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

Mr. Curtis arguments center around the denial of the appellant's Constitutional Protection of Due Process under the Ohio and United States Constitution.

This Honorable Court should accept jurisdiction because Mr. Curtis put forth meritorious claims for review into the court of Appeals, which is equally important for this court to review, if this court does not accept jurisdiction there will be an egregious infringement upon Mr. Curtis' Constitutional rights of Due Process and Equal Protection of the Law.

On July 9, 2007, Mr. Curtis entered guilty pleas to One count of Felonious Assault and One count of Attempted Kidnapping. The trial court imposed sentence on September 5, 2007, and imposed consecutive prison terms totaling 16 years in prison. Following Curtis's sentencing hearing, he filed a post-sentence Motion to Withdraw (through) his hired counsel, his guilty plea and for Post-Conviction Relief. These motions were filed pursuant to Ohio Criminal Rule 32.1 and pursuant to Ohio Revised Code §2953.21. The trial court conducted an evidentiary hearing on January 2, and January 18, 2008. On march 3, 2008, the trial court denied Mr. Curtis' motions.

Befeore Mr. Curtis filed these motions his family hired Mr. Jon Paul Rion as counsel for the purpose of filing a timely direct appeal, rather than filing a direct appeal (something any attorney) would have known to do Mr. Rion chose to file a collateral motion and combine the Criminal Rule 32.1 Motion to Withdraw with a Post-Conviction pursuant to R.C. § 2953.21 and raise one Assignment of Error .

Once Mr. Curtis became aware of his direct appeal as of right he wrote Mr. Rion a letter and asked him why he didn't file a direct appeal, Mr. Rion informed Mr. Curtis that a direct appeal would not be necessary in his case. Mr. Curtis took it upon himself to have a jailhouse attorney file the necessary paperwork so that he could pursue his direct appeal as of right.

Mr. Curtis put forth meritorious claims in the court of appeals which will be spelled out in the ~~following~~ memorandum. Mr. Curtis also states that he never waived his right to file his direct appeal.

The Court of Appeals for the Second District did not allow Mr. Curtis the right to file a direct appeal when he put forth meritorious claims and the counsel for the State of Ohio never filed an opposition brief, their denial of allowing Mr. Curtis his right to appeal embarked upon his ~~Constitutional~~ rights in various ways. 1) The trial court judge did not inform Mr. Curtis of his right to file a direct appeal; and 2). Trial Counsel was ineffective for failing to file a timely Notice of Appeal; and 3). The Court of Appeals violated his Constitutional rights by not allowing him to appeal were good cause was shown.

This is why this case is such an important case for this Honorable Court to accept jurisdiction because Mr. Curtis' Due Process rights were trampled over in such an unconstitutional way, Mr. Curtis prays that the reasons he has set forth in this memorandum were sufficient for this Honorable Court to accept jurisdiction.

STATEMENT OF THE CASE AND FACTS

Defendant-Appellant, Nathan L. Curtis, was indicted by the Greene County Grand Jury on October 20, 2006, and charged with a four (4) Count Indictment charging him with: Count 1). Felonious Assault pursuant to Ohi Revised Code § 2903.11 (A)(2); Count (2). Charged Mr. Curtis with Kidnapping, pursuant to Ohio Revised Code §2905.01 (A)(3); Count (3). charged him with Aggravated Assault, pursuant to Ohio Revised Code §2903.12 (A)(1); and Count (4). Charged Mr. Curtis with abduction pursuant to Ohio Revised Code § 2905.02 (A)(2). All of the charges carried a firearm specification.

On July 9, 2007 and pursuant to a negotiated plea, Mr. Curtis entered guilty pleas to OneCount of Felonious Assault and One Count of Attempted Kidnapping. The trial court imposed sentence on September 5, 2007 and gave Mr. Curtis consecutive prison terms totaling 16 years . Following Mr. Curtis' sentenceing hearing, his attorney filed two collateral motion (s) one being a Post-Sentence Motion to Withdraw pursuant to Criminal rule 32.1, and the other Motion being Post-Conviction Relief pursuant to Ohio Revised Code § 2953.21. The trial court conducted a evidentiary hearing on January 2, and January 18, 2008 and on March 3, 2008, the trial court denied Mr. Curtis' motions.

When mr. Curtis entered his guilty pleas, the trial court advised him that he could serve up to 16 years in prison as a result of those pleas. (T.R.22). However, there was another understanding that underpinned the plea, during the plea colloquy the defense attorney mentioned the first agreement, That agreement called for Mr. Curtis to cooperate with drug task force, if Mr. Curtis fulfilled that obligation he would receive a four-year prison sentence, with a recommendation for judicial release after serving one year. (T.R.42) Mr. Curtis testified and said he trusted his trial counsel and in the course of his representation they became friends.

At the start of the attorney's representation he promised Mr. Curtis that he could secure a plea deal where Mr. Curtis would serve only two years in prison, At the time they were to enter the plea, the attorney told Mr. Curtis that the two year plea deal had turned into a six year plea deal, because of that change, the trial attorney postponed the plea, After that, the attorney negotiated another agreement, where, so long as Mr. Curtis cooperated with the Drug Task Force, Mr. Curtis would receive a four-year sentence and that he would be granted judicial release after serving one year.

**Proposition of Law No. I:** APPELLANT WAS PREJUDICIALLY DEPRIVED OF HIS CONSTITUTIONAL AND STATUTORY RIGHT TO FILE A DIRECT APPEAL FROM HIS CRIMINAL CONVICTION, AS A RESULT OF (1) THE TRIAL COURT JUDGE DID NOT INFORM APPELLANT OF HIS RIGHT TO FILE A DIRECT APPEAL; AND (2) DEFENSE COUNSEL DID NOT FILE A NOTICE OF APPEAL, AFTER BEING ASKED TO DO SO.

Ohio Appellate Rule 3 and 4, requires that a Notice of Appeal from a Criminal Conviction shall be filed within thirty days from the date that the Judgment Entry of Conviction is journalized with the Clerk of Courts.

Criminal Rule 32(B)(1) & (2) of the Ohio Criminal Procedure, provides that the trial court shall inform the Appellant of his right to appeal a serious offense. Paragraph (3)(d) provides that the appellant has a right to have a notice of appeal timely filed on his or her behalf.

In Roe v. Flores-Ortega, (2000), 58 U.S. 470, 120 S. Ct 1029, 145 L.Ed.2d 985, the United States Supreme Court ruled that an Attorney is ineffective in cases for failing to timely file a Notice of Appeal where: (1) Counsel rationally believed that the defendant would have wanted to appeal; (2) Where the defendant reasonably demonstrated to counsel that he was interested in appealing; and (3) In the absence of filing a Notice of Appeal, the defendant demonstrates that he would have otherwise filed an appeal.

In the case sub judice, the trial court failed to inform the defendant of his statutory appeal rights. After the sentence was imposed, Appellant obtained the representation of Mr. Jon H. Rion to file an appeal from the trial court's sixteen year sentence. Rather than filing a direct appeal, Mr. Rion filed a Motion to Withdraw Pursuant to Criminal Rule 32.1 , and a Post-Conviction Relief pursuant to Ohio Revised Code §2953.21. Appellant wrote Mr. Rion a letter asking him why he did not file a direct appeal. In response, Mr. Rion told Appellant by letter that the direct appeal was not necessary.

This is enough evidence to demonstrate that the Appellant (1) would have wanted to appeal; and (2) is evidence demonstrating that appellant would have otherwise appealed his conviction. Thus, applying the United States Supreme Court decision in Flores-Ortega, Appellant meets the test set forth by the Supreme Court to demonstrate that his counsel was ineffective for failing to timely file a Notice of Appeal along with the Direct Appeal.

Appellate Rule 5(A) provides, in relevant part that: After the expiration of the thirty day period... an appeal may be taken only by leave of the court to which the appeal is taken. A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reason for the failure of the appellant to perfect an appeal as of right.

Ohio Case law provides that a motion seeking leave to appeal and requesting such right after the time within which an appeal as of right may be taken, should be granted where, as appears on the face of the record, the overruling of such motion would result in a miscarriage of justice. State v. Bednarik, (1954), 101 Ohio App. 339, 123 N.E.2d 31. In the case sub judice, the State of Ohio never filed an opposition to the Appellant's motion seeking leave of the Court of Appeals to file a direct appeal, surely this was a miscarriage of justice due to the fact that the state never opposed the Appellant, only the Court of Appeals.

Ohio case law has found good cause for leave to appeal filed by the appellant more than thirty days after sentencing, where the appellant had to rely upon his personal ability and experience, and due to his lack of legal training, it appears doubtful that he could have drafted and filed the necessary documents in the limited time in which an appeal as of right could have been perfected. State v. Baker, (1960), 113 Ohio App. 59, 177 N.E.2d 348. The Franklin County Court of Appeals ruled that a delayed appeal must be granted where an indigent offender is deprived of his right to the assistance of counsel to file the appeal within the thirty day period.

The United States Sixth Circuit Court of Appeals ordered in a Federal Post-Conviction Proceeding, that the petitioner was entitled to an evidentiary hearing on his claims where his counsel did not pursue the petitioner's appeal rights and where the trial judge did not advise the prisoner of his rights to appeal at the time of sentencing. Duhart v. United States, (6th Cir. 1973), 476 F.2d 597. The Sixth Circuit further ruled in a subsequent case, a habeas proceeding, that the Constitution is implicated when a defendant actually request that his counsel file an appeal, but counsel fails to do so. Lugwig v. United States, (6th Cir. 1998), 162 F.3d 456.

In the case sub judice, Appellant states that his family did obtain counsel within the time period that an appeal from the judgment entry of conviction could have been filed, for purposes of filing a direct appeal, counsel filed a motion to withdraw the Appellant's plea which was denied by the trial court. Appellant states that he, himself, is indigent and could not obtain counsel of his own choosing, and it was the funds of his family that retained counsel. Appellant states that he lacked the experience and legal skills to draft the necessary documents to perfect a timely appeal. Appellant further states that he did ask his attorney after to file an appeal and the trial judge did not advise the appellant of his right to appeal.

Proposition of Law No. II: APPELLANT WAS PRJUDICIALLY DEPRIVED OF HIS RIGHT TO BE FREE FROM TRIAL ERRORS COMMITTED BY THE TRIAL COURT'S SENTENCING MEASURES AS A RESULT OF THE TRIAL COURT'S FAILURE TO FOLLOW LEGISLATIVE LAW, THAT VIOLATES THE SEPARATION OF POWERS DOCTRINE, AND VIOLATES THE EXPOST FACTO CLAUSES TO THE FEDERAL AND STATE CONSTITUTIONS.

Appellant pled guilty to two second degree felonies, these two offenses were kidnapping and felonious assault committed during the same course of criminal conduct.

At sentencing, the trial court had the P.S.I. report and also had other mitigation-testimony by testifying witnesses. The trial court imposed the maximum 8 year sentence on each second degree felony offense, and ran both 8 year sentences consecutive to each other, totaling 16-years, the maximum sentence.

However, the trial court failed to follow Ohioi Statutory law on minimum sentences and further failed to apply the law with respects to consecutive sentences.

Ohio Revised Code § 2929.14(B)(1) & (2), provides in relevant part:

(B) " ... if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or thers.

In the case sub judice, the trial court did not make the necessary findings prior to imposing the longest maximum sentence. Additionally, Ohio Revised Code § 2953.08 (A)(1)(b), provides that a defendant may appeal a trial court's sentence that imposes the maximum sentence, or a sentence that the trial court imposed upon two or more convictions that resulted in consecutive sentences, above the maximum allowed for the highest offense. In this case, the highest sentence for a second degree felony is 8-years, thus the trial court's consecutive sentences (16-years) is double the longest lenght for the highest degree of a second degree felony. Ohio Revised Code §2953.08 (C)(1), authorizes a defendant to appeal the trial court's imposition of consecutive sentences.

The Trial Judge did not make the necessary findings, on the record, as required by the Ohio legislature, when it imposed the maximum/consecutive sentences. Nor did the trial court advise the defendant of his right to file an appeal under Ohio Revised Code § 2953.08 that pertains to maximum/consecutive sentences.

IN State v. Foster, (2006), 109 Ohio St.3d 1, the Ohio Supreme Court ruled that the Court's of Ohio are not permitted to make judicial findings that: (1) The Jury never found; or (2) Findings that the defendant never expressly admitted to. The Ohio Supreme Court further found, mistakenly, that those Ohio Statutes that mandated judicial findings to be made, in order to impose sentences consecutively or above the presumed minimum, are held to be unconstitutional under the U.S. Supreme Court decisions in United States v. Booker, (2005), 543 U.S. 220 Blakely v. Washington (2004), 542 U.S. 296; and Apprendi v. New Jersey, (2000), 530 U.S. 466. Specifically, the Ohio Supreme Court stated in Foster that:

"... Because R.C. §2929.14 (B) and (C) and R.C. 2929.19 (B)(2) require judicial factfinding before imposition of a sentence greater than the minimum term authorized by a jury verdict or admission of the defendant, they are unconstitutional.  
Because R.C. § 2929.14(E) and 2929.41 (A) require finding of facts not proven to a jury beyond doubt or admitted by the defendant, they are unconstitutional.

In support of Appellant's argument, he first relies upon a recent U.S. Supreme Court decision that has undermined the reasoning of the Ohio Supreme Court decision in Foster. The U.S. Supreme Court decided in Oregon v. Ice (January 19, 2009), 2009 WL 77896 (U.S. Or.), 09 Cal Daily Serv. 540, at F.N. 7, which held that the Ohio Supreme Court decision in Foster was misapplying the traditional powers that a sentencing judge has to make judicial findings upon offenders to serve consecutive sentences. Ohio, like Oregon, designed a statute that forbid sentencing court judges from imposing consecutive sentences unless certain judicial findings were first made by the sentencing judge. The Oregon Supreme Court held that the Oregon sentencing statutes were unconstitutional under holdings established in Booker, Blakely, and Apprendi, because the statutes authorized the sentencing judge to make judicial

findings that the jury never found or to findings that the defendant himself never admitted to. The United States Supreme Court rejected the State Supreme Court of Oregon interpretation of Booker, Blakely, and Apprendi. The U.S. Supreme Court upheld the state statutes by reversing the State Supreme Court of Oregon, and by holding that the state statutes in Oregon that allowed judges to make judicial findings for purposes of imposing consecutive sentences were permissible.

Under the United States Supreme decision in Ice, demonstrates, that it was never the intent of the United States Supreme Court to prohibit sentencing judges from making judicial findings on consecutive sentences. Thus, Ohio judges must make the necessary statutory requirements on findings prior to imposing consecutive sentences, that O.R.C. § 2929.19 (B)(2)(c) requires.

Appellant states that, as a matter of federal Constitutional law, the 14th Amendment to the United States Constitution, mandates that sentencing judges in Ohio must apply Ohio Statutory law when imposing sentences. The statute sets forth specific predicates that creates a liberty interest under state law, that the 14th Amendment to the United States Constitution requires as a matter of Due Process, for consecutive sentences.

Appellant further states that the ex post facto clause to the United States Constitution, as well as the Separation of Powers Doctrine, under the Federal and State Constitutions, requires sentencing judges to apply legislative law when imposing sentences that are either: (1) Consecutive Sentences; or (2) That are above the minimum presumptive term. The Separation of Powers doctrine prohibit the three co-equal branches of government from encroaching into areas reserved for the other branches. Mistretta v. United States, (1989), 488 U.S. 361, 385, 109 S.Ct. 647,662.

**Proposition of Law No. III:** APPELLANT'S GUILTY PLEA WAS NOT MADE KNOWINGLY OR VOLUNTARILY, RESULTING FROM INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, AND WAS INDUCED BY FALSE PRETENSES COMMITTED BY THE PROSECUTING ATTORNEY, FOR NOT HONORING HIS RECOMMENDATION TO A TERM OF FOUR YEARS IN PRISON, WITH JUDICIAL RELEASE ELIGIBILITY AFTER ONE YEAR.

The defense attorney and the prosecuting attorney made a plea contract agreeing to recommend that the Appellant serve four years in prison, with judicial release after the appellant served one year in prison. The only stipulation between the prosecutor and the appellant was that the appellant cooperate with the Task Force. The trial court record does not require anything more when the plea agreement was made between the appellant and the prosecutor through defense counsel.

Appellant did in fact cooperate with the Task force, however the State of Ohio argued that since the appellant did not fulfill all the stipulations imposed upon by the task force, and not exactly spelled out in the agreement, except to cooperate. Appellant cooperated, but obviously not enough that the state was satisfied and argued that appellant's efforts amounted to a breach of agreement. This is not true, at the time appellant entered his plea, he had provided a lot of evidence and testimony that aided the task force in their criminal investigations, Appellant also made the court aware that some of the things that the Appellant asked of the task force was not acknowledged, and this is part of the reason that the state was not satisfied with the Appellant's performance.

All of the plea negotiations, and contract agreements were made through trial counsel. The Trial Judge was made aware of these negotiations and plea stipulations at the time the plea was entered, In fact, the trial judge acted in harmony with the negotiations, no one had any problems with the negotiations until it came time for the prosecuting attorney to uphold and honor their part of the deal. The trial judge justified the 16 year sentence because: (1) The Appellant tested positive for marijuana use while he was out on bond; and (2) As a result of the fact that Appellant failed to comply hand and foot to the whims of the task force; and (3) as a result of

prejudicial impact statements made during the sentencing proceedings.

Appellant had no idea that the trial court would use other reasons to penalize him and that would ultimately effect the outcome of the agreed upon sentence. Thus, to use the above three reasons to justify the 16-year sentence, was gravely disproportionate to the plea agreement and therefore amounts to a breach of plea on the part of the State of Ohio.

Under contract laws, it requires that the State of Ohio perform specific performance by honoring its plea agreement as negotiated, no other alternative is allowed. Hill v. Lockhart, (1985), 474 U.S. 52, 106 S.Ct 366, 88 L.Ed 2d 203, the Supreme Court held that a guilty plea will be declared involuntary and invalid, where it is demonstrated that the plea would not have otherwise been made. *Id.* at:59, 106 S.Ct., at 370. State v. Nero, (1989), 56 Ohio St.3d 106, at 108. In the case sub judice, the defense counsel was ineffective for entering into an agreement with the prosecution that counsel knew would be breached, and did not warn appellant that impact statements would be used to blemish appellant's character besides the crimes that were already committed. Appellant feels he was set up by the defense attorney and the prosecutor.

In State v. Mays, (2008), 2008 WL 151890, the Cuyahoga County Court of Appeals vacated a guilty plea based on an ineffective assistance of counsel claim citing Strickland v. Washington, (1984), 466 U.S. 668, 104 S.Ct. 20520. The Court held that where the plea was induced by the product of defense counsel's ineffective representation, warrants vacation of an Appellant's guilty plea.

Appellant states that his plea was neither knowingly or voluntarily entered into. Defense counsel's representation fell below an objective standard of reasonableness, and violates Appellant's 6th and 14th Amendment rights under the United States Constitution, to the effective assistance of counsel.

Defense counsel was also ineffective for failing to file a notice of appeal, within the 30-day time period, when the Appellant asked him to do so.

CONCLUSION

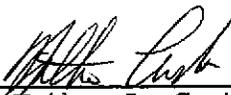
For the above foregoing reasons and to Correct a miscarriage of Justice, and as matter of Fundamental fairness, the appellant aske this Honorable Court to accept Jurisdiction in this case and hear the merits, so that he may be allowed to appeal his criminal conviction by way of a direct appeal as of right.

Respectfully Submitted,

  
\_\_\_\_\_  
Mr. Nathan L. Curtis #558451  
Ross Corr. Inst.  
16149 St. Rt. 104  
P.O.Box 7010  
Chillicothe, Ohio 45601  
In Propria Persona

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Memeorandum in Support of Jurisdiction, has hereby been served upon the counsel of the State of Ohio, Elizabeth A. Ellis, at 55 Greene Street, 1st Floor, Xenia, Ohio 45385, on this 12<sup>th</sup> day of May 2009, by regular U.S. Mail, postage preaffixed.

  
\_\_\_\_\_  
Mr. Nathan L. Curtis #558451  
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P.O.Box 7010  
Chillicothe, Ohio 45601

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

STATE OF OHIO

*Plaintiff-Appellee*

v.

NATHAN L. CURTIS

*Defendant-Appellant*

: Appellate Case No. 2009-CA-18

: Trial Court Case No. 06-CR-628

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**DECISION AND FINAL JUDGMENT ENTRY**

April 8, 2009

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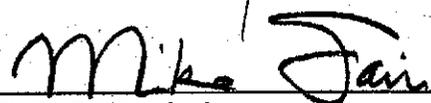
**PER CURIAM:**

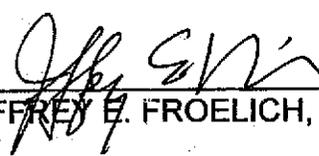
On March 12, 2009, Appellant, Nathan L. Curtis, filed a motion for leave to file a delayed appeal with this Court. Curtis seeks to appeal his conviction and sentence in the Greene County Common Pleas Court which was journalized September 5, 2007. To date, Appellee, the State of Ohio, has not filed a response in opposition to Curtis's motion.

Upon consideration of the foregoing, this Court finds that Curtis has failed to show good cause that would justify permitting a delayed appeal. Accordingly, Appellant's March 12, 2009 motion for delayed appeal is OVERRULED. This matter is hereby DISMISSED.

SO ORDERED.

  
MARY E. DONOVAN, Presiding Judge

  
MIKE FAIN, Judge

  
JEFFREY E. FROELICH, Judge

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