

IN THE SUPREME COURT OF OHIO

JASON JONES,

: CASE NO. 2011-1417

Relator,

:

*[Original Action in Mandamus ]*

vs.

:

JUDGE A. NASTOFF,  
JUDGE OF THE BUTLER COUNTY  
COURT OF COMMON PLEAS

:

MOTION TO DISMISS ON BEHALF OF  
RESPONDENT, JUDGE A. NASTOFF  
OF THE BUTLER COUNTY COURT  
OF COMMON PLEAS, OHIO

Respondent.

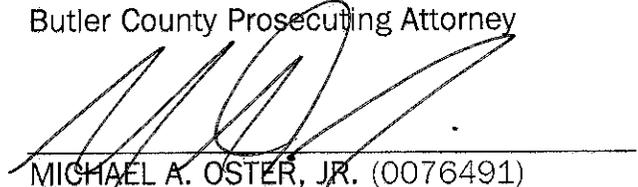
:

: : : : : : : : : : : : : : :

Now comes Respondent, Judge A. Nastoff, of the Butler County Court of Common Pleas, Ohio, and respectfully moves this Court for an order dismissing this action in mandamus for failure to state a claim upon which relief may be granted. A memorandum in support of this motion follows.

Respectfully submitted,

MICHAEL T. GMOSE (0002132)  
Butler County Prosecuting Attorney



MICHAEL A. OSTER, JR. (0076491)  
*[Counsel of Record]*

Assistant Prosecuting Attorney  
Appellate Division  
Attorneys for Respondent, Judge A. Nastoff  
Government Services Center  
315 High Street, 11<sup>th</sup> Floor  
Hamilton, Ohio 45011  
Telephone: (513) 887-3474  
Fax: (513) 887-3489

**FILED**  
SEP 06 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

**RECEIVED**  
SEP 06 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

## MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

### STATEMENT OF THE CASE AND FACTS:

On July 11, 2006, relator pled guilty to one count of possession of marihuana, trafficking in marihuana, permitting drug abuse, engaging in a pattern of corrupt activity, and to three counts of having weapons while under disability. (Respondent's Exhibit #1). A month later, relator was sentenced to an aggregate prison term of 18 years. (Respondent's Exhibit #2). Relator directly appealed his convictions. (Respondent's Exhibit #3) As part of this appeal, Appellant's counsel was provided with all necessary transcripts. (Respondent's Exhibit #4) Finding no errors, appellate counsel filed an appellate brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396 on behalf of Appellant. The Twelfth District Court of Appeals accordingly examined the record and found no error prejudicial to relator's rights in the trial court proceedings. *State v. Jones*, Butler App. No. CA2006-09-228, attached herein as (Respondent's Exhibit #5).

Approximately six months after the Twelfth District affirmed relator's convictions, on October 26, 2007, relator filed a motion for the production of trial transcripts. (Respondent's Exhibit #6) Respondent denied the motion because relator's counsel has been provided with the appropriate transcripts. (Respondent's Exhibit #7) Relator thereafter filed numerous additional requests for these transcripts that had already been given to his appellate counsel. These requests culminated in this Court, per Chief Justice Moyer, denying a writ of mandamus in case number 2009-1204, which was requesting the very same transcripts that the present writ again requests. (Respondent's Exhibit #8)

ARGUMENT:

In order to be entitled to a writ of mandamus, relator has the burden of establishing that he has a clear legal right to the relief prayed for, that the respondent has a clear legal duty to perform the requested acts, and that relator has no plain and adequate remedy at law. *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 1995-Ohio-130, 639 N.E.2d 1189; See, also, *State ex rel. Fain v. Summit Cty. Adult Probation Dept.*, 71 Ohio St.3d 658, 1995-Ohio-149, 646 N.E.2d 1113. In order to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint, after all factual allegations are presumed true and all reasonable inferences are made in favor of the relator/plaintiff, that the relator/plaintiff can prove no set of facts warranting relief. *Fain*, 71 Ohio St.3d at 659; See, also, *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 1995-Ohio-26, 650 N.E.2d 899.

As a general matter, mandamus will lie when a court has refused to render, or unduly delayed rendering, a judgment. *Sherrills*, 72 Ohio St.3d at 462; See, also, *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459. However, mandamus will not lie to compel the performance of a duty that has already been performed. *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 1998-Ohio-541, 703 N.E.2d 304, citing *Martin v. Judges of the Lucas Cty. Court of Common Pleas* (1990), 50 Ohio St.3d 71, 552 N.E.2d 906; *State ex rel. Eads v. Callahan*, 82 Ohio St.3d 405, 1998-Ohio-514, 696 N.E.2d 581.

Any controversy justiciable in mandamus in this case is moot, inasmuch as the respondent has already performed the act that may be compelled by the writ of mandamus.

*Nadel*, 84 Ohio St.3d at 253. In the present case, Respondent has already caused one transcript, free of cost, to be issued to Relator's appellate counsel. This is all that is required by law.

Thirty years ago, this Court recognized that:

This court has held in a long line of cases that the state has a duty to provide an indigent defendant with only a single trial transcript for the purpose of an effective appeal. E. g., *State v. Frato* (1958), 168 Ohio St. 281, 154 N.E.2d 432; *State ex rel. Vitoratos v. Walsh* (1962), 173 Ohio St. 467, 183 N.E.2d 719; *State ex rel. Terrell v. Court* (1963), 174 Ohio St. 209, 188 N.E.2d 291; *State ex rel. Vitoratos v. Morris* (1970), 22 Ohio St.2d 3, 257 N.E.2d 398.

Appellant essentially contends that *Griffin v. Illinois* (1956), 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891, and its progeny overrule those cases of this court, *supra*, and now require that multiple free transcripts may be in order for an indigent defendant. We disagree.

"*Griffin v. Illinois* and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners. While the outer limits of that principle are not clear, there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal." *Britt v. North Carolina* (1971), 404 U.S. 226, 227, 92 S.Ct. 431, 433, 30 L.Ed.2d 400. See also, *State v. Arrington* (1975), 42 Ohio St.2d 114, 116, 326 N.E.2d 667.

Appellant was provided with a basic tool for his appeal when Judge Hill granted his request for a single trial transcript. The constitutional requirements were met and, thus, Judge Hill was not under a clear duty to provide a second transcript for appellant. *State, ex rel. Terrell*, *supra*, at page 210, 188 N.E.2d 291. Therefore, the Court of Appeals properly denied appellant's request for a writ of mandamus.

*State ex rel. Ralston v. Hill* (1981), 65 Ohio St.2d 58, 58-59, 417 N.E.2d 1380, (emphasis added); see, also, *State ex rel. Greene v. Enright* (1992), 63 Ohio St.3d 729, 590 N.E.2d 1257

Thereafter, Ohio appellate courts have followed this guidance and have held that an indigent defendant is not entitled to a second free trial transcript. This position was clearly

stated by the Lucas County Court of Appeals when it found that “[i]t is undisputed in this case that appellant was provided a copy of his transcript for purposes of his direct appeal. ‘A criminal appellant is not entitled to a second copy of his or her transcript at the state’s expense.’ *State v. Edwards* (Aug. 14, 1998), Lucas App. No. L-98-1079, citing *State ex rel. Murr v. Thierry* (1987), 34 Ohio St.3d 45, 517 N.E.2d 226, and *State ex rel. Vitiates v. Walsh* (1962), 173 Ohio St. 467, 183 N.E.2d 917.” *State v. Adkins*, Lucas App. No. L-04-1143, 2005-Ohio-3203, ¶ 5.

Thus, Relator cannot prove any set of facts warranting relief. “[A] writ of mandamus will not be granted to compel the issuance of a transcript of trial proceedings at state expense where relator has no appeal pending in the court of appeals.” *State ex rel. Knight v. Tyack* (1982), 5 Ohio App.3d 136, 450 N.E.2d 305, syllabus. In denying relator’s motions for the transcripts, Respondent specifically found that Relator’s “appellate counsel was provided the necessary transcripts for appeal.” (See, Respondent’s Exhibits # 7 and #9<sup>1</sup>).

---

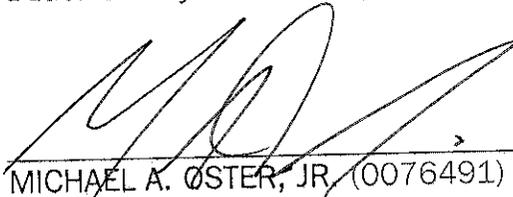
<sup>1</sup> Respondent’s Exhibit #9 are notes written by Relator confirming his understanding that his appellate counsel has received the one free copy of the transcripts.

CONCLUSION:

For the foregoing reasons, the complaint for a writ of mandamus should be dismissed.

Respectfully submitted,

MICHAEL T. GMOSE (0002132)  
Butler County Prosecuting Attorney



MICHAEL A. OSTER, JR. (0076491)

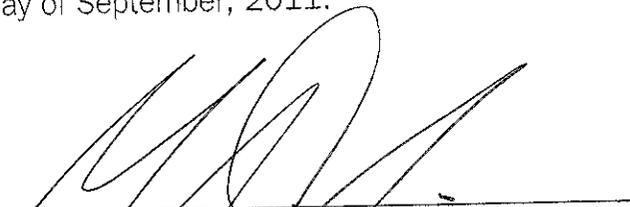
[Counsel of Record]

Assistant Prosecuting Attorney  
Appellate Division

Attorneys for Respondent, Judge A. Nastoff  
Government Services Center  
315 High Street, 11<sup>th</sup> Floor  
Hamilton, Ohio 45011  
Telephone: (513) 887-3474  
Fax: (513) 887-3489

PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion to Dismiss was sent by regular U.S. mail to Jason Jones, #529-115, Relator *pro se*, Ross Correctional Institution, P.O. Box 7010, Chillicothe, OH 45601-7010, this 2<sup>nd</sup> day of September, 2011.



MICHAEL A. OSTER, JR. (0076491)  
Attorney for Respondent, Judge A. Nastoff.

COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

STATE OF OHIO

CASE NO. CR 2005-09-1631

Plaintiff

vs.

2005 JUN 11 PM 1:28

PLEA OF GUILTY AND JURY WAIVER

JASON JONES

Defendant

I withdraw my former not guilty plea and enter a plea of guilty to the following offense(s):

Count or Specification Level	Offense/Specification	ORC Section
A- <u>COUNT I</u>	<u>POSS. MARIJUANA</u>	<u>2925.11</u>
B- <u>COUNT II</u>	<u>TRAFFICKING</u>	<u>2925.03 (A)(2)</u>
C- _____	<u>SPECIFICATION I</u>	<u>SPECIFICATION VI</u>
D- _____	<u>SPECIFICATION II</u>	<u>SPECIFICATION VII</u>
E- _____	<u>SPECIFICATION III</u>	<u>SPECIFICATION VIII</u>
	<u>SPECIFICATION IV</u>	<u>SPECIFICATION IX</u>
	<u>SPECIFICATION V</u>	<u>SPECIFICATION X</u>

Maximum Penalty: I understand that the maximum penalty as to each count is as follows:

Offense/Specification	Maximum Stated Prison Term (yrs/mos)	Maximum Fine	Mandatory Fine	License Suspension	Prison Term is Mandatory/Consecutive	Prison Term is Presumed Necessary
A- <u>F 2</u>	<u>8 YRS</u>	<u>\$ 15,000</u>	<u>\$ 7,500.00</u>	<u>YES</u>	<u>8 YRS</u>	_____
B- <u>F 1</u>	<u>10 YRS</u>	<u>\$ 20,000</u>	<u>\$ 10,000.00</u>	<u>YES</u>	<u>8 YRS</u>	_____
C- _____	_____	\$ _____	\$ _____	_____	_____	_____
D- _____	_____	\$ _____	\$ _____	_____	_____	_____
E- _____	_____	\$ _____	\$ _____	_____	_____	_____

My counsel has advised me of, and I fully understand, the following:

By this pleading GUILTY, I understand the Court will decide my guilt based upon a statement by the prosecutor about the evidence which would have been presented at trial. The judge will accept the statement of evidence as true.

Prison terms for multiple charges may be imposed consecutively by the Court, even if consecutive sentences are not mandatory. If I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively.

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

Any prison term that I receive as a result of this plea will be served without good time credit.

**Post Release Control:** In addition, a period of supervision by the Adult Parole Authority after release from prison is (mandatory/optional) in this case. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have mandatory post release control of 5 years under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have



mandatory post release control of 3 years. If I receive a sentence to prison for a felony 3, 4, or 5, I may be given up to 3 years of post release control.

If I violate any post release control rule or condition, I can receive a more restrictive sanction while I am under post release control and increased duration of supervision or control up to the maximum term. If I violate conditions of supervision while under post release control, the Parole Board can return me to prison for up to nine months for each violation up to a maximum of 1/2 my original stated prison term, even though I have already served the entire stated prison term imposed upon me by this Court. If the violation is a new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the new offense.

**Community Control:** If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the offense(s) of which I am found guilty. I understand that I have been ordered to pay a \$25 monthly probation fee and that failure to do so may result in revocation of community control/probation.

I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand by pleading GUILTY, I give up my right to a jury trial or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt on every element of each charge. I know that the jury verdict would have to be unanimous before the jury could find me guilty of any offense.

I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within thirty (30) days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this plea voluntarily.

Jason Jones  
Signature of Defendant

Van Pittsburg  
Attorney for Defendant

Shawn Rossi  
Prosecuting Attorney

**JUDGMENT ENTRY OF GUILTY**

The Court finds that this day the defendant, in open court, was advised of all applicable Constitutional rights and made a knowing, intelligent, and voluntary waiver of those rights pursuant to Crim. R. 11. The plea is accepted and is ordered filed. The Court finds the defendant guilty of each offense to which defendant has entered this plea. A sentencing hearing is scheduled on 8/11/06 at 9:30am Bond is Revised.

7/11/06  
Date  
P.S.I.  is not ordered. 9/01

[Signature]  
Judge

COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

STATE OF OHIO

CASE NO. CR 05-09-1631

Plaintiff

vs.

PLEA OF GUILTY AND JURY WAIVER

JASON JONES

Defendant

I withdraw my former not guilty plea and enter a plea of guilty to the following offense(s):

Count or Specification Level	Offense/Specification	ORC Section
A- <u>THREE</u>	<u>Having Weapon Under Disability</u>	<u>2923.13</u>
B- <u>FOUR</u>	<u>Having Weapon Under Disability</u>	<u>2923.13</u>
C- <u>FIVE</u>	<u>Having Weapon Under Disability</u>	<u>2923.13</u>
D- <u>SIX</u>	<u>Reckless Drug Abuse</u>	<u>2925.13(B)</u>
E- <u>SEVEN</u>	<u>Emergency Pattern of Violent Activity</u>	<u>2923.32</u>

Maximum Penalty: I understand that the maximum penalty as to each count is as follows:

Offense/Specification	Maximum Stated Prison Term (yrs/mos)	Maximum Fine	Mandatory Fine	License Suspension	Prison Term is Mandatory/Consecutive	Prison Term is Presumed Necessary
A- <u>F3</u>	<u>5 years</u>	<u>\$10,000</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>-</u>
B- <u>F3</u>	<u>5 years</u>	<u>\$10,000</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>-</u>
C- <u>F3</u>	<u>5 years</u>	<u>\$10,000</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>-</u>
D- <u>F5</u>	<u>12 months</u>	<u>\$2,500</u>	<u>NO</u>	<u>5 years</u>	<u>NO</u>	<u>-</u>
E- <u>F1</u>	<u>10 years</u>	<u>\$20,000</u>	<u>NO</u>	<u>NO</u>	<u>Yes</u>	<u>-</u>

My counsel has advised me of, and I fully understand, the following:

By this pleading GUILTY, I understand the Court will decide my guilt based upon a statement by the prosecutor about the evidence which would have been presented at trial. The judge will accept the statement of evidence as true.

Prison terms for multiple charges may be imposed consecutively by the Court, even if consecutive sentences are not mandatory. If I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively.

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

Any prison term that I receive as a result of this plea will be served without good time credit.

**Post Release Control:** In addition, a period of supervision by the Adult Parole Authority after release from prison is (mandatory/optional) in this case. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have mandatory post release control of 5 years under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or a felony 3 which involved causing or threatening physical harm, I will have

mandatory post release control of 3 years. If I receive a sentence to prison for a felony 3, 4, or 5, I may be given up to 3 years of post release control.

If I violate any post release control rule or condition, I can receive a more restrictive sanction while I am under post release control and increased duration of supervision or control up to the maximum term. If I violate conditions of supervision while under post release control, the Parole Board can return me to prison for up to nine months for each violation up to a maximum of  $\frac{1}{2}$  my original stated prison term, even though I have already served the entire stated prison term imposed upon me by this Court. If the violation is a new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the new offense.

**Community Control:** If this Court is not required by law to impose a prison sanction, it may impose community control sanctions or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the offense(s) of which I am found guilty. I understand that I have been ordered to pay a \$25 monthly probation fee and that failure to do so may result in revocation of community control/probation.

I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows:

The State of Ohio agrees to stand mute on sentence.

I understand by pleading GUILTY, I give up my right to a jury trial or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt on every element of each charge. I know that the jury verdict would have to be unanimous before the jury could find me guilty of any offense.

I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within thirty (30) days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this plea voluntarily.

Jason Jones  
Signature of Defendant

Wm. J. Rossi  
Attorney for Defendant

Stenn J. Rossi  
Prosecuting Attorney

#### JUDGMENT ENTRY OF GUILTY

The Court finds that this day the defendant, in open court, was advised of all applicable Constitutional rights and made a knowing, intelligent, and voluntary waiver of those rights pursuant to Crim. R. 11. The plea is accepted and is ordered filed. The Court finds the defendant guilty of each offense to which defendant has entered this plea. A sentencing hearing is scheduled on 8/11/06 at 9:30AM. Bond is Revised.

7/11/06  
Date  
P.S.I.  is not ordered. 9/01

[Signature]  
Judge

PS

12

FILED

COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

2006 AUG 17 AM 11:03

STATE OF OHIO  
Plaintiff

CASE NO. CR2005-09-1631

NASTOFF, J.

vs.

JUDGMENT OF CONVICTION ENTRY

JASON JONES

Defendant

On August 11, 2006 defendant's sentencing hearing was held pursuant to Ohio Revised Code Section 2929.19. Defense attorney, William P. Whalen, Jr. and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Plea, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

**POSSESSION OF MARIHUANA** as to Count One, a violation of Revised Code Section 2925.11 a second degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 8 years, which is a mandatory prison term pursuant to Revised Code Section 2929.13(F).

**TRAFFICKING IN MARIHUANA** as to Count Two, a violation of Revised Code Section 2925.03(A)(2) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

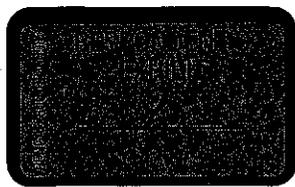
Prison for a period of 10 years, which is a mandatory prison term pursuant to Revised Code Section 2929.13(F).  
This sentence will be served concurrent with Count One.

**HAVING WEAPONS WHILE UNDER DISABILITY** as to Count Three, a violation of Revised Code Section 2923.13(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 5 years.  
This sentence will be served concurrent with Count One and Two

**HAVING WEAPONS WHILE UNDER DISABILITY** as to Count Four, a violation of Revised Code Section 2923.13(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO  
P.O. BOX 515, HAMILTON, OH 45012-0515



Prison for a period of 5 years.  
This sentence will be served concurrent with Count One and Two.

**HAVING WEAPONS WHILE UNDER DISABILITY** as to Count Five, a violation of Revised Code Section 2923.13(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 5 years.  
This sentence will be served concurrent with Count One and Two.

**PERMITTING DRUG ABUSE** as to Count Six, a violation of Revised Code Section 2925.13(B) a fifth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 12 months.  
This sentence will be served concurrent with Counts One and Two.

**ENGAGING IN A PATTERN OF CORRUPT ACTIVITY** as to Count Seven, a violation of Revised Code Section 2923.32(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 10 years, which is a mandatory prison term pursuant to Revised Code Section 2929.13(F).  
This sentence will be served consecutive to Counts One and Two.

Credit for 1 days served is granted as of this date.

Said sentence is to be served consecutive to Hamilton County Case#B0800264-B

As to Count(s) One, Two, Three, Four, Five, Six and Seven:

The Court has notified the defendant that post release control is mandatory in this case up to a maximum of five (5) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 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. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

It is FURTHER ORDERED that said defendant is fined the sum of \$7,500.00 as to Count One, which is a mandatory fine imposed pursuant to the provisions of Ohio Revised Code, 2925.03(H), and that the court makes the following equitable division of the mandatory fine in the amount of \$7,500.00 to be distributed between or among the law enforcement trust funds of the law enforcement agencies which have participated in the investigation, arrest, seizure, and prosecution, herein, as the Court considers proper under the circumstances, to wit: twenty-five percent (25%) to the Butler County Prosecuting Attorney's mandatory drug fines fund, in the amount of \$1,875.00; and seventy-five (75%) to the West Chester Police Department mandatory drug fines fund, in the amount of \$5,625.00.

Fines are to be paid to the Butler County Clerk of Courts.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO  
P.O. Box 515, HAMILTON, OH 45012-0515

It is **FURTHER ORDERED** that said defendant is fined the sum of \$10,000.00 as to Count Two, which is a mandatory fine imposed pursuant to the provisions of Ohio Revised Code, 2925.03(H), and that the court makes the following equitable division of the mandatory fine in the amount of \$10,000.00 to be distributed between or among the law enforcement trust funds of the law enforcement agencies which have participated in the investigation, arrest, seizure, and prosecution, herein, as the Court considers proper under the circumstances, to wit: twenty-five percent (25%) to the Butler County Prosecuting Attorney's mandatory drug fines fund, in the amount of \$2,500.00; and seventy-five (75%) to the West Chester Police Department mandatory drug fines fund, in the amount of \$7,500.00.

Fines are to be paid to the Butler County Clerk of Courts.

It is **FURTHER ORDERED**, pursuant to Revised Code 4507.16, that the defendant's pleasure driving, operator's license or any other driving permits or privileges shall be suspended for a term of 5 years. Said term will begin August 11, 2006. Said term will end on August 10, 2011. It is **FURTHER ORDERED** that the Clerk shall notify the Ohio Bureau of Motor Vehicles through form 2724.

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

**APPROVED AS TO FORM:**

**ROBIN N. PIPER  
PROSECUTING ATTORNEY  
BUTLER COUNTY, OHIO**

**ENTER**

  
**NASTOFF, J.**

*N/R* BAB/mbs *off*  
August 11, 2006

**PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO  
P.O. Box 515, HAMILTON, OH 45012-0515**

**FILED**  
OHIO TWELFTH DISTRICT COURT OF APPEALS

2006 SEP 13 10:31 AM  
BUTLER COUNTY, OHIO

CA06 09 0228

CINDY CARPENTER  
BUTLER COUNTY  
CLERK OF COURTS  
STATE OF OHIO : CASE NO.: CR0005-09-1631

Plaintiff :

vs

FILED BUTLER CO.  
COURT OF COMMON PLEAS

JASON JONES :

SEP 13 2006

Defendant :

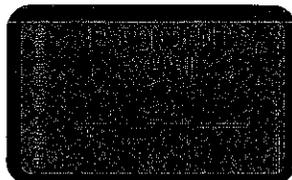
CINDY CARPENTER  
CLERK OF COURTS

**NOTICE OF APPEAL**

Notice is hereby given that Jason Jones, hereby appeals to the Twelfth District Court of Appeals, Butler County, Ohio, from the judgment of conviction and sentencing entered in the Court of Common Pleas, Butler County, Ohio on the 11<sup>th</sup> day of August, 2006.

---

William P. Whalen, Jr. (016646)  
810 Sycamore Street, Suite 511  
Cincinnati, OH 45202  
(513) 579-8700 Ext. 511  
(513) 579-8703 Fax No.  
[www.billw@cincilaw.net](http://www.billw@cincilaw.net)



## PRAECIPE

**TO THE CLERK:** Please prepare and file in the Court of Appeals all original papers, a transcript of the docket and journal entries, and all other documents required by law to be so files.

---

William P. Whalen, Jr. (016646)  
810 Sycamore Street, Suite 511  
Cincinnati, OH 45202  
(513) 579-8700 Ext. 511  
(513) 579-8703 Fax No.  
[www.billw@cincilaw.net](http://www.billw@cincilaw.net)

FILED  
COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO  
2006 SEP 13 PM 5:11

FILED BUTLER CO.  
COURT OF COMMON PLEAS  
SEP 13 2006  
CINDY CARPENTER  
CLERK OF COURTS

STATE OF OHIO  
CINDY CARPENTER  
BUTLER COUNTY  
CLERK OF COURTS:

APPEAL NO.: \_\_\_\_\_

Plaintiff/Appellee :

vs :

TRAIL NO.: \_\_\_\_\_

JASON JONES :

Defendant/Appellant :

AFFIDAVIT OF INDIGENCY

COUNTY OF BUTLER )  
STATE OF OHIO ) §

JASON JONES, the undersigned, being first duly sworn and cautioned, deposes and states as follows:

1. That he is the defendant in the above captioned matter;
2. That he is a citizen of the State of Ohio;
3. That he is indigent and unable to pay the costs and charges involved in the within matter;
4. That he is entitled to the redress that is sought in the above captioned matter to the best of his knowledge and belief.

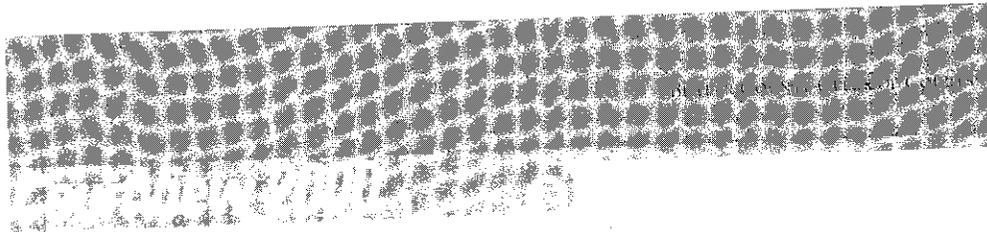
FUTHER AFFIANT SAYETH NAUGHT

Jason Jones  
Defendant/Appellant-Indigent

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF OHIO ON THIS 28th DAY OF AUGUST, 2006.

WILLIAM P. WHALEN, JR., Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration date, Section 147.03 R.C.

William P. Whalen, Jr.  
NOTARY PUBLIC



General Inquiry

New Search...

Summary
  Parties
  Events
  Dockets
  Fields
  Notes
  Disposition
  Costs

Docket Search

STATE OF OHIO VS JASON JONES

Search Criteria

Docket Desc.

Begin Date

End Date

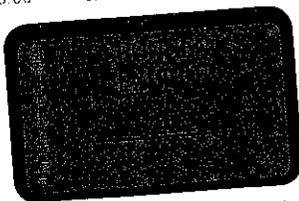
Sort

Ascending

Descending

Search Results 49 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
08/02/2007	RETURN OF EXHIBIT, DEPOSITION, OR TRANSCRIPT ISSUED. RETURN OF EXHIBIT, DEPO, OR TRANS Sent on: 08/02/2007 15:25:20	0.00	0.00	
08/02/2007	Issue Date: 08/02/2007 Service: RETURN OF EXHIBIT, DEPO, OR TRANS Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000360063	4.00	4.00	
05/18/2007	ALL PAPERS SEPARATED AND RETURNED TO SHELF FROM COURT OF APPEALS	0.00	0.00	
05/08/2007	ATTORNEY FEES	595.30	595.30	
05/08/2007	APPLICATION, STATEMENT & MOTION & ENTRY/ATTY FEES \$595.30 & AFFIDAVIT OF INDIGENCY FILED,for atty.: CHARLES CONLIFF FILED BRESSLER,J	2.00	2.00	
04/12/2007	COPIES TO ATTORNEYS AND/OR PARTIES OF RECORD ISSUED. COURT OF APPEALS COPY ISSUED Sent on: 04/12/2007 16:23:40	1.00	1.00	
04/12/2007	Issue Date: 04/12/2007 Service: COURT OF APPEALS COPY Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000343596 STATE OF OHIO c/o ATTY: PIPER Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000343597	8.00	8.00	
04/09/2007	COSTS TO BE TAXED IN COMPLIANCE	0.00	0.00	
04/09/2007	DISMISSAL ENTRY FILED BRESSLER,J WALSH,J POWELL,J	6.00	6.00	
03/14/2007	COPIES TO ATTORNEYS AND/OR PARTIES OF RECORD ISSUED. COURT OF APPEALS COPY ISSUED Sent on: 03/14/2007 10:28:11	1.00	1.00	
03/14/2007	Issue Date: 03/14/2007 Service: COURT OF APPEALS COPY Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE	8.00	8.00	



HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000339021 STATE OF OHIO c/o ATTY: PIPER  
Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000339022

03/09/2007	ENTRY EXTENDING TIME TO FILE APPELLANT'S BRIEFS FILED (ISSUE COPIES) BENNETT MANNING	2.00	2.00	
03/02/2007	MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF FILED. COPIES ISSUED TO CA Attorney: PRO SE ()	0.00	0.00	
02/20/2007	COPIES TO ATTORNEYS AND/OR PARTIES OF RECORD ISSUED. COURT OF APPEALS COPY ISSUED Sent on: 02/20/2007 16:20:51	1.00	1.00	
02/20/2007	Issue Date: 02/20/2007 Service: COURT OF APPEALS COPY Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000335263 STATE OF OHIO c/o ATTY: PIPER Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000335264	8.00	8.00	
02/16/2007	ENTRY DENYING MOTION TO STRIKE APPLTS ANDERS BRIEF FILED BRESSLER,J	2.00	2.00	
02/06/2007	MOTION TO EXCLUDE OR SET ASIDE ANDERS NO ISSUES BRIEF OF APPLT JASON JONES FILED Attorney: PRO SE ()	0.00	0.00	
01/31/2007	ALL PAPERS SENT TO COURT OF APPEALS	0.00	0.00	
01/22/2007	APPELLEE'S NOTICE OF INTENT NOT TO RESPOND TO APPELLANT'S BRIEF FILED PURSUANT TO ANDERS V. CALIFORNIA FILED Attorney: OSTER JR Junior, MICHAEL A (0076491)	0.00	0.00	
01/17/2007	REQUEST OF COURT/APPEALS ADMIN.OFFICE TO ASSEMBLE & ARRANGEXTRANSMITTAL OF CASE FILE,copy-fileroomCA	0.00	0.00	
01/05/2007	MOTION TO WITHDRAW AS ATTY OF RECORD FOR APPLT JASON JONES FILED Attorney: CONLIFF, CHARLES M (0059432)	0.00	0.00	
01/05/2007	"NO ISSUES" BRIEF OF APPLT JASON JONES Attorney: CONLIFF, CHARLES M (0059432)	0.00	0.00	
12/26/2006	Issue Date: 12/26/2006 Service: COURT OF APPEALS COPY Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000327628 STATE OF OHIO c/o ATTY: PIPER Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000327629	8.00	8.00	
12/26/2006	COPIES TO ATTORNEYS AND/OR PARTIES OF RECORD ISSUED.	2.00	2.00	
12/19/2006	ENTRY EXTENDING TIME TO FILE APPELLANT'S BRIEFS FILED (ISSUE COPIES) BENNETT MANNING	2.00	2.00	
12/13/2006	MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF FILED. COPIES ISSUED TO CA Attorney: CONLIFF, CHARLES M (0059432)	0.00	0.00	
12/08/2006	MOTION AND CERTIFICATION BY COURT REPORTER FOR TRANSCRIPTION FEES FILED LINDA TUTTLE Attorney: PRO SE ()	0.00	0.00	
12/08/2006	ORDER FOR PAYMENT/CLERK'S TRANSCRIPT FEE/Ct.Reprtr LINDA TUTTLE FILED NASTOFF,J	2.00	2.00	
12/08/2006	CERTIFICATE \ TRANSCRIPT FEES \$176.00, filed (amount +\$2. in line 3) (certified copies>Auditor) NASTOFF,J	2.00	2.00	
11/16/2006	Issue Date: 11/16/2006 Service: NOTICE OF COMPLETE RECORD Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE	8.00	8.00	

HWY #302 FAIRFIELD, OH 45014 Tracking No:  
1000322517 STATE OF OHIO c/o ATTY: PIPER  
Prosecutor Butler County Ohio, ROBIN 315 High  
Street Govt Serv Ctr 11TH FLOOR HAMILTON,  
OH 45011 Tracking No: 1000322518

11/16/2006	NOTICE	0.00	0.00	
11/16/2006	RULE 11(B) NOTICE OF COMPLETE RECORD TO ATTORNEYS AND PARTIES ISSUED.	4.00	4.00	
11/13/2006	TRANSCRIPT OF PROCEEDING CHANGE OF PLEA 7/11/06 FILED LINDA TUTTLE	3.00	3.00	
11/13/2006	TRANSCRIPT OF PROCEEDING DISP 8/11/06 FILED LINDA TUTTLE	3.00	3.00	
10/19/2006	DOCKET STATEMENT FILED COPY TO COURT OF APPEALS	1.00	1.00	
10/17/2006	Issue Date: 10/17/2006 Service: COURT OF APPEALS COPY Method: SERVICE BY ORDINARY MAIL. Cost Per: \$ 4.00 JONES, JASON c/o ATTY: CONLIFF, CHARLES M 6660 DIXIE HWY #302 FAIRFIELD, OH 45014 Tracking No: 1000318444 STATE OF OHIO c/o ATTY: PIPER Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000318445	8.00	8.00	
10/17/2006	COPIES TO ATTORNEYS AND/OR PARTIES OF RECORD ISSUED.	2.00	2.00	
10/10/2006	NOTICE OR REQUIREMENTS OF LOC.R.12 (A)	2.00	2.00	
10/10/2006	SCHEDULING ORDER & NOTICE IN CIVIL CASE OF PRETRIAL DATE Attorney: CONLIFF, CHARLES M (0059432)	2.00	2.00	
09/29/2006	APPOINTMENT OF ATTORNEY CHARLES CONLIFF FOR INDIGENT DEFENDANT JASON JONES FILED NASTOFF, J.	2.00	2.00	
09/19/2006	Issue Date: 09/19/2006 Service: CASE DOCKET SHEET Method: SERVICE BY ORDINARY MAIL Cost Per: \$ 4.00 JONES, JASON c/o ATTY: WHALEN Jr, WILLIAM P 810 SYCAMORE STREET CINCINNATI, OH 45202 Tracking No: 1000313816 STATE OF OHIO c/o ATTY: PIPER Prosecutor Butler County Ohio, ROBIN 315 High Street Govt Serv Ctr 11TH FLOOR HAMILTON, OH 45011 Tracking No: 1000313817	8.00	8.00	
09/19/2006	CASE DOCKET SHEET ISSUED.	1.00	1.00	
09/13/2006	AFFIDAVIT OF INDIGENCY FILED	0.00	0.00	
09/13/2006	TRANSCRIPT OF DOCKET & JOURNAL ENTRIES FILED ORIGINAL PAPERS FILED	4.00	4.00	
09/13/2006	ENTRY TO WITHDRAW AS COUNSEL FILED NASTOFF, J.	2.00	2.00	
09/13/2006	Court \$10 imposed 1/1/2000 suspended 8/25/2000; Re-imposed 5/29/01 as \$25 fee Local Rule 4.13	25.00	25.00	
09/13/2006	Clerk of Courts Computerization Fee 2303.201 (B)(1)	10.00	10.00	
09/13/2006	LEGAL FEES	26.00	26.00	
09/13/2006	NOTICE OF APPEAL w/ AFFIDAVIT ATTACHED FILED CC CA -MIDD; JUDGE; CDS>FILED & SENT BY MAIL>ATTYS&PARTIES INDICATED	50.00	50.00	

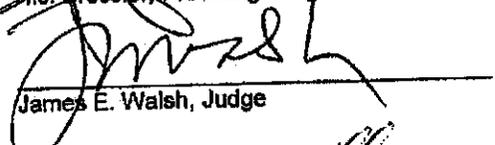
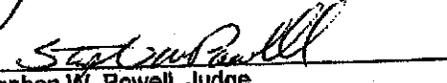
**FILED**  
COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
2007 APR -9 PM 3:05  
CHERYL CARPENTER  
BUTLER COUNTY  
CLERK OF COURTS

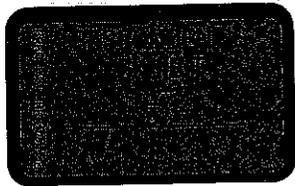
STATE OF OHIO, :  
Plaintiff-Appellee, : CASE NO. CA2006-09-228  
: JUDGMENT ENTRY  
- vs - :  
JASON JONES, :  
Defendant-Appellant. :

The brief of appellant, filed pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, properly before this court and having been considered by the court, it is ordered that the motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is hereby dismissed for the reason that it is wholly frivolous.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

  
H.J. Bressler, Presiding Judge  
  
James E. Walsh, Judge  
  
Stephen W. Powell, Judge



IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2006-09-228  
 :  
 - vs - : DECISION  
 : 4/9/2007  
 :  
 JASON JONES, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR2005-09-1631

Robln N. Piper, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11<sup>th</sup> Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Charles M. Conliff, 8660 Dixie Highway, Suite 302, Fairfield, Ohio 45014, for defendant-appellant

Per Curiam.

{1} This cause came on to be considered upon a notice of appeal, the transcript of the docket and journal entries, the transcript of proceedings and original papers from the Butler County Court of Common Pleas, and upon a brief filed by appellant's counsel, oral argument having been waived.

{2} Counsel for defendant-appellant, Jason Jones, has filed a brief with this court pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, which (1) indicates that

a careful review of the record from the proceedings below fails to disclose any errors by the trial court prejudicial to the rights of appellant upon which an assignment of error may be predicated; (2) lists five potential errors "that might arguably support the appeal," *Anders* at 744, 87 S.Ct. at 1400; (3) requests that this court review the record independently to determine whether the proceedings are free from prejudicial error and without infringement of appellant's constitutional rights; (4) requests permission to withdraw as counsel for appellant on the basis that the appeal is wholly frivolous; and (5) certifies that a copy of both the brief and motion to withdraw have been served upon appellant.

{13} Having allowed appellant sufficient time to respond, and no response having been received, we have accordingly examined the record and find no error prejudicial to appellant's rights in the proceedings in the trial court. The motion of counsel for appellant requesting to withdraw as counsel is granted, and this appeal is dismissed for the reason that it is wholly frivolous.

BRESSLER, P.J., WALSH and POWELL, JJ., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

ORIGINAL

J. 1/28  
D.L.

FILED IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO  
GENERAL DIVISION

CINDY CARPENTER  
STATE OF OHIO, COUNTY CLERK  
CLERK OF COURTS

FILED in Common Pleas Court Case No. CR-2005-09-1631  
BUTLER COUNTY

vs.

Jason Jones,  
Defendant.

OCT 26 2007

Judge: Hon. Andrew Nastoff, Jr.

CINDY CARPENTER  
CLERK OF COURTS

**MOTION FOR PRODUCTION OF TRANSCRIPTS AND RELATED DOCUMENTS  
AT STATE'S EXPENSE BY INDIGENT DEFENDANT**

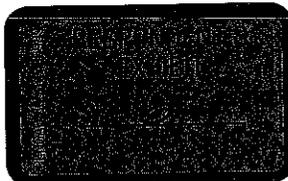
COMES NOW, Jason Jones (hereinafter, Defendant), acting in pro se, and respectfully moves this Court for the Defendant to be provided with either a photocopy of the transcripts of his trial, and all pretrial hearings and related documents, or, in the alternative, for the Defendant to be loaned all transcripts and related documents, which are necessary for the Defendant to proceed in all post-appeal statutory or regulatory proceedings created by Ohio law.

If the relief granted by this Court is the loaning of the above-mentioned documents, the Defendant respectfully requests that the documents be loaned for a period of not less than ninety(90) days, and that the Defendant be allowed to photocopy all documents loaned at his own expense, at a cost not to exceed five(5) cents per page. Giles v. Tate, 907 F.Supp. 1135(S.D. OH W.D. 1985).

The reasons for the granting of this instant motion are more fully set forth in the attached Memorandum In Support and are in accordance with recent decisions in the United States District Court for the Southern District on this issue.

Respectfully Submitted,

Jason Jones #529-115  
Jason Jones #529-115



ORIGINAL

MEMORANDUM IN SUPPORT

In State ex rel. Greene v. Enright, 63 Ohio St.3d 729, 590 N.E.2d 1257, the Ohio Supreme Court denied Mr. Greene's request for a copy of his transcripts to proceed In Pro Se on direct appeal. Subsequent to the denial, the Ohio Public Defender's Office filed a Writ of Habeas Corpus on Mr. Greene's behalf.

In a comprehensive decision from the United States District Court for the Southern District of Ohio, the Honorable Judge Spiegall issued a conditional writ of habeas corpus, giving the State of Ohio sixty (60) days to provide Mr. Greene with the transcripts of his trial or the Writ would issue. Greene v. Brigano, 904 F.Supp. 675.

At page 677 of the opinion, the court addressed not only Mr. Greene's right to the transcripts of his trial on direct appeal, but also discussed Mr. Greene's right to the documents and transcripts of his trial for "post-appeal" remedies created by the State, citing to Lane v. Brown, 372 U.S. 477, 484-485, 83 S.Ct. 768, 772-773. Lane v. Brown, supra, in turn cites to Burns v. Ohio, 360 U.S. 252, 257, 79 S.Ct. 1164, 1168, for the proposition that:

"Once the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty. \*\*\*This principle is no less applicable where the State has afforded an indigent defendant access to the first phase of its appellate procedure but has effectively foreclosed access to the second phase of that procedure solely because of his indigency. Id. at 257, 79 S.Ct. 1168. In Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39, the Court made clear that these principles were not to be limited to direct

appeals from criminal convictions, but extended  
alike to state post conviction proceedings' \*\*\*  
Id. at 714, 81 S.Ct. 898" Lane at 485.

The Defendant, Jason Jones, respectfully states and claims that the above-cited case law creates an Article VI, §2 duty by which this Court is bound and which mandates the granting of the instant motion.

The Defendant, Jason Jones, as is attested in the attached Affidavit of Indigency, is indigent for any meaningful purposes of attempting to pay for the transcripts of his trial proceedings, or, the related documents requested herein.

The Court should take judicial notice that the Defendant, Jason Jones, is currently incarcerated and unable to procure these documents by appearing in person at the Courthouse and requesting them under the Ohio Public Records Act.

Further, case law does not provide a method for the Defendant to be mailed a copy of the transcripts under the Act. State ex rel. Nelson v. Furst, 66 Ohio St.3d 47, 607 N.E.2d 836.

It should be further noted that a Defendant's failure to file in a timely fashion an Application to Reopen pursuant to Ohio Rules of Appellate Procedure 26(B) is overcome by a finding of "good cause for delay." The lack of transcripts, where duly evidenced by a criminal defendant, is "good cause." State v. Everette, 74 Ohio St. 3d 274, 658 N.E.2d 720(Ohio 1995); State v. Bell, 73 Ohio St.3d 32, 652 N.E.2d 191(Ohio 1995). As such, the Defendant contends that the same "good cause" would apply in post conviction proceedings where the Defendant needs the transcripts to determine what was entered on the record of the trial, and what was outside the record of the trial.

ORIGINAL

The depending on memory is such a case that would be foolish and impossible in cases of lengthy trials. Hardy v. United States, 375 U.S. 277,288, 84 S.Ct. 424,431, 11 L.Ed.2d 331(1964)

As such, the Defendant has no other remedy at law but to request that the heretofore mentioned transcripts and documents be supplied to him by this Court and the Respondent, in whatever manner that is possible and in accordance with the above-cited case law. This is the first crucial step of the Defendant's post appeal process. To proceed further, the Defendant must have the transcripts and documents of his trial.

CONCLUSION

For all the foregoing reasons, the Defendant, Jason Jones, respectfully moves this Court to ORDER that a true copy of the Defendant's trial transcripts and relevant related documents necessary for the Defendant to pursue post appeal and post conviction remedies, be supplied to the Defendant, either on loan for review and copying, or a photocopy to be made by the Clerk of Court, or Respondent, to be forwarded to the Defendant. The Defendant states under penalty of perjury that he has not ever had in his personal possession a copy of his transcripts, nor has he been allowed to review the record of his trial, or the documents relevant to his trial or conviction.

Respectfully Submitted,

Jason Jones 529115  
Jason Jones, Petitioner pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION and MEMORANDUM IN SUPPORT were sent to Robin Piper, Butler County Prosecutor, via Regular U.S. Mail at the Government Services Center, 315 High Street - 11th Floor, P.O. Box 515, Hamilton, Ohio 45011-0515 on this 24th day of October, 2007.

Jason Jones 529115  
Jason Jones, Defendant pro se

FILED  
2007 NOV -8 AM 10:32  
IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

BUTLER COUNTY  
CLERK OF COURTS

STATE OF OHIO,

Plaintiff,

vs.

Jason Jones,

Defendant.

\* CASE NO: CR05-09-1631

\*

\* Judge Nastoff

\*

\* ENTRY DENYING MOTION FOR  
\* PRODUCTION OF TRANSCRIPTS  
\* AND RELATED DOCUMENTS AT  
\* AT STATE'S EXPENSE

\*

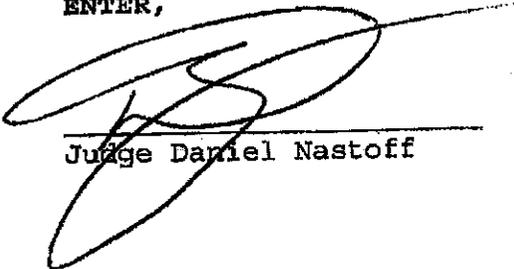
\*

---

It appearing to the Court that defendant's appellate counsel was provided the necessary transcripts for appeal; the defendant's motion for Production of Transcripts and Related Documents at State's Expense is hereby denied.

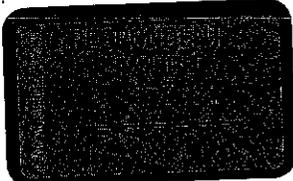
IT IS SO ORDERED.

ENTER,

  
\_\_\_\_\_  
Judge Daniel Nastoff

cc: Jason Jones, #529-115  
P.O. Box 7010  
Chillicothe, Ohio 45601

Prosecutor



# The Supreme Court of Ohio

FILED

AUG 26 2009

CLERK OF COURT  
SUPREME COURT OF OHIO

Jason Jones

v.

A. Nastoff, Judge

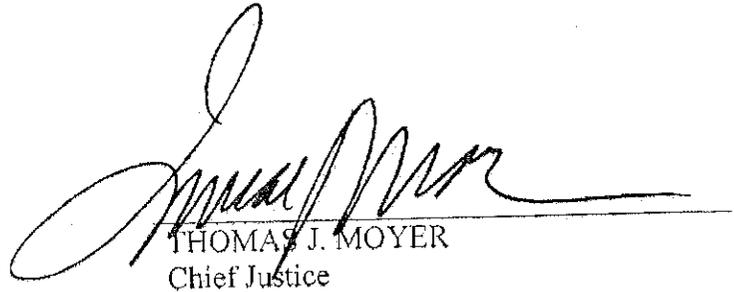
Case No. 2009-1204

IN MANDAMUS

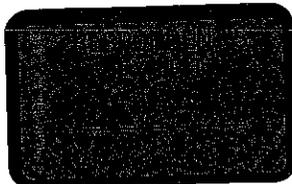
ENTRY

This cause originated in this Court on the filing of a complaint for a writ of mandamus. Upon consideration of respondent's motion to dismiss,

It is ordered by the Court that the motion to dismiss is granted. Accordingly, this cause is dismissed.



THOMAS J. MOYER  
Chief Justice



ADC  
3

1-4-08

Dear MR. Couliff

Please send me the trial transcripts that you obtained at states expense as I need them to further fight my case. I have attempted to obtain them from the court and was instructed to obtain them from you.

**EXHIBIT A4**

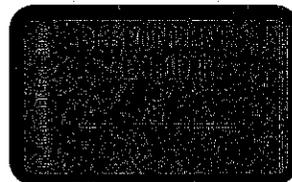
1-28-08

Mr. Couliff

I have motioned the court for trial transcripts and was instructed to obtain them from you. I have sent to letter's prior to this one with no response. It is very important that I receive a response from you to proceed with my case.

Mr. Couliff, please respond to this letter, as I need to know if you have them or not so that I can move forward with this matter.

**EXHIBIT A5**



1-13-07

Dear Mr. Conliff:

Please send me the trial transcripts that you obtained at State's expense, as I need them to further fight my case. I have attempted to obtain them from the court and was instructed to obtain them from you. If giving them to me to keep is an inconvenience, I could copy them and send them back to you.

Thank you very much.

Jason Jones 529115  
RCI P.O.Box 7010  
Chillicothe, OH 45601  
CA2006-09-228

EXHIBIT A6