

**10-2263**

Trial No. Bol02447

App. No. C090857

On Appeal from the  
First District  
Appellate Court  
Decision rendered  
11-10-10

CHARLES BLEVINS,

Appellant,

VS.

STATE OF OHIO,

Appellee,

MEMORANDUM IN SUPPORT OF JURISDICTION

Mr. Charles Blevins 419052  
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St. Clarsville Oh, 43950

Office of Hamilton County  
Prosecutor  
230 E. Ninth Street  
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**RECEIVED**  
DEC 27 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

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DEC 27 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

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**EXPLANATION OF WHY THIS IS A CASE OF  
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INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case presents (2) critical issues for the future of the public who stands a chance at losing certain rights if this judgement of the Appellate Court be allowed.

The Appellate Court reasoning process revolves around the which court held jurisdiction to rule on the "motion to amend ". The Appellate Court has a duty to review the record before it and to enforce the rules and procedure. A review of this judgement from the First District Court of Appeals attempts to placed the blame upon the Appellant...(1) Blevins's appeal from the judgement denying his postconviction petition divested the common pleas court of jurisdiction to rule on the motion to amend the petition. (2) Blevins did not ask this court to remand the case to the common pleas court for a ruling on the motion. It's clear that the First District Court of Appeals did not review the brief where the Appellant Charles Blevins, clearly demonstrated the cause which is why this Supreme Court must remand this case back to the trial court period for failing to understand that no court beyond the Trial Court had jurisdiction over Blevins's case after the Appellate Court failed to review the record in the cases cited within its judgements "State V. Blevins, Had the Appeals Court reviewed the record, it would have known that the trial court sentencing was contrary to law.

The judgement rendered on November 10, 2010 is of great general interest. The judgement based its decision totally on jurisdiction. " The Ohio's Supreme Court recent lines of cases dealing with post release control has consistently held that sentences that fail to impose a mandatory term of post release control are void." State V. Simpkins, 117 Ohio St.3d 420, State V. Boswell, 121 Ohio St.3d 575, State V. Singleton, 124 Ohio St.3d 173, and cases cited therein.

The trial court attempted to impose a sentence for the offense of murder. The trial court failed to specify that the Appellant would be placed on a mandatory five year period of post release control pursuant to R.C.2967.28(b)(1) after his release from prison. The First District Court of Appeals never had jurisdiction to make the judgement on November 10th 2010 It has failed to enforce the rules & procedures of law. The Appellant Charles Blevins is entitled to relief by returning him to the trial court for a new sentencing hearing in order to include in its judgement entry a proper sentence pursuant to Crim.R.32(c)

Although, the First District Court of Appeals took jurisdiction of this case under different appeals after the trial court's failures, it never had jurisdiction to entertain those appeal because a final appealable order was never issued in this case.

The Court of Appeals has no jurisdiction over orders that are not final and appealable. Section 3(b)(2), Article IV, Ohio's Constitution. Furthermore, since the trial court failed to

comply with Crim.R.32(c) & R.C.2967.28(b)(1) the Appellant's sentence is void. State V. Ketterer, 2010 WL 3362963 (Ohio) The Appellant believe the trial court very well indeed had jurisdiction to rule upon the motion to amend arguably based upon these facts presented, the Appellant is entitled to a new sentencing hearing so, that the trial court can issue a final appealable order. R.C.2505.05(b) State V. Baker, 119 Ohio St.3d 197, quoting State V. Muncie, 91 Ohio St.3d 440, citing State ex rel. Leis V. Kraft, 10 Ohio St.3d 34.

### STATEMENT OF THE CASE

#### PROCEDURAL POSTURE

Charles Blevins was convicted of murder R.C.2903.02 and sentenced to 15 years to life. He unsuccessfully appealed his conviction to the First Appellate District and then to this court. After his appeals were rejected, Blevins filed a federal petition where the a honorable Judge returned Blevins back to the trial court with a order to show cause why the trial court never ruled upon the Motion to Amend which bring him to this Supreme Court in order to exhaust his state remedies.

#### Statement of Facts

Mr. Blevins was charged with and tried by a jury on one count of murder, there were no other charges filed to support this...State V. Blevins, 1st Dist.No.C020068 The charges stems from the only fact that Blevins was present at the scene of his

friend, the deceased place of resident but evidence reveals that others was also present, Blevins, exercised his rights and was charged with the murder of his friend.

Blevins also through the Ohio's Innocence Project file & exhausted motions/briefs to have the evidence tested that obviously belongs to one of the two men seen running away from the scene. This Court declined jurisdiction.

#### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of law No.1 trial court abused its discretion refusing to recognize persons with disabilities.

Blevins, timely filed his post conviction petition through counsel.

Blevins, counsel failed to complete the petition requirements which made Blevins, contact the trial court through a Motion to Extend time & Motion to Amend.

Blevins, understand that the clock starts to file a post conviction after the trial record has been transferred to the appellate court. The problem we face beside the supporting arguments around this proposition of law; the post conviction petition itself was still under the jurisdiction of the trial court based upon the Explanation of why this is a case of public or great general interest This is an unusual & rare case when the record will support that no court had jurisdiction over Blevins, except the trial court, therefore Blevins rights have been violated beyond repair simply because he's been fighting to prove that he is indeed wrongfully convicted.

Blevins, request that this Supreme Court remand this case back to the trial court because there was never a final appealable order, therefore the 30 day clock hasn't started to run to file his first notice to appeal.

PROPOSITION OF LAW NO.2

Trial court abused its discretion

A. When it created an inadequate state remedy.

The trial courts actions are contrary to law in more than one incident in this case in which has robbed the Appellant/petitioner of a meaningful opportunity to file his post conviction petition being fully aware that trial counsel violated the Attorney Client Privilege. The First District along with this court had the jurisdiction to deny those appeals from the trial court which means that the motions were timely and should have been answered.

CONCLUSION

For the forgoing reasons, this court has no jurisdiction to entertain this appeal and if somehow this court overrule its on cases that support these arguments within cases concerning a void sentence, then the matter is solved, Blevins has exhausted his state remedies.

RESPECTFULLY SUBMITTED

Charles Blevins

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Appellant/prose

CERTIFICATE OF SERVICE

I certify that a true copy of this has been mailed to the Ohio Supreme Court at 65 S. Front Street Cols, Oh,43215 and to the Hamilton County Prosecutors office at 230 E.Ninth Street Cinti, Ohio 45202

(5)

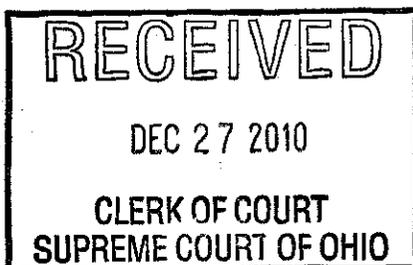
Charles Blevins 41905  
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St. Clarsville OH 43950

Original

Appendix

C090857

Judgement Entry



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



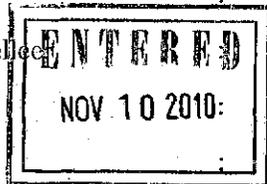
STATE OF OHIO,

Respondent-Appellee

vs.

CHARLES BLEVINS,

Petitioner-Appellant.



APPEAL NOS. C-090857

C-090858

C-090866

TRIAL NO. B-0102447

JUDGMENT ENTRY.

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Charles Blevins presents on appeal two assignments of error that, in essence, challenge the Hamilton County Common Pleas Court's judgment overruling his motion for leave to amend his R.C. 2953.21 petition for postconviction relief. We dismiss the appeals numbered C-090858 and C-090866. And in the appeal numbered C-090857, we overrule the assignments of error because the common pleas court had no jurisdiction to entertain the motion.

Blevins was convicted in 2002 of murder. He unsuccessfully challenged his conviction in direct appeals to this court and to the Ohio Supreme Court<sup>2</sup> and in a postconviction petition filed with the common pleas court.

Five days after the common pleas court had denied his postconviction petition, Blevins moved for leave to amend the petition. While this motion was

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> See *State v. Blevins*, 1st Dist. No. C-020068, 2002-Ohio-7335, appeal not accepted for review, 98 Ohio St.3d 1567, 2003-Ohio-2242, 787 N.E.2d 1231.

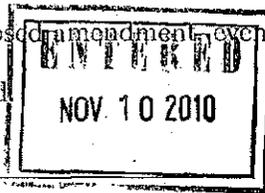
OHIO FIRST DISTRICT COURT OF APPEALS

pending before the common pleas court, Blevins appealed to this court the judgment denying his postconviction petition. We subsequently affirmed the judgment denying the petition, and the Ohio Supreme Court declined to accept Blevins's appeal there.<sup>3</sup>

Six years later, the common pleas court, prompted by an unspecified "request," overruled Blevins's motion for leave to amend his 2002 postconviction petition. From that judgment, Blevins timely filed three notices of appeal.

We dismiss the appeals numbered C-090858 and C-090866 because they were perfected by notices of appeal duplicative of the first notice of appeal filed in this case, in the appeal numbered C-090857.

And we hold that the common pleas court had no jurisdiction to entertain Blevins's motion for leave to amend his postconviction petition. Blevins's appeal from the judgment denying his postconviction petition divested the common pleas court of jurisdiction to rule on the motion for leave to amend the petition.<sup>4</sup> While the appeal was pending, Blevins did not ask this court to remand the case to the common pleas court for a ruling on the motion for leave to amend. Because our disposition of the appeal did not require us to remand the case, the common pleas court did not regain jurisdiction after we had decided the appeal.<sup>5</sup> And although a trial court retains jurisdiction to correct a void judgment,<sup>6</sup> the postconviction claims presented in Blevins's proposed amendment, even if demonstrated, would not have rendered his conviction void.



<sup>3</sup> See *State v. Blevins* (June 30, 2004), 1st Dist. No. C-030576, appeal not accepted for review, 103 Ohio St.3d 1493, 2004-Ohio-5605, 816 N.E.2d 1080.

<sup>4</sup> See *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

<sup>5</sup> See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

<sup>6</sup> See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.

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Accordingly, we overrule Blevins's assignments of error. Upon the authority conferred by App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the motion for leave to amend. And we affirm the judgment as modified.

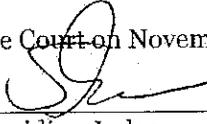
A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 10, 2010

per order of the Court

  
\_\_\_\_\_  
Presiding Judge

