

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, : Case No. 11-0212
 :
 Plaintiff-Appellee, : On Appeal from the Holmes County
 : Court of Appeals, Fifth Appellate
 v. : District, Case No. 09CA12
 :
 Wesley Lloyd, :
 :
 Defendant-Appellant. :

Notice of Judicial Activity

Sean Mathew Warner (0075110)
Assistant Prosecuting Attorney

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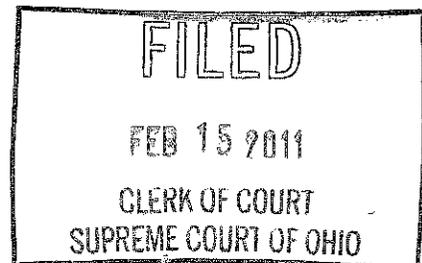
Counsel for Appellee, State of Ohio

Office of the Ohio Public Defender

By: Stephen P. Hardwick (0062932)
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Counsel for Appellant, Wesley Lloyd



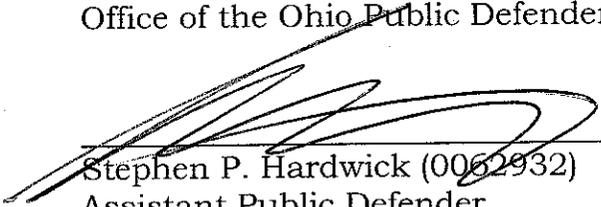
Notice of Judicial Activity

The court of appeals has summarily denied Mr. Lloyd's motion for stay. Exhibit 1. The State's motion to revoke bond remains pending in the trial court. The State has supplemented the motion with the attached memorandum asserting that the court cost case, *State v. Clevenger*, 114 Ohio St.3d 258, 2007-Ohio-4006, prohibits trial courts from staying a sentence outside the express statutory authorization of R.C. 2949.05. Exhibit 2. On the other side, Mr. Lloyd has argued that trial courts have inherent authority to stay their judgments. *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, ¶118 (“[i]t is well settled in an array of jurisdictions that the courts’ inherent authority includes the power to issue or to deny stays”), citing *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 464, 1996-Ohio-374.

Neither the State nor the trial court nor the court of appeals has asserted that Mr. Lloyd has violated any term of his current appellate bond. The disagreement on the question of leaving the appeal bond in place pending this Court’s review focuses solely on the trial court’s authority to continue the bond, as well as on Mr. Lloyd’s chance of success in this Court.

Respectfully submitted,

Office of the Ohio Public Defender



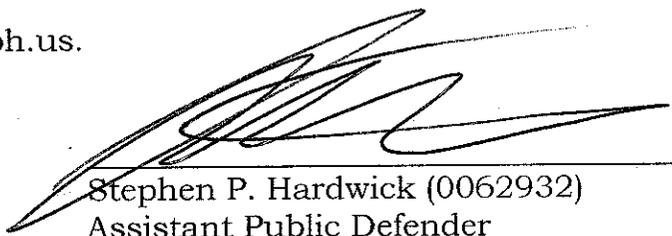
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Counsel for Wesley Lloyd

Certificate of Service

I certify that on February 15, 2011, a copy of the foregoing was sent via email to Sean Mathew Warner, Assistant Prosecuting Attorney, Holmes County Prosecutor's Office, 164 East Jackson Street, Millersburg, OH 44654 @ swarner@exchange.co.holmes.oh.us.



Stephen P. Hardwick (0062932)
Assistant Public Defender

Counsel for Wesley Lloyd

#337110

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO **FILED**
FIFTH APPELLATE DISTRICT

2011 FEB 14 AM 10:04

5TH DISTRICT APPEALS COURT
HOLMES COUNTY
DORCAS L. MILLER, CLERK.

STATE OF OHIO

Plaintiff-Appellee

-vs-

WESLEY LLOYD

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. 09 CA 12

This matter comes before the Court pursuant to Appellant's Motion to Stay Decision Pending Appeal to the Ohio Supreme Court. Said motion was filed on February 3, 2011.

Upon review, the motion is DENIED.

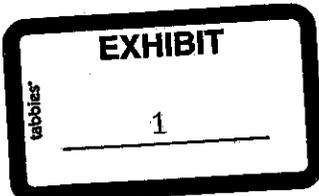
IT IS SO ORDERED.

W. Scott A. ...

[Signature]

John A. Edwards

JUDGES



**IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO**

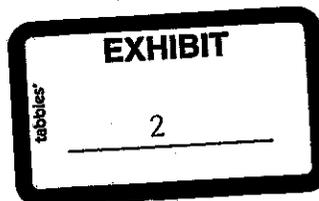
STATE OF OHIO	:	CASE NO. 09-CR-001
Plaintiff	:	
-vs-	:	<u>SUPPLEMENTAL</u>
WESLEY LLOYD	:	<u>MEMORANDUM IN</u>
Defendant	:	<u>SUPPORT OF STATE'S</u>
	:	<u>MOTION TO REVOKE</u>
	:	<u>BOND AND EXECUTE</u>
	:	<u>SENTENCE</u>
	:	

In its Journal Entry of February 8, 2011, this Court vacated the January 25, 2001 Entry revoking bond and issuing a warrant for Defendant's arrest. This Court took all issues under advisement due to the pendency of remaining issues before the Fifth District Court of Appeals and/or The Supreme Court of Ohio.

The Fifth District Court of Appeals has denied Defendant/Appellant's Motion to Stay Decision Pending Appeal. See attached Judgment Entry filed by the Fifth Appellate District on February 14, 2011. Due to the fact that the Fifth District has affirmed the conviction and sentence on Counts I and III pending against the Defendant this Court is subject to the statutory mandate of O.R.C. 2949.05 to execute sentence.

This limitation on the Court's inherent authority to stay sentences has been repeatedly upheld by the Ohio Supreme Court. *State v. Clevenger* 114 Ohio St. 3d 258, 2007 Ohio 4006, 871 N.E.2d 589, 2007 Ohio LEXIS 1921 (2007) ("The common pleas courts do not have inherent power to suspend the execution of a sentence unless authorized by statute." At p. 259) citing *State v.*

PROSECUTING ATTORNEY
HOLMES COUNTY,
OHIO

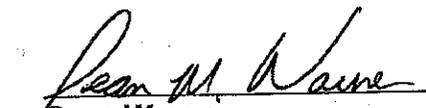


Smith 42 Ohio St. 3d 60, 537 N.E.2d 198, 1989 Ohio LEXIS 36 (1989). See also *Madjorous v. State* (1925), 113 Ohio St. 427, 140 N.E. 393.

February 15, 2011.

Due to the clear statutory and judicial authority on this matter and for the additional reasons stated in the State's Motion to Revoke Bond and Execute Sentence filed on January 13, 2011 and the State's Response to Defendant's Memorandum Contra filed on February 1, 2011, the State renews its request to this Court to revoke Defendant's bond and execute sentence.

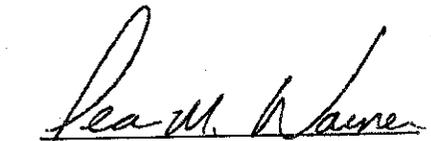
Respectfully submitted,


Sean Warner
Assistant Prosecuting Attorney
Holmes County, Ohio
164 E. Jackson Street
Millersburg, Ohio 44654

PROSECUTING ATTORNEY
HOLMES COUNTY,
OHIO

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was served upon Stephen P. Hardwick, Assistant Public Defender, by Facsimile at (614) 752-5167 and by regular U.S. Mail at 250 East Borad Street- Suite 1400, Columbus, OH 43215 on this 15th day of February 2011.


Sean M. Warner
Assistant Prosecuting Attorney