

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	: S.C.T. CASE NO. <b>10-1108</b>
PLAINTIFF/APPELLEE,	: CASE APP. NO. 09 CA 29
vs.	: ON APPEAL TO THE SUPREME COURT
HARRY SMITH,	: OF OHIO, FROM THE COURT OF APPEALS,
DEFENDANT/APPELLANT.	: HIGHLAND COUNTY, FOURTH APPELLATE
	: DISTRICT OF OHIO.
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**MEMORANDUM IN SUPPORT OF JURISDICTION**

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ON BEHALF OF APPELLANT:

HARRY SMITH, #609#335  
 PICKAWAY CORRECTIONAL INST.  
 P.O. BOX 209  
 ORIENT, OHIO 43146

ON BEHALF OF APPELLEE:

JAMES GRANDEY  
 HIGHLAND COUNTY PROSECUTOR  
 101 S. HIGH STREET  
 HILLSBORO, OHIO 45133

(PRO SE FOR APPELLANT)

**RECEIVED**  
 JUN 24 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

(COUNSEL OF RECORD FOR APPELLEE)

**FILED**  
 JUN 24 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

SUBSTANTIAL CONSTITUTIONAL QUESTION

This case raises a substantial question under the 1st, 4th, 5th, 6th, and 14th Amendments to the Constitution of the United States, and Article I, Sec. 2, 9, 14, and 16 of the Ohio Constitution.

Appellant, Harry Smith, is currently represented by appellate counsel, who is representing appellant on his pending direct appeal.

Appellate Counsel failed to raise a number of claims with the Court of Appeals of Highland County, Fourth Appellate District. Thus, as a means to preserve these rights, including Appellant's right to the **effective assistance of appellate counsel**, Harry Smith, acting pro se, filed motions, in a timely manner, with the Fourth District Court of Appeals, asking leave of court to entertain a pro se "supplemental brief," setting forth Five (5) Additional Assignments of Errors, that Appellate Counsel failed to raise on direct appeal.

Appellant also filed a motion, pro se, seeking to enlarge the record, on direct appeal, by asking the Fourth District Court of Appeals, to ORDER up certain transcript records from the Hillsboro Municipal Court.

In an Entry dated on May 10, 2010, a Magistrate Judge of the Fourth District Court of Appeals, DENIED these motions. Appellant timely filed a pro se application for **Reconsideration**, pursuant to Ohio App. R. 26(A), asking the Fourth District Court

(2)

of Appeals to GRANT Appellant a reconsideration of the Magistrate Judge's Ruling. (Note: Appellant time-filed his Motion for A Reconsideration, which was filed with the Court of Appeals within 10-days of the judgment). Appellant asked for the Court of Appeals to **entertain** his pro se supplemental brief, that he filed with the Court of Appeals; and asked the Court of Appeals to **OVERRULE** the ruling made by the Magistrate Judge.

On June 14th, 2010, the Court of Appeals issued a ruling on that **DENIED** Appellant's request for RECONSIDERATION on entertaining Appellant's pro se supplemental brief. (**See: Exhibit Entry, attached [A] & [B]**).

Turning now to why the Ohio Supreme Court should find that a substantial constitutional question: Appellant raised in his pro se supplemental brief, important substantial constitutional violations of his right to the Effective Assistance of Counsel, (at both the Court of Appeals and Common Pleas Court Level); ~~Claims~~ Claims that his Forth Amendment right to be free from illegal searches and seizures; actual innocence claims; and a fundamental miscarriage of justice.

Appellant therefore asks the Supreme Court of Ohio for Judgment GRANTING him the right to appeal the Court of Appeals Judgment, that DENIED his request(s) to have his pro se assignments of errors, to be addressed on their merits, because the Court of Appeals ORDER DENYING this request, arbitrarily, is a fundamental miscarriage of justice, especially so where the delay

caused, was not the Appellant's fault, but, rather, was the direct failure on the part of the Clerk of Court of Appeals (Ms. Paulette Donley, Highland County Clerk), who purposely failed to file my pro se motions, for leave of court on filing a pro se brief, which I sent to her for filing in February of 2010. However, it wasn't until April of 2010, until my pro se motions for leave on filing a pro se supplemental brief, was actually filed.

I then sent another motion to the Court of Appeal, within ten days, again asking for reconsideration. I asserted that the Court of Appeals Judgment, refusing to entertain my pro se supplemental brief, on grounds that I failed to submit my pro se briefing in time, was a gross abuse of discretion; a fundamental miscarriage of justice, and a violation my 1st, 4th, 5th, 6th, and 14th Amendment Rights, as well as a violation my state law rights as made by Article I, Sec. 2, 9, 10, 14, and 16, Ohio Constitution, by denying me access to the court; by denying me the right to demonstrate that the police committed an illegal search and seizure; by denying the right to demonstrate that Municipal Court Judge, McKeena (Judge of Hillsboro Municipal Court) and Judge Coss, Judge of the Highland County Court of Common Pleas, were not "neutral" and "detached;" but acted in complicity and conspiracy to violate my right to life and liberty; and prevented me from being able to demonstrate that my trial and appellate attorneys were ineffective; and violating my right to due process and equal protection of the law. Thus, ann of right be GRANTED.

STATEMENT OF FACTS

On June 2nd, 2009, the defendant was indicted by a Highland Co. Grand Jury on a 4 count Indictment for 1) Illegal Assembly or Possession of Chemicals for the Manufacturing of Drugs; (F-3); 2) Possession of Methamphetamine (F-5); 3) Trafficking in Drugs (F-4); 4) Tampering with Evidence (F-3). On August 12th, 2009 the defendant was convicted on all counts and sentenced to 16 years in prison.

On September 3rd, 2009 WILLIAM JEFFREY MOORE was appointed as Appellate counsel. On December 29th, 2009 the transcripts of all hearings, docket and it's entries were filed were filed and transmitted to the 4th District Court of Appeals. During this time the defendant had contact with his Appellate counsel by mail and letters and Legal Notices and explained to the counsel of an **ABUNDANCE** of error's through out the defendant's case and of the **ABUNDANCE OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, PROSECUTORIAL MISCONDUCT, ILLEGAL ACT'S BY THE POLICE AND OF PREJUDICE AND BIASED JUDGES- BOTH THE COMMON PLEAS JUDGE AND THE JUDGE THAT ISSUED A SEARCH WARRANT.**

Due to unexplainable reason's , my Appellate Counsel was not going to raise the **ABUNDANTLY CLEAR** Ineffective Assistance of Counsel and thouroughly argue and explore the **ERROR'S AND ARGUEMENT'S** and Granted my Appellate Counsel is a very busy man, but my **RIGHT'S, FREEDOM AND LIBERTY** hangs in the midst.

On Febuary 12th, 2010 the defendant mailed a motion to the 4th dist. Court of Appeals to **ADD INFORMATION TO THE RECORD; AND MOTION TO SUPPLEMENT THE RECORD WITH MUNICIPAL COURT TRANSCRIPT'S**, and I mailed the motion due to the fact that the Municipal Court Judge, Judge David Mckeena, whom signed the search warrant, was involved with the very Det.(s) in this case by entering into a secret agreement to release my young daughter (ABBY SMITH) from jail to **STALK AND FRAME ME.** Then Judge Mckeena arraigned me and set **EXTREME AND UNCONSTITUTIONAL BONDS** on

me and denied me the right to challenge Jurisdiction and denied me the right to a Preliminary Hearing and OPENLY ON THE RECORD acted in Complicity with the police and prosecution.

Judge Mckenna also, along with the prosecution, **UNDER THE GUISE OF A PROBATION REVOCATION HEARING**, on the day of the incident (MAY 15th, 2009) took testimony in open court from my daughter of the **ALLEGED** criminal acts of mine and this testimony was inconsistent, conflicting and perjured as to trial.

On June 25th, 2009 and a few weeks prior to my Suppression Hearing, Judge Mckenna **KNOWING** quite well that my daughter had made a **RECORDED INTERVIEW** with the police on the morning of the incident, was a **MATERIAL WITNESS** and she was in all actuality a **VITAL WITNESS** for the defence and not for the Prosecution as the police and prosecution implied, and Judge Mckenna released my daughter from jail **KNOWING** my daughter had an extensive **FAILURES TO APPEAR** with the courts and would not show up for the Suppression Hearing, which she did not and on the evening of the denial of my Suppression Hearing the Highland Co. Sheriff's dept. was then able to locate my daughter and arrested her on a **MATERIAL WITNESS WARRANT!** How convenient!!!

These transcripts were kept from the record by the police, prosecution, my Court Appointed Attornies and Judge Rocky Coss (COMMON PLEAS) and these transcripts would support **MAJOR ISSUES, VIOLATIONS AND ERROR'S** for my appeal.

On February 22nd, 2010 the defendant Mailed a **MOTION TO FILE SUPPLEMENTAL BRIEF** and within this motion the defendant exerted and showed **INEFFECTIVE ASSISTANCE OF COUNSEL** through out my trial process and a denial of a **PROPER AND MEANINGFUL SUPPRESSION HEARING** by both the **COURT APPOINTED COUNSEL'S AND THE COMMON PLEAS JUDGE**. The Motion was supported by **CONTROLLING CASE LAW AND SUPPORTING FACT'S**, which demonstrated the right to relief prayed for.

On March 29th, 2010, Appellant mailed a Motion of Instanter, seeking leave, asking the Court of Appeals to GRANT the pro se supplemental brief to be entertained. Appellant asserted that the Clerk of Court of Appeals for the Fourth Appellate District, had not filed his earlier motions, (which were sent in February, 2010) that initially requested leave to file the pro se supplemental brief. Thus, Appellant filed a motion of instanter, stating that he previously motions (in February) that requested permission to file a pro se supplemental brief; and Appellant argued before the Court of Appeals, through his instanter motion, and other subsequently motions, that the Clerk of Highland County, was knowingly and purposely refusing, to file my pro se motions; and had caused a delay on having my pro se supplemental brief to be entertained.

Notwithstanding these facts, the Fourth District Court of Appeals, ruled that the delay was my fault. The Fourth District Court of Appeals DENIED my motions seeking leave to entertain my pro se supplemental briefs; The Fourth District Court of Appeals DENIED my timely-filed motions for RECONSIDERATION, asking the Appellate Court to reversal their denial judgment on entertaining my pro se supplemental brief.

Appellant is now before the Ohio Supreme Court, on a request for leave to appeal, and on an appeal as of right, to appeal this interlocutory-order. Appellant states that the Court of Appeals have filed a final-appealable-order, by DENYING his request for leave to file a pro se supplemental; and by denying his request for a reconsideration. Appellant asks the Supreme Court of Ohio to accept jurisdiction in this case, by GRANTING jurisdiction review.

PROPOSITION OF LAW NO. ONE

APPELLANT'S 1ST, 4TH, 5TH, 6TH, AND 14TH AMENDMENT RIGHTS, AS GUARANTEED BY THE UNITED STATES CONSTITUTION; AS WELL AS HIS CORRESPONDING RIGHTS UNDER ARTICLE I, SEC. 2, 9, 10, 14 AND 16, OHIO CONSTITUTION, HAVE BEEN VIOLATED AS A RESULT OF THE APPELLATE COURT'S REFUSAL, TO ENTERTAIN APPELLANT'S PRO SE SUPPLEMENTAL BRIEF, IN REGARDS TO APPELLANT'S ASSIGNMENT(S) OF ERRORS, PERTAINING TO: (a) DENIAL OF ACCESS TO THE COURT(S), AS RESULT OF THE CLERK OF THE COURT OF APPEALS FAILURE, TO FILE PRO SE PLEADINGS; (b) THE DENIAL OF THE EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL, AND AT TRIAL, RESULTING FROM BOTH ATTORNEY(S) FAILURE TO PRESERVE APPELLANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; (c) APPELLANT'S RIGHT TO CHALLENGE THE ILLEGALITY OF THE SEARCH WARRANT, BASED ON A LACK OF PROBABLE CAUSE; AND BASED ON THE FACT THAT THE WARRANT ITSELF IS PREDICATED UPON THE KNOWING USE OF FALSE STATEMENTS, MADE IN DISREGARD FOR THE TRUTH; AND (D) THE APPELLATE COURT COMMITTED A GROS ABUSE OF DISCRETION, BY DENYING APPELLANT'S PRO SE MOTION FOR LEAVE TO FILE A PRO SE SUPPLEMENTAL BRIEF.

Appellant, Harry Smith, filed a pro se motion seeking leave of the Fourth District Court of Appeals, on allowing Appellant leave of court on accepting his pro se supplemental brief, which raised claims under the 1st, 4th, 5th, 6th, and 14th Amendments to the United States Constitution, and citing the corresponding rights under the Ohio Constitution.

The Court of Appeals DENIED Appellant's Motion for leave to accept his pro se supplemental brief, for purposes of ruling on the constitutional claims set forth in his supplemental brief. Appellant states that he has been denied the right to effective assistance of counsel, on appeal, and at trial, as a result of his appellate counsels', and trial counsels', ineffective repre-

sentations, resulting from both attorney(s) failure to preserve this Appellant's Right to the Effective Assistance of Counsel, as set forth by the United States Supreme Court in *Strickland v. Washington*, (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674; and *Kimmelman vs. Morrison*, (1986), 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305.

It is a well established right, as determined by the United States Supreme Court that a search warrant, which is based on a lack of sufficient probable cause, may not be issued by the Magistrate Judge that issued the warrant. See: *Illinois v. Gates*, (1983), 462 U.S. 213, 76 L.Ed.2d 527, 103 S.Ct. 2317; *Stanford v. Texas* (1965), 379 U.S. 479, 13 L.Ed.2d 431, 85 S.Ct. 506. It is just as equally clear, as set forth by the United States Supreme Court, that a search warrant which is based on the knowing use of false statements, or which is made in a disregard for the truth, violates the 4th Amendment. See: *Franks vs. Delaware*, (1978), 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667. When an affidavit to search is so lacking in probable cause, the good faith exception should not apply. *United States vs. Leon*, (1984), 468 U.S. 897, 923, 104 S.Ct. 3430 (Quoting: *Brown vs. Illinois*, (1975), 422 U.S. 590, 610-611, 95 S.Ct. 2254).

In the present case, Appellant, Harry Smith, filed a pro se motion seeking leave of the Fourth District Court of Appeals, and Appellant also filed his own pro se supplemental brief, raising a total of Five (5) Additional Assignments of Errors, asserting ineffective assistance of counsel claims; and asserting claims

that the search warrant itself was based on a lack of probable cause; as well as the fact that the search warrant was predicated upon the knowing use of false statements; and was made in a disregard for the truth.

Appellant additionally asserted the fact that his trial attorney(s) failed to properly file a sufficient motion to Suppress Evidence, which prevented Appellant from properly challenging the apparent lack of probable cause; and which prevented the Appellant from attacking the false statements made in the search warrant. Thus, Appellant's 6th Amendment right to the effective assistance of counsel, at trial, was violated, due to defense counsels' failure to properly file a proper motion to suppress evidence.

Defense Attorney(s) at the trial court were equally ineffective, as a result of the fact that: (a) the attorney(s) failed to subpoena record material evidence, such as prehearing interviews (narratives) of written or recorded statements made by Abby Smith; Chris McGee; James Clark; and Municipal Court transcripts, which were recorded at the Hillsboro Municipal Court, **F.N.1** which would have proven, in addition to all the other evidence, that the Magistrate Judge, McKenna, Judge of the Municipal Court, was not a "neutral" or "detached" Magistrate, and, thus, under prevailing Case Law, the search warrant is constitutionally defective, based on the fact that the issuing magistrate judge was

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**F.N.1** The "narratives" that trial attorney(s) failed to offer into as evidence, and subpoena, and use as cross-examination evidence, was evidence which were recorded by the Highland County Sheriff's Department.

not neutral or detached. Thus, defense attorney(s) at trial, were ineffective, below an objective standard of reasonable representation, resulting from defense attorney(s) failure to subpoena witnesses, and documentation, for purposes of demonstrating that the search warrant, as issued by Magistrate Judge McKenna, was an illegal search warrant, in violation of the 4th and 14th Amendments to the United States Constitution.

Furthermore, Appellant's corresponding rights, as guaranteed by the Ohio Constitution, Article I, Sec. 2, 9, 10, 14 and 16, which guarantees the right of this appellant to receive effective assistance of counsel; his right to due process and equal protection of the law; his right to access to the court; his right to be free from illegal, unreasonable searches and seizures, and his right to effective assistance of counsel, on direct appeal, has been violated.

The jury's verdict is tainted with illegal, unlawful, and perjured evidence, that had a substantial, injurious effect or influence upon the jury's verdict, in violation of *Brecht v. Abrahamson*, (1993), 507 U.S. 619, 623; and *O'Neal v. McAninch*, (1995), 513 U.S. 432. Appellant states that, as a result of his trial attorney(s) ineffective representation, he did not receive a full and fair/meaningful hearing. Thus, the Supreme Court holding in *Stone vs. Powell*, (1976), 428 U.S. 465, 96 S.Ct. 3037, which bars federal habeas corpus review in cases where the defendant did receive a full and fair hearing in state court, does not apply in the present case, because of the fact that the defendant did not

receive **effective assistance of counsel** at the trial court level, that prejudiced the defendant from receiving a full and fair Suppression of Evidence Hearing. **See: Kimmelman vs. Morrison, Supra, 477 U.S. 365** (This case established the point that, in cases where the attorney failed to file a proper motion to suppress evidence, violates the defendant's right to the effective assistance of counsel; and excuses the defendant from the holding set forth in **Stone vs. Powell, Supra**). Accordingly, Appellant states that his constitutional rights were clearly violated.

In addition, at trial, the Court of Common Pleas Judge, Rocky Coss, denied the Appellant his right to put issues on the record; by refusing the Appellant the right to **speak** or of the right to make **objections on the record**; and prevented the trial attorney(s) from asking questions towards the state's witness, in regards to the apparent lack of probable cause; and in regards to the false statements made in the search warrant.

In addition to the above, the Fourth District Court of Appeals has DENIED the Appellant of his request for leave on entertaining his pro se supplemental brief, which raises the specific claims that his appellate counsel on direct appeal has failed to raise. The Fourth District Court of Appeals OVERRULED Appellant's Motion seeking leave to entertain the Five (5) Assignments of Errors that the Appellant herein had raised, asserting claims of ineffective assistance of counsel.

It is well established Constitutional Law, as set forth by the United States Supreme Court, that a criminal defendant on a direct appeal, has a Constitutional Right to the **Effective Assistance of Counsel on direct appeal. Evitts v. Lucey, (1985), 469 U.S. 387, 105 S.Ct. 830, 83 L.ED.821.** Although the Supreme Court has held that a defendant, on direct appeal, does not possess a right (under the Federal Constitution) to file a pro se supplemental brief, **See, Martinez vs. Court of Appeals of California, (2000), 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed.2d 597,** the Supreme Court left open the question that, as a matter of State law, the State Court's are free to enact state statutes or to construe State Constitutions, as providing a **right** to defendant appellant's to raise claims **pro se** on an appeal.

In this case, the State Constitution of Ohio, affords the right of criminal defendants' to file pro se briefs on direct appeal. Especially in cases such as the one before the Court, where the claims raised involve the violation of the right to the **effective assistance of counsel.** In such cases, the Ohio Supreme Court should carve out an exception in these cases, by holding that, as a matter of State Law, the Ohio Constitution guarantees criminal appellant's the right to file pro se supplemental briefs, for purposes of preserving their ineffective assistance of counsel claims.

Additionally, the Ohio Supreme Court should find that, in cases where a Court of Appeals has refused to allow a criminal defendant the right to file a pro se supplemental brief, for pur-

poses of raising and preserving his ineffective counsel claims, constitutes as a gross abuse of discretion on the part of the Ohio Court of Appeals, by refusing to allow such pro se supplemental briefs from being accepted or entertained; and, thus, the Ohio Supreme Court should hold that, as a Matter of Right, Article I, Sec. 2, 10, and 16, require that: (a) The Right to Due Course of Law; And Equal Protection; as well as the right to appear with with counsel, and to be heard in the defendant's own behave, (which Sec. 10 of Art. I, Ohio Const., states), requires the right of the Criminal-Appellant to file a pro se Supplemental Brief, asserting his underlying claims under the guise of ineffective assistance of counsel. This would add an extra layer of protection in Ohio, to preserve the right to effective assistance of counsel, by allowing a pro se brief to be entertained, raising such claims.

Accordingly, in light of the fact that the Appellant, Harry Smith, has raised a **Substantial Constitutional Question** (under the Ohio Constitution); <sup>F.N.2</sup> ~~and~~ And in light of the fact that the Appellant has demonstrated a **gross abuse of discetion** on the part of the Fourth District Court of Appeals, resulting from the appellate court's refusal to accept and/or entertain Appellant's pro se supplemental brief, raising ineffective counsel claims; and raising the fact that the Clerk of Court of Appeals has violated the Appellant's 1st Amendment Right to **Access to the**

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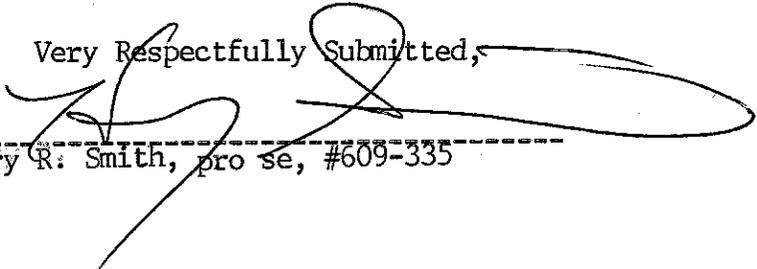
**F.N.2** Notwithstanding the fact that the Supreme Court has ruled, as a matter of Federal Law, that the Constitution does not require pro se supplemental briefs to be constitutionally required; Appellant still states that he raised Constitutional Rights Violations under the 1st, 4th, 5th, 6th and 14th Amendments.

(14)

Court, by refusing and/or failing to file his pro se pleadings and pro se motions, which also violates the Appellant's right to due process of law, and his right to raise ineffective assistance of counsel claims, should be found well taken; GRANTING the Appellant the right to appeal, as of right, to the Supreme Court of Ohio. *Lewis vs. Casey*, (1996), 518 U.S. 343, 116 S.Ct. 2174, held that citizens in this country have a right to access to the courts as provided by the 1st and 14th Amendments to the U.S. Constitution. Although the holding in *Lewis v. Casey*, supra comes with some restrictions, See, *Dissenting Opinion made by Ohio Supreme Court Justice LUNDBERG STRATTON, in Disciplinary Counsel vs. Cotton*, (2007), 115 Ohio St.3d 113, at: 120-125, the Supreme Court in *Lewis*, s also pointed out by Justice Lundberg Stratton, found that the holding in *Lewis* does guarantee the right to access to the court to file their grievances and legal claims with the court. *Id.* at: 873 N.E.2d, at: 1248 (Citing *Lewis*, at: 356, 116 S.Ct. 2174).

Accordingly, for all of the above mentioned forgoing reasons, the Supreme Court of Ohio should GRANT jurisdictional review in this case; reversing the decision of the Fourth District Court of Appeals, which OVERRULED the Appellant's Motion for leave on entertaining his properly filed pro se supplemental brief and ORDERING the Fourth District Court of Appeals to entertain Appellant's pro se Supplemental Brief, under the Manifest miscarriage of Justice Doctrine.

Very Respectfully Submitted,

  
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Harry R. Smith, pro se, #609-335

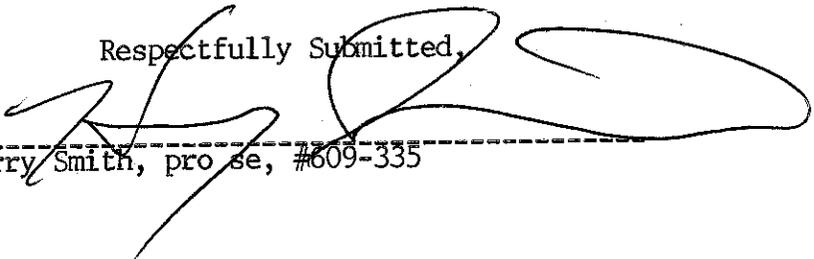
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CONCLUSION

Appellant, Harry Smith states that: the Ohio Supreme Court should GRANT leave to appeal in this case; and should accept this appeal for review, as an appeal as of right, in light of the fact that the Fourth District Court of Appeals has committed a GROSS ABUSE OF DISCRETION, and has violated the Appellant's Constitutional Rights.

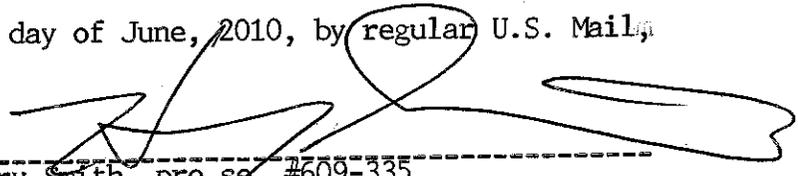
Appellant further states that the Ohio Supreme Court has authority to accept this appeal, from the interlocutory-order made by the Fourth District Court of Appeals, which DENIED Appellant's motion for leave to file a supplemental pro se brief, and which denied appellant's subsequently (time-filed) motion for a reconsideration) on filing a supplemental pro se.

Respectfully Submitted,

  
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Harry Smith, pro se, #609-335

CERTIFICATE OF SERVICE

This is hereby to verify that a true exact photo copy of the forgoing Notice of Appeal, and Memorandum In Support of Jurisdiction, has hereby been sent to the Highland County Prosecuting Attorney, at: 101 S. High Street, Hillsboro, Ohio 45133, on the 18th day of June, 2010, by regular U.S. Mail, postage preaffixed.

  
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Harry Smith, pro se, #609-335  
Pickaway Correctional Institution  
P.O. BOX 209  
Orient, Ohio 43146

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HIGHLAND COUNTY

State of Ohio,

Plaintiff-Appellee,

v.

Harry R. Smith,

Defendant-Appellant.

**FILED**  
COURT OF APPEALS  
HIGHLAND COUNTY, OHIO  
MAY 10 2010

*Paulette Donley*  
HIGHLAND COUNTY CLERK OF COURTS

Case No. 09CA29

**MAGISTRATE'S ORDER**

Appellant, Harry R. Smith, has filed the following pro se motions: (1) A Motion to Add Information to the Record: and Motion to Supplement the record with Municipal Court Transcript Records; (2) Motion for Leave to File a Supplemental Pro Se Brief on Direct Appeal; and (3) Motion of Instanter Seeking Leave to File a 29-Page Supplemental Brief. Upon consideration, appellant's pro se motions are **DENIED**.

The clerk is **ORDERED** to serve all counsel of record at their last known addresses. The clerk is further **ORDERED** to serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail.  
**IT IS SO ORDERED.**

**FOR THE COURT**

*A - M. McHenry*  
\_\_\_\_\_  
Aaron M. McHenry  
Magistrate

*JJ  
by 170*

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HIGHLAND COUNTY

**FILED**  
COURT OF APPEALS  
HIGHLAND COUNTY, OHIO

JUN 14 2010

*Paulette Donley*  
HIGHLAND COUNTY CLERK OF COURTS

STATE OF OHIO,

Plaintiff-Appellee,

v.

HARRY R. SMITH,

Defendant-Appellant.

Case No. 09CA29

ENTRY

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This matter comes before the Court on Harry R. Smith's Objection to the Magistrate's Order; Motion Requesting Reconsideration on Accepting to Hear Appellant's Pro Se Supplemental Brief; and Motion for Rehearing En Banc. For the reasons that follow, Smith's objection is **OVERRULED** and his motions are **DENIED**.

Through counsel, Smith filed a timely notice of appeal from his convictions for illegal assembly or possession of chemicals in violation of R.C. 2925.041 (a third degree felony), possession of methamphetamine in violation of R.C. 2925.11 (a fifth degree felony), aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2) (a third degree felony), and tampering with evidence in violation of R.C. 2921.12(A)(1) (a third degree felony). On March 4, 2010, Smith's counsel filed a brief, to which the State of Ohio responded on March 10, 2010 and counsel filed a reply brief on March 31, 2010. Thereafter, Smith filed a pro se motion instanter seeking leave to file a 29-page supplemental brief, a second motion for leave to file a supplemental pro se brief on direct appeal, and a motion

to add information to the record; and a motion to supplement the record with Municipal Court transcript records. This Court denied these motions via a Magistrate's Order on May 10, 2010, and Smith has filed a pro se request asking that we reconsider and accept his pro se supplemental brief.

App.R. 26(A) does not specify an exact standard against which a request for reconsideration should be measured. The test generally applied under this rule is whether the application calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was not considered at all or was not fully considered by us when it should have been. See, e.g., *State v. Wong* (1994), 97 Ohio App.3d 244, 246, 646 N.E.2d 538, 539; *Woerner v. Mentor Exempted Village School Dist. Bd. of Edn.* (1993), 84 Ohio App.3d 844, 846, 619 N.E.2d 34, 36; *State v. Gabel* (1991), 75 Ohio App.3d 675, 676, 600 N.E.2d 394.

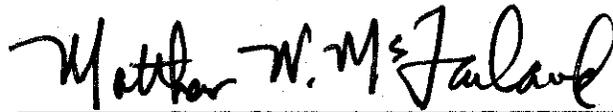
Smith has not called any obvious errors in the Magistrate's Order to our attention. He is attempting to file a supplemental pro se after briefing has already been completed in this case. Further, neither the United States nor the Ohio Constitution mandate a hybrid representation allowing a pro se appellant with appointed counsel to file briefs in addition to those filed by his counsel. *State v. White* (1991), 71 Ohio App.3d 550, 594 N.E.2d 1087, at fn. 1, citing *State v. Thompson* (1987), 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407, 413-414. Therefore, the Magistrate correctly denied Smith's request to file a pro se supplemental brief.

For the reasons stated above, Smith's Objection to the Magistrate's Order

is **OVERRULED** and the Motion Requesting Reconsideration on Accepting to Hear Appellant's Pro Se Supplemental Brief and Motion for Rehearing En Banc are **DENIED**. The clerk is **ORDERED** to all counsel of record at their last known addresses. The clerk is further **ORDERED** to serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail. **IT IS SO ORDERED.**

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

A handwritten signature in black ink that reads "Matthew W. McFarland". The signature is written in a cursive style with a horizontal line underneath it.

Matthew W. McFarland  
Presiding Judge