

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.,
JONATHAN CHAPIN, A 503-479,
GRAFTON CORRECTIONAL INSTITUTION,
2500 SOUTH AVON-BELDON ROAD,
GRAFTON, OHIO 44044,
PETITIONER/RELATOR,

11-0786

CASE NO. _____

VERSUS,

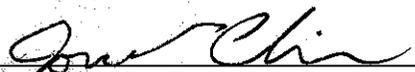
KIMBERLY CLIPPER, WARDEN,
GRAFTON CORRECTIONAL INSTITUTION,
2500 SOUTH AVON-BELDON ROAD,
GRAFTON, OHIO 44044,
RESPONDENT.

ORIGINAL ACTION

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
ARTICLE IV, SECTION 2(B)(1)(c) AND OHIO REVISED CODE 2725.01 et seq.**

PETITIONER/RELATOR

Respectfully submitted,


Jonathan Chapin, pro se
A 503-479
Grafton Correctional Institutional
2500 South Avon-Beldon Road
Grafton, Ohio 44044
(440) 748-1161

RESPONDENT

Kimberly Clipper, WARDEN
Grafton Correctional Institution
2500 S. Avon-Beldon Road
Grafton, Ohio 44044
(440) 748-1161

FILED
MAY 09 2011
CLERK OF COURT
SUPREME COURT OF OHIO

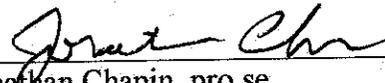
STATEMENT OF FACTS/CLAIMS

(1) Relator is being deprived of his constitutional right of liberty by Respondent Warden Kimberly Clipper in violation of the laws and constitution of the State of Ohio and the XIV Amendment of the constitution of the United States. Lorain County Common Pleas Court records in State of Ohio versus Jonathan Chapin, Case Numbers: 04 CR 065811; 05 CR 067665; and 06 CR 070216, demonstrate that on successive dates, April 10, 2006 in the 04 case and on July 21, 2006 in the remaining two cases, Relator was sentenced to one (1) year, five (5) years, and one (1) year respectively. While journal entries of July 21, 2006 are specific in noting that Judge Rothgery sentenced Relator to concurrent sentences for all charges in both cases that journal entry was silent as to how this latter sentence was to be served with the one (1) year sentence meted out by Judge Janas, three months earlier, on April 10, 2006 in Case No. 04 CR 06581.

(2) Ohio Revised Code, Ohio Administrative Code, and Ohio Court precedent requires such silence, under relevant Ohio Revised Code, to favor an offender and have multiple sentences served concurrently. The Department of Rehabilitation and Correction's Bureau of Sentence Computation has ignored sections of the Ohio Revised Code, the Ohio Administrative Code, and Ohio case precedent, substituting its own interpretation of how the overall sentence should be determined, and taken this silence to mean that Relator's sentences are to be served consecutively. Thus, instead of a concurrent five (5) year term of imprisonment as legally required, Relator is being held beyond his sentence expiration date to serve a consecutive six (6) year term.

(3) For calculation purposes and because of concurrent sentencing provisions of Ohio Revised Code and hierarchical sentence calculation provisions of Ohio Administrative Code the five (5) year prison term is the controlling sentence for which Relator received one hundred twenty-two days of jail-time credit and began serving on or about July 21, 2006. With the jail-time credit calculated backward from July 21, 2006, Relator effectively began serving his time on or about March 21, 2006 and as of March 21, 2011 his five (5) year prison term has expired and he is thus imprisoned in violation of the laws and constitution of the State of Ohio and the XIV Amendment of the United States Constitution and is thereby entitled to the issuance of a writ of habeas corpus ordering his immediate release from prison.

Respectfully submitted,



Jonathan Chapin, pro se
A 503-479
Grafton Correctional Institution
2500 South Avon-Beldon Road
Grafton, Ohio 44044
(440) 748-1161

**MEMORANDUM IN SUPPORT OF
RELATOR'S PETITION FOR
WRIT OF MANDAMUS**

STATEMENT OF FACTS/ISSUE

(4) Lorain County Common Pleas Court records in State of Ohio versus Jonathan Chapin, Case Numbers: 04 CR 065811; 05 CR 067665; and 06 CR 070216, demonstrate that on successive dates, April 10, 2006 in the 04 CR 065811 case and on July 21, 2006 in the remaining two cases, Relator was sentenced to one (1) year, five (5) years, and one (1) year respectively. While the sentencing journal entries of July 21, 2006 are specific in noting that Judge Rothgery sentenced Relator to concurrent sentences for all charges in both cases that journal entry was silent as to how this latter sentence was to be served with the one (1) year sentence meted out three months earlier on April 10, 2006 by Judge Janas in Case No. 04 CR 065811. Ohio Revised Code, Ohio Administrative Code, and Ohio Supreme Court precedent requires such silence, under the Doctrine of Lenity and relevant Ohio Revised Code, to favor an offender and have multiple sentences in multiple cases served concurrently. The Department of Rehabilitation and Correction's Bureau of Sentence Computation has ignored relevant sections of the Ohio Revised Code, relevant sections of its own Ohio Administrative Code, and relevant Ohio court precedent substituting its own interpretation of how the Relator's overall sentence should be determined and taken the court's silence to mean Relator's sentences are to be served consecutively. Thus, instead of a concurrent five (5) year term of imprisonment as legally required, Relator is being held by Respondent beyond his sentence expiration date to serve a consecutive six (6) year term.

(5) For calculation purposes and because of concurrent sentencing provisions and hierarchical sentence provisions of Ohio Administrative Code the five (5) year prison term is the controlling sentence for which Relator received one hundred twenty-two days of jail-time credit and began serving on or about July 27, 2006. With the jail-time credit calculated backward from July 27, 2006, Relator effectively began serving his sentence on or about March 27, 2006 and as of March 27, 2011 his five (5) year prison term has expired and he is thus imprisoned beyond his expiration of maximum sentence date in violation of the laws and constitution of the State of Ohio and the XIV Amendment of the United States Constitution and is thus entitled to the issuance of a writ of habeas corpus ordering his immediate release from prison.

LAW AND DISCUSSION

(6) In support of his claims Relator is submitting, pursuant to relevant Ohio Revised Code (R.C.), Ohio Rules of Evidence (Evid.R.), Ohio Civil Rules of Court (Civ.R.), and Ohio Supreme Court Rules of Practice (S.Ct.Prac.R.), exhibits and affidavits as follows: (a) commitment document, Exhibit A - certified copy of sentencing journal entry in Case No. 04 CR 065811 pursuant to Evid.R. 1005; (b) Exhibit B - commitment document, certified copy of sentencing journal entry in Case No. 05 CR 067665 pursuant to Evid.R. 1005; (c) Exhibit C - commitment document, certified copy of sentencing journal entry in Case No. 06 CR 070216; (d) Exhibit D - copy of sentence calculation document from Department of Rehabilitation and Correction (DR&C)'s, Bureau of Sentence Computation (BOSC) pursuant to Evid.R. 1003; Affidavit pursuant to S.Ct.Prac.R. XV, section 3; Affidavit, Prior Actions, pursuant to R.C. 2969.25(A); Affidavit, Grievance System, pursuant to R.C. 2969.26; Affidavit, Waiver of Filing

Fees and Court Costs and supporting Affidavit of Indigence pursuant to R.C. 2969.25(C)(1)(2); and Affidavit in Support pursuant to S.Ct.Prac.R. 10.4(B).

(7) By not releasing him from prison at the maximum expiration of his sentence Relator suffered invidious discrimination and has been deprived of the considerations and benefits granted others similarly situated and Relator's rights, under the equal protection clause of both the Ohio and United States constitutions, have been violated. "Whenever a state provision impinges upon the exercise of a federally guaranteed and constitutionally protected right, a showing of compelling state interest is required before such provision can be sustained*152 under a challenge of denial of equal protection of the laws." See **Reynolds v. Sims** (1964), 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506; **Giona v. American Guarantee & Liability Ins. Co.** (1968), 391 U.S. 73, 88 S.Ct. 1515, 20 L.Ed.2d 441; **King v. Smith** (1968), 392 U.S. 309, 334, 88 S.Ct. 2128, 20 L.Ed.2d 1118; **Levy v. Louisiana** (1968), 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436. For example the proof required of an inmate attempting to show a denial of equal protection under either the United States or Ohio Constitutions must be "exceptionally clear" in establishing that the OAPA abused its discretion and that a "purposeful discrimination" resulted. **Loper v. Ohio Adult Parole Auth.** (June 28, 2001), Franklin App. No. 00AP-436. An inmate claiming a denial of equal protection must also establish what effect the discriminatory acts complained of had on him. *Id.*, citing **Mayrides v. Ohio Adult Parole Auth.** (Apr. 30, 1998), Franklin App. No. 97APE08-1035. In this instance Relator is being deprived of his constitutionally protected right to liberty, not by a parole board, but by Respondent, Warden Kimberly Clipper who is, pursuant to provisions of R.C. 2725.04, the officer in custody of Relator.

(8) "Habeas corpus is available when an individual's maximum sentence has expired and he is being held unlawfully." **Morgan v. Ohio Adult Parole Auth.** (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941. Relator's sentences have expired and he is entitled to immediate release from prison. In order to understand how this conclusion was derived at it is necessary to discuss the chronological events of Relator's cases and sentences. It is axiomatic that Relator is entitled to concurrent sentences for all offenses mentioned in the aforementioned cases. In Case No. 04 CR 065811 Judge Janas sentenced Relator on or about April 10, 2006, Exhibits A and D, and could not and did not order the sentence in this case to run consecutive with some unknown future sentence. It is well established in Ohio case law that a sentence cannot run consecutively with a future sentence. This Court stated, "When a trial court imposes a sentence and orders it to be served consecutively with any future sentence to be imposed, it appears that such a sentence interferes with the discretion of the second trial judge to fashion an appropriate sentence." **State v. White** (1985), 18 Ohio St.3d 340, 342-3. In **State v. Wise**, the Twelfth District Court of Appeals states "a trial court may not order a sentence to be served consecutively to a sentence that is to be imposed in the future." 2004-Ohio-6241, citing **State v. Watson** (1992), 76 Ohio App.3d 258, 261." Likewise Case Nos. 05 CR 067665 and 06 CR 070216 , Exhibits B and C, are devoid of any reference to Case No 04 CR 065811 and demonstrate Judge Rothgery failed to make a determination as to whether or not the combined sentences in those cases would be served consecutively or concurrently with Case No. 04 CR 065811; this silence created an ambiguity in Relator's overall sentence resulting in a presumption of concurrent sentencing.

(9) “Where there is an ambiguity in the language as to whether the sentences are to be served concurrently or consecutively, a defendant is entitled to have the language construed in his favor.” See **Gaddis v. United States** (C.A. 6, 1960), 280 F.2d 334, 336. Ohio R.C. § 2901.04(A) provides that “Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused. ...” In addition, as is applicable to Relator, Ohio Administrative Code (OAC) 5120-2-03.1 provides: “(A) This rule applies only to prison terms imposed for offenses committed on or after July 1, 1996, to be served with the department of rehabilitation and correction. (B) *A prison term shall be served consecutively to any other prison term as provided by law.* (C) *A prison term shall be served concurrently, not aggregated, with any other prison term imposed by a court of this state, another state, or of the United States, except as otherwise provided by law. (emphasis added to note conflicting provisions of OAC).* (D) When multiple stated prison terms are imposed to run concurrently, the offender shall be deemed to be serving the longest of the stated terms so imposed. If, however, the various prison terms are subject to different amounts of reduction for jail time credit, the offender shall be released after serving the longest diminished stated prison term. ...”

(10) In a Supreme Court of Ohio case, **MORGAN supra**, the court determined the following, “Initially, we note that habeas corpus is available where an individual's maximum sentence has expired and he is being held unlawfully. **Hoff v. Wilson** (1986), 27 Ohio St.3d 22, 27 OBR 440, 500 N.E.2d 1366; see **Frazier v. Stickrath** (1988), 42 Ohio App.3d 114, 536

N.E.2d 1193. Appellant's contentions involve statutory construction of the aforementioned statutes. In construing a statute, a court's paramount concern is the legislative intent in enacting the statute. **State v. S.R.** (1992), 63 Ohio St.3d 590, 594, 589 N.E.2d 1319, 1323. In determining legislative intent, the court first looks to the language in the statute and the legislature's purpose. *Id.* at 594-595, 589 N.E.2d at 1323. Words used in a statute must be taken in their usual, normal or customary meaning. See R.C. *347 1.42; **S.R.** at 595, 589 N.E.2d at 1323, citing **State v. Cravens** (1988), 42 Ohio App.3d 69, 72, 536 N.E.2d 686, 689. Thus relevant Ohio statutes, case law and administrative regulations, as delineated in paragraphs 7, 8, 9, and 10, support Relator's assertions that all of the sentences in all of his cases had expired on or about March 27, 2011 and he is entitled to immediate release from prison.

(11) Respondent is an employee of the DR&C, an administrative agency of the executive branch of government, and as such has no legal authority to alter, modify and/or ignore the clear and unambiguous statement contained in the court judgment, nor does Respondent have authority to substitute or alter a determination or calculation of the court on what a sentence should be. "Respondent and the Ohio Department of Rehabilitation and Corrections have no authority to interpret or alter the clear and unambiguous statement contained in a court judgment." **State ex rel. Dailey v. Morgan** 115 Ohio Misc.2d 44, 761 N.E.2d 140 Ohio Com.Pl.,2001. August 08, 2001.

TIME - LINE OF EVENTS

(12) In support of his assertions Relator is submitting this time-line, calculated pursuant to R.C. 2949.12 and R.C. 2967.191, to better illustrate the chronological order of events surrounding each case, each event in each case, defined by Exhibit reference for clarity, to demonstrate that his prison sentences are concurrent; have, as of March 21, 2011 expired; and he is indeed entitled to the issuance of a writ of habeas corpus requiring his immediate release from prison.

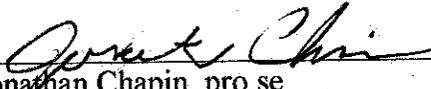
March 21, 2006 (Exhibit B) Start date of five year term, Sentence less 122 days jail-time credit
March 21, 2006 (Exhibit C) Start date of one year term, Sentence less 122 days jail-time credit
March 26, 2006 (Exhibit A) Start date of one year term, Sentence less 15 days jail-time credit
April 10, 2006 (Exhibit A) Initial Sentence date, one year concurrent sentences
April 25, 2006 (Exhibit A&D) Entry into prison, one year concurrent sentence
July 21, 2006 (Exhibit B) Initial Sentence date, five year concurrent sentences
July 21, 2006 (Exhibit C) Initial Sentence date, one year concurrent sentences
July 27, 2006 (Exhibit B& D) Re-entry into prison, five year concurrent sentence
July 27, 2006 (Exhibit C &D) Re-entry into prison, one year concurrent sentence
March 21, 2007 (Exhibit C) one year sentence expires
April 10, 2007 (Exhibit A) one year sentence expires
March 21, 2011 (Exhibit B) five year sentence expires

(13) As is evident from the aforementioned time-line Exhibits A, B, C, and D demonstrate that Relator's assertions are well founded and supported by statute and case law and that he is being held in prison beyond the maximum expiration of sentence date, March 21, 2011. Because Relator's sentences are expired his only recourse in law is a writ of habeas corpus.

CONCLUSION

(14) For the aforementioned reasons and to correct a manifest injustice Relator prays this Honorable Court will issue a writ of habeas corpus ordering Respondent, Warden Kimberly Clipper, Grafton Correctional Institution, 2500 South Avon-Beldon Road, Grafton, Ohio 44044 to immediately release Relator, Jonathan Chapin, from custody.

Respectfully submitted,


Jonathan Chapin, pro se
A 503-479
Grafton Correctional Institution
2500 South Avon-Beldon Road
Grafton, Ohio 44044
(440) 748-1161

**AFFIDAVIT IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS
PURSUANT TO S.Ct. R. 10.4(B)**

I, Jonathan Chapin, Relator and Affiant herein, having been duly warned and cautioned in accordance with the law and penalties for perjury, do hereby attest, swear and/or affirm under penalty of perjury that all statements set forth below are taken directly from my Petition for Writ of Habeas Corpus and are true and accurate to my own personal knowledge and I am competent to testify to the same:

(1) Relator is being deprived of his constitutional right of liberty by Respondent, Warden Kimberly Clipper, in violation of the laws and constitution of the State of Ohio and the XIV Amendment of the constitution of the United States. Lorain County Common Pleas Court records in State of Ohio versus Jonathan Chapin, Case Numbers: 04 CR 065811; 05 CR 067665; and 06 CR 070216, demonstrate that on successive dates, April 10, 2006 in the 04 case and on July 21, 2006 in the remaining two cases, Relator was sentenced to one (1) year, five (5) years, and one (1) year respectively. While journal entries of July 21, 2006 are specific in noting that Judge Rothgery sentenced Relator to concurrent sentences for all charges in both cases that journal entry was silent as to how this latter sentence was to be served with the one (1) year sentence meted out by Judge Janas, three months earlier, on April 10, 2006 in Case No. 04 CR 06581.

(2) Ohio Revised Code, Ohio Administrative Code, and Ohio Court precedent requires such silence, under relevant Ohio Revised Code, to favor an offender and have multiple sentences served concurrently. The Department of Rehabilitation and Correction's Bureau of Sentence Computation has ignored sections of the Ohio Revised Code, the Ohio Administrative Code, and Ohio case precedent, substituting its own interpretation of how the overall sentence should be determined, and taken this silence to mean that Relator's sentences are to be served consecutively. Thus, instead of a concurrent five (5) year term of imprisonment as legally required, Relator is being held beyond his sentence expiration date to serve a consecutive six (6) year term.

(3) For calculation purposes and because of concurrent sentencing provisions of Ohio Revised Code and hierarchical sentence calculation provisions of Ohio Administrative Code the five (5) year prison term is the controlling sentence for which Relator received one hundred twenty-two days of jail-time credit and began serving on or about July 27, 2006. With the jail-time credit calculated backward from July 21, 2006, Relator effectively began serving his time on or about March 21, 2006 and as of March 21, 2011 his five (5) year prison term has expired and he is thus imprisoned in violation of the laws and constitution of the State of Ohio and the XIV Amendment of the United States Constitution and is thereby entitled to the issuance of a writ of habeas corpus ordering his immediate release from prison.

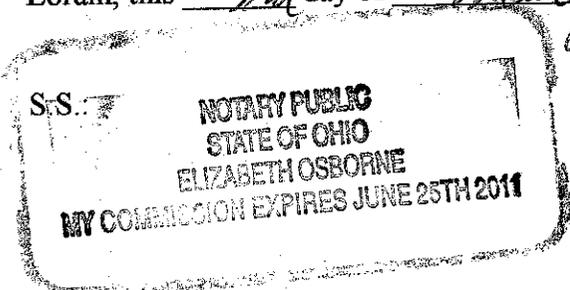
(4) Relator avers R.C. 2969.26 is inapplicable because Relator's sentence has expired and that any and all exhibits proffered with his petition are incorporated and made a part of this complaint as if fully rewritten or included herein pursuant to Civ.R.10(C).

FURTHER AFFIANT SAYETH NOT;


Jonathan Chapin, A 503-479
Grafton Correctional Institutional
2500 South Avon-Beldon Road
Grafton, Ohio 44044
(440) 748-1161

NOTARY PUBLIC

Sworn to and/or affirmed to before me a Notary public in the State of Ohio, County of Lorain, this 3rd day of May, 2011.




NOTARY PUBLIC, STATE OF OHIO

FILED
LORAIN COUNTY

2006 APR 10 2:59

CLERK OF COMMON PLEAS
CLERK'S ENDORSEMENT
RON NABAKOWSKI



ENTERED

COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
RON NABAKOWSKI, CLERK
JOURNAL ENTRY

Date 4-10-06

Case No. 04CR065811

STATE OF OHIO

Plaintiff

VS

Plaintiff's Attorney

JOHN ALLEN CHAPIN

Defendant

Defendant's Attorney

Further

Defendant in Court for sentencing. Defendant sentenced to prison; see sentencing judgment entry and exhibit(s).

VOL 979 PAGE 1818

[Signature]
THOMAS W. JANAS, JUDGE

CC:

HEREBY CERTIFY THIS TO BE A TRUE COPY
OF THE ORIGINAL FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY
CLERK OF THE COURT OF COMMON PLEAS
BY *[Signature]* DEPUTY

DEFENDANT'S EXHIBIT A (PAGE 1 OF 4)

FILED COURT OF COMMON PLEAS
LORAIN COUNTY LORAIN COUNTY, OHIO

2006 APR 10 2:59

STATE OF OHIO,

CLERK OF COMMON PLEAS
Plaintiff, NABAKOWSKI

-vs-

CASE NO.: 04CR065811

JUDGMENT ENTRY OF
CONVICTION AND SENTENCE

JOHN ALLEN CHAPIN

Defendant.

.....

1. Defendant appeared in Court for sentencing after having plead guilty to/ been found guilty of the following charge(s):

Count 1: Failure to comply, a violation of R.C. 2921.33(A), a 3rd degree felony/misdemeanor.

Count 2: Obstruction, a violation of R.C. 2921.31(A), a 5th degree felony/misdemeanor.

Count 3: _____, a violation of R.C. _____, a _____ degree felony/misdemeanor.

Count 4: _____, a violation of R.C. _____, a _____ degree felony/misdemeanor.

Count 5: _____, a violation of R.C. _____, a _____ degree felony/misdemeanor.

Count 6: _____, a violation of R.C. _____, a _____ degree felony/misdemeanor.

() IF CHECKED, see additional charges on attached page.

2. (X) IF CHECKED, a pre-sentence investigation and report were ordered and completed, and said report was made available to the defense for review.

3. Defendant was present with counsel in open court for sentencing on 4-10-06, Those persons listed in R.C. 2929.19(A) were afforded an opportunity to speak and present any information relevant to the imposition of sentence.

4. Upon consideration of all matters set forth by law, it is the judgment of law and sentence of the Court that the Defendant be sentenced to:

Count 1: 12 months/years in LCJ and pay a drug mandatory fine of \$ _____

Count 2: 6 months/years in LCJ and pay a drug mandatory fine of \$ _____

Count 3: _____ months/years in _____ and pay a drug mandatory fine of \$ _____

Count 4: _____ months/years in _____ and pay a drug mandatory fine of \$ _____

Count 5: _____ months/years in _____ and pay a drug mandatory fine of \$ _____

Count 6: _____ months/years in _____ and pay a drug mandatory fine of \$ _____

() IF CHECKED, see additional sentences on attached page.

(X) IF CHECKED, sentences imposed on all counts shall run concurrently.

() IF CHECKED, see paragraph 5, below, for additional sentence for firearm specification.

Defendant: _____

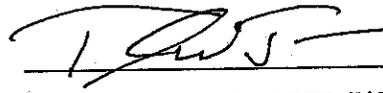
- () IF CHECKED, sentence(s) imposed herein shall run concurrently with the sentence(s) in any other case. _____
- 5. () IF CHECKED, an additional _____ years of actual incarceration is imposed on count(s) _____ as and for a firearm specification, pursuant to R.C. 2929.14(D)(1). Said term of actual incarceration shall be served prior to and consecutive to any other sentence(s) imposed herein.
- 6. () IF CHECKED, counts/case _____ shall run consecutively to counts/case _____.
- 7. Defendant is entitled to credit, pursuant to R.C. 2967.191, on his/her sentence ~~for~~ as computed by LCCF
- 8. () IF CHECKED, Defendant's driver's license is suspended on Count(s) _____ for _____ commencing _____, 200_____.
- 9. The Defendant was advised at the time of sentencing, of the amount of post-release control, pursuant to R.C. 2929.19(B)(3)(c), to which he/she would be subject, and the consequences of violating the terms of post-release control or of committing a new felony while on post-release control, all of which is part of the sentence herein.
 - _____ 5 years post release control
 - _____ 3 years post release control
 - up to 3 years post release control.
- 10. () IF CHECKED, mandatory drug fine(s) in count(s) _____ shall be paid to the Clerk of Courts who shall distribute said fine(s) as follows: 50 % to _____ and 50% to the Lorain County Prosecutor, the law enforcement agencies primarily responsible for or involved in making the arrest of and prosecuting the Defendant.
- 11. () IF CHECKED, upon consideration of the affidavit of indcency filed by the Defendant, the Court finds that the Defendant is indigent and payment of the mandatory fine(s) previously imposed is suspended.
- 12. () IF CHECKED, the sentence imposed herein was jointly recommended by the prosecutor and defense counsel.
- 13. Seized money or property in the custody of a law enforcement agency is ordered forfeited pursuant to defendant's plea agreement. Said money or property may be used or sold by the law enforcement agency. Said money or proceeds of sale shall be distributed according to law.
- 14. All property not forfeited is hereby ordered returned to the victim(s)/owner(s) or, if said victim(s)/owner(s) cannot be located, sold at public auction with proceeds distributed according to law.

DEFENDANT'S EXHIBIT A (PAGE 3 OF 4)

Case No. 04CR065811

Defendant: _____

- 15. All contraband and/or drugs are hereby ordered destroyed by the law enforcement agency in possession of same.
- 16. Defendant ordered to pay costs of prosecution forthwith.
- 17. _____



THOMAS W. JANAS, JUDGE

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS
BY Andy Peterford DEPUTY

DEFENDANT'S EXHIBIT A (PAGE 4 OF 4)

III

FILED
LORAIN COUNTY

ENTERED

2006 JUL 25 1:37

JOURNAL ENTRY

CLERK OF COMMON PLEAS COURT OF COMMON PLEAS
RON NABAKOWSKI

Lorain County, Ohio
Ron Nabakowski, Clerk

Case No. 05CR067665

STATE OF OHIO Plaintiff Asst. Pros.

Jonathan A. Chapin Defendant Atty for Defendant

Date 7-21-06 J.E. Vol. 986 Page 1993

~~DEFENDANT IN COURT WITH COUNSEL FOR SENTENCING: DEFENDANT SENTENCED TO PRISON/COMMUNITY CONTROL SANCTIONS; SEE SENTENCING JUDGMENT ENTRY.~~

Judge ROTHGERY

for Judge Glava

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS
BY Anthony Rothger DEPUTY

DEFENDANT'S EXHIBIT B (PAGE 1 OF 6)

(III)

FILED COURT OF COMMON PLEAS
LORAIN COUNTY LORAIN COUNTY, OHIO
Ron Nabakowski, Clerk

2006 JUL 25 1:37

STATE OF OHIO, COURT OF COMMON PLEAS
RON NABAKOWSKI

CASE NO: 05CR067665

Plaintiff

v.

Assistant Prosecuting Attorney

Jonathan A. Chapin

Defendant

Defense Attorney

Journal 986 Page 193

JUDGMENT ENTRY OF CONVICTION AND SENTENCE

1. Defendant appeared in Court for sentencing after having plead guilty to the following charge(s):

1. Felony Assault

a violation of O.R.C. 2903.11(A) a 2nd degree felony/misdemeanor.

2. Menacing

a violation of O. R. C. 2903.22 a 4th degree felony/misdemeanor.

3. Endangering Children

a violation of O.R.C. 2919.22(A) a 1st degree felony/misdemeanor.

4. Domestic Violence

a violation of O.R.C. 2919.25(A) a 1st degree felony/misdemeanor.

5. Intimidation of a Crime Victim or Witness

a violation of O.R.C. 2921.04(B) a 3rd degree felony/misdemeanor.

() IF CHECKED, see additional charges on attached page.

2. () IF CHECKED, a pre-sentence report and investigation were ordered and completed. A copy was/was not made available to defense. waived

DEFENDANT'S EXHIBIT B (PAGE 2 OF 6)

3. Defendant was present with counsel in open court for sentencing 7-21, 200~~2~~⁶. A stenographer was present. Defendant's counsel and defendant were afforded an opportunity to speak and present any information in mitigation of punishment, pursuant to Criminal Rule 32(A)(1).

4. **EXCEEDING THE MINIMUM FOR FIRST PRISON TERM:**

The court finds, pursuant to Ohio Rev. Code §2929.14(B) that:

_____ The shortest prison term will demean the seriousness of the defendant's conduct;

(or)

_____ The shortest prison term will not adequately protect the public from future crime by the defendant or others.

5. **IMPOSING THE MAXIMUM PRISON TERM:**

The court finds for the reasons stated on the record, pursuant to Ohio Rev. Code §2929.14(C) that:

_____ The defendant has committed the worst form of the offense;

_____ The defendant poses the greatest likelihood of recidivism.

6. **FIREARM SPECIFICATION:**

An additional term of (1, 3, 5, or 6) years is imposed as a mandatory and consecutive term pursuant to Ohio Rev. Code §2929.14(D)(1), to be served before any other time is served.

7. **CONSECUTIVE SENTENCES:**

Pursuant to Ohio Rev. Code §2929.14(E)(3), the court finds that the sentences are to be served consecutively to one another as:

_____ Consecutive sentences are necessary to protect the public from future crime or to punish the defendant.

_____ Consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and the danger the defendant poses to the public.

_____ Consecutive sentences are required by law pursuant to division (E)(1) or (E)(2) of Ohio Rev. Code §2929.14.

The court also finds that any one of the following apply:

_____ The defendant committed the multiple offenses while the defendant was:

- _____ awaiting trial or sentencing;
- _____ under a community sanction;
- _____ under a post release control sanction

when the offense was committed

(or)

_____ The harm caused by the defendant was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the defendant's conduct

(or)

_____ The defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

_____ THEREFORE, the sentences are to be served consecutively.

_____ THEREFORE, the sentences are to be served concurrently.

*The sentences are concurrent/consecutive to each other and concurrent/consecutive to case number _____.

8. REPEAT VIOLENT OFFENDER OR MAJOR DRUG OFFENDER:

The court finds that the defendant is a:

_____ repeat violent offender under Ohio Rev. Code §2929.14(D)(2);

_____ major drug offender under Ohio Rev. Code §2929.14(D)(3).

The court also finds that a maximum basic prison term is inadequate to protect the public because one or more applicable factors under Ohio Rev. Code §2929.12 indicating a defendant is more likely to commit future crimes outweigh any applicable factors indicating that a defendant is less likely to commit future crimes.

The court also finds that the maximum basic prison term is demeaning to the seriousness of the offense because one or more factors under Ohio Rev. Code §2929.12 that increase the seriousness of the offense outweigh any applicable factors indicating that the offense is less serious.

The court therefore orders an additional term of years beyond the maximum basic prison term pursuant to Ohio Rev. Code §2929.14(D)(2)(b) on:

Count(s) _____

The court has considered the presumptions under Ohio Rev. Code §2929.13(D). It is therefore ordered that the defendant serve a stated prison term of _____ years/months in prison, of which

_____ is a mandatory prison term pursuant to Ohio Rev. Code §2929.13(F) on Count(s) _____

The court has notified the defendant that bad time may be imposed by the Parole Board under Ohio Rev. Code §2967.11 for ~~certain rule violations committed while in prison.~~ The defendant is ordered to serve as part of this sentence any bad time imposed.

The court has further notified the defendant that post conviction control is (mandatory/optional) in this case up to a maximum of (37) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Ohio Rev. Code §2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

- 9. All contraband and/or drugs are hereby ordered destroyed by the law enforcement agency in possession of same.
- 10. Seized money or property in the custody of a law enforcement agency is ordered forfeited pursuant to defendant's plea agreement. Said money or property may be used or sold by the law enforcement agency. Said money or proceeds of sale shall be distributed according to law.
- 11. All property nor forfeited is hereby ordered returned to the victim(s)/owner(s) or, if said victim(s)/owner(s) cannot be located, sold at public auction with proceeds distributed according to law.

12. Upon consideration of all matters set forth by law it is the judgment of law and sentence of the Court that defendant be sentenced to: *All counts to run concurrently to each other and concurrent to Case No. 02CRO61527.*

- Count 1: 3 months/years in LCI and pay a fine of \$ _____;
- Count 2: 1 months/years in LCI and pay a fine of \$ _____;
- Count 3: 6 months/years in LCI and pay a fine of \$ _____;
- Count 4: 6 months/years in LCI and pay a fine of \$ _____;
- Count 5: 3 months/years in LCI and pay a fine of \$ _____;

() IF CHECKED, see additional sentences on attached page.

13. () IF CHECKED, the defendant's drivers license is suspended for _____ consecutive/concurrent to any other suspension.

14. FINES:

(a) Pay a mandatory fine pursuant to O.R.C. 2925.03(H) of \$ _____ on Ct 1; \$ _____ on Ct 2; \$ _____ on Ct 3; \$ _____ on Ct 4.

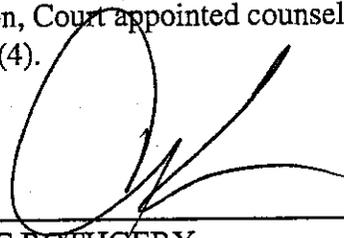
(b) The mandatory fine listed shall be paid to the Clerk of Courts, who in turn shall pay the same to _____ and 25% to the Lorain County Prosecutor.

(c) Mandatory drug fines under any section of O.R.C. 2925 (other than R.C. 2925.03) shall be disbursed by the Clerk of Courts as follows: 50% in care of the Ohio Board of Pharmacy, ___% to _____, and 25% to the Lorain County Prosecutor.

(d) _____ (If checked) Mandatory fines are HELD IN ABEYANCE pending hearing or/SUSPENDED pursuant to the affidavit of indigency.

15. The defendant is therefore ordered conveyed to the custody of the Ohio Department of Rehabilitation and Correction. Credit for 23 days is granted as of this date along with future custody days while the defendant awaits transportation to the appropriate state institution. The defendant is ordered to pay restitution of \$ ~~_____~~, all costs of prosecution, Court appointed counsel costs and any fees permitted pursuant to Ohio Rev. Code §2929.18(A)(4).

Dated: 7-21-06



JUDGE ROTHGERY

for Judge Blawas

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS
BY *Carly Rothgery* DEPUTY

VIII FILED LORAIN COUNTY

2006 JUL 25 1:37

CLERK OF COMMON PLEAS
RON NABAKOWSKI

JOURNAL ENTRY
COURT OF COMMON PLEAS

ENTERED

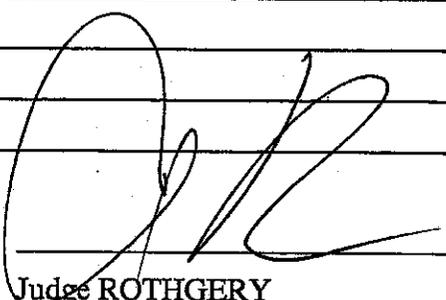
Lorain County, Ohio
Ron Nabakowski, Clerk

Case No. 06CR070216

STATE OF OHIO Plaintiff Asst. Pros.
^{-vs-}
Jonathan A. Chapin Defendant Atty for Defendant

Date 7-21-06 J.E. Vol. 986 Page 2009

DEFENDANT IN COURT WITH COUNSEL FOR SENTENCING: DEFENDANT SENTENCED TO PRISON/COMMUNITY CONTROL SANCTIONS: SEE SENTENCING JUDGMENT ENTRY.


Judge ROTHGERY
for Judge Glavas

DEFENDANT'S EXHIBIT C (PAGE 1 OF 5)

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RON NABAKOWSKI, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS
BY [Signature] DEPUTY

3. Defendant was present with counsel in open court for sentencing 7-21, 2006 A stenographer was present. Defendant's counsel and defendant were afforded an opportunity to speak and present any information in mitigation of punishment, pursuant to Criminal Rule 32(A)(1).

4. The court has considered the factors under Ohio Rev. Code §2929.13(B) and finds the following:

- ___ physical harm to a person;
- ___ attempt or threat with a weapon;
- ___ attempt or threat of harm, and previous conviction for physical harm;
- ___ public trust, office or position;
- ___ for hire, or organized crime;
- ___ sex offense;
- ___ previous prison term served;
- ___ defendant already under community control or violated prior community control.

For reasons stated on the record, and after consideration of the factors under Ohio Rev. Code §2929.12, the court also finds that prison is consistent with the purposes of Ohio Rev. Code §2929.11 and the defendant is not amenable to an available community control sanction.

5. **EXCEEDING THE MINIMUM FOR FIRST PRISON TERM:**

The court finds, pursuant to Ohio Rev. Code §2929.14(B) that:

___ The shortest prison term will demean the seriousness of the defendant's conduct;
(or)

___ The shortest prison term will not adequately protect the public from future crime by the defendant or others.

6. **IMPOSING THE MAXIMUM PRISON TERM:**

The court finds for the reasons stated on the record, pursuant to Ohio Rev. Code §2929.14(C) that:

___ The defendant has committed the worst form of the offense;

___ The defendant poses the greatest likelihood of recidivism.

7. **FIREARM SPECIFICATION:**

An additional term of (1, 3, 5, or 6) years is imposed as a mandatory and consecutive term pursuant to Ohio Rev. Code §2929.14(D)(1), to be served before any other time is served.

8. CONSECUTIVE SENTENCES:

Pursuant to Ohio Rev. Code §2929.14(E)(3), the court finds that the sentences are to be served consecutively to one another as:

_____ Consecutive sentences are necessary to protect the public from future crime or to punish the defendant.

_____ Consecutive sentences are not disproportionate to the seriousness of the defendant's conduct and the danger the defendant poses to the public.

_____ Consecutive sentences are required by law pursuant to division (E)(1) or (E)(2) of Ohio Rev. Code §2929.14.

The court also finds that and of the following apply:

_____ The defendant committed the multiple offenses while the defendant was:

- _____ awaiting trial or sentencing;
- _____ under a community sanction;
- _____ under a post release control sanction

when the offense was committed.

(or)

_____ The harm caused by the defendant was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the defendant's conduct.

(or)

_____ The defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

THEREFORE, the sentences are to be served consecutively.

9. All contraband and/or drugs are hereby ordered destroyed by the law enforcement agency in possession of same.
10. Seized money or property in the custody of a law enforcement agency is ordered forfeited pursuant to defendant's plea agreement. Said money or property may be used or sold by the law enforcement agency. Said money or proceeds of sale shall be distributed according to law.
11. All property nor forfeited is hereby ordered returned to the victim(s)/owner(s) or, if said victim(s)/owner(s) cannot be located, sold at public auction with proceeds distributed according to law.

12. The court has notified the defendant that bad time may be imposed by the Parole Board under Ohio Rev. Code §2967.11 for certain rule violations committed while in prison. The defendant is ordered to serve as part of this sentence any bad time imposed.

The court has further notified the defendant that post release control is (~~mandatory~~/optional) in this case up to a maximum of (3/5) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Ohio Rev. Code §2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

13. Upon consideration of all matters set forth by law it is the judgment of law and sentence of the Court that defendant be sentenced to: *Commitment to Case No. 05CR067665.*

Count 1: 1 months/years in _____ and pay a fine of \$ _____;

Count 2: _____ months/years in _____ and pay a fine of \$ _____;

Count 3: _____ months/years in _____ and pay a fine of \$ _____;

Count 4: _____ months/years in _____ and pay a fine of \$ _____;

() IF CHECKED, see additional sentences on attached page.

14. FINES:

(a) Pay a mandatory fine pursuant to O.R.C. 2925.03(H) of \$ _____ on Ct 1; \$ _____ on Ct 2; \$ _____ on Ct 3; \$ _____ on Ct 4.

(b) The mandatory fine listed shall be paid to the Clerk of Courts, who in turn shall pay the same to _____ and 25% to the Lorain County Prosecutor.

(c) Mandatory drug fines under any section of O.R.C. 2925 (other than R.C. 2925.03) shall be disbursed by the Clerk of Courts as follows: 50% in care of the Ohio Board of Pharmacy, _____% to _____, and 25% to the Lorain County Prosecutor.

(d) _____ (If checked) Mandatory fines are HELD IN ABEYANCE pending hearing or/SUSPENDED pursuant to the affidavit of indigency.

15. The defendant is therefore ordered conveyed to the custody of the Ohio Department of Rehabilitation and Correction. Credit for 123 days is granted as of this date along with future custody days while the defendant awaits transportation to the appropriate state institution. The defendant is ordered to pay restitution of \$, all costs of prosecution, Court appointed counsel costs and any fees permitted pursuant to Ohio Rev. Code §2929.18(A)(4).

Dated: 7-21-06



JUDGE ROTHGERY
for Judge Glavas

I HEREBY CERTIFY THIS TO BE A TRUE COPY
OF THE ORIGINAL FILE IN THIS OFFICE.
RON NABAKOWSKI, LORAIN COUNTY
CLERK OF THE COURT OF COMMON PLEAS
BY *Anthony Rothgery* DEPUTY



Ohio Department of Rehabilitation and Correction

RECEIVED RECORDS

1050 Freeway Drive North
Columbus, Ohio 43229

Bob Taft, Governor

2006 SEP 20 A 7:34

www.drc.state.oh.us

Terry J. Collins, Director

RICHLAND CORRECTIONAL

Monday, September 25, 2006 3:13 P

RICI [BOSC - UPDATE & CORRECTION]

BY: HEISS

INMATE # : A503479
 NAME : CHAPIN, JONATHAN
 INST : RICHLAND CORRECTIONAL INSTITUTION
 ENTERED : 09/25/2006

COMMENTS: ADDED SENTENCES LORAIN
 05CR067665/06CR070216. NEW EST

ADMISSION DATE: 04/25/2006 FBI#: BCI#: SSN#:

- INACTI
 ** - OFFENSE INFORMATION: Att. = 1; Con. = 2; Com

START	OFFENSE	LK	C/L	FEL	ORG/ORN	CNTY	CASE #	C	**
GUN	DEF/TERM	MIN FULL	MAX	AI/MAN	RVO MDO	JUDGE	PROSECUTOR	L	JTC
04/25/2006	OBSTRUCTING OFFICIAL BUSINESS	1	C	5	2921.31 4	LORA	04CR065811	C	
0	0.50	0	0	0/0	0/0	JANAS	WILL		15
04/25/2006	FAIL TO COMPLY	1	C	3	2921.331 4	LORA	04CR065811	S	
0	1.00	0	0	0/0	0/0	JANAS	WILL		15
07/27/2006	FEL ASSAULT	1	C	2	2903.11 4	LORA	05CR067665	C	
0	5.00	0	0	0/0	0/0	ROTHGERY	WILL		122
07/27/2006	INTIMIDATE VICTIM/WITNESS	1	C	3	2921.04 4	LORA	05CR067665	C	
0	5.00	0	0	0/0	0/0	ROTHGERY	WILL		122
07/27/2006	VERIFY ADDRESS FAILURE	1	C	4	2950.06 4	LORA	06CR070216	C	
0	1.00	0	0	0/0	0/0	ROTHGERY	WILL		122

AGGREGATE SENTENCE: 6.00 TERM

REMARKS: RET FROM AWL/OTC

DATES: **

HEARING DATE

AGG DEF SENT YEARS

DEFENDANT'S EXHIBIT D (PAGE 1 OF 2)

ACTUAL HD		AGG MIN/FULL SENT YEARS	
2/3 ACTUAL		AGG AI SENT YEARS	
MAX SENT EXP DATE		AGG MANDATORY YEARS	
EXPIRATION DEF SENT		AGG MAX SENT YEARS	
2/3 EDS		AGG MDO YEARS	
STATED TERM EXP DATE	12/07/2011	AGG RVO YEARS	
GUN EXPIRATION DATE		AGG JAIL TIME CRE (days)	137
EXP OF MANDATORY TERM			