

ORIGINAL

**IN THE SUPREME COURT OF OHIO
AT COLUMBUS**

The State of Ohio, ex rel., : Trial Court Case No. B-0501011
JAMES E. WOMACK, :
Relator, : On Appeal from the Hamilton
County Court of Appeals
vs. : First Appellate District
: Court of Appeals
MELBA D. MARSH, JUDGE, : Case No. C-100287
HAMILTON COUNTY :
COURT OF COMMON PLEAS, :
Respondent. : Supreme Court Case No. 10-1157

Appeal from Entry Dismissing Petition
for Writ of Mandamus rendered in the
Court of Appeals, First District,
Hamilton County, Ohio, Appeal No. C-100287.

MERIT BRIEF OF RELATOR

James E. Womack #526-178
London Correctional Institution
P.O. Box 69
1580 State Route 56 N.E.
London, Ohio 43140-0069

Relator,

Joseph T. Deters (0012084P)
Prosecuting Attorney

Paula E. Adams (0069036P)
Assistant Prosecuting Attorney

230 East Ninth Street. Suite 4000
Cincinnati, Ohio 45202

Counsel for Respondent.

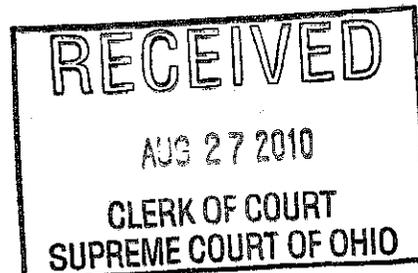
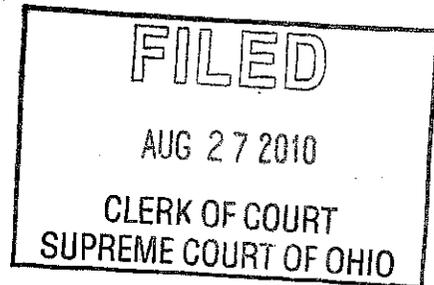


TABLE OF CONTENTS
AND
PROPOSITIONS OF LAW

STATEMENT OF THE CASE	Page
Procedural Posture	1
Statement of the Facts	1

ARGUMENT

I. Proposition of Law No. 1:

THE COURT OF APPEALS ERRED TO THE PREJUDICE OF RELATOR BY SUA SPONTE DISMISSING WRIT OF MANDAMUS AND OR/PROCEDENDO TO COMPEL TRIAL COURT TO ISSUE AN APPROPRIATE SENTENCING ENTRY THAT COMPLIES WITH CRIM.R. 32(C), AND R.C. §2505.02, THAT CONSTITUTES A FINAL APPEALABLE ORDER.

Authorities:

<u>State v. Baker</u> , 119 Ohio St.3d 197, 983 N.E.2d 163, 2008-Ohio-3330	4,5,6,7,9
<u>State v. Bashlor</u> , 2008 WL 623728	6
<u>STATE ex rel. BROOKS v. O'MALLEY</u> , 117 Ohio St.3d 385, 2008-Ohio-1118, 884 N.E.2d 42	4
<u>STATE ex rel. CARNAIL v. McCORMICK</u> , 2010 WL 2430956 .	5
<u>State v. Constable</u> , 2008 WL 3914990	6
<u>State v. Clutter</u> , 2008 WL 5205682	5
<u>STATE ex rel. GULGAN v. MEDINA COURT OF COMMON PLEAS et al</u> , 119 Ohio St.3d 535, 865 N.E.2d 805, 2008-Ohio-4609	3,4,7
<u>STATE ex rel. HUSTED v. BRUNNER</u> , 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215	6
<u>State v. Lampkin</u> , 2010 WL 1781496	6
<u>STATE ex rel. MOORE v. KRICHBAUM</u> , 2010 WL 1316230 ...	5
<u>STATE ex rel. MILEY v. PARROT</u> , 77 Ohio St.3d 64-65, 1996 Ohio-350,	6

STATE ex rel. REYNOLDS v. BASINGER, 99 Ohio St.3d 303,
2003-Ohio-3631, 791 N.E.2d 459 4
STATE ex rel. STAFFREY v. D'APOLITO, 2010 WL 2249447 . 7
State v. Swanson, 2008 WL 242 4896 6
Revised Code §2505.02 2,3,5
Revised Code §2929.191 2
Revised Code §2967.28 (B)(3) 1,3
Rules of Criminal Procedure Rule 32(C) 2,3,4,5,6,7

II. Proposition of Law No. 22:

NUNC PRO TUNC ENTRY CORRECTING INCORRECT TERM OF POST-RELEASE CONTROL WAS NOT THE APPROPRIATE METHOD FOR SENTENCE THAT WAS VOID BECUASE THE TRIAL COURT MADE A MISTAKE IN IT'S JOURNAL ENTRY REGARDING POST-RELEASE CONTROL.

Authorities:

State v. Battle, 2007-Ohio-2474 11
State v. Bedford, 2009 WL 2448260, 2009-Ohio-3972 ... 8
State v. Bezak, 868 N.E.2d 961,964 8,9
State v. Brown, (2000), 136 Ohio App. 818-820 10,11
Colegrove v. Burns, (1964), 175 Ohio St. 437,438, 195
N.E.2d 181 9
STATE ex rel. CRUZADO v. ZALESKI, 856 N.E.2d 263 ... 8,10
State v. Greulich, 572 N.E.2d 132 (1988) 10
State v. O'Neal, 2010 WL 1173021 11
State v. Simpkins, 117 Ohio St.3d 420, 884 N.E.2d 568,
2008-Ohio-1197 8,9,11
State v. Singleton, 124 Ohio St.3d 173, 920 N.E.2d 958,
2009-Ohio-6434 9,10,11
State v. Winston, 182 Ohio App.3d 302, 912 N.E.2d 655, 10
Revised Code §2911.01 (A)(1) 7

<u>Revised Code §2911.02 (A)(3)</u>	7
<u>Revised Code §2967.28 (B)(3)</u>	8,12
<u>Revised Code §2929.14 (F)(2)</u>	8
<u>Revised Code §2929.19 (B)(3)(d)</u>	8
<u>Revised Code §2929.191</u>	9,11,12
<u>Revised Code §2505.02</u>	12
<u>Rules of Criminal Procedure Rule 32(C)</u>	12

Appendix:

1). Notice of Appeal of Relator James E. Womack ...	14,15
2). Entry Dismissing Petition for Writ of Mandamus ...	16
3). Entry Overruling Application for Resentencing/ Correcting Mandatory Term of Post-Release Control from Five Years to Three Years	17
4). Judgment Entry; Sentence: Incarceration	18,19
Conclusion	11,12
Certificate of Service	13

STATEMENT OF THE CASE

The Relator, James E. Womack, (hereinafter Relator) was indicted in Hamilton County, Ohio on February 7, 2005.

On May 5, 2006, a jury convicted Relator.

On June 13, 2006, Relator was sentenced by the trial court.

A timely notice of appeal was filed by appointed appellate counsel on June 23, 2006.

Relator appealed his convictions and the Court of Appeals, First Appellate District, Hamilton County, affirmed.

Relator appealed the decision of the court of appeals to the Ohio Supreme Court which did not allow Relator's further appeal.

STATEMENT OF THE FACTS

On June 8, 2009, Relator filed an Application for Resentencing Pursuant to Foster, in the Hamilton County, Court of Common Pleas, Case No. B-0501011, and on December 1, 2009, Relator filed an Application for Reopening for Resentencing Pursuant to Ohio Revised Code §2967.28 (B)(3), in the Hamilton County, Court of Common Pleas, Case No. B-0501011, asserting that certain portions of Ohio's sentencing laws are unconstitutional and violative of a defendant's Sixth Amendment right to a jury trial and that since the trial court made a mistake in it's journal entry regarding Post-Release Control, the journal entry is void, and there is no final appealable order. (See Judgment Entry, 6-13-06, sentencing Relator to (5) five years Post-Release Control for a third-degree felony, Page 2).

On May 3, 2010, Relator filed a Writ of Mandamus and or/ Procedendo in the Court of Appeals, First Appellate District, Case No. C-100287, to compel trial court judge Melba D. Marsh, to rule on pending motions filed on June 8, 2009, and on December

1, 2009, to hold a *de novo* sentencing hearing pursuant to R.C. § 2929.191, and issue a new journal entry with correct term of Post-Release Control.

On May 11, 2010, trial court issued an Entry Overruling Application for Resentencing/Correcting Mandatory Term of Post-Release Control from (5) Five Years to (3) Three Years.

On May 20, 2010, Relator filed a Notice of Appeal, Appeal No. C-100343, and a Reply to Entry Overruling Application for Resentencing/Correcting Mandatory Term of Post-Release Control from (5) Five Years to (3) Three Years, Case No. C-100287, Trial Court Case No. B-0501011, to the Court of Appeals, First Appellate District, Hamilton County, Ohio, contending that the trial court erred in issuing a *nunc pro tunc* sentencing entry that failed to comply with Crim.R. 32(C), that it failed to contain the (4) four elements in constituting a final appealable order under R.C. §2505.02.

On June 9, 2010, the Court of Appeals, First Appellate District Case No. C-100287, dismissed Writ of Mandamus and or/Procedendo.

On July 2, 2010, Relator filed a Notice of Appeal, Affidavit of Indigency and Memorandum in Support to the Supreme Court of Ohio, Case No. 10-1157, asserting that the Court of Appeals, First Appellate District, Hamilton County, Ohio, erred by dismissing Relator's Writ of Mandamus and or/Procedendo to compel trial court to issue an appropriate sentencing entry that constitutes a final appealable order.

On July 8, 2010, the Supreme Court of Ohio filed an entry allowing Relator to proceed as an appeal of right.

This cause is now before the Court upon Relator's appeal.

LEGAL ARGUMENT

I. Proposition of Law No. 1.

THE COURT OF APPEALS ERRED TO THE PREJUDICE OF RELATOR BY SUA SPONTE DISMISSING WRIT OF MANDAMUS AND OR/PROCEDENDO TO COMPEL TRIAL COURT TO ISSUE AN APPROPRIATE SENTENCING ENTRY THAT COMPLIES WITH CRIM.R. 32(C), R.C. §2505.02, THAT CONSTITUTES A FINAL APPEALABLE ORDER.

Relator appeals an entry from the Court of Appeals, First Appellate District, Hamilton County, Ohio, dismissing a petition for Writ of Mandamus and or/Procedendo to compel trial court to issue an appropriate sentencing entry that constitutes a final appealable order.

On June 8, 2009, and on December 1, 2009, Relator filed an Application for Resentencing Pursuant to Foster, and an Application for Resentencing Pursuant to R.C. §2967.28 (B)(3), asserting that certain portions of Ohio's sentencing laws are unconstitutional and violative of a defendant's Sixth Amendment right to a jury trial and that since the trial court made a mistake in it's sentencing entry regarding Post-Release Control, the sentence and journal entry is void, and there is no final appealable order.

Respondent, Judge Melba D. Marsh denied Relator's motions.

Relator filed a complaint for Writ of Mandamus and or/Procedendo in the Court of appeals, First Appellate District, to compel the Respondent, Judge Marsh, and the trial court to enter a judgment of conviction complying with Crim.R. 32(C) and R.C. §2505.02.

Respondent filed a motion to dismiss and the Court of Appeals dismissed the petition sua sponte.

The Supreme Court of Ohio held that Writs of Mandamus and or/Procedendo would issue to compel trial court to issue appropriate sentencing judgment. State ex rel. CULGAN v. MEDINA COUNTY COURT

OF COMMON PLEAS et al., 119 Ohio St.3d 535, 895 N.E.2d 805, 2008-Ohio-4609.

Relator asserts that the Court of Appeals erred in sua sponte dismissing his complaint for Writ of Mandamus and or/Procedendo.

"A court may dismiss a complaint sua sponte and without notice when the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." (See State ex rel. Brooks v. O'Malley, 117 Ohio St.3d 385, 2008-Ohio-1118, 884 N.E.2d 42, ¶ 5), Culgan, 895 N.E.2d 805 at ¶ 7.)

"Procedendo and mandamus will lie when a trial court has refused to render or unduly delayed rendering a judgment." (See State ex rel. Reynolds v. Basinger, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459 ¶ 5. Culgan, 895 N.E.2d 805 at ¶ 8.)

Relator is correct that Respondent's revised or corrected sentencing entry violates Crim.R. 32(C), which renders the entry non-appealable and his claim for Writs of Mandamus and or/Procedendo has merit, and the Court of Appeals erred in sua sponte dismissing his complaint.

According to State v. Baker, 119 Ohio St.3d 197, 893 N.E.2d 163, 2008-Ohio-3330, the Supreme Court of Ohio held that a judgment of conviction is a single document that includes the sentence and the means of conviction, whether by plea, verdict, or finding by the court, to be a final appealable order under R.C. §2505.02.

Crim.R. 32 (C), requires that a judgment of conviction set forth the following to be a final appealable order: (1), the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2), the sentence; (3), the signature of the judge; and (4), entry on the journal by the clerk of court. "

Respondent's revised or corrected sentencing entry did not constitute a final appealable order because it did not contain a guilty plea, jury verdict, or the finding upon which Relator's convictions were based.

Relator is entitled to a sentencing entry that complies with Crim.R. 32(C).

Relator's original judgment entry filed on June 13, 2006, sets forth (1), the jury verdict; (2), the sentence; (3), the signature of the judge; (4), entry on the journal by the clerk of court.

Relator's revised or corrected judgment entry filed May 7, 2010, sets forth only the correct term of Post-Release Control, the signature of the judge, and the entry on the journal by the clerk of court.

It fails to set forth the jury verdict, and the sentence.

Allowing multiple documents to constitute a final appealable order is an erroneous interpretation of the rule.

Only one document can constitute a final appealable order under Crim.R. 32(C).

According to State ex rel. Carnail v. McCormick, 2010 WL 243-0956, citing State v. Clutter, 2008 WL 5205682, the Ohio Supreme Court specifically rejected any rationale that would allow two separate judgment entries to constitute a final appealable order, or otherwise satisfy the requirements of Crim.R. 32(C) and R.C. §2505.02 or Baker.

According to STATE ex rel. MOORE v. KRICHBAUM, 2010 WL 1316230 (Ohio App. 7 Dist.), 2010-Ohio-1541, Relator Moore' original and subsequent sentencing entries did not contain the the necessary elements required to constitute a final appealable order under

Crim.R. 32(C), and Baker.

In order for a court to issue a writ of mandamus, a relator must have a clear legal right to the relief prayed for, the respondent must have a clear legal duty to perform the act requested, and the relator must have no plain and adequate remedy at law.

STATE ex rel. HUSTED v. BRUNNER, 123 Ohio St.3d 288, 2009-Ohio-5327 915 N.E.2d 1215, at ¶ 8.

To be entitled to a writ of procedendo, "a relator must establish a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law." STATE ex rel. MILEY v. PARROT, 77 Ohio St.3d 64,65, 1996-Ohio-350, 671 N.E.2d 24.

In the instant case, Relator has filed several motions in the trial court requesting a de nova sentencing hearing, vacating the void sentence, and issuing a new journal entry because the trial court made a mistake in it's sentencing entry when it imposed (5) five years Post-Release Control on convictions of (4) four third-degree felonies when Ohio law requires (3) three years. (See State v. Swanson, 2008 WL 2424896, State v. Bashlor, 2008 WL 623728, and State v. Lampkin, 2010 WL 1781496).

The Respondent, Judge Marsh, issued a revised or corrected sentencing entry that failed to contain the jury verdict, and the sentence.

Allowing multiple documents to constitute a final appealable order violates the rules of criminal procedure. (See State v. Constable, 2008 WL 3914990).

Based on the foregoing, the Court of appeals erred in sua sponte dismissing Relator's complaint.

The Relator is entitled to Writ of Mandamus and or/Procedendo

compelling the Respondent Marsh to enter a judgment of conviction in one single document complying with Crim.R. 32(C).

Relator is entitled to a new sentencing entry irrespective of prior appellate review. (See STATE ex rel. STAFFREY v. D'APOLITO, 2010 WL 2249447).

Under Culgan, this holding applies retroactively and a Baker violation can be argued by a defendant who had previously appealed his conviction.

Relator is entitled to a new sentencing entry due to the possibility that without appellate review this case would be impossible to appeal.

Relator's Writ of Mandamus and or/Procedendo has merit and the Court of Appeals erred to the prejudice of Relator in sua sponte dismissing the complaint.

II. Proposition of Law No. 2.

NUNC PRO TUNC ENTRY CORRECTING INCORRECT MANDATORY TERM OF POST-RELEASE CONTROL WAS NOT THE APPROPRIATE METHOD FOR SENTENCE THAT WAS VOID BECAUSE THE TRIAL COURT MADE A MISTAKE IN IT'S JOURNAL ENTRY REGARDING POST-RELEASE CONTROL.

Relator is entitled to a new sentencing hearing because the trial court incorrectly wrote in it's judgment entry that Relator would be supervised under Post-Release Control for (5) five years when statute requires (3) three years for a third-degree felony.

The Relator was indicted on (4) four counts of aggravated robbery, R.C. § 2911.01 (A)(1), felonies of the first-degree, but convicted of (4) four counts of robbery, R.C. §2911.02 (A)(3), felonies of the third-degree.

On June 13, 2006, at the sentencing hearing, the trial court notified Relator that he was subject to a term of (3) three years.

Post-Release Control, however in the sentencing entry, the trial court notified Relator that he was subject to a term of (5) five years of Post-Release Control.

R.C. §2967.28 (B) provides in part * * * a period of Post-Release Control required by this division for an offender shall be one of the following periods: * * * (3) For a felony of the third-degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, (3) three years.

R.C. §2929.14 (F)(2) provides that if a court imposes a prison term for a felony of the third, fourth, or fifth degree, it shall include in the sentence a requirement that the offender be subject to a period of Post-Release Control after his release from imprisonment, in accordance with R.C. §2967.28, if the parole board determines that a period of Post-Release Control is necessary.

R.C. §2929.19 (B)(3)(d) provides that if the sentencing court determines that a prison term is necessary or required, it shall notify the offender that he may be supervised under R.C. §2967.28 after he leaves prison if he is being sentenced for a felony of the third, fourth or fifth degree. (See State v. Bedford, 2009 WL 2448260, 2009-Ohio-3972 at 1, 2).

According to State v. Simpkins, 117 Ohio St.3d 420, 884 N.E.2d 568, 2008-Ohio-1197, the Ohio Supreme Court held that, [i]n cases in which a defendant is convicted of, or pleads guilty to, an offense for which Post-Release Control is required but not properly included in the sentence, the sentence is void. Id at syllabus. (See State v. Bezak, 868 N.E.2d 961, 964, STATE ex rel. CRUZADO v. ZALESKI, 856 N.E.2d 263).

The Supreme Court reasoned that no court has the authority to substitute a different sentence for that which is required by law. Simpkins, at 20, citing Colegrove v. Burns, (1964), 175 Ohio St. 437 438, 195 N.E.2d 811.

A sentence that does not conform to statutory mandates requiring the imposition of Post-Release Control is a nullity and void, it must be vacated.

The effect of vacating the sentence places the parties in the same position they would have been in had there been no sentence. State v. Bezak, 114 Ohio St.3d 94, 868 N.E.2d 961 at ¶13.

In State v. Singleton, 124 Ohio St.3d 173, 920 N.E.2d 958, 2009-Ohio-6434, the Ohio Supreme Court reconsidered Simpkins and it's other Post-Release Control opinions to address the effect that R.C. §2929.19.1 had on those decisions.

The effective date of R.C. §2929.19.1 was July 11, 2006.

The Supreme Court held that, for criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose Post-Release Control, trial courts shall conduct a *de nova* sentencing hearing in accordance with Simpkins and it's other Post-Release Control decisions. Id at paragraph one of the syllabus.

For criminal sentences imposed on or after July 11, 2006, in which a trial court failed to properly impose Post-Release Control trial courts shall apply the procedures set forth in R.C. §2929.191 Id at paragraph two of the syllabus.

It concluded that because the trial court incorrectly imposed Post-Release Control and Mr. Singleton was sentenced before July 11, 2006, he was entitled to a *de nova* sentencing hearing. Id at ¶ 36, 884 N.E.2d 568.

The trial court did not properly impose Post-Release Control when it sentenced the Relator.

Under Singleton, 920 N.E.2d 955 at ¶ 1, the remedy is dependent on whether the sentence was imposed before, or after July 11, 2006.

The trial court entered the original "Judgment Entry" on June 13, 2006.

It entered it's revised or corrected **Nunc Pro Tunc** Judgment Entry on May 7, 2010.

"A **Nunc Pro Tunc** order may be issued by a trial court as an exercise of it's inherent power to make it's record speak the truth State v. Greulich, 572 N.E.2d 132, (1988)."

"It is used to record that which the trial court did, but which has not been recorded." Id.

It is limited in proper use to reflecting what the court should have decided. Cruzado, 2006-Ohio-5795 at ¶ 1.

It can be used to supply information which existed but not recorded, to correct mathematical calculations, and to correct typographical or clerical errors. Greulich, 61 Ohio App.3d at 24, 527 N.E.2d 132.

The trial court was not merely correcting a clerical error but was required to vacate void sentence, resentence Relator, and issue a new journal entry. State v. Winston, 182 Ohio App.3d 302, 912 N.E.2d 655.

Nunc Pro Tunc entries are used to correct clerical errors, and in this context, "clerical mistake" refers to a mistake, or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment. State v. Brown,

(2000), 136 Ohio App.3d 818-820.

In general, a **Nunc Pro Tunc** entry relates back to the date of the journal entry it corrects. State v. Battle, 2007-Ohio-2475 at ¶ 6.

Nunc Pro Tunc entries are given a retrospective application as between the parties thereto. State v. O'Neal, 2010 WL 1173021 at 13.

"It is an order issued now which has the same legal force and effect as if it had been issued at an earlier time, when it ought to have been issued", Greulich, 572 N.E.2d 132 (1988).

The **Nunc Pro Tunc** revised or corrected judgment entry on May 7, 2010 must be treated as if it had been issued at the time the trial court entered it's June 13, 2006 Judgment Entry.

Because if the **Nunc Pro Tunc** Judgment Entry is treated as if it was entered on June 13, 2006, it was issued before the effective date of R.C. §2929.191.

Because it "does not conform to the statutory mandates requiring the imposition of Post-Release Control," it is void and must be vacated. Simpkins, 2008-Ohio-1197 at 22.

Under Singleton, Relator is entitled to a *de nova* sentencing hearing. (See State v. O'Neal, 2010 WL 1173021, 2010-Ohio-1252).

CONCLUSION

R.C. §2929.191, provides that the trial court may after conducting a hearing with notice to the offender, the prosecuting attorney, and the Department of Rehabilitation and Corrections, correct an original judgment of conviction by placing on court a **Nunc Pro Tunc** entry that includes a statement that the offender will

be supervised under R.C. §2967.28.

R.C. §2929.191 (C), prescribes the type of hearing that must occur to make such a correction to a judgment entry.

Finally, the trial court erred when it ordered Relator to serve an illegal, mandatory term of (5) five years of Post-Release Control for (4) four third-degree felonies.

Relator's sentence on his convictions are void as is the journal entry in which the trial court attempted to impose this sentence.

Because the trial court made a mistake regarding Post-Release Control in it's journal entry, the Relator's sentence is void and not a final appealable order under R.C. §2505.02.

The Court of Appeals erred when it dismissed Relator's Writ of Mandamus and or /Procedendo compelling Respondent Marsh to issue a sentencing entry that complies with Crim.R. 32(C), and constitutes a final appealable order.

The trial court erred to the prejudice of Relator when it issued a Nunc Pro Tunc order correcting the mandatory term of Post-Release Control from (5) five years to (3) three years without first holding a hearing as required by R.C. §2929.191 (C).

Since Relator was sentenced before July 11, 2006, he is entitled to a new sentencing hearing and a revised sentencing entry that would be in compliance with the rules of criminal procedure.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Merit Brief of Relator James E. Womack has been served by U.S. Mail, postage pre-paid to Joseph T. Deters, Prosecuting Attorney, c/o Paula E. Adams, Assistant Prosecuting Attorney, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio, 45202, on the 18th day of August, 2010.

James E. Womack
Relator

IN THE SUPREME COURT OF OHIO
AT COLUMBUS

The State of Ohio, ex rel .,

JAMES E. WOMACK,

Relator,

vs.

MELBA MARSH, JUDGE,
HAMILTON COUNTY,
COURT OF COMMON PLEAS,

Respondent.

: Trial Court Case No. B-0501011

: **10-1157**

: On Appeal from the Hamilton
County Court of Appeals
: First Appellate District

:

: Court of Appeals
Case No. C-1000287

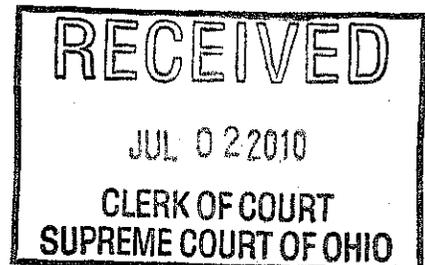
:

:

NOTICE OF APPEAL OF RELATOR JAMES E. WOMACK

James E. Womack #526-178
London Correctional Institution
P.O. Box 69
1580 State Route 56 N.E.
London, Ohio 43140-0069

Relator,

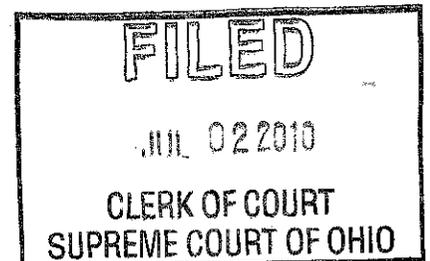


Joseph T. Deters (0012084P)
Prosecuting Attorney

Paula E. Adams (0069036P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

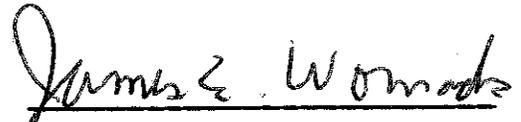
Counsel for Respondent.



NOTICE OF APPEAL OF RELATOR JAMES E. WOMACK

Relator James E. Womack hereby gives notice of appeal to the Supreme Court of Ohio from the Entry Dismissing Petition for Writ of Mandamus, from the Hamilton County Court of Appeals, First Appellate District, entered in Court of Appeals Case No. C-100287, on June 9, 2010.

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

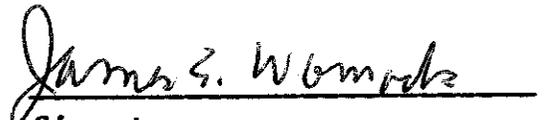

Signature

James E. Womack #526-178
L.O.C.I.
P.O. Box 69
1580 State Route 56 N.E.
London, Ohio 43140-0069

Relator,

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to Joseph T. Deters, Prosecuting Attorney, c/o Paula E. Adams, Assistant Prosecuting Attorney, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio, 45202, on the 28th day of June, 2010.


Signature

James E. Womack #526-178
Relator.

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

STATE EX REL.
JAMES E. WOMACK,

APPEAL NO. C-100287

Relator,

vs

ENTRY DISMISSING PETITION
FOR WRIT OF MANDAMUS

MELBA MARSH, JUDGE,
HAMILTON COUNTY
COURT OF COMMON PLEAS,

Respondent.

This cause came on to be considered upon the petition for a writ of mandamus, upon the motion of the respondent to dismiss the petition, and upon the relator's reply.

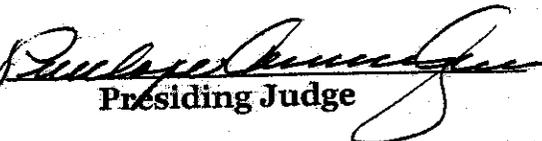
The Court finds that the motion to dismiss is well taken and is granted.

The petition for writ of mandamus is dismissed.

To The Clerk:

Enter upon the Journal of the Court on ~~JUN - 9 2010~~ per order of the Court.

By:


Presiding Judge

(Copies sent to all counsel)

ENTERED
MAY 07 2010

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION

STATE OF OHIO

Plaintiff

vs.

JAMES WOMACK

Defendant

: Case No. B-0501011

: Judge Melba D. Marsh

: ENTRY OVERRULING
: APPLICATION FOR RE-
: SENTENCING / CORRECTING
: MANDATORY TERM OF POST-
: RELEASE CONTROL FROM
: FIVE YEARS TO THREE YEARS

This matter is before the court on the defendant's "Application for Re-sentencing Pursuant to Foster" filed on June 24, 2009 and his "Motion Requesting Re-Sentencing" filed on December 1, 2009. The court finds that the defendant is not entitled to a re-sentencing hearing. The court further finds that the defendant is correct that the mandatory term of post-release control is three years as opposed to the five years originally ordered by this Court. Therefore, it is the order of this Court that, as the defendant is well aware, he shall be subject to three years of post-release control.

Judge Melba D. Marsh

James E. Womack (#526-178)
London Correctional Institution
P.O. Box 69
London, OH 43140-0069

Paula E. Adams (0069036F)
Hamilton County Prosecutor's Office
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202

A TRUE COPY OF THE ORIGINAL
ENTERED 5/10/10
ATTEST PATRICIA M. CLANCY
CLERK. [Signature]
BY _____
DEPUTY
DATE 5/10/10

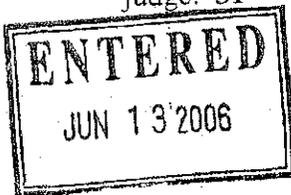
Exhibit A

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 06/13/2006

code: GJEI

judge: 31



Ralph Winkler
Judge: RALPH WINKLER

NO: B 0501011

STATE OF OHIO
VS.
JAMES WOMACK

JUDGMENT ENTRY: SENTENCE:
INCARCERATION

Defendant was present in open Court with Counsel MICHAELA M STAGNARO on the 13th day of June 2006 for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

- count 1: ROBBERY (LESSER OFFENSE), 2911-02A3/ORCN,F1
- count 2: ROBBERY (LESSER OFFENSE), 2911-02A3/ORCN,F1
- count 3: ROBBERY (LESSER OFFENSE), 2911-02A3/ORCN,F1
- count 4: ROBBERY (LESSER OFFENSE), 2911-02A3/ORCN,F1

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:

- count 1: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
- count 2: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
- count 3: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS
- count 4: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

THE SENTENCES IN COUNTS #1, #2, #3 AND #4 ARE TO BE SERVED CONSECUTIVELY TO EACH OTHER. THE DEFENDANT IS GIVEN CREDIT FOR FIVE HUNDRED ONE (501) DAYS TIME SERVED.

DEFENDANT TO PAY COURT COSTS.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 06/13/2006
code: GJEI
judge: 31


Judge: RALPH WINKLER

NO: B 0501011

STATE OF OHIO
VS.
JAMES WOMACK

JUDGMENT ENTRY: SENTENCE:
INCARCERATION

CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENCE IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE (5) YEARS.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.