ORIGINAL

10-1368

IN THE OHIO SUPREME COURT

RELATOR
DEREK LICHTENWALTER
2000 South Avon Belden Road Grafton Ohio 44044

ORIGINAL ACTION IN HABEAS CORPUS

RESPONDENT
HECTOR SANTIAGO
Warden of
North Coast Correctiona l institution
2000 South Avon Belden Road Grafton Ohio 4044
44044

IN THE OHIO SUPREME COURT

Relator,
Derek Lichtenwalter
2000 South AVon Belden Road
Grafton Ohio 44044

ORIGINAL ACTION IN
HABEAS CORPUS

Respondent,
Hector Santiago
Warden
North Coast Correctional Inst.
2000 South AVon Belden Road
Grafton Ohio 44044

The Relator, Derek Lichtenwalter 564-988, Does request the Ohio Supreme Court to issue an writ compelling the Respondent, Hector Santiago to reelase him from prison. The Relator does show in the aatached affidavit in suppoort with law and argument as well as attached Journal Entries of senetcning and attached Bill of information.Also The Relator does show that the Bill is invalid in the attached argument for seevral reasons. As such the Trial COurt is without Jurisdiction for the Charge and the Relator is being held ilegally by the Warden Hector Santiago.

Relator

Derek Lichtenwalter

2000 South aVon Belden Road Grafton Ohio 44044

Sign _____ Date 7-30-2010

Sworn and attested to in my presence Jill Grunenwald

Notary Public. on this 30 Day of July, 2010

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

Affidiavit in support

I the relator moving Pro Se does show the following:

CASE FACTS

In April 2008 I the Relator was arrested in Tuscarawas county Ohio. I was arrested for driving under suspension and Failure to pay for Gasoline at the sheetz gas station in New Philadelphia Ohio.

I was susequently held and charged with Driving under susepnsion and with Receiving stolen property. That property later is told to me that it is a felony.

I enetr an agreemnt to proceed to a bill of information if the Court in New Philadelphia at the Municipal level will grant me an Own Recognizance bond. I was granted the bond and was released shortly theerafter.

I then left back to my Home County of Stark County Ohio, It was shortly theerafter that the court of Common Pleas of Columbiana County had held me in their jail.(I was also sentenced to prison from that county but the senetnce has been completed see attached from the records dept of the ODRC) This is where the Court of Tuscarawas Common pleas took me for a plea to the Bill of information.

I was not arraigned, I was never served a copy of the attached BILL OF INFORMATION I WAS NEVER GIVEN NOTICE OF MY RIGHTS TO BE ARRAIGNED NOR WAS THE COURT EVER IN THE AUTHORITY TO ENTERTAIN A PLEA TO THE BILL AS THE BILL IS NOT VALID AS IT IS NOT A BILL SWORN TO AND SUBSCRIBED BY ANYONE, PLEASE SEE ATTACHED COPY, THe Court will please note that the Bill SHows it is signed by someone in The NAME OF THE FORMER PROSECOTOR, AMANDA K SPIES WAS NOT THE Prosecutor I Beleive she was forced out by this date. ALSO PLEASE

NOTE, THE RELEVANT FACT IS THAT THE SWORN TO IN MY PRESCENCE ON THIS BLANK DAY IS STILL BLANK AND ALSO NOTE IT IS NOT NOTARIZED, AS SUCH THE COURT WAS NEVER IN JURISDICTION AS THE BILLL IS NOT VALID Just For that simple fact. The court was also without jurisdiction for a felony as the Count must have the following to make the offense a felony and this has been decided by the Fifth District court of appeals in State V Bennett 185 Ohio App.3d 54,923 2d 179."A Licens plate Must include a valid Validation sticker and must include the License plate number to make the offense a felony" The court will note that the Bill does list 2913.71, Howeevr that section goes on to list 4503.22, That section goes on to specify the requirements or the "Elements of the offense of A motor Vehicle license plate" Thoat means the court needed to have the following elemnts on the Bill to make it a felony.

2913.51(A) 2913.51(C) that then leads to 2913.71(C) that then lists the Statue 4503.22(A). That then describes a license plate, As stated earlier. Alos the Court lacked Juriscition for any offense of receiving stolen property as the Bill does not come to the simplest conclusion of how the Prosecutor or the State Comes to the conclusion that the property is stolen. It shoud say something to the effect of Property having been reported stolen in stark County Ohio, or some other sismilar such concept. As if the satet cannot show the simplest conclusion of how it believes the property was reporetd stolen how could I. This is what is the real Mens Rea element of the offense of Recieving stolen Property.

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

7-30-2010

Sworn To In My Presence Jill Grunenwald

On This 30th day of July 2010

Request for releif

I the relator does request the Court to issue my release I will take a few lines to express that the court truly was obviously without Jurisdiction heer as the court must comply with the rules of court Specicfically Rules 3,4,5, 6, 7, 10 12, and 32.

As the Court lacked jurisdiction for the offense I wish the Court to issue an writ compelling my release from prison.

Relator

Derek lichtenwalter 7-30-2010

200020

2000 South AVon Belden Road Grafton Ohio 44044

Sworn and attested in my presence [redacted] Jill Grunewald Notary Public This 30th Day of July 2010.

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

STATE OF OHIO

v.

DEREK R. LICHTENWALTER
1613 FREDERICK AVENUE, SW
CANTON, OH 44706
DOB: 08-21-75

No. 2008 CR 04 0116 Bindover from New Philadelphia Municipal Court Case No.: CRA 08 00344

PROSECUTING ATTORNEY'S REQUEST FOR ISSUANCE OF SUMMONS UPON INFORMATION

(CRIMINAL RULE 9)

TO: THE CLERK OF COURTS

ENTERED

DEREK R. LICHTENWALTER has been named a defendant in an information filed by the Prosecutor in the Tuscarawas County Court of Common Pleas.

Issue summons to an appropriate officer and direct him to make personal service upon defendant at the address stated in the caption of this request.

Special instructions for server.

Notify defendant to prepare to pay the $45.00 recognizance bond fee at arraignment.

For **AMANDA K. SPIES**
Prosecuting Attorney for Tuscarawas County, Ohio

Detective Captain Orvis Campbell, Tuscarawas County Sheriff's Office
TWO COUNTS RECEIVING STOLEN PROPERTY

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO,	* **CASE NO. 2008 CR 04 0116**
PLAINTIFF,	* **JUDGE ELIZABETH LEHIGH THOMAKOS**
v.	* **INFORMATION**
DEREK R. LICHTENWALTER,	* **TWO COUNTS**
DEFENDANT.	* **RECEIVING STOLEN PROPERTY**
	* **O.R.C. §2913.51(A)**

****

Amanda K. Spies, Prosecuting Attorney of Tuscarawas County, Ohio, by authority of Section 2941.02 of the Revised Code of Ohio, and Rule 7 of the Criminal Rules of the State of Ohio, does give this information as follows:

On or about the 9th day of April, 2008, at the County of Tuscarawas, State of Ohio, one **DEREK R. LICHTENWALTER** did receive, retain, or dispose of property of another, to-wit: license plates registered to Shawn A. Daniels, said property being identified in Section 2913.71 of the Ohio Revised Code, when **DEREK R. LICHTENWALTER** knew or had reasonable cause to believe that the property had been obtained through commission of a theft offense, contrary to and in violation of Section 2913.51(A) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWO

On or about the 9th day of April, 2008, at the County of Tuscarawas, State of Ohio, one **DEREK R. LICHTENWALTER** did receive, retain, or dispose of property of another, to-wit: license plates registered to Faviano Perez Baltos, said property being identified in Section 2913.71 of the Ohio Revised Code, when **DEREK R. LICHTENWALTER** knew or had reasonable cause to believe that the property had been obtained through commission of a theft offense, contrary to and in violation of Section 2913.51(A) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

For **AMANDA K. SPIES**
Prosecuting Attorney for
Tuscarawas County, Ohio

THE STATE OF OHIO, TUSCARAWAS COUNTY, SS:

Amanda K. Spies, being first duly sworn, says that she is the duly elected Prosecuting Attorney for Tuscarawas County, Ohio, that she makes this Affidavit of Information in behalf of the State of Ohio as such, and that the facts set forth in support of the foregoing Information are true as she verily believes, and that the said is guilty of the offense therein charged, as she verily believes.

For **AMANDA K. SPIES**
Prosecuting Attorney

Sworn to and subscribed in my presence this _____ day of April, 2008.

Emma Pelle Deputy
ROCKNE W. CLARKE
Clerk of Courts

cc: Amanda K. Spies, Prosecuting Attorney
Gary Greig, Assistant Public Defender
Derek R. Lichtenwalter, Defendant

Ohio Department of Rehabilitation and Correction

Division of Legal Services
770 West Broad Street
Columbus, OH 43222-1419

Ted Strickland, Governor

www.drc.ohio.gov

Ernie L. Moore, Director

June 7, 2010

Bonnie L. Williams
Paralegal, Criminal Justice
Ohio Attorney General Richard Cordray
150 E. Gay Street, 23rd Floor
Columbus, Ohio 43215

RE: Derek R. Lichtenwalter A564988 (old A585316)

Dear Ms. Williams:

Pursuant to your request for sentence computation information on the above noted, I can provide the following:

Lichtenwalter was originally admitted on July 15, 2008 under inmate number A585316 to serve the following case from Tuscarawas County:

2008CR040116 Receiving Stolen Property 2 counts consecutive 1 year each Total: 2 years with 4 days jail credit

He was then released November 10, 2008 by Tuscarawas County on Judicial Release.

On May 22, 2009, he was admitted under inmate number A564988 to serve the following case from Stark County:

2009CR0554 Failure to Comply 1 year with 48 days jail credit. Expiration of this sentence was 3/30/2010

On June 30, 2009, his Tuscarawas case 2008CR040116 was reimposed and he was ordered to serve:

2 years with 9 months of previous credit (274 days) to run concurrent to Stark. The expiration of this sentence is September 24, 2010.

On July 28, 2009, he was sentenced to Columbiana County 2008CR146 and ordered to serve:

4 counts of Receiving Stolen Property - 15 months on 3 counts and 12 months on 1 count. All counts to run concurrent with each other and to Tuscarawas and Stark. He was granted a total of 173 days of credit. Expiration of this sentence was May 2, 2010.

The expiration of these sentences includes 4 days of credit that he has earned since being incarcerated.

I hope this information will be helpful. Please feel free to contact me with any questions.

Sincerely,

Melissa Adams, Chief

Cc: File

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO	*	CASE NO. 2008 CR 04 0116
PLAINTIFF,	*	JUDGE THOMAKOS
v.	*	
DEREK LICHTENWALTER **DOB: 8-21-75** **SSN: 278-86-0722**	* *	**JUDGMENT ENTRY**
DEFENDANT.	*	

This matter came on for hearing on June 29, 2009, upon the **Motion to Revoke Judicial Release/Community Control or Modify Former Order** filed on **April 15, 2009**. The State of Ohio was represented in Court by Assistant County Prosecutor Michael Ernest, who was accompanied by Joseph Pelegreen of the Adult Parole Authority. The Defendant was present in Court represented by Public Defender Gerald Latanich.

The Court advised the Defendant of the alleged violations contained in the Motion.

The Defendant waived a probable cause hearing and waived a hearing on the merits of the Motion to Revoke Judicial Release/Community Control or Modify Former Order filed April 15, 2009. The Court was advised that the Defendant would admit to allegation number two (2) contained in the Motion to Revoke.

EXHIBIT "A"

Prior to entering an admission, the Court reviewed with the Defendant his Constitutional and statutory rights pertaining to the full hearing on the merits. The Court finds that the Defendant knows and understands his rights and is making a voluntary waiver of those rights. The Court finds that the Defendant entered an admission to violating terms and conditions of supervision as follows:

1. On or about April 4, 2009, the Defendant was arrested and charged with Failure to Comply with the Order of a Police Officer (F3), four counts Receiving Stolen Property (F5), Falsification (M1), Obstructing Official Business (M2), Driving Under FRA Suspension (M1), Willful/Wanton Operation (MM), and Display/Expired Plates (MM) in Stark County, Ohio.

The Court **FINDS** that the Defendant has violated the terms and conditions of his community control sanctions.

It is therefore **ORDERED** that the Motion to Revoke shall be **granted.**

It is further **ORDERED** that the **twelve (12) month consecutive** terms of imprisonment for **Two Counts Receiving Stolen Property**, contrary to and in violation of Section 2913.51 of the Ohio Revised Code, felonies of the fifth degree, shall be imposed. This sentence shall be served concurrently with the Defendant's current term of state penal incarceration, beginning on this date.

It is hereby **ORDERED** that the Defendant be remanded to the custody of the Tuscarawas County Sheriff and that a warrant issue to said Sheriff for conveyance of this Defendant back to Lorain Correctional Institution.

The Defendant is further advised that during any period of State Penal incarceration, said Defendant does not have the right to vote, to hold public office, or to sit on juries.

The Defendant was advised in open Court of the possible terms of post-release control and the possible penalties for violation of post-release control. Specifically, a period of supervision by the Adult Parole Authority after release from prison is optional in this case. If said Defendant receives a prison sentence for a felony three, four, or five, said

Defendant may be given up to three years of post release control. A violation of any post release rule can result in a more restrictive sanction while said Defendant is under post release control, and increased duration of supervision or control, up to a maximum term and reimprisonment even though said Defendant has served the entire stated prison term imposed by this Court for all offenses. If said Defendant violates conditions of supervision while under post release control, the Parole Board could return said Defendant to prison for up to nine months for each violation, for a total of one half of the originally stated prison term. If the violation is a new felony, said Defendant could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense. [1]

It is further **ORDERED** that the Defendant shall be granted **nine (9) months** jail credit, which includes all prior state penal credit.

Costs to Defendant.

IT IS SO ORDERED.

I the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By Emma Pabl
Deputy Clerk

Thomas J. Pokorny
JUDGE ELIZABETH LEHIGH THOMAKOS

Dated: 6-29-09

cc: Michael Ernest, Assistant Prosecuting Attorney
Gerald Latanich, Public Defender
Defendant #564-988, c/o Lorain Correctional Institution
Tuscarawas County Sheriff
Lorain Correctional Institution
Joseph Pelegreen, Probation
Bureau of Sentence Computation

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2009 JUN 30 P 2:03
ROCKNE W. CLARKE
CLERK OF COURTS

ELT:mdt

[1]The Defendant was also advised of the possible terms of post-release control and the possible penalties for violation of post-release control at the time of sentencing in this matter on July 10, 2008.

585-316

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO	*	
PLAINTIFF,	*	**CASE NO. 2008 CR 04 0116**
v.	*	**JUDGE THOMAKOS**
DEREK R. LICHTENWALTER	*	
D.O.B.: 75	*	**JUDGMENT ENTRY ON**
S.S.N.:	*	**SENTENCING**
DEFENDANT.	*	

This matter came on for **Sentencing** this 10th day of July, 2008, upon the Defendant's conviction for **Two Counts Receiving Stolen Property**, violations of Section 2913.51 of the Ohio Revised Code, felonies of the fifth degree. The conviction was the subject of the Judgment Entry filed herein on the 20th day of May, 2008, which Judgment Entry is incorporated by reference as if fully rewritten herein. The State of Ohio was represented in Court by Assistant Prosecuting Attorney Scott Mastin. The Defendant, Derek R. Lichtenwalter, was present in Court represented by Public Defender Gerald Latanich, on behalf of Assistant Public Defender Gary Greig.

The Court has considered the record, oral statements, any victim impact statements and presentence reports prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12. The Court inquired of the Defendant whether he had anything to say prior to pronouncement of sentence. The Defendant did not make a statement on his behalf.

The Court finds the Defendant has been convicted of Two Counts Receiving Stolen Property, violations of Revised Code Section 2913.51, felonies of the fifth degree.

Pursuant to the factors in Section 2929.12 and the presumptions in Section 2929.13(D) of the Revised Code, the Court considered the following matters in determining an appropriate sentence:

1. The offender has numerous prior adult convictions, beginning in 1994. The offender's prior offenses include convictions of a nature similar to the offense in this matter. The offender was released from prison shortly prior to committing this offense;

2. The offender has failed to respond favorably in the past to sanctions previously imposed for criminal convictions;

3. The offender's LSIR score is 34 (medium/high risk/needs);

4. The offender has not been adjudicated delinquent; and

5. The offender has previously served a prison term.

The factors under Revised Code Section 2929.12 for increasing and decreasing seriousness are not present. The applicable factors under Revised Code Section 2929.12 indicating that recidivism is more likely outweigh those indicating that recidivism is less likely. The Court finds that the offender is not amenable to available community control sanctions and that a prison term is consistent with the purposes and principles of sentencing.

It is hereby **ORDERED** that the Defendant is sentenced to serve **twelve (12) month consecutive** sentences in the appropriate State Penal Institution of the Ohio Department of Rehabilitation and Correction for the offenses of **Two Counts Receiving Stolen Property**, contrary to and in violation of Section 2913.51 of the Ohio Revised Code, felonies of the fifth degree.

The Defendant is further advised that during any period of State Penal incarceration, said Defendant does not have the right to vote, to hold public office, or to sit on juries.

The Defendant was advised in open Court of the possible terms of post-release control and the possible penalties for violation of post-release control. Specifically, a period of supervision by the Adult Parole Authority after release from prison is optional in this case. If said Defendant receives a prison sentence for a felony three, four, or five, said Defendant may be given up to three years of post release control. A violation of any post release rule can result in a more restrictive sanction while said Defendant is under post release control, and increased duration of supervision or control, up to a maximum term and reimprisonment even though said Defendant has served the entire stated prison term imposed by this Court for all offenses. If said Defendant violates conditions of supervision while under post release control, the Parole Board could return said Defendant to prison for up to nine months for each violation, for a total of one half of the originally stated prison term. If the violation is a new felony, said Defendant could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense.

It is hereby **ORDERED** that the Defendant be remanded to the custody of the Tuscarawas County Sheriff and that a warrant issue to said Sheriff for conveyance of this Defendant to the Correctional Reception Center at Orient, Ohio.

The Court shall consider judicial release at the appropriate time, upon a properly filed motion and provided the Defendant has a clean institution record. If Judicial Release is granted at the appropriate time, the Court will impose specific conditions of judicial release to include placement in a community based correctional facility.

The Defendant is **ORDERED** to submit to D.N.A. registration at the Tuscarawas County Sheriff's Department.

The Defendant shall be entitled to **-0- days** jail credit toward state penal incarceration.

The Defendant is **ORDERED** to pay Court costs in this matter and any and all Court costs shall be paid through the Office of the Tuscarawas County Clerk of Courts.

IT IS SO ORDERED.

JUDGE ELIZABETH LEHIGH THOMAKOS

Dated: July 10, 2008

cc: Scott Mastin, Assistant Prosecuting Attorney
Gary Greig, Assistant Public Defender
Defendant, c/o Tuscarawas County Jail
Probation
C.R.C.
Bureau of Sentence Computation
Tuscarawas County Sheriff

I, the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By Deputy Clerk

ELT:mdt

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO	:	
	:	Case Number: 2008 CR 04 0116
PLAINTIFF,	:	
	:	Judge Elizabeth Lehigh Thomakos
vs.	:	
	:	
DEREK LICHTENWALTER	:	**JUDGMENT ENTRY**
Inmate #: 585-316	:	
	:	ENTERED
DEFENDANT.	:	

This matter came before the Court on November 10, 2008. The State was represented in Court by Assistant Prosecuting Attorney Scott Mastin. The Defendant was present in Court represented by Public Defender Gerald Latanich. The matter before the Court for consideration was the **Motion for Judicial Release** filed **August 25, 2008** and the State's **Reply** filed **September 3, 2008**. The State of Ohio was not opposed to judicial release with strict adherence to the terms and conditions of supervision and placement of the Defendant into the S.R.C.C.C. Program. The Court has also received an Institution Summary report dated September 4, 2008, which indicates no violations.

The Court **FINDS** that the Motion is well taken and should be **granted**.

It is therefore **ORDERED** that the Defendant shall be released from incarceration for **three (3) years** community control sanctions, with the following terms and conditions.

The Court further imposes specific conditions as follows:

1. That the Defendant follow all rules of community control as previously established by this Court;

2. That the Defendant pay all Court costs assessed in this matter;

3. That the Defendant not consume alcohol or drugs, or enter into establishments whose primary source of business is the sale of alcoholic beverages and that the Defendant submit to random screening;

4. That the Defendant successfully complete the S.R.C.C.C. Program and any recommended substance abuse treatment or counseling, as well as any and all aftercare with the S.R.C.C.C. Program;

5. That the Defendant serve local incarceration pending placement into the S.R.C.C.C. Program;

6. That the Defendant obtain/maintain employment; and

7. That the Defendant complete **80 hours** of community service.

The Defendant agreed in open Court to the terms and conditions of community control sanctions.

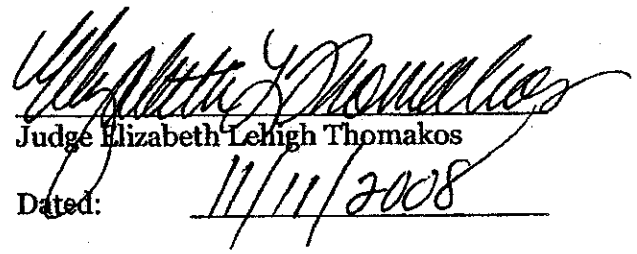
It is therefore **ORDERED** that the Motion for Judicial Release is **granted**.

It is further **ORDERED** that the Defendant shall follow all terms and conditions of supervision as outlined herein.

The Defendant is **ORDERED** to pay Court costs in this matter and any and all Court costs shall be paid through the Office of the Tuscarawas County Clerk of Courts.

It is **ORDERED** that the Defendant be remanded to the custody of the Tuscarawas County Sheriff to await transport to the S.R.C.C.C. Program.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: 11/11/2008

cc: Scott Mastin, Assistant Prosecuting Attorney
Gerald Latanich Public Defender
Defendant, c/o Tuscarawas County Jail
Probation
Southeastern Correctional Institution, certified copy
Tuscarawas County Justice Center
S.R.C.C.C.

ELT:mdt

5/13/09 clp 1 & 7 564988
File/Lowry/JDF/Paula/2-jail/BSC(cert.)

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs.

DEREK RALPH LICHTENWALTER,

Defendant.

CASE NO. **2009CR0554**

JUDGE V. LEE SINCLAIR

JUDGMENT ENTRY -

CHANGE OF PLEA AND SENTENCE

This day, May 13, 2009, the defendant, DEREK RALPH LICHTENWALTER, came in the custody of the Sheriff, and accompanied by his counsel, Derek Lowry , Esq., and the defendant having heretofore entered a plea of not guilty at the arraignment to the crime of Failure to Comply with Order or signal of a Police Officer, 1 Ct. [R.C.2921.331 (B)(C)(5)(a)(ii)](F3) as charged in the Indictment, informed the Court that he had consulted with his attorney and that his attorney had fully informed him as to the nature of the charge and the element constituting the crime under the statute pertaining to it including the penalties and the right to a trial by jury and that the defendant desired to withdraw his former plea of not guilty.

Whereupon the Court having granted leave, the defendant withdrew his plea of not guilty and thereupon the Court inquired of the defendant as to whether or not he desired to plead further, to which inquiry the defendant replied that he is guilty

of the crime of Failure to Comply with Order or signal of a Police Officer, 1 Ct. [R.C.2921.331 (B)(C)(5)(a)(ii)](F3) as charged in the Indictment, which said plea was accepted by the Court, and upon which the defendant was duly convicted of the charged offense. Thereupon the Prosecuting Attorney moved that sentence be pronounced against said defendant.

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

The Court has considered the record, oral statements, any victim impact statement and pre-sentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code section 2929.11 and has balanced the seriousness and recidivism factors Ohio Revised Code Section 2929.12. The Court finds that the defendant has been convicted of Failure to Comply, 1 Ct., a violation of Revised Code Section 2921.331(B)(C)(5)(a)(ii)], a felony of the third degree subject to division (C) of section 2929.13 of the Ohio Revised Code and

that a prison term is consistent with the purposes and principles of sentencing in Revised Code Section 2929.11.

The Court finds that defendant has been convicted of or pled guilty to a felony and/or a misdemeanor as listed in division (D) of R.C. 2901.07 and hereby ORDERS that a sample of defendant's DNA be collected pursuant to Ohio Revised Code Section 2901.07.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this defendant shall serve a prison term of one (1) year on the charge of Failure to Comply with Order or signal of a Police Officer, 1 Ct. [R.C.2921.331 (B)(C)(5)(a)(ii)](F3), and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant's Operator's License shall be suspended for three (3) years on the charge of Failure to Comply with Order or signal of a Police Officer, 1 Ct. [R.C.2921.331 (B)(C)(5)(a)(ii)](F3) beginning April 4, 2009, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that six (6)points shall be added to defendant's driving record, and

The Court has further notified the defendant that post release control is optional in this case up to a maximum of three (3) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

Defendant is therefore ordered conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this defendant is entitled to jail time credit which will be calculated by the Sheriff and the number of days inserted in a certified copy of an order which shall be forwarded to the institution at a later date.

IT IS HEREIN ORDERED that the defendant shall pay the costs of prosecution for which the Court herein renders a judgment against the defendant for such costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any law enforcement agency having custody of evidence in this case may dispose of said evidence pursuant to Ohio Revised Code Section 2981.12 after the appropriate time period has passed and provided no appeals are pending in the above captioned case.

The Court, pursuant to Ohio Revised Code Section 120.36, hereby ORDERS that if the defendant requested or was provided representation by the Stark County Public Defender there is hereby assessed a $25.00 non-refundable application fee.

IT IS SO ORDERED.

V Lee Sinclair
JUDGE V. LEE SINCLAIR

A TRUE COPY TESTE:
NANCY S. REINBOLD, CLERK
By ..... Deputy
Date 5-18-07

APPROVED BY:

John D. Ferrero
JOHN D. FERRERO, #0018590
PROSECUTING ATTORNEY

Hope
HOPE S. KONOVSKY, #0070002
ASSISTANT PROSECUTING ATTORNEY

CL
SC

6/2/09 clp 1 & 3
file/Frame/BSC (Cert)

S

564988

FILED
JUN 04 2009
NANCY S. REINBOLD
STARK COUNTY OHIO
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

2009 JUN 12 AM 8:47

STATE OF OHIO,

Plaintiff,

vs.

DEREK LICHTENWALTER,

Defendant.

CASE NO. **2009CR0554**

JUDGE V. LEE SINCLAIR

JUDGMENT ENTRY

Based on an investigation by the Stark County Sheriff's Department, the Court finds that the Defendant is entitled to a total of forty-nine (49) days credit for time served in the Stark County Jail as of the date of sentencing as follows:

04/04/09-05/22/09

TOTAL = FORTY-NINE DAYS

V Lee Sinclair
Judge V. LEE SINCLAIR
Court of Common Pleas
Stark County, Ohio

A TRUE COPY TESTE:
NANCY S. REINBOLD, CLERK
By ..... Deputy
Date 6-4-09

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2008-CR-146

STATE OF OHIO)
Plaintiff)
vs.)
)
DEREK R. LICHTENWALTER)
Defendant) (SJC)

NUNC PRO TUNC

JUDGMENT ENTRY

This matter came on for hearing on Monday, July 20, 2009, on the State's motion to show probable cause why the Defendant's probation should not be revoked. Tammie Riley Jones, Assistant Prosecuting Attorney, appeared for the State. The Defendant appeared in the custody of the Sheriff with his counsel, Attorney Douglas A. King. Adult Probation Officer Kyle Gainor also appeared.

Defendant stipulated to the probable cause and waived the probation violation hearing. By reason of said stipulation, the Court finds probable cause to believe that the Defendant has violated the terms and conditions of his Community Control and further finds that the Defendant has violated the terms and conditions of his Community Control and dishonorably terminates his Community Control.

The Defendant made a statement prior to imposition of sentence.

The Court will order on the charge in **COUNT ONE: RECEIVING STOLEN PROPERTY**, a violation of O.R.C. §2913.51(A), being a felony of the fourth degree, that the Defendant serve a definite Fifteen (15) months in a state correctional facility; and

The Court will order on the charge in **COUNT TWO: RECEIVING STOLEN PROPERTY**, a violation of O.R.C. §2913.51(A), being a felony of the fourth degree, that the Defendant serve a definite Fifteen (15) months in a state correctional facility; and

The Court will order on the charge in **COUNT FOUR: RECEIVING STOLEN PROPERTY**, a violation of O.R.C. §2913.51(A), being a felony of the fifth degree, that the Defendant serve a definite ***Twelve (12) months*** in a state correctional facility; and

The Court will order on the charge in **COUNT SIX: RECEIVING STOLEN PROPERTY**, a violation of O.R.C. §2913.51(A), being a felony of the fourth degree, that the Defendant serve a definite ***Fifteen (15) months*** in a state correctional facility.

These sentences may be served ***concurrently*** with each other and also ***concurrently*** with any sentence that the Defendant is currently serving out of Tuscarawas County under Case No. 2008-CR-401116 and out of Stark County under Case No. 2009-CR-554.

The Defendant was advised that upon his release from prison that he may be subject to a period of Three (3) years of post-release control under the authority of the Parole Board. Post-release control means that you will have to live under certain terms and conditions for a period of time set by law.

Upon a violation, the Parole Board can impose additional prison time of up to one half of the stated prison term. The Defendant was advised that if he violates post-release control by committing a felony, he can be punished separately for the felony.

The Defendant is prohibited from ingesting or permitting himself to be injected with any drug of abuse. To assure compliance he must submit to random drug testing, and also to DNA typing when requested to do so.

The Defendant may have credit for Fifty (50) days of jail time previously served, plus credit for time while awaiting transport to the appropriate state facility.

Bond, if any, is released.

Defendant shall pay the costs of this proceeding, which are deferred until the Defendant is released from prison.

JUDGE C. ASHLEY PIKE

Date: July 21, 2009 - css

cc: File
Prosecutor
Douglas A. King, Esq.
Adult Probation
Sheriff

STATE OF OHIO
COLUMBIANA COUNTY, ss)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE.

Sept 9, 20 09.

ANTHONY J. DATTILIO, CLERK OF COURTS

BY: DEPUTY CLERK

a
BV
564988

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2008-CR-146
JUDGE C. ASHLEY PIKE

THE STATE OF OHIO	)	
	)	
Plaintiff	)	✓
	)	
-VS-	)	**JUDGMENT ENTRY**
	)	
DEREK R. LICHTENWALTER	)	
	)	
Defendant	)	

The Defendant has filed a Motion to Grant Jail Time Credit for Stay in Community Correctional Facility.

This Defendant was sentenced to community control probation by entry of November 20, 2008. The community control was to run concurrently with Case Number 2008-CR-40116 out of Tuscarawas County, Ohio, which included, successfully completing a community based correctional program at SRCC that was specified in the Tuscarawas County Judgment Entry.

The Court has received confirmation from the Stark County facility that the Defendant was admitted there on November 26, 2008 and was discharged from that same facility on March 20, 2009. Thus, he was in residence at that facility for 115 days for which he is now seeking credit.

By Entry of September 8, 2009, the Court found, upon the Defendant's stipulation, that he had violated his community control and the Court sentenced him to concurrent terms of imprisonment on four felony counts. The longest term in any one or more of those counts was fifteen (15) months. He was given credit for fifty (50) days of incarcerated time already served. None of this included the time spent as SRCC. The Court also specified that the sentences could

run concurrently with any sentence that the Defendant might receive in his Tuscarawas County case, which again carried the number of 2008-CR-40116.

By Entry of September 14, 2009, the Court acknowledged that a corrective sentencing entry on Count Four had been journalized and by that same entry of September 14, 2009, the Court effectively denied the Defendant credit for additional jail time served.

In the Tuscarawas County case the Defendant on June 30, 2009 was sentenced to consecutive terms for two counts of receiving stolen property and granted jail-time credit of nine (9) months. Presumably, that included the 115 days served at SRCC. Upon further consideration, it appears to the Court that the Defendant is entitled to credit on his sentence in this case which consists of concurrent terms of imprisonment on four counts in the additional amount of jail-time credit of 115 days. This is for the days he served at the SRCC Program pursuant to the order in the Tuscarawas County case and with which his community control in this case at an earlier time was made to run concurrent.

IT IS SO ORDERED and the costs of filing this entry are waived.

Two certified copies of this entry are ordered sent to the Defendant at 2000 South Avon Belden Road, Grafton, Ohio 44044. Another certified copy is ordered sent to the Bureau of Sentence Computation at Box 450, Orient, Ohio 43146. The certified copies shall be *without fee*.

C. ASHLEY PIKE, JUDGE

DATED: January 22, 2010/kam

cc: File
Prosecutor
Adult Probation
Derek Lichtenwalter, pro se Defendant c/o Northcoast Correctional Treatment Facility – 2000 S. Avon Belden Road – Grafton, OH 44044
Bureau of Sentence Computation

IN THE OHIO SUPREME COURT

Relator,
Derek Lichtenwalter
2000 South Avon Belden Road
Grafton Ohio 44044

Respondent,
Hector Santiago
Warden of
N.C.C.T.F
2000 South Avon Belden Road
Grafton Ohio 44044

Secondary relief
For Habeas Corpus
on grounds of Missing
Jail time credit
Requesting court to use
Argument shown in attached
Motion for default for
Case#2010AP050117

The Relator does show in the argument attached in the Motion for default or summary judgment filed in Case#2010Ap050017 That I am due an additional amount of Jail time credit for the Case #2008Cr040116. The Fact is in the attached sets of motions concerning the original reconsideration and the Mandamus attached to the Motion that the Defednnat had clearly shown that this court Has already decided the question of laws listed. Also the defendant will now request that attached is an request for an alternative WRit of Procedendo in the case to the alternative respondent of Elizabeth Lehigh Thomakos, of 101 East High Avenue New Philadelphia Ohio 44663.

I will show that the argument is simple and is applicable to the argument presented in this court in the STate V Fugate,concerning Jail time credit when sentenced for both a probation holder and a new case when those senetcnes are ordered served concurrently.

Please not that I was given a total of nine months jail time credit when I am due an auctual amount of 12 months.

Please review my attached argument supporting this and the first request for a writ as the court will need to show I Hvae no adequate remedy at law. The reason is adequacy equals speed.

IN THE OHIO SUPREME COURT

Relator
Derek Lichtenwalter
2000 South AVon Belden road
Grafton Ohio 44044
Respondent
Elizabeth Lehigh Thomakos
1010 East High Avenue
New Philadelphia Ohio 44663

Request for an
Alternative writ
In procedendo to
The second request for
Habeas Corpus.

Attached to teh secondary relief for habeas corpus is a group of mations for the Honorable Elizabeth lehigh thomakos.

The fact is the Court has failed to come to a conclusion in the reconsideration of the Jail time credit portion.
ASlo the court has failed to come to a conclusion in the Court cost section of the motion.

As such an procedendo wheer the court supplements its opinio for taht of the court will correct the sentencesing courts failure to follow the decisions already issued by this court.
Thank you for your consideration and pleas forgive any and all of my typographical errors.

respectfully reuqested
Relator
derek Lichtenwalter
2000 South AVon Belden Road
Grafton Ohio 44044
Sign _____ Date 7-31-2010
Sworn to and subscribed in my presence Jill Grunenwald Notary Public on This 31st Day of July 2010.

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

Afidavit showing why no adequate remedy at law.

The court will see upon a review of the online case dockets for the cases shown in the Affidavit of previous civil actions and in the online case docket for the Common pleas case number 2008 cr 04 0116.

The fact is that I have atteted to have the court and the court of appeals correct the issues several times. the fact is also that the court does have the ability to decide this writ as the court of appeals has yet to make any determiantion of the merits of my arguments.

The common pleas court of Tuscarwas county has clearly been acting on motions that do not comport with rules of courts as far as the bill goes and the Court has also apparently ignored the rulings of this court as set down in all the cases I had cited from this court in this request for an writ and in the request for the alternative wit.

The fcat is that I am no lawywer, I had none of the knowledg at the time of the earlier hearings in this case that I have now. If I had I would have known That I had to be serevd a bill I would have Known that allied offenses would have preveted me from being punished twice in this case as I was contrary to the decision in the STate V underwood 2010-OHIO_! MADE BY THIS COURT.

The reality is that I am not a lawyer I have been held illegly for two many months and it has taken teh majority of these moths for me to figure out the facts os the illegally imposed sentence that the Respondents haev held me under and commited me on.

I thank this court for its patience with my writ and reuest the court to come to a quick conclusion as my Outdate is aproaching fast although I never should have been held this long in the first palce on these charges. 7-31-2010

Derek Lichtenwalter Relator 2000 SOuth AVon belden Road Grafton OH 44044

Sworn to and subsribed befor me Jill Grunewald Notary Public

on this 31st Day of July 2010.

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

Page two of secondary relief for Habeas Corpus.

The fact is that the Court will see for an remedy at law to be adequate it must be speedy I ahev obviously tried to correct all these errors in the trial court and have been answered incorrectly.

AS such I Pray this court grant my writ.

Respectfully requested Derek Lichtenwalter
Relator
2000 South Avon BElden Road
Grafton Ohio 44044
Sign _____ Date 7-31-2010
Sworn to and subscribed in my presence Jill Grunenwald Notary Public
This 31st Day of July 2010.

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

In The Ohio Court of Appeals
Fifth District
Tuscarawas County Ohio

Case# 10 AP 050017

State Ex. Relator
Derek Lichtenwalter 564-988
N.C.C.T.F
2000 South Avon Belden Road
Grafton,Ohio 44044

Motion for default/or summary judgment

Respondent,
Elizabeth Lehigh Thomakos
Tuscarawas County Common Pleas Court
101 East High ave.
New Philadelphia Ohio 44663

The Relator does hereby move the Honorable Court of the Fifth District Court of Appeals to issue an order in this case Compelling the Respondent to perform her Clear statutory duties, as was set in the request for the writ. The Relator does show that as of this 10th day of June 2010. The Relator has yet to receive either an answer or response to the request, from the Respondent. As such the Ohio Supreme Court sets 21 days as being the response time for an original action in mandamus.(SCt R X original Actions Section 5. Response to complaint The respondent Shall File an response to complaint or a motion yto dismiss within 21 days of service of the summons on complaint.) As such the time limit to respond has expired. In the event that the Respondent responds prior to the court receieving this request I would request summary judgment on the issues concerning the requested writ in accordance with the Argument and supporting law already set forth in the requested Writ an accompanying Motions that were filed in The Tuscarawas County Common pleas court in this case.

I Humbly Pray for the requested Writ to compel the trial court to act under what is according to under it's clear Statutory duties.

State Ex. Relator
Derek Lichtenwalter 564-988

Sign _____ Date 6-14-2010

Memorandum in support

- The Ohio Supreme Court has already directed as is set forth in the case law for the Motions and the merger all the following are required when brought to the courts attention.
- 2941.25(A) Merging and considering the merger of Allied offenses. In the State V underwood the Ohio Supreme Court determined that the DuTY to Merge allied counts is Mandatoey. It was also deiced that it is plain Error Criminal rule 52(B) and as such has no time limit to recognize the Error as long as the prejudice is still occurring.
- Also the Ohio supreme Court has dictated that a sentence is void if Post release control is not imposed orally and I was not re advised of Post release control at the sentencing hearing on 6-29-09. As such the sentence is also void for lack of this Mandatory statutory duty.
- Also the Ohio supreme court has recently determined in STATE v. JOSEPH, 125 Ohio St.3d 76, 926 N.E.2d 278, 2010 -Ohio- 954 that costs can be waived or actually that while costs for proceedings must be imposed the collection of those cost can be waived when an defendant is found to be indigent. I was found to be indigent and My income is not collectible according to 2969.22 as I am on Social Security Disability. Also I was not advised of Costs on the oral record as is required as such making this issue also not final. As such the Court Must allow me to move for a waiver and if found to meet the Indigent criteria the Collection of costs should be waived.
- Also my sentence is Void for lack of jurisdiction on the felony's as the Bill was never served on me also the Bill does not meet the Statutory requirements for a felony.(argument in the original motions) Also the Bill Does not meet The requirement for a bill to be valid as it was never sworn to properly as the Bill will show that the "Sworn and subscribed in my presence on this _____Day is still blank" Therefore leaving the Court without jurisdiction for charge[redacted]ed) Also the Bill is to have Mens Rea Element of the offense of receiving stolen property somewhere on the Bill I.E. the property was reported stolen in Canton Ohio. It does not however in fact the Bill does never come to the conclusion that the property was ever repoerted stolen. It simply says I received stolen property but does not conclude how anyone

would have any idea it was or is actually stolen property there is no reference to how the property is perceived to be stolen. It is just as possible the property was lost. Simply put if the state does not have any idea as to if the property is actually stolen how do I a know?

- Also the trial Court is required to only act on motions that comport with Statutory provision and the fact is that the "Motion to revoke Judicial release community control or modify former order is not in compliance with Superintendence rules six. As the atty registration number is not on the Motion and also if it is considered to be filed by the atty it says then I was represeneted and prosecuted by the same man on the same case acts.(Not case number as Patrick J williams represenetd me in 2008 on the originakl arretsing achrae of Driving under susepnsion.
- Also the trial court failed to discuss Jail time credit on the record and while Jail time Credit is Appropriately addressed on appeal it is also plain Error when the Court failed to address the issue in court I am due an additional 83 days or nearly three moths. Please review, I was held originally in the Tuscarawas County jail for about two weeks then placed on bond in April of 2008. (the following dates are verifiable off the attached copy of the Docket sheet and also online at the Tuscarawas county Court of Common pleas website).
  - I was placed in prison on 7-10-08
- On November 10th 2008 the trial Court held and Granted Judicial release I was then held in the county jail until November 26th 2008. at that Time I was not released I was transfered to The S.R.C.C.C program in Stark County. At the completion of the program I was released on march 20th 2009. I was then subsequently arrested on April 3rd 2009. A Holder and an issuance for an order to bring me before the court was then issued by the Court and is verified on the Courts Docket Sheet. I was then Held on both the Tuscarawas County case and the Stark County Case in the Stark County jail. I was not taken before the trial court for my probation violation until the date of 6-29-09.
- Total days credit due is from 7-10-08 until 3-20-2010, granted already as nine months, also from 4-3-2009 until 6-29-09 totaling 83 days as such I am due nine Months and 83 days credit or nearly 12 mos of Jail time credit. This duty is also mandatory. The court

has refused citing the Case of State V Marini Slip Copy, 2009 WL 2859352 (Ohio App. 5 Dist.), 2009 -Ohio- 4633, and even this court has previosly determined that {¶ 23} When different courts impose sentences at separate times, the sentences at best are only partly concurrent, and there is no requirement that courts arrange their cases in such a way as to maximize concurrency. *State v. Carter,* 2nd Dist. No. 1580, 2002-Ohio-6387, ¶¶ 8-10. It is one thing to hold, such as the Supreme Court did in State v. Fugate, 117 Ohio St.3d 261, 883 N.E.2d 440, 2008-Ohio-856 that jail time credit earned in two cases must be applied to both cases when the sentences are imposed concurrently by the same court. It would be quite another to hold in the present case that confinement while serving non-concurrent jail time must be awarded as "jail time" to reduce a later-imposed felony sentence.

- I would agree if I was held in a far away Jail or in some other far away place that would be of a burden to the state to receive me that arrnging concurrency would not be necessary but I was not I was held in an adjoining County that I have no right to extardition on in fact twice during the weeks I was in the County Jail in Stark County two people went "out to Court" to the Tuscarwas County Court of Common pleas. Also the Court will please take Note that the Alliance Municipal Court had notified me at the Bond hearing for the stark county case the IF YOU GET THE PROBATION HOLDER DROPPED THE BOND WILL BE REDUCED TO OWN RECOGNIZANCE, I HAD THEN ADVISED MY PROBATION OFFICER AND SHE ADVISED THA THE TRILA COURT WAS NOT GOING TO HOLD A BOND HEARING IN TUSCARAWAS COUNTY. While I think that Information is not neccesary to I do wish the court to know.

As such I am due the total amount of credit due as the Ohio Supreme Court has already determined in **State v. Fugate** 117 Ohio St.3d 261, 883 N.E.2d 440 Ohio,2008.

- The Equal Protection Clause requires that all time spent in any jail prior to trial and commitment by a prisoner who is unable to make bail because of indigence must be credited to his sentence. U.S.C.A. {¶ 22} When a defendant is sentenced to consecutive

terms, the terms of imprisonment are served one after another. Jail-time credit applied to one prison term gives full credit that is due, because the credit reduces the entire length of the prison sentence. However, when a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously. If an offender is sentenced to concurrent terms, applying credit to one term only would, in effect, negate the credit for time that the offender has been held. To deny such credit would constitute a violation of the Equal Protection Clause. Therefore we hold that when a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term.

When concurrent prison terms are imposed, courts do not have the discretion to select only one term from those that are run concurrently against which to apply jail-time credit. R.C. § 2967.191.**(Ohio Supreme Court)**

- **As the issue of jail time credit was not addressed in the hearing on the record and as the issue is clear the Court must grant the Jail time credit. As far as an adequate remedy by way of an appeal I am seeking an appeeal of these issue in my Post conviction appeal in this court I also am seeking an writ of habeas corpus in the Ninth District Court of appeals. The reason why the Appeal is currently not an adequate remedy at law is simple with the Jail time credit I will be released in 25 days. For an remedy at law to be adequate it must be Speedy.**
- **Both This court and the Ohio Supreme Court have already determined that time spent on both a probation violation and a new case are to granted towards each concurrent term. While my sentence was imposed by two different courts I am only seeking the tie I was held in any facility on the Tuscarawas Case as is required by 2967.191. The court can clearly see I was held on all these dates. Also I Widsh to express that Hwile it is an appelaable isue it is also Plain Error Criminal Rule 52(b) when the issues is not addersed in the court openly at the oral proceedingsand on record. I also request any alternative writs or orders that would accomplish the same goals be issued, I request the court to exercise it's full Authority in this. I AS a Layman cannot be expected to ask specifically for all writs and types of relief that only a Specialized trained and practiced in law would Know.**

Prayer For relief

I Do Humbly Pray for the reqeusetd reief as I have set forth good cause and solid Case law from the Ohio Suprem Court. Specifically I request the Court to compel the Common Pleas court Nd Elizabeth Lehigh Thomakos to issue the orders as is required for all the issues presented in the Argument and request for Default or summary Judgment.

Respectfully prayed for

State Ex. Relator

Derek Lichtenwalter 564-988

N.C.C.T.F

2000 South Avon Belden Road

Grafton,Ohio 44044

6-14-2010

In The Fifth District Court of Appeals

for

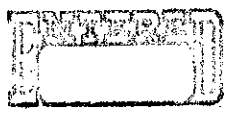
Tuscarawas County, Ohio

State ex Relator
Derek Lichtenwalter 564-988
2000 South Avon Belden Road
Grafton Ohio 44044

'10 AP 05 0017

Case#_____

an original action In
A Writ of Mandamus
Pursuant to 2731.01



Respondent'
Honorable Elizabeth Lehigh Thomakos
Tuscarawas County court of Common Pleas
101 South high Street
New Philadelphia Ohio,44663

The Relator Derek Lichtenwalter, Does hereby request the Honorable court of the Fifth District court of appeals to issue a Writ compelling The Court of Common Pleas Tuscarawas County the Honorable Elizabeth Lehigh Thomakos to comply with Statutory laws. 2941.25(A) Also to comply with the Rules of court procedure as set by the Ohio Constitution Through Article IV Sec. 5 "Powers and Duties of The Supreme Court court" (A) (1) In addition to all other Powers Vested by this article The Supreme Court Shall have general Superintendence Over All courts in the State...(B) The Supreme Court Shall Prescribe rules governing Practice in all courts in the State, ...All laws in conflict With with such rules shall be of no further force or effect after such rules have taken effect.

The Relator has supported the requested writ with The attached "Motion to merge Multiple Convictions" and "Motion to Correct Void Sentence" As the motion implies it is Based on The new Supreme Court case In the state V Underwood124 Ohio St.3d 365, 922 N.E.2d 923, 2010 - Ohio- 1, Ohio, January 05, 2010 (NO. 2008-2133, 2008-2228, 4309). This court can clearly see that allied offense are a CLEAR STATUTORY DUTY. I have no adequate remedy at law. The merger will effect my immediate Release from prison. This is not a habeas Corpus though as I am asking the court to compel the trail court to act within it's jurisdiction to correct the void sentence. If that correction does release me then it does, if it does not then it does not. I have searched the west law system and found nothing to indicate that Mandamus cannot be used to merge multiple convictions. On March 22nd the trial court had denied my request saying she lacked Jurisdiction as I understands it all this makes the section 2941.25(A) amendable to a writ.

Reasons Why no adequate remedy at law

I have attempted an appeal and was denied that involved this and other issues.

I have attempted to correct the Error in the trail court, the trail court has refused saying she lacks jurisdiction.(The court denied my request on March 22nd 2010)

I am being held illegally as a result of the courts failure to consider the merger of the allied offenses. The Fact is that this is a substantial constitutional Right. That has been ignored.

I am seeking to correct the trials courts errors also in this court in my appeal of my denial of post conviction relief that includes this as well as other issues.

- I have read that a writ is amendable when no other remedy at law is adequate? Well I had sought to have the issues corrected in the following case#'s Case #2008CR040116, also Case # 2009AP 12 0064, and case#2010AP 03 0011.(The Appeal in Case #2010AP 03

0011 is still pending an if I was not to be released immediately the I would not ask this court to consider my mandamus if the trail court recognizes her Jurisdiction to correct then I will request this court to withdraw my appeal in case # 2010Ap030011)I also have just recently requested this and several issue's in a writ of habeas Corpus in the Ninth District Court of Appeals in Case# 10CA009806. Please accept this also as my statement of previous civil action as prior to case#2008Cr040116 I have never done any civil actions the only other civil actions I have pending is a mandamus concerning Medical care and a divorce in the Lorain county Common pleas court.

- The Trial court seems to feel she lacks jurisdiction however Clearly the Supreme Court has referenced the Post Release control cases so courts can recognize the Plain error. Please review the arguments I present in my attached Copies of the Motions I have filed this same day in the Tuscarawas Common Pleas Court.

I greatly appreciate your consideration and anticipate your response.

Thank you for your full consideration in this matter

Relator Pro Se
Derek Lichtenwalter 564-988
2000 South Avon Belden Road
Grafton,Ohio 44044

5-12-2010

Sworn to and subscribed in my presence
Jill Grunenwald, on this 12th day of May, 2010
Notary Public

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

IN THE COURT OF COMMON PLEAS

TUSCARWAWAS COUNTY OHIO

Case#2008 Cr 040116

State Of Ohio

Plaintiff

Motion for reconsideration of the merger of allied offenses

and Jail time Credit

and Court costs

(With attached memorandum in support)

Vs

Defendant Pro Se

Derek Lichtenwalter 564-988

2000 South Avon Belden Road

Grafton,Ohio 44044

The Defendant Pro Se does hereby move this court to reconsider it's previous decisions relating to the Jail time credit the merger of the allied offenses and the imposition of the court cost. As all these issues was not addressed at the Trial court in the date of sentencing on 6-29-09. This is Plain error and also is the same as the sentence not being imposed.(memorandum in support attached supplying law and argument for the request.)

State v. Holcomb 921 N.E.2d 1077 Ohio App. 9 Dist.,2009. June 30, 2009 (Approx. 11 pages)

Motion to correct void sentence.

Derek Lichtenwalter 564-988

2000 South Avon Belden Road

Grafton,Ohio 44044

5-12-2010

Memorandum in Support

Your Honor,

The Public Defender has said that it must be plain error for the court to recognize the error. Pleas review the following and if the court disagrees please at least inform me as to why within the law I am wrong so I may adequate seek an appeal.

- I am due credit from the date of the Holder being placed on me on 4-9-2009, until the date of sentencing on 6-29-09. I was also due the credit of nine moths from the time I was originally arrested and sent to prison on the case. AS such I am due nearly 12 mos of Jail time credit not Nine months.
- The Prosecutor says that the issue must be addressed in the trial court and that the lack of credit is an appeal able issue However It is also Plain Error when the Trail court is required to make the findings on the record and has not done so, The court will clearly see that the issue was not discussed in open court on the record as such the issue has not been waived. Also there is as far as I can find no transcript of the proceedings and as such the proceedings are not final. This also violates Criminal rule 22 and 32 and 32.3, also it is Clearly Plain Error.
- According to the OHIO SUPREME COURT IN117 Ohio St.3d 261, 883 N.E.2d 440, 2008 -Ohio- 856 STATE V FUGATE I am due the credit when I am sentenced to concurrent terms for both A probation Violation and a new case that is the reason for the violation when those terms are ran concurrent.
- Also Your Honor pleas review that according to The OHIO SUPREME COURT IN THE CASE OF 124 Ohio St.3d 365, 922 N.E.2d 923, 2010 -Ohio- 1 STATE OF OHIO Vs UNDERWOOD, The courts failure to consider the fundamental Right to ALLIED OFFENSES IS PALIN ERROR criminal Rule 52(B). This means the Court must recognize the Error as the Supreme Court has Directed that a sentence such as mine is both NOT AUTHORIZED BY LAW AND CONTRARY TO LAW. There is no time limit set for the trail court to recognize and fix the PLAIN ERROR CRIMINAL RULE 52(B) Please review Paragraphs 19 Through 32, of UNDERwood,
- Also Your Honor Please review that the Trail court must address the Issue of Court Costs at the hearing or the costs are not imposed. --- N.E.2d ----, 2010 WL 986511 (Ohio), 2010 -Ohio- 954 Supreme Court of Ohio. STATE of Ohio, Appellee, v. JOSEPH, Appellant.
- These issues was not addressed at the 6-29-09 Sentencing Hearing and I have been unable to buy a copy of the transcript of the proceedings. As such the issues are Plain Error and the court

MEMORANDUM IN SUPPORT

Of Merger or voiding sentence under law 2941.25(A)

Now comes the defendant and does hereby state that on June 29th 2009 he was convicted and sentenced to two 12 mos terms of incarceration for two counts of receiving stolen property in violation of 2913.51(A) and (C) , The property involved being described as motor vehicle License plates. The Charges arose from me being pulled over for failing to pay for gas at the Sheetzs gas station in New Philadelphia, I also was charged that night with driving under suspension. I was convicted of that in the Municipal court of New Philadelphia, Ohio. As the Ohio Supreme Court has decided in the case of 124 Ohio St.3d 365, 922 N.E.2d 923, 2010 -Ohio- 1,5 [7] [8] {¶ 25} R.C. 2941.25(A) clearly provides that there may be only *one conviction* for allied offenses of similar import. ..... This court has previously said that allied offenses of similar import are to be merged at sentencing. .... A defendant's plea to multiple counts does not affect the court's duty to merge those allied counts at sentencing. **This duty is mandatory, not discretionary**. .... Further the court held

Plain Error

[11] {¶ 30} . .....Under Crim. R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." We have previously held that imposition of multiple sentences for allied offenses of similar import is plain error. State v. Yarbrough, 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845, ¶ 96-102. .....

[12] {¶ 31} Justice Cupp's dissent asserts that "Underwood's agreement to the sentence here should be characterized as a specific waiver of the ability to challenge the sentence." We have held that " 'courts indulge every reasonable presumption *against* waiver' of fundamental constitutional rights and that we 'do not presume acquiescence in the loss of fundamental rights.' A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." (Emphasis added.) State v. Adams (1989), 43 Ohio St.3d 67, 69, 538 N.E.2d 1025 quoting Johnson v. Zerbst (1938), 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461, quoting Aetna Ins. Co. v. Kennedy (1937), 301 U.S. 389, 393, 57 S.Ct. 809, 81 L.Ed. 1177, and Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio (1937), 301 U.S. 292, 307, 57 S.Ct. 724, 81 L.Ed. 1093. There is nothing in the record that demonstrates that Underwood was informed that he was agreeing to be convicted of allied offenses, thereby waiving his constitutional right to be free from double jeopardy.

As such the court can clearly see by the record of the Journal entry on sentencing and the plea agreement entered in this case that I was never advised of allied offenses anywhere on the record of the

court. As such these offenses need to be merged under 2941.25(A) and pursuant to the cases **of Sate V Wilson,21 Ohio App. 3D 171 486 N.E.2d 1242(9th district summit county 1985) Three counts of receiving stolen property in violation of 2913.51and see the case of State v Sanders,59 Ohio App. 2D 187, 13 Ohio Op . 3D 209, 392 N.E.2d 1297 (9th district summit county 1978)(four counts of receiving stolen property)**

As the foregoing analysis shows I did not waive my rights to be free from double jeopardy and do hereby request this court to correct the error either in a new sentencing hearing or in a **nunc pro tunc entry**, where the court merges the allied offenses of the two counts of receiving stolen property into the single count authorized by law, Also as the Bill Of Information is for a misdemeanor and a felony see the case of The STATE of Ohio v. BENNETT, Appellant.No. 09 CAA 04 0034.Decided Nov. 5, 2009.--- N.E.2d ----, 2009 WL 3863018.(Ohio App. 5 Dist.), 2009 -Ohio- 6092.As this merger will end my sentence six months ago I will further request this court to order my release from prison on these offenses. That a copy of the merger of the sentences be sent to the Ohio Department of Rehabilitation and Corrections ad to the Warden of North Coast Correctional Institution.

I will waive any requirement that I be present if the court is to merge these offense,s in a journal entry. As the merger will effect my immediate release of this case.

Respectfully submitted Defendant Pro Se

5-12-2010

Derek Lichtenwalter 564-988

2000 South Avon-Beldon Road, Grafton, Ohio 44044

THE Fifth District Court of APPEALS

IN THE COURT OF COMMON PLEAS

TUSCARAWAS COUNTY, OHIO

MANDAMUS

STATE OF OHIO, PLAINTIFF	)	Case Number: _____
v.	)	AFFIDAVIT OF INDIGENCY
DEREK Lichtenwalter, DEFENDANT 564-988	)	

I, DEREK Lichtenwalter, do solemnly swear that I have presently this 12TH day of MAY 2010, no means of financial support and no assets of any value and, therefore, cannot afford to pay for any legal services, fees or costs in the above-styled case.

Defendant, *pro se*
564-988

NCCTF
2000 South Avon-Belden Rd.
Grafton, Ohio 44044

Sworn to and subscribed before me on this 12th day of May, 2010

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires May 18, 2014

Notary Public

INMATE'S AFFIDAVIT OF PRIOR ACTIONS

I, Derek Lichtenwalter, pursuant to Ohio Revised Code § 2969.25, do hereby solemnly swear that:

☐ In the previous five years, I **have not filed** any civil action or appeal of a civil action in any state or federal court.

☒ In the previous five years, I **have filed** the following civil action(s) or appeal(s) of a civil action in state and/or federal court.

During the last five years, I have filed 5 [number] civil actions, and of those civil actions All [number] were filed during the last three years.

Information is included in unit, ~~I have attached an informational~~ sheet which provides all the information required by Ohio Revised Code 2969.25 for each of the civil actions mentioned above.

I hereby declare that all the information contained in this affidavit and the attached Inmate's Information Sheet of Prior Action(s) is true and correct.

SIGNATURE

5-12-2010

NAME AND NUMBER

INSTITUTION

ADDRESS

CITY, STATE & ZIP

PLAINTIFF-APPELLANT, PRO SE

Sworn to and subscribed in my presence this 12th day of May, 2010.

NOTARY PUBLIC

JILL A. GRUNENWALD
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
~~My commission expires May 18, 2014~~

In The Court Of Common Pleas

Tuscarwawas county Ohio

Case#2008cr040116

State Of Ohio

plaintiff

MOTION TO MERGE MULTIPLE CONVICTIONS

2941.25(A)

Crim.rule 52(B)

The STATE of Ohio, v. UNDERWOOD.

MOTION TO CORRECT VOID SENTENCE

117 Ohio St.3d 420, 884 N.E.2d 568, 2008 -Ohio- 1197

The STATE of Ohio, v. SIMPKINS.

Derek Lichtenwalter 564-988

Defendant Pro Se

MOTION TO MERGE MULTIPLE CONVICTIONS 2941.25(A),
MOTION TO CORRECT VOID SENTENCE

Now comes Derek Lichtenwalter ,defendant, pursuant to Ohio Rev. Code 2941.25 (A) and pursuant to the recent decision By the Ohio Supreme Court see,The STATE of Ohio, v. UNDERWOOD.--- N.E.2d ----, 2010 WL 45973 (Ohio), 2010 -Ohio- 1.Decided January 5th 2010.

{¶ 25} R.C. 2941.25(A) . See State v. Brown, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶ 43; State v. McGuire (1997), 80 Ohio St.3d 390, 399, 686 N.E.2d 1112. Thus, a trial court is prohibited from imposing individual sentences for counts that constitute allied offenses of similar import. A defendant's plea to multiple counts does not affect the court's duty to merge those allied counts at sentencing. **This duty is mandatory, not discretionary.....(State v Underwood) and 17 Ohio St.3d 420, 884 N.E.2d 568, 2008 -Ohio- 1197** The STATE of Ohio, v. SIMPKINS. **"keycite referencing"**

[6]No court has the authority to substitute a different sentence for that which is required by law....
[7] Because no judge has the authority to disregard the law, a sentence that clearly does so is void.

As is set in the caption and as is set forth by the laws of the Supreme court of Ohio and the statues of allied offenses and the laws of correction of a void sentence I request the court to merge the allied offense as is required by both statue and the recent supreme court case's. See attached memorandum in support.(See attached memorandum in support) Defendant Pro Se, Derek Lichtenwalter

has been directed that the rules require the procedures to be recorded, and for the Issues to be addressed in open court, as such please Merge the Allied offense and Please grant the Jail time credit, also please waive the Court Costs in this action as I am indigent and I am on Social Security Disability at Home making my income not Garnish able, ACCORDING TO 2329.66

- Also Post Release control was not reimposed at the 6-29-09 sentencing and as such has not been addressed on the record as is required.
- Your Honor you were not present on the 6-29-09 sentencing. As such I am requesting you to please review the fact that I cannot find any copy of the recording of the proceedings also the court has been directed to fix void sentences already By the Ohio supreme Court. I have attached a list of cases for your review to show that the Supreme Court has directed the Underwood decision to be a mandate, the fact is when the court fixes the errors I will be immediately released if not for that fact I would not ask for reconsideration but would wait until the Appeal has been answered. However My children need me at Home Today My mother is having a hard time all by herself.

I thank you for your time and consideration in this matter

Respectfully Requested

Derek Lichtenwalter 564-988
N.C.C.T.F
2000 South Avon Belden Road Grafton Ohio 44044

5-12-2010

Case law for the merger of allied offense's and for the Jail time credit and for Correction of Void sentence

- State v. Holcomb 921 N.E.2d 1077 Ohio App. 9 Dist.,2009. June 30, 2009 (Approx. 11 pages) Motion to correct void sentence.(Describes that Correction of a void senetnce is a secondary form of Post conviction relief not a second post conviction request)
- --- N.E.2d ----, 925 N.E.2d 129, 2010 WL 986536 (Ohio), 2010 -Ohio- 921 Supreme Court of Ohio. BOWEN v. SHELDON, Warden. No. 2010-0077. Submitted Feb. 16, 2010. Decided March 16, 2010. The Ohio Supreme Court decides in this case that a writ of Habeas corpus is not correct here as the trail courts retain jurisdiction to correct sentences that are both not Authorized by law and are contrary to law(Void sentences)

The following is a list of cases reversed and remanded or merged because of the Underwood decision please review then please review your earlier decision in my case.

- State V Lee Slip Copy, 2010 WL 1328683, 2010 -Ohio- 1546, Ohio App. 7 Dist., March 31, 2010 (NO. 08 MA 115)(allied offesnes are plainn error)
- State V Sawer Slip Copy, 2010 WL 1818942 (Ohio App. 1 Dist.), 2010 -Ohio- 1990
- State Vs Storey Slip Copy, 2010 WL 1500595 (Ohio App. 8 Dist.), 2010 -Ohio- 1664
- State V banks Slip Copy, 2010 WL 1611011 (Ohio App. 8 Dist.), 2010 -Ohio- 1762
- State V Bias Slip Copy, 2010 WL 1796333 (Ohio App. 8 Dist.), 2010 -Ohio- 1977
- In Re N.S Slip Copy, 2010 WL 973461 (Ohio App. 8 Dist.), 2010 -Ohio- 1057
- State V wheeler Slip Copy, 2010 WL 1610940 (Ohio App. 8 Dist.), 2010 -Ohio- 1753
- State V Charlton Slip Copy, 2010 WL 1511481 (Ohio App. 2 Dist.), 2010 -Ohio- 1683
- In RE T.L. --- N.E.2d ----, 2010 WL 424468 (Ohio App. 9 Dist.), 2010 -Ohio- 402
- State V Curtis Slip Copy, 2009 WL 4895317, 2009 -Ohio- 6740, Ohio App. 12 Dist., December 21, 2009 (NO. CA2009-01-004)
- State V Bowlin Slip Copy, 2010 WL 1444521 (Ohio App. 12 Dist.), 2010 -Ohio- 1635
- State V Slager Slip Copy, 2010 WL 1636151 (Ohio App. 5 Dist.), 2010 -Ohio- 1797(does not use the New case of Underwood but does reverse the sentence imposed for the allied offenses)

Prayer For merger and/ or Jail time credit to be granted,

Your honor upon review of all the case law I have set forth I hope you see that the Ohio Supreme Court has left you in full control of a sentence that is not imposed within statutory Guidelines. The SUPREME COURT OF OHIO has SAID IT IS PLAIN ERROR as such the trial court should recognize and correct the Error, If it was not that the merger

would effect my Immediate release I would not ask for you to reconsider , if it was not that the Jail time credit is due me and the fact that it was not discussed in open court makes the issues nor final I would not ask for a reconsideration. I have also requested the Fifth District to issue a WRIT OF MANDAMUS to compel you to act as According to the March 22nd denial you are unsure if you have jurisdiction to correct the sentence and I believe that Mandamus is an appropriate vehicle for the request to help you see that you do have Jurisdiction. I thank You for your full consideration In this matter.

Respectfully Requested

Derek Lichtenwalter 564-988

N.C.C.T.F

2000 South Avon Belden Road Grafton Ohio 44044

5-12-2010

IN THE COURT OF APPEALS
FIFTH APPELLATE DISTRICT
TUSCARAWAS COUNTY, OHIO

State ex Rel. Derek Lichtenwalter Relator vs. Judge Elizabeth Lehigh Thomakos Tuscarawas County Court of Common Pleas Respondent	)	Case # 10 AP 05 0017 RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (No Oral Hearing Requested)

Respondent Elizabeth Lehigh Thomakos, Judge of the Tuscarawas County Common Pleas Court moves the Court for an Order granting summary judgment in her favor on the grounds that there are no genuine issues of material fact, and that movant is entitled to judgment in her favor as a matter of law.

ROBERT R. STEPHENSON II #0034616
Assistant Prosecuting Attorney for
Tuscarawas County, Ohio
Counsel for Respondent
125 East High Ave.
New Philadelphia, OH 44663
PH: (330) 364-8811, ext. 3332
FX: (330) 364-4135
e-mail: StephensonB@co.tuscarawas.oh.us

MEMORANDUM IN SUPPORT

Relator's May 14, 2010 Complaint seeking a Writ of Mandamus seeks to compel Respondent to reconsider her previous decision relating to jail time credit. Relator seeks

jail time credit from the date of a holder placed upon him on April 9, 2009 until his sentencing, with a nine month credit from the time he was originally arrested and sent to prison. (Paragraph 2 of Relator's Memorandum in Support).

The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St. 3d 118, 515 N.E. 2d 194. Mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St. 3d 176, 631 N.E. 2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St. 2d 55, 295 N.E. 2d 659; and *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St. 2d 141, 228 N.E. 2d 631, paragraph three of the syllabus. Mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St. 3d 45, 1997-Ohio-245, 676 N.E. 2d 108 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St. 3d 33, 564 N.E. 2d 86. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St. 2d 165, 364 N.E. 2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E. 2d 14; *State ex rel.*

Connole v. Cleveland Board of Education (1993), 87 Ohio App. 3d 43, 621 N.E. 2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

In this case mandamus is not the proper remedy, because relator has or had adequate remedies at law through appeal, delayed appeal, or postconviction relief, all of which preclude mandamus. In *Jimison v. Wilson*, 106 Ohio St. 3d 342, 2005-Ohio-5143, 835 N.E. 2d 34, the petitioner brought a habeas corpus action seeking his immediate release for the trial court's failure to comply with *R.C. 2929.15*(B) and *2929.19*(B)(5). The Supreme Court of Ohio affirmed the dismissal of the petition, because "sentencing errors by a court that had proper jurisdiction cannot be remedied by extraordinary writ."

In *State ex rel. Lewis v. Fuerst*, 2002-Ohio-657, 2002 WL 253917, the relator filed an action seeking a writ of mandamus for an order requiring the grant of jail time credit. The court found that the clerk of court was not the proper party defendant and further determined that the request was moot since the trial court had granted jail time credit in the underlying cases. The court granted respondent's motion for summary judgment. Similarly, in this case, the trial court granted the defendant/relator nine months of jail time credit through a judgment entry filed on 6/30/2009 in Tuscarawas County Common Pleas Court Case No. 2008 CR 04 0116 (Exhibit "A") and denied a request for further jail time credit through a judgment entry filed on 12/7/2009 (Exhibit "B"). Even if the trial court acted in error with regard to these judgment entries, mandamus is not a proper remedy. The court did not refuse to make a decision on the jail time credit. If the decisions made by the trial court were improper the defendant has or had adequate remedies at law through appeal, delayed appeal or post conviction relief

- which as noted above preclude mandamus.

State ex rel. Ross v. Sheward, 2003-Ohio-4575, 2003 WL 22020905, involved a situation where an inmate filed an action requesting that the Court of Appeals issue a writ of mandamus to order the Common Pleas Court to properly calculate an inmates jail time credit. The Court of Appeals held that the Common Pleas Court had twice denied the inmates motions to recalculate his jail time credit and that the matter of jail time credit was therefore moot. The Court further found that the inmate had an adequate remedy at law and was accordingly not entitled to a writ of mandamus to recalculate the jail time credit. The Court further noted that under *R.C. 2967.191* the duty to grant pre-trial confinement time credit rested with the Ohio Adult Parole Authority rather than with the respondent judge.

Respondent requests that the Court dismiss Relator's petition seeking a writ of mandamus for the foregoing reasons.

Respectfully submitted,

ROBERT R. STEPHENSON II #0034616
Assistant Prosecuting Attorney for
Tuscarawas County, Ohio
Counsel for Respondent
125 East High Ave.
New Philadelphia, OH 44663
PH: (330) 365-3332/ FX: (330) 364-4135
e-mail: StephensonB@co.tuscarawas.oh.us

PROOF OF SERVICE

A copy of the foregoing was mailed this 23rd day of June, 2010, to Relator erek Lichtenwalter, 564-988, 2000 South Avon Beldon Road, Grafton, OH 44044.

ROBERT R. STEPHENSON II
Counsel for Respondent

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
TUSCARAWAS COUNTY, OHIO

THE STATE OF OHIO	*	CASE NO. 2008 CR 04 0116
PLAINTIFF,	*	JUDGE THOMAKOS
v.	*	
DEREK LICHTENWALTER **DOB: 8-21-75** **SSN: 278-86-0722**	* *	**JUDGMENT ENTRY**
DEFENDANT.	*	

This matter came on for hearing on June 29, 2009, upon the **Motion to Revoke Judicial Release/Community Control or Modify Former Order** filed on **April 15, 2009**. The State of Ohio was represented in Court by Assistant County Prosecutor Michael Ernest, who was accompanied by Joseph Pelegreen of the Adult Parole Authority. The Defendant was present in Court represented by Public Defender Gerald Latanich.

The Court advised the Defendant of the alleged violations contained in the Motion.

The Defendant waived a probable cause hearing and waived a hearing on the merits of the Motion to Revoke Judicial Release/Community Control or Modify Former Order filed April 15, 2009. The Court was advised that the Defendant would admit to allegation number two (2) contained in the Motion to Revoke.

EXHIBIT "A"

Prior to entering an admission, the Court reviewed with the Defendant his Constitutional and statutory rights pertaining to the full hearing on the merits. The Court finds that the Defendant knows and understands his rights and is making a voluntary waiver of those rights. The Court finds that the Defendant entered an admission to violating terms and conditions of supervision as follows:

1. On or about April 4, 2009, the Defendant was arrested and charged with Failure to Comply with the Order of a Police Officer (F3), four counts Receiving Stolen Property (F5), Falsification (M1), Obstructing Official Business (M2), Driving Under FRA Suspension (M1), Willful/Wanton Operation (MM), and Display/Expired Plates (MM) in Stark County, Ohio.

The Court **FINDS** that the Defendant has violated the terms and conditions of his community control sanctions.

It is therefore **ORDERED** that the Motion to Revoke shall be **granted.**

It is further **ORDERED** that the **twelve (12) month consecutive** terms of imprisonment for **Two Counts Receiving Stolen Property**, contrary to and in violation of Section 2913.51 of the Ohio Revised Code, felonies of the fifth degree, shall be imposed. This sentence shall be served concurrently with the Defendant's current term of state penal incarceration, beginning on this date.

It is hereby **ORDERED** that the Defendant be remanded to the custody of the Tuscarawas County Sheriff and that a warrant issue to said Sheriff for conveyance of this Defendant back to Lorain Correctional Institution.

The Defendant is further advised that during any period of State Penal incarceration, said Defendant does not have the right to vote, to hold public office, or to sit on juries.

The Defendant was advised in open Court of the possible terms of post-release control and the possible penalties for violation of post-release control. Specifically, a period of supervision by the Adult Parole Authority after release from prison is optional in this case. If said Defendant receives a prison sentence for a felony three, four, or five, said

Defendant may be given up to three years of post release control. A violation of any post release rule can result in a more restrictive sanction while said Defendant is under post release control, and increased duration of supervision or control, up to a maximum term and reimprisonment even though said Defendant has served the entire stated prison term imposed by this Court for all offenses. If said Defendant violates conditions of supervision while under post release control, the Parole Board could return said Defendant to prison for up to nine months for each violation, for a total of one half of the originally stated prison term. If the violation is a new felony, said Defendant could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense. [1]

It is further **ORDERED** that the Defendant shall be granted **nine (9) months** jail credit, which includes all prior state penal credit.

Costs to Defendant.

IT IS SO ORDERED.

I the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By Gemma Pabelo
Deputy Clerk

Thomas J. Polony

JUDGE ELIZABETH LEHIGH THOMAKOS

Dated: 6-29-09

cc: Michael Ernest, Assistant Prosecuting Attorney
Gerald Latanich, Public Defender
Defendant #564-988, c/o Lorain Correctional Institution
Tuscarawas County Sheriff
Lorain Correctional Institution
Joseph Pelegreen, Probation
Bureau of Sentence Computation

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2009 JUN 30 P 2:03
ROCKNE W. CLARKE
CLERK OF COURTS

ELT:mdt

[1]The Defendant was also advised of the possible terms of post-release control and the possible penalties for violation of post-release control at the time of sentencing in this matter on July 10, 2008.

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

STATE OF OHIO	:	
	:	Case Number: 2008 CR 04 0116
Plaintiff,	:	
	:	Judge Elizabeth Lehigh Thomakos
vs.	:	
	:	
DEREK R. LICHTENWALTER	:	**JUDGMENT ENTRY**
	:	
Defendant.	:	

This matter came before the Court for consideration of the **Motion for Jail Time Credit** filed by the Defendant, *pro se*, on **September 1, 2009.** It appears that this Motion was somehow omitted from the Court's hearing docket at an earlier date. However, the matter has now come to the attention of the Court. The Court further notes that a **Memorandum in Opposition to Jail Time Credit** was filed by the State of Ohio on **September 23, 2009.** Defendant also filed a **Response** to said Opposition on **November 19, 2009**.

EXHIBIT "B"

132

The Defendant moves the Court for additional jail time credit on the sentence imposed June 29, 2009. At that time, the Court imposed twelve month consecutive terms of imprisonment for Two Counts Receiving Stolen Property, in violation of R.C. 2913.51, felonies of the fifth degree. The Defendant was granted nine months jail credit, which included all prior state penal credit.

The Court has considered the Memorandum of Law submitted by the State of Ohio. The Court agrees that the legal authority supports a finding that the issue of crediting a sentence with jail time served is one which is properly raised on direct appeal.

The Court further **FINDS** that the Defendant cannot receive jail time credit when he is serving time or being held for other offenses.

It is therefore **ORDERED** that the Motion for Jail Time Credit shall be **denied**.

Costs to Defendant.

IT IS SO ORDERED.

Judge Elizabeth Lehigh Thomakos

Dated: December 4, 2009

I, the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original entered in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By Emma Deputy Clerk

cc: Michael Ernest, Assistant Prosecuting Attorney
Defendant #564-988, c/o North Coast Correctional Treatment Facility

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO
2009 DEC -7 A 8: 39
ROCKNE W. CLARKE
CLERK OF COURTS

ELT:pc