

IN THE SUPREME COURT OF OHIO
AT COLUMBUS

ORIGINAL

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
: First Appellate District
vs. :
MELBA D. MARSH, : Court of Appeals
HAMILTON COUNTY : Case No. C-100287
COURT OF COMMON PLEAS, :
Respondent. : Supreme Court Case No. 10-1157

REPLY BRIEF OF RELATOR

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London, Ohio 43140-0069

Relator,

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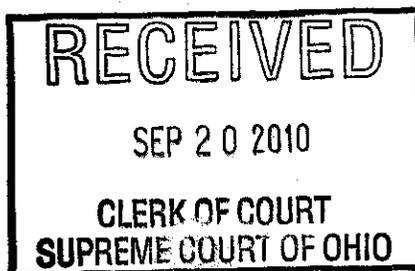
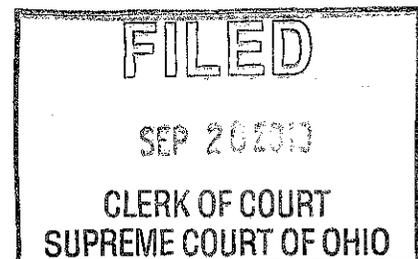


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STATEMENT OF THE FACTS

Relator has filed several motions for resentencing pursuant to R.C. §2967.28 challenging the imposition of an incorrect term of Post-Release Control and the trial court's failure to issue an appropriate sentencing entry that complies with Crim.R. 32(C), and the court of appeals error in sua sponte dismissing his Writs of Mandamus and or/Procedendo. (Please read Statement of the Case and the Statement of the Facts in Relator's Merit Brief, Page 1).

LEGAL ARGUMENT

Proposition of Law No. 1:

WRITS OF MANDAMUS AND OR/PROCEDENDO SHALL ISSUE WHEN RELATOR HAS DEMONSTRATED THAT HE HAS NO PLAIN AND ADEQUATE REMEDY AT LAW.

Relator has consistently demonstrated that he has no plain and adequate remedy at law.

Relator's original sentencing entry imposes (5) five years of Post-Release Control when R.C. §2967.28 (B)(3) requires (3) three years for third-degree felonies.

Relator's corrected or revised sentencing entry failed to mention the jury verdict and the sentence imposed on the Relator.

Relator has a clear legal right to the relief requested which is a *de nova* sentencing hearing, and the issuance of a new journal entry.

Respondent has a clear legal duty to perform the requested act because Relator was sentenced before July 11, 2006, prior to the enactment of R.C. §2929.191 and State v. Singleton, 124 Ohio St.3d 173, 920 N.E.2d 958, 2009-Ohio-6434.

Finally, Relator has no plain and adequate remedy at law because his judgment of conviction is not a final appealable order in that it is not contained in one single document as held in State v. Baker, 119 Ohio St.3d 197, 983 N.E.2d 163, 2008-Ohio-3330. (See R.C. §2505.02, defining final appealable orders).

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

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

Relator is entitled to appeal a corrected or revised sentencing entry that fails to set forth the manner of conviction and the sentence.

Relator's Writs of Mandamus and or/Procedendo is not a substitute for an appeal where the judgment of conviction is not contained in one single document.

Relator's Writs of Mandamus and or/Procedendo is not a substitution for an appeal when the trial court has refused to issue an appropriate sentencing entry in one single document that contains the plea, the verdict or the findings, the sentence, the signature of the judge, and the entry on the journal by the clerk of court.

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

CONCLUSION

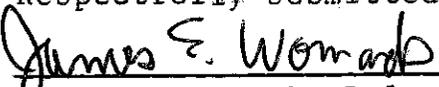
The court of appeals has no jurisdiction over orders that are not final and appealable. Section 3(B)(2), Article IV, Ohio Constitution,

Relator further argues that because the journal entry and the sentence is void the court of appeals had no jurisdiction to consider the merits of the appeal that led to his petition.

The court of appeals erred in sua sponte dismissing the complaint for Writs of Mandamus and or/Procedendo.

The judgment of the court of appeals should be reversed and this Court should grant the Writs of Mandamus and or/Procedendo to compel Respondent Marsh to issue a sentencing that complies with Crim.R. 32(C) and Baker, and constitutes a final appealable order in one single document.

Respectfully submitted,


James E. Womack, Relator.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply 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 16th day of Sept, 2010.

James E. Womack
Relator.

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Respondent. :

AFFIDAVIT OF INDIGENCY

I, James E. Womack, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

1). I am currently incarcerated at the London Correctional Institution and I have been incarcerated since January 28, 2005.

2). I work at the prison but only receive \$15.00 per month.

Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fees and security deposit, if applicable, be waived.

James E. Womack
AFFIANT

Sworn to, or affirmed, and subscribed in my presence this

10th day of September, 2010.
Gilbert A. Hurwood

Notary Public

My Commission Expires: 1/9/13

GILBERT A. HURWOOD
Notary Public, State of Ohio
My Commission Expires 1-9-2013