

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 Appellee, : Case Nos. 2007-1261
 -vs- : 2007-2425
 DONALD J. KETTERER, : Appeal taken from Butler County
 : Court of Common Pleas
 Appellant. : Case No. CR 2003-03-0309
 : This is a death penalty case.

SUPPLEMENTAL BRIEF OF APPELLANT DONALD J. KETTERER

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TABLE OF CONTENTS

Page No.

TABLE OF CONTENTS..... i
TABLE OF AUTHORITIES iii
STATEMENT OF THE CASE.....1
STATEMENT OF FACTS3
PROPOSITION OF LAW NO. II.....4
A JUDGMENT OF CONVICTION IS A FINAL APPEALABLE ORDER UNDER R.C. 2505.02 WHEN IT SETS FORTH (1) THE GUILTY PLEA, THE JURY VERDICT, OR THE FINDING OF THE COURT UPON WHICH THE CONVICTION IS BASED; (2) THE SENTENCE; (3) THE SIGNATURE OF THE JUDGE; AND (4) THE TIME STAMP SHOWING JOURNALIZATION BY THE CLERK OF COURT.....4
CONCLUSION.....7
CERTIFICATE OF SERVICE.....8

APPENDIX:

July 13, 2007 Notice of Appeal of Donald J. Ketterer A-1
May 29, 2007 Re-Sentencing Judgment Entry of Conviction A-5
June 21, 2007 Order Denying Defendant’s Motion For the Disclosure of Favorable Evidence for Purposes of Resentencing A-7
June 21, 2007 Order Denying Defendant’s Motion to Withdraw Guilty Pleas..... A-8
December 28, 2007 Notice of Appeal of Donald J. Ketterer A-9
November 15, 2007 Amended Re-Sentencing Judgment Conviction Entry (Nunc Pro Tunc: May 29, 2007)..... A-13
O.R.C. 2505.02 A-15

Ohio R. App. 12..... A-16
Ohio R. Crim. P. 32 A-17

TABLE OF AUTHORITIES

Cases

| | |
|---|--------|
| <i>Cleveland v. Trzebuckowski</i> , 85 Ohio St. 3d 524, 709 N.E.2d 1148, 1999-Ohio-285..... | 4 |
| <i>Dunn v. Smith</i> , 119 Ohio St. 3d 364, 2008-Ohio-4565..... | 5 |
| <i>State ex rel. Agosto v. Cuyahoga Court of Common Pleas</i> , 119 Ohio St. 3d 366, 2008-Ohio-4607 | 5 |
| <i>State ex rel. Culgan v. Medina County Court of Common Pleas</i> , 119 Ohio St. 3d 535, 2008-Ohio-4609 | 5 |
| <i>State v. Baker</i> , 119 Ohio St. 3d 197, 2008-Ohio-3330..... | passim |
| <i>State v. Harris</i> , 122 Ohio St. 3d 373, 2009-Ohio-3323 | 5 |
| <i>State v. Henderson</i> (1979), 58 Ohio St. 2d 171, 389 N.E.2d 494..... | 4 |
| <i>State v. Ketterer</i> , 111 Ohio St. 3d 70, 2006-Ohio-5283..... | 1 |
| <i>State v. Ketterer</i> , 113 Ohio St. 3d 1463, 2007-Ohio-1722..... | 1 |

Statutes

| | |
|----------------------|---|
| O.R.C. 2505.02 | 4 |
|----------------------|---|

Rules

| | |
|---------------------------|--------|
| Ohio R. App. 12..... | 6 |
| Ohio R. Crim. P. 32 | passim |

STATEMENT OF THE CASE

The present case involves two appeals from two separate orders entered by the trial court. On January 30, 2008, this Court ordered that the two appeals be consolidated. For the purposes of clarity, Appellant will separately address each appeal in the statement of the case.

State v. Ketterer, Case No. 2007-1261

On October 25, 2006, this Court affirmed Appellant's convictions and death sentence, and non-capital sentences. *State v. Ketterer*, 111 Ohio St. 3d 70, 2006-Ohio-5283.

On January 23, 2007, Appellant filed his Application for Reopening. On April 18, 2007, this Court vacated Appellant's non-capital sentences and remanded the matter for re-sentencing. *State v. Ketterer*, 113 Ohio St. 3d 1463, 2007-Ohio-1722.

On July 18, 2007, Appellant timely appealed to this Court from the resentencing entries placed of record by the three judge panel. [A-1 to A-8]. On November 5, 2007, Appellant submitted his merit brief. In Proposition of Law No. II, he asserted that the trial court's sentencing entry did not constitute a final appealable order. [Merit Brief of Appellant, pp. 9-10]. Appellant cited to the fact that the entry did not comply with Crim. R. 32(C). [*Id.*]. On December 19, 2007, Appellee submitted its merit brief in which it claimed that literal compliance with Crim. R. 32(C) was not required. [Appellee's Brief, pp. 7-9].

State v. Ketterer, Case No. 2007-2425

On November 15, 2007, the trial court entered an amended *nunc pro tunc* sentencing entry to attempt to correct some of the errors that Appellant had identified in his November 5, 2007 Merit Brief. [A-13 to A-14]. Those errors related to the imposition of post release control. [*Id.*]. The trial court, in its amended entry, did not address the flaws that Appellate had cited in Proposition of Law No. II. [*Id.*].

On December 28, 2007, Appellant appealed the November 15, 2007 order to this Court. [A-9 to A-14]. On January 7, 2008, Appellee moved to dismiss the December 28, 2007 notice of appeal. On January 30, 2008, the Court overruled the Appellee's Motion to Dismiss, sua sponte consolidated the two appeals, and ordered that no new briefing would be permitted.

The Consolidated Appeals

On October 13, 2009, the Court sua sponte ordered the Clerk of the Butler County Court of Appeals, within twenty days, to certify and transmit to this Court the transcript from the grand jury proceedings. The Butler County Clerk of the Common Pleas Court has yet to comply with this order despite twenty days having lapsed.

On October 29, 2009, the Court ordered that both parties submit supplemental briefing concerning the impact of its decision in *State v. Baker*, 119 Ohio St. 3d 197, 2008-Ohio-3330. The issue on which the Court ordered supplemental briefing, is responsive to Appellant's Proposition of Law No. II.

Appellant submits this Supplemental Brief pursuant to this Court's October 29, 2009 order.¹

STATEMENT OF FACTS

For the sake of brevity, Appellant incorporates the statement of facts (factual posture) contained in his prior briefing. [Merit Brief of Appellant, pp. 4-7].

¹ Appellant has reworded Proposition of Law No. II to reflect this Court's holding in *Baker*.

PROPOSITION OF LAW NO. II

A JUDGMENT OF CONVICTION IS A FINAL APPEALABLE ORDER UNDER R.C. 2505.02 WHEN IT SETS FORTH (1) THE GUILTY PLEA, THE JURY VERDICT, OR THE FINDING OF THE COURT UPON WHICH THE CONVICTION IS BASED; (2) THE SENTENCE; (3) THE SIGNATURE OF THE JUDGE; AND (4) THE TIME STAMP SHOWING JOURNALIZATION BY THE CLERK OF COURT.

For a ruling in a criminal case to constitute a final appealable order, the entry must comply with R.C. 2505.02 and Crim. R. 32(C). See *Cleveland v. Trzebuckowski*, 85 Ohio St. 3d 524, 526, 709 N.E.2d 1148, 1999-Ohio-285 (to constitute a final appealable order, an entry must satisfy each of the three criteria contained in R.C. 2505.02); *State v. Henderson* (1979), 58 Ohio St. 2d 171, 389 N.E.2d 494 paragraph two of the syllabus (a prior conviction requires a judgment of conviction as defined in Crim. R. 32(B)). “A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.” Crim. R. 32(C).

This Court recently addressed whether a judgment entry in a criminal case must contain all of the elements identified in Crim. R. 32(C). *State v. Baker*, 119 Ohio St. 3d 197, 2008-Ohio-3330. This Court answered that question in the affirmative. *Id.* at ¶ 16. This Court concluded that for a judgment entry to comply with Crim. R. 32(C) and constitute a final appealable order it must include “(1) the guilty plea, the jury verdict, or the finding of the

court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) the time stamp showing journalization by the clerk of court.” *Id.* This Court has four times reaffirmed this holding. *Dunn v. Smith*, 119 Ohio St. 3d 364, 2008-Ohio-4565 ¶ 7; *State ex rel. Agosto v. Cuyahoga Court of Common Pleas*, 119 Ohio St. 3d 366, 2008-Ohio-4607, ¶9; *State ex rel. Culgan v. Medina County Court of Common Pleas*, 119 Ohio St. 3d 535, 2008-Ohio-4609 ¶ 9; *State v. Harris*, 122 Ohio St. 3d 373, 2009-Ohio-3323 ¶ 22.

The trial court’s November 15, 2007 nunc pro tunc amended sentencing entry does not comply with this Court’s holding in *Baker* and its subsequent rulings affirming the *Baker* holding. As a result, the November 15, 2007 entry did not comply with Crim. R. 32(C) and consequently does not constitute a final appealable order.

I. THE ENTRY DID NOT CONTAIN APPELLANT’S GUILTY PLEAS

This Court in *Baker* ruled that for a judgment entry to constitute a final appealable order it must contain the method of conviction, “(1) the *guilty plea*, the jury verdict, or the finding of the court upon which the conviction is based . . . Simply stated, a defendant is entitled to appeal an order that sets forth *the manner of conviction* and the sentence.” *Id.* at ¶ 16 (emphasis added).

Appellant pled guilty to all of the counts and specifications contained in the indictment. The November 15, 2007 entry does not reflect his guilty pleas. [A-13 to A-14]. Consequently, pursuant to *Baker* and its progenies, the November 15, 2007 entry does not comply with Crim. R. 32(C) and is not a final appealable order.

II. THIS COURT CANNOT CORRECT THESE OMISSIONS.

Appellee has previously conceded that the sentencing entry is flawed, “it is true that the actual two words, guilty pleas, are not directly found in the Amended Re-Sentencing Judgment of Conviction.” [Merit Brief of Appellee, p. 8]. Appellee, instead, urged this Court to “use its powers pursuant to App. R. 12(B) and simply insert the words, guilty plea, into the Amended Resentencing Judgment of Conviction. [*Id.*]. This Court implicitly rejected that theory in *Baker* and its progenies. In those cases, this Court could have inserted the missing words, but did not. The act of inserting the missing words would contravene the *Baker* holding. If pursuant to Crim. R. 32(C) this Court lacks jurisdiction, then it does not have the power to correct an incomplete sentencing entry. To undertake the correction, this Court would have to exercise the jurisdiction which it lacks.

III. JUDICIAL ECONOMY DOES NOT FAVOR A DIFFERENT RESULT.

The State has previously argued that the “this Court would greatly aid judicial economy and the interests of justice” if it would itself correct the flaws in the sentencing entry. [Merit Brief of Appellee, p. 9]. Appellee’s argument is not well taken for two reasons. First, this Court lacks jurisdiction. See Section IV, *supra*. Secondly, the trial court had the opportunity to correct this error, but did not do so. On November 5, 2007, Appellant filed his merit brief in which he raised this issue. [Merit Brief of Appellant, pp. 9-10]. On November 15, 2007, the trial court placed of record its amended sentencing entry. The trial court at that time was on notice as to the omissions in its prior

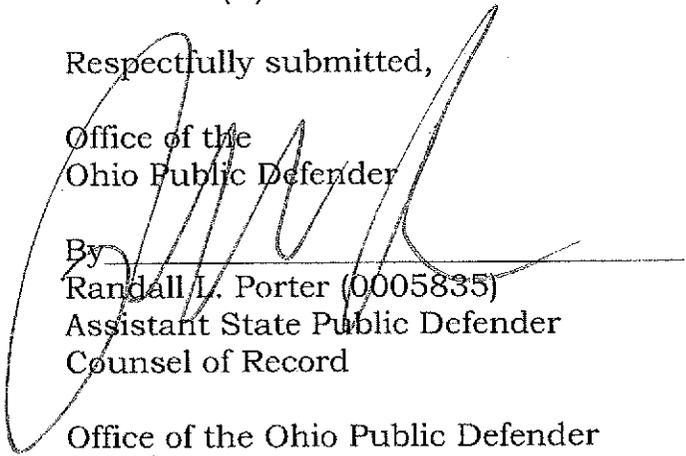
resentencing entry, but chose not to correct them. At any time in the last two years Appellee could have conceded this error and asked that the appeal be dismissed to permit the trial court to enter another resentencing entry. Appellee did not take this action. Accordingly, Appellee cannot now be heard to complain of the delay in these proceedings caused by the trial court's failure to enter an appropriate resentencing entry.

CONCLUSION

The trial court's entry does not comply with Crim. R. 32(C) and this Court's holding in *Baker* and its subsequent decisions affirming *Baker*. Accordingly this Court lacks jurisdiction to hear either of the two appeals. This Court must dismiss the two appeals to permit the trial court to enter a resentencing entry that complies with Crim. R. 32(C).

Respectfully submitted,

Office of the
Ohio Public Defender

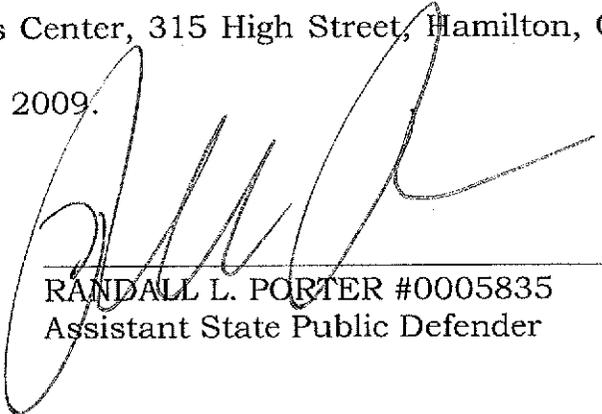
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Supplemental Brief of Appellant Donald J. Ketterer was forwarded by electronic and first-class U.S. Mail, postage prepaid to Daniel G. Eichel, Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney at the Government Services Center, 315 High Street, Hamilton, Ohio 45011 on this 18th day of November, 2009.



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Assistant State Public Defender

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Case Nos. 2007-1261
 : 2007-2425
-vs- : Appeal taken from Butler County
 : Court of Common Pleas
DONALD J. KETTERER, : Case No. CR 2003-03-0309
Appellant. : This is a death penalty case.

APPENDIX TO SUPPLEMENTAL BRIEF
OF APPELLANT DONALD J. KETTERER

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

-vs-

DONALD J. KETTERER,

Appellant.

:

:

:

:

:

Case No. **07-1261**

Appeal taken from Butler County
Court of Common Pleas

Case No. CR 2003-03-0309

This is a death penalty case.

NOTICE OF APPEAL OF APPELLANT DONALD J. KETTERER

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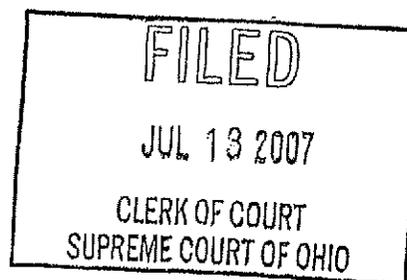
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No.
Appellee, :
-vs- : Appeal taken from Butler County
DONALD J. KETTERER, : Court of Common Pleas
: Case No. CR 2003-03-0309
Appellant. : This is a death penalty case.

DONALD KETTERER'S NOTICE OF APPEAL

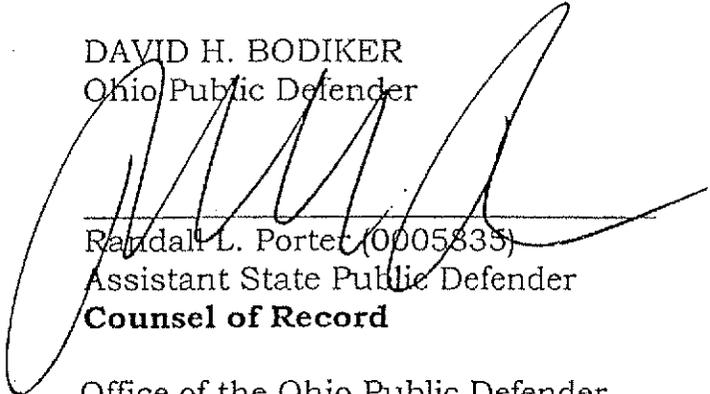
Appellant Donald J. Ketterer hereby gives notice of appeal to the Supreme Court of Ohio from the orders and judgment entry of the Butler County Court of Common Pleas entered in Case No. CR 2003-03-0309 on the following dates: May, 29, 2007 (Re-sentencing Judgment Entry of Conviction, Exhibit A); June 21, 2007 (Order Denying Defendant's Motion for The Disclosure of Favorable Evidence for Purposes of Re-Sentencing, Exhibit B) and June 21, 2007 (Order Denying Appellant's Motion to Withdraw Guilty Pleas, Exhibit C).

This is a capital case and the date of the offense is February 24, 2003. See Supreme Court Rule of Practice XIX, § 1(A). This Court has affirmed Donald Ketterer's convictions and death sentence. *State v. Ketterer* 111 Ohio St. 3d 70, 2006-Ohio-5283. On April 18, 2007, this Court vacated the non-capital offenses and remanded the matter for re-sentencing. *State v. Ketterer*

113 Ohio St. 3d 1463, 2007-Ohio-1722. The instant appeal is from the remand proceedings in the trial court.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender



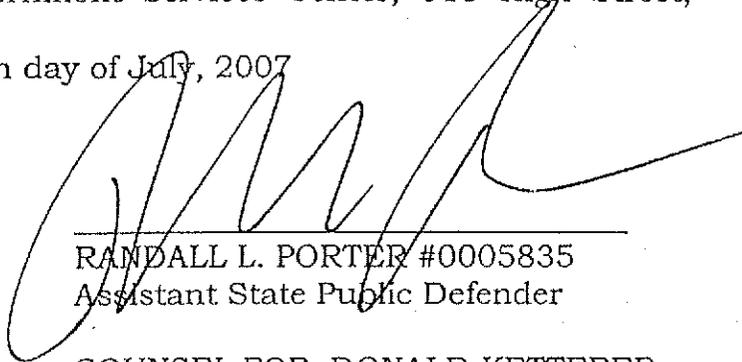
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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify a copy of the foregoing NOTICE OF APPEAL has been sent by regular U.S. mail to Daniel G. Eichel, First Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney at the Government Services Center, 315 High Street, Hamilton, Ohio 45011 on this 13th day of July, 2007



RANDALL L. PORTER #0005835
Assistant State Public Defender

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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

MAY 29 2007

CINDY CARPENTER
CLERK OF COURTS

STATE OF OHIO

CASE NO. CR2003-03-0309

Plaintiff

ONEY, J., SAGE, J. and CREHAN, J.

vs.

RE-SENTENCING
JUDGMENT OF CONVICTION ENTRY

DONALD JOSEPH KETTERER

Defendant

On May 24, 2007 defendant's re-sentencing hearing was held on the noncapital offenses, Counts Two, Three, Four and Five, pursuant to Ohio Revised Code Section 2929.19 and the decision in State v. Ketterer, 113 Ohio St.3d 1463, 2007-Ohio-1722, the previous judgment of conviction and sentence as to Count One having been affirmed in State vs. Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, certiorari denied (May 14, 2007), _____ U.S. _____, 2007 WL812004. Defense attorney Randall Porter, and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Judges, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

AGGRAVATED ROBBERY as to Count Two, a violation of Revised Code Section 2911.01(A)(3) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count One.
Fine in the amount of \$2,000

AGGRAVATED BURGLARY as to Count Three, a violation of Revised Code Section 2911.11(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

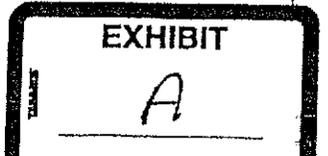
Prison for a period of 9 years.
This sentence will be served **consecutive** to Count Two.
Fine in the amount of \$2,000

GRAND THEFT as to Count Four, a violation of Revised Code Section 2913.02(A)(1) a fourth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 17 months.
This sentence will be served **concurrent** with Count(s) Two and Three.

BURGLARY as to Count Five, a violation of Revised Code Section 2911.12(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 4 years.



This sentence will be served consecutive to Count(s) Two and Three.
Fine in the amount of \$1,000

Credit for 1556 served is granted as of this date.

As to Count(s) Two, Three, Four and Five:

The Court has notified the defendant that post release control is in this case up to a maximum of years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

APPROVED AS TO FORM:

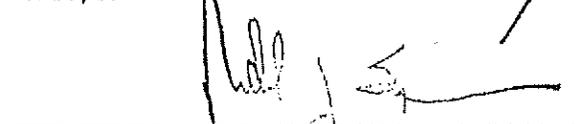
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PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO



ONEY, J.

SAGE, J.



SAGE, J.

CREHAN, J.

MAO/beg
May 25, 2007

h. polter

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED
JUN 21 2007

JUN 21 2007
CLERK OF COURTS

STATE OF OHIO

Plaintiff

vs.

DONALD JOSEPH KETTERER

Defendant

CASE NO. CR2003-03-0309

ONEY, J.

ORDER DENYING DEFENDANT'S MOTION
FOR THE DISCLOSURE OF FAVORABLE
EVIDENCE FOR PURPOSES OF RE-
SENTENCING

This matter came before the Court, on May 24, 2007, upon Defendant's Motion for the disclosure of favorable evidence for purposes of re-sentencing. After due consideration of the Motion, Legal Memorandum and Oral Argument from both parties on said Motion, the Court finds that said motion is not well taken.

It is, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion for the disclosure of favorable evidence for purposes of re-sentencing is hereby denied.

[Handwritten Signature]
Oney, J.

APPROVED AS TO FORM:

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

MAO/beg
June 19, 2007

EXHIBIT
B

FILED in Probation, Juvenile Court
BUTLER COUNTY, OHIO
JUN 21 2007
JANET C. WHEELER
CLERK OF COURTS

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO

Plaintiff

vs.

DONALD JOSEPH KETTERER

Defendant

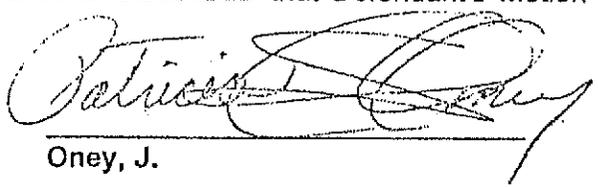
CASE NO. CR2003-03-0309

ONEY, J.

ORDER DENYING DEFENDANT'S MOTION
TO WITHDRAW GUILTY PLEAS

This matter came before the Court, on May 24, 2007, upon Defendant's Motion to withdraw guilty pleas. After due consideration of the Motion, Legal Memorandum and the Oral Argument from both parties, the Court finds that the motion is not well taken.

It is, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendant's Motion to withdraw his guilty pleas is hereby denied.



Oney, J.

APPROVED AS TO FORM:

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

MAO/beg
June 19, 2007

EXHIBIT
C

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

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-vs-

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Appellant.

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: Case No.

07-2425

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: This is a death penalty case.

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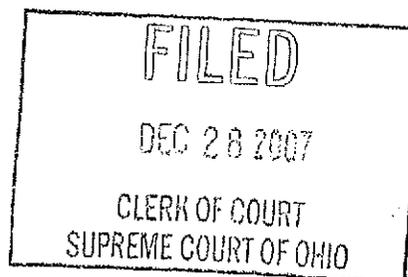
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DONALD KETTERER'S NOTICE OF APPEAL

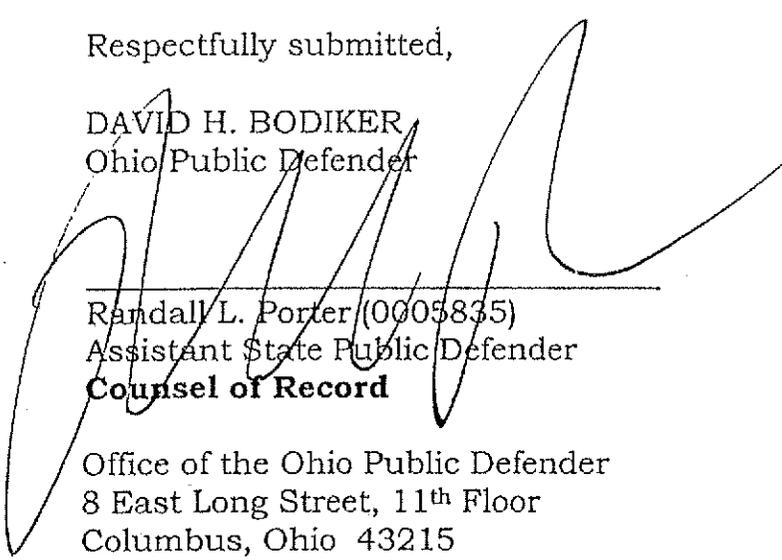
Appellant Donald J. Ketterer hereby gives notice of appeal to the Supreme Court of Ohio from the Amended Re-Sentencing Judgment Entry of Conviction of the Butler County Court of Common Pleas entered in Case No. CR 2003-03-0309 on November 15, 2007.

This is a capital case and the date of the offense is February 24, 2003. See Supreme Court Rule of Practice XIX, § 1(A). This Court has affirmed Donald Ketterer's convictions and death sentence. *State v. Ketterer* 111 Ohio St. 3d 70, 2006-Ohio-5283, 855 N.E. 2d 48. On April 18, 2007, this Court vacated the non-capital offenses and remanded the matter for re-sentencing. *State v. Ketterer* 113 Ohio St. 3d 1463, 2007-Ohio-1722. On July 13, 2007, Donald Ketterer appealed from the re-sentencing proceedings. *State v. Ketterer*, Ohio Supreme Court Case No. 07-1261. This appeal is from the November 15,

2007 resentencing entry which the three judge panel entered after Donald Ketterer had instituted his pending appeal to this Court.

Respectfully submitted,

DAVID H. BODIKER
Ohio Public Defender



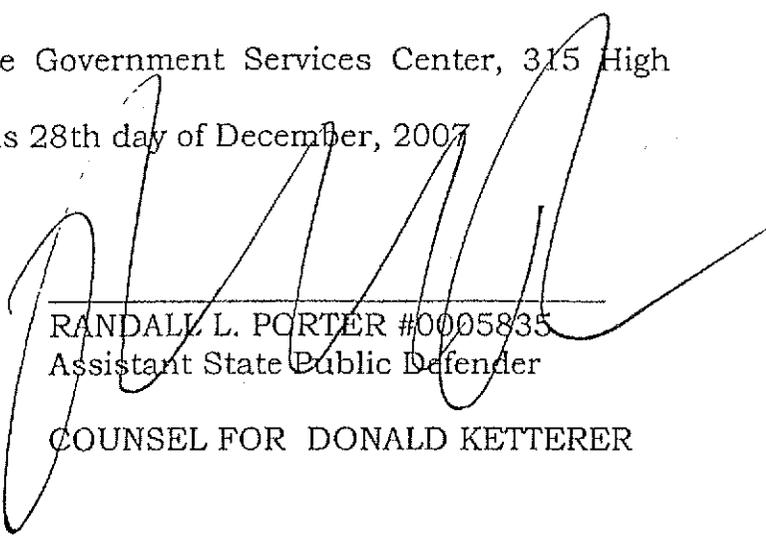
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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify a copy of the foregoing Notice Of Appeal has been sent by electronic and regular U.S. mail to Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney at the Government Services Center, 315 High Street, Hamilton, Ohio 45011 on this 28th day of December, 2007



RANDALL L. PORTER #0005835
Assistant State Public Defender

COUNSEL FOR DONALD KETTERER

R. Porter

FILED BUTLER CO.
COURT OF COMMON PLEAS

NOV 15 2007

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO

CASE NO. CR2003-03-0309

CINDY CARPENTER
CLERK OF COURTS

Plaintiff

ONEY, J., SAGE, J. and CREHAN, J.

vs.

AMENDED RE-SENTENCING
JUDGMENT OF CONVICTION ENTRY
{NUNC PRO TUNC: May 29, 2007}

DONALD JOSEPH KETTERER

Defendant

On May 24, 2007 defendant's re-sentencing hearing was held on the noncapital offenses, Counts Two, Three, Four and Five, pursuant to Ohio Revised Code Section 2929.19 and the decision in State v. Ketterer, 113 Ohio St.3d 1463, 2007-Ohio-1722, the previous judgment of conviction and sentence as to Count One having been affirmed in State vs. Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, certiorari denied (May 14, 2007), _____ U.S. _____, 2007 WL812004. Defense attorney Randall Porter, and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Judges, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

AGGRAVATED ROBBERY as to Count Two, a violation of Revised Code Section 2911.01(A)(3) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count One.
Fine in the amount of \$2,000

AGGRAVATED BURGLARY as to Count Three, a violation of Revised Code Section 2911.11(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count Two.
Fine in the amount of \$2,000

GRAND THEFT as to Count Four, a violation of Revised Code Section 2913.02(A)(1) a fourth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 17 months.
This sentence will be served **concurrent** with Count(s) Two and Three.

BURGLARY as to Count Five, a violation of Revised Code Section 2911.12(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 4 years.

This sentence will be served consecutive to Count(s) Two and Three.
Fine in the amount of \$1,000

Credit for 1556 served is granted as of this date.

As to Count(s) Two, Three, Four and Five:

The Court has notified the defendant that post release control is Mandatory in this case up to a maximum of 5 years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

{This *nunc pro tunc* entry is necessary to properly and legally reflect the Court of Common Pleas Judgement of Conviction that was originally entered on May 24, 2007, and journalized on May 29, 2007}.

APPROVED AS TO FORM:

ENTER

ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ONEY, J.

SAGE, J.

CREHAN, J.

MAO/beg
May 25, 2007
November 7, 2007 amended

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. BOX 515, HAMILTON, OH 45012-0515

OHIO REVISED CODE
TITLE 25. COURTS -- APPELLATE
CHAPTER 2505. PROCEDURE ON APPEAL

ORC Ann. 2505.02 (2009)

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a

meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code or or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

Ohio Rules Of Appellate Procedure
Title II Appeals From Judgments And Orders Of Court Of Record

Ohio App. Rule 12 (2009)

Rule 12. Determination and judgment on appeal

(A) Determination.

(1) On an undismissed appeal from a trial court, a court of appeals shall do all of the following:

- (a) Review and affirm, modify, or reverse the judgment or final order appealed;
- (b) Determine the appeal on its merits on the assignments of error set forth in the briefs under App.R. 16, the record on appeal under App.R. 9, and, unless waived, the oral argument under App.R. 21;
- (c) Unless an assignment of error is made moot by a ruling on another assignment of error, decide each assignment of error and give reasons in writing for its decision.

(2) The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).

(B) Judgment as a matter of law.

When the court of appeals determines that the trial court committed no error prejudicial to the appellant in any of the particulars assigned and argued in appellant's brief and that the appellee is entitled to have the judgment or final order of the trial court affirmed as a matter of law, the court of appeals shall enter judgment accordingly. When the court of appeals determines that the trial court committed error prejudicial to the appellant and that the appellant is entitled to have judgment or final order rendered in his favor as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and render the judgment or final order that the trial court should have rendered, or remand the cause to the court with instructions to render such judgment or final order. In all other cases where the court of appeals determines that the judgment or final order of the trial court should be modified as a matter of law it shall enter its judgment accordingly.

(C) Judgment in civil action or proceeding when sole prejudicial error found is that judgment of trial court is against the manifest weight of the evidence.

In any civil action or proceeding which was tried to the trial court without the intervention of a jury, and when upon appeal a majority of the judges hearing the appeal find that the judgment or final order rendered by the trial court is against the manifest weight of the evidence and do not find any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and do not find that the appellee is entitled to judgment or final order as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and either weigh the evidence in the record and render the judgment or final order that the trial court should have rendered on that evidence or remand the case to the trial court for further proceedings; provided further that a judgment shall be reversed only once on the manifest weight of the evidence.

(D) All other cases.

In all other cases where the court of appeals finds error prejudicial to the appellant, the judgment or final order of the trial court shall be reversed and the cause shall be remanded to the trial court for further proceedings.

Ohio Rules Of Criminal Procedure

Ohio Crim. R. 32 (2009)

Rule 32. Sentence

(A) Imposition of sentence.

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

- (1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.
- (2) Afford the prosecuting attorney an opportunity to speak;
- (3) Afford the victim the rights provided by law;
- (4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

- (1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.
- (2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.
- (3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court shall also advise the defendant of all of the following:
 - (a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;
 - (b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;
 - (c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;
 - (d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.