

IN THE SUPREME COURT OF OHIO

State of Ohio, :
 : Case No. **10-2210**
 :
 Plaintiff-Appellee, :
 :
 : On Appeal from the Summit
 v. : County Court of Appeals,
 : Ninth Appellate District,
 Adolph R. Brown, : Case No. 25099
 :
 :
 Defendant-Appellant. :

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT ADOLPH R. BROWN**

OFFICE OF THE OHIO PUBLIC
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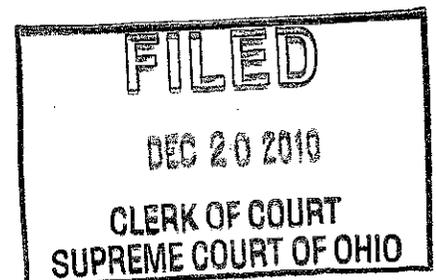


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A criminal defendant's appeal following a *Bezak* resentencing is the first direct appeal as of right from a valid sentence.

Proposition of Law No. II4

The trial court committed reversible error by:

- A. Denying Mr. Brown’s suppression motions without a hearing;**
- B. Convicting and sentencing him despite the ineffective assistance of counsel in litigating the motions to suppress;**
- C. Convicting him of trafficking drugs in the vicinity of a school without sufficient evidence;**
- D. Denying his motion for a new trial.**

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**This is a Case of Public or Great General Interest and
Involves a Substantial Constitutional Question**

This Court should accept jurisdiction over this case and hold it for the decision in *State v. Fischer*, Case No. 2009-897, because Mr. Brown had a de novo sentencing hearing pursuant to *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, and *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434 at ¶36, n1. The court of appeals incorrectly held that Mr. Brown was not entitled to have his resentencing treated as de novo because it occurred after the effective date of HB 137. Slip Op. at ¶2-5. But the court of appeals missed that Mr. Brown's *Bezak* sentencing was on October 20, 2009, before the December 22, 2009 release of the *Singleton* decision. Apx. at A-7. And *Singleton* expressly stated that it did not "require further judicial action in cases where, prior to the release of this opinion, a trial court has conducted a de novo sentencing hearing in conformity with the caselaw of this court to remedy a sentence lacking postrelease control entered on or after July 11, 2006." *Singleton* at ¶36, n1. Pursuant to *Singleton*, Mr. Brown's *Bezak* resentencing of a void judgment remains a *Bezak* resentencing of a void judgment, rather than a hearing under the *Singleton* interpretation of R.C. 2929.191. Accordingly, this Court should accept jurisdiction, reverse, and remand for further consideration in light of *Fischer*.

Statement of the Case and the Facts

In February 2007, after a jury convicted Adolph Brown of trafficking in cocaine, possession of cocaine, possession of marijuana, possession of criminal tools, and illegal use or possession of drug paraphernalia, the trial court sentenced him to six years in prison. Mr. Brown filed what purported to be an appeal, and the court of appeals affirmed.

In October 2009, prompted by a motion to dismiss and a motion for new trial, the trial court held a de novo resentencing hearing pursuant to *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250. Mr. Brown filed an appeal from that resentencing hearing, but the court of appeals held that the appeal was not Mr. Brown's first appeal as of right because, pursuant to *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, his original sentence occurred after the effective date of HB 137. Slip Op. at ¶2-5. In accordance with this holding, the court of appeals declined to address Mr. Brown's appellate issues on the merits. *Id.* at ¶5-14.

Argument

Proposition of Law No. I

A criminal defendant's appeal following a *Bezak* resentencing is the first direct appeal as of right from a valid sentence.

Mr. Brown had a de novo sentencing hearing pursuant to *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, and pursuant to *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434 at ¶36, fn1. The court of appeals held that Mr. Brown was not entitled to have his resentencing treated as de novo because it occurred after the effective date of HB 137. Slip Op. at ¶2-5. But the court of appeals failed to recognize that Mr. Brown's *Bezak* sentencing was on October 20, 2009, before *Singleton* was released. Apx. at A-7.

Singleton stated that it did not "require further judicial action in cases where, prior to the release of this opinion, a trial court has conducted a de novo sentencing hearing in conformity with the caselaw of this court to remedy a sentence lacking postrelease control entered on or after July 11, 2006."

Singleton at ¶36, n1. Pursuant to *Singleton*, Mr. Brown's *Bezak* resentencing of a void judgment remains a *Bezak* resentencing of a void judgment.

Accordingly, this is Mr. Brown's first appeal as of right. This Court should accept jurisdiction, reverse, and remand for further consideration in light of *Fischer*.

Proposition of Law No. II

The trial court committed reversible error by:

- A. Denying Mr. Brown's suppression motions without a hearing;**
 - B. Convicting and sentencing him despite the ineffective assistance of counsel in litigating the motions to suppress;**
 - C. Convicting him of trafficking drugs in the vicinity of a school without sufficient evidence;**
 - D. Denying his motion for a new trial.**
- A. The trial court erred by denying Mr. Brown's suppression motions without a hearing.**

The trial court denied Mr. Brown's September 6, 2006 motion to suppress after his attorney said that he had telephoned Mr. Brown, but did not actually speak with Mr. Brown. No testimony was given that Mr. Brown was sent written notice or that he received oral notice. Mr. Brown later discharged the attorney.

The trial court also summarily denied a hearing on Mr. Brown's January 26, 2007 motion to suppress even though the trial court granted a hearing on a similar motion to suppress filed by a co-defendant the same day.

The denial of continuances for the motions was an abuse of discretion and a denial of Mr. Brown's federal constitutional right to be physically present at all critical stages of his trial. Sixth and Fourteenth Amendments to the United States Constitution; Crim.R. 43(A); See generally *Illinois v. Allen* (1970), 397 U.S. 337.

B. The trial court erred by convicting and sentencing Mr. Brown despite the ineffective assistance of counsel in litigating the motions to suppress.

Mr. Brown's trial attorney did not notify him of the October 13, 2006 motion to suppress hearing date. The attorney also failed to sufficiently state the basis of the suppression motion in the document, did failed to a brief in support after requesting permission to do so, failed to request a continuance of the October 13, 2006 hearing despite Mr. Brown's lack of notice, and failed to request an evidentiary hearing to demonstrate why Mr. Brown did not appear at the October 13, 2006 hearing. Counsel's failures constitute deficient performance that prejudiced Mr. Brown by denying him the opportunity to seek to bar the State from introducing evidence crucial to the State's case.

Strickland v. Washington (1984), 466 U.S. 668.

C. The trial court erred by convicting him of trafficking drugs in the vicinity of a school without sufficient evidence.

The State both failed to prove that Mr. Brown was within 1,000 feet of a building the State claims is a school, and that the building in question was a in fact a school. A police officer testified that the transaction occurred "across the street from (Barber) elementary school[.]" But the officer's testimony does not include any measurement of the distance. See, *State v. Batin*, 5th Dist. No. 2004-CA-00128, 2005-Ohio-36 (guesses as to distance insufficient). The State also failed to show that the Barber elementary school is a "school" as defined by the drug trafficking statute. See, *State v. Shaw*, 7th Dist. No. 03JE14, 2004-

Ohio-5121 (trial court erred by taking judicial notice that an alleged school was actually a school).

Mr. Brown's conviction's despite insufficient evidence deny him his right to be convicted only upon the State's presentation of evidence proving guilt beyond a reasonable doubt. *In re Winship* (1970), 397 U.S. 358; *Jackson v. Virginia* (1979), 443 U.S. 307.

D. The trial court erred by denying his motion for a new trial.

The court of appeals overruled assignments of error asserting that Mr. Brown's motion for a new trial should have been granted based on the suppression motion denials, ineffective assistance of counsel, and insufficiency of the evidence. The appellate court's decision was based solely on its finding that Mr. Brown's resentencing was not de novo. Slip Op. at ¶ 7. Because the court of appeals' underlying assumption was wrong, this Court should accept this case, hold it for *State v. Fischer*, reverse the decision, and remand this case to the court of appeals for further proceedings in light of *Fischer*.

Conclusion

This Court should accept jurisdiction, hold this case for *State v. Fischer*, reverse the decision of the court of appeals, and remand this case to the court of appeals for further consideration in light of *Fischer*.

Respectfully submitted,

Office of the Ohio Public Defender



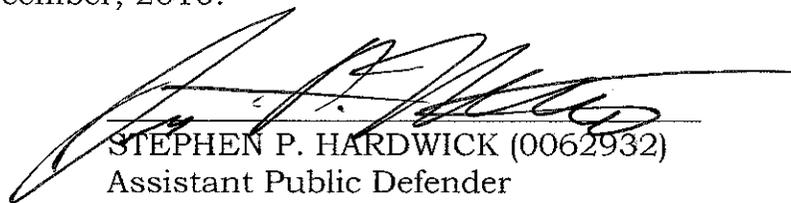
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Counsel for Appellant, Adolph R. Brown

Certificate Of Service

I hereby certify that a copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT ADOLPH R. BROWN was sent via regular U.S. mail, postage prepaid to the office of Richard S. Kasay, Assistant Summit County Prosecutor, 53 University Avenue – 7th Fl., Safety Bldg., Akron, Ohio 44308, on this 20th day of December, 2010.



STEPHEN P. HARDWICK (0062932)
Assistant Public Defender

Counsel for Appellant, Adolph R. Brown

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	
	:	Case No.
Plaintiff-Appellee,	:	
	:	On Appeal from the Summit
v.	:	County Court of Appeals,
	:	Ninth Appellate District,
Adolph R. Brown,	:	Case No. 25099
	:	
Defendant-Appellant.	:	

APPENDIX TO

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT ADOLPH R. BROWN**

STATE OF OHIO
COUNTY OF SUMMIT

COURT OF APPEALS
DANIEL M. HERRIGAN

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

NOV - 3 AM 7:50

STATE OF OHIO

SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 25099

Appellee

v.

ADOLPH R. BROWN

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 06 07 2588(A)

DECISION AND JOURNAL ENTRY

Dated: November 3, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} A jury convicted Adolph Brown of trafficking in cocaine, possession of cocaine, possession of marijuana, possession of criminal tools, and illegal use or possession of drug paraphernalia, and the trial court sentenced him to six years in prison. Mr. Brown appealed, and this Court affirmed his convictions and sentence. Mr. Brown petitioned for post-conviction relief, but the trial court dismissed his petition, and this Court affirmed its decision. Mr. Brown then filed a motion to dismiss for lack of jurisdiction and a motion for new trial. In October 2009, the trial court denied Mr. Brown's motion to dismiss and motion for new trial, but resentenced him because it had imposed the incorrect term of post-release control. Mr. Brown has appealed, arguing that the trial court incorrectly denied the motions to suppress he filed before trial, that his trial lawyer was ineffective, that there was insufficient evidence to support his trafficking conviction, that the trial court incorrectly denied his motion to dismiss and motion

for new trial, and that the trial court incorrectly imposed post-release control when it resentenced him. This Court affirms because Mr. Brown is unable to attack his convictions in this appeal, the trial court correctly denied his motion to dismiss and motion for new trial, and the court imposed the correct term of post-release control.

PRIOR APPEALS

{¶2} Mr. Brown's first assignment of error is that the trial court incorrectly denied the motion to suppress he filed on September 6, 2006. His second assignment of error is that the trial court incorrectly denied the motion to suppress he filed on January 26, 2007. His third assignment of error is that his trial lawyer was ineffective, and his fourth assignment of error is that there was insufficient evidence to support his trafficking conviction. Mr. Brown has argued that, although he raised these issues in his prior appeals, he may argue them in this appeal because his original sentence was void.

{¶3} In *State v. Harmon*, 9th Dist. No. 24495, 2009-Ohio-4512, this Court determined that, if a defendant's sentence is void because the trial court did not properly impose post-release control, he may raise assignments of error regarding his convictions following his resentencing, notwithstanding having pursued a prior direct appeal. *Id.* at ¶9. According to Mr. Brown, because the trial court did not correctly impose post-release control in its original sentencing entry, the entry was void.

{¶4} The State has argued, and we agree, that this case is distinguishable because, unlike in *Harmon*, the trial court's sentencing entry was not void. In *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, the Ohio Supreme Court concluded that sentences imposed after July 11, 2006, are not void just because the trial court failed to properly impose post-release control. *Id.* at ¶27. Mr. Brown has counter-argued that, because the defendant in *Singleton* was

sentenced before July 11, 2006, the Ohio Supreme Court's statements regarding sentences imposed after that date are dicta. In *State v. Fuller*, 124 Ohio St. 3d 543, 2010-Ohio-726, however, the Ohio Supreme Court applied *Singleton* to a case in which the defendant was sentenced after July 11, 2006. *Id.* at ¶1. We are obliged to follow its precedent on that issue. *State v. Culgan*, 9th Dist. No. 09CA0060-M, 2010-Ohio-2992, at ¶15.

{¶5} Because the trial court's original sentencing entry was not void, Mr. Brown may not reassert issues in this appeal that were or could have been decided in his prior appeals. *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St. 3d 402, 404-05 (1996). Mr. Brown's first, second, third, and fourth assignments of error are overruled.

MOTION FOR NEW TRIAL

{¶6} Mr. Brown's fifth assignment of error is that the trial court incorrectly denied his motion for new trial. He has argued that he is entitled to a new trial for the same reason he is entitled to relief on his first and second assignments of error.

{¶7} Under Rule 33(B) of the Ohio Rules of Criminal Procedure, a defendant has 14 days to move for a new trial after his verdict was rendered, unless his motion is made on account of newly discovered evidence or he establishes by clear and convincing proof that he was unavoidably prevented from filing his motion. Mr. Brown moved for a new trial based on his assumption that his original sentence was void. Because it was not void, and he has failed to establish that he was otherwise unavoidably prevented from filing his motion, we conclude that the trial court correctly denied his motion for new trial. Mr. Brown's fifth assignment of error is overruled.

MOTION TO DISMISS

{¶8} Mr. Brown's sixth assignment of error is that the trial court incorrectly denied his motion to dismiss for lack of jurisdiction. His argument is that, because his original sentence was void, the trial court waited too long following his trial to sentence him. Mr. Brown's argument fails for the same reason as his previous assignments of error. His original sentence was not void. Mr. Brown's sixth assignment of error is overruled.

POST-RELEASE CONTROL

{¶9} Mr. Brown's seventh assignment of error is that the trial court incorrectly imposed post-release control at his resentencing hearing. He has argued that the court incorrectly told him that he would be subject to post-release control for sentences he had already completed.

{¶10} Under Section 2967.28(B) of the Ohio Revised Code, "[e]ach sentence to a prison term for a . . . felony of the second degree . . . shall include a requirement that the offender be subject to a period of post-release control . . . after the offender's release from imprisonment." "For a felony of the second degree that is not a felony sex offense," the period is three years. R.C. 2967.28(B)(2). Under Section 2967.28(C), "[a]ny sentence to a prison term for a felony of the third, fourth, or fifth degree . . . shall include a requirement that the offender be subject to a period of post-release control of up to three years . . . , if the parole board . . . determines that a period of post-release control is necessary for that offender."

{¶11} "If an offender is subject to more than one period of post-release control, the period of post-release control for all of the sentences shall be the period of post-release control that expires last, as determined by the parole board or court." R.C. 2967.28(F)(4)(c). For Mr. Brown, the period of post-release control that will expire last is the one for trafficking of cocaine,

which is a mandatory three-year period because it is for a felony of the second degree. R.C. 2967.28(B)(2).

{¶12} At Mr. Brown's resentencing hearing, the trial court told Mr. Brown his sentence for each count and the amount of post-release control that would or could be imposed for each offense. It determined that, because his most serious conviction, for trafficking, was a felony of the second degree and all of his sentences were running concurrently, the post-release control periods for the other convictions were moot. It made sure that Mr. Brown understood the consequences of post-release control, telling him that, because he had not completed his sentence for trafficking, he would have three years of mandatory post-release control after he finished serving his sentences. Mr. Brown told the court that he understood that he was subject to a mandatory period of three years post-release control on his trafficking conviction. The court also wrote in its journal entry that, after Mr. Brown left prison, he would be on post-release control for a mandatory three-year period.

{¶13} The trial court correctly noted that, because Mr. Brown had been convicted of a felony of the second degree, the post-release control terms for the less serious convictions were irrelevant. R.C. 2967.28(F)(4)(c). It correctly concluded that the post-release control term for the second-degree felony was the term for all of the convictions and correctly wrote that in its journal entry. Accordingly, Mr. Brown has not demonstrated that the trial court incorrectly imposed post-release control on resentencing. His seventh assignment of error is overruled.

CONCLUSION

{¶14} Because Mr. Brown's original sentence was not void, he can not raise the same arguments in this appeal that he raised in his prior appeals. The trial court correctly imposed

post-release control, even though Mr. Brown has completed his sentence on some of his convictions. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

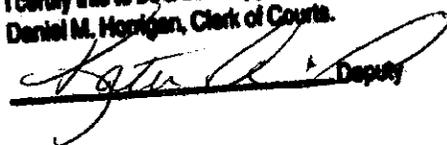
Costs taxed to appellant.



CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

I certify this to be a true copy of the original
Daniel M. Horigan, Clerk of Courts.



Deputy

APPEARANCES:

JAMES K. REED, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and RICHARD S. KASAY, assistant prosecuting attorney, for appellee.

IN THE COURT OF COMMON PLEAS
DANIEL M. CRODIGNY
COUNTY OF SUMMIT

2009 OCT 20 PM 2:46
THE STATE OF OHIO
vs.
SUMMIT COUNTY)
CLERK OF COURTS)

Case No. CR 06 07 2588 (A)

JOURNAL ENTRY

ADOLPH R. BROWN

THIS DAY, to-wit: The 16th day of October, A.D., 2009, now comes the Prosecuting Attorney, Colleen Sims, on behalf of the State of Ohio, the Defendant, ADOLPH R. BROWN, being in Court with counsel, NATHAN RAY, for re-sentencing.

IT IS HEREBY ORDERED that the Defendant's motion for a new trial is denied. The Defendant's motion for transcripts of the December 18, 2006 hearing is granted, and Sandra Maxson, Official Shorthand Reporter, shall produce a copy of said proceedings before this Court in the above-captioned case for purposes of appeal. A valid Affidavit of Indigency has been filed with the Clerk of Courts. Said transcripts are to be taxed as costs.

Heretofore on February 16, 2007 been found GUILTY by a Jury Trial of POSSESSION OF COCAINE, as contained in Count 1 of the Indictment, Ohio Revised Code Section 2925.11(A), a felony of the third (3rd) degree, and the jury further found that the amount of cocaine DOES equal or exceed five grams but is less than ten grams; GUILTY of the crime of POSSESSING CRIMINAL TOOLS, as contained in Count 3 of the Indictment, Ohio Revised Code Section 2923.24, a felony of the fifth (5th) degree, and the jury further found that the Defendant DID intend to use the substance, device, instrument or article to commit the felony offense of Trafficking in Cocaine; GUILTY of the crime of ILLEGAL USE OR POSSESSION OF DRUG PARAPHERNALIA, as contained in Count 4 of the Indictment, Ohio Revised Code Section 2925.14(C)(1), a misdemeanor of the fourth (4th) degree; GUILTY of the crime of POSSESSION OF MARIJUANA, as contained in Count 5 of the Indictment, Ohio Revised Code Section 2925.11(A), a minor misdemeanor; and GUILTY of the crime of TRAFFICKING IN COCAINE, as contained in Count 13 of the Supplement One to Indictment, Ohio Revised Code Section 2925.03(A)(2), a felony of the second (2nd) degree, and the jury further found the offense WAS committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, which offenses occurred on or about July 19, 2006; and the Court found the Defendant guilty of the same offenses.

The Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. The Defendant was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said, and showing no good and sufficient cause why judgment should not be pronounced:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, ADOLPH R. BROWN, be committed to the Ohio Department of Rehabilitation and Corrections for a definite term of Two (2) Years, which is a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of POSSESSION OF COCAINE, Ohio Revised Code Section 2925.11(A), a felony of the third (3rd) degree; for a definite term of One (1) Year, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of POSSESSING CRIMINAL TOOLS, Ohio Revised Code Section 2923.24, a felony of the fifth (5th) degree; that he serve 30 days in the Summit County Jail for punishment of the crime of ILLEGAL USE OR POSSESSION OF DRUG PARAPHERNALIA, Ohio Revised Code Section 2925.14(C)(1), a misdemeanor of the fourth (4th) degree to be served at the appropriate penal institution; that he pay a fine in the amount of \$100.00 for punishment of the crime of POSSESSION OF MARIJUANA, Ohio Revised Code Section 2925.11(A), a minor misdemeanor; and that he be committed to the Ohio

Department of Rehabilitation and Corrections for a definite term of Six (6) Years, which is a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of TRAFFICKING IN COCAINE, Ohio Revised Code Section 2925.03(A)(2), a felony of the second (2nd) degree, and that the said Defendant pay the costs of this prosecution for which execution is hereby awarded, **and judgment is granted against the Defendant in favor of the County of Summit for the court costs;** said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. The Defendant is to make minimum monthly payments toward the court costs or community service up to 40 hours per month can be ordered until paid in full.

IT IS FURTHER ORDERED that the sentence imposed in Counts 1, 3, 4, 5, and 13 be served CONCURRENTLY and not consecutively with each other.

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be returned to the **Richland Correctional Institution at Mansfield, Ohio,** to continue serving his prison sentence.

IT IS FURTHER ORDERED that the fine is suspended due to the Defendant's indigency.

IT IS FURTHER ORDERED that the Defendant's driver's license and all driving privileges be SUSPENDED for a definite period of Six (6) Months on each of Counts 1, 4, 5, and 13, all to be served concurrently.

IT IS FURTHER ORDERED that money seized by the Akron Police Department from the Defendant exclusive of police buy money and/or money returned, in the amount of \$369.00, as well as the Zenith plasma TV, and Craftsman snow blower are FORFEITED, as agreed to by the Defendant, and pursuant to Ohio Revised Code Section 2981.06. This seized money shall be deposited with the Summit County Clerk of Courts and subsequently dispersed as follows:

Seventy percent (70%) is to be made payable to the Akron Police Department Drug Law Enforcement Fund. Thirty percent (30%) is to be made payable to the Summit County Prosecutor's Law Enforcement Trust Fund.

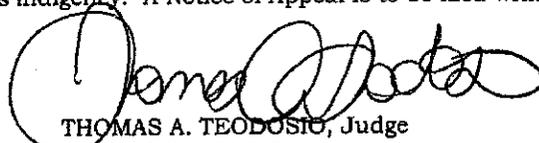
As part of the sentence in this case, the Defendant shall be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for Three (3) years, which is mandatory. If the Defendant violates post-release control supervision or any of its conditions, 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. Defendant is ORDERED to pay all prosecution costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that any motion for post-conviction relief is to be filed within 6 months from the date of sentencing.

IT IS FURTHER ORDERED that credit for time served **as of the date of sentencing** is to be calculated by the Summit County Pretrial Services Department and will be forthcoming in a subsequent journal entry.

Thereupon, the Court informed the Defendant of his right to appeal pursuant to Rule 32A2, Criminal Rules of Procedure, Ohio Supreme Court, and further the Court appoints Attorney James Reed as counsel to represent the said Defendant for purposes of appeal due to said Defendant's indigency. A Notice of Appeal is to be filed within 30 days.

APPROVED:
October 20, 2009
pmw



THOMAS A. TEODOSIO, Judge
Court of Common Pleas
Summit County, Ohio

- cc: (Prosecutor Colleen Sims)
- Criminal Assignment
- (Attorney Nathan Ray)
- (Attorney James Reed)
- (Registrar's Office - email)
- (Court Convey - email)
- (Sgt. Ken Pullen - APD & Property Room - EMAIL)
- (Sandra Maxson, Court Reporter - email)
- (Pretrial Services - CREDIT - email)
- (OBMV)