

IN THE SUPREME COURT OF OHIO

ORIGINAL

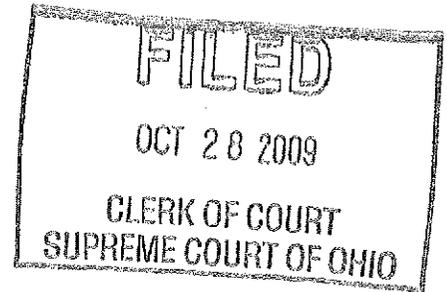
ROBERT LEE NORRIS,  
Petitioner/Appellant,

Supreme Court No. 09-1821

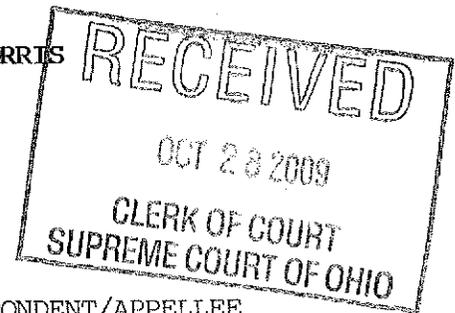
On Appeal from the Lucas County Court  
of Appeals, Sixth District, \*Case No.  
L 09 1212

- vs -

ROBERT WELCH, Warden,  
Respondent/Appellee.



MERIT BRIEF OF APPELLANT ROBERT LEE NORRIS



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**TABLE OF CONTENTS**

**pages:**

TABLE OF CONTENTS . . . . .	i
TABLE OF AUTHORITIES . . . . .	ii
STATEMENT OF FACTS . . . . .	1

**LAW AND ARGUMENT:**

PROPOSITION OF LAW NO. 1

Res judicata inapplicable to former habeas corpus decision(s) predicated on void judgment(s) . . . . .	2
--	---

PROPOSITION OF LAW NO. 2

Habeas corpus will lie where evidence shows petitioner entitled to custody of another and respondent under affirmative mandatory duty not to accept custody of petitioner . . . . .	15
---	----

CONCLUSION . . . . .	18
----------------------	----

CERTIFICATE OF SERVICE . . . . .	18
----------------------------------	----

**APPENDIX:**

continued:

Appx. pages:

Notice of Appeal to the Supreme Court of Ohio, dated: Oct. 8, 2009) . . . . .	1
Opinion (Decision and Judgment), Ohio Sixth Appellate District Court, re: <u>Norris v. Welch</u> , Case No. L 09 1212 . . . . .	4
Opinion (Decision and Judgment), Ohio Sixth Appellate District Court, re: <u>Norris v. Welch</u> , Case No. L 09 1212 . . . . .	1,9,16
Opinion, Ohio Eleventh Appellate District Court, re: <u>Norris v. Konteh</u> , Case No. 98 T 0030 . . . . .	4,7
Opinion, Ohio Fifth Appellate District Court, re: <u>Norris v. Wilson</u> , Case No. 04 CA 33 . . . . .	4
Opinion, Ohio Tenth Appellate District Court, re: <u>Norris v Ohio Dept. of Rehab. and Corr.</u> , Case No. 05AP-762 . . . . .	13
Ohio Department of Rehabilitation and Correction Polict No 52 RCP 01 . . . . .	3,8
Judgment Entry, re: <u>State v. Norris</u> , Stark Co. Com. Pl. No 92 CR 2871(A), dated: ' <u>January 4, 1994</u> ' . . . . .	3-12
Judgment Entry, re: <u>State v. Norris</u> , Stark Co. Com. Pl. Ct. No. 92 CR 28171(A), dated: ' <u>July 9, 1998</u> ' . . . . .	3-12
Transcript of Proceedings, re: <u>State v. Norris</u> , Stark *Co. Com. Pl. Ct. No. 92 CR 2871, dated: ' <u>March 8, 2007</u> ' . . . . .	4,10
<u>State ex rel. Norris, v. Giavasis</u> , 100 Ohio St. 3d 371 . . . . .	[ ]

**TABLE OF AUTHORITIES**

pages:

Bennett v. Ohio Dept. of Rehab. and Corr., 60 Ohio St. 3d 107 . . . . .	2,3
Brinkman v. Drolesbaugh (1918), 97 Ohio St. 171, 119 N.E. 2d 451 . . . . .	2,3
Customized Solutions, Inc. v. Yurchyk, 2003 WL 22120273 (Ohio App. 7 Dist.), 2003-Ohio-4881 . . . . .	15
Diehl v. Friester, 37 Ohio St. 473, 475 . . . . .	3
Dunn v. Smith (2008), 119 Ohio St. 3d 384 . . . . .	12
Eastern Savings Bank v. City of Salem, 597 N.E. 2d 55 . . . . .	8
Freeland v. Pfeiffer (Ohio App. 9 Dist.), 621 N.E. 2d 857 . . . . .	8
Hill v. Buchanan, 6 Ohio Supp. 230, 1941 WL 3363, 21 O.O. 24 . . . . .	7
In re Brown, 6 O.O. 44 (CP) . . . . .	7
Metropolis Night Clubs, Inc. v. Ertel, 662 N.E. 2d 94 . . . . .	14
Neal v. Maxwell (1963), 175 Ohio St. 201, 192 N.E. 2d 782 . . . . .	17
Norris v. Konteh (Apr. 19, 1999), Trumbull App. No. 97 T 0030 . . . . .	4,7,8
Norris v. Ohio Dept. of Rehab. and Corr. (Ohio App. 10th Dist.) No. 05AP-762, 2006-Ohio-1750 . . . . .	13
Norris v. Schotten, 146 F. 3d 314, 333-336 (6th Cir. 1998) . . . . .	11,12,16
Norris v. Wilson (Ohio App. 5 Dist.) No. 04 CA 33, 2005-Ohio-4594 . . . . .	4
State ex rel. Culgan v. Medina County Court of Common Pleas (2008), 119 Ohio St. 3d 535 . . . . .	12
State ex rel. Kelly v. Frick, 14 O.L.A. 355 . . . . .	7
State v. Baker, 119 Ohio St. 3d 197, 2008-Ohio-3330 . . . . .	9,12,13
State v. Beasley (1984), 14 Ohio St. 3d 74 . . . . .	15
State v. Brown (1989), 596 N.E. 2d 1068 . . . . .	6
State v. Collins (Oct. 18, 2001), 8th Dist. No. 79064, 2001 WL 1243943 . . . . .	6
State v. Dovala, 209 WL 806847 (Ohio App. 9 Dist.) . . . . .	14
State v. Garner, 2003 WL 22235358 (Ohio App. 11 Dist.), 2003-Ohio-5222 . . . . .	6
State v. Glavic (2001), 143 Ohio App. 3d 583, 758 N.E. 2d 728 . . . . .	6

continued:

pages:

State v. Kalish, 120 Ohio St. 3d 23, 896 N.E. 2d 124 . . . . .	15
State v. Lovelace, 1999 WL 12728 (Ohio App. 1 Dist.) . . . . .	5
State v. Meyers, 119 Ohio App. 3d 642, 695 N.E. 2d 1226 . . . . .	6
State v. Miller, 2007-Ohio-1353, 2007 WL 879666 at: ¶15 . . . . .	10
State v. Nemchik, 2000 WL 254908, at: 1 . . . . .	14
State v. Orosz, 2008 WL 2939471 (Ohio App. 6 Dist.), 2008-Ohio-3841 . . . . .	10
State v. Pelfrey, 112 Ohio St. 3d 422 . . . . .	15
State v. Reese, 2007 WL 1390647 (Ohio App. 9 Dist.), 2007-Ohio-2267 . . . . .	10
State v. Smith, Lorain Co. Com. Pl. Nos. 93 CR 044489 - 94 CR 045368 . . . . .	12
State v. Tripodo (1977), 50 Ohio St. 2d 124, 363 N.E. 2d 719 . . . . .	9
State v. Tucker (May 2, 1989), 10th Dist. No. 88AP-550, 1989 WL 47012 . . . . .	17
Warren v. Ross, 116 Ohio App. 3d 275, 688 N.E. 2d 3 . . . . .	17
Willoughby v. Lukehart (1987), 39 Ohio App. 3d 74, 529 N.E. 2d 206 . . . . .	17
Worcester v. Donnellon (1990), 49 Ohio St. 3d 117, 118-119 . . . . .	6
O.R.C. § 2505.02 . . . . .	14
O.R.C. § 2969.25(A) . . . . .	14
O.R.C. § 2929.11 . . . . .	15
O.R.C. § 2929.51(A) . . . . .	12
App. R. 4(A) . . . . .	14
Crim. R. 32(B) . . . . .	5
Crim. R. 32(C) . . . . .	6,10,12 14
Sup. R. 7(A) . . . . .	10
Sup. R. 39(B)(4) . . . . .	17
Department of Rehabilitation and Correction Policy 52 RCP 01 . . . . .	3,8,16 17

continued:

pages:

Fourteenth Amendment to the United States Constitution . . . . . 15

**Additional authorities:**

**STATEMENT OF FACTS**

[T]his case originated in the Sixth Appellate District Court as an 'original action' in habeas corpus, Case No. L 09 1212, filed on: 'August 18, 2009,' and thereafter denied (without hearing or responsive pleadings filed) on: 'August 31, 2009.'

Appellant sought habeas corpus intervention, and presented substantive evidentiary materials in support of such action, in challenge to the fact and duration of his confinement therein seeking the alternative relief of 'immediate discharge from custody' or 'expansion to the custody of another.'

After the initiating petition was denied on the basis of an incorrect application of the doctrine of res judicata, appellant immediately sought relief from judgment under Civil Rule 60(B) and supported that request for relief with \*new evidence in to form of a Transcript of Proceedings flowing from the Stark County Common Pleas Court dated: 'March 8, 2007,' urging that the court's reliance on res judicata preclusion was inherently predicated on a series of void judgments.

The court of appeals denied the reopening request on: 'September 30, 2009,' and a 'timely' appeal as of right followed to the Supreme Court of Ohio.

**LAW AND ARGUMENT:**

PROPOSITION OF LAW NO. 1

Res judicata inapplicable to former habeas corpus decision(s) predicated on void judgment(s)

[I]n the instant case, appellant had sought habeas corpus relief under O.R.C. § 2725.01 which provides, that:

"Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." id.

'False imprisonment' in turn has been defined by this court as being:

"'False imprisonment' occurs when person confines another without lawful privilege and against his consent within limited area for any appreciable time, however short." see: Bennett v. Ohio Dept. of Rehab. and Corr., 60 Ohio St. 3d 107, 573 N.E. 2d 633, 634.

[a]nd that:

"Person who intentionally confines another against his consent cannot escape liability by arguing that he or she was initially privileged to impose confinement; once initial privilege to impose confinement expires, justification for continued confinement expires and possibility for false imprisonment begins." id.

The pivotal or threshold is whether 'lawful privilege' exists.

In then the context of confinement by the respondent (Ohio Department of Rehabilitation and Correction), respondent's own internal 'mandatory' policy, DRC Policy 52 RCP 01 (Exhibit #7) provides, in unmistakable mandatory language, at Section VI(B)(3)(a), that:

"The Record Officer in charge shall complete the following actions prior to the departure of the transporting officer:

(a) Review the commitment papers to ensure that they are certified, valid and accurate. If inaccuracies exist, the offender shall not be accepted, and the committing court shall be contacted immediately." id.

The purpose and intent of this affirmative and mandatory policy is to ensure that lawful to intentionally confine facially exists in recognition that "a void judgment," or one that offends this court's holding in: State v. Baker, 119 Ohio St. 3d 197, 2008-Ohio-3330, implicates lawful privilege to which again this court has held, that:

"While an action for malicious prosecution may be maintained, notwithstanding the plaintiff was imprisoned on a perfectly valid judgment or order, an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void." see: Brinkman v. Drolesbaugh (1918), 97 Ohio St. 171, 119 N.E. 2d 451, quoting: Diehl v. Friester, 37 Ohio St. 473, 475.

If, and as was asserted by appellant, the 'January 4, 1994-nunc pro tunc resentencing order' or the 'July 9, 1998-nunc pro tunc entry' were/are void ab initio, petitioner, and pursuant to DRC Policy 52 RCP 01, would be entitled to the custody of another to which habeas corpus would otherwise lie to effectuate that alternative custody.

The court of appeal however incorrectly relied upon the doctrine of res judicata in denying the underlying petition for writ of habeas corpus.

The court of appeals held in its Decision and Judgment (dated: August 31, 2009) (Exhibit #2) that appellant was res judicata because of (2) two former habeas corpus applications, i.e. Norris v. Konteh (Exhibit #4) and, Norris v. Wilson (Exhibit #5).

In: Konteh, the Trumbull County Common Pleas Court denied the petition for failure to include an \*affidavit which contained a description of his civil actions filed in the previous five years, O.R.C. § 2969.25(A), and that his "motion is not a proper manner in which to test trial or sentencing error." id. at: Opinion @ page 4.

The court of appeals furthered, holding that:

"Appellant was properly sentenced to a maximum twenty-five years for kidnapping and this maximum sentence has not expired." id. at: Opinion @ page 5.

The court ultimately concluded, and as is most relevant here, that:

"Because appellant has not provided valid support for his demand, the trial court did not err by denying appellant's petition for writ of habeas corpus." id. at: page 5, lines 9-10.

The court however imposed or articulated no res judicata consequence in conjunction with this matter, and apparently rejected in its entirety the attempted 'July 9, 1998-nunc pro tunc entry' as offered in that action as the true cause of appellant's detention by the State of Ohio.

\* \* \*

In then: Wilson, the Fifth Appellate District Court immediately noted that:

"This matter arises from an unusual set of circumstances." id. at: Opinion, page 2.

The court of appeals however did venture upon an exhausting narrative of procedural history, and ultimately concluded with respect to the 'July 9, 1998 -nunc pro tunc entry,' that:

" ... we find that appellant could have raised these issues on direct appeal. As such, appellant is not entitled to relief." id. at: Opinion @ page 9, lines 10-11.

[a]nd that:

"Further, we note that this is appellant's second petition for habeas corpus filed in a state court. See *Norris v. Konteh* (April 19, 1999), Trumbull App. No. 98-T-0030. Res judicata precludes appellant from filing successive habeas corpus petitions. *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St. 3d 287, 288, 685 N.E. 2d 1243." id. at: lines 12-15.

Each of the courts (state and federal) reviewing these matters have consistently concluded that the 'January 4, 1994-nunc pro tunc resentencing order' was made in error, and in fact is 'declared void' by operation of law.

That 'entry' (though properly journalized) fails to include a sentence for each of the offenses to which appellant was convicted and is therefore a mere nullity and void as a matter of law. see: State v. Lovelace, 1999 WL 12728 (Ohio App. 1 Dist.) ("Even though it is obvious from a reading of the transcript that Lovelace was found guilty of the charges against him, obviously is not good enough. Strict compliance with Crim. R. 32(B) is required.") id.

[a]nd that:

"Without a valid judgment of conviction from which an appeal may be taken, we are without jurisdiction to entertain the appeal. Accordingly, we sua sponte dismiss the appeal for lack of jurisdiction." id.

The same effect occurs here.

More critically still, in: State v. Garner, 2003 WL 22235358 (Ohio App. 11 Dist.) 2003-Ohio-5222, the court explicitly held, that:

"Trial court imposed only single sentence on defendant despite fact that jury found defendant guilty of theft by deception and tampering with records, and thus prevented Court of Appeals from determining to which offense given sentence was actually applied, leaving no final judgment for review on appeal. Rules of Crim. Proc., Rule 32(C)." id.

"Absent the imposition of sentence on each and every offense for which [a defendant] was convicted, there is no final appealable order." id., citing: State v. Collins (Oct. 18, 2001), 8th Dist. No. 79064, 2001 WL 1243943, at: 1. see also: State v. Glavic (2001), 143 Ohio App. 3d 583, 758 N.E. 2d 728 (holding that a sentence was invalid because it did not include a specific sentence for each of the nine convictions); State v. Brown (1989), 59 Ohio App. 1,2, 569 N.E. 2d 1068 (holding that there was no final appealable order where trial court failed to render a signed judgment with respect to the second count in a two-count indictment). id.

Again, \*\*\* the same effect occurs here. see: State v. Myers, 119 Ohio App. 3d 642, 695 N.E. 2d 1226, which provides, that:

"Making incorrect journal entry is clear abuse of trial court's discretion; court speaks through its journal, and it is therefore imperative that court's journal speak the truth." id.

"All litigants have a clear legal right to have proceedings they are involved in correctly journalized." id. citing: Worcester v. Donnellon (1990), 49 Ohio St. 3d 117, 118-119, 551 N.E. 2d at: 183-185.

It must also be remembered, that:

"Habeas corpus is proper remedy where imprisoned person is illegally held regardless of circumstances of commitment, the only limitation being that

order of commitment **must be absolutely void**; if merely voidable, the only remedy would be a proceeding in error." see: State ex rel. Kelly v. Frick, 14 O.L.A. 355.

In the instant case, and with respect to the 'January 4, 1994-nunc pro tunc resentencing order,' there is no doubt that 'that entry' is 'absolutely void,' it was void from its inception, and was/is inherently incapable of either effectuating or maintaining appellant's confinement.

In then the context of the former habeas corpus proceeding, Norris v. Konteh (Exhibit #4), it must be remembered, that:

"A judgment of conviction that is void may be attacked collaterally and the accused discharged on habeas corpus in any court of competent jurisdiction." see: In re Brown, 6 O.O. 44 (CP), in recognition, that:

"All proceedings founded on a void judgment are themselves regarded as invalid, and the void judgment is regarded as a nullity and the situation is the same as if there were no judgment and the parties litigant are left in the same position they were in before the trial." see: Hill v. Buchanan, 6 Ohio Supp. 230, 1941 WL 3363, 21 O.O. 24.

In turn, the former habeas corpus proceeding(s) in: Norris v. Konteh was wholly predicated on the 'absolutely void' 'January 4, 1994-nunc pro tunc resentencing order,' and accordingly, 'that judgment' must be regarded as a nullity as a matter of law thus implicating any application of the doctrine of res judicata.

"A void judgment is not entitled to the respect accorded a valid adjudication, and may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it, and it is attended by none of the consequences of a valid adjudication, and has no legal or binding force or efficacy for any purpose or at any place, it cannot affect, impair or create rights, and it is not entitled to enforcement, and is ordinarily no protection to those who seek to enforce it." id. at: Hill v. Buchanan, supra.

Here however, \*\*\* the court of appeals sought to give full force and effect to the judgment proffered in: Norris v. Konteh which again, was wholly set upon the 'absolutely void' 'January 4, 1994-nunc pro tunc resentencing order.'

In doing, \*\*\* both courts erroneously sought to \*validate the absolutely void 'January 4, 1994-nunc pro tunc' exercise to which it must as well be remembered that such 'attempted affirmation' of an 'absolutely void' judgment is contrary to law in recognition, that:

"The general rule is that a judgment which is void cannot be cured by subsequent proceedings. Such a judgment cannot be validated by citing the parties against whom it was rendered, to show cause why it should not be declared valid, or by affirmation by an appellate court, especially if such affirmation is put upon grounds not touching the validity of the judgment. It is also worthy of noting that even the legislature may not ratify a void judgment so as to impart validity to it." id., citing: 31 Am. Jur. p. 92, § 431.

"Judgments entered in a proceeding failing to comply with procedural due process are void, \*\*\* as is one entered by a court acting in a manner inconsistent with due process." see: Eastern Savings Bank v. City of Salem, 597 N.E. 2d 55; and, Freeland v. Pfeiffer (Ohio App. 9 Dist.), 621 N.E. 2d 857 ('void ab initio'), 87 Ohio App. 3d 55.

Ultimately, \*\*\* and in the context of DRC Policy 52 RCP 01 (Exhibit #7), the respondent-state has never possessed the requisite 'lawful privilege' to intentionally confine appellant with respect to the 'January 4, 1994-nunc pro tunc exercise' and pursuant to that policy's own mandatory language, appellant is unquestionably entitled to the custody of another and habeas corpus intervention to effectuate such alternative custody therefore.

So says basic fairness and due process of law.

As an alternative proposition, the court of appeals has asserted a res

judicata consequence on the basis of the a 'July 9, 1998-nunc pro tunc entry,' which, and as is made irrefutably evident by the record (Transcript of Proceedings dated: 'March 8, 2007' Exhibit #10) has never been (1) time/stamped; (2) signed by the judge; or, (3) journalized. see: State v. Baker, 119 Ohio St. 3d 197, 893 N.E. 2d 163, 2008-Ohio-3330.

In appellant's \*Exhibit #3 (Decision and Judgment from appellant's Civ. R. 60(B) reopening motion), the court of appeals explicitly noted the relevant transcript of proceedings, to wit:

The transcript is of a hearing conducted, pursuant to House Bill 180, for classification of petitioner as a sexual predator. The hearing was conducted in the Stark County Court of Common Pleas in the case entitled State v. Norris, Stark County Court of Common Pleas case (sic) No. 1992CR2871(A)." id. at: Decision and Judgment, at: page 1, lines 3-7.

The court of appeals furthered, noting that:

"In his motion for relief from judgment, appellant argues that the third of three subsequent nunc pro tunc orders modifying sentence, **the nunc pro tunc judgment of July 9, 1998, is void.** He claims it is void because the nunc pro tunc entry "was never (1) signed by the presiding judge; (2) bears no required 'time stamp;' and (3) was never journalized \*\*\*."

Undoubtedly, \*\*\* if those factual allegation were in fact true ('as the record clearly depicts) then there is no judgment of conviction upon which any of the former habeas corpus judgments could lie nor does appellee have any lawful privilege to intentionally confine appellant.

This court has explicitly held, that:

"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 ... Journalization of the judgment of conviction pursuant to Crim. R. 32(C) starts the 30-day appellate clock ticking." id., citing: App. R. 4(A); **and, State v. Tripodo** (1977), 50 Ohio St. 2d 124, 363 N.E. 2d 719.

The Ninth District has held that there are five elements that constitute a judgment of conviction: (1) the plea; (2) the verdict or findings; (3) the sentence; (4) the signature of the judge; and, (5) the time stamp of the clerk to indicate journalization." id., quoting: State v. Miller, 2007-Ohio-1353, 2007 WL 879666 at: ¶5.

[a]nd that:

"All judgment entries must be "filed" and "journalized" within 30 days of the "verdict, decree, or decision."" see: Sup. R. 7(A).

"Further, journalization of a judgment is requirement of Crim. R. 32(C), which states, "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 ... Filing and journalization are two separate acts." see: State v. Orosz, 2008 WL 2939471 (Ohio App. 6 Dist.) 2008-Ohio-3841

[a]nd:

"There is no requirement that a judgment be filed and journalized on the same day, only that both acts occur within 30 days of the decision." id., citing: Sup. R. 7(A).

In: State v. Reese, 2007 WL 1390647 (Ohio App. 9 Dist.), 2007-Ohio-2267, the court further held, that:

"[w]ithout the journalization of this information, there is no judgment of conviction pursuant to Crim. R. 32(C) and therefore, no final appealable order." id.

In the instant case however, the record is clear that the 'July 9, 1998-nunc pro tunc entry' (though certified a true copy teste) was never signed by the judge; bears no 'time-stamp' and according to the sworn testimony of the Stark County Clerk of Courts (Phil Giavasis) [Exhibit #10],

at least as late as: 'June 25, 2002' (some 5 years after the entry was file-stamped) it had not been journalized.

As such, \*\*\* any proceeding or judgment flowing therefrom which pre-dated 'June 25, 2002' is void as a matter of law.

Moreover, and as is evidenced by Exhibit #11 (State ex rel. Norris v. Giavasis, 100 Ohio St. 3d 371), this court specifically identified (2) two separate and distinct certified dockets flowing from Stark County Common Pleas Court Case No. 92 CR 2817(A).

The first certified docket being dated: 'June 25, 2002' and the second \*hybrid docket dated: 'July 11, 2003.'

A careful review of the 'July 11, 2003-docket reveals an even more startling revelation, to wit:

The 'sentence' sought to be inserted into the docket imposes an 'aggregate' term of incarceration of: 30-50 years with \$20,000.00 in 'aggregate' fines and is therefore, as defined by the law-of-the-case (Norris v. Schotten, 146 F. 3d 314, at: 333-336) absolutely void on the face of the docket and thus incapable of sustaining either a 'res judicata consequence' or 'lawful privilege to intentional confine' appellant.

The 'written' and attempted entry dated: 'July 9, 1998' seeks to impose an 'aggregate' term of imprisonment of 45-75 years with \$30,000.00 in 'aggregate' fines.

In turn, \*\*\* the \*belated and clearly out of rule 'July 11, 2003-journal activities seeks to impose a \*new and previously un contemplated sentence which is not only contrary to law but is the very antithesis to the law-of-the-case as defined in Norris v. Schotten, supra.

Habeas corpus will lie in '**extraordinary**' circumstance to which this case does clearly qualify.

"Nunc pro tunc order cannot be used to supply omitted action, or to indicate what the court might or should have decided, or what the trial court intended to decide." Norris v. Schotten, 146 F. 3d at: 333, citing: State v. Greulich, 61 Ohio App. 3d 22, 572 N.E. 2d 132, 134 (1988).

More recently, the Lorain County Common Pleas Court, and in: State of Ohio v. Nancy Smith, Case Nos. 93 CR 044489 and 94 CR 045368, held, on: 'February 13, 2009' in the context of a Crim. R. 32(C) violation, that:

"Defendant has not been admitted to a state correctional facility pursuant to a judgment entry of conviction and sentence that has been filed with the clerk of courts." id. at: OPINION (Conclusions of Law: R.C. 2929.51(A)) page 3, Section B(2).

While the Smith-Court did on the former R.C. 2929.51 and, Dunn v. Smith (2008), 119 Ohio St. 3d 384, finding it appropriate for Smith to file a Motion Requesting a Revised Sentencing Entry, and if a trial court refuses to do so, to seek \*mandamus relief, State ex rel. Culgan v. Medina County Court of Common Pleas (2008), 119 Ohio St. 3d 535, \*\*\* it must be strongly noted that even those 'remedies at law' are not open or available to appellant for each of the following reasons:

(1) The Transcript of Proceedings dated: 'March 8, 2007' unquestionably shows that when challenged with the clear and compelling Baker-violation, the judge responded by ruling:

"The Court is ruling that it is not relevant and is not going to be considered by the Court ..." id. at: page 29, lines 20-22.

The Stark County Common Pleas Court had previously ruled that appellant was 'banned' from filing any pleadings with respect to his sentencing challenges without first pre-paying 'in advance' all costs and fees and

accordingly, appellant have no possible remedy in said court as after all, the court clearly ruled the matters 'irrelevant.'

In then the context of \*mandamus relief, the Stark County Fifth Appellate Court in turn held that the clear and compelling Baker-violations are res judicata regardless of the invalidity of the underlying attempted 'July 9, 1998-nunc pro tunc entry,' its lack of judicial endorsement, a time-stamp, or even required journalization holding (by affirmation) that:

"Q. And other than the state's requirements that a docket be kept showing what has been filed, the official filings, are those actual documents that are contained and not solely based upon the docket; is that correct?"

"A. Correct." id. at: Trans. dated: 'March 8, 2007,' at: page 29, lines 8-14.

The Stark County Clerk of Courts was testifying that even aside from the state law requirement for \*journalization, ... this case involves something other than state law.

Clearly, \*\*\* the case is 'extraordinary' bordering the incredible.

2. Each of the Ohio Courts reviewing the matter has systemically and erroneously sought to apply a res judicata consequence to an 'absolutely void' judgment, the effect of which was made all the more evidence by the Ohio Tenth Appellate District Court in: Norris v. Ohio Dept. of Rehab. and Corr., Case No. 05AP-762, dated: 'April 6, 2006' (Exhibit #5) which held, even in the context of a damage action, that:

"Thus, not only do we reach the same conclusion as the previous court that have addressed this issue, that the alleged clerical errors in the trial court's sentencing entries, including those corrected by the 1998 nunc pro tunc entry, do not affect the validity of appellant's convictions and sentence, but the claims brought by appellate related to this issue are

clearly barred under the doctrine of res judicata." id. at: Opinion at: ¶13.

Even if the irrefutable record evidence does not provide a prima facie case for a fundamental miscarriage of justice and a viable exception to any application of the doctrine of res judicata, it must be remembered that for such application to be sustainable, there must first be a valid, final judgment which simply does not exist here.

In addition to the above, and as is made evident in: State v. Dovala, 2009 WL 806847 (Ohio App. 9 Dist.):

"To survive preclusion by res judicata [she had to] produce \*new evidence that would render the judgment void or voidable and ... show the [s]he could not have appealed the claim based upon information contained in the original record." id. see also: State v. Nemchik, 2000 WL 254908, at: 1.

In the first part, appellant produced \*new evidence in the form of the Transcript of Proceedings dated: 'March 8, 2007' (Exhibit #10) which, in and of itself rendered the attempted 'July 9, 1998-nunc pro tunc entry' a mere nullity and void.

Secondly, \*\*\* the Stark County Fifth Appellate Court flatly refused to permit appellant to appeal the 1998-entry urging that "it is not an entry upon which an appeal can be taken."

It goes without saying that neither the 1994 or the 1998 entries existed at the time of appellant's 1993 'appeal as of right' and because neither of those entries constitute a final appealable order as contemplated in and under O.R.C. § 2505.02; App. R. 4(A); Crim. R. 32(C); or, State v. Baker, 119 Ohio St. 3d 197, the instant matters fall squarely within the exception of res judicata preclusion as a matter of law and fact.

Simply stated, \*\*\* there exists no valid, final judgment, Metropolis Night Club, Inc. v. Ertel, 662 N.E. 2d 94, and, \*\*\* the 'actual controversy'

has never been tried. see: Customized Solutions, Inc. v. Yurchyk, 2003 WL 22120273 (Ohio App. 7 Dist.), 2003-Ohio-4881.

Finally, \*\*\* and with respect to the 15-25 year prison term imposed on each of the entries herein in issue, it must be remembered (as the record clearly shows) appellant was tried and convicted by jury of 'kidnapping' as charged in the indictment, i.e. an aggravated felony of the SECOND degree.

O.R.C. § 2929.11 in turn prescribed that the authorized maximum penalty sanction for such offense is an indeterminate prison term of: 3,4,5,6,7 or 8 to 15 years with a maximum fine of: \$7,500.00.

Each of the 1994 and 1998 entries seek to impose a term of incarceration for 'kidnapping' of: 15-25 years with a \$10,000.00 fine to which again it must be remembered, that:

"If trial court's sentence is outside the permissible statutory range, the sentence is clearly and convincingly contrary to law, and cannot stand." see: State v. Kalish, 120 Ohio St. 3d 23, 896 N.E. 2d 124, 2008-Ohio-4912, ... in recognition, that:

"Any attempt by a trial court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity and void." see: State v. Beasley (1984), 14 Ohio St. 3d 74.

Under the above analysis, \*\*\* it is clear from the record that the appellee does not possess any lawful privilege to intentionally confine appellant on the basis of either of the attempted 1994 or 1998 entries, and that pursuant to DRC Policy 52 RCP 01, appellant is clearly and manifestly entitled to the custody of another. see also: State v. Pelfrey, 112 Ohio St. 3d 422.

This action does thus follow. see: U.S.C.A. Const. Amend. 14.

PROPOSITION OF LAW NO. 2

Habeas corpus will lie where evidence shows petitioner entitled to custody of another and respondent under affirmative mandatory duty not to accept custody of petitioner.

[A]s was stated above, \*\*\* DRC Policy 52 RCP 01, places an affirmative duty on appellee to perform the following official duties prior to acceptance of an offender:

"(a) Review the commitment papers to ensure that they are certified, valid and accurate. If inaccuracies exist, the offender shall not be accepted, and the committing court shall be contacted immediately." id. at: Section VI(B)(3)(a) (Exhibit #7).

Appellee was required (in unlistakable mandatory terms) to review the 'January 4, 1994-nunc pro tunc resentencing entry' and to determine its \*certification; \*validity and \*accuracy.

The record evidence (filed in conjunction with the initiating petition) shows that appellee found the 'January 4, 1994-entry- to be 'fatally insufficient' and thereupon 'continued to confine petitioner' while sending a series of FAX communications to the committing court requesting issuance of a \*new sentencing entry to include the dismissed rape offenses.

This action in turn resulted in an 'October 13, 1995-nunc pro tunc order' that was later declared void by the Sixth Circuit Court in: Norris v. Schotten, 146 F. 3d 314, at: 333.

The Policy required that (1) petitioner not be accepted followed by (2) appellee contacting the committing court ... this however did not occur.

In light of the above, appellee resigned himself to the proposition of "incarceration pending lawful privilege to do so" which was/is acts or omissions manifestly outside the scope of his official duties and responsibilities as defined in and under DRC Policy 52 RCP 01.

In then the context of the 'July 9, 1998-nunc pro tunc entry,' ... once appellee had been served with the 'June 2002' certified docket by the Stark County Clerk of Courts in June of 2002, and thereafter being served (by the Stark County Official Court Reporter) with a certified copy of the 'March 8, 2007-Transcript of Proceedings,' appellee against refused to employ the mandatory provisions of DRC Policy 52 RCP 01 thereby releasing appellant from DRC care, custody and control, rather again, appellee enlisted upon the proposition of: Incarceration pending lawful privilege to do so" without regard to appellant's clear 'false imprisonment.'

"When the reason for the rule no longer exist ...  
so ought not the rule."

DRC Policy 52 RCP 01 was effectuated and enacted as a 'safeguard' to specifically ensure that 'executive' both (1) incarcerated no person without due process of law; and, (2) to provide a viable and substantive conduit through which 'suspect entries' which, as here, were and are facially deficient as a matter of law and fact are scrutinized for legitimacy and statutory enforceability.

Such was/is not the case at bar, and when so little was required to correct the underlying miscarriage of justice over the past (17+) years, appellee simply cannot be permitted to rely on an inapplicable application of the doctrine of res judicata to remove himself from his liability to appellant for his 'false imprisonment,' as after all, it has historically been 'systemic liability' which fuels this fundamental miscarriage of justice.

Appellee simply cannot justify his protracted confinement of appellant under such obvious circumstances as are redolent here, and because 'at this late date' no court has jurisdiction to do other than order appellant's immediate release from confinement, habeas corpus is the only adequate remedy of law in such 'extraordinary' circumstances therefore. see: Willoughby v. Lukehart (1987), 39 Ohio App. 3d 74, 529 N.E. 2d 206; Warren v. Ross, 116 Ohio App. 3d 275, 688 N.E. 2d 3; Sup. R. 39(B)(4); State v. Tucker (May 2, 1989), 10th Dist. No. 88AP-550, 1989 WL 47012; and, Neal v. Maxwell (1963), 175 Ohio St. 201, 192 N.E. 2d 782.

This action does thus follow.

CONCLUSION:

[W]herefore, \*\*\* and for each of those reasons stated above and made evident in the record on appeal, appellant hereby respectfully moves this Honorable Court to:

1. overrule the judgment of the lower court as an incorrect application of the doctrine of res judicata; and,
2. grant a writ of habeas corpus commanding appellant's immediate discharged from the care, custody and control of the Ohio Department of Rehabilitation and Correction.

[R]elief is accordingly sought.

[E]xecuted this 21<sup>ST</sup> day of October, 2009.



Robert Lee Norris, #281-431

ToCC

2001 East Central Avenue

Toledo, Ohio

43608

CERTIFICATE OF SERVICE:

This is to certify that the foregoing was duly served via Institutional Mail Service on: Robert Welch, Warden, Toledo Correctional Institution, 2001 East Central Avenue, Toledo, Ohio, 43608, on this 21<sup>ST</sup> day of October, 2009.

IN THE SUPREME COURT OF OHIO

ROBERT LEE NORRIS,  
Petitioner/Appellant,

Supreme Court No. 09-1821

On Appeal from the Lucas County  
Court of Appeals, Sixth District  
Case No. L 09 1212

- VS -

ROBERT WELCH, Warden,  
Respondent/Appellee

APPENDIX TO MERIT BRIEF OF APPELLANT ROBERT LEE NORRIS

CERTIFICATE OF SERVICE:

This is to certify that the accompanying "APPENDIX TO MERIT BRIEF OF APPELLANT" was duly served on: Robert Welch, Warden, Toledo Correctional Institution, 2001 East Central Avenue, Toledo, Ohio, 43608 ('by Institutional Mail Service') on this 21st day of October, 2009.

  
Robert Lee Norris, #281-431

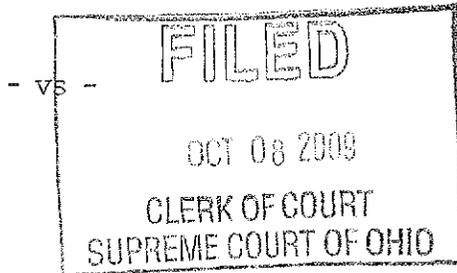
IN THE SUPREME COURT OF OHIO

On Appeal from the Sixth Appellate District Court  
for Lucas County, Ohio  
Case No. L 09 1212

09-1821

ROBERT LEE NORRIS,  
Petitioner/Appellant,

Supreme Court No. \_\_\_\_\_  
COA No. L 09 1212



NOTICE OF APPEAL (in an appeal as of right)  
[p]ursuant to: S. Ct. Prac. R. II § 1.  
[an original action in habeas corpus]

ROBERT WELCH, Warden,  
Respondent/Appellee.

[N]OTICE IS HEREBY GIVEN, that 'ROBERT LEE NORRIS,' [p]etitioner/appellant ('pro se') hereby appeals from the: 'August 31, 2009-judgment of the Ohio Sixth District Court of Appeals, Case No. L 09 1212, therein dismissing (sua sponte) the underlying original action in habeas corpus.

This case originated in the Sixth Appellate District Court as an original action in habeas corpus, see attached "Decision and Judgment," dated: 'August 31, 2009.' see: State v. Day, 2009-Ohio-3755 (Ohio App. 4 Dist.); State v. Baker, 119 Ohio St. 3d \_\_\_\_; State v. Carter, 2009-Ohio-4161; and, State v. Pelfrey, 112 Ohio St. 3d 422. see also: State v. SIMPKINS, 117 Ohio St. 3d 420; and, State v. Bealsey (1984), 14 Ohio St. 3d 74.

[E]xecuted this 30<sup>th</sup> day of September, 2009.

Robert L. Norris

Robert Lee Norris, #281-431

ToCC

2001 East Central Avenue

Toledo, Ohio

43608

CERTIFICATE OF SERVICE:

This is to certify that the foregoing was duly served (along with the other accompanying initiating appellate papers) by: Institutional Mail Service on: 'ROBERT WELCH, Warden,' at: Toledo Correctional Institution, 2001 East Central Avenue, Toledo, Ohio, 43608, on this 30<sup>th</sup> day of September, 2009.

Robert L. Norris

Robert Lee Norris, #281-431

ToCC

2001 East Central Avenue

Toledo, Ohio

43608

[ ]

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COURT OF APPEALS

2009 AUG 31 P 2:11

COMMON PLEAS COURT  
BERNE COULTER  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Robert Lee Norris

Court of Appeals No. L-09-1212

Petitioner,

v.

Robert Welch, Warden

DECISION AND JUDGMENT

Respondent

Decided: AUG 31 2009

\* \* \* \* \*

Robert Lee Norris, pro se.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶ 1} This is an original action for a writ of habeas corpus brought by petitioner, Robert Lee Norris. Norris was convicted in jury trials in 1993, of two counts of rape, violations of R.C. 2907.02 (aggravated felonies of the first degree) and of one count of kidnapping, a violation of R.C. 2905.01 (aggravated felony of the second degree) including specifications on each count. The specifications were pursuant to R.C.

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2941.142 and provided that Norris had "previously been convicted of or plead guilty to aggravated kidnapping, sexual intercourse without consent, 2 Cts., and knife sexual intercourse without consent."

{¶ 2} The trial court sentenced Norris in a judgment filed on September 10, 1993, to an indeterminate prison term of 15 to 25 years on each count. As to each count, the judgment provided that "a minimum term of 15 years shall be served as actual incarceration." The judgment also imposed fines of \$10,000 on each count and ordered that the sentences were to be served consecutively.

{¶ 3} Three nunc pro tunc judgment entries modifying the sentencing judgment followed -- dated January 4, 1994, October 13, 1995, and July 9, 1998. The legal effect of the nunc pro tunc judgment entries and their validity has been the subject of unending litigation by Norris. These judgment entries were described by the Fifth District Court of Appeals in *State v. Norris* (Mar. 26, 2001), 5th Dist. No. 2000CA00235 in the following terms:

{¶ 4} 1. "[A] Nunc Pro Tunc Judgment Entry was filed on January 4, 1994. The January 4, 1994, entry was issued to order the Stark County Sheriff to calculate appellant's jail time credit. However, the trial court, in its January 4, 1994, Judgment Entry only sentenced appellant with respect to the charge of kidnapping."

{¶ 5} 2. "A second Nunc Pro Tunc Judgment Entry to correct the omissions contained in the first Nunc Pro Tunc Judgment Entry was filed by the trial court on October 13, 1995. The trial court, in such entry, sentenced appellant to 15-25 years

imprisonment for each of the three counts, to be served consecutively, and imposed a \$10,000.00 fine with respect to the kidnapping charge and a \$20,000.00 fine as to each of the two counts of rape." *Id.*

{¶ 6} 3. "[T]he trial court filed a third Nunc Pro Tunc Judgment Entry on July 9, 1998, clarifying that appellant was to pay an aggregate of \$30,000.00 in fines." *Id.*

{¶ 7} In his petition, Norris claims that he is entitled to immediate release from incarceration at the Toledo Correctional Institution because he has served the maximum sentence for kidnapping under Ohio law. He claims that under the nunc pro tunc judgment entry of January 4, 1994, his sentence was limited to a term of imprisonment for kidnapping alone. He further argues that although the nunc pro tunc judgment entry imposed a sentence of imprisonment for 15 to 25 years, the maximum term of imprisonment for the offense for which he was convicted is 15 years and that he is entitled to immediate release from custody because he has been imprisoned for more than 15 years.

{¶ 8} This is the third time petitioner has filed a petition for a writ of habeas corpus in Ohio courts with respect to his imprisonment for convictions of one count of kidnapping and two counts of rape in 1993. See *Norris v. Wilson*, 5th Dist. No. 04 CA 33, 2005-Ohio-4594; *Norris v. Konteh* (Apr. 19, 1999), Trumbull App. No. 98-T-0030. The grounds on which petitioner claims he is entitled to immediate release from custody in this petition are identical to those he asserted before the Fifth District Court of Appeals in *Norris v. Wilson*:

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{¶ 12} "In this case, we find that appellant could have raised these issues on direct appeal. As such, appellant is not entitled to relief.

{¶ 13} "Further, we note that this is appellant's second petition for habeas corpus filed in a state court. See *Norris v. Konteh* (April 19, 1999), Trumbull App. No. 98-T-0030. Res judicata precludes appellant from filing successive habeas corpus petitions. *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288, 685 N.E.2d 1243.

{¶ 14} "Accordingly, appellant's assignments of error are overruled.

{¶ 15} "The judgment of the Richland County Court of Common Pleas is affirmed." *Norris v. Wilson* at ¶ 23-27

{¶ 16} Petitioner has had his day in court. The judgment of the Fifth District Court of Appeals is a final judgment, binding upon petitioner, and under the doctrine of res judicata precludes further inquiry by this court. *Norris v. Wilson* at ¶ 25. The petition for a writ of habeas corpus is dismissed at petitioner's costs.

WRIT DENIED.

Peter M. Handwork, P.J.

Mark L. Pietrykowski, J.

Arlene Singer, J.  
CONCUR.

*Peter M. Handwork*

JUDGE

*Mark L. Pietrykowski*

JUDGE

*Arlene Singer*

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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COURT OF APPEALS

2009 SEP 30 10 30 34

COMMON PLEAS COURT  
JUDGE ROBERT WELCH  
COURT HOUSE

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Robert Lee Norris

Court of Appeals No. L-09-1212

Petitioner

v.

Robert Welch, Warden

DECISION AND JUDGMENT

Respondent

Decided:

SEP 30 2009

\* \* \* \* \*

We dismissed petitioner's original action for a writ of habeas corpus on August 31, 2009. Petitioner subsequently filed a motion for relief from that judgment with supporting materials, including a hearing transcript. The transcript is of a hearing conducted, pursuant to House Bill 180, for classification of petitioner as a sexual offender. The hearing was conducted in the Stark County Court of Common Pleas in the case entitled *State v. Norris*, Stark County Court of Common Pleas case No. 1992CR2871(A).

Petitioner was convicted of two counts of rape and one count of kidnapping in the Stark County Court of Common Pleas after jury trials in 1993. *Norris v. Welch*, 6th Dist.

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SEP 30 2009

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No. L-09-1212, 2009-Ohio-4598, ¶ 1. He was sentenced for each of the three offenses in a judgment filed on September 10, 1993. *Id.* at ¶ 2. In his motion for relief from judgment, appellant argues that the third of three subsequent nunc pro tunc orders modifying sentence, the nunc pro tunc judgment of July 9, 1998, is void. He claims it is void because the nunc pro tunc entry "was never (1) signed by the presiding judge; (2) bears no required 'time stamp;' and (3) was never journalized \* \* \*." He argues that this court's judgment dismissing his petition for habeas corpus relief is clearly erroneous because it is based upon a void judgment, the July 9, 1998 nunc pro tunc order.

Petitioner argued to the Stark County Court of Common Pleas in the classification hearing that it lacked jurisdiction over him due to procedural errors in sentencing. *State v. Norris*, 5th Dist. No. 2007CA00101, 2008-Ohio-4089, ¶ 34. On appeal, the Fifth District Court of Appeals characterized petitioner's claims in the classification hearing as demonstrating "his desire to utilize the House Bill 180 hearing to once again challenge his \* \* \* convictions and sentence." *Id.* at ¶ 44. The court of appeals, quoting at length, its 2007 decision in *State v. Norris*, 5th Dist. No. 2006CA00384, 2007-Ohio-2467, held that petitioner's claims concerning claimed procedural errors with respect to sentencing were barred by res judicata. *Id.* at ¶ 65.

The argument advanced today was also rejected by the Tenth District Court of Appeals in *Norris v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-762, 2006-Ohio-1750. There, as here, petitioner argued that he was "being wrongfully incarcerated.

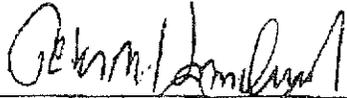
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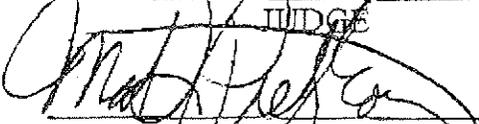
courts. We agree with those courts that petitioner's claims as to invalidity of the July 9, 1998 nunc pro tunc order are barred by res judicata. We, therefore, deny petitioner's motion for relief from judgment.

Peter M. Handwork, P.J.

Mark L. Pietrykowski, J.

Arlene Singer, J.  
CONCUR.

  
\_\_\_\_\_  
JUDGE

  
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JUDGE

  
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JUDGE

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COURT OF APPEALS

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COURT OF APPEALS  
ELEVENTH DISTRICT TRUMBULL COUNTY, OHIO  
MARGARET R. O'BRIEN, Clerk  
TRUMBULL COUNTY, OHIO

JUDGES

ROBERT LEE NORRIS,  
Petitioner-Appellant,

HON. DONALD R. FORD, P.J.,  
HON. ROBERT A. NADER, J.  
HON. WILLIAM M. O'NEILL, J.

- vs -

CHELLEH KONTEH, Warden,  
Respondent-Appellee.

CASE NO. 98-T-0030

OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from the  
Court of Common Pleas  
Case No. 97 CV 2446

JUDGMENT: Affirmed.

ROBERT LEE NORRIS, *pro se*  
PID: 281-431  
Trumbull Correctional Institution  
P.O. Box 901  
Leavittsburg, OH 44430

(Petitioner-Appellant)

BETTY D. MONTGOMERY  
ATTORNEY GENERAL

MARCI L. CANNON  
ASSISTANT ATTORNEY GENERAL  
Corrections Litigation Section  
140 East Town Street  
Columbus, OH 43215

(For Respondent-Appellee)

NADER, J.

This matter is on appeal from the Trumbull County Court of Common Pleas. Appellant, Robert Lee Norris, appeals from the decisions of the trial court denying his motion for summary judgment and denying his petition for a writ of habeas corpus.

Appellant was indicted during the September 1992 term of the Stark County Grand Jury and charged with the following: Count One, kidnapping, a violation of R.C. 2905.01 with a prior conviction specification; Count Two, rape, a violation of R.C. 2907.02 with a prior conviction specification; and Count Three, rape, a violation of R.C. 2907.02, with a prior conviction specification. A jury found Norris guilty of counts one and two, on July 26, 1993. Norris was found guilty of count three, on September 3, 1993, in a separate jury trial. Appellant was initially sentenced as follows:

“Count One: For an indeterminate term of incarceration of fifteen (15) years to twenty-five (25) years, or until otherwise pardoned, paroled or released according to law, with a minimum actual incarceration of fifteen (15) years and with a \$10,000 fine.

“Count Two: For an indeterminate term of incarceration of fifteen (15) years to twenty-five (25) years, or until otherwise pardoned, paroled or released according to law, with a minimum actual incarceration of fifteen (15) years and with a \$10,000 fine.

“Count Three: For an indeterminate term of incarceration of fifteen (15) years to twenty-five (25) years, or until otherwise pardoned, paroled or released according to law, with a minimum actual incarceration of fifteen (15) years and with a \$10,000 fine.”

It was further ordered that the sentences be served consecutively. On January 4, 1994, the trial court entered a *nunc pro tunc* resentencing order that appeared to drop counts two and three and sentenced appellant on the first count. Norris was sentenced for an indeterminate term of incarceration of fifteen years to twenty-five years, or until otherwise pardoned, paroled or released according to law, with a minimum actual incarceration of fifteen years and with a \$10,000 fine. Realizing that it failed to sentence Norris for counts two and three, the trial court entered a second *nunc pro tunc* sentencing order, on October 18, 1995. While the trial court did reinstate counts two and three of appellant's original sentence, it increased the fine imposed, for each count of rape, from \$10,000 for each count to \$20,000 for each count.

Appellant is now an inmate at the Trumbull Correctional Institution, a state penitentiary, located in Trumbull County, Ohio. Appellee, Chelleh Konteh, is the warden of that prison.<sup>1</sup> On December 5, 1997, appellant filed a *pro se* petition for a writ of habeas corpus, pursuant to R.C. 2725.01 et seq. On January 9, 1998, appellant filed a motion asking the trial court to grant his writ of habeas corpus on summary judgment. Appellant alleged that the following grounds entitled him to habeas corpus relief:

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<sup>1</sup> Initially, appellant named Betty Mitchell as the appellee in this action. Subsequently, however, Chelleh Konteh replaced Mitchell as the warden of the Trumbull Correctional Institution. As a result, Konteh has been substituted as the party to this appeal pursuant to App. R. 29(C)(1).

“(1) the trial court violated his Sixth Amendment right to a speedy trial by unreasonably delaying his sentence, resulting in a substantial increase in his punishment;

“(2) the trial court violated the double jeopardy clause of the Fifth Amendment by improperly increasing his punishment after execution and commencement of the initial punishment; and,

“(3) the trial court violated his Fifth Amendment right to due process by increasing his sentence *sua sponte*, without strict compliance with Ohio Crim. R. 43, which requires that a defendant must be present when one sentence is vacated and a new sentence imposed.”

Appellee responded by filing a motion to dismiss the petition. In judgment entries filed January 26, 1998, the trial court denied appellant's petition for writ of habeas corpus and, as a result thereof, denied appellant's motion for summary judgment as being moot. The trial court denied appellant's petition for failure to attach an affidavit, which contained a description of his civil actions filed in the previous five years, and held that his “motion is not a proper manner in which to test trial or sentencing error.” The trial court also noted that appellant did not allege that he had served his sentence and was being unlawfully held. Although the judgment entry denies appellant's petition for a writ of habeas corpus, the trial court gives reasons which support appellee's motion to dismiss. The variance in form does not affect the consistent result.

From this judgment, appellant filed a timely appeal with this court in which he asserts the following assignments of error:

“[1.] Whether the trial court abused its discret[ion] thereby violating the due process rights of petitioner by failing to make

a factual determination as to whether [the] petitioner did actually have an "an adequate alternative" state remedy thereby precluding habeas corpus relief."

"[2.] Whether the trial court erred by dismissing the pro se application for writ of habeas corpus pursuant to: Ohio Revised Code Section 2969.25(A), where [petitioner] had substantially fulfilled the requirement of listing his previous civil actions by listing those "civil actions" within the body of the ["verified complaint"] and there after annexing ("in chronological order") each of those civil actions to the initiating petition."

"[3.] Whether the trial court abused its discretion by violating petitioner's due process rights by failing to grant summary judgment where there was [\*no genuine issue] to any material fact, and where respondent raised, nor offered any recognizable dispute to "any" of the material facts in issue."

"[4.] It is error for a "state court of last resort" to close its door to the review and adjudication of a petition for writ of habeas corpus where, "clearly identifiable" and prima facie constitutional grounds' and question(s) are raised."<sup>2</sup>

Appellant's first and fourth assignments of error raise the same issue and thus will be discussed together. In appellant's first assignment of error, he alleges that the trial court should have made a determination that appellant was entitled to habeas corpus relief because he had no adequate alternative remedy at law. In his fourth assignment of error, appellant alleges that the trial court erred by denying his petition for a writ of habeas corpus and failing to consider the constitutional issues raised therein. Norris

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<sup>2</sup> These assignments of error are reproduced as they appear in appellant's brief. We have not made any attempt to correct grammatical, punctuation, or typographical mistakes.

claims that he had no adequate remedy at law because he was unable to file a timely direct appeal due to the trial court's denial of his request for appointment of counsel and that the Stark County Court of Common Pleas had not ruled on his application for postconviction relief. It is clear from this argument that appellant misunderstands *State ex rel. Pirman v. Money* (1994), 69 Ohio St. 3d 591, 635 N.E.2d 26. In *Pirman*, the Supreme Court of Ohio made the following pronouncement about the viability of habeas corpus relief when the petitioner does not attack the jurisdiction of the trial court. "We have implicitly recognized that in certain extraordinary circumstances where there is an unlawful restraint of a person's liberty, habeas corpus will lie notwithstanding the fact that only nonjurisdictional issues are involved, but only where there is no adequate legal remedy, e.g. appeal or postconviction relief." *Id.* at 593.

In the instant case, appellant does have an adequate remedy at law. "Appeal or postconviction relief are remedies at law to review claimed sentencing errors." *State ex rel. Massie v. Rogers* (1997), 77 Ohio St. 3d 449m 674 N.E.2d 1383 (citing *Blackburn v. Jago* [1988], 39 Ohio St. 3d 139, 529 N.E.2d 929). That appellant failed to raise the sentencing error on direct appeal does not mean that he now has a right to habeas corpus relief. *Adams v. Humphreys* (1986), 27 Ohio St. 3d 43, 500 N.E.2d 1373. In addition thereto, appellant has filed his petition for postconviction relief in the Stark County Court of Common Pleas. Appellant has no right to demand habeas corpus relief simply because his remedies at law are not successful. Furthermore, "habeas corpus is generally available only when the petitioner's maximum sentence has

expired and he is being held unlawfully." *Heddleston v. Mack* (1998), 84 Ohio St.3d 213, 702 N.E.2d 1198. Appellant claims that his maximum sentence has expired based upon the sentencing guidelines set forth in Am.Sub.S.B.No. 2; however, those provisions only apply to crimes committed on or after July 1, 1996. *State v. Rush* (1998), 83 Ohio St.3d 53, 697 N.E.2d 624. Appellant committed his offenses in 1992, before the effective date of Am.Sub.S.B.No. 2; therefore, any sentence set forth in Am.Sub.S.B.No. 2 does not apply to appellant. Appellant was properly sentenced to a maximum twenty-five years for kidnapping and this maximum sentence has not expired. Because appellant has not provided valid support for his demand, the trial court did not err by denying appellant's petition for a writ of habeas corpus. Appellant's first and fourth assignments of error have no merit.

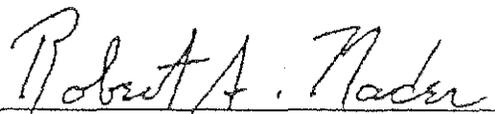
In his second assignment of error, appellant alleges that the trial court erred by denying his petition for a writ of habeas corpus for failing to comply with the mandatory provisions of R.C. 2969.25(A). This statute provides that "at the time an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action the inmate has filed in the previous five years in any state or federal court." Appellant argues that he substantially complied with this requirement by listing his previous civil actions in the body of the verified complaint.

It is not necessary to address the merits of this argument because even if appellant had complied with the requirements set forth in R.C. 2969.25(A), the trial court properly

denied appellant's petition for the reasons discussed in the analysis of appellant's first assignment of error.

In his third assignment of error, appellant alleges that the trial court abused its discretion by failing to grant appellant's motion for summary judgment. The trial court properly denied appellant's motion for summary judgment as moot, once it denied appellant's petition for a writ of habeas corpus. Appellant's third assignment of error has no merit.

For the foregoing reasons, appellant's assignments of error are without merit. The judgment of the Trumbull County Court of Common Pleas is affirmed.



JUDGE ROBERT A. NADER

FORD, P.J.,

O'NEILL, J.,

concur.

STATE OF OHIO )  
 ) SS.  
COUNTY OF TRUMBULL )

IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

ROBERT LEE NORRIS,

Petitioner-Appellant,

- vs -

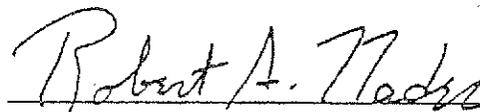
CHELLEH KONTEH,

Respondent-Appellee.

JUDGMENT ENTRY

CASE NO. 98-T-0030

For the reasons stated in the Opinion of this court, the assignments of error are without merit, and it is the judgment and order of this court that the judgment of the trial court is affirmed.

  
\_\_\_\_\_  
JUDGE ROBERT A. NADER

FOR THE COURT

**FILED**  
COURT OF APPEALS

APR 19 1999

TRUMBULL COUNTY, OHIO  
MARGARET R. O'BRIEN, Clerk

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

AUG 24 2005

LINDA H. FRARY  
CLERK

ROBERT LEE NORRIS	:	JUDGES:
	:	W. Scott Gwin, P.J.
Plaintiff-Appellant	:	John W. Wise, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 04 CA 33
JULIUS WILSON, WARDEN	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Richland County  
Court of Common Pleas Case 04 CV 64 D

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellant

ROBERT LEE NORRIS, Pro Se  
R.I.C.I.  
P. O. Box 8107  
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For Defendant-Appellee

M. SCOTT CRISS  
150 East Gay Street, 23rd Flr.  
Columbus, OH 43215

*Edwards, J.*

{¶1} Petitioner-appellant Robert Lee Norris appeals from the March 26, 2004, Judgment Entry of the Richland County Court of Common Pleas which overruled appellant's petition for writ of habeas corpus. Respondent-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On January 20, 2004, appellant filed the instant petition for habeas corpus. In the writ, appellant essentially contended that he had served his maximum sentence of 15 years for kidnapping and, therefore, was entitled to be released from prison.

{¶3} This matter arises from an unusual set of circumstances.<sup>1</sup> On November 12, 1992, the Stark County Grand Jury indicted appellant on two counts of rape in violation of R.C. 2907.02, aggravated felonies of the first degree, and one count of kidnapping in violation of R.C. 2905.01, an aggravated felony of the second degree. All of the counts in the indictment contained specifications that appellant had previously been convicted of or pled guilty to one count of aggravated kidnapping, two counts of sexual intercourse without consent, and one count of sexual intercourse without consent. See R. C. 2941.142. Counts one and two of the indictment (kidnapping and rape) concerned one victim and count three (rape) involved a different victim. At his arraignment, appellant entered a plea of not guilty to the charges contained in the indictment.

{¶4} Because there were different victims involved, counts one and two were tried separately from count three. A jury trial on the charges contained in counts one

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<sup>1</sup> This statement of facts will be limited to facts directly relevant to this court's disposition. We note that appellant has filed many actions in various courts which are not included in this statement of facts.

and two, rape and kidnapping, commenced on July 20, 1993. On July 26, 1993, the jury returned a verdict of guilty of both rape and kidnapping. A jury trial on the charge of rape as contained in count three of the indictment commenced on August 31, 1993. On September 3, 1993, the jury returned with a guilty verdict. Subsequently, following a hearing held on September 9, 1993, the trial court found appellant guilty of all the specifications.

{¶5} Thereafter, as memorialized in a Journal Entry filed on September 10, 1993, the trial court sentenced appellant to an indeterminate term of incarceration of fifteen (15) to twenty-five (25) years on each of the three counts. The trial court further ordered that the minimum term of fifteen years "be served as actual incarceration." The three sentences were to be served consecutively to each other. Appellant was ordered to pay a fine of \$10,000.00 with respect to each of the three counts. Thus, appellant was sentenced to an aggregate prison sentence of 45-75 years and fined \$30,000.00:

{¶6} Thereafter, a Nunc Pro Tunc Judgment Entry was filed on January 4, 1994. The January 4, 1994, Entry was issued to order the Stark County Sheriff to calculate appellant's jail time credit. However, the trial court, in its January 4, 1994, Judgment Entry only sentenced appellant with respect to the charge of kidnapping.

{¶7} Appellant filed a timely appeal of his conviction and sentence with this Court. Pursuant to an Opinion filed on February 21, 1995, Stark App. Case No. CA-9436, the judgment of the trial court was affirmed.

{¶8} Thereafter, on or about July 17, 1995, appellant filed a habeas petition pursuant to 28 U.S.C. Section 2254 seeking to overturn his state court rape and kidnapping convictions. The United States District Court for the Northern District of

Ohio denied appellant's petition. Subsequently, appellant filed an appeal with the United States Court of Appeals, Sixth Circuit.

{¶9} In the meantime, a second Nunc Pro Tunc Judgment Entry to correct the omissions contained in the first Nunc Pro Tunc Judgment Entry was filed by the trial court on October 13, 1995. In that Entry, the trial court sentenced appellant to 15-25 years of imprisonment for each of the three counts; to be served consecutively, and imposed a \$10,000.00 fine with respect to the kidnapping charge and a \$20,000.00 fine as to each of the two counts of rape.

{¶10} On January 3, 1997, appellant filed a writ of mandamus seeking to compel the trial court judge to vacate the second nunc pro tunc sentencing entry, dated October 13, 1995, and discharge appellant from custody.<sup>2</sup> On January 14, 1997, this court denied appellant's writ based upon a finding that appellant had an adequate remedy at law, i.e. direct appeal. Appellant appealed to the Ohio Supreme Court. The Ohio Supreme Court affirmed this court's decision finding, first, that habeas corpus, rather than mandamus, was the proper action since appellant sought immediate release from prison and, second, appellant had adequate legal remedies by an appeal or petition for post-conviction relief to challenge any sentencing error. *Norris v. Boggins*, 80 Ohio St.3d 296, 297, 1997-Ohio-115, 685 N.E.2d 1250.

{¶11} On December 5, 1997, while appellant was an inmate at the Trumbull Correctional Institution, appellant filed a petition for writ of habeas corpus, pursuant to R.C. 2725.01 et seq.<sup>3</sup> By judgment entry filed January 26, 1998, the trial court denied appellant's petition for writ of habeas corpus.

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<sup>2</sup> *Norris v. Boggins* (Jan. 14, 1997), Stark App. No. 1997CA00004.

<sup>3</sup> Appellant alleged that the following grounds entitled him to habeas corpus relief:

{¶12} Appellant filed a timely appeal with the Eleventh District Court of Appeals. The Eleventh District Court of Appeals affirmed the trial court's decision. See *Norris v. Konteh* (April 19, 1999), Trumbull App. No. 98-T-0030.

{¶13} Pursuant to an Opinion filed on May 26, 1998, the United States Court of Appeals, Sixth Circuit, affirmed the judgment of the United States District Court denying appellant's petition for a writ of habeas corpus. The court noted that it understood appellant's frustration with the disorderly and confusing method by which appellant was sentenced in the state trial court. However, the court also noted that the August Nunc Pro Tunc was most likely made to eradicate any suggestion by the December, 1993, Nunc Pro Tunc Judgment that appellants' sentences for the two rapes had been dropped. The court further noted that Ohio courts may amend a journal entry nunc pro tunc to correct any errors so that the final sentencing entry accurately reflects the penalty imposed at the sentencing hearing. *Norris v. Schotten* (1998), 146 F.3d 314, 333. However, in its May 26, 1998, Opinion, the court indicated that it "agree[d] with appellant that the sudden increase in fines from \$30,000 in September of 1993 to \$50,000 by August of 1995 needs to be explained since a 'nunc pro tunc order cannot be used to supply omitted action, or to indicate what the court might or should have decided, or what the trial court intended to decide." See *Norris v. Schotten* (1998), 146

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"(1) the trial court violated his Sixth Amendment right to a speedy trial by unreasonably delaying his sentence, resulting in a substantial increase in his punishment.

"(2) the trial court violated the double jeopardy clause of the Fifth Amendment by improperly increasing his punishment after execution and commencement of the initial punishment; and,

"(3) the trial court violated his Fifth Amendment right to due process by increasing his sentence sua sponte, without strict compliance with Ohio Crim. R. 43, which requires that a defendant must be present when one sentence is vacated and a new sentence imposed."

F.3d 314, 333.<sup>4</sup> For that reason, the trial court filed a third Nunc Pro Tunc Judgment Entry on July 9, 1998, clarifying that appellant was to pay an aggregate of \$30,000.00 in fines.

{¶14} The petition for a writ of habeas corpus at issue in this case concerns the issuance of the second and third nunc pro tunc entries by the trial court. In the petition, appellant contends that the State should be bound by the first nunc pro tunc Judgment Entry by the trial court which convicted appellant of kidnapping only. Appellant contends that he has served the maximum sentence allowable by law for such a conviction.

{¶15} By Judgment Entry filed on March 26, 2004, the trial court overruled appellant's petition for habeas corpus. The trial court concluded that appellant was not entitled to immediate release. The trial court noted that appellant was sentenced to serve 15 – 25 years on each of three counts, for an aggregate term of 45 – 75 years and had not yet served the maximum sentence on even one single term of conviction. Further, the trial court found that appellant's petition was based upon an alleged sentencing error and habeas corpus is not available to attack sentencing errors.

{¶16} It is from the March 26, 2004, Judgment Entry that appellant appeals, raising the following assignments of error:

{¶17} "1. WHETHER AN UNAPPEALED, NON-VACATED, AND UN-REVERSED FEDERAL JUDGMENT, AND IN DETERMINING THE 'TRUE CAUSE OF DETENTION,' 28 U.S.C. [SEC.] 2254 OF THE HABEAS CORPUS APPLICANT ON THE BASIS OF ACTIONS CERTIFIED ON AN 'APPEARANCE DOCKET SUBMITTED

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<sup>4</sup> Although not raised by appellant on his direct appeal in the federal court, the issue of the nunc pro tunc entries was raised by appellant in a pro-se supplemental brief.

WITH RESPONDENT'S RETURN OF WRIT,' IS RES JUDICATA AS DEFINED IN: FEDERATED DEPARTMENT STORES, INC., V. MOITIE, 452 U.S. 394; CLEGG V. UNITED STATES, C.C.A. UTAH112 F.2D 886; AND, FEDERAL DEPOSIT INS. CO. V. WILLOUGHBY, 482 N.E.2D 1267, 19 OHIO APP.3D 51. (Emphasis Original)

{¶18} "II. WHETHER A STATE COMMON PLEAS COURT MAY PROPERLY RELY UPON SUCH UNAPPEALED FEDERAL JUDGMENT IN FORMING ITS CONCLUSION AS TO THE 'FACT AND DURATION OF CONFINEMENT' IN A HABEAS CORPUS PROCEEDING FILED PURSUANT TO O.R.C. [SEC. ] 2725.01,' HOWEVER, AND IN SO DOING, REACH A CONCLUSION THAT IS FACIALLY INCONSISTENT WITH AND PATENTLY CONTRARY TO THE ULTIMATE FINDING AND CONCLUSION OF THE FEDERAL JUDGMENT UPON WHICH IT RELIES.

{¶19} "III. WHETHER A COURT OF RECORD SPEAKS ONLY THROUGH ITS JOURNAL, AND WHERE AS HERE, A STATE TRIAL COURT SEEKS TO GIVE FORCE AND EFFECT TO A JUDGMENT ENTRY NOT SPREAD ACROSS THE FACE OF A \*CERTIFIED AND UN-CONTESTED APPEARANCE DOCKET WHICH WAS MADE PART OF THE RECORD, WHETHER SUCH USAGE AND RELIANCE IS CONTRARY TO LAW AND OFFENDS BOTH THE DUE PROCESS AND FUNDAMENTAL FAIRNESS CLAUSES OF THE FEDERAL CONSTITUTION'S FOURTEENTH AMENDMENT.

{¶20} "IV. WHETHER O.R.C. [SEC.] 5145.01 IS SELF-EXECUTING, AND WHETHER, AS IN THE INSTANT CASE, WHERE THE EVIDENCE IRREFUTABLY SHOWS THAT APPELLANT WAS SENTENCED TO 'AN UNDULY LENGTHY PERIOD OF TIME ON THE FIRST COUNT, 'KIDNAPPING,' – [\*AN AGGRAVATED FELONY OF

THE SECOND DEGREE],’ AND ALL ADDITIONAL COUNTS OF THE INDICTMENT HAD BEEN DISMISSED, WILL HABEAS CORPUS LIE TO COMPEL APPELLANT’S IMMEDIATE RELEASE FROM CUSTODY OF RESPONDENT-APPELLEE WHERE APPELLANT HAS FULLY AND COMPLETELY DISCHARGED THE MAXIMUM AUTHORIZED PENALTY FOR ‘KIDNAPPING’ (‘AS CHARGED IN THE INDICTMENT’) UNDER O.R.C. [SEC.] 2929.11. (Emphasis Original)

{¶21} “V. WHETHER THE TRIAL COURT’S ERRONEOUS CONSTRUCTION OF THE FEDERAL HOLDING IN \*NORRIS-1221 IMPLICATES THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT’S (‘AEDPA’) ‘GATE-KEEPING FUNCTION’ AND THUS CONSTITUTES A CONTINUATION OF THE DIRECT APPEAL AS CONTEMPLATED UNDER 28 U.S.C. [SEC.] 2254; 28 U.S.C. [SEC.] 2244(B)(2); CARLSON V. PITCHER, 137 F.3D 416 (6<sup>TH</sup> CIR.); AND NORRIS V. SCHOTTEN, 146 F.3D 314, AT: 333 (6<sup>TH</sup> CIR. 1998).” (Emphasis Original).

{¶22} Essentially, in the five assignments of error presented, appellant contends that he is entitled to immediate release from prison because he has served the maximum sentence for his sole conviction for kidnapping, count I of the indictment. In order to reach this conclusion, appellant argues that the maximum sentence to which appellant could be sentenced was 15 years, not 15-25 years and that this court must enforce only the first nunc pro tunc judgment entry issued by the trial court. In the first nunc pro tunc judgment entry, the trial court indicated that count II and count III of the indictment for rapes had been dismissed. We disagree.

{¶23} Generally, the remedy of habeas corpus lies only where the jurisdiction of the court is attacked. Although appellant attempts to frame the issue in terms of

jurisdiction, in actuality, appellant's claims concern alleged sentencing errors. Sentencing errors are not jurisdictional and are not cognizable in habeas corpus. *State ex re. Massie v. Rogers* (1997), 77 Ohio St.3d 449, 450, 1997-Ohio-258, 674 N.E.2d 1383. Further, to grant a claim for habeas corpus, a petitioner must have no adequate remedy at law. *Id.* When a sentencing error is raised, the proper avenue for relief is through direct appeal or postconviction relief. *Majoros v. Collins* (1992), 64 Ohio St.3d 442, 443, 596 N.E.2d 1038; *Norris v. Boggins*, 80 Ohio St.3d 296, 297, 1997-Ohio-115, 685 N.E.2d 1250.

{¶24} In this case, we find that appellant could have raised these issues on direct appeal. As such, appellant is not entitled to relief.

{¶25} Further, we note that this is appellant's second petition for habeas corpus filed in a state court. See *Norris v. Konteh* (April 19, 1999), Trumbull App. No. 98-T-0030. *Res judicata* precludes appellant from filing successive habeas corpus petitions. *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288, 685 N.E.2d 1243.

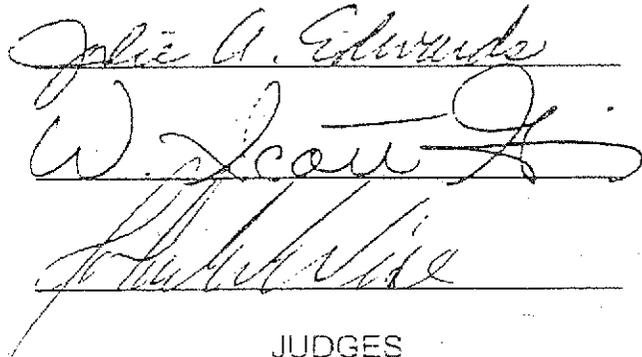
{¶26} Accordingly, appellant's assignments of error are overruled.

{¶27} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur



Julie A. Edwards  
W. Scott Gwin  
J. H. Wise

JUDGES

0623

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

AUG 24 2005

LINDA H. FRARY  
CLERK

ROBERT LEE NORRIS

Plaintiff-Appellant

-vs-

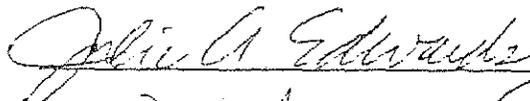
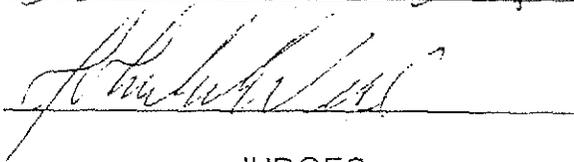
JULIUS WILSON, WARDEN

Defendant-Appellee

JUDGMENT ENTRY

CASE NO. 04 CA 33

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to appellant.

JUDGES

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

# The Supreme Court of Ohio

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LINDA H. FRARY  
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SUPREME COURT OF OHIO

Robert Lee Norris

Case No. 05-1646

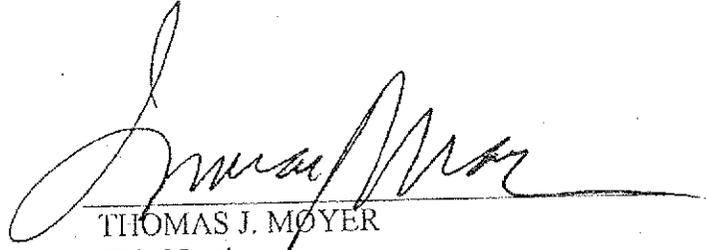
v.

ENTRY

Julius Wilson, Warden

Upon consideration of the jurisdictional memoranda filed in this case, the Court denies leave to appeal and dismisses the appeal as not involving any substantial constitutional question.

(Richland County Court of Appeals; No. 04CA33)



THOMAS J. MOYER  
Chief Justice

Robert Norris  
M. Scott Ciss

[Cite as *Norris v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-1750.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Robert Lee Norris,	:	
Plaintiff-Appellant,	:	
v.	:	No. 05AP-762
	:	(C.C. No. 2004-07824)
Ohio Department of Rehabilitation and Correction et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

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DECISION

Rendered on April 6, 2006

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*Robert Lee Norris, pro se.*

*Jim Petro, Attorney General, Velda K. Hofacker-Carr and  
Sally A. Walters, for defendants-appellees.*

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APPEAL from the Ohio Court of Claims.

McGRATH, J.

{¶1} Plaintiff-appellant, Robert Lee Norris ("appellant"), appeals from the judgment of the Ohio Court of Claims granting summary judgment to defendants-appellees, the State of Ohio Department of Rehabilitation and Correction ("ODRC") and the Ohio Adult Parole Authority ("APA"), collectively appellants.

{¶2} Appellant is currently incarcerated at the Richland Correctional Institute, and has filed this suit alleging that he is being wrongfully incarcerated. Appellant alleges that he is being incarcerated pursuant to an invalid entry, claiming that the entry was

never journalized. The events leading up to the filing of appellant's complaint are as follows. Appellant was incarcerated in September 1993 after a jury found appellant guilty of one count of kidnapping and two counts of rape. Appellant was sentenced to a consecutive indeterminate term of 15-25 years on each count and fined \$10,000 on each count. Following the trial court's filing of the original sentencing entry on September 10, 1993, the trial court filed two nunc pro tunc entries, one in January 1994, and one in October 1995. Appellant filed complaints concerning these entries in numerous courts, none of which have found any merit to appellant's arguments. One such complaint was filed in the United States District Court for the Northern District of Ohio, which denied appellant's request for a writ of habeas corpus. In affirming the district court's denial of the writ, the Sixth Circuit Court of Appeals summarized the procedural history of appellant's sentencing as follows:

[Norris'] last argument relates to the confusing series of nunc pro tunc sentencing entries made by the state trial court. At his sentencing hearing, the trial court imposed on appellant a term of imprisonment of 15-25 years (with 15 actual years) on each of the three counts, to be served consecutively, and a \$10,000 maximum fine on each of the three counts. Stark County Tr. Vol. 14 for 9/9/93 at 70. This sentence was reflected in two judgment entries made on September 10, 1993. J.A. at 157, 160 (Ex. B-1) (Found Guilty By Jury and Sentence Imposed Sept. 10, 1993). In other words, as of September 1993, appellant was facing a total of 45-75 years of imprisonment and \$30,000 in fines. For whatever reason, the state court made another judgment entry as of December 27, 1993 with respect to his convictions on Counts One, Two, and Three but this time sentencing appellant only for the kidnapping. J.A. at 162 (Ex. B-2) (J. Entry Nunc Pro Tunc as of Dec. 27, 1993). In October of 1995 several months after appellant filed his habeas petition with the federal courts, the state court entered another judgment sentencing appellant as of August 30, 1995 to 15-25 years imprisonment for each of the three counts to be served consecutively, imposing a

\$10,000 fine for kidnapping, and imposing a \$20,000 fine for each of the counts of rape. J.A. at 169 (Ex. B-3) (J. Entry Nunc Pro Tunc as of Aug. 30, 1995).

*Norris v. Schotten* (C.A.6, 1998), 146 F.3d 314, 333.

{¶3} The court went on to hold:

We understand appellant's frustration with the disorderly and confusing method by which he was sentenced in state court. However, we agree with the district court that the August nunc pro tunc entry was most likely made in order to eradicate any suggestion by the December 1993 nunc pro tunc judgment entry that appellant's sentences for the two rapes had been dropped. The reason for the December 1993 nunc pro tunc judgment entry is unclear; what is clear is that that entry as it now stands was made in error. Ohio courts may amend a journal entry nunc pro tunc in order to correct any errors so that the final sentencing entry accurately reflects the penalty imposed at the sentencing hearing. See *State v. Greulich*, 61 Ohio App.3d 22, 572 N.E.2d 132, 134 (Ohio 1988). We emphasize that appellant cannot expect to benefit from such clerical errors, especially when there is no valid reason why appellant should think that two rape convictions would carry no sentence.

Id.

{¶4} Because of a discrepancy in the last entry regarding the amount of fines appellant was sentenced to pay, in July 1998, the Stark County Court of Common Pleas filed a third nunc pro tunc entry "clarifying that [appellant] was to pay an aggregate of \$30,000 in fines." *State v. Norris* (Mar. 26, 2001), Stark App. No. 2000CA00235. Appellant filed the instant complaint in the Ohio Court of Claims alleging a claim for wrongful imprisonment, and seeking monetary damages and release from confinement. Appellees filed a motion for summary judgment arguing that appellant was properly incarcerated pursuant to a valid entry. The Court of Claims agreed and granted judgment in favor of appellees. It is from this judgment that appellant appeals.

{¶5} On appeal, appellant raises the following two assignments of error:

ASSIGNMENT OF ERROR NO. 1

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, IN A STAYED CASE AND THROUGH PROCEDURES WHICH WERE/ARE CONTRARY TO LAW AND THE VERY ANTITHESIS TO DUE PROCESS OF LAW.

ASSIGNMENT OF ERROR NO. 2

WHETHER, AND IN LIGHT OF THE EVIDENCE, DEFENDANT(S) WERE ENTITLED TO JUDGMENT AS A MATTER OF LAW, AND WHETHER \*DEFENDANTS WERE PROHIBITED [BY THE DOCTRINE OF RES JUDICATA] FROM FORWARDING SUCH AFFIRMATIVE DEFENSE WHERE THEIR FORMER PLEADING' AND THE FORMER JUDGMENT OF THE COURT SPECIFICALLY AVERRED AND IDENTIFIED THE EXISTENCE OF A GENUINE ISSUE OF MATERIAL FACT.

{¶6} Civ.R. 56(C) states that summary judgment shall be rendered forthwith if "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the non-moving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-359.

{¶7} Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio

St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66.

{¶8} The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the non-moving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The moving party may not fulfill its initial burden simply by making a conclusory assertion that the non-moving party has no evidence to prove its case. *Id.* Rather, the moving party must support its motion by pointing to some evidence of the type set forth in Civ.R. 56(C), which affirmatively demonstrates that the non-moving party has no evidence to support the non-moving party's claims. *Id.* If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. *Id.* However, once the moving party satisfies its initial burden, the non-moving party bears the burden of offering specific facts showing that there is a genuine issue for trial. *Id.* The non-moving party may not rest upon the mere allegations and denials in the pleadings, but, instead, must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. Civ.R. 56(E); *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

{¶9} Appellate review of summary judgments is de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588; *Midwest Specialties, Inc. v. Firestone Tire & Rubber Co.* (1988), 42 Ohio App.3d 6, 8. We stand in the shoes of the trial court and conduct an independent review of the record. As such, we must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support

it, even if the trial court failed to consider those grounds. See *Dresher*, supra; *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶10} Because our decision regarding appellant's second assignment of error is dispositive in this matter, we will address it first. We find that the allegations contained in appellant's complaint are barred by the doctrine of res judicata. The claim-preclusion effect of res judicata provides that "[a] final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction \* \* \* is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them." *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, quoting *Norwood v. McDonald* (1943), 142 Ohio St. 299, paragraph one of the syllabus.

\* \* \*In order for res judicata to bar a subsequent action, the claims asserted therein need not be identical to the claims asserted in the prior action. Rather, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava* at syllabus. The fact that a number of different legal theories may cast liability on an actor arising out of a given episode does not create multiple transactions or claims. *Id.* at 382, citing Comment c to 1 Restatement of the Law 2d, Judgments (1982), Section 24(1), at 200.

*EMC Mortgage Co. v. Jenkins* (2004), 164 Ohio App.3d 240, 252.

{¶11} A review of the record in this case reveals that appellant has made the same arguments relating to the original and nunc pro tunc entries in numerous courts in both the federal and state systems. See *Norris v. Konteh* (Apr. 19, 1999), 11<sup>th</sup> Dist. No. 98-T-0030 (affirming the trial court's denial of a writ of habeas corpus based upon sentencing entries); *Norris v. Schotten*, supra (affirming the federal district court's denial of habeas corpus relief). It has been repeatedly held that the nunc pro tunc entries filed in

this matter were to correct prior defects in the entries and in no way affect appellant's fundamental rights. See also, *State v. Norris* (Mar. 26, 2001), 5<sup>th</sup> App. No. 2000CA00235.

{¶12} Not only has this issue been addressed specifically with regard to appellant, it is well settled that the use of nunc pro tunc entries is an accepted practice in the state of Ohio.

The common law rule giving courts the power to enter **nunc pro tunc** orders has been codified by Civ.R. 60(A). *McGowan v. Giles*, 2000 Ohio App. LEXIS 1006 (Mar. 16, 2000), Cuyahoga App. No. 76332, unreported.

A **nunc pro tunc** order may be issued by a trial court, as an exercise of its inherent power, to make its record speak the truth. It is used to record that which the trial court did, but which has not been recorded. It is an order issued now, which has the same legal force and effect as if it had been issued at an earlier time, when it ought to have been issued. Thus, the office of a **nunc pro tunc** order is limited to memorializing what the trial court actually did at an earlier point in time. It can be used to supply information which existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors. \* \* \*

A **nunc pro tunc** order cannot be used to supply omitted action, or to indicate what the court might or should have decided, or what the trial court intended to decide. \* \* \* Its proper use is limited to what the trial court actually did decide. [*State v. Greulich* (1988), 61 Ohio App. 3d 22, 24-25, (Citations omitted).]

*State v. Furlong* (Feb. 6, 2001), Franklin App. No. 00AP-637.

{¶13} Thus, not only do we reach the same conclusion as the previous court that have addressed this issue, that the alleged clerical errors in the trial court's sentencing entries, including those corrected by the 1998 nunc pro tunc entry, do not affect the

validity of appellant's convictions and sentence, but the claims brought by appellant relating to this issue are clearly barred under the doctrine of res judicata.

{¶14} For the foregoing reasons, appellant's second assignment of error is overruled, appellant's first assignment is rendered moot, and the judgment of the Ohio Court of Claims is hereby affirmed.

*Judgment affirmed.*

PETREE and BROWN, JJ., concur.

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STATE OF OHIO



DEPARTMENT OF REHABILITATION  
AND CORRECTION

SUBJECT: <b>Reception Admission Procedures</b>	PAGE <u>1</u> OF <u>13</u>
	NUMBER: 52-RCP-01
RULE/CODE REFERENCE:	SUPERSEDES: 52-RCP-01 dated 11/1/2004 67-MNH-08 dated 11/18/05
RELATED ACA STANDARDS: 4-4226 4-4285 4-4286 4-4287 4-4288 4-4290	EFFECTIVE DATE: January 26, 2008
RELATED AUDIT STANDARDS:	APPROVED:  <i>Tony J. Collins</i>

**I. AUTHORITY**

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

**II. PURPOSE**

The purpose of this policy is to establish standard procedures that regulate admissions to the reception centers of the Department of Rehabilitation and Correction.

**III. APPLICABILITY**

This policy applies to all employees of the Department of Rehabilitation and Correction, specifically to the staff of the reception centers and offenders housed in the reception phase of their incarceration. The policy also applies to law enforcement agencies conveying prisoners to a reception center and to staff of the Adult Parole Authority returning parole violators to a reception center.

**IV. DEFINITIONS**

Classification – The process of assessing the needs and requirements of an offender in order that he/she is assigned to appropriate custody levels and work and program assignments within the limits of available resources.

Departmental Offender Tracking System (DOTS Portal): A relational database system that manages inmate, parole, probation, victim, and community offender database applications used in the Department of Rehabilitation and Correction.

Initial Processing – Initial processing and orientation activities that are completed upon an offender's arrival at the reception center.

New Offender – Any offender entering the reception center for initial processing from the committing county or any offender transferred to the reception center institutions from a parent institution (intra-system transfer).

Offender Photo Identification System – An integrated portrait capturing system with the capacity of storing, retrieving, transmitting, and producing offender images in a variety of formats through the Department of Rehabilitation and Correction communication network.

Reception Center – The Correctional Reception Center and the Lorain Correctional Institution for male offenders and the Ohio Reformatory for Women for female offenders. These institutions have been designated by the Director to serve as centers for the reception, processing and classification of offenders legally sentenced to the Department.

Reception Processing – Processing activities that occur within the first seventy-two (72) hours of incarceration after a court commitment in which all admission procedures are completed.

Temporary Reception Housing – The initial housing assignment of an offender during the first seventy-two (72) hours of his/her incarceration.

## V. POLICY

It is the policy of the Department of Rehabilitation and Correction to provide a standardized admissions procedure to foster consistency in processing all new commitments at the reception centers.

## VI. PROCEDURES

A. The admission procedures program is designed to include the following activities.

1. Reduce the anxiety level for newly committed offenders;
2. Ensure that all offenders are properly identified;
3. Ensure that court papers are complete and accurate;
4. Record properly authorized offender property and remove unauthorized property, completing the Reception Intake Property Record– Receipt and Disposition (DRC2258);
5. Complete medical, dental and mental health screenings;
6. Record basic personal data;
7. Explain basic rules and regulations;
8. Assign an institutional number;
9. Assign housing (per DRC policy 52-RCP-07 Reception Center Housing Assignments); and
10. Issue appropriate clothing and personal toiletry items as directed by DRC policy 61-PRP-02 Offender Clothing Issue.

The above admission procedures shall be completed within three days of an offender's arrival, including weekends and holidays, at all reception centers.

B. Arrival of Offender

1. The transporting officer must have a certified Judgment Entry legally committing the offender to the Department. In cases of parole violators, the institution must have a recommitment order from an appropriate Adult Parole Authority Official. A completed Sanction Order must accompany return Post Release Control violators.
2. When the offender is being transferred from another facility, the escorting officer will deliver the offender's institutional files. The escorting officer should also communicate to reception center receiving and discharge staff any known significant information (special management status, disciplinary status, suicide watch, medical concerns, etc.) that pertains to the offender

being received at the reception center. Prior to the offender's departure, the escorting officer will be provided with a receipt for the files and a receipt for the transfer of the offender.

3. The Records Officer in charge shall complete the following actions prior to the departure of the transporting officer.
  - a. Review the commitment papers to ensure that they are certified, valid and accurate. If inaccuracies exist, the offender shall not be accepted, and the committing court shall be contacted immediately.
  - b. Sign any detainer and return a copy to the transporting officer. The original is retained for the Records Office.
  - c. Complete the physical identification of the offender. This will usually be accomplished by asking questions related to confidential information contained in the accompanying records and comparing photographs, fingerprints, and other identifying characteristics.
  - d. Sign transfer receipts for the escorting officer.
  - e. Assign a number to the offender utilizing DRC form 2469. This form will be forwarded with the offender throughout the reception process.

#### C. Records Officer Processing Duties

The following procedures shall be followed by the Records Office to process all new admissions. This information shall be compiled by the records clerk and shall include, but not be limited to:

1. Information from court documents
2. Information from offenders:
  - a). alias(es)
  - b). nickname(s)
  - c). race/ethnic origin
  - d). nationality
  - e). date of birth
  - f). age
  - g). length of time in jurisdiction
  - h). marital status
3. Prior criminal history
4. Place a copy of the commitment papers in the Record Office file. A complete set of admission forms will be taken to the records section immediately for inclusion in the file.
5. Record the admission, entering the offender's name and assigned number in the Record Office file and DOTS Portal (RECEP I Screen).
6. Enter into DOTS Portal all required information and prepare a Record Office file, to be maintained in the Record Office. The Record Office file shall include the offender's name, assigned number, date of birth, committing jurisdiction, type of admission, date of arrival,

ethnicity, crime, and sentence with notations for date of release or parole hearing, judge and prosecutor's name and any detainer/notifier information and jail time previously served, in compliance with Department Policy 07-ORD-03, Record Office file.

7. The Record Office will enter in all required information into the Reentry screens via the DOTS Portal system.
8. Prepare a Display Sheet, indicating dates of parole eligibility and tentative release date.
9. Record the receipt of a social security card, state of Ohio identification card, birth certificate, driver's license and/or other identification documents in the DOTS Portal system. This documentation shall be maintained in the Record Office file and be returned to the offender upon release.

D. Search Procedures

1. All offenders entering or leaving the institution shall be strip-searched.
2. Clothing worn into the institution shall be carefully inspected for contraband.
  - a. Trousers should be given particular attention, including areas around seams or cuffs at bottom of trouser legs, waistbands, small (watch) pockets, seams along side of trouser legs, zipper area and all regular pockets.
  - b. Shirts should be carefully and thoroughly checked along seams, down the front, across shoulders, collars and pockets.
  - c. Shoes and socks are to be removed and searched. Shoes are to be visually checked inside; heels and soles are to be checked.
  - d. Coats and jackets are to be inspected as outlined in "b" above. A thorough search of the offender's person should be conducted.
3. Property shall be carefully and thoroughly searched. All items shall be removed from containers in which they are carried and each item examined to ensure that it does not conceal contraband or other unauthorized items. Care must be taken to neither damage nor destroy personal property. If this should happen, a report shall be completed by the staff involved and turned into the Shift Supervisor, along with the damaged or destroyed property.
4. Unauthorized items shall be properly marked with the name of the offender and returned to the address of the offender's choice, at the offender's expense. Major Contraband items (weapons, alcohol, etc.) will be properly marked and processed consistent with applicable DRC policy requirements and/or Administrative Rule 5120-9-55.
5. Medications shall be properly marked with the offender's name and transported to reception medical services for evaluation. Disallowed medications shall be properly destroyed. When medical devices are inspected for contraband by security, every effort should be made not to separate the offender from his/her medical device. If security has a concern regarding the medical device the offender and device shall be sent to medical for evaluation. If security staff believes that the medical device should not be permitted in general population, an Advanced Level Provider (ALP) must determine if the medical device is medically necessary

prior to it being taken away. If the ALP determines the medical device should not be allowed, it shall be disposed of as minor contraband consistent with applicable DRC policy requirements and/or Administrative Rule 5120-9-55 or sent home at offender's expense. In addition, the ALP must discontinue the order if it is deemed unnecessary.

6. Social security cards, state of Ohio identification cards, birth certificates, driver's licenses and/or other identification documents shall be delivered to the Records Office.

E. Allowable Personal Property Items and Possession Limits

1. Allowable items for offenders to possess shall be itemized on the Reception Intake Property Record and Disposition form (DRC2258). Offenders may possess the following items of personal property, not to exceed the quantities listed:

- a. Legal documents and papers (reasonable amount)
- b. Family pictures (not to exceed 10) (no albums or Polaroid's)
- c. Prescription glasses (two pair of glasses or one pair of glasses and/or contact lens and case).
- d. Dentures/Denture Cream - (1 each)
- e. Address book or list of addresses of relatives, friends, and other correspondents - (1)
- f. Wedding band, no stones or gems (\$100 value limit) - (1)
- g. Watch (date and time only) (\$75 value limit) - (1)
- h. Embossed envelopes (limit 25)
- i. Pens (See through pens, no pull-apart, no felt tips) - (5)
- j. Writing paper (reasonable amount)
- k. Religious material (i.e. Bible), other religious items, as permitted by Department Policy, 72-REG-01, Religious Services and approved by the chaplain. Possession limits of permitted religious materials will be limited to:
  1. Religious headgear - (1)
  2. Dashiki - (1)
  3. Prayer robe - (1)
  4. Prayer rug - (1)
  5. Chain with religious medallion - (1)
  6. Religious beads - (1)
- l. Tennis shoes (no air pockets - predominately black or white) (\$75 value limit)-(1)
- m. Dress shoes (black or dark brown only, 1" heel, no platforms, no suede or patent leather, no steel/metal shank) (\$75 value limit) - (1)
- n. T-shirts (clean or new, solid color only, blue/green/white, may be long sleeved)-(6)
- o. Undershirts (male only - white/blue/green) - (7)
- p. Under shorts (male only - white/blue/green - (7)
- q. Socks (clean or new, white, black, brown or green) - (7)
- r. Comb or pick (plastic only, not to exceed 4 inches)-(1)
- s. Cigarettes (10 packs) or cigars (4 packs), unopened
- t. Towels (solid colors, blue or green only)-(5)
- u. Washcloths (solid colors, blue or green only) - (5)
- v. Handkerchiefs (white 15" x 15") - (12)

- w. Lighter or availability to same if lighters are not permitted (matches, lighter boxes) -- (1)
  - x. Shower shoes, any color rubber only -- (1)
  - y. Bras (female only - white or black only) -- (7)
  - z. Panties (female only - solid or print, white/black/blue/green, no bikinis or thongs) -- (14)
2. Inventory of personal items and storage or disposal of those items not permitted will be thorough and complete. The Reception Intake Property Record and Disposition form (DRC2258) shall be signed by and copied to the offender, listing all items allowable as well as those that have been designated contraband. A copy of the Reception Intake Property Record and Disposition form (DRC2258) shall also be forwarded to the Quartermaster and filed in the Offender Property File. Items designated as contraband shall be disposed of consistent with applicable DRC policy requirements and/or administrative rule.

F. Clothing Issue for New Arrivals

Incoming reception offenders shall be permitted to possess the number of personal property items specified by section E of this policy and those listed on the Reception Intake Property Record and Disposition form (DRC2258). However, Reception Centers/Institutions shall not follow these specified limits when initially issuing or re-issuing property items. All institutions, including reception centers, must follow the clothing issue procedures and limits outlined in Department Policy, 61-PRP-02, Offender Clothing Issue Section VI. A and B.

G. Establishing Identification Records

The admitting officer shall follow the following procedures for photographing, fingerprinting, and recording identifying marks or unusual physical characteristics:

1. Photographs

- a. A digital photograph image is captured and retained in the mainframe database in Central Office. The image consists of a front, right and left side view. This system is linked with DOTS Portal, thereby producing the Escape Flyer with all pertinent information. Copies of the Escape Flyer, including the images, are distributed to the Deputy's Office Escape Pocket, Master File and Unit File.
- b. One I.D. badge with bar code is produced for each offender. Images are retained for replacement badges when necessary.

2. Fingerprints

- a. Fingerprints shall be taken in accordance with FBI and Department instruction manuals
- b. Fingerprints are digitally scanned and transmitted directly to BCI and FBI by way of the LiveScan system.
- c. Fingerprint cards are produced as needed for various reasons, e.g. HB180, release procedures.

3. Notification of identifying marks and/or unusual physical characteristics shall initially be made by the I.D. staff which shall include, but not be limited to:
  - a. visual examination of scars
  - b. notation of physical deformities
  - c. India ink marks, including tattoos
  - d. Height
  - e. Weight
  - f. gang-related identification marks
4. The Escape Flyer, consisting of offender name, offender number, Social Security number, Alias (AKA), Race, Date of Birth, Height, Weight, Hair, Eyes, Tattoos, Scars, charges, length of sentence, committing county, last known address and next of kin is produced for deputy card/packet.

#### H. Handbook Procedures

##### 1. Handbook Receipt

New Admission/Reception Offenders--Each reception center will be responsible for developing an offender handbook. Upon arrival, each new offender (including intra-system transfers) will receive an inmate handbook and sign an acknowledgement of receipt on the Inmate Orientation Checklist (DRC4141).

##### 2. Handbook Development / Contents

All inmate handbooks will contain the information required by DRC Policy 52-RCP-10, Offender Orientation (Section A). All written orientation materials, including the inmate handbook, shall be translated into the offender's native language, where possible. Staff shall explain the information to offenders where obvious barriers to comprehension exist and document this assistance on Inmate Orientation Checklist (DRC4141) accordingly.

##### 3. Handbook Distribution Methods

- a. All new offenders shall receive an inmate handbook upon their arrival and retain a personal copy for a minimum of fourteen (14) days, including holidays and weekends. Upon possessing the handbooks for the minimum fourteen (14) day period, each offender shall be responsible for returning their personal inmate handbooks to unit staff.
- b. At all times, a sufficient number of inmate handbooks shall be available in all housing units (Officers Desk) and in the Inmate Library. This provision includes all special management housing areas. Each institution shall establish procedures to ensure that an appropriate number of inmate handbooks are maintained to ensure all offenders have equitable access to inmate handbooks.

#### 4. Annual Review Process

The Warden shall designate a staff member to be responsible for coordinating and/or conducting an annual review of the inmate handbook to make certain all handbook information is accurate and properly updated with any policy changes. At a minimum, the person responsible for this process shall ensure written documentation of the annual review process is maintained for five (5) years. This documentation should include all original and revised information so that it can be determined what handbook information has been revised.

#### 5. Handbook Printing

- a. All institutions are required to have their inmate handbooks printed by the Ohio Penal Industries printing shop.
- b. If information contained in the inmate handbook changes between printing new handbooks, each institution shall make sure that addendums to existing handbooks are promptly distributed to offenders in order that all offenders receive the updated information. The method of printing and distributing addendums is to be determined by each institution.

### I. Reception Institution Orientation Procedures - Initial Intake Processing Guidelines

1. Upon arrival at the reception center, each offender shall be informed verbally and in writing of the following topics: How to access medical and mental health services, informed of the medical co-payment guidelines, and explanation of the offender grievance system. Each offender will also be provided with a verbal explanation and written information regarding sexual assaults consistent with DRC Policy 79-ISA-01. Receipt of the health care orientation information and grievance information shall be documented on the Health History form (DRC5031,5033-Male, DRC5032,5033-Female) for reception offenders or on the Intra-System Transfer and Receiving Health Screening form (DRC5255) for intra-system transfers. On the same date of the offender's arrival, staff shall reaffirm all of the above information has been received by all new offenders and document this receipt on the designated area of the Inmate Orientation Checklist (DRC4141).
2. Upon arrival at the reception center, designated reception staff shall document and attempt to verify any offender stated fear of transfer and requests for separation directed by Department Policy 53-CLS-05 Offender Separations. This shall include completion of the Reception Intake Questionnaire (DRC2720). This information shall be disseminated to the Bureau of Classification and Reception, Records Office, and appropriate institution officials. Similar information from sources other than offenders shall be handled in a like manner.
3. Seven Calendar-Day Institution Orientation Program
  - a. New Admission/Reception Offenders

Each new reception offender shall receive orientation within seven (7) Calendar-days of arrival, including weekends and holidays. Completion of the orientation process

will be documented on the Inmate Orientation Checklist (DRC4141), signed and dated by the offender and filed in the third section of the unit file. This orientation, at a minimum, shall address all information related to the required topics listed on the Inmate Orientation Checklist (DRC4141). When a literacy or language problem prevents an offender from understanding any of the information provided during this period, a staff member or translator will assist the offender. This assistance shall also be documented on the Inmate Orientation Checklist (DRC4141).

b. New Offenders Received From Parent Institutions (Intra-System Transfers)

Each new offender received from another parent institution (i.e. cadres) will receive orientation as directed by DRC Policy 52-RCP-10, Inmate Orientation, paragraphs C and D. Acknowledgement of this orientation shall be documented on the Inmate Orientation Checklist (DRC4141).

4. Reception Centers Only: Offenders remaining at Reception Centers As their Parent Institution assignment

Upon completing the initial intake processing procedures at a reception center, there may be offenders that remain at that reception center as their parent institution assignment (i.e. Short Term Offenders, ORW Offenders). In these cases, offenders must receive a unit orientation program within 5 calendar-days of being permanently assigned to the reception center as being their permanent (parent) institution assignment. This orientation program shall inform offenders of all items listed on the Inmate Orientation Checklist form (DRC4141) that are different with them now being permanently assigned to the reception center as their parent institution. For example, reception status inmates may have different levels of program access, stricter movement guidelines to follow or different recreation schedules. The only exception to the 5 calendar-day unit orientation timeframe is for those topics required to be addressed immediately upon arrival as specified under the "To Be Completed Upon Arrival" section of the Inmate Orientation Checklist (DRC4141). In such cases, the offender must be orientated verbally and in writing immediately upon being assigned to the reception center unit as a parent institution assignment. This orientation shall be documented in the notes section of the RAP6 screen in DOTS Portal. This unit orientation shall also be considered as a unit staff contact with the offender.

5. Exceptions to Orientation Completion Timeframes--The only exception to completing offender orientation within the required seven (7) calendar-day timeframe is when an offender is placed into special management status within 72 hours of his/her arrival at the reception center. All offenders, regardless of special management status, must still be orientated on those items required upon arrival as directed by Section K of this policy. This shall be documented on the designated sections of the Inmate Orientation Checklist (DRC4141) accordingly.

6. Mental Health Reception Orientation Procedures

- a. During the reception initial mental health and medical screening process, the medical nurse shall provide each inmate with a verbal and written description of available mental health services and information about accessing them.

2. Reception offenders shall not be assigned to a job and any work performed by a reception offender shall be on a no-compensation basis.
3. Reception offenders shall not be permitted to receive food or sundry packages.
4. Reception center wardens shall establish procedures regulating visitation, religious services attendance, and access to reading material, access to mail facilities, commissary and recreational activities for reception offenders. Local rules must be in compliance with applicable Department regulations and policies.

M. Reception Coordinator Procedures

1. All offenders in the reception phase of their incarceration shall be given a temporary security level status of Level 3, which shall remain in effect until the offender is classified and transferred to his/her parent institution.
2. All offenders who were under APA supervision when returned to the institution will be entered as "county jail parolee" offenders. If the offender arrives with an "Order to Hold", hold the offender at reception as "county jail parolee" (8B) in DOTS Portal until they have their violation hearing. These offenders must also be orientated as directed by this policy. These are the only offenders who need to be held at reception for hearings. Once they have their violation hearing, the date will be set for 60 days from then.
3. If the offender arrives with a revocation or sanction order, immediately begin the classification process so the offender can be transferred to a parent institution.

N. File Compilation

A record shall be completed by the Reception Coordinator and combining and assembling the material described previously. The summary shall constitute the first documents in the offender Record Office file. This summary admission document shall be completed within seventy-two (72) hours after the offender's arrival and shall include the Notification of Next of Kin Information form and the Daily Admission Sheet form.

Related Department Forms:

Reception Intake Property Record-- Receipt and Disposition	DRC2258
Intake Check Sheet	DRC2469
Reception Intake Questionnaire	DRC2720
Orientation Acknowledgement Checklist	DRC4141
Inmate Orientation/Mental Health	DRC5169

B  
PHIL G. GIVENS  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

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STATE OF OHIO,

CASE NO. 92-CR-2871

Plaintiff,

vs.

JUDGMENT ENTRY

ROBERT L. NORRIS,

FOUND GUILTY BY JURY

Defendant.

AND SENTENCE IMPOSED

NUNC PRO TUNC AS OF

DECEMBER 27, 1993

This day, July 19, 1993, this cause, having been regularly assigned for Trial, came on for hearing before the Jury, the same being duly impaneled and sworn, upon the Indictment for the crimes of Kidnapping, 1 Ct. (R.C. 2905.01) and Rape, 1 Ct. (R.C. 2907.02), Count Three having being previously served, and request having been made pursuant to R.C. 2941.142 for the Court to determine the prior conviction specifications to Counts One and Two at a separate and subsequent hearing, as charged in the Indictment, and the Plea of Not Guilty heretofore entered by the defendant, upon the evidence produced on behalf of the State of Ohio and on behalf of the defendant.

416

The Jury, having been duly charged as to the law of the State of Ohio, and after due deliberation on July 26, 1993, agreed upon their verdict, whereupon they were conducted into Open Court in the presence of the defendant and his Attorney, and the verdict, signed by all members of the Jury, was read to the defendant, and the verdict given, being such as the Court may receive it, was immediately entered in full upon the minutes. It was the unanimous verdict of the Jury that the defendant is

Rape, 1 Ct. (R.C. 2907.02) as charged in Counts One and Two of the Indictment. Thereupon the Prosecuting Attorney moved that sentencing against the defendant be continued in order that the Court may consider the prior conviction specifications to Counts One and Two of the Indictment, pursuant to R.C. 2941.142.

This day, August 30, 1993, this cause, having been regularly assigned for Trial, came on for hearing before the Jury, the same being duly impaneled and sworn, upon Count Three of the Indictment for the crime of Rape, 1 Ct. (R.C. 2907.01), having been previously served for trial, and request having been made pursuant to R.C. 2941.142 for the Court to determine the prior conviction specification to Count Three, as charged in the indictment, and the Pleas of Not Guilty heretofore entered by the defendant, upon the evidence produced on behalf of the State of Ohio and on behalf of the defendant.

The jury, having been duly charged as to the law of the State of Ohio, and after due deliberation, on September 3, 1993, agreed upon its verdict, whereupon the Jury was conducted in open court in the presence of the defendant and his Attorney, and the verdict, signed by all members of the Jury, was read to the defendant, and the verdict given, being such as the Court may receive it, was immediately entered in full upon the minutes. It was the unanimous verdict of the Jury that the defendant is guilty of the crime of Rape, 1 Ct. (R.C. 2907.02), as charged in Count Three of the Indictment. Thereupon the Prosecuting Attorney moved that sentencing against the defendant be continued in order that the Court may consider the prior conviction specification to County Three of the Indictment, pursuant to R.C. 2941.142.

This day, September 9, 1993, this cause came on for

One, Two and Three, as charged in the Indictment. After presentation of evidence on the prior conviction as alleged in the specifications charged in the indictment, as well as argument from the State and from defendant, through his Attorney, the Court duly deliberated and found defendant guilty of the specification to Count One of the Indictment, guilty of the specification to Count Two of the Indictment, the guilty of the specification to Count Three of the Indictment.

Whereupon the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant and his Counsel, and thereafter the court asked the defendant whether he had anything to say as to why judgment should not be pronounced against him, and the defendant, after consulting with his Counsel, said that he had nothing further to say except that which he had already said, and showing no good and sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant be committed to the Lorain Correctional Institution in Grafton, Ohio, for an indeterminate term of not less than fifteen (15) nor more than twenty-five (25) years, or until otherwise pardoned, paroled or released according to law, and minimum term of fifteen (15) years shall be served as actual incarceration, on Kidnapping, 1 Ct. (R.C. 2905.01) with a specification pursuant to R.C. 2941.142, as charged in Count One of the Indictment; 418

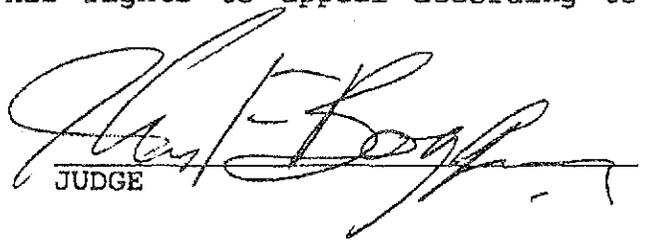
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this defendant pay a fine of \$10,00, on Kidnapping, 1 Ct. (R.C. 2905.01) with a specification pursuant to R.C. 2941.142;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above

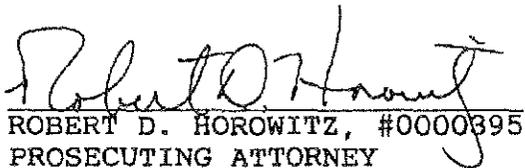
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall receive credit for jail time served, and that the Stark County Sheriff or his Deputies shall calculate the number of days to be credited and report the number to the Ohio Department of Rehabilitation and Correction.

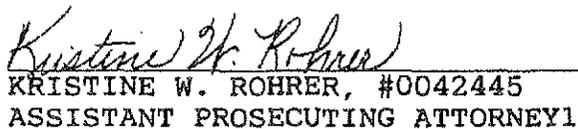
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay the costs of this prosecution for which execution is hereby awarded.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judge explained to the defendant his rights to appeal according to Criminal Rule 32.

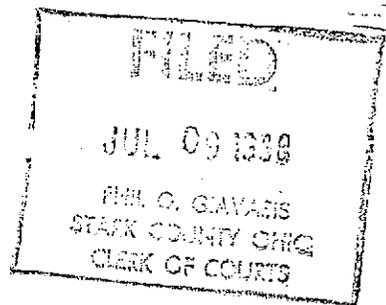
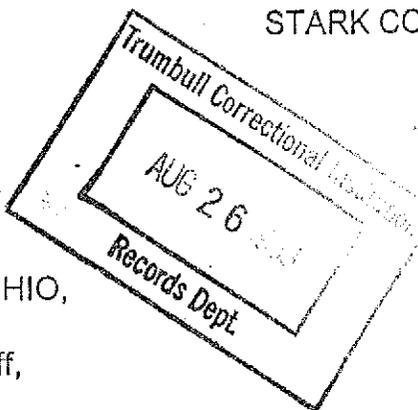
  
JUDGE

APPROVED BY:

  
ROBERT D. HOROWITZ, #0000395  
PROSECUTING ATTORNEY

  
KRISTINE W. ROHRER, #0042445  
ASSISTANT PROSECUTING ATTORNEY1

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO



STATE OF OHIO,

Plaintiff,

vs.

ROBERT L. NORRIS

Defendant.

CASE NO. 92-CR-2871

JUDGE JOHN F. BOGGINS

NUNC PRO TUNC JUDGMENT ENTRY  
FOUND GUILTY BY JURY AND  
SENTENCE IMPOSED

On July 19, 1993, this cause, having been regularly assigned for Trial, came for hearing before the Jury, the same being duly impaneled and sworn, upon the charges contained in Counts One and Two of the Indictment. The Indictment contained three counts: Count One of the Indictment for the crime Kidnapping, 1 Count, as set forth in Section 2905.01 of the Ohio Revised Code; Count 2 of the Indictment for the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code; and Count Three of the Indictment for the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code. Counts One, Two and Three of the Indictment all contained a specification, pursuant to Section 2941.142 of the Ohio Revised Code, for a prior conviction. Heretofore, defendant had entered a plea of not guilty to the charges within the Indictment, and heretofore, the Court had severed Count Three of the Indictment from Counts One and Two, for purposes of trial.

On July 26, 1993, the Jury, having been duly charged as to the law of the State of Ohio, and after due deliberation, agreed upon their verdict, whereupon they were

conducted into open court, in the presence of the defendant and his attorney, and the verdict, signed by all members of the Jury, was read to the defendant, and the verdict given, being such as the Court may receive it, was immediately entered in fully upon the minutes. It was the unanimous verdict of the Jury that the defendant was guilty of the crime of Kidnapping, 1 Count, as set forth in Section 2905.01 of the Ohio Revised Code, as charged in Count One of the Indictment and that the defendant was guilty of the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code, as charged in Count Two of the Indictment. Thereafter, the Court sustained the motion of the State of Ohio to defer sentencing against the defendant so that the Court could hold a separate hearing to consider the prior conviction specifications which were made pursuant to Section 2941.142 of the Ohio Revised Code and which were set forth in Counts One, Two, and Three of the Indictment.

On August 20, 1993, this cause, having been regularly assigned for Trial, came on for hearing before the Jury, the same being duly impaneled and sworn, upon the charges contained in Count Three of the Indictment. Count Three of the Indictment charged defendant with the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code and contained a specification, pursuant to Section 2941.142 of the Ohio Revised Code, for a prior conviction. Heretofore, Count Three of the Indictment had been severed from Counts One and Two of the Indictment.

On September 3, 1993, the Jury, having been duly charged as to the law of the State of Ohio, and after due deliberation, agreed upon their verdict, whereupon they were conducted into open court, in the presence of the defendant and his attorney, and the verdict, signed by all members of the Jury, was read to the defendant, and the

verdict given, being such as the Court may receive it, was immediately entered in fully upon the minutes. It was the unanimous verdict of the Jury that the defendant was guilty of the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code, as charged in Count Three of the Indictment. Thereafter, the Court sustained the motion of the State of Ohio to defer sentencing against the defendant so that the Court could hold a separate hearing to consider the prior conviction specifications which were made pursuant to Section 2941.142 of the Ohio Revised Code and which were set forth in Counts One, Two, and Three of the Indictment.

On September 9, 1993, this cause came for hearing upon the specifications which were made pursuant to Section 2941.142 of the Ohio Revised Code and which were set forth in Counts One, Two, and Three of the Indictment. After presentation of evidence and after argument from the defendant, through his attorney, the Court duly deliberated and found defendant guilty of the specification contained in Count One of the Indictment, found defendant guilty of the specification contained in Count Two of the Indictment, and found defendant guilty of the specification contained in Count Three of the Indictment.

Thereafter, the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant and his Counsel, and asked the defendant whether he had anything to say as to why judgment should not be pronounced against him, and the defendant, after consulting with his Counsel, said that he had nothing further to say except that which he had already said, and showing no good and sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence as follows.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant be committed to the Lorain Correctional Institution in Grafton, Ohio for an indeterminate term of not less than fifteen (15) nor more than twenty-five (25) years, or until otherwise pardoned, paroled, or released according to law, and that defendant serve a minimum term of fifteen (15) years of actual incarceration, for the crime of Kidnapping, 1 Count, as set forth in Section 2905.01 of the Ohio Revised Code, with a prior conviction specification, as charged in Count One of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant pay a fine of Ten Thousand Dollars (\$10,000.00) for the crime of Kidnapping, 1 Count, as set forth in Section 2905.01 of the Ohio Revised Code, with a prior conviction specification, as charged in Count One of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant be committed to the Lorain Correctional Institution in Grafton, Ohio for an indeterminate term of not less than fifteen (15) nor more than twenty-five (25) years, or until otherwise pardoned, paroled, or released according to law, and that defendant serve a minimum term of fifteen (15) years of actual incarceration, for the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code, with a prior conviction specification, as charged in Count Two of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant pay a fine of Ten Thousand Dollars (\$10,000.00) for the crime of Rape, 1

Count, as set forth in Section 2907.02 of the Ohio Revised Code, with a prior conviction specification, as charged in Count Two of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant be committed to the Lorain Correctional Institution in Grafton, Ohio for an indeterminate term of not less than fifteen (15) nor more than twenty-five (25) years, or until otherwise pardoned, paroled, or released according to law, and that defendant serve a minimum term of fifteen (15) years of actual incarceration, for the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code, with a prior conviction specification, as charged in Count Three of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant pay a fine of Ten Thousand Dollars (\$10,000.00) for the crime of Rape, 1 Count, as set forth in Section 2907.02 of the Ohio Revised Code, with a prior conviction specification, as charged in Count Three of the Indictment pursuant to Section 2941.142 of the Ohio Revised Code.

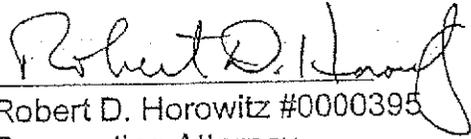
IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that the sentences for Count One, Count Two, and Count Three of the Indictment be served consecutively.

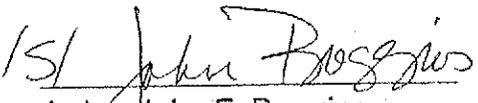
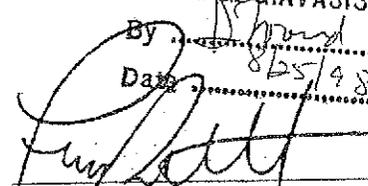
IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that defendant is entitled to jail time credit of three hundred nine (309) days for time served in the Stark County, Ohio, Jail.

IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that defendant pay the costs of this prosecution for which execution is hereby awarded.

IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that the Court explained to defendant the defendant's rights to appeal according to Rule 32 of the Ohio Rules of Criminal Procedure.

APPROVED BY:

  
Robert D. Horowitz #0000395  
Prosecuting Attorney  
Stark County, Ohio

15/   
Judge John F. Roggins  
PHIL G. GIAVASIS, CLERK  
By  Deputy  
Date 8/25/98  
Frederic R. Scott #0060049  
Assistant Prosecuting Attorney  
Stark County, Ohio

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IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO  
CASE NO. 1992-CR-2871 (A)  
CA NO. 2007-CA-00101

STATE OF OHIO, ) TRANSCRIPT OF  
 )  
Plaintiff, ) HB 180 HEARING  
 )  
versus )  
 )  
ROBERT LEE NORRIS, ) (EXCERPT OF  
 ) TRANSCRIPT)  
Defendant. )

BE IT REMEMBERED, That upon the  
hearing of the above-entitled matter in the  
Court of Common Pleas, Stark County, Ohio,  
before the Honorable Charles E. Brown,  
Judge, and commencing on March 8, 2007, the  
following proceedings were had:

-----  
RUTH C. WEESE, RDR  
OFFICIAL COURT REPORTER  
STARK COUNTY COURTHOUSE

1 APPEARANCES:

2  
3 On Behalf of the Plaintiff:

4  
5 Renee Watson, Attorney at Law

6 Lori Curd, Attorney at Law

7 Citizens Savings Building

8 Canton, Ohio 44702

9  
10 On Behalf of the Defendant:

11  
12 Jean Madden, Attorney at Law

13 Public Defender's Office

14 Canton, Ohio 44702

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1 (Beginning of excerpt.)

2 \* \* \* \* \*

3 THE COURT: Mr. Norris, you are  
4 going to do exactly what I tell you to do  
5 in regard to the conduct of this hearing.  
6 Attorney Madden is going to represent you.

7 THE DEFENDANT: Of course, Your  
8 Honor.

9 THE COURT: Are you ready to  
10 proceed, Attorney Madden?

11 MS. MADDEN: Yes, Your Honor.

12 THE COURT: Thank you very much.

13 DIRECT EXAMINATION

14 BY MS. WATSON:

15 Q. Would you state your name for us, please,  
16 and spell your last name for the record?

17 A. Phil G. Giavasis, G-I-A-V-A-S-I-S.

18 Q. And, Mr. Giavasis, what is your occupation?

19 A. I am the Stark County Clerk of Courts.

20 Q. What are your duties in this capacity?

21 A. We're the official record-keeper for the  
22 court. We collect, receive and disperse  
23 funds on behalf of the court. We keep and  
24 archive all historical copies of all  
25 documents filed with the clerk on behalf of

1 the court.

2 Q. Including all records regarding trials that  
3 take place in Stark County?

4 A. That's correct.

5 Q. If I may approach the witness, Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. WATSON:

8 Q. Hand you what I have marked as State's  
9 Exhibit 2. Would you take a look at that  
10 for us, please.

11 A. Yes.

12 Q. Can you tell us what that document is?

13 A. This is a certified copy of an indictment  
14 filed with the Stark County Clerk of  
15 Court's office.

16 Q. What does it mean that it is certified?

17 A. It is a true copy of the original that is  
18 on file with my office and it's certified  
19 by a member of my staff.

20 Q. Whose indictment is that?

21 A. This is an indictment for -- the  
22 Defendant's name is Robert L. Norris and  
23 Kimberly S. Southall. There are two  
24 Defendants listed on the indictment.

25 Q. Does that appear to be a complete and

1 accurate copy, is that what certification  
2 means?

3 A. That is correct.

4 Q. Now, what are the charges in that  
5 indictment?

6 A. The charges are kidnapping, one count, rape  
7 two counts, both with prior conviction  
8 specifications.

9 Q. You said that was an indictment for two  
10 different individuals, one of them being  
11 Robert Norris?

12 A. Correct.

13 Q. Can you tell us what Robert Norris was  
14 charged with, including the specification?

15 A. He was charged with kidnapping, two counts  
16 of rape with a specifications, prior  
17 conviction specifications.

18 Q. What was the date of that indictment?

19 A. File stamp is November 12th, 1992.

20 Q. If I could hand you what I have marked as  
21 State's Exhibit 3 now. Could you tell us  
22 what that document is?

23 A. State's Exhibit 3 appears to be again a  
24 certified copy of a journal entry filed in  
25 the Stark County Clerk of Court's office on

1           September 10th, 1993.

2           Q.     And does it appear to be a fair and  
3           accurate and complete copy?

4           A.     It is again certified by the same member of  
5           my staff as a certified copy of the  
6           original that appears in the file.

7           Q.     What does this document contain?

8           A.     It's a journal entry found guilty by jury  
9           and sentence imposed.

10          Q.     And could you please take a moment to look  
11          at it and tell us exactly what Mr. Norris  
12          was found guilty of?

13          A.     He was found guilty of one count of rape  
14          -- excuse me -- two counts of rape, one  
15          count of kidnapping with specifications.

16          Q.     If I can hand you what's been marked for  
17          identification as State's Exhibit 4.

18          A.     State's Exhibit 4 is a judgment entry  
19          marked nunc pro tunc as of December 27th,  
20          1993 again in the same captioned case. It  
21          appears to be a certified copy certified by  
22          a member of my staff which would appear --  
23          which is a certified copy of the original  
24          that's on file.

25          Q.     And in this nunc pro tunc sentencing entry,

1           again I would ask you to take a look at it  
2           and tell us exactly what Mr. Norris was  
3           found guilty of, including any  
4           specifications.

5       A.     He was found guilty of the same charges,  
6           one count of kidnapping, two counts of rape  
7           with specifications.

8       Q.     Same as the first?

9       A.     Correct.

10      Q.     Handing you what's been marked for  
11           identification State's Exhibit 5.

12      A.     State's Exhibit 5 is a certified copy of a  
13           judgment entry again marked nunc pro tunc  
14           certified by a member of my staff and is  
15           the same case, appears to address the same  
16           issues.

17      Q.     If you can look at it and see if again Mr.  
18           Norris was found guilty of these same  
19           charges or if there is any change?

20      A.     They are the same.

21      Q.     Two counts of rape, one count of kidnapping  
22           and the specifications?

23      A.     Correct.

24                   MS. WATSON: I have no further  
25           questions for this witness, Your Honor.

1 THE COURT: Thank you. Ms.  
2 Madden, do you have questions of this  
3 witness?

4 CROSS-EXAMINATION

5 BY MS. MADDEN:

6 Q. Good morning.

7 A. Good morning.

8 Q. Mr. Giavasis, you are the duly elected  
9 Clerk of Court for Stark County; is that  
10 correct?

11 A. Yes, ma'am.

12 Q. How long?

13 THE COURT: Can we just stop for  
14 just a minute. I inadvertently did not  
15 remove the microphone for Mr. Norris. I  
16 don't believe that he has said anything to  
17 counsel, but I think that it is appropriate  
18 that we remove that so that Mr. Norris and  
19 his counsel will be able to have private  
20 conversations.

21 Let the record reflect that the  
22 microphone has been removed. Thank you  
23 very much. I apologize for not doing that  
24 sooner.

25 MS. MADDEN: Thank you, Your

1 Honor.

2 BY MS. MADDEN:

3 Q. I asked how long have you been doing this?

4 A. Fifteen years. I am in my 15th year.

5 Q. And as the Clerk of Court for Stark County,  
6 it is your duty to accept documents for  
7 filing, correct?

8 A. That's correct.

9 Q. You do not prepare these documents?

10 A. No, ma'am.

11 Q. You do not review these documents to  
12 determine the content or veracity of them?

13 A. No, ma'am.

14 Q. Fair to say that you're limited to seeing  
15 whether or not they are in the form  
16 prescribed by law and signed properly?

17 A. Prescribed by law, court rule. It's purely  
18 a ministerial office.

19 Q. And the document, State's Exhibit 2, the  
20 indictment, did you have any input into the  
21 preparing of that document?

22 A. No, ma'am.

23 Q. Were you on the grand jury?

24 A. I believe the indictment was filed prior to  
25 my taking office if it was filed in 1992.

1           So I can tell you with all certainty I did  
2           not.

3           Q.    You weren't part of the grand jury that  
4           reviewed the evidence that caused that  
5           indictment to be issued?

6           A.    No, ma'am.

7           Q.    And the substance of that that you have  
8           testified to is based solely upon your  
9           ability to read the document here in court?

10          A.    That's correct.

11          Q.    And State's Exhibit 3 I believe was the  
12          original finding of guilty and sentence on  
13          September 10th, 1993, correct?

14          A.    That is correct.

15          Q.    Were you on the jury?

16          A.    No, ma'am.

17          Q.    That heard Mr. Norris' case?

18          A.    No, I was not.

19          Q.    Did you participate or assist the Court in  
20          any way in preparing that judgment entry?

21          A.    No, ma'am.

22          Q.    So the sum and substance of the content of  
23          that judgment entry was prepared by someone  
24          else other than you, correct?

25          A.    That is correct.

1 Q. State's Exhibit 4 is a January 4th of 1994  
2 judgment entry nunc pro tunc to 12-23-93 or  
3 12-27-93; is that correct?

4 A. Correct.

5 Q. Do you have any knowledge what a nunc pro  
6 tunc entry is?

7 A. Yes.

8 Q. What is that to your knowledge or  
9 understanding?

10 A. It is an entry that is filed either to  
11 correct an omission or previous mistake.

12 Q. Do you prepare a nunc pro tunc entry?

13 A. No.

14 Q. Do you have any idea what may have occurred  
15 on December 27th of 1993 that this referred  
16 back to?

17 A. No, ma'am.

18 Q. So your sole knowledge with regard to that  
19 is you accepted that entry prepared by  
20 someone else for filing in the clerk of  
21 courts to be kept as part of the record in  
22 this case, correct?

23 A. That is correct.

24 Q. State's Exhibit 5 I believe is also a nunc  
25 pro tunc judgment entry filed July 9th,

1 1998, correct?

2 A. That is correct.

3 Q. Did you prepare that?

4 A. No, I did not.

5 Q. Is it fair to say that that entry also was  
6 accepted into your office that you have  
7 basic control over for filing and kept as a  
8 part of the record in this case?

9 A. Correct.

10

- - - - -

11

(Defendant's Exhibit

12

A was marked for

13

identification.)

14

- - - - -

15

BY MS. MADDEN:

16

Q. Mr. Giavasis, handing you what's been  
17 marked for identification as Defendant's  
18 Exhibit A. Can you identify this for the  
19 record, please?

20

A. Defendant's Exhibit A is a certified copy  
21 of a journal entry in the same case in  
22 question, 92-CR-2871, judgment entry found  
23 guilty by jury, sentence imposed nunc pro  
24 tunc as of August 30th, 1995.

25

Q. Did you prepare that document?

1 A. No, I did not.

2 Q. Now, you indicated that it is a certified  
3 copy. The certification I believe  
4 indicates a true copy teste; is that  
5 correct?

6 A. Yes.

7 Q. What does that mean?

8 A. That means that this deputy clerk in  
9 question is attesting that this is a true  
10 and certified copy of the original document  
11 that is in the file.

12 Q. The original document is located where at  
13 this point?

14 A. The original document is in possession of  
15 the clerk of court, but it may be at this  
16 time in the judge's office if there's a  
17 hearing today.

18 Q. And original documents that are accepted by  
19 the clerk of courts, what happens to them?

20 A. They are maintained by the clerk of courts  
21 forever.

22 Q. Forever. So in their actual originally  
23 filed form?

24 A. In their form or a microfilm copy of that  
25 form approved by the state, but yes.

1 Q. But for a document to be microfilmed, the  
2 state would have to approve it?

3 A. Correct.

4 Q. And in this particular case, are the  
5 documents microfilmed in this particular  
6 case?

7 A. The documents could be imaged and/or on  
8 film. I don't know whether they have been,  
9 but the originals are still intact.

10 Q. So the originals have not been destroyed?

11 A. Correct.

12 Q. At this point. Do you have any personal  
13 knowledge with regard to the contents of  
14 that file other than if it was accepted  
15 into your office for filing?

16 A. I do not.

17 Q. Do you have any personnel involvement or  
18 interest in this case other than as  
19 custodian of record for the court of Stark  
20 County?

21 A. I do not.

22 MS. MADDEN: Thank you. I have  
23 nothing further.

24 THE COURT: Thank you. Attorney  
25 Watson.

REDIRECT EXAMINATION

1  
2 BY MS. WATSON:

3 Q. One question, Your Honor. Defense Exhibit  
4 A, would you look at this, please, and tell  
5 us if there was any change in the findings  
6 as far as guilt is concerned.

7 A. (Witness complies with request.) There does  
8 not appear to be, no.

9 Q. Still find him guilty of both counts of  
10 rape?

11 A. Yes.

12 Q. One count of kidnapping and the  
13 specifications, correct?

14 A. Correct.

15 MS. WATSON: Nothing further, Your  
16 Honor. Thank you.

17 THE COURT: Attorney Madden.

RECROSS-EXAMINATION

18  
19 BY MS. MADDEN:

20 Q. Mr. Giavasis, when somebody brings  
21 documents to be filed such as the ones that  
22 you have identified, as judgment entries,  
23 is there a signature line?

24 A. On the original, yes.

25 Q. And the signature on the original would be

1 a judge on a judgment entry?

2 A. That's correct.

3 Q. Now, if numerous copies of an entry are  
4 filed with the clerk of court's office, is  
5 it possible that only one will have the  
6 actual judge's signature?

7 A. Very possible.

8 Q. And those other copies which get filed for  
9 distribution if they get certified, how  
10 does that occur?

11 A. The deputy clerk may sign the judge's name,  
12 write the judge's name on there. They are  
13 attesting that is a copy of the other --  
14 the original that was tendered at the same  
15 time.

16 Q. So if there is a copy distributed or sent  
17 out, a certified copy, and it doesn't have  
18 the judge's actual signature on that, it  
19 has somebody's signature of the judge, is  
20 that a legally binding document?

21 A. Yes, it is. That deputy clerk is attesting  
22 that is a true copy of the original that  
23 was tendered at the same time. But if a  
24 certified copy is requested, as it was  
25 today, that is a copy of the original, that

1 is certified. But if multiple copies are  
2 tendered and one is going back to your  
3 office, for instance, they may certify it  
4 as a copy and write that the judge's --  
5 witness actually the judge's signature.

6 Q. So that like S slash, that would be put on  
7 by a deputy clerk, that's within the deputy  
8 clerk's duties and authority?

9 A. It is.

10 Q. To sign technically the judge's name and  
11 ascertain that it is?

12 A. A true copy.

13 Q. Okay. The docket that is available on  
14 line of the Stark County Clerk of Court's  
15 for cases, that is a service that is  
16 provided by the clerk of court's, correct?

17 A. Correct.

18 Q. And it lists filings that have been made in  
19 a particular case?

20 A. Correct.

21 Q. But is that an official document in any  
22 way?

23 A. It is not.

24 MS. MADDEN: Thank you.

25 THE COURT: Attorney Watson.

1 MS. WATSON: Nothing, Your Honor.

2 THE COURT: Do either counsel  
3 request this -- you are going to remain in  
4 the courthouse -- is anyone requesting that  
5 the witness remain in the courtroom, or may  
6 he be excused?

7 MS. WATSON: May be excused.

8 MS. MADDEN: Your Honor, he may be  
9 excused.

10 THE COURT: Thank you for your  
11 testimony this morning. You are excused.  
12 Please be mindful of the step as you exit  
13 the witness stand. Thank you for your  
14 testimony this morning.

15 MS. MADDEN: Excuse me a moment,  
16 Your Honor. It's okay, Mr. Giavasis.

17 - - - - -

18 (Attorney confers with client.)

19 THE COURT: Mr. Giavasis, if I can  
20 ask you just to have a seat for one minute,  
21 please.

22 - - - - -

23 (Attorney confers with client.)

24 MS. MADDEN: Your Honor, may we  
25 approach.

1 THE COURT: Certainly, please.

2

3 (A conference was held at the  
4 bench.)

5

6 MS. MADDEN: Your Honor, Mr.

7 Norris has requested that I present what I  
8 feel is not relevant evidence with regard  
9 to the issue that is pending before the  
10 Court, that being the determination as to  
11 his sexual offender status.

12 He is objecting to my refusal  
13 based upon my professional opinion and my  
14 duty to the Court not to present evidence  
15 that is not relevant to the issues before  
16 this Court. If the Court would like to --  
17 wish to inquire with Mr. Norris with regard  
18 to this matter, I understand. But I do  
19 want it to be noted that yes, I have  
20 refused.

21 THE COURT: Very well. Good. We  
22 will take care of it.

23

24 (Thereupon, the sidebar conference  
25 ended.)

1  
2 THE COURT: A case such as this  
3 presents an ethical dilemma for defense  
4 counsel. And Attorney Madden has just  
5 brought that to my attention and I  
6 appreciate her candor in so doing.

7 I am going to do something which  
8 is orthodox in my view, may not be orthodox  
9 in everyone's view, but it is orthodox in  
10 my view.

11 Many times counsel in a trial will  
12 want to present evidence and the Court will  
13 rule that it is not relevant. And the  
14 Court allows a proffer to be made for the  
15 record so that if the Court's ruling was  
16 not correct then on appellate review the  
17 Court can -- the Court's ruling can be  
18 viewed in its entirety.

19 So what I am going to do at this  
20 point in time, it is my understanding,  
21 Attorney Madden, that your client wants you  
22 to present some evidence in your  
23 professional opinion you feel that it is  
24 not relevant, but to make sure that Mr.  
25 Norris is treated fairly and impartially,

1 as I have stated is my intent, I am going  
2 to allow you to for the record proffer what  
3 Mr. Norris would like for you to present to  
4 the Court or attempt to have presented even  
5 though in your professional opinion at this  
6 point in time you feel that it is not  
7 relevant.

8 Therefore, the Court of Appeals,  
9 if this matter goes there, I am not  
10 prejudging that, will be able to view my  
11 ruling and also your ruling so they can see  
12 if it is relevant and if it should have  
13 been allowed to come in. So does it  
14 involve Mr. Giavasis?

15 MS. MADDEN: Yes.

16 THE COURT: Very well. Attorney  
17 Watson, would the State have any objection  
18 to call Mr. Giavasis for this purpose? Is  
19 that what you would ask me to do at this  
20 point?

21 MS. MADDEN: Yes, Your Honor.

22 THE COURT: And do you have any  
23 objection?

24 MS. WATSON: No, Your Honor.

25 THE COURT: Then, Mr. Giavasis, if

1           you would please return to the witness  
2           stand and I do remind you that you are  
3           still under oath. Thank you, sir, for your  
4           patience with us.

5                       MS. MADDEN: Would you like me to  
6           mark this also?

7                       THE COURT: Yes, let's do that so  
8           we have it for the record.

9                               - - - - -  
10                              (Defendant's Exhibit  
11                              B was marked for  
12                              identification.)

13                              - - - - -  
14                              BY MS. MADDEN:

15           Q.       Mr. Giavasis, handing you what's been  
16                    marked for identification as Defendant's  
17                    Exhibit B which I have also noted is a  
18                    proffer, could you identify that to the  
19                    Court?

20           A.       This is a docket sheet that is for case  
21                    92-CR-2871 (A).

22           Q.       Mr. Giavasis, how would that document be  
23                    generated?

24           A.       This document is a chronological listing of  
25                    all the files in this case. It is

1 generated by the criminal division --

2 Q. Is that an official document?

3 A. -- in my office. It is required by statute  
4 to be kept by the clerk of courts.

5 Q. But other than for the purpose of  
6 documenting what items have been filed in a  
7 case, what other purpose does that document  
8 exist?

9 A. There is no other purpose. It just lists  
10 the filing. It is an index to the journal  
11 that will tell you the listing of the  
12 journal entries and motions filed on the  
13 case.

14 Q. And who inputs the information?

15 A. The deputy clerk in the criminal division.

16 Q. And information that is input in there,  
17 where do they get the information from?

18 A. From the documents that are tendered for  
19 filing.

20 Q. And how do they determine the wording?

21 A. Well, in this particular case its inception  
22 was prior to my tenure. So I can't answer  
23 for Mrs. Garafalo's office, but they would  
24 ascertain as best they could what the  
25 document said.

1 Q. And part of this also includes filings that  
2 may have occurred during your tenure?

3 A. It does.

4 Q. And how would your deputy clerk determine  
5 what to type in?

6 A. It would depend on the filings. Sometimes  
7 they are precoded. If it is a motion for  
8 continuance for instance, we have a code  
9 for a motion for continuance. Just depends  
10 on the time frame that it was filed, but  
11 they would read the document and basically  
12 type what it says.

13 Q. On the first page of this document there  
14 appears to be copy of a signature. Can you  
15 read that?

16 A. Yes.

17 Q. What does that say?

18 A. That says A. Gifford, there is a date  
19 below, 6-25-02.

20 Q. What would that mean?

21 A. This is a deputy clerk who worked in the  
22 office and she wrote her name in the bottom  
23 corner and the date.

24 Q. Is that something that's required?

25 A. It is not required. Mr. Norris requested

1           it by mail I am assuming and she wrote her  
2           name and date that she mailed it probably  
3           on the bottom corner.

4           Q.     And, Your Honor, State's Exhibit 5 was  
5           previously marked as evidence and  
6           identified by the Court. Mr. Norris wishes  
7           to have Mr. Giavasis read this in its  
8           entirety. It is my opinion that the Court  
9           is perfectly capable of reading any  
10          exhibits that are admitted into evidence.  
11          If the Court wishes to have Mr. Giavasis  
12          read it in its entirety we would --

13                   THE COURT: No, the Court's ruling  
14                   is that the document speaks for itself. It  
15                   will not be read in its entirety into  
16                   evidence. I will note your objection for  
17                   the record, Attorney Madden.

18                   MS. MADDEN: Thank you.

19                   - - - - -

20                   (Attorney confers with  
21                   client.)

22                   - - - - -

23                   BY MS. MADDEN:

24           Q.     Mr. Giavasis, on the docket that I handed  
25           to you that has been provided by Mr.

1 Norris, is there a July 9th, 1998 entry?

2 A. July 9th, 1998? I don't see. The first  
3 entry that appears in month number seven is  
4 7-21-98.

5 Q. So this document does not appear on the  
6 docket?

7 THE COURT: Are you marking the  
8 document?

9 MS. MADDEN: I am referring to  
10 State's Exhibit 5.

11 THE WITNESS: I don't see it.

12 BY MS. MADDEN:

13 Q. But was State's Exhibit 5 accepted by the  
14 clerk of courts?

15 A. State's Exhibit 5 has a time stamp of  
16 July 9th, 1998.

17 Q. And the copy that you identified was a true  
18 copy taken from the actual filings in this  
19 case, although it does not appear on the  
20 docket?

21 A. This is a certified copy from the file and  
22 it does not appear on the docket sheet that  
23 I have in my hand.

24 Q. You would have no personal knowledge why?

25 A. I do not.

1 (Attorney confers with client.)

2 - - - - -  
3 (Defendant's Exhibit  
4 C was marked for  
5 identification.)  
6 - - - - -

7 BY MS. MADDEN:

8 Q. Mr. Giavasis, handing you what's been  
9 marked for identification Defendant's  
10 Exhibit C for proffer, would you kindly  
11 identify that?

12 A. This is a docket sheet for the same case.

13 THE COURT: Can you tell me what  
14 that exhibit number is again?

15 MS. MADDEN: C proffer.

16 BY MS. MADDEN:

17 Q. Do you know how that docket came to occur?

18 A. This docket sheet depicts the entry  
19 previously that you questioned me is  
20 appearing on 7-1 -- 1998.

21 Q. Defendant's Exhibit C proffered, when was  
22 that generated?

23 A. I can't tell you when it was.

24 Q. Is there a signature date on that?

25 A. There is a certification date of 7-11-03.

1 Q. That is a subsequent docket sheet?

2 A. Correct.

3 Q. You have no personal knowledge or reason as  
4 to why the 1998 entry would be on that and  
5 not on the prior one?

6 A. I have none. I can speculate, but I have  
7 none.

8 Q. We are not asking you to speculate to  
9 something that is not within your  
10 knowledge.

11 THE COURT: No further questions;  
12 is that correct, Attorney Madden?

13 MS. MADDEN: One moment, please.

14 - - - - -

15 (Attorney confers with client.)

16 BY MS. MADDEN:

17 Q. Mr. Giavasis, are you aware of any time  
18 constraints between the time a court makes  
19 a ruling and reduces it to writing and duly  
20 files it with you?

21 A. I am not.

22 Q. And that is not something that is within  
23 your purview or your duties to tell the  
24 Court something needs to be filed within a  
25 certain period of time?

1 A. Not to my knowledge.

2 Q. You are not a lawyer?

3 A. I am not.

4 Q. So when a ruling is made and when it is  
5 presented to you for filing, it's out of  
6 your control, correct?

7 A. Correct.

8 Q. And other than the state's requirements  
9 that a docket be kept showing what has been  
10 filed, the official filings, are those  
11 actual documents that are contained and not  
12 solely based upon the docket; is that  
13 correct?

14 A. Correct.

15 MS. MADDEN: Nothing further, Your  
16 Honor.

17 THE COURT: Thank you. All of that  
18 was a proffer for the record?

19 MS. MADDEN: Yes.

20 THE COURT: The Court is ruling  
21 that it is not relevant and it is not going  
22 to be considered by the Court; however, it  
23 is there for the record so that the Court  
24 of Appeals, if this matter goes to them,  
25 will be able to rule if the Court was

1 correct in its ruling.

2 MS. MADDEN: Your Honor, I have  
3 duly marked the exhibits that were  
4 introduced and shown to Mr. Giavasis as  
5 part of the proffer. On the Defendant's  
6 sticker it does indicate proffer so we'd  
7 ask those be preserved should the Court of  
8 Appeals wish to review it.

9 THE COURT: Very well. And they  
10 will be part of the record for that very  
11 limited purpose.

12 MS. MADDEN: Thank you.

13 THE COURT: With that, then, is  
14 there anything else that you request Mr.  
15 Giavasis' presence in this courtroom in  
16 regard to this matter, Attorney Madden?

17 MS. MADDEN: No, Your Honor.

18 THE COURT: Attorney Watson?

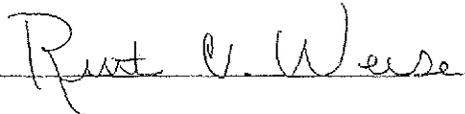
19 MS. WATSON: No.

20 THE COURT: Mr. Giavasis, you are  
21 excused. Thank you for your testimony this  
22 morning. Please be mindful of the step as  
23 you exit the witness stand.

24 Attorney Watson, would you please  
25 call your next witness.

1 C-E-R-T-I-F-I-C-A-T-E,  
2

3 I, Ruth C. Weese, a Registered Diplomate  
4 Reporter and Notary Public in and for the  
5 State of Ohio, do hereby certify that I  
6 reported in Stenotypy the testimony had;  
7 and I do further certify that the foregoing  
8 is a true and accurate transcription of  
9 said testimony.  
10

11  
12 

13 Ruth C. Weese, RDR  
14  
15  
16  
17  
18  
19

20 All exhibits are being maintained by the  
21 Evidence Administrator, William Johnson,  
22 451-7700 and are available upon ADVANCE  
23 request.  
24  
25

ent to [Civ.R. 62], defend- are entitled to a stay of a matter of right. The of Civ.R. 62(B) is the the supersedeas bond. kes this requirement un- case, and respondent has leny the stay. Therefore, hearing on the stay and sitions are inappropriate

y, in *State Fire Marshal*, 568, 722 N.E.2d 73, we mandamus to compel the the State Fire Marshal's pending appeal of a civil writ of prohibition to pre- from holding a contempt ate Fire Marshal was en- a matter of right without -deas bond, and this hold- rted by precedent, the ad federal experts in the federal courts construing led rules of civil proce- Ohio St.3d at 572, 722

sek, we rejected a trial tempt to exercise authori- e propriety of a stay of a ending appeal by govern- or officers.

re, based on *State Fire* , and the authorities cited ent patently and unambig- risdiction to lift the stay, rd and commissioners are

y in favor of government. d is taken by this state or ion, or administrative agency any officer thereof acting in e capacity and the operation of the judgment is stayed, no or other security shall be e appellant."

entitled as a matter of right. A contrary holding would require overruling preced- ent that has not been successfully chal- lenged for more than 25 years.

{1} {¶20} Moreover, even assuming that respondent was authorized to place conditions on the stay pending appeal, his December 27, 2002 stay was granted "in its totality" without any conditions. A court of record speaks only through its journal entries: *State ex rel. Marshall v. Glavas*, 98 Ohio St.3d 297, 2003-Ohio-857, 784 N.E.2d 97, ¶5. Therefore, respondent could not rely on the purported violation of conditions not specified in the journal entry to lift the December 27, 2002 stay.

{5} {¶21} Furthermore, by claiming to implicitly condition the stay on relators' continued funding of the sheriff's office at least at fiscal year 2002 levels, respondent in effect required that the board and commissioners post a supersedeas bond to partially secure the judgment pending appeal. See, e.g., *Mahoney v. Berra* (1986), 33 Ohio App.3d 94, 96, 514 N.E.2d 889 ("The purpose of an appeal bond is to secure the appellee's right to collect on the judgment during the pendency of the appeal"). This is expressly forbidden by Civ.R. 62(C), which precludes a trial court from requiring a government entity or officer to post bond or provide an obligation or other security pending appeal.

{¶22} Finally, respondent filed no merit brief in relators' action for extraordinary relief.

{¶23} Based on the foregoing, we grant a writ of mandamus to compel respondent to stay the November 14, 2002 judgment pending appeal. By so holding, we need not address the commissioners' alternate claim for a writ of prohibition.

Writ granted.

MOYER, C.J., RESNICK, FRANCIS E. SWEENEY, SR., LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

PFEIFER, J., dissents and would deny the writ.



100 Ohio St.3d 371  
2003-Ohio-6609

[¶] [The STATE ex rel.] NORRIS, Appellant,

v.

GIAVASIS, Clerk. et al., Appellees.

No. 2003-1478.

Supreme Court of Ohio.

Submitted Dec. 2, 2003.

Decided Dec. 31, 2003.

Inmate brought mandamus action to compel common pleas court judge and common pleas court clerk to remove docket entries stemming from inmate's indictment. The Court of Appeals, Stark County, sua sponte dismissed the complaint. Inmate appealed. The Supreme Court held that inmate's failure to comply with statutory requirements regarding affidavit of civil litigation history and affidavit of indigency warranted dismissal.

Affirmed.

1. Mandamus  $\Rightarrow$  155(1)

Dismissal of inmate's mandamus action to compel common pleas court judge and common pleas court clerk to remove docket entries stemming from inmate's indictment was warranted, where inmate's affidavit of civil litigation history did not

contain brief description of nature of each civil action or appeal and outcome of each civil action and appeal, and inmate's affidavit of indigency did not contain statement setting forth balance in his inmate account for each of preceding six months as certified by institutional cashier. R.C. § 2969.25(A)(1), 4, (C)(1).

## 2. Convicts $\Rightarrow$ 6

The statutory requirements regarding an affidavit of civil litigation history and an affidavit of indigency, for an inmate bringing a civil action against a government entity or employee, are mandatory, and failure to comply with them subjects an inmate's action to dismissal. R.C. § 2969.25.

Robert Lee Norris, pro se.

## PER CURIAM.

{¶ 1} On July 24, 2003, appellant, Robert Lee Norris, an inmate, filed a complaint in the Court of Appeals for Stark County. Norris sought a writ of mandamus to compel appellees, Stark County Common Pleas Court Clerk Phil G. Giavasis and Deputy Clerk A. Gifford, to remove from their records "the July 11, 2003 Appearance Docket and each of its entries" and to retain "the certified 'June 25, 2002' Appearance Docket." The docket entries were of his criminal case stemming from a 1992 indictment.

{¶ 2} Norris filed an affidavit that he claimed listed his prior "civil actions and criminal appeals within the preceding (5) five years pursuant to [R.C.] 2969.25."

The affidavit, however, did not contain a "brief description of the nature" of each civil action or appeal and the outcome of each civil action and appeal. R.C. 2969.25(A)(1) and (4). And although Norris requested a waiver of the filing fees assessed by the court of appeals based on his claimed indigency, his affidavit of indigency did not contain the statement required by R.C. 2969.25(C)(1) setting forth the balance in his inmate account "for each of the preceding six months, as certified by the institutional cashier."

{¶ 3} On August 1, 2003, the court of appeals sua sponte dismissed Norris's complaint.

{¶ 4} We affirm the judgment of the court of appeals. "The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Norris failed to comply with R.C. 2969.25(A) and 2969.25(C)(1). *State ex rel. Kimbro v. Glacox*, 97 Ohio St.3d 197, 2002-Ohio-5808, 777 N.E.2d 257, ¶ 2; *White*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 2, 5.

Judgment affirmed.

MOYER, C.J., RESNICK, FRANCIS  
E. SWEENEY, SR., PFEIFER,  
LUNDBERG STRATTON, O'CONNOR  
and O'DONNELL, JJ., concur.



100 Ohio St.  
2003-Ohio-  
OFFICE OF DIS-  
COUNSEL

v.

SHRAMI

No. 2002-

Supreme Court

Submitted Dec

Decided Dec.

ON APPLICATION FOR RE

{¶ 1} This cause can  
consideration upon the fi-  
tion for reinstatement b-  
ham Jeffrey Shramek. :  
tion No. 0059936, last .  
Amherst, New York.

{¶ 2} The court comin-  
its order of April 16. :  
court, pursuant to Gov-  
suspended respondent fi-  
year with six months sta-  
finds that respondent  
complied with that ord-  
provisions of Gov.Bar R.  
fore,