

ORIGINAL

IN THE SUPREME COURT OF OHIO

GREGORY SMITH(DEDONNO) : CASE NO. 2010-0906
 Appellant, :
 v. :
 CUYAHOGA COUNTY SHERIFF'S :
 DEPT. ETAL. :
 Appellees. :

REPLY BRIEF OF APPELLANT

GREGORY SMITH(DEDONNO) # 365-935
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APPELLANT.

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I. STATEMENT REFLECTING MISCHARACTERIZED CAPTION OF APPELLEES
MERIT BRIEF

It must be first and dutifully noted that Appellees, State of Ohio (Cuyahoga County Sherriff's Dept. et al.), presented their merit brief as if they were the Plaintiff-Appellees in this cause. Although insignificant to the instant appeal, such mischaracterization generally serves to mislead a Court regarding the true nature of the action.

As such, Appellant, Gregory Smith(DeDonno), hereby moves this Court to take full notice of the origin of the instant appeal, and compel Appellees to respond in conformity thereof. The instant appeal was brought before this Court under the caption, Gregory Smith(DeDonno), Relator-Appellant v. Cuyahoga County Sheriff's Dept. et al., Respondent-Appellees. Therefore, the Cuyahoga County Sheriff's Dept. is not the Plaintiff in this cause, as their merit brief erroneously stipulates.

II. APPELLEES LAW AND ARGUMENT CIRCUMVENTS THE PROPOSITION OF
LAW PRESENTED

At page 4 of Appellees merit brief, Appellees attempt to circumvent the Eighth District Court of Appeals holding in State v. Mack, 2009 -Ohio- 6460. Contrary to Appellees presentation of Mack before this Court, the Eighth District found that because Mack's originally imposed sentence was **void**, the over

26-month delay in attempting to validate his sentence, deprived the trial court of jurisdiction to sentence. Furthermore, Appellees attempt to dissuade this Court from the facts, because the attempted sentence imposed upon Appellant on October 13, 1998 was void, and of thus, no effect. As a result, the April 1, 2008 attempted sentence in this case was again, Appellant's first time under Ohio law being sentenced. However, it wasn't until February 10, 2010, that Appellees actually finalized Appellant's judgment - a delay of 12-years from the time Appellant plead guilty in this cause.

Appellees continue to cite this Court's holding in Simpkins, 2008 -Ohio- 1197, in support of their proposition that a criminal defendant cannot challenge his delay in sentencing on the statutory grounds of Crim.R. 32(A). However, their reliance on this Court's holding in Simpkins fails to acknowledge that Simpkins never challenged the sentencing on Crim.R. 32(A) grounds. The entire crux of Simpkins argument revolved around double jeopardy and finality purposes. Therefore, the advent of Crim.R. 32(A) involving wholly unauthorized and void sentences had never made its way to the decision-making process of this Court.

The entire aspect of the instant appeal involves the fact that where a defendant is given a void sentence in a criminal matter, and the malefactor is the State, and not the defendant in any way, the statutory provisions of Crim.R. 32(A) must apply.

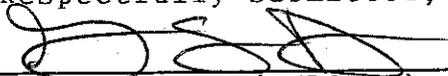
When the initial sentence is void, there is absolutely nothing in place to stop the Crim.R. 32(A) clock from continuing to run. As a result, a defendant should be able to challenge the jurisdiction of the trial court, where a delay in sentencing is extraordinarily lengthy. When Senate Bill 2 was enacted in 1996, the trial courts were fully aware of the mandatory provisions of R.C. 2967.28 of the Ohio Revised Code. Therefore, there has to be a limit to a court's jurisdiction where the court itself, and not the defendant, is the sole cause to the delay in executing judgment.

CONCLUSION

For the preponderance of reasons set forth in both the original merit brief, as well as the instant Reply of Appellant, Appellant respectfully requests that this Honorable Court finally set a rule of law conforming to the provisions of Crim.R. 32(A).

Thus, the Judgment of the Eighth District Court of Appeals must be reversed, and Appellant discharged from State custody for lack of jurisdiction.

Respectfully submitted,



GREGORY SMITH (DEDONNO)

APPELLANT.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Appellant has been sent to the Cuyahoga County Prosecutor at 1200 Ontario Street, Cleveland, Ohio 44113 this 13th day of August, 2010 by ordinary U.S. mail.



GREGORY SMITH (DEDONNO)

APPELLANT.