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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, James J. Mayer, Jr., Prosecuting Attorney, Kristen Pscholka - Gartner, Assistant Prosecutor, 38 South Park Street, Mansfield, Ohio 44902 on JUNE 12<sup>TH</sup>, 2009.

*Ronald Russell*

Ronald Russell  
Appellant, Pro se

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

This cause presents an opportunity for this Court to admonish overly zealous Richland County Prosecutor James J. Mayer, Jr., Bambi Couch - Page, and associate, from what has become a reprehensible practice of post conviction subversion and tampering when they disagree with a sentence.

In this case the trial Court granted Community Control on January 9, 2006 which was immediately appealed (06CA12 5th Dist.) and denied. Incensed by the outcome a perfidious and clandestine campaign was waged to disrupt the Appellant's Community Control in consortium with VOA Director Ms. Brody who summarily dismissed the Appellant from the program resulting in his present sentence.

The prosecutors in this case effectively encouraged the suborning of perjury by Director Brody. This nefarious technique breached the separation of powers and undermined the judicial process.

This decision permits prosecutors to play fast and loose in an already coercive process that routinely exceeds 98% conviction ratios. The State is now permitted to effectively modify outcomes they disagree with by tortious interference with a contract between the Appellant and the Court. These inroads defeat the proper administration of justice, rehabilitation and the integrity of the administration of justice. This Court should find the Prosecutor's conduct an impediment to the orderly and constructive negotiations of contracts with a trial court and grant jurisdiction to hear this case and review a mistaken decision by the Court of Appeals.

STATEMENT OF THE CASE AND FACTS

On January 9, 2006 the Appellant was sentenced to five years of Community Control for his conviction of gross sexual imposition in case no. 05 CR 557 (D), a fourth degree felony, and two counts of unlawful sexual conduct with a minor no. 05 CR 907 (D).

On February 8, 2006 the State filed a Notice of Appeal in 06 CA 12. On August 28, 2006 the sentence was affirmed.

On November 27, 2006 the Appellant was found to have violated the terms and conditions of his Community Control and was sentenced to 18 months in prison in 05 CR 557 (D) to be served consecutively to his 05 CR 907 (D) sentence of ten years (five years consecutively for each count).

On December 26, 2006 Appellant filed a Notice of Appeal of the Community Control revocation in 06 CA 117. The Appellate Court affirmed the consecutive sentences imposed by the trial court.

On July 23, 2008 Appellant filed a motion to vacate and set aside the Court's void judgement (sentence).

On August 25, 2008 the Court overruled the Motion to Vacate. This appeal follows in opposition.

It is apparent that the Richland County prosecutors were extremely displeased with the trial court's decision to grant Community Control on January 9, 2006. They immediately filed an appeal (06CA12), which did not result in a reversal. Incensed by the outcome, the prosecutors surreptitiously and perfidiously began a campaign to disrupt the Appellant's Community Control by exercising improper influence over the Volunteers of America (VOA) director of the program.

The alleged lack of compliance by Appellant was based on disinformation manufactured by the VOA director acting in consortium with the State. What the prosecution couldn't achieve directly was accomplished by subreption of the judicial process. In less than ninety (90) days, after this Court issued its opinion (8.28.06), an action plan was implemented by the Richland prosecutors inducing the VOA director to assert spurious claims of noncompliance by Appellant with program requirements. The Appellant is effectively blind, hearing impaired, and responsible for providing daily care for his invalid wife (now deceased). Appellant simply couldn't do enough to satisfy VOA director Ms. Brody, who disregarded his sincere efforts to complete the program as prescribed in favor of her own agenda to disqualify him.

It is from this Judgement Entry that Defendant now appeals.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. I: Motion to vacate sentence and void judgement must be granted.

The order of restitution fails to state any amount. See Crim. R. 32(C), State v. Huntsman, 2000 WL 30013 (5th Dist.); State v. Ginocchio (1987) 38 Ohio App. 3d 105; State v. Brown (1989) 59 Ohio App. 3d 1. The State supported the lack of finality, therefore an invalid judgement.

PROPOSITION OF LAW NO. II: The Appellant's action should not be construed as a post-conviction pursuant to R.C.2953.23.

The basis is, the judgement is void for failure to comply with mandates of Crim. R. 32(C) and R.C.2929.19; 2929.19(B)(5), and 2929.18(A)(1). See State v. Payne, 114 Ohio St. 3d 502 2007 Ohio 4642 at 33.

PROPOSITION OF LAW NO. III: The Court failed to adhere to R.C.2919.19 and 2929.19(B)(5).

A ten year sentence for a violation of Community Control sanctions exceeds the range of penalty for a felony of the third degree. See Marvin 73ONE. 2d 401-404 at[4]. When the Court originally sentenced Appellant it was mandatory to deal with each and every charge. The failure to amply, renders the judgement of the trial court substantively deficient. The Court's order is merely interlocutory. See State v. Brown (1989) 569 NE 2d 1068. Without journalization of this information there is no judgement of conviction pursuant to Crim. R. 32(C). See State v. Sandlin 2006 WL 3060130 (4th Dist.)\*3. The Court merely accepted a No Contest plea. The Court did not find the Appellant guilty in the first instance but placed the Appellant

on Community Control. The basics of the judgement is void. See Bezak 114 Ohio St. 3d 21, at 25. A void judgement may be challenged at any time. See Gahanna v. Jones-Williams (1997), 117 Ohio App. 3d 399, 404.

PROPOSITION OF LAW NO. IV: The Doctrine of Res Judicata is inapplicable.

The Court violated R.C.2929.19, 2919.19(B)(5) and Crim. R. 32(C) and therefore lost its jurisdiction by the way of [E]xceeding it. The resulting judgement is void. See Pratts v. Hurley (2004), 102 Ohio St. 3d 81 and also State v. Beasley, 14 Ohio St. 3d 74, 75. A Court of Appeals must raise jurisdictional issues sua sponte. The Doctrine of Res Judicata applies to valid, final judgements, which is not applicable in this instance.

CONCLUSION

As was stated above, the Appellant suffers with both hearing and severe vision loss. There were no provisions supplied to him to assure him any success in a program such as the VOA. The Americans with Disabilities Act states that such provisions (audio tapes and magnification readers) must be provided. It is like going off to battle, naked and without your sword!

For the reasons discussed above, this case involves matters of public and great general interest and a substantial question. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

*Ronald Russell*

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Ronald Russell  
Appellant, Pro se

# APPENDIX

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

2009 MAY 13 AM 10:04

LINDA H. FRARY  
CLERK

STATE OF OHIO

Plaintiff-Appellee

-vs-

RONALD RUSSELL

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 08 CA 82

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case Nos. 05 CR 557D and 05 CR  
907D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

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Wise, P. J.

{¶1} Appellant Ronald Russell appeals the decision of the Court of Common Pleas, Richland County, which denied his post-conviction motion to vacate sentence. The relevant facts leading to this appeal are as follows.

{¶2} In 2005, in trial court case number 2005-CR-557D, appellant was charged with one count of gross sexual imposition, a felony of the fourth degree. In addition, in case number 2005-CR-907D, appellant was charged with one count of unlawful sexual conduct with a minor and one count of sexual battery, both felonies of the third degree.

{¶3} Appellant appeared before the trial court on November 22, 2005, and entered a plea of no contest to all charges. The trial court subsequently found appellant guilty. On January 10, 2006, the trial court sentenced appellant to five years community control in each case with the requirement that appellant complete the in-patient sex offender treatment program at Volunteers of America ("VOA"). The trial court also ordered appellant to pay restitution "for the victims' counseling expenses" and informed appellant concerning sanctions for violating his community control.

{¶4} The State of Ohio thereafter appealed to this Court on the issue of proper notification of postrelease control in case no. 2005-CR-907D. On August 28, 2006, we affirmed the sentence. See *State v. Russell*, Richland App.No. 06CA12, 2006-Ohio-4450.

{¶5} On October 25, 2006, appellant was terminated from the VOA program for failure to successfully complete the sex offender treatment program. As a result, a community control violation was filed against appellant. Following a hearing, the trial court found appellant had violated his community control requirements, and sentenced

him to an aggregate term of eighteen months in prison in case no. 2005-CR-557D and ten years in prison in case no. 2005-CR-907D, to be served consecutively.

{16} Appellant appealed the revocation of his community control. On October 31, 2007, we affirmed the trial court's decision. See *State v. Russell*, Richland App.Nos. 06-CA-116, 07CA117, 2007-Ohio-5860.

{17} On June 23, 2008, appellant filed, under both case numbers, a "motion to vacate and set aside a void judgment." On August 25, 2008, the trial court denied the motion, stating that it was an untimely petition for postconviction relief and further barred by res judicata.

{18} On September 15, 2008, appellant filed a notice of appeal. He herein raises the following four Assignments of Error:

{19} "I. APPELLANT'S MOTION TO VACATE SENTENCE AND VOID JUDGMENT MUST BE GRANTED.

{110} "II. THE STATE ERRONEOUSLY ASSERTS APPELLANT'S MOTION IS A POST-CONVICTION PROCEEDING.

{111} "III. THE COURT FAILED TO FOLLOW THE MANDATES OF R.C. 2919.19 (SIC) AND 2929.19(B)(5).

{112} "IV. THE DOCTRINE OF RES JUDICATA IS ERRONEOUSLY ASSERTED BY THE STATE."

I.

{113} In his First Assignment of Error, appellant contends the trial court erred in denying his motion to vacate sentence. We disagree.

{¶14} The focus of this assigned error is the restitution portion of appellant's sentence. Appellant essentially maintains that because his original restitution order does not set forth an amount, his "motion to vacate and set aside a void judgment" of June 23, 2008 was cognizable, on the basis that the sentencing order was an "invalid judgment." Appellant's Brief at 5.

{¶15} R.C. 2929.18(A)(1) states in pertinent part that "[i]f the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. \* \* \*."

{¶16} In *State v. Hooks* (2000), 135 Ohio App.3d 746, 735 N.E.2d 523, the Tenth District Court of Appeals, emphasizing that "a sentence not authorized by statute is void," found a restitution order invalid sua sponte. *Id.* at 750. However, the appellant in that case had been convicted of offenses of tampering with records, which the Tenth District Court, relying on an earlier version of R.C. 2929.01, concluded "did not pose a threat of bodily injury or death within the meaning of the relevant statutes." Thus, the basis in *Hooks* for finding the restitution order invalid was not for want of specificity in the dollar amount, as would be applicable in the case sub judice.

{¶17} A trial court's decision on restitution is discretionary, although the amount ordered must bear a reasonable relationship to the actual loss suffered. See *State v. Bowman*, Miami App.No. 06-CA-41, 2007-Ohio-6673, ¶7, citing *State v. Williams* (1986), 34 Ohio App.3d 33. We further note R.C. 2929.18(A)(1) is conditional, in that it requires a determination of a specific amount "if" restitution is ordered. Therefore, because restitution per se is not statutorily mandated for a criminal sentence, we find no merit in appellant's claim that the lack of a specific amount of restitution in a sentencing entry

makes that entry void or invalid ab initio. Thus, we hold challenges to a restitution order must be raised via a direct appeal or timely post-conviction petition.

{¶18} The trial court thus did not err in dismissing appellant's motion to vacate sentence. Appellant's First Assignment of Error is overruled.

## II.

{¶19} In his Second Assignment of Error, appellant challenges the classification of his motion to vacate as a post-conviction motion.

{¶20} Technically, appellant herein challenges the State's "assertion," rather than a decision or ruling by the trial court. Ohio Constitution Art. IV, § 3(B)(2), reads in pertinent part: "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district \* \* \*." We will thus presume appellant is challenging the trial court's treatment of his motion as a post-conviction petition. Cf. *In re Willis*, Coshocton App.No. 02 CA 15, 2002-Ohio-6795, ¶10.

{¶21} Appellant again urges that the original sentence entries were void, and that his motion to vacate should have been addressed accordingly, rather than being treated as an untimely post-conviction motion. He cites Crim.R. 32(C), which states: "A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk."

{¶22} In the case sub judice, we hold the original sentence entries, although not establishing an amount for restitution, were not deficient under Crim.R. 32(C). As such, the trial court did not err in treating appellant's motion to vacate as a post-conviction petition and in declining to address it as a challenge to a void judgment.

{¶23} Appellant's Second Assignment of Error is therefore overruled.

### III.

{¶24} In his Third Assignment of Error, appellant contends the trial court erred in denying his motion to vacate on the basis that the court failed to follow R.C. 2929.19 in his original sentences.

{¶25} Assuming arguendo, appellant's present argument is not barred by res judicata and the doctrine of the law of the case (see *State v. Russell*, supra, 2007-Ohio-5860), we find the issue is moot. The error that appellant appears to cite is in his original sentencing entries from January 10, 2006. However, he has subsequently been re-sentenced to prison as a result of community control violations. In the Community Control Violation Journal Entry for Case No. 2005-CR-557D, the court imposed an eighteen-month prison sentence for the charge of gross sexual imposition. In the Community Control Violation Journal Entry for Case No. 2005-CR-907D, the court imposed a five-year prison sentence for Count I, unlawful sexual conduct with a minor, and a five-year prison sentence for Count II, sexual battery. As a community control violation sentence was imposed separately for each count, stemming from the convictions set forth by the trial court on January 10, 2006, appellant's claim of error lacks merit.

{¶26} Appellant's Third Assignment of Error is therefore overruled.

IV.

{¶27} In his Fourth Assignment of Error, appellant challenges the application of the doctrine of res judicata to his motion to vacate.<sup>1</sup>

{¶28} Under the doctrine of res judicata, a final judgment bars a convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that the defendant raised or could have raised at trial or on appeal. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96, 671 N.E.2d 233, reaffirming *State v. Perry* (1967), 10 Ohio St.2d 175, 39 O.O.2d 189, 226 N.E.2d 104, paragraph nine of the syllabus.

{¶29} Appellant once again maintains that his original sentences are void or invalid ab initio, and that his claims were thus ripe for review when he filed his motion of June 23, 2008, an assertion which we have herein rejected. We therefore find no error in the trial court's rejection of appellant's said motion to vacate on res judicata grounds.

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<sup>1</sup> Technically, appellant again challenges the State's "assertion," rather than a decision or ruling by the trial court. See our analysis under appellant's Second Assignment of Error, *supra*.

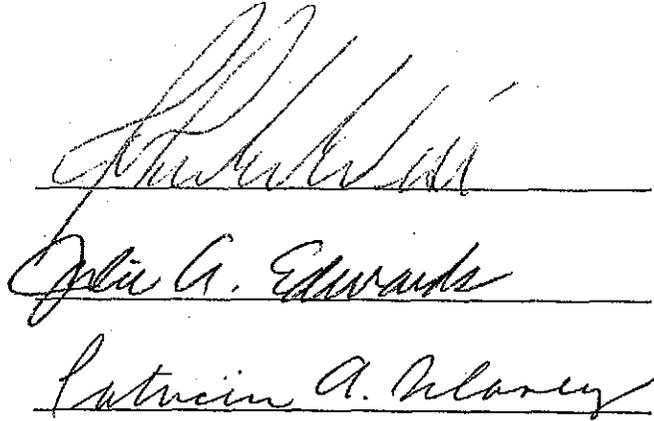
{¶30} Appellant's Fourth Assignment of Error is therefore overruled.

{¶31} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Richland County, Ohio, is hereby affirmed.

By: Wise, P. J.

Edwards, J., and

Delaney, J., concur.



*P. J. Wise*  
*J. Edwards*  
*J. Delaney*

JUDGES

