

ORIGINAL

Gregory Ballard,
Appellant,
V.
STATE OF OHIO,
Appellee,

: 11-0063
: ON APPEAL FROM THE CUYAHOGA
: COUNTY COURT OF APPEALS,
: EIGHTH APPELLATE DISTRICT
: Court of appeals case no.
: 96142

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT GREGORY BALLARD

Gregory Ballard #504-656
TRUMBULL CORRECTIONAL INSTITUTION
5701 Burnett Rd.
P.O. Box 901
Leavittsburg, Ohio 44430
Appellant

WILLIAM A. MASON
CUYAHOGA COUNTY PROSECUTOR
1200 ONTARIO St.
Cleveland, OHIO 44113-0000

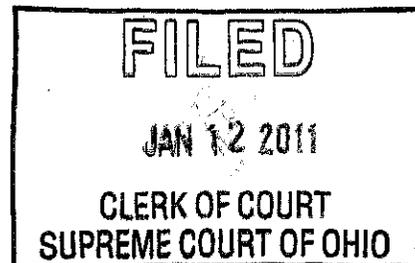


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Proposition of law No.: Appellants appeal as of right in accordance with Ohio Rules of Appellate Procedures Rule 3, (B), (C), and (D). And Rule 4 (A).

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC
OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents a critical issues in criminal cases. An appeal, the right of which is conferred by statute, can be perfected only in the mode prescribed by statute; the exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements. In this case the Court refused to grant an appeal after Attorney Randolph Howard refused to file a timely appeal. The court in this case ordered Attorney Randolph Howard to prefect a timely appeal. For three years and five months this Attorney has promised myself and my family that an appeal would be filed.

On or about the 6th of December, I filed to the Court of Appeals a motion for Appeal. On December 14, 2010 I received from the Court of Appeals an order denying my application for appeal. Even though the Court ordered Attorney Randolph Howard to file my appeal. See exhibit (A). Since there is no remedy under Ohio law for ineffective assistance of Appellate counsel the only remedy was to file an appeal in accordance to App. R. 5(A). Because "The Supreme Court of Ohio has required careful compliance with the formulation of App. R. 5(A). Since removing the requirement that an Appellant demonstrate merit before a delayed appeal can be pursued," State v. Sellers, (10th Dist. Dec.5, 2000), No. OOAP-1179.

By removing the burden from the Attorney, the Appellate Court has literally forced defendants to become Attorneys over night. The Appeals Court was mistaken in it's assessment that Appellant made a pro se motion to the court. Since I am a layman

at law, I don't qualify for pro se status. It a question of law. Can I Appeal if my Attorney chooses to ignore a court order? This is the question that I have placed before this Honorable Court.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Under Criminal Rule 32 (B) of the Ohio Revised Code; NOTIFICATION OF RIGHT TO APPEAL. Which states in part:

(B)(1): After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a RIGHT to appeal the conviction.

(3)(A)(B)(C)and (D). If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule. If ~~defend~~ is unable to obtain counsel for appeal, counsel will be appointed without cost.

Counsel in this case was appointed By Judge Sutula. Randolph Howard. I tried to contact Mr. Howard at least (17) Seventeen times, through regular U.S. Mail, and through my family. Finally through inmate help, I learned how. I pray this Court will address this issue and grant appellant appeal.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great interest and a substantial constitutional question. The appellant request that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully Submitted,

Gregory Ballard

Gregory Ballard #504-656

Appellant.

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, William A. Mason, Prosecuting Attorney, of Cuyahoga County, 1200 ONTARIO St., Cleveland, Ohio 44113. On this 21st day of December 2010.

Gregory Ballard

Gregory Ballard #504-656

Appellant.



46471834

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

2007 JUL 18 A 9:19

Case No: CR-06-476775-A

Judge: JOHN D SUTULA

GREGORY BALLARD
Defendant

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2911.01 AGGRAVATED ROBBERY /FRM1 /FRM3
2911.01 AGGRAVATED ROBBERY /FRM1 /FRM3
2911.01 AGGRAVATED ROBBERY /FRM1 /FRM3
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFENDANT IN COURT. COUNSEL HARVEY BRUNER PRESENT.
COURT REPORTER PRESENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED ROBBERY 2911.01 - F1 WITH FIREARM SPECIFICATION - 1 YEAR (2941.141), FIREARM SPECIFICATION - 3 YEARS (2941.145) AS CHARGED IN COUNT(S) 1, 4 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF CARRYING CONCEALED WEAPONS 2923.12 - F4 AS CHARGED IN COUNT(S) 5 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF DRUG POSSESSION 2925.11 - F5 WITH FIREARM SPECIFICATION - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF POSSESSING CRIMINAL TOOLS 2923.24 - F5 AS CHARGED IN COUNT(S) 9 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF HAVING WEAPONS WHILE UNDER DISABILITY 2923.13 - F3 AS CHARGED IN COUNT(S) 8 OF THE INDICTMENT.

CHRISTOPHER WAGNER ADDRESSES THE COURT

THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 12 YEAR(S).

SENTENCED TO 3 YEARS ON FIREARM SPECIFICATIONS ON COUNTS 1, 4 TO RUN PRIOR TO AND CONSECUTIVE TO 5 YEARS ON BASE CHARGE IN EACH OF COUNTS 1 AND 4 (1 AND 3 YEAR FIREARM SPECIFICATIONS TO MERGE FOR SENTENCING PURPOSES); 1 YEAR ON FIREARM SPECIFICATION ON COUNT 6 TO BE SERVED PRIOR TO AND CONSECUTIVE TO 8 MONTHS ON BASE CHARGE IN COUNT 6. SENTENCED TO 12 MONTHS ON COUNT 5; 8 MONTHS ON COUNT 9; 3 YEARS ON COUNT 8. FIREARM SPECIFICATIONS IN COUNTS 1, 4 AND 6 RUN CONSECUTIVE TO EACH OTHER FOR A TOTAL OF 7 YEARS ON FIREARM SPECIFICATIONS. ALL COUNTS TO RUN CONCURRENT WITH EACH OTHER FOR A TOTAL SENTENCE OF 12 YEARS.

NO JUDICIAL RELEASE .

POST RELEASE CONTROL IS PART OF THIS PRISON SENTENCE FOR 5 YEARS FOR THE ABOVE FELONY(S) UNDER R.C.2967.28.

JAIL CREDIT DAYS TO DATE TO BE CALCULATED BY THE SHERIFF.

DRIVER'S LICENSE SUSPENSION UNTIL 07/13/2012.

DEFENDANT ADVISED OF APPEAL RIGHTS.

DEFENDANT INDIGENT, COURT APPOINTS RANDOLPH HOWARD AS APPELLATE COUNSEL.

TRANSCRIPT AT STATE'S EXPENSE.

DEFENDANT IS TO PAY COURT COSTS.

07/13/2007

CPSAM 07/16/2007 09:25:44

SENT

07/13/2007

Sheriff Signature MS 71907 LORAIN COST

William

Sigoy Ballard
CR 476775



46471834

[Handwritten Signature]

Judge Signature

Date

SENT
07/13/2007

Sheriff Signature *[Handwritten Signature]* 71907, Lorel + Cost

Judge J. Butala

DEC 14 2010

Court of Appeals of Ohio, Eighth District

gc FILED

2010 DEC 16 P 1:54

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

m (TCI)

STATE OF OHIO
CLERK OF COURTS
CUYAHOGA COUNTY

Appellee

COA NO.
96142

LOWER COURT NO.
CP CR-476775

12-16-10

COMMON PLEAS COURT

-vs-

GREGORY BALLARD

ASD4656

Appellant

MOTION NO. 440108

FEE
3
TAXED

Date 12/14/2010

Journal Entry

SUA SPONTE, THIS APPEAL IS DISMISSED AT APPELLANT'S COST FOR FAILURE TO FILE A
TIMELY NOTICE OF APPEAL. SEE APP.R. 4(A).

COPYING MATERIAL TO COURTS FOR
ALL PARTIES--COSTS TAXED

FILED AND JOURNALIZED
PER APP.R. 22(C)

DEC 14 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Judge MARY EILEEN KILBANE, Concur

[Signature]
Administrative Judge
SEAN C. GALLAGHER

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66414938

VOL 0719 000149