In The Supreme Court of Ohio **ORIGINAL**

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State of Ohio
vs
Jesse Dunaway

Case No: 10-1193
on appeal from the Butler County Court of Appeals, twelfth Appellate District Case No: CA2009-05-141
CA2009-06-164

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Motin to Withdrawl

Comes now the defendant in pro-se on this day of August 8, 10 Requesting of the court to Withdrawl his arguement Submitted to this Court by Craig M Vaquith of the office the ohio public Defender,

The Appellate Requested and demanded that Mr Vaquith Submit other complaints and arguements to this Court that the other issues have more merit and proof which gives the defendant a better case and arguement to this Court, Mr Vaquith ignored this evidence and the proof provided to him regarding these violations of Rights and entered his own arguements to this court against the wishes of the defendant and Restricted the Appellate from having any say in his case or evidence provided to this Court and was done against the will of the defendant.

Every defendant has a constitutional Right to an appeal & Due process and under these Rules they have a Right to make Judgement of their own case and decide how they want it Tried or presented to the courts and evidence provided.

A Attorney cannot Restrict or Ignore the wishes of a defendant and the case or Evidence he wishes to provided to the Court which is why the defendant filed R26B Ineffective Assistance of Appellate Counsel, Mr Vaquth Ignored the defendant and the Evidence provided and failed to Submit this to the Courts which is harmful to the Appellates Appeal and doesnt give a solid case or Arguement to this Court to have an effective Appeal

Mr Vaquth New the wishes of the defendant before he accepted Counsel of the defendant and yet Mr Vaquth still took on the case and ignored the defendant and presented his own complaints to this Court even though the defendant Clearly Stated in letters to Mr Vaquth he did Not want to pursue the Unesdiction Arguement to this court, The defendant wrote to Mr Vaquth before the July 11th Deadline and urged even demanded that counsel Submit the defendants complaints, He again ignored the defendant and wrote him Stating that he has Not Read the defendants letters which harmed the Appeal of the defendant as the deadline had passed to Submit Any further Argements and is why the defendant Tried to Amend and enter these issues in pro-se to this Court and filed Rule 26B on Mr Vaquth and also why the defendant Request of this Court to Withdraw the Argements of Mr Vaquth and allow the defendant to Enter the Complaints he wished for which will show merit & prove of a better case and argement than Mr Vaquth Submitted to this Court against the wishes of the Defendant

Memorandum in Support

The defendant wants to Raise many issues that counsel Purposely has ignored, one such Issue has more merit and Proof of a case to this court than the one submitted by Mr Urquith

Where the indictment omits Mens rea, a necessary Element of the offense, Defendant - Appellate's due process Rights and Right to a proper Grand Jury Indictment were Violated

The defendant has tried to get Counsel to submit these Legitimate issues but he Continuously ignores the defendant and harms his appeals and overlooks pure Evidence in Support to his arguements Even Evidence from this Court.

On April 9, 2008 the Ohio Supreme Court held that an indictment that fails to charge a mens rea element of a Crime is so defective that it Resulted in Structural error which need not be raised at trial, The Supreme Court found that Structural errors "Constitutional defects" which deprive a defendant of a Constitutional Right, as the Defective indictment was a structural error that "Permeated" the trial from beginning to End and put into Question the reliability of the trial Court in Serving its function as a vehicle for Determination of Guilt or Innocence. the defendants case and Conviction was Reversed

State v Colon (Ohio 2008) 118 Ohio St. 3d 26, 2008-Ohio-1624, 885 N.E. 2d 917 See also

State v Perry (Ohio 2004) 101 Ohio St. 3d 118, 2004-Ohio-297, 802 N.E 2d 643

The Supreme Court found Support for its position in Art. I Section 10 of the Ohio Constitution which states tha "No Person Shall be held to answer for a Capital or otherwise infamous crime unless on presentment or Indictment of A Grand Jurry"

It Also Stated that the defendants due process Rights were Violated because he had No Notice of What Mens Rea the State was Required to Prove

The defendant has orderd Counsel to Raise this issue and others to this court as he has solid proof and merit behind his Argument and proof from this very Court to back up his claims, Counsel has ignored the defendant and chosen a lesser credible Argument to Raise to this court and against wishes of his client this Also has merit in unconstitutional Arguements and Arguements of defective Indictment the defendant wants to Raise

No where in the defendants indictment for his charges is there A Culpable mental State mentioned but as in Colon and State v. Lester State v. Lester, 2008-Ohio-3570, 2008 WL 2781033 (Ohio App. 1 Dist July 18, 2008)

This indictment was defective and unconstitutional and Resulted in Structural Error that permeated the proceedings, there is No Evidence that the defendant had notice that the State was Required to prove that he had been Reckless in order to convict him of the offense and thus his Due process Rights were Violated. Colon at 32. State v Hill, 2008-Ohio-4257, 2008 WL 3878363 (Ohio App 10 Dist August 21, 2008) The defendant has not been able to Raise these claims to the court Because of ineffective Counsel and now is Restricted by this Court from Doing So

State v Rogers, 2008-Ohio-4867, 2008 WL 4355892 (Ohio App. 8 Dist Sept 25, 2008)
State v Alvarez, 2008-Ohio-5189, 2008 WL 4455611 (Ohio App 3. Dist October 6, 2008)
State v Buford, 2008-Ohio-5505, 2008 WL 4684777 (Ohio App 6. Dist October 24, 2008)
State v. Glover, 2008-Ohio-4255, 2008 WL 3578365 (Ohio App 10 Dist August 21, 2008)

The defendant told Mr Craig M Vaquth that he wanted a new "trial." That he did "Not" wish to pursue argument that would at best have him resentenced and Judge give reason of the sentence, Current arguments are not better and do not have more merit than these issues and do not seek a new trial as demanded by his client, Jurisdiction is a lesser argument with lesser evidence & proof to benefit the defendant and is why the defendant Request this Court to Withdrawl current issues submitted by Mr Vaquth and Allow the defendant to Raise his own issues that have more merit & power to give him the new trial he wants

On August 29, 2008 the State of Ohio filed its appeal to the Ohio Supreme Court Stating the lester case was reversed by the First District Court of Appeals on the basis of State v Colon and such analysis is in direct conflict with the Supreme Courts decision in State v Wharf, 86 Ohio St. 3d 375 1999 Ohio-112, 715 N.E. 2d 172

If the defendant is not able to Raise credibable claims to this court this violates his Dueprocess Rights Even more

The State of Ohio contends that the Supreme Courts decision in State v Wharf Supports a Reversal of the first districts decision in this contention is erroneous. The Ohio Supreme Court in the Colon decision clearly states that "When a section neither Specifies Culpability nor plainly indicates a purpose to impose strict liability recklessness is sufficient culpability to commit the offense" Colon at 28 Even Justice Lanzinger in her dissent Recognizes that the majority for the first time was holding that the State is Required to prove that the defendant Recklessly inflicted physical harm to his Victim. Colon at 40 Similarly No where in ORC [redacted] Code of Attempt murder or felonious assault section does it Indicate a Culpable mental state nor is there indication of a purpose to impose strict liability, The State failed to state the mens rea of "Recklessness" It is Structurally defective under the courts decision in Colon and Therefore the Appellant was prejudiced by this Error, his Conviction must be VACATED pursant to State v Colon. Supra and this courts holding in State V. Rogers, 2008-Ohio-4867, 2008 WL 4355892 (Ohio App 8 Dist. September 25, 2008)

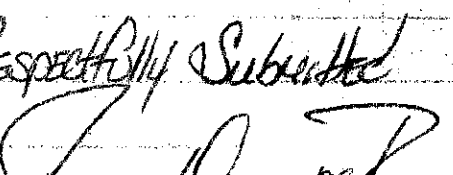
Mr Vaquith has ignored this Evidence purposefully and has Submitted a weaker less meritable Arguement to this court That Does not Seek a new trial for the defendant and clearly ignores the Rights & Constitutional violations and injustice done to the defendant and proves claims of ineffective assistance of Counsel that the defendant Raised and filed with this Court and why he Request a withdrawl of Submitted Complaints by Mr Vaquith and allow Him to Enter a more stronger meritable Complaint

Certificate of Services

I hereby Certify that a Copy of the foregoing motion has been sent VIA Regular U.S. Mail to the Butler County Prosecutors office 315 High St 11th Floor Hamilton, OH 45011 on this Day of August 8, 2010

August 8, 2010

Respectfully Submitted



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