

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-1640

STATE OF OHIO

Case No. _____

Plaintiff-Appellee,

On Appeal from the Montgomery
County Court of Appeals Second
Appellate District

vs.

ANTHONY L. WILSON

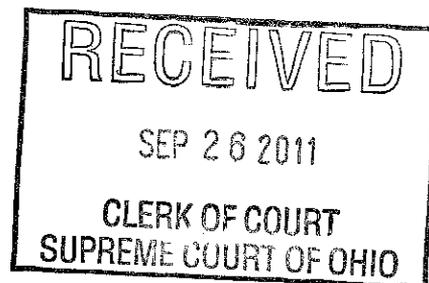
C.A. Case No. 23734

Defendant-Appellant.

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ANTHONY L. WILSON**

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Inmate Number 567-649
Pro Se Litigant
London Correctional Institution
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Defendant-Appellant



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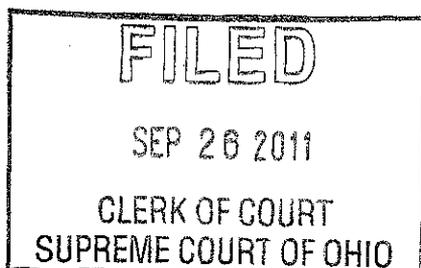


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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC AND/OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.

This cause presents three critical issues for the future of public and great general interest in Ohio to inspect and/or copy public records: (1) whether an incarcerated person can inspect and/or copy the public records to support clemency petition pursuant to R.C. 2967.07 (2) whether clemency petition according to R.C. 2967.07 should be considered a “pending action” and/or “justiciable claim” under trial courts discretion to grant an incarcerated person to inspect and/or copy the public records (3) whether filing a grievance to the Office of Disciplinary Counsel The Supreme Court of Ohio, Bar Associations and Ohio Parole Board is considered a “pending action” and/or “justiciable claim” for an incarcerated person to inspect and/or copy public records.

In this case, the Court of Appeals decided that “ We are troubled by the “justiciable claim” exception in R.C. 149.43(B)(8) we are required by the express terms of that section to enforce. Section 11, Article II confers power on the governor to grant reprieves, commutations, and pardons for all crimes and offenses, “. . . subject, however, to such regulations, as to the manner of applying for pardons as may be prescribed by law.” R.C. 2967.07 provides that applications for clemency shall be presented in writing to the adult parole authority. The parole board has issued Instructions and guidelines that require applicants to provide copies of indictments and judgments of conviction for each crime for which clemency is requested, adding: “These documents can be obtained from the sentencing county and may require payment of a copying fee.” We urge the General Assembly to consider an exception to the justiciable controversy requirements in R.C. 149.43(B)(8) to permit a convicted defendant who wishes to apply for clemency to obtain the needed documents.”

Thereafter, Second District Court of Appeals later affirmed the trial court decision denying the access being sought. Within Mr. Wilson's motion for reconsideration, he broadly identified the intended use for the public records and why such access to inspect and/or copy public records were

necessary in his pending actions. The decision of the court of appeals eliminates the process for which clemency petitioners can obtain access to inspect and/or copy public records. The entire process of public records under R.C. 149.43, designed to result in enforceable public record releases and coherent public record contractual agreements, would be frustrating if the decision of the court of appeals is permitted to stand. “[I]t is the responsibility of the person who wishes to inspect and/or copy records identify with reasonable clarity the records at issue.” *State re rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 29 quoting *State ex rel. Fant v. Tober* (Apr. 28, 1993), Cuyahoga App. No. 63737, 1993 WL 173743, * 1. Court records are generally public records subject to disclosure under the Public Records Act. See *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, ¶ 5 (“Court records fall within the broad definition of a ‘public record’ in R.C. 149.43(A)(1)”)” *State ex rel. Striker v. Smith*, 2011 WL 2498100, 2.

The decision of the court of appeals threaten the structure of public records request created by the General Assembly in R.C. 149.43. By its ruling, the court of appeals and trial courts undermine legislative intent, ignores the plain meaning of the Public Records Act, and creates its own unsupported view of the Public Records Act. Moreover, the court of appeals' decision establishes the illogical and untenable rule that a trial court can ignore public record requests by delegating clemency petitions; with unsupported hypothesis that the public records act doesn't provide “broad definition” in allowing incarcerated person to inspect and/or copy public records. Finally, the decision of the court of appeals elevates the judicial discretion of the trial courts over the authority of the General Assembly and Governor Section 11, Article II of the Ohio Constitution. To enact full discretion to the trial courts in commanding clemency petitions as being moot and/or unnoticed by public records requests.

The judgment of the court of appeals has great general significance also because it determines clemency petition by permitting trial courts to circumvent their decision around public records act. If the Governor has exclusive jurisdiction over trial court decisions, despite contrary provisions of trial

court discretions, the force and value of public records and the objectives of the Act would be severely compromised. Governmental executive agencies, such as clemency petitions, could negate an allow the access being sought under the Act. Such a prospect in contrary to current case law and the stated purpose of the Act.

In sum, this case puts in issue the essence of public record requests and the fate of public records act, thereby affecting every clemency petition filed to governmental entities in Ohio. To promote the purpose and preserve the integrity of the Public Record Requests' Public Records Act , to assure uniform application of the act, to promote orderly and constructive requests between trial court and petitioners, and to remove impediments to the public record request process, this court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

STATEMENT OF THE CASE AND THE FACTS

Mr. Wilson submitted a request to the Trial Court asking permission to inspect and/or copy the public records pursuant to R.C. 149.43. On October 7, 2009 the Trial Court denied Mr. Wilson's request stating that, "he has failed to demonstrate that the information sought in the "public record is necessary to support what appears to be a justiciable claim." Thereafter, on October 28, 2010, Mr. Wilson submitted a motion for reconsideration stating his intended use of why the public records was necessary. Mr. Wilson's intended use of such public records was to support his clemency petition being filed to the parole board for the governor to grant relief. The documents necessary for Mr. Wilson's clemency petition was intended to be used for verification of each and every conviction throughout his arrest history. This requirement is "mandatory" without question and the Trial Court's was very much aware of this obligation if Mr. Wilson so choose to submit a clemency petition. Which he did, but without the necessary mandatory documents required for such submission, Mr. Wilson was without any standing as commanded by the parole board, Governor's Office, General Assembly and Ohio Supreme Court.

On November 4, 2009, an entry was filed by the trial court denying Mr. Wilson's request for access to the public records. Thereafter, a notice of appeal was filed by the clerk's office on November 9, 2009, from the trial court's decision rendered. On November 13, 2009, a motion to dismiss appeal was filed by the State. The Court of Appeals decided that the appeal is of right and allowed the appeal to move forward in its decision an entry filed on January 5, 2010. Thereafter, on February 23, 2010, the State once again move for another dismissal of the appeal. Which the Court of Appeals had already decided to move forward. Mr. Wilson submitted an opposing motion contesting the facts that had already been presented from other appeals. A decision entry from the Court of Appeals filed May 28, 2010 overruled the State's request once again and allowed the appeal as of right.

Furthermore, a request for an extension of time was filed on June 30, 2010, to allow adequate time to file the merit brief. This was ask due to the evidentiary hearing held that required Mr. Wilson's presence. Which held the Appellate process up in the matter until such presence was no longer needed for that particular proceeding. Additional time was granted an a order handed down on July 13, 2010, extended the submission of the merit brief. Due to the ongoing proceedings in the trial court level Mr. Wilson's appearance was a necessitate once more that alter the time of submission.

The State moved to dismiss the appeal based upon non-compliance to the Appellate Rules of procedure. Inasmuch, Mr. Wilson was still going through the legal proceedings in the trial court level that caused a delay on the proceedings. An opposing motion was filed stating the actual reasons why the matter was delayed. It was to no fault of either party, simply because of another legal duty that had become a priority. On January 31, 2011, the Court of Appeals passed down an order that such brief will be filed by January 31, 2011. Due to extraordinary complications in the institutional Law Library the photographic printing was restricted and a power glitch erased Mr. Wilson's merit brief. Another extension was filed to validate this claim and allow the opportunity to have Mr. Wilson re-type and mail his submission in time for disposition.

On April 29 2011, the State responded to Mr. Wilson's merit brief. Soon thereafter, on May 6, 2011, Mr. Wilson filed a reply brief opposing the State's argument. On August 19, 2011, the Second Appellate District Court of Appeals rendered their decision and affirmed the trial court decision for Mr. Wilson's appeal. Now Mr. Wilson seeks relief from this Higher Court in hopes that his Memorandum in Support of Jurisdiction will be accepted for review.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law: The trial court committed prejudice error by denying incarcerated person to inspect and/or copy the public records to support executive administrative remedy and confidential proceedings that's suitable to be considered a "pending action" and/or "justiciable claim" in violation of Ohio and United States Constitution and O.R.C. § 149.43(B)(8) est.

Issue Presented For Review: Whether the trial court was in error by denying incarcerated person the opportunity to inspect and/or copy the public records to support his/her executive administrative remedy and confidential proceedings and whether those proceedings is suitable to be considered a "pending action" and/or "justiciable claim" when those proceedings are pending?

Mr. Wilson contest, that the trial court and the Court of Appeals abused their discretion by not allowing the opportunity to inspect and/or copy the public records. The heighten extreme burden for an incarcerated person to show probable cause to inspect and/or copy public records is at an uttermost high requirement that most litigants cannot overcome. Which most incarcerated persons cannot meet this extreme heighten criterion that the trial courts has implicated when requesting access to public records.

A person may inspect and/or copy public records irrespective to purpose for doing so, R.C. 149.43(A)(1), (B,D). "Any person" within meaning of statue requiring public records to be promptly prepared and made available for inspection to any person means any person regardless of purpose; thus, person seeking public records is not required to establish proper purpose or any purpose. *State ex rel. Clark v. Toledo*, (1990), 54 Ohio St.3d 55, 57 560 N.E.2d 1313, 1314. Quoting *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 610 N.E.2d 997 [¶ 2].

In this case, a request to inspect and/or copy the public records was being sought due to the instructional guidelines for filing a clemency petition to the Governor Office. Such guidelines was strict and mandatory requirements to obtain legal copies of prior convictions, and the convictions for which clemency relief is being sought. Thus, providing that a trial court release copies of indictments, journal entries, police reports, discover materials and information relating to a criminal conviction that can be released through public records request.

A. Public Records Request for Clemency Petition

Executive “clemency” relief was being sought for case number 2007-CR-2134/2, to wit, copies of the public records were required in validating petitioner's explanation of why he/she should be granted clemency. Public records were mandatory attachments that cannot be disregarded during the stages of submitting a clemency petition. Application for Executive Clemency question number states as following; “*ARREST RECORD (JUVENILE AND ADULT) of all convictions throughout a person life state or federal.*” Thus, questionnaires are to be fully explained and verified with adequate legal documents for parole board review. An incarcerated person is incapable of such explanation without the reasonable means of access to legal documents that's clearly available for inspection and/or copying. A request for such access is only allowing an incarcerated person to obtain permission to retrieve public records which is clearly accessible to the public and not exempt.

Furthermore, this requirement applies to incidents reports and their attached records. The phrase “any public record” does not apply to confidential law enforcement investigatory records. R.C. 149.43(B)(4) specifically exempts from release information not “subject to release as public record.” Under subsection (A)(1)(n), such records are not public records. The broad scope of the phrase “any public record” must necessary include those criminal investigation records which *Steckman* identified for immediate release. To obtain such documents, therefore, the trial court must give its approval. *State ex rel. Russell v. Bican*, 2006 WL 3095743 (Ohio App. 8 Dist.), 2006-Ohio-5735 Id ¶ 6.

The Governor Office utilized its empowerment to allow the parole board with the authority to enforce mandatory requirements of a clemency questionnaire. These rules and regulations are permitted and enacted through Section 11, Article II of the Ohio Constitution that empowers the Governor Office to enforce clemency mandatory conditions. This allows the Governor Office to emplace foreordained requirements and restrictions to be enforced under the parole board's supervision. This supervision cannot be superseded by any other judicial authority other than the Governor's Office who emplace such conditions to enforced upon an incarcerated person. To deny such a request for public records because of these conditions was an abuse of discretion of the trial court and court of appeals.

B. Public Records Request for Confidential Proceedings

A grievance application filed in the Ohio Supreme Court Bar Association, that requires public records access to validate said claims, should be subjected to be consider a “pending action” and/or “justiciable claim.” It's broad and clear, that if a disciplinary matter is being pursued against any court judicial officer, it must remain confidential until such investigation has been properly disposed of and/or once a decision has been rendered. Any person, inmate or civilian does not have a duty to break confidentiality for any reason and/or person. If the materials being sought were public records, then within the scope of the public record act, a disciplinary action should be consider a “pending action” and/or justiciable claim” to inspect and/or copy the public records. Which that person, incarcerated or not, should not have to break confidentiality for anyone to inspect and/or copy the public records he/she seeks. If such pronouncement is required, then there's no confidentiality to those proceedings to pursue a confidential proceeding.

Once a request for the public records is submitted to the clerk of courts then that document becomes public records, to wit, any person will have full access and knowledge of the contents of why the public record is being sought. Due to this extraordinary extreme procedure a person seeking to inspect and/or copy the public records is command to explain the exact intended use even if it's

disciplinary grievances. The right of an indigent prisoner to relevant portions of a record is limited to pending actions. *State ex rel. Call v. Zimmers*, 85 Ohio St.3d 367 Id. [¶ 3]; quoting, *Murr*, 34 Ohio St.3d at 45, 517 N.E.2d at 226-227; also stated in *State ex rel. Partee v. McMahon*, 175 Ohio St. 243 at [¶ 4]. But, in fact, there is no broad definition for “pending action” and/or “justiciable claim.”

A “pending action” and/or “justiciable claim” has not been described by an Ohio Court to grant an incarcerated person permission to inspect and/or copy public records in establishing a defense in such proceedings. By the trial court and the court of appeals restricting incarcerated persons to overcome an extreme heightened burden to break confidential due process of a legal investigation implicated through the Ohio Supreme Court Rules and regulations violates the methods of such process in place. To obtain public records under R.C. 149.43 (B)(8), an inmate must “demonstrate that the information he is seeking * * * is necessary to support a justiciable claim of defense.” *State v. Gibson*, Champaign App. No. 06CA37, 2007-Ohio-7161, ¶ 13. This ordinarily involves identifying a “pending proceeding with respect to which the request documents would be material.” *Id* at ¶ 14. Also quoted in *State v. Wilson*, 2009 WL 5199328 (Ohio App. 2 Dist.), 2009-Ohio-7035.

Identifying pending proceedings to circumstances where there are disciplinary grievances pending is an action that “does not” have to be brought to the trial courts attention through the course of the investigation. “Rules of the Supreme Court of Ohio precludes this requirement and maintains that an investigation be CONFIDENTIAL, and you’re asked to keep CONFIDENTIAL of the fact you submitted a grievance to one of their entities”. See Ohio State Bar Association Certified Grievance Committee GRIEVANCE FORM. A copy of the public records as defined in R.C. 149.011(G) and 149.43(A)(1), and (2) permit a person to inspect and/or copy files of interest.

The General Assembly clearly enacts a public-policy decision to restrict a convicted inmate with unlimited access to public records in order to conserve law enforcement resources. Unless, two requisites are met. Initially, the information must be “subject to release as public record” under R.C.

149.43. Secondly, “the judge who imposed the sentence” must determine “the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” *Jones v. Dann*, 2009 WL 3777999 (Ohio App. 10 Dist.), 2009-Ohio-5976 Id ¶ 10. Again, what is the broad definition for “pending action” and/or “justiciable claim?”

The trial court in this matter set forth an additional heightened requirement that incarcerated persons cannot overcome due to an abuse of discretion of “pending action” and/or “justiciable claim. To overcome such vindictive heightened requirements a person will have no choice but to pursue their executive administrative remedies once he/she is released from imprisonment. Such discretion has barred inmates from maintaining *pro se* litigations throughout their course in the pursuit of justice. A question that has not heretofore been decided is, whether an inmate is entitled to inspect and/or copy the public records towards legal proceedings that considered to be confidential?

“Pending action” and/or “justiciable claim” has no broad definition to determine what public records is being sought to sustain a constitutional defense of due process. Thus, depriving a trial court to keep confidential proceedings from public access once a request is submitted under their terms. Confidential proceedings and investigation holds a broad definition not to alert anyone regardless of reason and/or purpose.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the importance issues presented will be reviewed on the merits.

Respectfully submitted,



Anthony L. Wilson
Inmate Number 567-649
Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to the Montgomery County Prosecutor Office located at 301 West 3rd Street, 5th Floor, Dayton, Ohio 45422 on this 26th day of September 2011.



Anthony L. Wilson
Inmate Number 567-649
Pro Se litigant
London Correctional Institution
1580 State Route 56 SW
P.O. Box 69
London, Ohio 43140

Defendant-Appellant

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee,

Case No. _____

On Appeal from the Montgomery
County Court of Appeals Second
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vs.

ANTHONY L. WILSON

Defendant-Appellant.

C.A. Case No. 23734

APPENDIX TO:

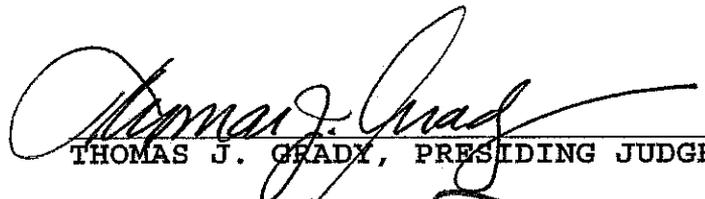
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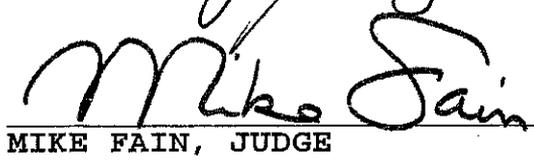
IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 23734
vs. : T.C. CASE NO. 04CR2632
ANTHONY L. WILSON : FINAL ENTRY
Defendant-Appellant :

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Pursuant to the opinion of this court rendered on the
19th day of August, 2011, the judgment of the trial
court is Affirmed. Costs are to be paid as provided in App.R.
24.


THOMAS J. GRADY, PRESIDING JUDGE


MIKE FAIN, JUDGE


MICHAEL T. HALL, JUDGE

Copies mailed to:

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Dayton, OH 45422

Anthony L. Wilson, #567-649
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Hon. Connie S. Price

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 23734
vs. : T.C. CASE NO. 04CR2632
ANTHONY L. WILSON : (Criminal Appeal from
Defendant-Appellant : Common Pleas Court

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O P I N I O N

Rendered on the 19th day of August, 2011.
.

Mathias H. Heck, Jr., Pros. Attorney; Timothy J. Cole, Asst.
Pros. Attorney, Atty. Reg. No. 0084117, P.O. Box 972, Dayton, OH
45422

Attorney for Plaintiff-Appellee

Anthony L. Wilson, #567-649, P.O. Box 69, London, OH 43140
Defendant-Appellant, Pro Se
.

GRADY, P.J.:

On October 7, 2009, the common pleas court denied Defendant Anthony Wilson's request made pursuant to the Ohio Public Records Act for copies of certain documents related to Defendant's conviction in common pleas court case number 2004CR02632. Wilson was then incarcerated pursuant to a criminal conviction in another case. The court found that Wilson failed to demonstrate "that the information sought in the public record is necessary to support what appears to be a justiciable controversy."

Wilson filed an application for reconsideration. Wilson averred that the records he requested are needed "for exhausting executive remedies (clemency)," adding:

"Those documents are required to be attached to such petition to validate petitioner criminal history in seeking clemency relief. Public records needed for this petition consist of; Police Report, Indictment, and Judgment Entries, etc."

The trial court denied Wilson's application for again failing to show "how his claim of a clemency application is justiciable." Wilson appeals.

ASSIGNMENT OF ERROR

"TRIAL COURT COMMITTED PREJUDICE ERROR BY DENYING DEFENDANT ACCESS TO INSPECT AND COPY THE PUBLIC RECORDS IN VIOLATION OF OHIO AND UNITED STATES CONSTITUTION AND PURSUANT TO O.R.C. 149.43(B)(8)."

R.C. 149.43(A)(1) defines a public record to include "records kept by any public office." R.C. 149.43(B)(1) provides that, "subject to division (B)(8) of this section, upon request, a public officer or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time."

R.C. 149.43(B)(8) states:

"A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal

investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person."

A "justiciable claim" is a claim properly brought before a court of justice for relief. Clemency is the power to grant reprieves, commutations, and pardons for crimes and offenses. Section 11, Article II of the Ohio Constitution confers that power on the governor. That grant of power is exclusive. The power may not be exercised by a court of justice. Therefore, an application for clemency is not "a justiciable claim" for purposes of R.C. 149.43(B)(8). The trial court was not required to provide copies of the records Wilson requested.¹

We are troubled by the "justiciable claim" exception in R.C. 149.43(B)(8) we are required by the express terms of that section to enforce. Section 11, Article II confers power on the governor to grant reprieves, commutations, and pardons for all crimes and offenses, ". . .subject, however, to such regulations, as to the

¹ To our knowledge, neither the court nor its clerk maintains or is otherwise responsible to keep police reports.

manner of applying for pardons as may be prescribed by law." R.C. 2967.07 provides that applications for clemency shall be presented in writing to the adult parole authority. The parole board has issued Instructions and Guidelines² that require applicants to provide copies of indictments and judgments of conviction for each crime for which clemency is requested, adding: "These documents can be obtained from the sentencing county and may require payment of a copying fee." We urge the General Assembly to consider an exception to the justiciable controversy requirement in R.C. 149.43(B)(8) to permit a convicted defendant who wishes to apply for clemency to obtain the needed documents.

The assignment of error is overruled. The judgment from which the appeal is taken will be affirmed.

FAIN, J. And HALL, J., concur.

Copies mailed to:

Timothy J. Cole, Esq.
Anthony L. Wilson
Hon. Connie S. Price

² See WWW.drc.ohio.gov/web/Forms/DRC3068_instructions.pdf

OHIO PAROLE BOARD
APPLICATION FOR EXECUTIVE CLEMENCY
INSTRUCTIONS AND GUIDELINES

The following guidelines and instructions are provided to assist an applicant in understanding the application process, hearing procedures and decision-making timeframes.

STEP 1: REQUESTING AN APPLICATION

Applications for Executive Clemency may be obtained through the Department of Rehabilitation and Correction internet site at www.drc.state.oh.us. Written requests for applications should be sent to the Ohio Parole Board, Clemency Section, 770 West Broad Street, Columbus, Ohio 43222. Please include an address to where the applications can be mailed. Email requests for applications should be sent to drc.clemency@drc.state.oh.us.

STEP 2: FILING THE APPLICATION

All clemency applications must be submitted in writing to the Adult Parole Authority on forms approved by and obtained from the Ohio Parole Board Clemency Section.

- A. Applications downloaded from other internet sites or obtained from other agencies will not be accepted and will be returned.
- B. Applications must be typed or printed legibly in black or blue ink.
- C. The applicant, the applicant's attorney or the applicant's POA must submit two (2) notarized applications with original signatures, along with two (2) copies of all attachments, to the Ohio Parole Board, Clemency Section, 770 West broad Street, Columbus, Ohio 43222.
- D. Attachments to the application cannot be returned. Copies of the original documents should be submitted with the application. The applicant is encouraged to retain a copy of the application and supporting attachments and documents.
- E. Please contact the Ohio Parole Board – Clemency Section – with any change of address or telephone number.
- F. The application, along with all attachments will be provided to the sentencing court and/or prosecuting attorneys' office in the county of conviction, if requested.

STEP 3: GUIDELINES FOR COMPLETING THE APPLICATION

Lines 1 through 4: Fill in all applicable identifying information.

If paroled or released to post release control (PRC) or granted probation/community control, then the applicant must provide a certificate of release or a journal entry granting probation/community control. If released from supervision, the applicant must provide the final release certificate or journal entry terminating probation/community control. These documents can be obtained from the Adult Parole Authority, the County or Municipal Probation Department or Clerk of Courts Office and may require the payment of a copying fee.

Line 5: Please check the box for the type of clemency being requested.

There are three (3) types of executive clemency:

- A. **COMMUTATION:** The reduction of a penalty to one less severe. Generally a commutation requests the reduction of a minimum sentence in order to make the applicant eligible for parole consideration at an earlier date. For definite sentences, a commutation would reduce the existing definite sentence to a lesser definite sentence to allow the applicant to be released at an earlier date.
- B. **PARDON:** The forgiveness of guilt and punishment. A pardon can be full and complete or be issued based upon the applicant meeting certain prescribed conditions. Pardons do not erase or seal a conviction; a pardon forgives guilt.
- C. **REPRIEVE:** Temporary postponement of the execution of any sentence.

Line 6: If you have previously applied for clemency, please check yes in this section. Include, if possible, the month and year that the application was denied by the Governor.

If the Parole Board receives an application for pardon, commutation or reprieve for a person for whom executive clemency was denied LESS THAN TWO YEARS earlier than the subsequent application was received, and the Parole Board does not believe that the application contains any grounds that were not or could not have been presented in the earlier application, then Ohio Administrative Code 5120:1-1-15 authorizes the Parole Board to forward the application to the Governor with the recommendation that the application be denied on the basis of the earlier review and denial. In such a case, no hearing and no further investigation shall be necessary unless specifically requested by the Governor. All applications received after two years from the date of the earlier review and denial shall be processed for review.

Line 7: Please provide the requested information on each offense for which clemency is requested. Additionally, the applicant must provide copies of 1) the indictment or bill of information and, 2) the judgment entry of conviction and sentence for each crime for which clemency is requested. These documents can be obtained from the sentencing county and may

require the payment of a copying fee. These documents cannot be provided by the institution record office as they are not the originators of the documents.

Line 8: Please provide all information concerning any other arrests either as a juvenile or adult, including arrests outside of Ohio or for federal crimes. It is not necessary to include the convictions for which the applicant is seeking clemency in this section as they should already be noted in Line 7.

Line 9: Please provide all applicable information.

Line 10: Please list the applicant's current and prior employment records for the last five (5) years. If incarcerated, please list the applicant's employment records for the last five (5) years prior to incarceration.

Line 11: Please indicate any participation in activities including volunteer work that demonstrates efforts to give back to the community. If incarcerated, please describe any programming or work assignments that demonstrate assistance to other inmates or members of the public (e.g. tutor, community services projects, etc.).

Line 12: Please explain the reason for requesting clemency in a concise manner. Include an explanation of why clemency is necessary to address a specific hardship or need.

Line 13: (Attachments) Attach any letters in support of the applicant or other supporting documents. Do not send or have letters sent separately or have letters sent directly to the Governor. To be considered, all materials must be submitted with the application. Attach all required court documents or parole documents as required in Lines 2, 3 or 7. Attach any copies of diplomas, or certificates that may document the information provided in Lines 9 or 10.

Signatures: Applications for executive clemency must be signed by the applicant and the applicant's signature must be properly notarized. Applications prepared and submitted by the applicant's legal representatives must also be signed by the legal representatives. Applications are not permitted from other interested parties (e.g., parents, friends, etc.) unless a Power of Attorney (POA) can be produced.

STEP 4: REVIEW OF THE APPLICATION:

1. All applications, once received, will be reviewed for completeness and to assure that all required documents have been provided. All incomplete applications will be returned without further processing, to the applicant or their legal representative with an accompanying correspondence specifying the deficiencies.

2. Ohio Revised Code Section 2967.07 requires a "thorough investigation into the propriety of granting a pardon, commutation or reprieve..." after an application has been filed. The Parole Board will utilize any available pre-sentence investigation or offender background investigation

on the applicant and will supplement those investigations if necessary. A Parole Officer may contact the applicant to conduct an interview and/or ask the applicant complete a questionnaire.

3. The Parole Officer will also contact the sentencing judge, prosecuting attorney and arresting agency in the county/city in which the applicant was convicted to solicit their opinion regarding the application for clemency.

4. Complete applications will be submitted to the Parole Board Members for review. The Parole Board Members will decide by majority vote if the application contains sufficient merit to warrant further consideration at a hearing. If the Parole Board Members do not decide by majority vote to conduct a hearing, the application will be forwarded to the Governor with a recommendation to deny the clemency request.

STEP 5: HEARING PROCEDURE:

If the Parole Board determines that an application warrants further review at a hearing, the applicant and/or legal representative shall be notified of the date and time of the clemency hearing. If the applicant is an inmate, an interview will be conducted at the institution in which the inmate is incarcerated prior to the hearing date. Generally, these hearings are conducted at a site in Columbus, Ohio.

The hearing shall be conducted before at least a majority of the Parole Board Members and shall be conducted pursuant to the Parole Board's Policy and Procedure for Clemency Cases.

STEP 6: RECOMMENDATION AND DECISION:

Either following the application review or following a hearing, the Parole Board shall determine, by at least majority vote, whether to submit to the Governor a recommendation which is favorable or unfavorable to the granting of the clemency requested.

The final decision for the granting or denial of clemency is solely that of the Governor. The final decision will be communicated in writing to the applicant and/or the legal representative by the Governor's Office. There is no timeframe by which the Governor must decide on a clemency application. A final decision can take several months.

Ohio Parole Board Application for Executive Clemency

1. APPLICANT'S NAME: _____ ALIAS: _____

2. IF Confined:

INSTITUTION:	INSTITUTION NUMBER:	DATE ADMITTED:
PAROLE/PRC ELIGIBILITY DATE:	EXPIRATION OF DEFINITE SENTENCE:	

3. IF NOT Confined:

OR

ADDRESS:	STREET	CITY	STATE	ZIP
DATE RELEASED ON PAROLE/PRC:		FINAL RELEASE DATE:		
DATE GRANTED COMMUNITY CONTROL/PROBATION:		DATE COMMUNITY CONTROL/PROBATION COMPLETED:		

4. DATE OF BIRTH: _____ AGE: _____ TELEPHONE NUMBER: _____

5. TYPE OF CLEMENCY HEARING REQUESTED: Pardon Commutation Reprieve ALTERNATE PHONE NUMBER: _____

6. HAVE YOU APPLIED FOR CLEMENCY IN THE PAST? YES NO - If yes, when: _____

7. OFFENSES FOR WHICH CLEMENCY IS REQUESTED: (SEE INSTRUCTIONS)

COUNTY (CITY)	CASE NO.	CRIME	DATE CONVICTED	SENTENCE

8. ARREST RECORD: (JUVENILE AND ADULT)

COUNTY (CITY)	CASE NO.	CRIME	DATE CONVICTED	SENTENCE

9. MARITAL STATUS: _____ SPOUSE'S NAME: _____ NO. OF DEPENDENTS: _____

EDUCATION: _____

10. EMPLOYMENT HISTORY: (PAST FIVE YEARS)

EMPLOYER	ADDRESS	TELEPHONE NUMBER	EMPLOYMENT STATUS

11. COMMUNITY/VOLUNTEER SERVICE: (SEE INSTRUCTIONS) (USE ADDITIONAL SHEETS IF NECESSARY)

12. REASONS CLEMENCY IS REQUESTED: (USE ADDITIONAL SHEETS IF NECESSARY)

13. ATTACHMENTS: (LETTERS IN SUPPORT, COURT PAPERS, DIPLOMAS, ETC.) (SEE INSTRUCTIONS)

I HEREBY SWEAR THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND THE ATTACHED DOCUMENTS IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE:

APPLICANT'S SIGNATURE DATE

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____

NOTARY PUBLIC: _____ MY COMMISSION EXPIRES: _____

IF PREPARED BY ATTORNEY:

ATTORNEY'S NAME

ADDRESS

ATTORNEY'S SIGNATURE DATE

** The application, along with the attachments will be provided to the sentencing court and/or prosecuting attorneys' office in the county of conviction, if requested.*

OFFICE OF DISCIPLINARY COUNSEL
THE SUPREME COURT OF OHIO

JONATHAN E. COUGHLAN, Disciplinary Counsel

250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
1-800-589-5256
(614) 461-7205 FAX

INSTRUCTIONS

The Office of Disciplinary Counsel investigates allegations of ethical misconduct against attorneys and judges. Disciplinary Counsel also investigates grievances regarding the unauthorized practice of law. Please understand that this office has no jurisdiction over and will not become involved in the legal merits of any case. The attorney disciplinary process will not affect or change court decisions made in your case. In addition, Disciplinary Counsel may not give you legal advice.

This form will assist you in filing your grievance. After you have legibly completed the form and signed and dated the form, please return it in the envelope provided. You may attach additional sheets of paper, if necessary, in order to complete the "Facts of the Grievance" portion of the form. If you wish to file a grievance against more than one attorney or judge, please use one form per attorney or judge. You may make additional copies of the form. You may enclose all forms in one envelope.

If you include documentation with your grievance, send copies only. **PLEASE DO NOT SEND ORIGINALS.**

The Rules of the Supreme Court of Ohio require that investigations be confidential. You are requested to keep confidential the fact that you are filing this grievance. Only the attorney/judge against whom you are filing your grievance may waive confidentiality. In filing a grievance against your attorney, you are waiving your attorney-client privilege.

The attorney/judge against whom you are filing your grievance will receive notice of your grievance. Those individuals are also entitled to receive a copy of your grievance and may be asked to respond to your allegations. Your grievance may result in your attorney withdrawing from your case. Disciplinary Counsel cannot prevent an attorney from withdrawing from representation.

Once received, it may take up to ninety (90) days for us to review and respond to your grievance. However, you will be contacted by mail within that time period to advise you whether your grievance will be investigated or dismissed. You may or may not be contacted by mail or telephone to provide additional information. This office will respond to inquiries only from the person(s) who complete(s) the form (is/are named as Grievant(s) under the "Your Name" portion of the form).

The Grievance Process

A grievance sent to the Disciplinary Counsel of the Supreme Court of Ohio or to a local bar association's certified grievance committee will be reviewed to determine whether the grievance alleges a violation of the Code of Professional Responsibility or Code of Judicial Conduct. If there is evidence that supports the allegation of a violation, the grievance will be investigated. Following the investigation, if substantial, credible evidence is found that a violation has occurred, a formal complaint will be filed with the Board of Commissioners on Grievances and Discipline. A three-member panel of the Board will review the complaint and determine whether probable cause exists to certify it. If the complaint is certified by the Board, a hearing is then held before a different three-member panel of the Board. The panel considers the evidence and makes a recommendation to the full Board of Commissioners. The full Board then makes a recommendation to the Supreme Court of Ohio. The Court has final say on whether to discipline an attorney or judge and what sanction should be administered. A grievance is confidential until the Board certifies it as a formal complaint. A grievance or complaint can be dismissed at any point in the process.

Grievance Form

YOUR NAME: _____
Last First MI Phone No.

ADDRESS: _____
Street

City County State Zip Code

(Please circle) ATTORNEY or JUDGE

NAME: _____
Last First MI Phone No.

ADDRESS: _____
Street

City County State Zip Code

GRIEVANCE FILED WITH OTHER AGENCIES:

Have you filed this grievance with any other agency or bar association? _____ Yes _____ No

If yes, name of that agency: _____

When filed?: _____

What happened?: _____

The Rules of the Supreme Court of Ohio require that investigations be confidential. Please keep confidential the fact that you are submitting this grievance. The party(ies) you are filing your grievance against will receive notice of your grievance and may receive a copy of your grievance and be asked to respond to your allegations.

Signature

Date