

ORIGINAL

IN THE SUPREME COURT OF OHIO

SHAWN R. BOLES,

Petitioner-Appellant,

V.

ROBIN KNAB, Warden,

Respondent-Appellee.

Case No. **2011-0808**

On Appeal from the
Ross County
Court of Appeals
Fourth Appellate District
Court Appeals Case No.
11CA003201

MOTION TO STRIKE Pursuant to Civ. R. 12(F)

SHAWN R. BOLES, #A410-417
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P.O. Box 5500
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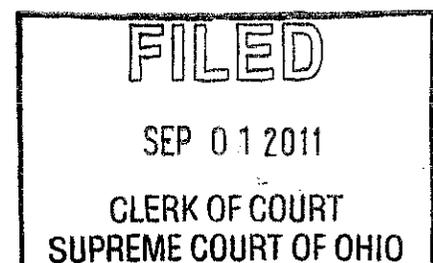
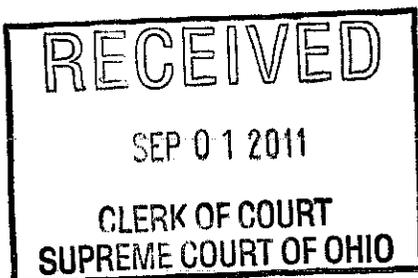
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MEMORANDUM IN SUPPORT

Now comes Appellant, Shawn R. Boles, Pro-se, and respectfully moves the Court for a Motion to Strike pursuant to Civ. R. 12(F) striking Appellee's Proposition of Law No II:

Civ. R. 12(B)(6) is the proper motion when a party fails to state a claim upon which relief can be granted.

(1) Appellant argues that Appellee's Proposition of Law No II is fatally defective and does not comply with the mandatory requirements of App. R. 16(A)(7). Therefore, Appellee has failed to argue its Second Proposition of Law as required by App. R. 16(A)(7) in its Merit Brief of Appellee Robin Knab in the above captioned cause.

Moreover, App. 16(A)(7) provides that:

An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary. See, *Kremer v. Cox*, 114 Ohio App.3d 41, 682 N.E.2d 1006, Ohio App. 9 Dist., 1996. See, Also, App. R. 16(A)(7); *Akron v. Wendell*, 70 Ohio App.3d 35, 590 N.E.2d 380.

In Addition, Pursuant to App. R. 12(A)(2) The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A). See, also, *State v. Watson*, 126 Ohio App.3d 316, 710 N.E.2d 340.

As a final matter, Boles note that the Respondent failed to present any argument in its Proposition of Law No II. Pursuant to App. R. 16(B), The brief of the appellee shall conform to the requirements of divisions (A)(1) to (A)(8) of this rule, except that a statement of the case or of the facts relevant to the assignments of error need not be made unless the appellee is dissatisfied with the statement of the appellant. Moreover, An argument containing the contentions of the [appellee] with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

Further, Appellant, Shawn R. Boles, pro-se, moves the Court for a motion to strike pursuant to Civ. R. 12(F) Striking the Appellee's Proposition of Law No V:

Failure to strictly comply with O.R.C. 2969.25(C) at the time of filing requires immediate dismissal of a habeas petition.

(2) Boles argues that Appellee's Proposition of Law No V is wholly meritless, misplaced, and without supporting facts. On January 27, 2011, Appellee's Petition for a writ of habeas corpus was filed in compliance with the provisions of R.C. 2969.25(C). Boles did include a verified and signed Certified Statement by the Institutional Cashier at the time of filing. See the Record on appeal Ross County Court of Common Pleas, Case Docket Sheet, Entry Dated 1/27/2011, Case No 11CA003201 filed 1/27/2011, Entry line 1 clearly indicating, that Appellant has submitted the "Certified Cashiers Statement." See, also, Entry Date 3/11/2011, Plaintiff's Motion Contra in Opposition to Respondent's Motion to Dismiss under Civ. R. 12(B)(6) the attached exhibit B (a copy of the Ross County Court of Common Pleas, Case Docket Sheet Entry Dated 1/27/2011, Case No 11CA003201 filed 1/27/2011). Respondent's argument under its Proposition of Law No V of its Merit Brief of Appellant, Robin Knab in the above captioned cause is wholly meritless, and unfounded, thereby, it must be stricken from the record, rejected, and shall not be commented on by this court. Civ. R. 12(F), and App.R. 12(A)(2).

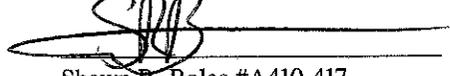
Moreover, as a final, matter, Boles note that the lower court has never reached the merits of the alleged violation under R.C. 2969.25(C) raised by the appellee, herein, for the purpose of a final appealable order pursuant to R.C. 2505.02, and where there is no Civ. R. 54(B) language disposing of the claimed error under R.C. 2969.25(C). See, also, the Court of Appeals of Ohio Fourth Appellate District Ross County Case No. 11CA3201 Decision And Entry entered on the 29th day of March 2011 in the above stated cause.

Further, Appellant, Shawn R. Boles, pro-se, and hereby, moves the Court for a motion to strike pursuant to Civ. R. 12(F) striking Appellee's Merit Brief of Appellee Robin Knab in the above captioned cause.

(3) Appellant argues that Appellee's Merit Brief is fatally defective in its entirety for failure to present an argument in response to appellant's Proposition of Law IV, V, and VI. Pursuant to App. R. 16(B), which requires " An argument containing the contentions of the [appellee] with respect to each assignment of error presented for review and the reasons in support of the contentions. " See, *Kremer v. Cox*, 114 Ohio App. 3d 41, 682 N.E.2d 1006, Ohio App. 9 Dist.,1996. See, Also, App. R. 16(A)(7); *Akron v. Wendell*, 70 Ohio App. 3d 35, 590 N.E.2d 380. See, also App. R. 16(A)(2).

In addition, Appellee's Propositions of Law No. I, II, and V must be stricken from the record under Civ. R. 12(F) as those propositions of its Merit Brief in the above captioned cause does not conform to App. R. 16(A)(7) in the manner described above.

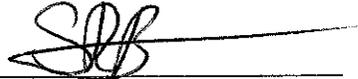
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was sent to the Assistant Attorney General, ELIZABETH A MATUNE (0078544), Assistant Attorney General, Criminal Justice Section, at 150 E. Gay Street, 16 Floor, Columbus, Ohio 43215 by regular U.S. Mail 8.31.11.



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