

ORIGINAL

STATE OF OHIO

PLAINTIFF-APPELLEE,

-VS-

CHRISTOPHER HAWKINS

DEFENDANT, APPELLANT

ON APPEAL FROM THE CUYAHOGA  
COUNTY COURT OF APPEALS, EIGHTH  
APPELLATE DISTRICT, CASE NO.  
CR-493005 and CR-492933

COURT OF APPEALS CASE NO.  
91930

09-1951

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NOTICE OF APPELLANT CHRISTOPHER HAWKINS

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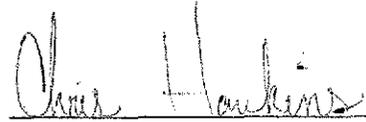
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OCT 28 2009  
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NOTICE OF APPEAL OF APPELLANT CHRISTOPHER HAWKINS

The appellant hereby gives notice of appeal to the Ohio Supreme Court of Ohio from the judgment of the CUYAHOGA County Court of Appeals, EIGHTH Appellate District, entered in the Court of Appeals case number 91930 on OCTOBER 15, 2009.

This case raises a substantial constitutional question, involves a felony, and is one of great public or general interest.

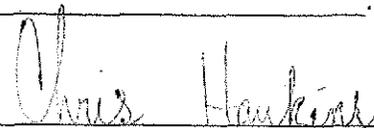
Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing Notice of Appeal has been sent by U.S. mail to the prosecuting attorney of CUYAHOGA County on this 15 day of OCTOBER, 2009, at the following address 1200 ONTARIO, CLEVELAND, OH 44430



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

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THIS CASE PRESENTS 3 CRITICAL ISSUES:

(1) WHEN A DEFENDANT STATES ON THE RECORD THAT HE "WOULD LIKE TO OBTAIN NEW COUNSEL BECAUSE HIS ATTORNEY(S) ARE NOT REPRESENTING HIM TO THE FULLEST EXTENT OF THE LAW" AND "ATTORNEY(S) WOULD NOT FIGHT FOR HIM" SEE(PAGE 3 OF EIGHTH DIST. JOURNAL ENTRY AND OPINION)

AND, ALSO, ATTORNEY(S) ON THE RECORD STATED THAT "DEFENDANT DID NOT LIKE OR WANT TO EXCEPT THE PLEA AGREEMENT THAT PROSECUTOR, COUNSEL, AND COURT APPARENTLY AGREED TO. (SEE. P-5 EIGHTH DIST JUDGEMENT)

DOES THE DEFENDANT HAVE A CONSTITUTIONAL RIGHT TO OBTAIN NEW COUNSEL?, REJECT PLEA AGREEMENT?, AND THE RIGHT TO PROCEED TO TRIAL?

(2) DID JUDGE INDUCE GUILTY PLEA FROM DEFENDANT WHEN JUDGE STATED ON THE RECORD "THAT IF DEFENDANT PLEADED GUILTY TO TWENTY-EIGHT YEARS TO LIFE, HE WOULD BE GIVEN AN OPPORTUNITY, ULTIMATELY IN HIS YOUNG LIFE TO GO OUT AND BE FRUITFUL AND MULTIPLY.

AND ALSO, THAT" HE WOULD HAVE A STRONG POSSIBILITY OF GETTING OUT OF PRISON IF HE PLEADED GUILTY". SEE(PAGE 7 OF EIGHTH DIST. JOURNAL ENTRY AND OPINION).

(3) DEFENDANTS RIGHT TO A GRANDJURY INDICTMENT AND THE RIGHT TO KNOW THE CHARGES AGAINST HIM. BY DEFECTIVE INDICTMENT.

THIS CASE INVOLVES A DEFENDANTS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. THE FAILURE OF THE TRIAL COURT TO PROTECT A SIXTEEN YEAR OLD DEFENDANTS RIGHT TO DUE PROCESS.

THE DEFENDANT MADE KNOWN TO THE TRIAL COURT THAT HIS "COUNSEL WAS NOT DEFENDING HIM TO THE FULLEST EXTENT OF THE LAW". INSTEAD OF THE TRIAL COURT HEARING THE DEFENDANT OUT, THE JUDGE CUT DEFENDANT OFF AND IMMEDIATELY WENT INTO HER PERSONAL FEELINGS ABOUT HER EXPERIENCE WITH THE DEFENDANTS APPOINTED COUNSEL, WHICH HAD NOTHING TO DO WITH THIS PARTICULAR CASE, AND NOTHING TO DO WITH DEFENDANTS CONCERNS ABOUT HIS RIGHTS TO BE DEFENDED.

IN WHAT LOOKED TO BE AN INQUIRY, THE JUDGE THEN ASKED DEFENDANTS TWO LAWYERS HOW THEY FELT ABOUT THE DEFENDANTS CONCERNS, TO WHICH THEY GAVE THEIR ANSWERS. WHILE ALL THIS TOOK PLACE THE JUDGE NEVER LET DEFENDANT FINISH HAVING HIS SAY IN THE MATTER.

THE TRIAL JUDGE SPECIFICALLY STATED THAT DEFENDANT HAD UNTIL ONE O' CLOCK TO MAKE UP HIS MIND (SEE PAGE 8 OF EIGHTH DIST. JOURNAL ENTRY AND OPINION) BUT, WHEN COURT DID RECONVENE, THE COURT ACTED IF THE EARLIER SESSION NEVER TOOK PLACE. THIS WAS A DENIAL OF DUE PROCESS. THE CONSTITUTION PROVIDES THE ACCUSED THE RIGHT TO PROCEED TO TRIAL IF HE SO CHOOSES. AND, IF THE DEFENDANT IS UNHAPPY WITH THE PLEA AGREEMENT, (WHICH THE THE PROSECUTION, DEFENSE COUNSEL, AND THE JUDGE AGREED TO), HE CAN NOT BE FORCED TO ACCEPT A PLEA WHICH HE IS NOT IN AGREEMENT WITH.

ALSO, THERE WAS AN INDUCEMENT BY THE JUDGE IN ORDER TO GET DEFENDANT TO EXCEPT GUILTY PLEA.

THE FEDERAL RULE IS THAT THE "COURT SHALL NOT PARTICIPATE IN SUCH DISCUSSIONS" AND SEVERAL STATES ARE IN ACCORD AS A CONSEQUENCE OF A RULE STATUTE OR COURT DECISION TO THE SAME EFFECT.

IF IN ONE OF THOSE JURISDICTIONS DEFENDANT BRINGS HIS GUILTY PLEA INTO QUESTION BY SHOWING THAT IT WAS PRECEDED BY SOME INDUCEMENTS FROM THE JUDGE, THE CASE MIGHT WELL BE DISPOSED OF IN THE DEFENDANTS FAVOR WITHOUT ANY DETERMINATION.

ALSO, ALL CRIMINAL DEFENDANTS HAVE A RIGHT TO A GRANDJURY INDICTMENT AND DUE PROCESS UNDER THE CONSTITUTION. AND ALSO, DFENDANT HAS THE RIGHT TO BE NOTIFIED OF THE CHARGES AGAINST HIM.

HAWKINS HAD TWO COUNTS OF AGGRAVATED ROBBERY, IN VIOLATION OF R.C. 2911.01 (A)(1), AND TWO COUNTS OF AGGRAVATED ROBBERY, IN VIOLATION OF 2911.01(A)(3) .

THESE COUNTS OF AGGRAVATED ROBBERY DID NOT CONTAIN THE MENTAL ELEMENTS REQUIRED OF THE CRIMES, THEREFORE DEFENDANT THOUGHT IF HE PROCEEDED TO TRIAL HE WOULD BE FIGHTING STRICT LIABILITY OFFENSES. DEFENDANT WAS NEVER NOTIFIED THAT THE COURT WOULD HAVE TO PROVE THE " RECKLESS ELEMENTS " OF THE CHARGES IF HE PROCEEDED TO TRIAL. THIS WAS A DENIAL OF DEFENDANTS RIGHTS TO BE NOTIFIED OF THE CHARGES AGAINST HIM.

RULES, STATUTES, AND CASE LAW PROTECTS AN ACCUSED RIGHTS TO BE NOTIFIED OF THE CHARGES AGAINST HIM.

BECAUSE OF THESE REASONS THIS COURT MUST GRANT JURISDICTION TO HEAR THIS CASE AND REVIEW THE ERRONEOUS DICISION OF THE COURT OF APPEALS.

#### STATEMENT OF THE CASE AND FACTS

IN MARCH 2007, IN CASE NO. CR-492933, THE CUYAHOGA COUNTY GRAND JURY INDICTED HAWKINS ON EIGHT COUNTS FOR EVENTS THAT ALLEGEDLY TRANSPIRED IN SEPTEMBER 2006; TWO COUNTS OF AGRAVATED MURDER, IN VIOLATION OF R.C. 2903.01(A) AND 2903.01(B); FOUR COUNTS OF AGGRAVATED ROBBERY, TWO IN VIOLATION OF 2911.01(A)(1), TWO IN VIOLATION OF 2911.01(A)(3); TWO COUNTS OF FELONIOUS ASSAULT, IN VIOLATION OF R.C.2903.11(A)(1) AND 2911.11(A)(2). ALL COUNTS HAD ONE-AND THREE-YEAR FIREARM SPECIFICATIONS ATTACHED.

ALSO IN MARCH 2007, IN CASE NO. CR-493005, THE GRAND JURY INDICTED HAWKINS ON FOUR COUNTS OF AGGRAVATED ROBBERY FOR EVENTS THAT ALLEGEDLY OCCURED IN AUGUST 2006, IN VIOLATION OF R.C. 2911.01 WITH ONE-AND THREE-YEAR FIREARM SPECIFICATIONS.

AT THE TIME OF THE CRIMES HAWKINS WAS 16 YEARS OLD.

IN OCTOBER 2007, HAWKINS WITHDREW HIS FORMER PLEAS OF NOT GUILTY AND ENTERED GUILTY PLEAS IN BOTH CASES. IN CASE NO. CR-492933,

HAWKINS PLED GUILTY TO ONE COUNT OF AGGRAVATED MURDER WITH THE THREE YEAR FIREARM SPECIFICATION(COUNT 1) AND ONE COUNT OF FELONIOUS ASSAULT WITH THE THREE-YEAR FIREARM SPECIFICATION(COUNT 6).THE REMAINING COUNTS WERE NOLLED. IN CASE NO. CR-493005, HAWKINS PLED GUILTY TO FOUR COUNTS OF AGGRAVATED ROBBERY WITHOUT THE ONE-AND THREE-YEAR FIREARM SPECIFICATIONS.

IN CASE NO. CR-492933, THE TRIAL COURT SENTENCED HAWKINS TO 25 YEARS TO LIFE ON THE AGGRAVATED MURDER, SIX YEARS ON THE FELONIOUS ASSAULT , AND ORDERED THAT IT BE SERVED CONCURRENT TO THE MURDER SENTENCE, AND THREE YEARS ON THE FIREARM SPECIFICATION, TO BE SERVED PRIOR TO AND CONSECUTIVE TO THE MURDER SENTENCE, FOR AN AGGREGATE SENTENCE OF 28 YEARS TO LIFE IN PRISON. FIVE YEARS OF MANDATORY POST RELEASE CONTROL WAS ALSO PART OF HIS SENTENCE.

IN CASE NO. CR-493005, THE TRIAL COURT SENTENCED HAWKINS TO EIGHT YEARS ON EACH COUNT, AND ORDERED THAT COUNTS 1 AND 2 BE SERVED CONSECUTIVE TO COUNTS 3 AND 4, FOR AN AGGREGATE SENTENCE OF 16 YEARS IN PRISON. THE TRIAL COURT THEN ORDERED THAT THIS SENTENCE BE SERVED CONCURRENT TO THE SENTENCED HE RECIEVED IN CASE NO. CR-492933. FIVE YEARS OF MANDATORY POSTRELEASE CONTROL WAS ALSO PART OF HIS SENTENCE.

HAWKINS THEN APPEALED JUDGEMENT TO THE EIGHTH DIST. RAISING THREE ASSIGNMENTS OF ERROR:

- 1) TRIAL COURT VIOLATED APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTION BY NOT HOLDING AN INQUIRY INTO APPELLANT'S REQUEST FOR NEW COUNSEL AND BY NOT PROVIDING APPELLANT NEW COUNSEL PRIOR TO HIS PLEA.
- 2) TRIAL COURT VIOLATED APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS BY ACCEPTING APPELLANT'S GUILTY PLEAS WHEN THEY WERE NOT VOLUNTARILY MADE.
- 3) THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF THE AGGRAVATED ROBBERY COUNTS IN CR-493005.

THE EIGHTH DIST. COURT OF APPEALS AFFIRMED JUDGEMENT. DEFENDANT NOW REQUEST THAT THE SUPREME COURT ACCEPTS JURISDICTION.

IN SUPPORT OF HIS POSITION,THE APPELLANT PRESENTS THE FOLLOWING ARGUMENT.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO.1: EIGHTH DISTRICT ERRED BY NOT FINDING THAT TRIAL COURT VIOLATED THE DFENDANTS RIGHTS UNDER THE U.S. CONST. 5th,14th AMEND. OHIO CONST. SECTION 10 ARTICLE 1

STATE LAID OUT CONDITIONS OF THE PLEA AGREEMENT, TO WHICH DEFENSE COUNSEL APPARENTLY AGREED TO, AND COURT ACTED AS IF IT WOULD ACCEPT, WHICH IT DID ACCEPT. DFENDANT IMMEDIATELY INTERUPTED AND MADE REQUEST FOR NEW COUNSEL. BECAUSE, HE STATED" THAT HIS ATTORNEYS WERE NOT REPRESENTING HIM TO THE FULLEST EXTENT" SEE PAGE 3 OF EIGHTH DIST. JUDGMENT).

THE COURT SET FORTH THE APPROPRIATE STANDARD FOR DETERMINING WHEN A DEFENDANT'S REQUEST FOR NEW COUNSEL SHOULD BE GRANTED BY TRIAL COURT, WHEN IT STATED THE FOLLOWING IN STATE V. VAUGHN, 2006-OHIO-6577;

THE SIXTH AMENDMENT PROVIDES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE". U.S. CONST. AMEND. 6. A ~~INDIGENT~~ DEFENDANT HAS A RIGHT TO COMPETENT REPRESENTATION BY HIS COURT APPOINTED ATTORNEY, BUT HE HAS NO RIGHT TO HAVE A PARTICULAR ATTORNEY REPRESENT HIM, AND MUST DEMONSTRATE "GOOD CAUSE" TO WARRANT SUBSTITUTION OF COURT APPOINTED COUNSEL.

APPELLANT TOLD THE COURT ON THE RECORD THAT COUNSEL WAS NOT DEFENDING HIM TO THE "FULLEST EXTENT". COUNSEL, ALSO, ON THE RECORD MADE KNOWN THAT APPELLANT "DID NOT LIKE" WHAT THEY EXPLAINED TO HIM ABOUT THE PLEA AGREEMENT. SEE (PAGE 5 OF EIGHTH DIST. JUDGEMENT) APPELLANT BELIEVES THIS IS "GOOD CAUSE".

THIS IS ALSO, SPECIFIC ALLEGATIONS, THAT REQUIRED A INQUIRY BY THE TRIAL COURT. IN STATE V. DEAL (1969), 17 OHIO St. 2d 17, WHICH WAS CITED IN THE VAUGHN CASE, THE COURT DEALT WITH DEFENDANT'S OBJECTION DURING THE TRIAL, TO CONTINUING WITH THE TRIAL WITH HIS CURRENT ATTORNEY. THE COURT IN DEAL HELD THAT THE TRIAL COURT HAS A DUTY TO INQUIRE INTO SUCH A COMPLAINT, AND TO MAKE SAID INQUIRY PART OF THE RECORD. CONDUCTING SUCH INQUIRY INTO A DEFENDANT'S COMPLAINTS ABOUT ASSIGNED COUNSEL, AND A REQUEST TO REPLACE ASSIGNED COUNSEL, IS EQUALLY NECESSARY IN THE CONTEXT OF A DEFENDANT'S PLEA. IN FACT IT MAY EVEN BE MORE IMPORTANT. IN THE TIME BEFORE TRIAL, WITHOUT AN INQUIRY, THE TRIAL COURT WOULD HAVE NO FIRST HAND BASIS TO JUDGE THE VALIDITY OF A DEFENDANT'S COMPLAINTS, AND REQUEST FOR NEW COUNSEL. DURING A TRIAL AS IN DEAL, SUPRA, AT LEAST THE COURT HAS THE ABILITY TO OBSERVE AND JUDGE THE LEVEL OF COMPETENCY AND PERFORMANCE BY COUNSEL. PRIOR TO PLEA OR TRIAL, THE COURT WILL LIKELY HAVE NO WAY OF KNOWING WHETHER A DEFENDANT'S COMPLAINTS ABOUT AN ATTORNEY ARE INVALID UNLESS A MEANINGFUL INQUIRY IS CONDUCTED.

LIKewise, IN STATE V. JOHNSON, 2008-OHIO-5769, THE COURT HELD THAT WHERE A DEFENDANT EXPRESSED DISSATISFACTION WITH HIS TRIAL COUNSEL, IT TRIGGERED A DUTY ON THE PART OF THE TRIAL COURT TO CONDUCT SOME INQUIRY INTO THE DEFENDANT'S CONCERNS. AS DEAL, SUPRA, AND SUBSEQUENT OHIO CASE LAW MAKES CLEAR, WHEN A DEFENDANT ESPECIALLY A (17) YEAR OLD DEFENDANT, PUTS A TRIAL COURT ON NOTICE THAT HE IS VERY DISSATISFIED WITH APPOINTED COUNSEL, TO THE POINT OF DESIRING NEW COUNSEL, A TRIAL COURT IS UNDER THE EXPRESS OBLIGATION TO CONDUCT AN INQUIRY INTO THE MATTER.

EVEN THOUGH DEFENDANT AND COUNSEL MADE CLEAR ON THE RECORD THAT DEFENDANT DID NOT BELIEVE THAT THEY WERE DEFENDING HIM AND, THAT HE DID NOT LIKE THE PLEA AGREEMENT.

HOW MUCH MORE SPECIFIC CAN ONE GET. THE JUDGE WAS TOLD BY THE DEFENDANT AND COUNSEL OF PROBLEMS. THESE ARE SPECIFIC ALLEGATIONS ON THE RECORD, SPECIFIC AS ONE MIGHT GET, CONSIDERING THE JUDGE CUT APPELLANT OFF WHILE HE WAS SPEAKING HIS CONCERNS TO THE COURT.

IN STATE V. CARTER (1998), 128 OHIO APP. 3d, 419, THE FOURTH APPELLATE DISTRICT EXPLAINED:

"THE DEFENDANT BEARS THE BURDEN OF ANNOUNCING THE GROUNDS FOR A MOTION FOR APPOINTMENT OF NEW COUNSEL. IF THE DEFENDANT ALLEGES

FACTS WHICH, IF TRUE, WOULD REQUIRE RELIEF, THE TRIAL COURT MUST INQUIRE INTO THE DEFENDANT'S COMPLAINT AND MAKE THE INQUIRY PART OF THE RECORD. (DEAL) AT 20: STATE V. KING(1995), 104 OHIO APP.3d 434,437: STATE V. PRATER(1990), 71 OHIO APP. 3d 78,83. THE INQUIRY MAY BE BRIEF BUT IT MUST BE MADE.' KING SUPRA, AT 437, CITING PRATER,SUPRA. EVEN THAT LIMITED JUDICIAL DUTY ARISES ONLY IF THE ALLEGATIONS ARE SUFFICIENTLY SPECIFIC. STATEMENTS BY APPELLANT AND HIS LAWYERS WERE SPECIFIC,AND JUDGE STATED ON THE RECORD THAT APPELLANT WOULD BE ABLE TO SPEAK AT " ONE O' CLOCK " WHEN COURT RECONVENED. SEE(PAGE 8 OF EIGHTH DIST JUDGEMENT) HOWEVER JUDGE RENEGED ON PROMISE TO DEFENDANT, BY NOT ALLOWING HIM TO ADRESS HIS ISSUES WITH COUNSEL AT ONE O' CLOCK.

THIS WAS AN ABUSE OF DISCRETION BY THE COURT.

A TRIAL COURTS DECISION REGAURDING A REQUEST FOR SUBSTITUTECOUNSEL IS GOVERNED BY ABUSE OF DISCRETION STANDARD. SEE STATE V. MURPHY (2001), 91 OHIO ST.3d 516,523. THUS, AN APPELLATE COURT WILL NOT REVERSE THE TRIAL COURTS DECISION ABSENT AN ABUSE OF DISCRETION. ID. THE TERM " ABUSE OF DISCRETION IMPLIES THAT THE COURT'S DECISION WAS"UNREASONABLE, ARBITRARY, OR UNCONSIONABLE". STATE V. ADAMS(1980), 62 OHIO St.2d 151,157,404 N.E.2d 144.

THE JUDGE IN THIS CASE WAS UNREASONABLE BY ACTIONS.THE RECORD SHOWS COURT'S INSISTANCE ON STICKING DEFENDANT WITH APPOINTED COUNSEL NO MATTER HOW MUCH HE EXPRESSED HIS DISPLEASURE. EVERYBODY ELSE INVOLVED IN THIS CASE EXCEPT FOR THE DEFENDANT HAD THEIR SAY IN THE CASE, WHICH SHOWS THE DEFENDANT WAS STRONG ARMED FOR HIS DUE PROCESS IN THE PROCEEDINGS. VIOLATING HIS 6th,5th,and 14th AMENDMENTS UNDER THE U.S CONSTITUTION,AND SECTION 10 ARTICLE 1 UNDER THE OHIO CONSTITUTION.

THERE SHOULD HAVE BEEN A COMPLETE INQUIRY AS PERFORMED IN DEAL.

EIGHTH DISTRICT USES GRAVES(DEC. 15,1999,9th dist. no.98 CA007029. WHEN TIMING OF A REQUEST FOR NEW COUNSEL IS AN ISSUE, A TRIAL COURT MAY MAKE A DETERMINATION AS TO WHETHER THE APPELLANT'S REQUEST FOR NEW COUNSEL WAS MADE IN BAD FAITH.A MOTION FOR NEW COUNSEL MADE ON THE DAY OF TRIAL " INTIMATES SUCH A MOTION IS MADE IN BAD FAITH FOR PURPOSES OF DELAY". STATE V. HABEREK(1988),47 OHIO APP. 3d 35,41.

WHEN APPELLANT MADE HIS REQUEST FOR NEW COUNSEL,TRIAL JUDGE STATED " MR. HAWKINS THIS CASE HAS BEEN PENDING SINCE"2007", THIS IS THE FIRST TIME YOU HAVE INDICATED YOUR DISSATISFACTION WITH YOUR TWO LAWYERS". SEE (PAGE 4 PARAGRAPH 1 IN 8th DIST. JUDGMENT). HOWEVER THE DOCKETT AND THE RECORD WILL SHOW THAT THIS WAS IN FACT THE DEFENDANTS FIRST APPEARANCE IN FRONT OF THE JUDGE, AND ONLY HIS SECOND TIME SPEAKING WITH HIS LAWYERS.(SEE RECORD AND HAWKINS AFFIDAVIT). THEREFORE STATE V. GRAVES DOES NOT APPLY HERE.

THIS SHOWS A WILLINGNESS TO TRY TO MANIPULATE THE RECORD BY THE COURT.

STATE V. COLEMAN (1984),18 OHIO APP.3d 50,57. STATES: PARAGRAPH 4 OF THE SYLLABUS.A INDIGENT DEFENDANT IS ENTITLED TO NEW COUNSEL " ONLY UPON A SHOWING OF GOOD CAUSE,SUCH A CONFLICT OF INTEREST,

A COMPLETE BREAKDOWN IN COMMUNICATION, OR AN IRRECONCILABLE CONFLICT WHICH LEADS TO AN APPARENTLY UNJUST RESULT." STATE V. EDSALL (1996), 113 OHIO APP. 3d 337,339; see,also, STATE V. BLANKENSHIP(1995), 102 OHIO APP.3d 534,558.

THE COMPLETE BREAKDOWN BETWEEN HAWKINS AND HIS TRIAL COUNSEL IS EVIDENT WHEN COUNSEL TOLD THE JUDGE THAT "HAWKINS WAS NOT HAPPY WITH THE PLEA AGREEMENT COUNSEL PRESENTED TO HIM.SEE PAGE 3 PARA.23 IN THE 8th DIST. JUDGMENT; DEFENDANT STRESSED TO COURT THAT HE WAS NOT BEING DEFENDED. THIS SHOULD QUALIFY AS A BREAKDOWN, ALONG WITH A NUMBER OF OTHER THINGS ON THE RECORD.

AFTER REVIEWING THE RECORD IN IT'S TOTALITY, IT'S CLEAR THAT 8th DIST. ERRED AND TRIAL COURT DID ABUSE IT'S DISCRETION WHEN IT DENIED HAWKINS REQUEST FOR NEW CONSEL. DEFENDANT WAS CUT OFF BY TRIAL COUNSEL WHEN HE TRIED TO VOICE CONCERNS.

AND, WHILE STATE V.KETTERER, 111 OHIO St.3d 70, 2006-OHIO-5283 PARA150. STATES:ATTORNEYS HAVE A DUTY TO GIVE DEFENDANT A HONEST APPRAISAL OF THEIR CASE.

DEFENDANT SHOULD STILL BE ABLE TO RETAIN HIS RIGHT TO REJECT PLEA AGREEMENT,AND PROCEED TO TRIAL ,AS IT IS HIS CONSTITUTIONAL \*TO HAVE A TRIAL IF HE SO CHOOSES. IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, AS STATED IN THE SIXTH AMENDMENT U.S. CONSTITUTION AND SECTION 10 ARTICLE 1 OHIO CONSTITUTION.

PROPOSITION OF LAW NO.2; EIGHTH DISTRICT ERRED BY NOT FINDING TRIAL COURT VIOLATED HAWKINS RIGHTS BECAUSE IT DID NOT COMPLY WITH CRIM.RULE 11. AND,BECAUSE PLEA WAS NOT VOLUNTARY

EIGHTH DISTRICT MAINTAINS THAT HAWKINS PLEAS WERE MADE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY. THE RECORD HOWEVER, IS CLEAR THEY WERE NOT MADE KNOWINGLY,INTELLIGENTLY,AND VOLUNTARILY.

CRIM.RULE 11(2)(C) PROVIDES;

IN FELONY CASES THE COURT MAY REFUSE TO ACCEPT GUILTY PLEA, AND SHALL NOT ACCEPT A PLEA OF GUILTY WITHOUT FIRST ADDRESSING THE DEFENDANT PERSONALLY AND DOING ALL THE FOLLOWING:

- (A) DETERMINING THAT THE DEFENDANT IS MAKING THE PLEA VOLUNTARILY, WITH UNDERSTANDING OF THE NATURE OF THE CHARGES AND THE MAXIMUM PENALTY INVOLVED,AND, IF APPLICABLE, THAT THE DEFENDANT IS NOT ELGIBLE FOR PROBATION OR FOR IMPOSITION OF COMMUNITY CONTROL SANCTIONS AT THE SENTENCING HEARING.
- (B) INFORMING THE DEFENDANT OF AND DETERMINING THAT THE DEFENDANT UNDERSTANDS THE EFFECT OF THE PLEA OF GUILTY OR NO CONTEST AND THE COURT,UPON ACCEPTANCE OF THE PLEA,MAY PROCEED WITH JUDGMENT AND SENTENCE.
- (C) INFORMING THE DEFENDANT AND DETERMINING THAT THE DEFENDANT

UNDERSTANDS THAT BY THE PLEA THE DEFENDANT IS WAIVING THE RIGHTS TO JURY TRIAL, TO CONFRONT WITNESSES AGAINST HIM OR HER, TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN THE DEFENDANTS FAVOR, AND TO REQUIRE THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AT A TRIAL AT WHICH THE DEFENDANT CANNOT BE COMPELLED TO TESTIFY AGAINST HIMSELF OR HERSELF.

1) PLEA WAS NOT VOLUNTARY BECAUSE DEFENDANT'S APPOINTED COUNSEL STATED TO JUDGE THAT DEFENDANT WAS NOT HAPPY WITH THE PLEA. SEE PAGE 3 ( OF 8th DIST JUDGMENT).

2) PLEA WAS NOT MADE KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY, BECAUSE, JUDGE INDUCED DEFENDANT BY TELLING HIM " IT WAS A STRONG POSSIBILITY THAT HE WOULD GET OUT IF HE PLED GUILTY " SEE (PAGE 4 OF 8th DIST. JUDGMENT) THIS WAS IN FACT A LIE BECAUSE 28 YEARS TO LIFE IS IN FACT A LIFE SENTENCE IN PRISON. AND, BY JUDGE GIVING HAWKINS THE IDEA THAT HE WOULD "BE GETTING OUT BY PLEADING GUILTY", IS A VIOLATION IN ITSELF AND SHOULD VOID THIS SENTENCE.

**2929.02 PENALTIES FOR MURDER:** (A) WHOEVER IS CONVICTED OF OR PLEADS GUILTY TO AGGRAVATED MURDER IN VIOLATION OF SECTION **2903.01** OF THE REVISED CODE **SHALL SUFFER DEATH OR BE IMPRISONED FOR LIFE**, AS DETERMINED PURSUANT TO **SECTIONS 2929.022, 2929.03, AND 2929.04** OF THE REVISED CODE, ETC.....

COURT FAILED TO NOTIFY DEFENDANT THAT THE STATUTES WOULD REQUIRE HIM TO CARRY OUT LIFE SENTENCE BY PLEADING GUILTY.

3) PLEA WAS NOT VOLUNTARY WHERE JUDGE TOLD HAWKINS " IF HE DID NOT PLEAD GUILTY HE WOULD DIE IN PRISON" AND "AND HIS FAMILY WOULD ALSO DIE WHILE HE WAS IN PRISON" SEE (PAGE 8 OF THE EIGHTH APPELLATE DIST. JOURNAL ENTRY AND JOURNAL).

4) PLEA WAS NOT KNOWINGLY , INTELLIGENTLY, OR VOLUNTARILY WHERE DEFENDANT RECIEVED POST RELEASE CONTROL AS PART OF PLEA FOR AGGRAVATED MURDER WHEN P.R.C. DOES NOT APPLY TO THE AGGRAVATED MURDER STATUTE. INSTEAD DEFENDANT SHOULD RECIEVE PAROLE FOR THIS CHARGE. THIS MEANS THAT HE SHOULD HAVE BEEN NOTIFIED THAT IF HE VIOLATED PAROLE HE WOULD FINISH OUT A SENTENCE OF LIFE IN PRISON, AND NOT A P.R.C. SENTENCE OF UP TO NINE MONTHS, OR UP TO HALF THE TIME OF THE SENTENCE THAT WAS PREVIOUSLY CARRIED OUT. THIS WAS A FAILURE TO COMPLY WITH CRIMINAL RULE 11(2)(C). AND , SHOULD VOID THE SENTENCE AND PLEA.

IN STATE V. CLARK 119 OHIO St.3d 239,893 N.E. 2d 462,2008-OHIO-3748, COURT OF APPEALS IN DETERMINING THAT THE TRIAL COURT SUBSTANTIALLY COMPLIED WITH CRIM R. 11 AND THAT CLARK KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED HIS PLEA NOTWITHSTANDING THE COURT'S ERRONEOUS EXPLAINATION OF LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE, THE COURT OF APPEALS RELIED UPON THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS IN STATE V. HAMILTON, HOCKING APP NO.5CA4, 2005-OHIO-5450, 2005 WL 2592964. STATE V. CLARK, ASHTABULA APP. NO. 2006-A-0004, 2007-OHIO-1780, 2007 WL 1113968 para 24.

(PARA 55) IN HAMILTON, THE DEFENDANT APPEALED HIS CONVICTION FOR AGGRAVATED MURDER, ALLEGING THAT HIS GUILTY PLEA WAS INVALID BECAUSE THE TRIAL COURT HAD INCORRECTLY INFORMED HIM THAT HE WOULD BE SUBJECT TO POSTRELEASE CONTROL WHEN, IN FACT HE WAS SUBJECT TO PAROLE. BECAUSE THE TRIAL COURT CORRECTLY ADVISED HIM THAT THE MAXIMUM FOR AGGRAVATED MURDER WAS LIFE 474 IMPRISONMENT WITH **PAROLE** ELGIBILITY AFTER 20 YEARS TO LIFE, THE COURT OF APPEALS

CONCLUDED THAT THE TRIAL COURT'S SUBSEQUENT REFERENCES TO BOTH PAROLE ELIGIBILITY AND POSTRELEASE CONTROL DID NOT RENDER GUILTY PLEA INVALID. HAMILTON AT PARA.1. THE COURT REASONED THAT NOTHING IN THE TRIAL COURT'S DISCUSSION OF POSTRELEASE CONTROL CONVEYED THAT HAMILTON HAD A RIGHT TO EARLY RELEASE OR WOULD BE SUBJECT TO ANYTHING LEES THAN THE MAXIMUM PENALTY FOR THE OFFENSE:LIFE IMPRISONMENT. ID AT PARA. 17-18.

" IN THE RECORD OF STATE V. HAWKINS, THE TRIAL JUDGE SPECIFFICALLY STATED TO HAWKINS THAT IF HE PLEADED GUILTY HE WOULD HAVE A STRONG POSIBILITY OF GETTING OUT OF PRISON," SEE.(T-11)

THIS SHOWS THAT THE COURT GAVE DEFENDANT THE IDEA THAT HE WOULD NOT BE CARRYING OUT A LIFE SENTENCE , AND THAT HE HAD THE CHANCE OF GETTING OUT EARLY.

THE JUDGE IN THIS CASE , REPEATEDLY MADE COMMENTS THAT TENDED TO PUSH HAWKINS INTO ACCEPTING THIS PLEA AGREEMENT. THIS IN FACT MAKES THIS PLEA INVALID,WHERE COURT MADE INDUCMENTS TO GET DEFENDANT-APPELLANT TO ACCEPT PLEA AGGREEMENT, AND ENTER PLEA OF GUILTY.

BRADY V. UNITED STATES, 397 U.S. 742, 90 S.ct. 1463, 25 L.Ed. 2d 747(1970, ASSERTING THAT A PLEA OF GUILTY IS GENERALLY TO BE DEEMED VOLUNTARY IF " ENTERED BY ONE FULLY AWARE OF THE DIRECT CONSEQUENCES, INCLUDING THE ACTUAL VALUE OF ANY COMMITMENTS MADE TO HIM BY THE COURT.

JUDGE IN THIS CASE MADE A COMMITMENT TO HAWKINS, BY TELLING HIM THAT IF HE PLED GUILTY THAT HE WOULD HAVE A STRONG POSSIBILITY OF GETTING OUT OF PRISON. BY PLANTING THIS SEED OF DOUBT IN THE DEFENDANTS HEAD THAT HE WOULD NOT HAVE TO CARRY OUT LIFE SENTENCE WAS A VIOLATION.

PROPOSITION OF LAW NO.3; EIGHTH DISTRICT ERRED BY NOT FINDING TRIAL COURT PROCEEDED ON A DEFECTIVE INDICTMENT AND FAILED TO NOTIFY THE DEFENDANT OF THE CHARGES AGAINST HIM AND VIOLATED HIS U.S. CONSTITUTIONAL RIGHTS UNDER THE 14th, AND 5th AMENDMENT AND UNDER TH OHIO CONSTITUTION SECTION 10 ARTICLE 1. VIOLATING HIS RIGHT TO A GRANDJURY INDICTMENT.

APPELLANT WAS INDICTED ON AGGRAVATED ROBBERY OFFENSES UNDER R.C. 2911.01(A)(1) WHICH DID NOT INCLUDE THE PROPER MENS REA. ALSO HE WAS CHARGED WITH AGGRAVATED ROBBERY UNDER 2911.01(A)(3) WHICH DID NOT INCLUDE THE MENS REA OF " RECKLESSNESS ".

EVEN THOUGH THE COURT FAILED TO EXTEND STATE V. COLON, 118 OHIO ST 3d 26, 2008-OHIO-1624, AS CLARIFIED BY STATE V. COLON, 119 OHIO ST 3d 204, 2008-OHIO-3749, TO CASES WHERE DEFENDANTS PLEAD GUILTY. STATE V. LAWRENCE 8th DIST. NOS. 90977, 90978, 2009-OHIO-33, para.29, CITING STATE V. HAYDEN, 8th DIST. -NO.90474, THE THIRD APPELLATE DIST. WAS QUOTED " THE DEFENDANT HAS WAIVED ANY ALLEGED ERRORS IN THE INDICTMENT BY PLEADING GUILTY TO THE OFFENSES.

APPELLANT NOW ARGUES THAT " EVEN THOUGH HE PLEADED GUILTY" HE STILL HAD THE RIGHT TO BE NOTIFIED OF THE CHARGES AGAINST HIM, INCLUDING ALL "THE ESSENTIAL ELEMENTS OF THE OFFENSE", BEFORE HE PLEADED GUILTY.

IN REALITY COURT HAD DEFENDANT PLEAD TO WHAT WAS PRESENTED AS A " STRICT LIABILITY OFFENSE ". APPELLANT SHOULD HAVE BEEN NOTIFIED THAT COURT WOULD HAVE TO PROVE "RECKLESS ELEMENT" TO CONVICT OF AGGRAVATED ROBBERY, IF HE DID INDEED PROCEED TO TRIAL.

A "STRICT LIABILITY" OFFENSE WOULD REQUIRE NO PROOF OF "MENTAL ELEMENT". A RECKLESS ELEMENT WOULD REQUIRE A HIGHER STANDARD OF PROOF. THEREFORE, APPELLANT SHOULD HAVE BEEN NOTIFIED OF THIS FACT.

BY PROCEEDING ON A DEFECTIVE INDICTMENT THAT ALSO, FAILED TO CHARGE AN OFFENSE VIOLATED THE APPELLANTS CONSTITUTIONAL RIGHTS. SEE 10 ARTICLE 1 OF THE OHIO CONSTITUTION PROVIDES THAT " NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS, CRIME, UNLESS ON PRESENTMENT OR INDICTMENT OF A GRANDJURY ".

STATE V. DONNA CONLEY NOT REPORTED IN NE 2d, 20 WL 150 3589 (OHIO APP. 5 DIST.), 2005-OHIO-3257

- HELD (1) INDICTMENT WAS DEFECTIVE.  
(2) STATES FAILURE TO STATE ESSENTIAL ELEMENT OF "RECKLESSNESS" IN REGARD TO INDICTMENT AND SUBSEQUENT FAILURE TO AMEND INDICTMENT OR OTHERWISE CORRECT ERROR WAS PLAIN ERROR; AND  
(3) DEFENDANTS CONVICTIONS WERE VOID.

THE SUPREME COURT HELD " A JUDGMENT OF CONVICTION BASED ON AN INDICTMENT WHICH DOES NOT CHARGE AN OFFENSE, IS VOID FOR LACK OF JURISDICTION OF SUBJECT MATTER AND MAY BE SUCCESSFULLY ATTACKED, EITHER ON DIRECT APPEAL TO A REVIEWING COURT, OR BY COLLATERAL PROCEEDING" STATE V. CIMPRITZ (1953). 158 OHIO ST. 490, 110 NE 2d 416, SYLLABUS AT PARA. 6 . ' THUS BECAUSE THE INDICTMENT DID NOT INCLUDE THE ELEMENT OF "RECKLESSNESS" THE INDICTMENT WAS INSUFFICIENT AND FAILED TO CHARGE OFFENSE.

CONCLUSION

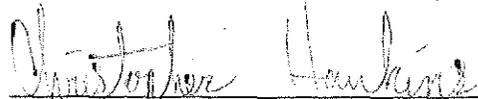
IF COURTS ARE ABLE TO DISREGUARD A DEFENDANTS' CONCERNS WITH COUNSEL IN A PROCEEDING, AFETR DEFENDANT DESPERATLY PLEADING CONCERNS TO COURT, THEN THE PUBLIC IS NOT PROTECTED BY THE OHIO, OR THE U.S. CONSTITUTIONS.

THE LAST THING WE HAVE ON THE RECORD FROM APPELLANT IS HIS CONCERNS WITH THE DEFENSE COUNSEL NOT DEFENDING HIM. AND, ALSO, THE ADMISSION OF COUNSEL ITSELF, THAT THE APPELLANT DID NOT LIKE COUNSEL INSISTANCE THAT HE ACCEPT PLEA AGREEMENT. AFTER THIS THERE IS NOTHING ELSE SAID BY THE COURT, ON THE RECORD ABOUT THIS MATTER WHICH SHOWS EXTREME DISREGUARD OF THE APPELLANTS' RIGHTS BY THE COURT.

IT IS THE SUPREME COURTS DUTY TO ENSURE THAT THE TRIAL COURTS COMPLY WITH THE CONSTITUTION, RULES, STATUTES, AND CASE LAW.

FOR THE REASONS DISCUSSED ABOVE, THIS CASE INVOLVES MATTERS OF PUBLIC AND GREAT GENERAL INTEREST AND A SUBSTANTIAL CONSTITUTIONAL QUESTION. THE APPELLANT REQUEST THAT THIS COURT ACCEPT JURISDICTION IN THIS CASE SO THAT THE IMPORTANT ISSUES PRESENTED WILL BE REVIEWED ON THE MERITS.

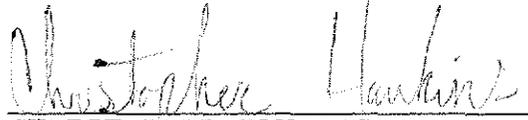
RESPECTFULLY SUBMITTED,



CHRISTOPHER HAWKINS  
DEFENDANT-APPELLANT, Pro Se

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 APPELLEE , WILLIAM D. MASON , CUYAHOGA COUNTY PROSECUTOR'S OFFICE 1200 ONTARIO STREET, CLEVELAND , OHIO 44113.

A handwritten signature in cursive script that reads "Christopher Hawkins". The signature is written in dark ink and is positioned above a horizontal line.

CHRISTOPHER HAWKINS  
DEFENDANT-APPELLANT, Pro SE.

APPENDIX 1

APPENDIX 1

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 91930

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CHRISTOPHER HAWKINS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-493005 and CR-492933

**BEFORE:** Boyle, P.J., Sweeney, J., and Jones, J.

**RELEASED:** August 27, 2009

**JOURNALIZED:** SEP 09 2009

VOL 689 00515

CA08091930

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**FILED AND JOURNALIZED  
PER APP. R. 22(E)**

SEP 09 2009

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY: [Signature] DEP.

**ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)  
RECEIVED**

AUG 27 2009

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY: [Signature] DEP.

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED

MARY J. BOYLE, P.J.:

Defendant-appellant, Christopher Hawkins aka Christopher Etheridge, appeals his convictions. Finding no merit to the appeal, we affirm.

In March 2007, in Case No. CR-492933, the Cuyahoga County Grand Jury indicted Hawkins on eight counts for events that allegedly transpired in September 2006: two counts of aggravated murder, in violation of R.C. 2903.01(A) and 2903.01(B); four counts of aggravated robbery, two in violation of R.C. 2911.01(A)(1) and two in violation of 2911.01(A)(3); and two counts of felonious assault, in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). All counts had one- and three-year firearm specifications attached.

Also in March 2007, in Case No. CR-493005, the grand jury indicted Hawkins on four counts of aggravated robbery for events that allegedly occurred in August 2006, in violation of R.C. 2911.01, with one- and three-year firearm specifications.

At the time of the alleged crimes, Hawkins was 16 years old.

In October 2007, Hawkins withdrew his former pleas of not guilty and entered guilty pleas in both cases. In Case No. CR-492933, Hawkins pled guilty to one count of aggravated murder with the three-year firearm specification (Count 1) and one count of felonious assault with the three-year firearm

specification (Count 6). The remaining counts were nolle. In Case No. CR-493005, Hawkins pled guilty to four counts of aggravated robbery without the one- and three-year firearm specifications.

In Case No. CR-492933, the trial court sentenced Hawkins to 25 years to life on the aggravated murder, six years on the felonious assault, and ordered that it be served concurrent to the murder sentence, and three years on the firearm specification, to be served prior to and consecutive to the murder sentence, for an aggregate sentence of 28 years to life in prison. Five years of mandatory postrelease control was also part of his sentence.

In Case No. CR-493005, the trial court sentenced Hawkins to eight years on each count, and ordered that counts 1 and 2 be served consecutive to counts 3 and 4, for an aggregate sentence of 16 years in prison. The trial court then ordered that this sentence be served concurrent to the sentence he received in Case No. CR-492933. Five years of mandatory postrelease control was also part of his sentence.

It is this judgment that Hawkins appeals, raising three assignments of error for our review:

"[1.] The trial court violated Appellant's rights under the United States and Ohio Constitutions by not holding an inquiry into Appellant's request for new counsel and by not providing Appellant with new counsel prior to his plea.

"[2.] The trial court violated Appellant's rights under the United States and Ohio Constitutions by accepting appellant's guilty pleas when they were not voluntarily made.

"[3.] The trial court erred in convicting Appellant of the aggravated robbery counts in CR-493005."

Inquiry into Request for New Counsel

In his first assignment of error, Hawkins argues that the trial court violated his Sixth Amendment right to counsel because it failed to inquire into the reasons for his request for new counsel prior to accepting his plea. He further contends that the trial court erred by not granting his request for new counsel.

We note at the outset that Hawkins was assigned two attorneys to represent him because he was charged with aggravated murder. On the morning Hawkins's case was set for trial, the state informed the trial court that the parties had reached a plea agreement. The state set forth the parameters of the negotiated plea to the trial court. At that point, Hawkins told the trial court, "I would like to try to get some new lawyers" because "I feel like my lawyers [are] not going to fight for me to the fullest extent." The following exchange then occurred between the trial court, Hawkins, and his two attorneys.

"THE COURT: Mr. [Hawkins], this case has been pending [since] March of 2007. This is the first time you've ever indicated your dissatisfaction with these two lawyers.

"Let me tell you, Mr. Hawkins, that the two lawyers that you have seated beside you at this time are above reproach, and certainly two of the finest lawyers you could have to represent you.

"Whether or not you like the answers they give you, Mr. [Hawkins], is not at issue. They both know their business. They both will fight hard for you at a trial, and they will do their best to represent you in accordance with their canons of ethics and code of responsibility, zealously represent you. So that's not an issue.

"You're going to trial today or you're going to enter a plea of guilty today.

"Mr. [Hawkins], I want to make sure you understand.

"Mr. Buckley and Shaughnessy, is that your understanding of the plea that's been offered by the state?

"MR. BUCKLEY: Your Honor, it is. Basically its twenty-eight years to life.

"I would just like to add that [Mr. Shaughnessy] and I have explained this fully to Chris. I think he understands the plea, the ramifications. We also communicated with his family. His dad is sitting right behind us here. His mother is over here, and his grandmother was here yesterday, and we had them

in the courtroom, and we've talked with all of them. I think -- and I just want to put this on the record.

"[Mr. Shaughnessy] and I strongly recommended to Chris that he take this plea. As lawyers who've done a lot of these cases, and looking at the evidence in this case, being fully versed, we think it's in his best interest to enter into the plea bargain as outlined.

"I think what Christopher's voiced to you today, asking to have new lawyers, is maybe he doesn't want to hear what we've said.

"I will say, that we will zealously represent him if this is a trial. We're prepared to do that. We're prepared to go forward, but we have recommended to him and his family that the plea bargain is in his best interest.

"THE COURT: Okay. Thanks.

"MR. SHAUGHNESSY: Your Honor, for the record, I would just concur with the thoughts of Mr. Buckley.

"Again, we did spend numerous hours with his family. We've been in communication with them throughout the months, during the pretrials.

"We've gone out to the scene. We've done everything we need to do to prepare for this trial. Your honor, we are prepared to go forward, but again, it is our belief that Christopher should entertain the plea bargain offered by the

State of Ohio, given the fact that he's 17 years of age [16 at the time of the alleged crimes].

"THE COURT: And the court does recognize that counsel – all counsel for these three young men charged in this indictment, have repeatedly been at the court for pretrial conferences with the prosecuting attorney in this matter, and have worked many, many hours at each of those events on this matter.

"What was done outside the court is obviously extensive, based upon the motion practice filed in this case.

"Mr. [Hawkins], you heard what the lawyer for the state of Ohio said, Miss Hilow, and what your own lawyers have said. The fact of the matter is, I have to make sure you understand what you're going to do here today, sir, before we bring up the jury.

"You are facing on two counts, young man, a sentence of life imprisonment without the possibility of parole.

"That means the rest of your life you will live and die in prison. Do you understand that?

"[HAWKINS]: Yes, ma'am.

"THE COURT: The court may also impose a sentence of life imprisonment without parole until you serve twenty years, twenty-five years, or thirty years.

"But ultimately, I could send you to prison for life without parole.

"You're also facing an additional possible sentence, if convicted, of fifty-six years on the other crimes related to this case, plus three years for the firearm specification. So that's fifty-nine years on top of anything else you get in this case for the aggravated murders.

"And on the other case, sir, you're facing, if convicted, forty years in prison, plus three years for the firearm specification, so an additional forty-three years.

"And the three-year firearm specifications on these two separate cases are not going to merge by law. They don't have to. These crimes were committed separately and distinctly. So, you're looking at forty-three years on the other case, and by my calculations that is 112 years in prison on these cases, in addition to the potential of twenty to life, twenty-five to life, or thirty to life, or life without parole.

"Do you understand all that, young man?

"[HAWKINS]: Yes, ma'am.

"THE COURT: And it is your desire, sir, to go forward with trial and face those sentencings, or you can plead guilty and receive a sentence of twenty-eight years to life in prison, and give – be given an opportunity, ultimately, in your young life to go out and be fruitful and multiply.

"Do you understand you have a possibility of getting out of prison, a strong possibility of getting out of prison if you plead guilty?

"If you're convicted of all these crimes, Mr. [Hawkins], you are going to die in prison, and so is everybody else in your family.

"You have till one o'clock till we bring up the jury, Mr. [Hawkins], to decide this. If you want to talk to your mom, your dad, anybody else in your family that would be helpful here. \*\*\*

"One o'clock, we want an answer."

When the court resumed proceedings in the afternoon, it did not ask Hawkins what he had decided and Hawkins did not reiterate that he wanted new counsel. In fact, the afternoon plea hearing proceeded as if the morning session had not occurred.

Hawkins relies on *State v. Deal* (1969), 17 Ohio St.2d 17, to argue that the trial court committed reversible error because it failed to inquire into his request for new counsel.

In *Deal*, the Ohio Supreme Court held at the syllabus:

"Where, during the course of his trial for a serious crime, an indigent accused questions the effectiveness and adequacy of assigned counsel, by stating that such counsel failed to file seasonably a notice of alibi or to subpoena witnesses in support thereof even though requested to do so by the accused, it is the duty of the trial judge to inquire into the complaint and make such inquiry a part of the record. The trial judge may then require the trial to proceed with

assigned counsel participating if the complaint is not substantiated or is unreasonable.”

In *State v. Carter* (1998), 128 Ohio App.3d 419, the Fourth Appellate District explained:

“The defendant bears the burden of announcing the grounds for a motion for appointment of new counsel. If the defendant alleges facts which, if true, would require relief, the trial court must inquire into the defendant’s complaint and make the inquiry part of the record. [*Deal*] at 20; *State v. King* (1995), 104 Ohio App.3d 434, 437; *State v. Prater* (1990), 71 Ohio App.3d 78, 83. “The inquiry may be brief and minimal, but it must be made.’ *King*, supra, at 437, citing *Prater*, supra. Even that limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further. See *Deal*, supra, at 19. Failure to inquire into specific allegations constitutes an error as a matter of law. Id. \*\*\*” *Carter* at 423.

The Ohio Supreme Court recently upheld *Deal* in *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, but adopted the Fourth District’s reasoning in *Carter* that “the limited judicial duty arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further.” *Johnson* at ¶68, quoting *Carter* at 423.

Thus, it is well established that the duty prescribed by *Deal*, “arises only if the allegations are sufficiently specific; vague or general objections do not trigger the duty to investigate further.” *Id.* at 423. The question at the crux of this appeal then is: Was Hawkins’s statement to the judge, that he felt like his lawyers were “not going to fight for him to the fullest extent,” sufficiently specific to warrant an inquiry from the trial court? Under the facts of this case, we find that it was not.

In *Deal*, the defendant attempted to discharge his attorney during trial, informing the court that his assigned counsel had failed to file a notice of alibi or to subpoena witnesses. The trial court rejected the defendant’s complaint as “unreasonable,” without making any inquiry into its merits. On appeal, the Ohio Supreme Court reversed the defendant’s conviction, recognizing that absent an on-the-record inquiry into the defendant’s complaints, it was impossible to conduct appellate review of appointed counsel’s performance. The court also recognized that “[t]he appellant, by himself, did everything he could be expected to do to preserve his objection as to the incompetency of his counsel and to the defense his counsel had prepared. His objection was specific, not vague or general.” *Id.* at 19.

In *Carter*, the defendant alleged that his counsel had lied to him, refused to communicate with him, and worked with the state against him. The Fourth

District Court of Appeals held that the defendant had made sufficiently specific allegations to require the trial court to further investigate “the truth of the allegations.” *Id.* at 423.

In *State v. Ervin* (Nov. 26, 2001), 5th Dist. No. 2000CA00297, the defendant informed the trial court on the morning of trial: “I just wanted to get me a lawyer to fight my case. I feel like he ain’t representing me right. I want to pay a lawyer to represent me.” In response, the trial court simply stated, “Motion denied. Bring in the jury.” The court held that because the defendant did not “allege facts which, if true, would require the appointment of new counsel,” the trial court had no duty to inquire into those complaints. *Id.*

In *State v. Simon* (Nov. 22, 2000), 2d Dist. No. 99CA5, the defendant filed a motion to dismiss his appointed trial counsel, citing merely a “conflict of interest.” The trial court denied the motion without inquiry or a hearing. The Second District held that “‘conflict of interest’ without more, is not a sufficiently specific allegation to trigger the duty to investigate further.” *Id.*

In *State v. Washington* (Aug. 17, 2001), 1st Dist. No. C-000754, the defendant orally requested a continuance immediately before trial. Washington told the court that he was “not happy” with his attorney. The trial court quickly overruled the motion without further investigation into the source of defendant’s discontent. The First District noted that the defendant contended, “with some

authority,” that the trial court erred by not investigating the defendant’s complaint. But the appellate court found that the defendant’s allegation was a “general allegation of unhappiness” that was “so vague,” it did not require additional investigation. *Id.*

We find the case *sub judice* to be similar to *Ervin, Simon, and Washington*. Hawkins’s request for new counsel was a general allegation; he did not allege specific facts which would require the appointment of new counsel. Thus, the trial court did not have a duty to inquire further into his request. Moreover, when the court returned after its break for lunch, Hawkins did not raise the subject of wanting new counsel again with the trial court. And during his actual plea colloquy, he asserted that he was satisfied with his lawyers’ representation. Accordingly, we find no error on the part of the trial court.

We note, however, that the better practice would have been for the trial court to conduct a minimal inquiry regarding Hawkins’s concerns. This would have permitted the trial court to quickly dispose of any nonmeritorious claims and would have resulted in a more complete record on appeal. However, under the specific facts and circumstances in this case, the trial court did not err by not conducting such an inquiry.

Hawkins further contends that the trial court erred by not granting his request for new counsel. We disagree.

A trial court's decision regarding a request for substitute counsel is governed by an abuse of discretion standard. See *State v. Murphy* (2001), 91 Ohio St.3d 516, 523. Thus, an appellate court will not reverse the trial court's decision absent an abuse of discretion. *Id.* The term "abuse of discretion" implies that the court's decision was "unreasonable, arbitrary, or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

It is well established that an indigent defendant is not entitled to the counsel of his choosing, but rather, only the right to competent, effective representation. See *Murphy*, *supra*. Further, the right to counsel does not guarantee the defendant a meaningful relationship with counsel. See *Morris v. Slappy* (1983), 461 U.S. 1, 13-14; *State v. Pruitt* (1984), 18 Ohio App.3d 50, 57.

In order for a criminal defendant to discharge a court-appointed attorney, the defendant must show a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to the effective assistance of counsel. See *State v. Coleman* (1988), 37 Ohio St.3d 286, paragraph four of the syllabus. Thus, an indigent defendant is entitled to new counsel "only upon a showing of good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result." *State v. Edsall* (1996), 113 Ohio App.3d 337, 339; see, also, *State v. Blankenship* (1995), 102 Ohio App.3d 534, 558.

Further, when the timing of a request for new counsel is an issue, a trial court may make a determination as to whether the appellant's request for new counsel was made in bad faith. See *State v. Graves* (Dec. 15, 1999), 9th Dist. No. 98CA007029. A motion for new counsel made on the day of trial, "intimates such motion is made in bad faith for the purposes of delay." *State v. Haberek* (1988), 47 Ohio App.3d 35, 41.

After reviewing the record in its totality, we find that the trial court did not abuse its discretion when it denied Hawkins's request for new counsel on the day of trial. Both of Hawkins's appointed attorneys informed the trial court that they were prepared to go to trial that day and represent him to the fullest extent. They indicated on the record that they had done all they could do to prepare for the trial. Although they stated that Hawkins did not like their advice that he should accept the plea offer, there is no indication that there was a complete breakdown in attorney-client communications or that there was an irreconcilable conflict. Moreover, Hawkins's attorneys had a duty to give him an honest appraisal of his case, and to be candid, which is what Hawkins's attorneys did here. See *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, ¶150. "If the rule were otherwise, appointed counsel could be replaced for doing little more than giving their clients honest advice." *Id.*

Accordingly, in the absence of a more articulable breakdown of the attorney-client relationship by Hawkins, we conclude the trial court acted reasonably in denying his last-minute request for new counsel.

Hawkins's first assignment of error is overruled.

Voluntariness of a Plea

In his second assignment of error, Hawkins maintains that the trial court violated his constitutional rights by accepting his guilty pleas, claiming that his pleas were not voluntarily entered into. He claims that the record is clear that he "had no confidence in his counsel's ability to represent him at trial," and that he was "forced or coerced" into accepting the plea.

First, we note that Hawkins never moved to withdraw his guilty plea, either before or after sentencing. Second, a guilty plea waives all appealable orders except for a challenge as to whether the defendant made a knowing, intelligent, and voluntary plea. *State v. Clay*, 8th Dist. Nos. 89339-89341, 2008-Ohio-314, ¶15. "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process,' precluding a criminal defendant from 'rais[ing] independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *State v. Spates*, 64 Ohio St.3d 269, 272-273. (Citations omitted.)

A guilty plea will be considered knowing, intelligent, and voluntary if, before accepting the plea, the trial court, at the very least, substantially complied with the procedures set forth in Crim.R. 11 with respect to nonconstitutional notifications. *State v. Nero* (1990), 56 Ohio St.3d 106, 108. "Substantial compliance means that, under the totality of the circumstances, the defendant subjectively understands the implications of his plea and the rights he is waiving." *Id.*

Crim.R. 11(C)(2) provides,

"In felony cases the court may refuse to accept a plea of guilty \*\*\*, and shall not accept a plea of guilty \*\*\* without first addressing the defendant personally and doing all of the following:

"(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

"(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty \*\*\*, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

"(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to

confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

In the instant case, Hawkins entered into a plea bargain in which he agreed to plead guilty to reduced charges. Prior to accepting Hawkins's guilty pleas, the trial court made sure that Hawkins was not under the influence of any drugs, alcohol, or medicine that would affect his judgment. The trial court further determined that Hawkins could read, write, and understand the English language. The trial court then explained to him that he would be waiving his right to a trial by jury, the right to confront witnesses, the right to compulsory process of witnesses, the right to be proven guilty beyond a reasonable doubt, and the right against self-incrimination, all of which he said he understood.

The trial court also fully apprised Hawkins of the range of the minimum and maximum penalties and the fines provided for each offense, the possibility of the imposition of postrelease control, and the potential consequences for a violation of postrelease control. The trial court inquired into whether Hawkins had been threatened or promised anything in exchange for his plea, other than the dismissal or reduction of various counts in the indictment, and asked him if he was satisfied with his attorneys. Hawkins indicated that he understood, said

he had not been threatened or coerced, and agreed that he was satisfied with his representation.

The totality of the circumstances indicates that Hawkins understood the charges against him. Contrary to his assertion, there is no evidence in the record that he did not understand the plea or was otherwise confused about the proceedings. Based on these circumstances, we find that Hawkins entered into his plea knowingly, voluntarily, and intelligently and thus, the trial court accepted his plea in compliance with Crim.R. 11.

Hawkins's second assignment of error is overruled.

#### Defective Indictment

In his third assignment of error, Hawkins argues that the indictment charging him with aggravated robbery was defective.

This court has declined to extend *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, as clarified by *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, to cases in which the defendant pleaded guilty to the indictment. *State v. Lawrence*, 8th Dist. Nos. 90977, 90978, 2009-Ohio-33, ¶29, citing *State v. Hayden*, 8th Dist. No. 90474, 2008-Ohio-6279, ¶5. In *Lawrence*, we quoted the Third Appellate District, in explaining:

“[The defendant] has waived any alleged errors in the indictment by pleading guilty to the offenses. The court in *Colon* [I] held that ‘when an

indictment fails to charge a mens rea element of a crime and the defendant fails to raise that defect in the trial court, the defendant has not waived the defect in the indictment.’ 118 Ohio St.3d 26, 2008-Ohio-1624, at ¶45. However, the defendant in *Colon* did not plead guilty like Gant, herein. “The plea of guilty is a complete admission of the defendant’s guilt.’ Crim.R. 11 (B)(1). Accordingly, ‘[b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.’ *State v. Kitzler*, 3d Dist. No. 16-02-06, 2002-Ohio-5253, ¶12, citing *State v. Barnett* (1991), 73 Ohio App.3d 244, 248. Therefore ‘[a] criminal defendant who pleads guilty is limited on appeal; he may only attack the voluntary, knowing, and intelligent nature of the plea and “may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”’ *State v. Woods*, 3d Dist. No. 1-05-82, 2006-Ohio-2368, ¶14, quoting *State v. Spates* (1992), 64 Ohio St.3d 269, 272, 1992-Ohio-130. \*\*\* This court is not persuaded that the court in *Colon* [I] was also overruling the longstanding waiver rules with regard to guilty pleas. Accordingly, this court finds that Gant admitted guilt of the substantive crime of burglary and has, therefore, waived any alleged indictment defects for purposes of appeal.” (Some internal citations omitted.) *State v. Gant*, 3d Dist. No. 1-08-22, 2008-Ohio-5406, ¶13.

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Accordingly, Hawkins's third assignment of error is overruled.

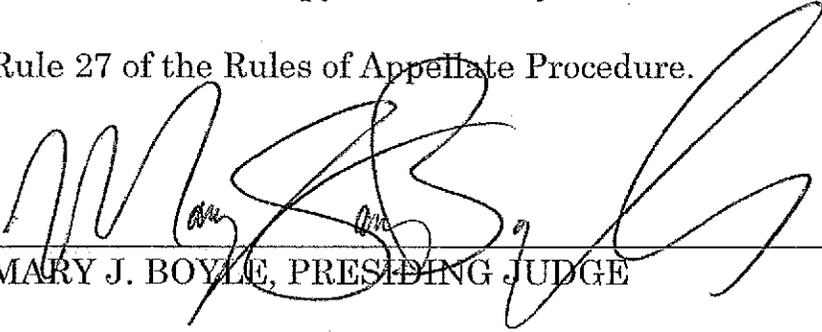
Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



MARY J. BOYLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and  
LARRY A. JONES, J., CONCUR