

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

APPELLEE

11-1269

V

TRIAL CASE NO. 05 CR 155

LESHAWN NICKELSON

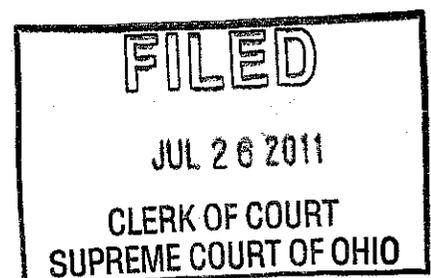
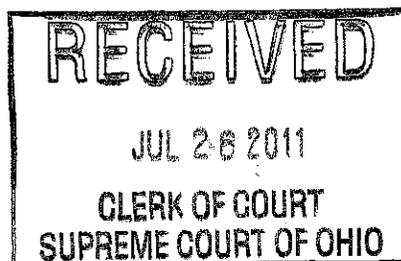
APPEAL CASE NO. 11 CA 11

APPELLANT

MEMORANDUM IN SUPPORT
FOR SUPPLEMENT OF RECORD

LESHAWN NICKELSON
C.C.I.
P.O.BOX 5500
CHILlicoTHE, OHIO 45601
APPELLANT PRO SE

BRIGHAM ANDERSON
ONE VETERAN'S SQUARE
IRONTON, OHIO 45638
APPELLEE-STATE OF OHIO



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

LeShawn Nickelson, calls upon this Court which is the last bastion of the protection for Ohio citizens rights under the Fifth and Fourteenth Amendments to the U.S. Constitution to grant review and prevent the further miscarriage of justice.

At issue is the Fourth District Court of Appeals failure to allow a supplement to the record with evidence that the Appellant enclosed with the Civil Rule 60(B) 5 Motion, LeShawn Nickelson, case presents a substantial Constitutional question in that it requires an interpretation of the Constitutional Due Process Equal Protection Clause under Fifth and Fourteenth Amendment. It is well settled law that the Court of Appeal are confined to testimony and evidence that the parties presented to the trial court on Appeal State v. Ishmail 54 Ohio St.2d 402, 377 N.E.2d 500. The record in this case shows clearly that the evidence submitted with the 60(B) 5 motion to file in the Court of Common pleas supports that evidence was submitted in the **Appendix**. Furthermore, the transcripts to support the claim that the Appellant used already exists in the Case of 05 CR 155 an affidavits which was submitted as evidence for truth of the matter with New Discovered evidence. On May 17, 2011 the Appellant receive a Court document back expressing that there was No records taken or any exhibits filed in the above entitled Case No. 05 CR 155 however, the record in particular, belies his claim when the record of the Motion show that evidence was submitted. The Fifth and Fourteenth Amendments guarantees everyone equal protection under the law the Fourth District Court of appeals failure to supplement the record is a clear and open miscarriage of justice record and the affidavits was not properly before the court filed with the Motion, that why this Court should accept the case for review.

STATEMENT OF THE CASE AND FACTS

On March 17, 2011, In the Lawrence County Common Pleas Court a timely Notice of Appeal was filed on a Civil Rule 60(B) 5 Motion.

FACTS

In the Fourth District Court of Appeals Docket statement the Appellant, requested that the transcripts and In the Court of Common Pleas Statement, Praeipce and Notice to Court Reporter that was filed May 31, 2011 the Appellant Pro se requested the original papers and exhibits be filed in the Court of Appeals. However, on or about June 6, 2011 the Court Reporter sent a document to the Appellant expressing that the record was complete. There after the Appellant filed a Motion to supplement the record with exhibits that were filed with the Motion and file the same to the Court of Common Pleas on or around June 27, 2011 it was filed, because the Documents were submitted with the Motion and the Transcripts already exist and New Discovered evidence was submitted with affidavits supporting the claims the Appellant respectfully ask that the record be supplement to adequately and effectively Appeal the Constitutional violation the request was denied by the Appeal court and the Common Pleas Court. So this timely appeal followed.

PROPOSITION OF LAW 1

The Magistrate failure to supplement the record when Evidence was submitted to the trial Court and filed with the Motion In the Appendix and Transcripts of the case is a clear violation of Appellant's, Due Process rights under the 5th and 14th Amendments to the U.S. Constitution.

The Fifth and Fourteenth Amendments of the U.S. Constitution and its Ohio Constitution counterpart contained at Section 16, Article 1 of the Due Process cause protection requires every person equal protection.

Clearly a reviewing court cannot add matter to the record that was not part of the trial Court's proceedings, and decide the Appeal on new basis of new matter, This Honorable held State v. Ishmail 54 Ohio St.2d 402, 377 N.E.2d 500. In the case at bar the evidence in the Appendix, and the Transcripts was submitted to the trial Court in the 60(B) 5 Motion and it was also submitted to the Appeals court with the Motion to supplement the record. The Court Magistrate is clearly in violation of the Appellant's Constitutional Due Process rights.

The Appellant sought supplementation of the record on appeal pursuant to App. R. 9(E) so as to include these remaining attachments within the record on appeal with that of Appendix with the Exhibits listed Affidavits and requested the transcripts, because the court will be unable to view the transcripts or other court documents an affidavits in order to determine whether or not it was prejudicial to appellant's case wherefore the supplement to the record is necessary for an adequate appeal.

Pursuant to App.R. 9(A), the record on appeal must contain “ the original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court .” It is the appellant's duty to transmit the transcript of proceedings to the court of appeals. App.R. 10(A); Loc.R. 5(A). This duty falls to the appellant because the appellant has the burden of establishing error in the trial court. Knapp v. Edwards Laboratories (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384.

In the Case at bar the appellant took the appropriate action by filing the supplement to the record.

Wherefore, Mr Nickelson, prays this Court accepts jurisdiction and answer the Question as to Whether the evidence submitted to the appropriate court is the record allowed to be supplement when the evidence is not include in the Appeal when the record is necessary for an adequate appeal.

CONCLUSION

For the reason discussed above that supported by the record in this case the Appellant respectfully ask the court to accept jurisdiction to review this case and this case involves matter of public and great general interest and substantial constitutional question. The appellant requests that this court accepts jurisdiction and allow this case to be reviewed on the merits.

Respectfully Submitted,
LeShawn Nickelson
LeShawn Nickelson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY A TRUE COPY OF THIS NOTICE OF APPEAL AND MEMORANDUM IN SUPPORT OF JURISDICTION WAS SENT AND BY U.S. MAIL TO LAWRENCE COUNTY PROSECUTION OFFICE 7-22-11

Respectfully Submitted,
LeShawn Nickelson
LeShawn Nickelson

IN THE COURT OF COMMON PLEAS ~~FILED~~
LAWRENCE COUNTY, OHIO ~~COMMON PLEAS COURT~~

2011 JUN 27 PM 3:35

STATE OF OHIO)
)
 PLAINTIFF(S))
)
 VS)
)
 LESHAWN NICKELSON)
)
 DEFENDANT(S))

CASE NO. 05-CR-155
ENTRY
D. SCOTT BOWLING
CLERK OF COURTS
LAWRENCE COUNTY

The court has received the defendant's Motion To Supplement The Record filed June 23, 2011,
the court hereby finds this motion was untimely filed.

THEREFORE, the court denies the Plaintiff's motion for this reason.


D. SCOTT BOWLING
JUDGE

PROOF OF SERVICE

A copy of the foregoing was mailed via regular U.S. mail to the following on June 27, 2011:

J.B. Collier, Jr., Esquire (Interoffice Mail)
111 South 4th Street
Ironton, OH 45638

LeShawn Nickelson, A598-117
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, OH 45601


D. SCOTT BOWLING
JUDGE

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

2011 JUN 29 AM 10: 23

MIKE PATTERSON
CLERK OF COURTS
LAWRENCE COUNTY

State of Ohio, :
Plaintiff-Appellee, :
v. :
LeShawn R. Nickelson, :
Defendant-Appellant. :

Case No. 11CA11 :
MAGISTRATE'S ORDER

Appellant, LeShawn R. Nickelson, has filed a motion to supplement the record.

Upon consideration, appellant's motion is **DENIED**.

The clerk is **ORDERED** to serve all counsel of record at their last known addresses. The clerk is further **ORDERED** to serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail.

IT IS SO ORDERED.

FOR THE COURT

A - M. McHenry

Aaron M. McHenry
Magistrate