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## STATEMENT OF THE FACTS

On August 16, 1978 the U.S. Supreme Court in the cases of Lockett v. Ohio, and Bell v. Ohio, supra, ruled that Ohio's Death Penalty was unconstitutional. This Ohio State Supreme Court agreed and Ordered that the death sentences listed on the 'Entry Order' dated August 16, 1978 by the Supreme Court be vacated and a "Life" sentence be imposed. The Entry further Ordered that the Clerk of the Ohio Supreme Court Notify the Clerk's of Court of the Counties named herein, or, listed in this Entry Order.

Appellant was removed from death row and placed into the prisons General Prison population where he has remained ever since. He was never returned back to his sentencing court for a new sentence, nor did he ever receive any notification from any court stating that his sentence was hereby changed.

Following, on July 01, 1981, Ohio's General Assembly Amended Statute R.C. §2967.19 in Am.S.B.1, Sec.3 to read in part; "Any such person shall, upon re-sentencing after the persons sentence of death is vacated, be sentenced to life imprisonment with parole eligibility after serving fifteen years of imprisonment."

However, Appellant was never returned back to the sentencing court for this legislatively and statutorily imposed 15-Life sentence. Nor was Appellant's un-signed, non-final and non-appealable Journal Entry ever modified or changed to

reflect this newly imposed, legislatively and statutorily enacted new sentence. Appellant's Original Journal Entry remained un-changed, un-signed, non-final and non-appealable, a Void Journal Entry Order of Commitment as it still appears to this very day on the Court of Common Pleas Docket Entry in Cuyahoga County, Ohio.

Had this newly enacted, legislatively approved and statutorily imposed 15-Life sentence been given to Appellant, then Appellant's first meaningful parole consideration would have been conducted in 1990, instead of 1995, a full twenty years into his incarceration.

This, in and of itself created a Due Process Rights Violation as well as an Equal Rights Violation under both State and Federal Constitutions by violating the 5th and 14th Amendments to the U.S. Constitution, as well as Section 2, Article I of the Ohio State Constitution.

It is from this un-signed, non-final, non-appealable Void Journal Entry Order of Commitment on file in the sentencing court of Cuyahoga County which has created this foregoing appeal. After thirty-four plus years Appellant still remains incarcerated over this Void, non-final and non-appealable Journal Entry Order of Commitment.

STATEMENT OF THE CASE

On November 25, 1975, Appellant John A. Johnson was indicted by a Cuyahoga County Grand Jury on the counts of: Kidnapping, R.C.§2905.01; Rape, R.C.§2907.02; and, Aggravated Murder, R.C.§2903.01 w/specifications.

Following a Jury trial on March 05, 1976, Appellant was found guilty of the above named counts and was sentenced to death for the aggravated murder w/specifications, and sentenced to seven to twenty-five years for the kidnapping and seven to twenty-five years for the rape, counts to run consecutively according to the last line of the Appellant's un-signed Journal Entry Order of Commitment of May 20, 1976.

Following, on January 22, 2010 in the Court of Appeals, Fourth Appellate District, Hocking County, Ohio Appellant filed for a Writ of Habeas Corpus. The issues presented are identical to those issues presented to this Supreme Court, all dealing with Appellant's Void Judgement Entry Order of Commitment.

On March 10, 2010, the Fourth Appellate District Court issued a Magistrates Order directing the Respondent, Francisco Pineda, Warden of Hocking Correctional Facility to respond to Appellant's Motion within fifteen (15) days of the filing of the entry, which as stated, was March 10, 2010. The Case No. in the Fourth District Court of Appeals was 10CA01.

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However, the State never entered a response to the

Magistrates Order so Appellant Filed his Motion for Summary Judgement with the Court on April 02, 2010. On April 08, 2010 the Assistant Attorney General, Diane Mallory filed a response to Appellant's Motion for Summary Judgement and/or Default Judgement. It should be noted that the State 'never' responded to the Magistrates direct Order placing them (state) in direct Default.

On June 01, 2010 the Fourth District Appellate Court issued it's Decision and Judgement Entry in Appellant's Case No. 10CA01. The Appellate Court denied Appellant's Writ of Habeas Corpus citing reasons of Res Judicata, and then issuing it's Sua Sponte dismissal.

On June 25, 2010 Appellant Filed a Notice of Appeal with this Honorable Ohio Supreme Court due to his case being dismissed by the Fourth District Court of Appeals in Hocking County Ohio. This court issued Appellant a Case No. for his appeal of 10-1116.

Following this filing this Supreme Court informed Appellant on June 30, 2010 by way of regular U.S. Mail that his Appeal, Case No.2010-1116 was originally filed as a discretionary appeal and claimed appeal of right. But upon consideration of Appellant's jurisdictional memorandum, it was determined by the Court that this cause originated in the court of appeals and, therefore, should proceed as an appeal of right pursuant to S.Ct.Prac.R.2.1(A)(1).

It was further ordered by this Court that the Clerk shall issue an order for the transmission of the record from the Court of Appeals for Hocking County, and the parties shall otherwise proceed in accordance with S.Ct.Prac.R.6.2-6.7, signed by Chief Justice Eric Brown.

Appellant is now properly before this Honorable Court on an Appeal of Right and awaits this Court's decision of the foregoing case.

FIRST PROPOSITION OF LAW

APPELLANT'S DUE PROCESS AS GUARANTEED HIM BY THE 5th AND 14th AMENDMENTS TO THE U.S. CONSTITUTION, AS WELL AS SECTION 2 & 10, ARTICLE I OF THE OHIO CONSTITUTION WAS VIOLATED WHEN THE APPELLATE COURT FAILED TO IMPOSE A LEGAL SENTENCE WHICH IS MANDATED BY LAW AND THE CONSTITUTIONS, BOTH STATE AND FEDERAL.

I. VOID JUDGEMENT: The Certified Journal Entry Order of Commitment issued on May 20, 1976 by the Cuyahoga County Court of Common Pleas, and entered on that court's docket entry is an un-signed, non-final and non-appealable Certified Journal Entry Order of Commitment, see (Appdx. 1). Said Journal Entry is Void on it's face and the Commitment imposed by it upon Appellant does not comply with former O.R.C.32(B), hereinafter, Crim.R.32(C), see (Appdx. 2) nor does said Journal Entry comply with R.C.§2505.02, see (Appdx. 3) as to the legal definition of a 'Final Appealable Order.' Appellant's only docketed and Certified Journal Entry Order of Commitment does not set forth the Plea the Verdict or Findings, nor does it contain the Signature of the issuing Judge.

Furthermore, it does not validly dispose of all three (3) offenses charged in the indictment. Without a Valid Final Judgement, which cannot be had "without" a Judges Signature, the verdict or findings, and a valid disposition of all charges, the trial court lacked the necessary power, authority and jurisdiction to make the Order of Commitment of Appellant. See (Appdx.1).

In order for a "Journal Entry" in a criminal case to constitute a Valid Final Judgement upon which a commitment can be ordered, it must contain all the elements of a valid, final order, see R.C.§2505.02 (Appdx.3) and Crim.R.32(C) (Appdx.2).

In addition to the Caption of the Case and a designation that the document is a Judgement or other Entry, Crim.R.32(C) sets forth five (5) requirements that define what constitutes a Valid, Final Judgement and/or Order in a Criminal Case; (1) the plea, (2) the verdict or findings, (3) the sentence, (4) the judges signature, and (5) the clerk's "Filed Stamp", indicating that it was filed and journalized in the case. In re Mitchell, (1994), 93 Ohio St.3d 153; State v. Ginocchio, (1987), 38 Ohio App.3d 105; State v. Breedlove, (1988), 46 Ohio App.3d 178.

The Certified "Journal Entry" filed in Appellant's original criminal case was "never" signed by a judge, does not contain a judges signature, contains only a typewritten name of a judge; see (Appdx.1) and, absent the signature of the judge, makes Appellant's Journal Entry Void, a Nullity and does not constitute a Final, Appealable Order according to R.C.§2505.02 (Appdx.3) and Crim.R.32(C) (Appdx. 2). As such the Appellate Court has violated Section 3(B)(2), Article IV of the Ohio Constitution (Appdx. 4) when it ruled Res Judicata on a clearly apparent non-final and non-appealable order of commitment that Appellant

specifically pointed out and briefed in detail to the Appellate Court.

In addition to a lack of a judges signature, the Certified Journal Entry (Appdx. 1) does not set forth the plea, verdict, or the findings; it sets forth only the name and Statute numbers of the charged offenses, and a retrospective statement "Defendant, on a former day in court, having been found guilty by a jury of," does not make a finding, but only suggests the existence of a verdict, and makes no finding whatsoever by the court. This very type of language was discussed in detail by the Ninth District Court of Appeals in State v. Frazier, (2006), WL 1791016, un-reported; wherein the court stated that such language, when read under the "plain and ordinary language requirement" refers to some un-identified prior findings, but makes no actual finding itself within the very document where it is required by Crim.R.32(C) to be made. The court further stated that in order for a "finding" to comply with the rules, and to constitute a final judgement, it must be a positive, present-tense statement, such as "the court finds."

See also, State v. Sandlin, 2006-Ohio-5021 (4th Dist.), un-reported, where the court identically decided the same issue, and then stated "[t]he trial court's sentencing entry does mention that the appellant 'has been convicted of' tampering with records and forgery, but that's not the same as setting forth the verdict. Strict compliance with

Crim.R.32(C) is required, see State v. Lovelace, (Jan.15, 1999), Hamilton App.No. 970983; State v. Klein, (Dec.04, 1988), Hamilton App.No. 970788. Thus, a trial court must actually specify that a jury "rendered" a verdict.

Ginocchio, supra, said this requirement exists "because only in compliance with Crim.R.32(C) formalities can the court be assured that it is correctly and completely informed of the trial court's Judgement or Order from which the appeal is taken."

The trial court's Certified Journal Entry (Appdx.1) is "File" stamped by the Clerk, but that does not make it valid. The Clerk should not have accepted the document for filing without a Judge having first signed it. See, State ex rel. Drucker v. Reichle, 81 N.E.2d 735 (8th Dist. 1948).

The Certified Journal Entry of the Trial Court (Appdx.1) does not comply with R.C.§2505.02 (Appdx.3) or Crim.R.32(C) (Appdx.2); it is Void and has never created Statutory Appellate jurisdiction. See, Davidson v. Remi, (1986), 115 Ohio App.3d 688, 692, ("if a judgement appealed is not a 'Final Appealable Order', the Appellate Court has no jurisdiction to consider it, and the appeal must be dismissed"; State v. Dickey, (1991), 74 Ohio App.3d 587, (failure to comply with Crim.R.32(C) results in a lack of a Final Appealable Order).

See also, State ex rel. Hansen v. Reed, (1992), 63 Ohio

St.3d 597; State v. Tripodo, (1977), 50 Ohio St.2d 124, (Lack of a final appealable order is defect in Court of Appeals jurisdiction requiring dismissal).

The fact that no Appellate Jurisdiction is created by the Void, Certified "Journal Entry" of the trial court (Appdx.1) not only demonstrates that there is no valid "commitment" filed against Appellant upon which he may be lawfully held, but it also shows beyond argument that the Appellant has no remedy of appeal. Thus, without any remedy of the Appellate process, Appellant has shown a total lack of Due Process afforded to him, as well as his rights to Equal Protection under both Ohio's and the U.S. Constitution. These Constitutional Rights have been totally and completely violated.

The law on Crim.R.32(C) has been well-settled for many years, and has now been reinforced in State v. Baker. In State v. Baker, (2008), 119 Ohio St.3d 197, 893 N.E.2d 163, this very same Ohio Supreme Court (hereinafter Supreme Court) stated in ¶6; A Court of Appeals has no jurisdiction over orders that are not Final and Appealable. Section 3(B)(2), Article IV, Ohio Constitution. (Appdx. 4). See also, R.C.§2953.02. (Appdx. 5) This Supreme Court went on to further determine in this same section of Baker, that the Appellate Court's should apply definitions of 'Final Order' contained in R.C.§2505.02. State v. Muncie, (2001) 91 Ohio St.3d 440, 444, 746 N.E.2d 1092 citing; State ex

rel. Leis v. Kraft, (1984) 10 Ohio St.3d 34, 36, 10 OBR 237, 460 N.E.2d 1372.

This Supreme Court in ¶10 of Baker went on to explain in entering a Final, Appealable Order in a criminal case, the trial court must comply with Crim.R.32(C), which states: "A Judgement of Conviction shall set forth the plea, verdict or findings, and the sentence. If the defendant is found not guilty or for any reason entitled to be discharged, the court shall render judgement accordingly. A judgement is effective only when entered on the journal by the clerk."

Journalization of the judgement of conviction pursuant to Crim.R.32(C) starts the thirty (30) day appellate clock ticking. App.R.4(A); see also, State v. Tripodo, (1977) 50 Ohio St.2d 124, 4 O.O.3d 280, 363 N.E.2d 719.

As is apparent from the aforementioned quote of Baker, in order for a judgement to become effective the trial court shall sign the judgement. A clear reading of Appellant's Certified Journal Entry (Appdx.1) clearly shows a lack of any judges signature or plea. As such, it becomes quite apparent that on it's face, Appellant's Certified Journal Entry Order of Conviction (Appdx.1) is Void, a Nullity, and as such no Appellate Clock has ever begun to start ticking negating Appellant's rights to the appellate process.

Furthermore, the Appellate Court denied Appellant's Appeal by way of Res Judicata. Appellant fully agree's that

"if" Res Judicata could attach somehow to a non-final and non-appealable order, then Appellant's appeal would have to be denied. However, the fact remains that Appellant's Certified Journal Entry Order of Conviction (Appdx.1) remains totally Void, and as such, the Appellate Clock has never begun ticking in the first instance, thus the Appellate Court applying the doctrine of Res Judicata to Appellant's appeal prior to there even being a final, appealable order is a bit premature and should not be allowed, period.

In ¶13 of Baker, this Supreme Court states that the Ninth District has stated that there are five elements that constitute a judgement 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.

Further, in ¶14 this Supreme Court went on to state: "A more logical interpretation of Crim.R.32(C)'s phrase "the plea, verdict or findings, and the sentence" is that a trial court is required to sign and journalize a document memorializing the sentence." Obviously, appellant's Certified Journal Entry (Appdx.1) dated May 20, 1976 contains "no" trial court judges signature, nor a stated plea on it's face.

In ¶17 of Baker, this Supreme Court stated that the Twelfth District's interpretation allowing multiple documents to constitute a Final, Appealable Order is in error. This

Supreme Court went on to say that "Only one document can constitute a Final, Appealable Order."

[Crim.R.32(C)] now requires that a judgement in a criminal case be reduced to writing, signed by the judge and entered by the clerk, State v. Tripodo, supra.

Lastly in ¶18 of Baker, this Supreme Court in it's concurring opinion now holds that a judgement 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 findings 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. Simply stated, a defendant is entitled to appeal an order that sets forth the manner of conviction and the sentence.

Appellant does not want to appear one-sided, so the following is the dissenting opinion of State v. Baker, supra, given by this Court's former Chief Justice Moyer. The former Chief Justice wrote in ¶24: However, we have repeatedly stated that we first look to the plain language of a statute or rule and apply it as "written when it's meaning is unambiguous and definite." Portage Cty. Bd. of Commrs. v. Akron, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶52, citing State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn., (1996) 74 Ohio St.3d 543, 545, 660 N.E.2d 463. Further, we "read [ ] words and phrases in context and constru[e] them in accordance with the rules

of grammar and common usage." State ex rel. Choices for South-Western City Schools v. Anthony, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, at ¶40, citing State ex rel. Rose v. Lorain Cty Bd. of Elections, (2000) 90 Ohio St.3d 229, 231, 736 N.E.2d 886; R.C.1.42.

Following, in ¶28 the former Chief Justice states; "The Ninth District Court of Appeals does not try to complicate Crim.R.32(C) with lengthy analysis interpreting the rule." Rather, the court of appeals lists five elements included in Crim.R.32(C), as they are plainly stated:

- 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.

In State v. Miller, 9th Dist. No. 06CA0046-M, 007-Ohio-1353, 2007 WL 879666, at ¶5. The court of appeals then proceeds in Miller to review the trial court's judgement entry to locate each of the five elements. Finding one of the elements missing, the court of appeals concludes that the entry fails to comply with Crim.R.32(C) and dismisses the appeal for a lack of a final appealable order. Id. at ¶20.

Further, in ¶30 former Chief Justice Moyer states in writing, the Ninth District Court of Appeals has not required

that additional language be included in the judgement of conviction; the court of appeals decision has simply required the five elements required by this court's rule. Justice O'Connor also concurred in the aforementioned opinion of the Former Chief Justice Moyer.

Lastly, in a more recent decision, this Supreme Court reinforced the necessity of a valid final judgement entry in State v. Culgan, (2008) 119 Ohio St.3d 535, 895 N.E.2d 805, decided on September 18, 2008. This Supreme Court stated in the case of Culgan that the Journal Entry in that case was also missing a required element (the Guilty Plea). This Supreme Court ruled that even though Culgan appealed his case, he was entitled to have a valid, judgement rendered, and entitled to appeal such judgement. Obviously, in Culgan's case, unlike Appellant's, the 30 day appellate clock was ticking, and yet Culgan was still given permission to appeal from a non-final, non-appealable order.

#### SECOND PROPOSITION OF LAW

APPELLANT'S DUE PROCESS AND EQUAL PROTECTION AS GUARANTEED HIM BY THE OHIO CONSTITUTION, ARTICLE I, SECTION 10 & 16, AND U.S.C.A. CONSTITUTIONAL AMENDMENTS 5 AND 14 AMONG OTHERS WERE DENIED TO HIM WHEN RES JUDICATA WAS APPLIED IN A MANNER WHICH BORDERS ON A MISCARRIAGE OF JUSTICE WHEN THE APPELLATE COURT FAILED TO VACATE THE VOID SENTENCE AND ORDER THAT A LEGAL SENTENCE BE IMPOSED, WHICH WAS GIVEN BY OHIO LEGISLATOR'S, IMPOSED BY STATUTE, AND MANDATED BY LAW BY BOTH STATE AND FEDERAL CONSTITUTIONS.

II. (A) RES JUDICATA: Appellant's Due Process Rights and his Rights to Equal Protection under the law was completely violated and denied to Appellant when the Fourth Appellate District Court applied Res Judicata in a manner totally inconsistent to the Laws and Constitutions of both Ohio and the United States.

It is a well settled principle of law that a Void Judgement cannot be appealed. Keeping this principle in mind it should be noted that Res Judicata can only be applied to a valid, final appealable judgement; it cannot be applied to a Void Judgement which can never be made Final and/or Appealable. Any imposition of Res Judicata against Appellant would have to fail as the Original Motion to Vacate a Void Judgement and Petition for a Writ of Habeas Corpus in the Fourth Appellate District deals solely with the issue of a non-final and non-appealable judgement.

Keeping this aforementioned thought in mind, Appellant would turn this Court's attention to the topic of successive petitions. The term "successive" is ordinarily used to denote that an applicant repeated similar claims in additional petitions. However, the claim before this Supreme Court is entirely different in that it demonstrates beyond argument that there is no valid, final appealable judgement and/or commitment upon which to hold the Appellant. Further, this new claim is against a different custodial party. See, Quality Ready Mix Inc. v. Mamone, (1988) 35 Ohio St.3d 324,

(a prior judgement will not be afforded Res Judicata effect where the latter preceding to which it is sought to be applied involves different issues and different parties). See also, In re Knight, (1944) 144 Ohio St. 257 20 Ohio Op. 407, (Res Judicata in Habeas Corpus actions apply only to the same questions under the same set of facts).

Moreover, Res Judicata is not to be applied in a manner that encroaches upon fundamental rights, including the right to due process. Bentley v. Grange Mut. Cas. Ins. Co., 119 Ohio App.3d 93, (10th Dist. 1997).

Nor should Res Judicata be applied so rigidly as to defeat the ends of justice or so as to work an injustice. Davis v. Wal-Mart Stores Inc., (2001) 93 Ohio St.3d 488.

Because it is indisputable that the attempted judgement of conviction and commitment on file in the Cuyahoga County Court of Common Pleas does not comply with R.C.§2505.02 (Appdx.3), or Crim.R.32(C) (Appdx.2); does not contain a judges signature, and has never become a Final, Appealable Order giving Appellate Jurisdiction to any court; it goes beyond question that any claims as to Res Judicata, Collateral Estoppel, or Successive Petitions will fail under the context of there being "no" Final, Appealable Order ever conceived in Appellant's case.

However, for arguendo sake, assuming that Appellant's case and order of commitment was a Final Appealable Order by

both Statute and Criminal Rule, then that would mean that the thirty (30) day appellate clock had begun ticking. Appellant would be immediately Time-Barred from bringing these issues up before this court. However...a clear reading of Appellant's only and original Journal Entry Order of Commitment (Appdx.1), on file and docketed with the original sentencing court in Cuyahoga County Ohio clearly shows on it's face that the Order of Commitment is clearly lacking as to any judges signature, and as to any stated plea, thereby making said Entry Order a non-final and non-appealable Order of Commitment by the standards in both R.C.§2505.02 (Appdx.3) and Crim.R.32(C) (Appdx.2).

As such, the Appellate Court's argument as to applying Res Judicata to Appellant's case has to fail as there simply is no final appealable order in which to attach this doctrine of Res Judicata.. No court has "ever" had jurisdiction to render a ruling in this case through any appellate process, certainly not the Appellate Court who has just done so.

Lastly, if the Appellate Court is allowed to deny Appellant's appeal by way of applying Res Judicata, this would suppose that Appellant's Order of Commitment has now been 'somehow' made final and appealable; now complys with R.C.§2505.02 (Appdx.3) and Crim.R.32(C) (Appdx.2) as to the meaning of a final appealable order; and surely invokes the authority listed in State v. Tripodo, supra, as to the 30 day appellate clock starting to tick.

Yet this would be a completely ludicrous statement to make as a clear reading of Appellant's Certified Journal Entry Order of Commitment (Appdx. 1) shows without a doubt that the Journal Entry Order of Commitment is missing elements (judges signature) as well as a stated plea that would comply with Crim.R.32(C) (Appdx.2), and thus comply with R.C. §2505.02 (Appdx.3) making this entry a final appealable order. But there is no such judges signature, nor a stated plea and as such, the thirty (30) day appellate clock has never begun to 'start' ticking in this case, something that Appellant would certainly like to see.

**II. (B) LEGISLATIVE ENACTMENT:** On July 01, 1981 Ohio's Legislators stated in Volume CXXXIX, Legislative Acts-Passed and Joint Resolutions Adopted by the One Hundred and Fourteenth General Assembly of Ohio, Am.S.B.1, (Appdx.6). In this Senate Bill 1, Section 3 it states in part: "The person shall not be eligible for diminution of time that is required to be served before parole eligibility under Section R.C.§2967.19 (Appdx.7) of the Ohio Revised Code. Any such person shall, upon re-sentencing after the person's sentence of death is vacated, be sentenced to Life Imprisonment with parole eligibility after serving fifteen years of imprisonment.

So it is not over-looked, the above cited legislative enactment (Appdx.6) also clearly stated that this 'new law' would be covered by Statute R.C.§2967.19 (Appdx.7) of Ohio's Revised Code.

This clearly shows that a 15-Life sentence was to be imposed upon Appellant "after" Appellant's sentence of death was vacated by the United States Supreme Court in the cases of Lockett v. Ohio, (1978) 438 U.S. 586, and Bell v. Ohio, (1978) 438 U.S. 637, and approved by this very same Supreme Court of Ohio on August 16, 1978, see (Appdx.8).

In the case of State v. Grosse, 2009 WL 3756960 (Ohio App.9th Dist.), 2009-Ohio-5942, in ¶15; Regarding whether Statutes reflect legislative intent the Ohio Supreme Court has explained that, "in construing a statute," "[1]legislative intent is the pre-eminent consideration." State ex rel. Wolfe v. Delaware County Bd. of Elections, 88 Ohio St.3d 182, 184, 724 N.E.2d 771 (2000). To determine legislative intent, the first step is to "review the statutory language [,]...accord[ing] the words used in their normal, or customary meaning." Id. "[W]hen the language of a statute is plain and unambiguous and conveys a clear a definite meaning, there is no need to apply rules of statutory interpretation." State ex rel. Jones v. Conrad, 92 Ohio St.3d 389, 392, 750 N.E.2d 583 (2001). In those situations, this Court's "only task is to give effect to the words used." State v. Elam, 68 Ohio St.3d 585, 587, 629 N.E.2d 442 (1994). "Courts do not have the authority to ignore, in the guise of statutory interpretation, the plain and unambiguous language in a statute." Pike-Delta-York Local Sch. Dist. Bd. of Educ. v. Fulton County Budget Comm'n., 41 Ohio St.2d 147, 156, 324 N.E.2d 566 (1975).

As a final note, quite simply Appellant has "no" Journal Entry Order of Commitment on file in 'any' court in Ohio that can be viewed as a Final, Appealable Order. The Appellate Court's only duty was to recognize that Appellant's Journal Entry is Void, and then rule as the law requires.

Instead, the Appellate Court allowed the State to remain in Default, see (Appdx.9), and then even supplied the argument for the state to use in order to deny Appellant's appeal, ignored Appellant's Certified Void Journal Entry (Appdx.1), applied Res Judicata in a manner that encroaches upon being a miscarriage of justice, and then ruled Sua Sponte to deny Appellant's petition when it is clear that "no" Appellate jurisdiction exists to do so.

Appellant's Original Certified Journal Entry Order of Commitment, on file and docketed in the Original Court of Jurisdiction is a Void Judgement entry on it's face, in total opposition to R.C.§2505.02 (Appdx. 3) and Crim.R.32(C) (Appdx. 2). The U.S. Supreme Court's ruling in August 1978 vacating Ohio's Death Penalty makes Appellant's Certified Journal Entry Order of Commitment Void, and finally, Ohio's Legislator's amending and passing into law Am.S.B.1 on July 01, 1981, Section 3, and using this same amendment to change R.C.§2967.19 (Appdx.7) to read the same totally negates and makes Appellant's 'only' Certified and Journalized Entry Order of Commitment on file "anywhere" completely illegal, a ~~totally non-final, non-appealable Void Judgement Entry of~~ Sentence.

This Supreme Court cannot possibly allow this type of travesty to go on unchecked within it's borders and jurisdiction. To do so would make a mockery out of both State laws and State Constitutions, as well as the applicable and comparable Federal Laws and Constitutions.

**CONCLUSION**

This case raises substantial Constitutional questions, involves a felony and is one of public or great general interest. Review should be granted in this case.

  
Signature

JOHN A. JOHNSON, A145-213  
Name & Number

HOCKING CORRECTIONAL FACILITY  
Institution

16759 SNAKE HOLLOW ROAD  
Address

NELSONVILLE, OHIO 45764  
City, State & Zip

APPELLANT - PRO SE

**CERTIFICATE OF SERVICE**

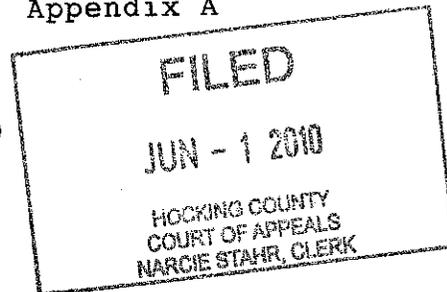
I hereby Certify that a true copy of the foregoing Merit Brief of Appellant John A. Johnson, has been served by U.S. mail postage pre-paid to Diane Mallory, Prosecuting Attorney 150 East Gay Street, Columbus, Ohio 43215-3130, this 15<sup>th</sup> day of July, 2010.

  
Signature

JOHN A. JOHNSON, A145-213  
Name & Number

APPELLANT - PRO SE

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



State ex rel. John A. Johnson,	:	Case No. 10CA1
	:	
Petitioner,	:	<b><u>DECISION AND</u></b>
	:	<b><u>JUDGMENT ENTRY</u></b>
v.	:	
	:	
Francisco Pineda, Warden,	:	
	:	
Respondent.	:	

APPEARANCES:

John A. Johnson, Hocking Correctional Facility, Petitioner.

Richard Cordray, Ohio Attorney General, and Diane Mallory, Assistant Attorney General, Columbus, Ohio, for Respondent.

McFarland, P.J.:

Petitioner, John A. Johnson, has filed a petition for a writ of habeas corpus to compel respondent, Hocking Correctional Facility Warden Francisco Pineda, to release him from prison. Johnson argues that his convictions for rape and kidnapping are void because the trial court did not comply with Crim.R. 32. He also argues that his conviction for aggravated murder is invalid because the judgment is not signed or file-stamped. Because res judicata bars Johnson's successive habeas corpus petition, the writ of habeas corpus is **DENIED** and the petition is sua sponte **DISMISSED**.

In 1975, a Cuyahoga County grand jury indicted appellant on one count each of kidnapping, rape, and aggravated murder. The aggravated murder charge included a death penalty specification. A jury found appellant guilty of all counts and the trial court

sentenced him to an indefinite prison term for the kidnapping and rape convictions and imposed the death penalty for the aggravated murder charge. Appellant's convictions were affirmed on appeal. *State v. Johnson* (Jan. 30, 1978), Cuyahoga App. No. 36618, 1978 WL 217677. The Supreme Court of Ohio, however, modified appellant's death sentence and reduced it to life imprisonment.

In 1998, Johnson filed a petition in the Court of Appeals for Richland County for a writ of habeas corpus to compel his release from prison because he had never been returned to the common pleas court for resentencing pursuant to Crim.R. 32 and 43 after his death sentence had been modified. The court of appeals dismissed Johnson's petition, and on appeal, the Supreme Court affirmed. *Johnson v. Mitchell* (1999), 85 Ohio St.3d 123, 1999-Ohio-441.

In 2007, Johnson filed a second petition for a writ of a habeas corpus in the Court of Appeals for Richland County. Johnson argued that he was entitled to the writ because both his 1976 sentencing entry and the Supreme Court's 1978 entry modifying his death sentence to life imprisonment were void for several reasons, including that the sentencing entry did not comply with Crim.R. 32. The court of appeals dismissed Johnson's petition, and on appeal the Supreme Court affirmed, holding that Johnson was barred by res judicata from filing a successive habeas corpus petition. *State ex rel. Johnson v. Hudson*, 118 Ohio St.3d 308, 2008-Ohio-2451.

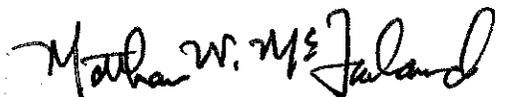
As we noted earlier, Johnson has raised the same claims in his most recent petition that he did in 2007. Res judicata, however, bars a petitioner from filing successive habeas corpus petitions. *State ex rel. Childs v. Lazaroff*, 90 Ohio St.3d 519, 520, 2001-Ohio-9. See, also, *State ex rel. Tarr v. Williams*, 112 Ohio St.3d 51, 2006-

Ohio-6368, at ¶4. As such, Johnson's claims are forever barred.

**CASE DISMISSED. COSTS TO PETITIONER. ANY PENDING MOTIONS ARE DENIED AS MOOT. IT IS SO ORDERED.**

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

FOR THE COURT



Matthew W. McFarland  
Presiding Judge

**NOTICE**

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.



**NOTICE OF APPEAL OF APPELLANT JOHN A. JOHNSON**

Appellant Johnson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hocking County Court of Appeals, 4th Appellate District, entered in Court of Appeals Case No. 10CA1 on 06-01-2010, \_\_\_\_\_.

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

  
SIGNATURE

JOHN A. JOHNSON, A145-213  
NAME AND NUMBER

HOCKING CORRECTIONAL FACILITY  
INSTITUTION

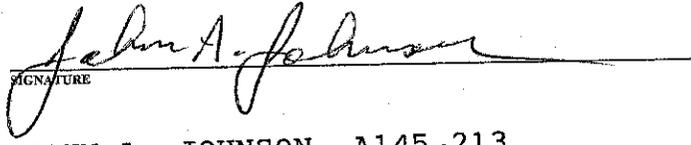
16759 SNAKE HOLLOW ROAD  
ADDRESS

NELSONVILLE, OHIO 45764  
CITY, STATE & ZIP

**DEFENDANT-APPELLANT, PRO SE**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular  
by regular U.S. Mail to DIANE MALLORY, Prosecuting Attorney  
150 EAST GAY STREET COLUMBUS, OHIO 43215-3130 on  
JUNE 20, 2010.

  
SIGNATURE

JOHN A. JOHNSON, A145-213  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

May 20, 1976

INDICTMENT

Murder with specifications

JOURNAL ENTRY

Now comes the Prosecuting Attorney on behalf of the State and defendant, John A. Johnson was brought into Court, represented by counsel.

Defendant, on a former day of Court, having been found guilty by a Jury of Kidnapping, RC. 2905.01, first count, Guilty of Rape, RC. 2907.02, second count, and Guilty of Aggravated Murder, RC. 2903.01, with Specifications #1, and #2, guilty of Aggravated Murder during a Kidnapping and during a Rape, as charged in the third count of the indictment, was this day inquired of if he had anything to say why judgment should not be pronounced against him and he having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced.

It is therefore, ordered and adjudged by the Court that you, John A. Johnson, be taken from the bar of this Court to the Jail of this County, thence within thirty (30) days by the Sheriff of this County be taken to the Chillicothe Correctional Institution, Chillicothe, Ohio, and that the said Sheriff there deliver you to the Warden of the Southern Ohio Correctional Facility, Lucasville, Ohio, and that you be kept in the said Southern Ohio Correctional Facility, and that on the 20th day of November, 1976, before the hour of Sunrise of said day, and in accordance with law and within the walls of said Southern Ohio Correctional Facility at Lucasville, Ohio, the Warden or Deputy Warden of said Southern Ohio Correctional Facility, shall cause a current of electricity to pass through your body and that the application of such current of electricity be continued until you, John A. Johnson are dead pursuant to the third count of the indictment, RC. 2903.01, according to law. It is further ordered by the Court that John A. Johnson be imprisoned and confined for a period of seven (7) to twenty-five (25) years, as to the first count, RC. 2905.01, and for a period of seven (7) to twenty-five years, as to the second count of the indictment, RC. 2907.02, all according to law. Counts to run consecutive.

Transcript ordered at State's expense.

Francis E. Sweeney, Judge

RECEIVED COURT CLERK

MAY 23 1976

APPENDIX 1

SHERIFF RETURN 6-3-76

RALPH C. KREISER

SWEERS #297, Keith #301

Stamp area containing text: 'RECEIVED COURT CLERK', 'MAY 23 1976', and 'SHERIFF RETURN 6-3-76'. Includes a signature and handwritten notes.

## Crim. R. Rule 32

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Criminal Procedure  
Crim R 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 also shall 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, 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.

(Adopted eff. 7-1-73; amended eff. 7-1-92, 7-1-98, 7-1-04)

## R.C. § 2505.02

Baldwin's Ohio Revised Code Annotated Currentness  
 Title XXV. Courts--Appellate  
 Chapter 2505. Procedure on Appeal (Refs & Annos)  
 Final Order  
 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.

R.C. § 2505.02

Baldwin's Ohio Revised Code Annotated Currentness  
 Title XXV. Courts--Appellate  
 Chapter 2505. Procedure on Appeal (Refs & Annos)  
 Final Order  
 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, 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, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code 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, 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.

(2007 S 7, eff. 10-10-07; 2004 H 516, eff. 12-30-04; 2004 S 80, eff. 4-7-05; 2004 S 187, eff. 9-13-04; 2004 H 292, eff. 9-2-04; 2004 H 342, eff. 9-1-04; 1998 H 394, eff. 7-22-98; 1986 H 412, eff. 3-17-87; 1953 H 1; GC 12223-2)

OH Const. Art. IV, § 3

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Article IV. Judicial (Refs & Annos)

**O Const IV Sec. 3 Organization and jurisdiction of courts of appeals**

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition; Jo
- (e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2 (B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

CREDIT(S)

(1994 HJR 15, am. eff. 1-1-95; 132 v HJR 42, adopted eff. 5-7-68)

R.C. § 2953.02

Baldwin's Ohio Revised Code Annotated Currentness

Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)

Chapter 2953. Appeals; Other Postconviction Remedies

General Provisions

**2953.02 Review of judgments and final orders**

In a capital case in which a sentence of death is imposed for an offense committed before January 1, 1995, and in any other criminal case, including a conviction for the violation of an ordinance of a municipal corporation, the judgment or final order of a court of record inferior to the court of appeals may be reviewed in the court of appeals. A final order of an administrative officer or agency may be reviewed in the court of common pleas. A judgment or final order of the court of appeals involving a question arising under the Constitution of the United States or of this state may be appealed to the supreme court as a matter of right. This right of appeal from judgments and final orders of the court of appeals shall extend to cases in which a sentence of death is imposed for an offense committed before January 1, 1995, and in which the death penalty has been affirmed, felony cases in which the supreme court has directed the court of appeals to certify its record, and in all other criminal cases of public or general interest wherein the supreme court has granted a motion to certify the record of the court of appeals. In a capital case in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the judgment or final order may be appealed from the trial court directly to the supreme court as a matter of right. The supreme court in criminal cases shall not be required to determine as to the weight of the evidence, except that, in cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, and in which the question of the weight of the evidence to support the judgment has been raised on appeal, the supreme court shall determine as to the weight of the evidence to support the judgment and shall determine as to the weight of the evidence to support the sentence of death as provided in section 2929.05 of the Revised Code.

CREDIT(S)

(1995 S 4, eff. 9-21-95; 1981 S 1, eff. 10-19-81; 1970 S 530; 128 v 141; 1953 H 1; GC 13459-1)

R.C. § 2953.02, OH ST § 2953.02

Current through 1995 File 49 of the 121st GA (1995-1996) apv. 8/10/95

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THE STATE OF OHIO

VOLUME CXXXIX

# LEGISLATIVE ACTS

PASSED

AND

# JOINT RESOLUTIONS

ADOPTED

BY THE

ONE HUNDRED AND FOURTEENTH GENERAL ASSEMBLY  
OF OHIO

AT ITS REGULAR SESSION

JANUARY 5, 1981 TO DECEMBER 31, 1982 INCLUSIVE

Compiled by Anthony J. Celebrezze, Jr.  
Secretary of State

Published by SHERROD BROWN  
Secretary of State, 1985

# AN ACT

To amend sections 2313.37, 2903.01, 2929.02, 2929.03, 2929.04, 2929.41, 2941.14, 2945.06, 2945.21, 2945.24, 2945.25, 2953.02, 2967.13, 2967.19, 2967.26, and 2967.27, to enact sections 2929.021, 2929.022, 2929.023, 2929.024, 2929.05, 2929.06, 2945.18, and 2945.19, and to repeal section 2945.22 of the Revised Code to require the sentencing authority in a capital case to consider all circumstances that mitigate against the imposition of the death penalty and to weigh them against the aggravating circumstances the offender was found guilty of committing, to provide for sentencing in some capital cases by the trial jury and judge, to require the supreme court to be notified by the trial court when a person is charged with aggravated murder with a specification of an aggravating circumstance, to provide for a special review by courts of appeals and the supreme court of all sentences of death, to modify certain aggravating circumstances for which death could be imposed in murder cases and to establish the aggravating circumstance that the victim of the aggravated murder was a witness to an offense who was killed in anticipation of or in retaliation for his testimony in a criminal proceeding, to prohibit the imposition of the

death penalty upon offenders who were not eighteen years of age or older at the time of the commission of the offense, to provide a special procedure for jury selection in capital cases, to revise the challenge for cause specifically allowed for capital cases in relation to jury selection, to provide additional peremptory challenges in capital cases, to revise the requirements for determining parole eligibility for consecutive sentences when one of the sentences is life imprisonment, to revise the provisions for time off for good behavior for sentences of life imprisonment, and to permit a defendant in certain cases to have the existence of an aggravating circumstance determined at the sentencing hearing.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2313.37, 2903.01, 2929.02, 2929.03, 2929.04, 2929.41, 2941.14, 2945.06, 2945.21, 2945.24, 2945.25, 2953.02, 2967.18, 2967.19, 2967.26, and 2967.27 be amended and sections 2929.021, 2929.022, 2929.023, 2929.024, 2929.05, 2929.06, 2945.18, and 2945.19 of the Revised Code be enacted to read as follows:

Sec. 2313.37. (A) In the trial in the court of common pleas of any CIVIL case ~~civil or criminal~~, when it appears to the judge presiding that the trial is likely to be protracted, upon direction of the judge after the jury has been impaneled and sworn, an additional or alternate juror shall be selected in the same manner as the regular jurors in ~~and~~ THE case were selected, but each party is entitled to two peremptory challenges as to ~~each~~ THE alternate juror. ~~Such~~

(B) IN ALL CRIMINAL CASES, THE SELECTION OF ALTERNATE JURORS SHALL BE MADE PURSUANT TO CRIMINAL RULE 24.

(C) THE additional or alternate ~~juror~~ JURORS SELECTED shall be sworn and seated near the ~~jury~~ REGULAR JURORS, with equal opportunity for seeing and hearing the proceedings and shall attend at all times upon the trial with the ~~jury~~ REGULAR JURORS and shall obey all orders and

admonitions of the court to the jury, and when the REGULAR jurors are ordered kept together in a criminal case, ~~and~~ THE alternate ~~juror~~ JURORS shall be kept with them. ~~Such~~ THE additional or alternate ~~juror~~ JURORS shall be liable as a regular ~~juror~~ JURORS for failure to attend the trial or to obey any order or admonition of the court to the jury, shall receive the same compensation as other jurors, and except as provided in this section shall be discharged upon the final submission of the case to the jury.

(D) If before the final submission of the case to the jury, WHICH IN CAPITAL CASES INCLUDES ANY HEARING REQUIRED UNDER DIVISION (D) OF SECTION 2929.03 OF THE REVISED CODE, a REGULAR juror becomes UNABLE TO PERFORM HIS DUTIES, incapacitated, or disqualified, he may be discharged by the judge, in which case, or if a REGULAR juror dies, upon the order of the judge, ~~and~~ AN additional or alternate juror, IN THE ORDER IN WHICH CALLED, shall become one of the jury and serve in all respects as though selected as an original juror.

Sec. 2903.01. (A) No person shall purposely, and with prior calculation and design, cause the death of another.

(B) No person shall purposely cause the death of another while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated burglary or burglary, or escape.

(C) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

(D) NO PERSON SHALL BE CONVICTED OF AGGRAVATED MURDER UNLESS HE IS SPECIFICALLY FOUND TO HAVE INTENDED TO CAUSE THE DEATH OF ANOTHER. IN NO CASE SHALL A JURY IN AN AGGRAVATED MURDER CASE BE INSTRUCTED IN SUCH A MANNER THAT IT MAY BELIEVE THAT A PERSON WHO COMMITTS OR ATTEMPTS TO COMMIT ANY OFFENSE LISTED IN DIVISION (B) OF THIS SECTION IS TO BE CONCLUSIVELY INFERRED, BECAUSE HE ENGAGED IN A COMMON DESIGN WITH OTHERS TO COMMIT THE OFFENSE BY FORCE AND VIOLENCE OR BECAUSE THE OFFENSE AND THE MANNER OF ITS COMMISSION WOULD BE LIKELY TO PRODUCE DEATH, TO HAVE INTENDED TO CAUSE THE DEATH OF ANY PERSON WHO IS KILLED DURING THE COMMISSION OF, ATTEMPT TO COMMIT, OR FLIGHT FROM THE COMMISSION OF OR ATTEMPT TO COMMIT, THE OFFENSE. IF A JURY IN AN AGGRA-

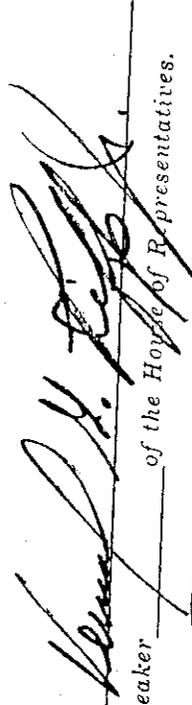
(D) Furloughs may be granted only upon the written approval of the director of the department of rehabilitation and correction or if the director deems it appropriate, by the assistant director of the department of rehabilitation and correction, or the chief of the division of parole and community services within the department of rehabilitation and correction.

(E) Furloughs granted pursuant to this section shall be for a period no longer than is reasonably necessary to accomplish the purposes of this section, but in no event shall such furlough extend beyond seven days, nor shall the total furlough time granted to any inmate within any calendar year exceed fourteen days except furloughs granted under divisions (A)(3) and (A)(4) of this section.

(F) A prisoner who violates any rule ~~or regulation~~ established by the department of rehabilitation and correction under this section may be returned to the state penal, reformatory, or other facility from which he was furloughed, but such violation does not constitute cause for denial of credit toward completion of his sentence of the time the prisoner was on furlough.

SECTION 2. That existing sections 2313.37, 2903.01, 2929.02, 2929.03, 2929.04, 2929.41, 2941.14, 2945.06, 2945.21, 2945.24, 2945.25, 2953.02, 2967.13, 2967.19, 2967.26, and 2967.27, and section 2945.22 of the Revised Code are hereby repealed.

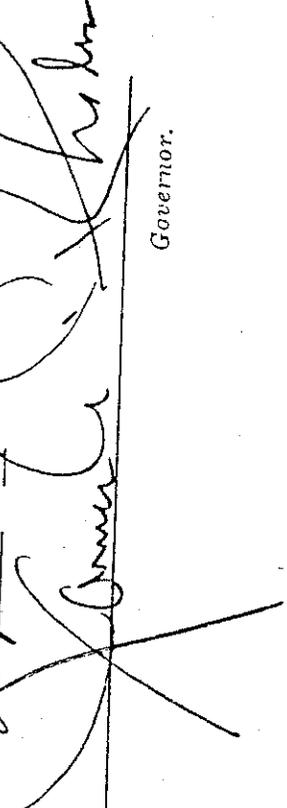
SECTION 3. Any person who is charged with aggravated murder and who is alleged to have committed the aggravated murder prior to the effective date of this act shall, upon conviction, and regardless of any charge or conviction of a specification of an aggravating circumstance, be sentenced to life imprisonment with parole eligibility after serving fifteen full years of imprisonment. The person shall not be eligible for dimission of the time that is required to be served before parole eligibility under section 2967.19 of the Revised Code. Any such person shall, upon resentencing after the person's sentence of death is vacated, be sentenced to life imprisonment with parole eligibility after serving fifteen years of imprisonment.

  
Speaker \_\_\_\_\_ of the House of Representatives.

  
President \_\_\_\_\_ of the Senate.

Passed July 1, 1981

Approved July 19, 1981

  
Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

(Substitute Senate Bill No. 4)

*David A. Johnston*

Director, Legislative Service Commission.

# AN ACT

Filed in the office of the Secretary of State at Columbus, Ohio, on the 20th day of July, A. D. 1981.

*Anthony J. Celley*

Secretary of State.

File No. 60

Effective Date October 19, 1981

To amend sections 4729.02, 4729.51, 4729.54, 4729.55, 4729.57, 4729.60, and 4729.99 of the Revised Code to change provisions governing the licensure of terminal distributors of dangerous drugs, and to specify that some professional associations and partnerships of licensed physicians and surgeons, dentists, or veterinarians are practitioners for purposes of Dangerous Drugs Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4729.02, 4729.51, 4729.54, 4729.55, 4729.57, 4729.60, and 4729.99 of the Revised Code be amended to read as follows:

Sec. 4729.02. As used in ~~Chapter 4729.~~ of the Revised Code THIS CHAPTER:

(A) "Pharmacy" means any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs, or poisons are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public.

(B) To "practice pharmacy" means to compound or dispense drugs, dangerous drugs, and poisons.

(C) "Drug" means:

(1) Any article recognized in the official United States pharmacopeia, or official national formulary, or any supplement to either of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

**R.C. §2967.19**

Baldwin's Ohio Revised Code Annotations  
Title XXIX. Crimes--Procedure (Refs & Annos)  
Chapter 2967. Pardon; Parole; Probation (Refs & Annos)  
2967.19 Deduction from sentence for faithful observance of rules; procedures--Repealed

(1995 S 2, eff. 7-1-96; 1994 H 571, eff. 10-6-94; 1992 H 725, eff. 4-16-93; 1990 S 258; 1987 H 261; 1983 S 210; 1982 H 269, § 4, S 199; 1981 S 1; 1972 H 511; 130 v Pt 2, H 28)

**UNCODIFIED LAW**

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[2967.19], as amended by [1982 S 199],... shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

1981 S 1, § 3, eff. 10-19-81, reads: Any person who is charged with aggravated murder and who is alleged to have committed the aggravated murder prior to the effective date of this act shall, upon conviction, and regardless of any charge or conviction of a specification of an aggravating circumstance, be sentenced to life imprisonment with parole eligibility after serving fifteen full years of imprisonment. The person shall not be eligible for diminution of the time that is required to be served before parole eligibility under section 2967.19 of the Revised Code. Any such person shall, upon resentencing after the person's sentence of death is vacated, be sentenced to life imprisonment with parole eligibility after serving fifteen years of imprisonment.

Fax Note	7871
216-443-7545	
216-443-3613	

Date	10/22/98	# of pages	2
From	Lori Robison		
Co.			
Phone #	614-466-0671		
Fax #			

# The Supreme Court of Ohio

1978 TERM

To wit: August 16, 1978

The State of Ohio,  
City of Columbus

**E N T R Y**

The Court coming now to consider the judgment of the Supreme Court of the United States in the cases of Lockett v. Ohio and Bell v. Ohio, and in conformity with the mandates issued on the basis thereof, hereby orders that the judgments in the cases set forth hereinafter, affirming the death sentence of each of the defendants named therein, are hereby modified and the death sentence of each of such defendants is reduced to life imprisonment.

It is further ordered that the Clerk of this Court issue a certified copy of this entry to the Superintendent of the Southern Ohio Correction Facility who shall acknowledge receipt thereof, and to the Clerks of the Courts of Common Pleas of the Counties named herein.

C. WILLIAM O'NEILL  
CHIEF JUSTICE

<u>Case No.</u>		<u>County</u>
75-149	State of Ohio v. Carl L. Bayless	Summit
75-460	State of Ohio v. Roger L. Strodes	Clark
75-843	State of Ohio v. John William Harris	Franklin
75-975	State of Ohio v. James J. Royster	Franklin
75-1070	State of Ohio v. Taylor Hancock	Franklin
76-38	State of Ohio v. Floyd Edwards	Summit
76-137	State of Ohio v. Ricardo L. Woods	Hamilton
76-143	State of Ohio v. Robert P. Lytle	Greene
76-155	State of Ohio v. Roland A. Reaves	Hamilton
76-219	State of Ohio v. Jesse Black	Richland

76-1072	State of Ohio v. George Washington Miller	Clark
76-1128	State of Ohio v. James Kenneth Weind	Franklin
76-1250	State of Ohio v. Robert Williams	Cuyahoga
77-75	State of Ohio v. Charles Edward Downs	Fairfield
77-127	State of Ohio v. Ellis Shelton	Hamilton
77-147	State of Ohio v. Jerry Jackson	Hamilton
77-219	State of Ohio v. James W. Cooper, Jr.	Lake
77-296	State of Ohio v. Kenneth Ray Barker	Greene
77-493	State of Ohio v. Eugene L. Adams	Franklin
77-693	State of Ohio v. Carl Faulkner	Ashtabula
77-715	State of Ohio v. James T. Curtis	Hamilton
77-716	State of Ohio v. Pompie Junior Wade	Trumbull
77-821	State of Ohio v. William V. Nabozny	Licking
77-834	State of Ohio v. Larry Kaiser	Cuyahoga
77-955	State of Ohio v. Wayne L. House	Knox
77-975	State of Ohio v. Ronnie Bridgeman	Cuyahoga
77-1095	State of Ohio v. Mark Anthony Davis	Franklin
77-1125	State of Ohio v. Robert Melchior	Montgomery
77-1127	State of Ohio v. Larry Kaiser	Cuyahoga
77-1388	State of Ohio v. Richard Keith Cornely	Marion
77-1483	State of Ohio v. Charles D. Cotton	Richland
78-8	State of Ohio v. Willie Johnson	Hamilton
78-43	State of Ohio v. Willie Jones	Ashtabula
78-423	State of Ohio v. Paul W. McNeely	Holmes
78-488	State of Ohio v. John Scott Garside	Licking
78-510	State of Ohio v. John Johnson	Cuyahoga
78-537	State of Ohio v. James Lockett	

8-510	State of Ohio v. John Johnson	Cuyahoga
8-537	State of Ohio v. James Lockett	Summit
8-598	State of Ohio v. Dwain L. Farrow	Cuyahoga
8-806	State of Ohio v. Paul Tompkins	Cuyahoga
8-809	State of Ohio v. Ricky Lee Crawford	Seneca
8-850	State of Ohio v. Gary Lamar James	Franklin
8-933	State of Ohio v. Dallas C. Stuckey	Cuyahoga
8-948	State of Ohio v. John Ingram	Mahoning
8-951	State of Ohio v. George Douglas Harris	Summit
8-990	State of Ohio v. Duran Harris	Cuyahoga

THE STATE OF OHIO }  
 Cuyahoga County } ss I, GERALD E. FUERST, CLERK OF  
 THE COURT OF COMMON PLEAS  
 WITHIN AND FOR SAID COUNTY,  
 HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
 TAKEN AND COPIED FROM THE ORIGINAL Criminal  
Journal Entry  
 NOW ON FILE IN MY OFFICE.  
 WITNESS MY HAND AND SEAL OF SAID COURT THIS 22nd  
 DAY OF October A.D. 1998.  
 GERALD E. FUERST, Clerk  
 By Rosemary Shroyer Deputy

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

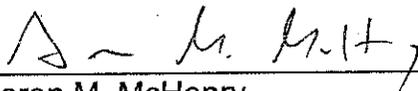
**FILED**  
MAR 10 2010  
HOCKING COUNTY  
COURT OF APPEALS  
NARCIE STAHR, CLERK

John A. Johnson, : Case No. 10CA1  
Petitioner, : **MAGISTRATE'S ORDER**  
v. :  
Francisco Pineda, Warden, :  
Respondent. :

Petitioner, John A. Johnson, has filed a petition for a writ of habeas corpus to compel respondent, Hocking Correctional Facility Warden Francisco Pineda, to release him from prison. In accordance with Loc.R. 16(D), respondent is **ORDERED** to either file an answer or a motion to dismiss within 15 days of the filing of this entry.

The clerk is **ORDERED** to serve by ordinary mail a copy of this order to all counsel of record and to all unrepresented parties at their last known addresses. **IT IS SO ORDERED.**

**FOR THE COURT**

  
\_\_\_\_\_  
Aaron M. McHenry  
Magistrate

OH Const. Art. I, § 2

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Article I. Bill of Rights (Refs & Annos)

**O Const I Sec. 2 Equal protection and benefit**

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

UNCODIFIED LAW

OH Const. Art. I, § 10

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Article I. Bill of Rights (Refs & Annos)

**O Const I Sec. 10 Rights of criminal defendants**

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

CREDIT(S)

(1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851)

**OH Const. Art. I, § 16**

Baldwin's Ohio Revised Code Annotated Currentness  
Constitution of the State of Ohio  
Article I. Bill of Rights (Refs & Annos)  
O Const I Sec. 16 Redress for injury; due process

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851)

**U.S.C.A. Const. Amend. V**

United States Code Annotated Currentness  
Constitution of the United States  
Annotated

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property (Refs & Annos)

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S.C.A. Const. Amend. XIV**

United States Code Annotated Currentness

Constitution of the United States

Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## R.C. § 2903.01

Baldwin's Ohio Revised Code Annotated Currentness  
Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)  
Chapter 2903. Homicide and Assault  
Homicide  
2903.01 Aggravated murder; specific intent to cause death

- (A) No person shall purposely, and with prior calculation and design, cause the death of another.
- (B) No person shall purposely cause the death of another while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson or arson, aggravated robbery or robbery, aggravated burglary or burglary, or escape.
- (C) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.
- (D) No person shall be convicted of aggravated murder unless he is specifically found to have intended to cause the death of another. In no case shall a jury in an aggravated murder case be instructed in such a manner that it may believe that a person who commits or attempts to commit any offense listed in division (B) of this section is to be conclusively inferred, because he engaged in a common design with others to commit the offense by force and violence or because the offense and the manner of its commission would be likely to produce death, to have intended to cause the death of any person who is killed during the commission of, attempt to commit, or flight from the commission of or attempt to commit, the offense. If a jury in an aggravated murder case is instructed that a person who commits or attempts to commit any offense listed in division (B) of this section may be inferred, because he engaged in a common design with others to commit the offense by force or violence or because the offense and the manner of its commission would be likely to produce death, to have intended to cause the death of any person who is killed during the commission of, attempt to commit, or flight from the commission of or attempt to commit the offense, the jury also shall be instructed that the inference is nonconclusive, that the inference may be considered in determining intent, that it is to consider all evidence introduced by the prosecution to indicate the person's intent and by the person to indicate his lack of intent in determining whether the person specifically intended to cause the death of the person killed, and that the prosecution must prove the specific intent of the person to have caused the death by proof beyond a reasonable doubt.

(1981 S 1, eff. 10-19-81; 1972 H 511)  
R.C. § 2903.01, OH ST § 2903.01  
Current through 1995 File 49 of the 121st GA (1995-1996) apv. 8/10/95  
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**R.C. § 2905.01**

Baldwin's Ohio Revised Code Annotated Currentness  
Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Annos)  
Chapter 2905. Kidnapping and Extortion  
Kidnapping and Related Offenses  
2905.01 Kidnapping

(A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where he is found or restrain him of his liberty, for any of the following purposes:

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against his will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

(B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances which create a substantial risk of serious physical harm to the victim:

- (1) Remove another from the place where he is found;
- (2) Restrain another of his liberty;
- (3) Hold another in a condition of involuntary servitude.

(C) Whoever violates this section is guilty of kidnapping, an aggravated felony of the first degree. If the offender releases the victim in a safe place unharmed, kidnapping is an aggravated felony of the second degree.

(1982 H 269, § 4, eff. 7-1-83; 1982 S 199; 1972 H 511)  
R.C. § 2905.01, OH ST § 2905.01

Current through 1995 File 49 of the 121st GA (1995-1996) apv. 8/10/95  
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## R.C. § 2907.02

Baldwin's Ohio Revised Code Annotated Currentness

Appendix to Title XXIX Crimes--Procedure (Law Effective Prior to July 1, 1996) (Refs & Amos)

Chapter 2907. Sex Offenses

Sexual Assaults

2907.02 Rape; evidence; marriage or cohabitation not defenses to rape charges

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug or intoxicant to the other person, surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, an aggravated felony of the first degree. If the offender under division (A)(1)(b) of this section purposely compels the victim to submit by force or threat of force, whoever violates division (A)(1)(b) of this section shall be imprisoned for life.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant

in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

(1993 S 31, eff. 9-27-93; 1985 H 475; 1982 H 269, § 4, S 199; 1975 S 144; 1972 H 511)

R.C. § 2907.02, OH ST § 2907.02

App. R. Rule 4

Baldwin's Ohio Revised Code Annotated Currentness

Rules of Appellate Procedure

Title II. Appeals from Judgments and Orders of Court of Record

**App R 4 Appeal as of right--when taken**

**(A) Time for appeal**

A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

S. Ct. Prac. R. Rule 2.1

Baldwin's Ohio Revised Code Annotated Currentness

Rules of Practice of the Supreme Court of Ohio (Refs & Annos)

Section 2 Institution of Appeals; Notice of Appeal

**S.Ct. Prac. R. 2.1. Types of appeals**

**(A) Appeals from courts of appeals**

- (1) Appeals of right. An appeal of a case in which the death penalty has been affirmed for an offense committed prior to January 1, 1995, an appeal from the decision of a court of appeals under App. R. 26(B) in a capital case, or a case that originated in the court of appeals invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct. Prac. R. 6.1 through 6.8.

S. Ct. Prac. R. Rule 6.2

Baldwin's Ohio Revised Code Annotated Currentness

Rules of Practice of the Supreme Court of Ohio (Refs & Annos)

Section 6 Briefs on the Merits in Appeals

**S.Ct. Prac. R. 6.2. Appellant's brief**

*[See Appendix D following these rules for a sample brief.]*

**(A) Time to file**

(1) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within twenty days from the date the Clerk of the Supreme Court files the record from the court of appeals.

(2) In every other appeal, the appellant shall file a merit brief within forty days from the date the Clerk files the record from the court of appeals or the administrative agency. In any case, the appellant shall not file a merit brief prior to the filing of the record by the Clerk.

**(B) Contents**

The appellant's brief shall contain all of the following:

(1) A table of contents listing the table of authorities cited, the statement of facts, the argument with proposition or propositions of law, and the appendix, with references to the pages of the brief where each appears.

(2) A table of the authorities cited, listing the citations for all cases or other authorities, arranged alphabetically; constitutional provisions; statutes; ordinances; and administrative rules or regulations upon which appellant relies, with references to the pages of the brief where each citation appears.

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S.Ct. Prac. R. 7.1 through 7.2.

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if appellant prevails. If several propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading.

(5) An appendix, numbered separately from the body of the brief, containing copies of all of the following:

(a) The date-stamped notice of appeal to the Supreme Court, the notice of certified conflict, or the federal court certification order, whichever is applicable;

(b) The judgment or order from which the appeal is taken;

(c) The opinion, if any, relating to the judgment or order being appealed;

(d) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;

(e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which appellant relies;

(f) Any constitutional provision, statute, or ordinance upon which appellant relies, to be construed, or otherwise involved in the case;

(g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

**(C) Page limit**

Except in death penalty appeals of right, the appellant's brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

CREDIT(S)

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

STAFF NOTES

**2010:**

The citation to *Drake v. Bucher* (1966), 5 Ohio St.2d 37, 39, 213 N.E.2d 182, 184 was removed.  
Supreme Court Rules, Rule 6.2, OH ST S CT Rule 6.2

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S. Ct. Prac. R. Rule 6.3

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Practice of the Supreme Court of Ohio (Refs & Annos)  
Section 6 Briefs on the Merits in Appeals  
**S.Ct. Prac. R. 6.3. Appellee's brief**

**(A) Time to file**

S. Ct. Prac. R. Rule 6.7

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Practice of the Supreme Court of Ohio (Refs & Annos)  
Section 6 Briefs on the Merits in Appeals  
**S.Ct. Prac. R. 6.7. Consequence of failure to file briefs**

(A) If the appellant fails to file a merit brief within the time provided by S.Ct. Prac. R. 6.2 or as extended in accordance with S.Ct. Prac. R. 14.3, the Supreme Court may dismiss the appeal.

(B) If the appellee fails to file a merit brief within the time provided by S.Ct. Prac. R. 6.3 or as extended in accordance with S.Ct. Prac. R. 14.3, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

CREDIT(S)

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

Supreme Court Rules, Rule 6.7, OH ST S CT Rule 6.7

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S. Ct. Prac. R. Rule 6.4

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Rules of Practice of the Supreme Court of Ohio (Refs & Annos)

. Section 6 Briefs on the Merits in Appeals

**S.Ct. Prac. R. 6.4. Appellant's reply brief**

**(A) Time to file**

- (1) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant may file a reply brief within fifteen days after the filing of appellee's brief.
- (2) In every other appeal, the appellant may file a reply brief within twenty days after the filing of appellee's brief.
- (3) If the case involves multiple appellees who file separate merit briefs, the appellant shall file only one reply brief, if any, responding to all of the appellees' merit briefs. The time for filing the appellant's reply brief, if any, shall be calculated from the date the last brief in support of appellee is filed.

**(B) Page limit**

Except in death penalty appeals of right, the reply brief shall not exceed twenty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

CREDIT(S)

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

Supreme Court Rules, Rule 6.4, OH ST S CT Rule 6.4

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## S. Ct. Prac. R. Rule 6.5

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. Section 6 Briefs on the Merits in Appeals

**S.Ct. Prac. R. 6.5. Merit briefs in case involving cross-appeal****(A) Requirements**

In a case involving a cross-appeal, each of the parties shall be permitted to file two briefs, and each brief shall conform to the requirements of S.Ct. Prac. R. 6.2(B).

**(B) First brief**

(1)(a) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the first merit brief within twenty days from the date the Clerk files the record from the court of appeals.

(b) In every other appeal, the appellant/cross-appellee shall file the first merit brief within forty days from the date the Clerk files the record from the court of appeals or the administrative agency.

(2) Except in death penalty appeals of right, this first brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

**(C) Second brief**

(1) (a) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellee/cross-appellant shall file the second merit brief within twenty days after the filing of the first brief.

(b) In every other appeal, the appellee/cross-appellant shall file the second merit brief within thirty days after the filing of the first brief. The second brief shall be a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law and arguments in support of the cross-appeal.

(2) Except in death penalty appeals of right, the second brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

**(D) Third brief**

(1) (a) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the third merit brief within twenty days after the filing of the second brief.

(b) In every other appeal, the appellant/cross-appellee shall file the third merit brief within thirty days after the filing of the second brief. If the appellant/cross-appellee elects to file a reply brief in that

party's appeal, the third brief shall be a combined brief containing both a reply and a response to the arguments in the cross-appeal. Otherwise, the third brief shall include only a response in opposition to the cross-appeal.

(2) Except in death penalty appeals of right, the third brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

**(E) Fourth brief**

(1) The fourth brief may be filed by the appellee/cross-appellant only as a reply brief in the cross-appeal.

(a) In every appeal involving termination of parental rights or adoption of a minor child, or both, if a fourth brief is filed, it shall be filed within fifteen days after the filing of the third brief.

(b) In every other appeal, if a fourth brief is filed, it shall be filed within twenty days after the filing of the third brief.

(2) Except in death penalty appeals of right, a fourth brief shall not exceed twenty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

**CREDIT(S)**

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

**STAFF NOTES**

**2010:**

Divisions in this rule were separated for clarification.  
Supreme Court Rules, Rule 6.5, OH ST S CT Rule 6.5

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S. Ct. Prac. R. Rule 6.6

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Section 6 Briefs on the Merits in Appeals  
**S.Ct. Prac. R. 6.6. Brief of amicus curiae**

(A) An amicus curiae may file a brief urging affirmance or reversal, and leave to file an amicus brief is not required. The brief shall conform to the requirements of this rule, except that an amicus filing a brief in support of an appellant need not include the appendix required by S.Ct. Prac. R. 6.2(B)(5).

(B) The cover of an amicus brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal. If the amicus brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, and the amicus curiae may file a reply brief within the time allowed to the appellant to file a reply brief. If the amicus brief is in support of an appellee or does not expressly support the position of any party, the brief shall be filed within the time for filing allowed to the appellee to file a merit brief. The Clerk shall refuse to file an amicus brief that is not submitted timely.

CREDIT(S)

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

Supreme Court Rules, Rule 6.6, OH ST S CT Rule 6.6

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S. Ct. Prac. R. Rule 6.7

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Rules of Practice of the Supreme Court of Ohio (Refs & Annos)

. Section 6 Briefs on the Merits in Appeals

**S.Ct. Prac. R. 6.7. Consequence of failure to file briefs**

(A) If the appellant fails to file a merit brief within the time provided by S.Ct. Prac. R. 6.2 or as extended in accordance with S.Ct. Prac. R. 14.3, the Supreme Court may dismiss the appeal.

(B) If the appellee fails to file a merit brief within the time provided by S.Ct. Prac. R. 6.3 or as extended in accordance with S.Ct. Prac. R. 14.3, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

CREDIT(S)

(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10)

Supreme Court Rules, Rule 6.7, OH ST S CT Rule 6.7

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