

ORIGINAL

CASE NUMBERS: 2008-1942 AND 2008-2170

IN THE SUPREME COURT OF OHIO

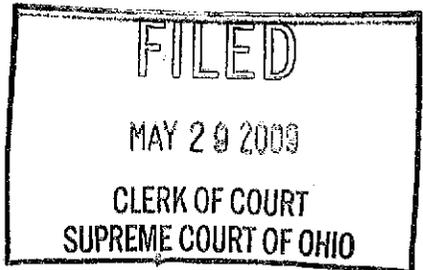
APPEAL FROM

THE COURT OF APPEALS OF THE THIRD
APPELLATE JUDICIAL DISTRICT OF OHIO
UNION COUNTY - NO. 14-07-20

STATE OF OHIO
Plaintiff-Appellant

vs.

RAYNELL ROBINSON
Defendant-Appellee



MEMORANUM OPPOSING MOTION
OF APPELLEE, RAYNELL ROBINSON TO RESCHEDULE ORAL
ARGUMENT, APPOINT COUNSEL AND SET A DEADLINE FOR APPELLEE
TO FILE A JURISDICTIONAL MEMORANDUM AND/OR A MERIT BRIEF

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Counsel for Amicus,
The Ohio Attorney General

The Court is aware of the procedural history of the two appeals as outlined in the Appellee's Motion filed on May 21, 2009 in the instant matter. After the State filed its Notice of Appeal and Order Certifying the Conflict, respectively, the Office of the Ohio Public Defender filed Motions to Strike and Dismiss each of the cases on November 13, 2008, respectively. The reason for the Ohio Public Defender's respective motions was the failure of the Appellant to serve it pursuant to the Ohio S.Ct. Prac. Rule XIV Section 2(D)(2). When legal counsel for the Appellant, State of Ohio, received the various motions, it attempted to rectify its error and it mailed copies of the Notice of Appeal and the Order Certifying the Conflict in each Case Nos. 2008-1942 and 2008-2170 to the Office of the Ohio Public Defender. At this same time, counsel for the Appellant mailed the respective Memorandums in Support of Jurisdiction to the Office of the Ohio Public Defender.

Thereafter, the Appellant served its Merit Briefs on legal counsel for the Appellee, Attorney Alison Boggs, Appellee's appointed legal counsel for his appeal to the Third Appellate District, and Stephen P. Hardwick, Counsel for Amicus, Office of the Ohio Public Defender. In addition, the legal counsel for Amicus, the Ohio Attorney General, also served its Merit Brief upon Attorney Boggs and the Office of the Ohio Public Defender. If Ms. Boggs was not representing the Appellee on this appeal, no notice to that effect was ever given to Appellant or to the Ohio Supreme Court. Nor to the best of Appellant's knowledge

did the Appellee ever apply for other appointed legal counsel to represent him in the appeals to the Ohio Supreme Court. To suggest, as counsel for the Appellee does in his Motion, that “no party or amici has served, in compliance with this Court’s rules, any document from the notice of appeal until today on Mr. Robinson” is disingenuous. After the initial filings in each of the appeals, the Appellant served each legal counsel with its filings thereafter. It is the duty of the Appellee and his respective legal counsel to notify the Court as to the Appellee’s counsel of record; it is not appropriate for the Appellant to have to guess who is actually providing representation to the Appellee.

The second legal argument advanced by the Office of the Ohio Public Defender is that the Appellee is entitled to legal counsel for the reason that “it is a critical stage in this case because the State appealed a loss from the trial court.” The Appellant would initially note that it was successful in obtaining convictions against the Appellee at the trial court level. The Third District Court of Appeals reversed the conviction against the Appellee on the charge of Disrupting Public Service in violation of Ohio Revised Code Section 2909.04(A)(3). Further, the Appellee states that “because the State is attempting to reverse the dismissal of charges against Mr. Robinson, he needs an attorney ‘as a shield to protect him against being haled (sic) into court by the State. . .’” Appellant disagrees with this argument because this case concerns a pure matter of law and will have no effect upon the Appellee at this point. The Appellee has finished serving his term and has been released from prison. Additionally, the Court sentenced the Appellee to concurrent sentences for his convictions for Intimidation of a Victim, Witness or Attorney and Disrupting Public Services. The Appellee in essence has served, will not serve and cannot serve additional time based upon his conviction for Disrupting Public Services; all of his time in prison for the offense of

Disrupting Public Services was subsumed by his sentence on the Intimidation charge. To suggest, as the Appellee does, that the Appellant is attempting to “hale” the Appellee back into court based on this Court’s ruling is simply not accurate.

Finally, to state at this late date, that the Appellee should be permitted to file a Merit Brief and that the oral arguments be rescheduled substantially delays the instant appeals. The Appellee, in essence, desires to begin the appeal anew with a briefing schedule and a new date for oral arguments. The reason for the Court to delay the appeals is because of a fault in the system employed by the Ohio Public Defender’s office. While the Appellant is empathetic to docketing problems in a busy office, the receipt of two merit briefs from the Appellant and Amicus counsel should have triggered the Appellee’s counsel or the Amicus counsel’s need to respond.

WHEREFORE, for all of the reasons set forth in more detail above, the Appellant respectfully requests that the Court overrule the Movant’s motion.

Respectfully Submitted,

DAVID W. PHILLIPS (0019966)
UNION COUNTY PROSECUTOR

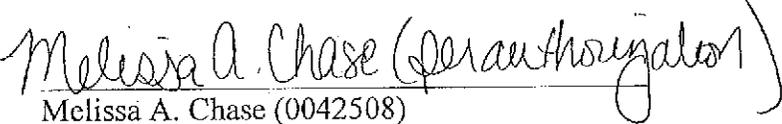
Melissa A. Chase (per authorization)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opposing Appellee’s was served upon Alison Boggs, Legal Counsel for the Defendant-Appellee at her business address

of 240 West Fifth Street, Suite A, Marysville, Ohio 43040 and upon Stephen P. Hardwick, Assistant Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 by ordinary U.S. Mail, postage prepaid, this 29th day of May, 2009.


Melissa A. Chase (0042508)
Assistant Prosecuting Attorney