

ORIGINAL

**IN THE
OHIO SUPREME COURT**

STATE OF OHIO,	:	NO.	10-1168
Appellee,	:	Appeal from the Hamilton County Court of Appeals, First Appellate District	
vs.	:		
LEON C. NORMAN, JR.,	:	Court of Appeals Case No. C 090515	
Appellant.	:		

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF LEON NORMAN, JR.**

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TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION	1
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW	3
<p><u>Proposition of Law No. I:</u> Where the trial court and the Court of Appeals ignore the Judgment Entry: Sentence: Incarceration entered on January 12, 2000 that imposes a aggregate sentence of 21 years and impose and approve an aggregate sentence of 48 years the Appellant's rights under the Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution are violated.</p>	
CONCLUSION	4
PROOF OF SERVICE	6
APPENDIX	<u>Appendix Page</u>
Judgment Entry of the Hamilton County Court of Appeals (May 19, 2010)	7-9

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

This case presents the issue of whether the Court of Appeals can ignore the sentence that was imposed by the trial court in the year 2000 and re-sentence the Appellant to a sentence that is 27 years longer than the sentence imposed in the year 2000. Appellant maintains that his rights under the Eighth and Fourteenth Amendments to the United States Constitution and his rights under Article I, Section 10 of the Ohio Constitution were violated by the procedures and sentence imposed in the year 2009.

STATEMENT OF THE CASE AND FACTS

A. Procedural Posture

The Appellant, Leon C. Norman, Jr., referred to as Norman, was re-sentenced for the third time on July 7, 2009. Originally, the trial court sentenced Norman on October 10, 1998. That sentence was vacated by the First District Court of Appeals for Hamilton County, Ohio on December 3, 1999 in Case Nos. C 980874 and C 980872. At that time the Court found the original sentence to be unlawful as the record was insufficient to establish the necessary findings for consecutive sentences.

On January 12, 2000, the trial court re-sentenced Norman. No felony sentencing findings were filed by the trial court. The Judgment Entry entered on January 12, 2000 only ordered that the sentences for the gun specifications were to run consecutively to each other. Likewise, in the transcript of proceedings from that date, no mention of consecutive sentences is stated for anything except the gun specifications. The Department of Corrections calculated Norman's sentence to be 21 years which is consistent with the Judgment Entry. The First District Court of Appeals affirmed the sentence imposed by the trial court in Case No. C 000052 on August 30,

2000 but the Court ignored the sentencing entry and incorrectly assumed that the sentence totaled 48 years.

On January 25, 2008 the trial court ordered Norman to be returned for re-sentencing for Post Release Control notification. The trial court re-sentenced Norman on February 15, 2008 as set forth in the Judgment Entry. The total number of years imposed increased to 48 years.

The sentences were for four groups of counts in the indictment. Group A was for Counts 1 and 2 and a 3 year gun specification; Group B was for Counts 4, 5 and 6 and a 3 year gun specification; Group C was for Counts 9 and 10 and a 3 year gun specification; and Group D was for Counts 11 and 12 and a 3 year gun specification. Counts 1, 4, 9 and 11 carried 9 year sentences. Counts 2, 5, 6, 10, and 12 carried 7 year sentences. All the 7 year sentences were ordered to be served concurrently with the 9 year sentence in each group.

All the 9 year sentences were for aggravated robbery and all the 7 year sentences were for robbery.

On page one of the Judgment Entry it correctly reflects that Norman was acquitted on Count 3. On page 3 and 4 of the Judgment Entry there are numerous references to Norman being sentenced on Count 3. Elsewhere on page 4 of the Judgment Entry Counts 5 and 6 are omitted.

In the Judgment Entry entered on December 24, 2008, the First District Court of Appeals ordered the multiple sentences to be vacated and remanded for re-sentencing for either the aggravated robbery or the robbery of each store, along with the appropriate firearm specification. The Court of Appeals assumed the sentence was 48 years in the year 2000 and stated that the Double Jeopardy Clause was inapplicable because the trial court did not increase the sentence in the year 2008 when a 48 year aggregate sentence was imposed.

At the third re-sentencing hearing on July 7, 2009, the trial court acknowledged, on the record, that the sentencing transcript and the judgment entry from the 2000 sentencing are both silent as to whether the sentences for the aggravated robberies and robberies were to be served consecutively. In reviewing the records, the successor trial judge stated that she interpreted the documents based upon what she believed the that the original trial judge intended to do. Based upon that interpretation, the allied offenses were merged and Norman was sentenced to four consecutive sentences for the aggravated robberies and four consecutive sentences for the firearm specifications for an aggregate sentence of 48 years.

The errors in this case violate Norman's rights under the Eighth and Fourteenth Amendments to the United States Constitution and under Article I, Sections 10 of the Ohio Constitution.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I:

Where the trial court and the Court of Appeals ignore the Judgment Entry: Sentence: Incarceration entered on January 12, 2000 that imposes an aggregate sentence of 21 years and impose and approve an aggregate sentence of 48 years the Appellant's rights under the Eighth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution are violated.

It is axiomatic that the court speaks through its records, dockets and journal entries. In this case the trial court resentenced Norman on January 12, 2000 to four consecutive sentences on four 3 year firearm specifications and four concurrent sentences on four 9 year sentences on the underlying aggravated robberies and five concurrent sentences on five 7 year sentences on the underlying robberies. When the Department of Corrections calculated Norman's sentence in the year 2000, it totaled 21 years. There is no language in the Judgment Entry, Felony

Sentencing Findings, or pronouncements in the transcript of proceedings that ordered Counts 1,2,4, 5, 6,9,10,11, and 12 to be consecutive to each other in any manner.

When the trial court resentenced Norman on February 15, 2008 and July 7, 2009, Norman's sentence was increased by 27 years. In North Carolina v. Pearce (1969) 395 U.S. 711, 89 S.Ct. 2072 the Court held that a trial court violated the Due Process Clause of the Fourteenth Amendment when it resentences a defendant to a harsher sentence unless there is a factual basis upon which the increased sentence is based set forth in the record. Despite the fact that the Judgment Entry from January 12, 2000 and the Department of Corrections calculation of Appellant's sentence were appended to the brief in the Court of Appeals the Court of Appeals ignored those documents three times, in the 2000 year appeal, in the 2008 year appeal, and in the 2009 appeal.

Conclusion

This case has travelled a torturous path. First it was reversed because the trial court sentenced the Appellant to the maximum sentences as a first time offender to the Department of Corrections and did not set forth any findings as required by statute, at that time on consecutive sentences. When Appellant was re-sentenced in 2000 the trial court filed no sentencing findings and never imposed consecutive sentences, either in the courtroom or in the Judgment Entry: Sentence: Incarceration that was filed with the Clerk of Court.

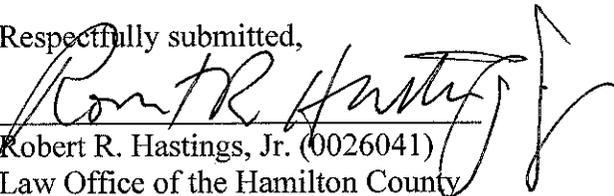
The Court of Appeals did not address the 2000 sentencing deficiencies in their 2000 year decision and they incorrectly assumed that the trial court had imposed a 48 year aggregate sentence. The Department of Corrections did correctly compute the sentence imposed in 2000 and their records reflected an aggregate sentence of 21 years (four times 3 years for each firearm

specification equaling 12 years plus 9 years on all the concurrent aggravated robberies and robberies).

Finally, the successor trial judge to the original sentencing judge returned Norman for re-sentencing twice to the correct sentencing deficiencies set, but ignored the plain language of the 2000 sentencing entry and imposed a 48 year sentence based upon her "interpretations" of the original trial judge's intent. The Court does not speak through interpretations of intent. It speaks through what is written in the judgment entry and stated in the sentencing transcript. To rule otherwise dispenses the certainty of judgment entries and replaces that certainty with speculation and guesswork.

For all these reasons the Appellant asks this Court to grant leave to appeal to decide this case which involves a violation of Appellant's constitution rights as well as the issue that trial courts and appellate courts are to be governed by the orders that the trial court places of record.

Respectfully submitted,


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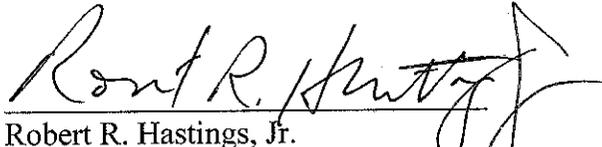
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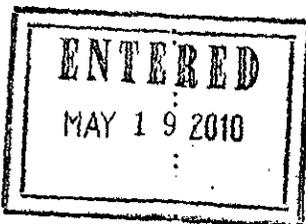
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to the Office of the Hamilton County Prosecutor's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 on this 2nd day of July, 2010.


Robert R. Hastings, Jr.
Counsel for Appellant, Leon C. Norman, Jr.

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,
Plaintiff-Appellee,
vs.
LEON C. NORMAN JR.,
Defendant-Appellant.



APPEAL NO. C-090515
TRIAL NO. B-9803709

JUDGMENT ENTRY.

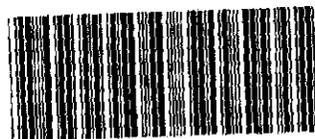
We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On October 2, 1998, defendant-appellant Leon C. Norman Jr. was found guilty by a jury on four aggravated-robbery counts, with each count including firearm specifications, and five counts of robbery, which also included firearm specifications on each count. The trial court sentenced Norman to 40 years' incarceration on the underlying offenses and to an additional 12 years' incarceration for the firearm specifications. The sentences for the underlying offenses and the specifications were to run consecutively, for a total of 52 years' incarceration.

On December 3, 1999, we sua sponte vacated Norman's sentences because the trial court had not provided its reasons for imposing maximum, consecutive sentences.² On remand, the trial court resentenced Norman to 36 years'

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *State v. Norman* (1999), 137 Ohio App.3d 184, 196, 738 N.E.2d 403 ("*Norman I*").



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OHIO FIRST DISTRICT COURT OF APPEALS

incarceration on the underlying offenses and to 12 years' incarceration on the firearm specifications, for a total of 48 years' incarceration. The sentencing entry stated that certain sentences were to be served concurrently, and that the sentences imposed for the firearm specifications were to be served consecutively, but no other reference was made to consecutive sentences. This court affirmed the 48-year term of incarceration.³

On February 15, 2008, the trial court ordered Norman's return from incarceration so that he could be resentenced with the appropriate postrelease-control notification. It again imposed a term of 48 years' incarceration. We again reversed the trial court's resentencing, this time holding that, under the particular circumstances of Norman's case, the aggravated-robbery and robbery counts involved allied offenses of similar import "because the commission of aggravated robbery necessarily results in the commission of robbery. * * * We point out that resentencing will not necessarily result in a reduction of Norman's aggregate term of imprisonment."⁴ On July 7, 2009, the trial court once again sentenced Norman to 48 years' incarceration. Norman has timely appealed to this court, asserting one assignment of error.

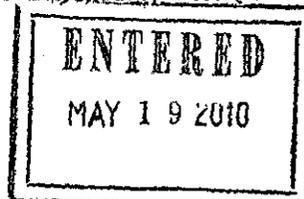
In his single assignment of error, Norman asserts that the trial court erred in sentencing him to an additional 27 years of incarceration. Norman argues that this was improperly the result of vindictiveness prohibited by *North Carolina v. Pearce*.⁵

Norman's argument is the same argument he made in *Norman III*. We overruled his argument in that appeal, specifically noting that "[t]he trial court originally sentenced Norman to 52 years' incarceration. That sentence was vacated.

³ *State v. Norman* (Aug. 30, 2000), 1st Dist. No. C-000052, unreported ("Norman II").

⁴ *State v. Norman* (Dec. 24, 2008), 1st Dist. No. C-080192, unreported ("Norman III").

⁵ (1969), 395 U.S. 711, 89 S.Ct. 2072.



OHIO FIRST DISTRICT COURT OF APPEALS

The court resentenced Norman and he appealed. We upheld the 'forty-eight-year sentence imposed by the trial court for a series of aggravated robberies.' The trial court returned Norman for resentencing and postrelease-control notification, and again imposed a 48-year aggregate sentence."⁶ We then held that *Pearce* was inapplicable because the trial court had not increased Norman's sentence.⁷

Our previous remand in *Norman III* was for the limited purpose of merging Norman's robbery convictions into his aggravated-robbery convictions. The record reveals that the trial court did precisely that. Therefore, we overrule Norman's lone assignment of error and affirm the sentence of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

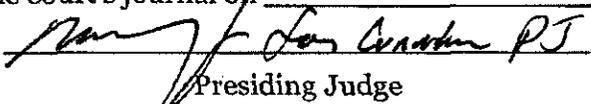
CUNNINGHAM, P.J., HILDEBRANDT and MALLORY, JJ.

To the Clerk:

MAY 19 2010

Enter upon the court's journal on _____

by order of the court


Presiding Judge

⁶ *Norman III*, supra, quoting *Norman II*, supra.
⁷ *Norman III*, supra.

