agents arising from consumer transactions are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101 et seq.

6. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000.00 for each violation, in accordance with W. Va. Code § 46A-7-111(2).

THE ATTORNEY GENERAL'S ALLEGATIONS

7. The Attorney General's office received numerous complaints from consumers who alleged they ordered monuments from BMM that were not delivered.

8. On or about January, 2007, BMM closed its doors and Ken and Vickie Hobbs moved to Texas without delivering and/or settling numerous monuments in violation of the WVCCPA.

AGREEMENT

9. Without admitting that it has committed any of the violations set forth herein, BMM promises to take the following actions set forth hereinbelow in order to resolve the concerns of the Attorney General:

(a) BMM, its owners, employees, agents, servants, heirs, successors, and assigns do hereby promise and voluntarily assure the Attorney General that they will comply with the provisions of the WVCCPA and other applicable state and federal consumer protection laws in its business practices.

(b) BMM shall issue refunds to all consumers who paid BMM for goods and services that were not delivered or and/or not set intact by BMM. Currently, the total amount to be refunded is \$29,899.35. All complaints filed by consumers with the Attorney General's office 90 days from the date of the execution of this **ASSURANCE** will also be included under the terms of the **ASSURANCE**.

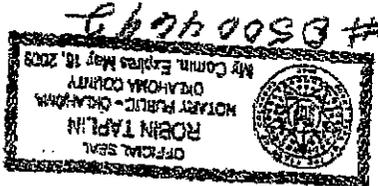
(c) BMM shall refund the money to the Attorney General's office, which will distribute the refunds.

(d) BMM shall make minimum payments of \$1,000.00 per month on the 25th day of each month, commencing June 2007, until all consumers have been reimbursed.

10. BMM further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its business operation, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this **ASSURANCE** are and shall be public information.

11. It is further agreed and understood that, while the parties to this **ASSURANCE** presently intend to cooperate in securing and obtaining compliance with the terms of this **ASSURANCE**, the matters settled by the filing of this agreement may not be reopened by the Attorney General of West Virginia except for the sole purpose of enforcing the specific terms of this **ASSURANCE**.

IN WITNESS WHEREOF, BMM has caused this **ASSURANCE** to be executed. The Attorney General of West Virginia or his designate has approved this **ASSURANCE**.



Robin Taplin
NOTARY PUBLIC

My commission expires
12 day of June, 2007

Taken, subscribed, and sworn to before me in the County and State aforesaid this

COUNTY OF Oklahoma, TO-WIT:

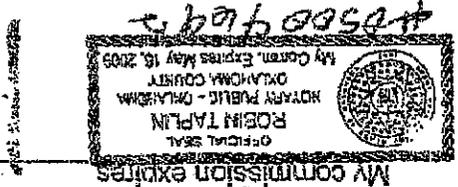
STATE OF OK

BY: Vickie Hobbs Co-Owner
Vickie Hobbs, Owner

Beautiful Memories Monuments
Vickie Hobbs, Owner

DATE

6-12-07



Robin Taplin
NOTARY PUBLIC

My commission expires
12 day of June, 2007

Taken, subscribed, and sworn to before me in the County and State aforesaid this

COUNTY OF Oklahoma, TO-WIT:

STATE OF OK

BY: Ken Hobbs Co-Owner
Ken Hobbs, Owner

Beautiful Memories Monuments
Ken Hobbs, Owner

DATE

6-12-07

APPROVED BY:

JILL MILES
DEPUTY ATTORNEY GENERAL

Kim Stitzinger Jones
KIM STITZINGER JONES
ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division

DATED: 6/18/07

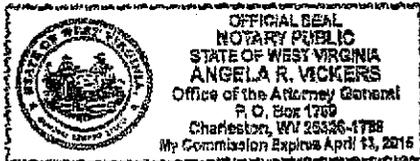
STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

Taken, subscribed, and sworn to before me in the County and State aforesaid this
18th day of June, 2007.

My commission expires April 13, 2015

Angela R. Vickers
NOTARY PUBLIC



IN THE COURT OF COMMON PLEAS
MEIGS COUNTY, OHIO

2008 APR 23 PM 12:03

Mark Stinson
CLERK OF COURTS
MEIGS COUNTY, OHIO

STATE OF OHIO, *ex rel.*)
MARC DANN)
ATTORNEY GENERAL OF OHIO)

CASE NO. 07-CV-136
JUDGE CROW

Plaintiff)

v.)

KENNETH HOBBS II individually and d/b/a)
BEAUTIFUL MEMORIES MONUMENTS)

CONSENT JUDGMENT
ENTRY AND ORDER

and)

VICKIE HOBBS individually and d/b/a)
BEAUTIFUL MEMORIES MONUMENTS)

Defendants)

PREAMBLE

This matter came to be heard upon the filing of a Complaint by the Attorney General of Ohio on December 12, 2007. By signing this entry, Defendants Kenneth Hobbs, II and Vickie Hobbs (hereinafter referred to as "Defendants") submit to the personal jurisdiction of this Court and consent to the entry of this Consent Judgment Entry and Order. Further, Defendants hereby consent to the Court's finding of the following facts and conclusions of law and the imposition of the Order as follows:

FINDINGS OF FACT

1. Defendants were, and have been at all times relevant to this action, engaged in the business of advertising, soliciting, offering, and selling monuments and grave markers in the State of Ohio, including in Meigs County.

EXHIBIT

2. Defendants accepted money from consumers for the purchase of goods and/or services, ordered by mail, telephone, or otherwise, and then permitted eight weeks to elapse without: (a) making shipment or delivery of the goods or services ordered, (b) making a full refund, (c) advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requested, or (d) furnishing similar goods or services of equal or greater value as a good faith substitute if the consumer agreed.
3. Defendants accepted money from consumers as deposits for the purchase of goods and/or services without having available sufficient goods and/or services to satisfy all consumers who made deposits.

CONCLUSIONS OF LAW

4. This Court has jurisdiction over the subject matter, issues, and parties to this Consent Judgment and venue is proper.
5. The Ohio Attorney General is the proper party to bring this action under the authority of R.C. 1345.07, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
6. The Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq. governs the business practices of the Defendants.
7. Defendants were "suppliers" as that term is defined in R.C. 1345.01(C) in that they engaged in the business of effecting consumer transactions by soliciting, offering, and selling monuments and grave markers to individual consumers in the State of Ohio, including in Meigs County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

8. Defendants' practice of accepting payments from consumers for purchase of monuments and grave markers, and then permitting eight weeks to elapse without: (a) making shipment or delivery of the goods or services ordered, (b) making a full refund, (c) advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requested, or (d) furnishing similar goods or services of equal or greater value as a good faith substitute if the consumer agreed is an unfair, deceptive and unconscionable act or practice in violation of the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09(A)(1)-(2), and the Ohio Consumer Sales Practices Act, R.C. 1345.02(A).
9. Defendants' practice of accepting money from consumers as deposits for the purchase of goods and/or services without having sufficient goods and/or services to satisfy all consumers who made deposits is an unfair or deceptive act or practice in violation of the Ohio Admin. Code 109:4-3-07(A) and the Ohio Consumer Sales Practices Act, R.C. 1345.02(A).

ORDER

For the purpose of effectuating this Consent Judgment it is therefore, ORDERED, ADJUDGED, and DECREED that:

- A. Defendants are hereby permanently enjoined from engaging in the acts and practices described above that are in violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
- B. It is hereby ORDERED that Defendants shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.

- C. The Defendants are jointly and severally ORDERED to provide restitution, in the amount of Ten-Thousand Three Hundred Eighty-Three Dollars and Eight Cents (\$10,383.08), to those consumers listed on Exhibit A, attached hereto and incorporated by reference. The Defendants expressly agree to the amendment of this order to increase the amount of restitution to reimburse any consumer who files a valid complaint with the Office of the Ohio Attorney General within sixty (60) days of the date of this order.
- D. It is hereby ORDERED that Defendants are jointly and severally assessed a civil penalty pursuant to R.C. 1345.07(D) in the amount of Twenty Five Thousand Dollars (\$25,000.00), with Twenty Thousand Dollars (\$20,000.00) suspended upon full compliance with the terms of this Consent Judgment.
- E. It is hereby ORDERED that the acceptance by the Attorney General of any payment due hereunder subsequent to the time such payment is due or the failure of the Attorney General to insist on strict performance of any order contained herein shall not be construed as a waiver of the obligation created by such order.
- F. IT IS FURTHER ORDERED that Defendant shall keep for a period of five (5) years, or until the monetary provisions of this Consent Judgment have been fulfilled, whichever is longer, records sufficient to establish its compliance with the terms of this Consent Judgment and shall permit the Ohio Attorney General or his representative, upon twenty-four (24) hours notice, to inspect and/or copy any such records during normal business hours.
- G. IT IS FURTHER ORDERED that, as a means of ensuring compliance with the provisions of this Order, Defendants shall comply with the following terms:

a. Until such time as the monetary provisions of this Consent Judgment have been satisfied, Defendants shall notify the Ohio Attorney General of the following information:

- i. Any changes in residences, mailing addresses, and telephone numbers of either Defendant;
- ii. Any changes in employment status (including self-employment), of either Defendant; such notice shall include the then current name and address of the employer or business, and a statement of the Defendant's duties and responsibilities in connection with such business or employment;
- iii. Any change in the ownership of Beautiful Memories Monuments;
- iv. Any changes in either Defendant's name or use of any aliases or fictitious names;
- v. Any additional change in any of the information provided in the affidavits of indigency signed by each Defendant contemporaneously with this agreement, and;

b. For the purposes of this Order, Defendants shall notify the Ohio Attorney General within ten days if any of the above information in subsection (a), changes, and shall mail all required written notifications to:

**Ohio Attorney General
Consumer Protection Section
30 E. Broad Street
Columbus, Ohio 43215**

c. Failure to report any change in the information listed in subsection (a), as required by subsection (b) may result in the suspended judgment entered pursuant to

Section C of this Order shall becoming immediately due and payable by Defendants, jointly and severally.

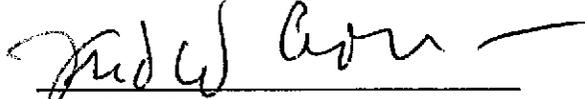
- H. IT IS FURTHER ORDERED that Defendants shall negotiate in good faith, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office concerning Defendants' conduct occurring prior to the filing date of this Consent Judgment, which are brought by consumers after entering into this Consent Judgment.
- I. IT IS FURTHER ORDERED that should the Attorney General initiate legal action to enforce this Consent Judgment and should the Court find Defendants in violation of this Consent Judgment, the Twenty Thousand Dollars (\$20,000.00) suspended civil penalty shall immediately become due and shall be paid within fourteen (14) days of the Court's finding that Defendants are in violation of this Order. This provision is in addition to any additional relief that may be sought by the Attorney General in attempting to enforce this Consent Judgment, including civil penalties of up to Five Thousand Dollars (\$5,000.00) per day pursuant to 1345.07(A)(2), and appropriate fines as ordered by the court for findings of contempt.
- J. The Attorney General's agreement to, and the Court's approval of, this Order, is expressly premised upon the financial condition of Defendants as represented in the affidavits of indigency signed by each Defendant contemporaneously with this agreement. Such affidavits contain material information upon which the Attorney General relied in negotiating and agreeing to this Order. If, upon motion by the Attorney General, the Court finds that such financial statements contain any material misrepresentation or omission, the suspended judgment entered pursuant to Section C of this Order shall become immediately due and payable by Defendants, jointly and

severally, provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, provided further, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to, contempt proceedings, that the Attorney General may initiate to enforce this order. For purposes of this Section, and any subsequent proceedings to enforce payment, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants agree not to contest any of the allegations in the Attorney General's Complaint.

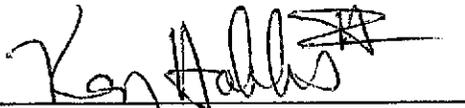
K. It is further ORDERED that the Defendants shall pay all costs associated with this matter.

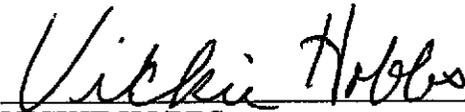
L. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

Date: 4/28/08


JUDGE CROW

APPROVED:


KENNETH HOBBS, II


VICKIE HOBBS

Defendants

MARC DANN
Attorney General


TRACY M. MORRISON (0082898)
MICHAEL R. SLIWINSKI (0076728)
Assistant Attorneys General
Consumer Protection Section
30 East Broad Street
14th Floor
Columbus, Ohio 43215-3428
614/466-3999

Attorneys for Plaintiff

EXHIBIT A

STATE

v

**KENNETH HOBBS II individually and d/b/a BEAUTIFUL MEMORIES MONUMENTS
and
VICKIE HOBBS individually and d/b/a BEAUTIFUL MEMORIES MONUMENTS**

**MEIGS COUNTY COURT OF COMMON PLEAS
CASE NO. 07-CV-136
JUDGE CROW**

<u>Consumer</u>	<u>Amount</u>
1. Ella Underwood	\$1,834.51
2. Lois Simms	\$486.00
3. Sandra Fulton	\$568.16
4. Denise Williams	\$497.95
5. Peggy Morris	\$1,914.00
6. Virginia Evans	\$1,125.00
7. William Cogar	\$1,359.46
8. James Montgomery	\$2,098.00
9. Debra Greene	\$500.00

Total: \$10,383.08

FILED
MARLENE HARRISON
CLERK OF COURTS
MEIGS COUNTY, OHIO

DEC 16 2008

COMMON PLEAS COURT

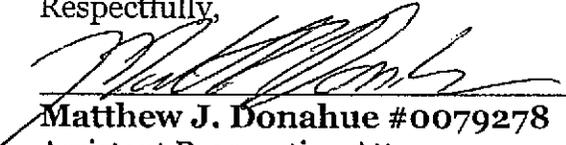
IN THE COURT OF COMMON PLEAS
MEIGS COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff, : CASE NO. 06 CR 091
 : 07CR076
 -vs.- : JUDGE CROW
 :
 KENNETH HOBBS, :
 :
 Defendant. :

Notice of Submission

Now comes the State of Ohio, through the undersigned Assistant Prosecuting Attorney, and pursuant to Order of the Court, provides notice of the filing of the proposed entry, which is attached.

Respectfully,


Matthew J. Donahue #0079278
Assistant Prosecuting Attorney
117 West Second Street
Pomeroy, OH 45769

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Defendant, pro se by placing a copy of the same in the ordinary U.S. Mail addressed to Kenneth R. Hobbs #A567153, Noble Correctional 15708 McConnelsville Rd. PO Box 1812 Caldwell OH 43724 this 17th day of December 2008.


Matthew J. Donahue #0079278
Assistant Prosecuting Attorney
117 West Second Street
Pomeroy, OH 45769
Telephone 740-992-6371
FAX 740-992-6567

EX-111

IN THE COURT OF COMMON PLEAS
MEIGS COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff, : CASE NO. 06 CR 091
 : 07CR076
 -vs.- : JUDGE CROW
 :
 KENNETH HOBBS, :
 :
 Defendant. :

Entry

Kenneth R. Hobbs II has filed a motion for judicial release, motion for additional time for answer and objection to jurisdiction, motion for summary judgment, motion to correct the record and other unstyled pleadings. Hobbs was convicted in this Court in December of 2007, his appeals have been denied by the 4th district court of appeals on June 4, 2008 and by the Ohio Supreme Court on October 15, 2008.

All of these motions are overruled and denied. Other than the motion for judicial release all of these motions were either moot or jurisdictional inappropriate. Hobbs has filed a number of repetitive, bizarre, nonsensical and jurisdictional inappropriate motions, pleadings etc., in both this court and the Court of Appeals. Hobbs has become such a disruption that the Court of Appeals placed an order on November 18, 2008 directing the clerk to refuse any additional filings by Hobbs.

This court has the power and the duty to do all things necessary to ensure the orderly administration of justice. State ex rel. Pfeiffer v. Lorain Cty. Court of Common Pleas (1968), 13 Ohio St.2d 133; See also Zangerle v. Cuyahoga Cty. Court of Common Pleas (1943), 141 Ohio St. 70; Smith v. Ohio Dept of Human Services (1996), 115 Ohio App 3d 755.

The Court finds that the litigation in this case has been concluded for some time, and that the Court overrules and denies any pending motions.

EX-114
2

The Court further finds that the Defendant has filed a number of repetitive, bizarre, nonsensical and jurisdictional inappropriate motions, pleadings etc; all of them are at best very confusing and at worst incomprehensible.

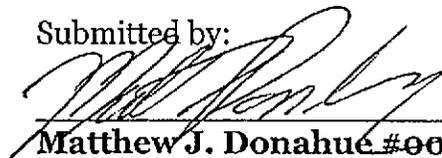
"The Court further finds that any further filings by the Defendant in this case, other than those motions allowed by law, will be frivolous and will result in a waste of time and resources on the part of both the State, the Defendant and this Court.

IT IS ORDERED that all pending motions, pleadings etc. are denied and the Defendant is hereby precluded from filing any further motions in this Court with respect to this case, with the exception of those motions allowed by law, and is notified that the Court will not take any further action regarding future filings.

IT IS SO ORDERED

HON. Fred W. Crow III, Judge

Submitted by:



Matthew J. Donahue #0079278
Assistant Prosecuting Attorney
117 West Second Street
Pomeroy, OH 45769
Telephone 740-992-6371
FAX 740-992-6567