

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,
MARQUISE JONES

*

Case No. 11-1517

Appellant-Relator,

*

v.

*

JUDGE BARBERA J. ANSTED,
JUDGE OF SANDUSKY COUNTY
COURT OF COMMON PLEAS

*

On Appeal From the Sandusky County Court of
Appeals, Sixth Appellate District

*

Appellee-Respondent.

MERIT BRIEF OF APPELLANT MARQUISE JONES

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APPELLANT-RELATOR, PRO SE

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OCT 17 2011
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SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE-RESPONDENT, SANDUSKY COUNTY
COURT OF COMMON PLEAS JUDGE BARBERA J. ANSTED

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SUPREME COURT OF OHIO

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STATEMENT OF THE FACTS

This case arises from the attempt of Appellant-Relator, Marquise Jones ("Relator" hereinafter), to have issued a judgment entry of conviction and sentence which fully complies with Crim.R. 32(C) and constitutes a final appealable order in Relator's criminal case.

In **State v. Jones**, Sandusky County Court of Common Pleas Case No. 08CR208, a grand jury indicted Relator for Amended Counts 1, 2, 3, 4, 5, 6, 7, 10, and 11, Complicity to Commit Aggravated Robbery (with firearm specifications), violations of R.C. 2911.01(A)(1) and R.C. 2923.03, felonies of the first degree; Amended Counts 13, 14, and 15, Felonious Assault (with firearm specifications), violations of R.C. 2903.11(A)(2) and R.C. 2923.03, felonies of the second degree; Amended Counts 8 and 12, Complicity to Commit Robbery (with firearm specifications), violations of R.C. 2911.02(A)(2) and R.C. 2923.03, felonies of the second degree; Count 17, Complicity to Commit Aggravated Burglary (with firearm specification), a violation of R.C. 2911.11(A)(2) and 2923.03, a felony of the first degree; Amended Count 9, Complicity to Commit Robbery (with firearm specification), a violation of R.C. 2911.02(A)(3) and R.C. 2923.03, a felony of the third degree; and Amended Count 16, Theft a violation of R.C. 2913.02(A) and R.C. 2923.03, a felony of the fifth degree.

Relator plead not guilty to all charges and firearm specifications attached thereto and, thereafter, was tried by a jury which returned separate verdicts of guilty on all counts and firearm specifications.

On October 27, 2008 Relator appeared before former Sandusky County Court of Common Pleas Judge Roger Hafford, who orally pronounced a judgment of conviction and sentence of, three (3) years on each of Counts One, Two, Three, Four, Five and Six, said sentences to be served consecutively, and also ordered that Relator serve an additional mandatory three (3) year term of imprisonment for a firearm specification, said sentence to be served consecutively to the previously imposed sentences, for a total of twenty one (21) years.

For purposes of sentencing, former Sandusky County Court of Common Pleas Judge Roger Hafford ordered the following counts in the amended indictment be merged:

Counts Seven and Thirteen merge with Count One;
Count Eight merges with Count Two;
Count Nine merges with Count Three;
Counts Ten and Fourteen merge with Count four;
Counts Eleven and Fifteen merge with Count Five;
Count Twelve merges with Count Six;
Counts Sixteen and Seventeen merge with Counts One through Six,

whereupon such pronouncement a purported judgment entry of conviction and sentence dated October 29, 2008 (App. p. 8) was filed.

Because the judgment entry of conviction and sentence dated October 29, 2008 (App. p. 8) does not include a sentence for every firearm specification which Relator was found guilty of and/or fails to properly dispose of every firearm specification which Relator was found guilty of the said entry does not fully comply with Crim.R. 32(C), and is therefore, merely interlocutory and not a final appealable order.

On March 14, 2011, the Relator filed in the Sandusky County Court of Common Pleas a Motion to Issue a Judgment Entry That Complies with Criminal Rule 32(C), in his criminal case, based on the fact that the judgment entry of conviction and sentence issued in that case failed to comply with Crim.R. 32(C). Although no valid excuse can be given by Appellee-Respondent for not issuing a proper final and appealable judgment in that case, Judge Barbera J. Ansted denied the said motion in a judgment entry filed on March 29, 2011. (Supp. p. 1) stating:

“This cause came before the Court this day upon a Motion filed by the defendant to Issue a new sentencing Judgment Entry by vacating the prior sentencing order and re-sentencing the defendant due to the fact that all the firearm specifications were not addressed in the prior entry.

“Upon consideration of the Motion and the Response filed by the State of Ohio, the Court finds the Motion not well taken and is hereby denied for the reason that a firearm specification is merely a sentencing enhancement, not a separate offense that would require vacating the prior sentence.”

On June 8, 2011, Relator filed in the Sixth District Court of Appeals a Complaint/Petition for a Writ of Mandamus and/or Procedendo which sought an order to compel Appellee-Respondent, Judge

Barbera J. Ansted ("Respondent" hereinafter), to proceed to a final judgment, in Relator's criminal case, and to issue a judgment entry that fully complies with Criminal Rule 32(C) and constitutes a final appealable order.

In a Decision and Judgment time-stamped July 25, 2011, the court of appeals denied Relator's Complaint/Petition for a Writ of Mandamus and/or Procedendo. (App. p. 3). In the relevant portion of the court's decision, the court found that Relator's arguments relating to the requirements of Crim.R. 32(C) were without merit, stating the following:

"Appellant does not claim that all of his convictions did not arise out of the 'same act or transaction.' Accordingly, we find no basis on which to conclude that Respondent erred by merging the six firearm specifications for purposes of sentencing.

"On consideration of the foregoing, we find that respondent is under no clear legal duty to do the act requested in relator's petition for mandamus. This mandamus action is dismissed at relator's cost."

It is from this denial that Appellant-Relator respectfully appeals to this court.

ARGUMENT

Proposition of Law No. I: A Judgment entry which does not include a sentence for every charge and firearm specification which a Defendant is found guilty of and/or fails to properly dispose of every charge and firearm specification which a Defendant is found guilty of does not fully comply with Crim.R. 32(C) and is therefore not a final appealable order.

The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments or orders of inferior courts. Section 3(B)(2), Article IV, Ohio Constitution. This Court has directed reviewing courts to consider the definition of final order as provided in section 2505.02 of the Ohio Revised Code when deciding whether a criminal judgment entry is a final appealable order. **State v. Baker**, 119 Ohio St.3d 197, 893 N.E.2d 163, 2008-Ohio-3330, at ¶ 6. R.C. 2505.02 states, in pertinent part, that:

“(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

“(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;”

Crim.R. 32(C), which became effective July 1, 1973, governs the requirements for criminal convictions,

and as recently amended the Rule provides that:

“A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.”

In an effort to clarify the Rule, this Court declared that a judgment entry of a criminal conviction is a final appealable order pursuant to R.C. 2505.02 when it contains: “(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” **Baker** at syllabus.

This Court's decision in “Baker did not affect longstanding precedent that says a criminal action

is not final for purposes of appeal until the court has separately disposed of each count in the indictment.” **State v. White**, 2010 WL 2106092 (Ohio App. 8 Dist.), 2010-Ohio-2342, ¶60. “Moreover, it has long been established that in order to have a final, appealable order in a criminal case, there must be a resolution of each and every charge, and this includes the specifications.” **State ex rel. Viceroy v. Strickland Saffold**, 2010 WL 4684699 (Ohio App. 8 Dist.), 2010-Ohio-5563, ¶4.

In **Viceroy**, the Eighth District Court of Appeals found that the March 1995 sentencing entry in that relator's criminal case did not comply with Crim.R. 32(C) because the jury did not return a verdict on the violence specification and the entry did not state that the jury found Viceroy guilty of the firearm specification. Stating that there could be no final, appealable order without a proper resolution of those specifications and concluding that the case was fully analogous to **State ex rel. Culgan v. Medina County Court of Common Pleas**, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, the court granted a writ of procedendo and ordered the respondent to issue a final appealable order in the underlying case which complies with Crim.R. 32(C) and corrects the defects and errors in the original sentencing journal entry, including a clear statement that the jury found Viceroy guilty of the firearm specification. *Id.* **Viceroy**, supra, at ¶¶5, 7.

Relator filed in the Sixth District Court of Appeals a Complaint/Petition for a Writ of Mandamus and/or Procedendo which sought an order to compel Appellee-Respondent, Judge Barbera J. Ansted (“Respondent” hereinafter), to proceed to a final judgment, in Relator's criminal case, and to issue a judgment entry that fully complies with Criminal Rule 32(C) and constitutes a final appealable order. The Sixth District Court of Appeals determined that:

“Appellant does not claim that all of his convictions did not arise out of the 'same act or transaction.' Accordingly, we find no basis on which to conclude that Respondent erred by merging the six firearm specifications for purposes of sentencing.

“On consideration of the foregoing, we find that respondent is under no clear legal duty to do the act requested in relator's petition for mandamus. This mandamus action is dismissed at relator's cost.”

This was error. The Respondent herself admitted, in the judgment entry dated March 29, 2011 (Supp. p. 1) denying Relator's Motion to Issue a Judgment Entry That Complies with Criminal Rule 32(C), that the judgment entry of conviction and sentence dated October 29, 2008 (App. p. 8) does not address every firearm specification which the Relator was found guilty of, thus, the Sixth District Court of Appeals could have no valid bases for determining that the judgment entry in question reflected that former Sandusky County Court of Common Pleas Judge Roger Hafford had merged the firearm specifications.

Presumably the Sixth District Court of Appeals somehow inadvertently confused the merger of the underlying offenses in Counts Seven and Thirteen with Count One; Count Eight with Count Two; Count Nine with Count Three; Counts Ten and Fourteen with Count four; Counts Eleven and Fifteen with Count Five; Count Twelve with Count Six; and Counts Sixteen and Seventeen with Counts One through Six, with the firearm specifications attached thereto being merged, therefore, in an effort to resolve this matter expediently and so as to avoid any further confusion, Relator will only address Counts 1, 2, 3, 4, 5, and 6 and the firearm specifications attached thereto.

For purposes of sentencing former Sandusky County Court of Common Pleas Judge Roger Hafford ("Judge Hafford" hereinafter) had two choices with relation to the firearm specifications attached to Counts 1, 2, 3, 4, 5, and 6.

First, Judge Hafford could make a determination that the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction and therefore the firearm specifications attached to each of those Counts must be merged pursuant to R.C. 2929.14(D)(1)(b) which provides: "[a] court shall not impose more than one prison term on an offender for multiple firearm specifications if the underlying felonies were committed as part of the same act or transaction."

The second choice Judge Hafford had was to make a determination that the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were not committed as part of the same act or transaction in which case Judge Hafford had a mandatory duty to impose a separate three (3) year mandatory term of

imprisonment for each of those firearm specifications, because only then would the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6 be properly disposed of.

Crim.R. 32(C)'s requirement for "the sentence" is a requirement for the sentence prescribed by law for every charge and firearm specification which a Defendant is found guilty of.

An inspection of the record in this case including the sentencing portion of the transcripts (Supp. p. 2) and the judgment entry of conviction and sentence dated October 29, 2008 (App.p. 8) clearly shows that Judge Hafford never found that the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction, absent that determination being made, Judge Hafford was required to impose the sentence prescribe by law for each of the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6, because that's what the law called for, thus, as it stands the judgment entry of conviction and sentence dated October 29, 2008 (App.p. 8) does not fully comply with Crim.R. 32(C)'s requirement for "the sentence" where the three (3) year mandatory term of imprisonment required for each of the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6 is not included in the entry, because although a court has the discretion to suspend a sentence, a court cannot refuse to impose sentence altogether. **State v. Ford**, 9th Dist. No. 23269, 2006-Ohio-6961, at ¶ 6

It could also be said that Judge Hafford never determined that the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were not committed as part of the same act or transaction and therefore Judge Hafford was without authority to proceed in any manner with relation to the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6, because without determining that:

(1) the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction; or

(2) the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were not committed as part of the same act or transaction Judge Hafford could have no clue as to what the law required, either that the firearm specifications should have merged or should not have merged.

It would seem then, before a judgment entry of conviction and sentence which fully complies with Crim.R. 32(C) can be issued in Relator's criminal case there must be a limited hearing conducted to determine whether or not the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction because only then will it become clear what judgment the law requires in Relator's criminal case, i.e., a separate sentence for each of the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6, or the firearm specifications attached to Counts 1, 2, 3, 4, 5, and 6 merged, and only then can the Court pronounce the judgment required by law and thereafter cause a judgment entry of conviction and sentence to be issued which includes a sentence for and/or properly disposes of every firearm specification which Relator was found guilty of as required by Crim.R. 32(C) and well settled Ohio precedent. **State v. Crawford**, 2009 WL 1090051 (Ohio App. 8 Dist.), 2009-Ohio-1880, ¶3 (“journal entry must contain a complete history of the appellant's means of conviction and disposition of each count and specification.”) (internal quotation marks omitted). See, also, **State v. Deshich**, 9th Dist. No. 2952-M, 2000 WL 141023 (Feb. 2, 2000) (“[T]he failure of an entry to dispose of the court's ruling as to each prosecuted charge renders the order of the trial court merely interlocutory.”)

REMEDY TO CURE ERROR
INCURRED HEREIN

In accordance with Ohio law, Judge Hafford was in fact required to: (1) impose a separate three (3) year mandatory term of imprisonment for each of the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6; and/or (2) make a determination that the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction and thereafter merge the firearm specifications attached to those Counts; and (3) issue a judgment entry of conviction and sentence which included the imposition of a proper disposition for each of the firearm specifications attached to Counts 1, 2, 3, 4, 5, and 6 which Relator was found guilty of.

The Respondent cannot simply issue a “nunc pro tunc” entry to correct the error incurred

herein, instead the Respondent must first vacate the judgment entry of conviction and sentence dated October 29, 2008 (App.p. 8) and thereafter conduct a limited hearing at which time Respondent must determine that:

(1) the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were committed as part of the same act or transaction and thereafter actually merge the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6; or

(2) the underlying felonies, i.e, Counts 1, 2, 3, 4, 5, and 6 were not committed as part of the same act or transaction and thereafter actually impose a separate three (3) year mandatory term of imprisonment for each of the firearm specifications attached to Counts 1, 2, 3, ,4, 5, and 6, because only then will any resulting judgment entry reflect the truth of the proceedings. “[N]unc pro tunc entries are limited in proper use to reflecting what the court actually decided, not what the court might or should have decided.” **State ex rel. Mayer v. Henson**, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 14, quoting *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158, 164, 656 N.E.2d 1288. “All courts have a clear legal duty to have their journals reflect the truth. All litigants have a clear legal right to have the proceedings they are involved in correctly journalized.” **State ex rel. Worcester v. Donnellon** (1990), 49 Ohio St.3d 117, 119, 551 N.E.2d 183, 185.

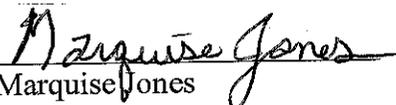
CONCLUSION

Based on all of the foregoing, a lawful judgment has not been pronounced in regards to each of the firearm specifications attached to Counts 1, 2, 3, 4, 5, and 6 which Relator was found guilty of and no judgment entry of conviction and sentence which fully complies with Crim.R. 32(C), and constitutes a final appealable order, has been issued in Relator's criminal case. No valid excuse can be given by Respondent for not issuing a proper final and appealable judgment. See, e.g., **State ex rel. Scott v. Dewey**, 2010 WL 1223910 (Ohio App. 6 Dist.), 2010 -Ohio- 1362, ¶5 (“Pursuant to R.C. 2731.06, and because it is apparent that no valid excuse can be given by respondent for not issuing a proper final and

appealable judgment, this court issues a peremptory writ of mandamus...”). As such, Relator is entitled to relief, i.e., to be taken before the Sandusky County Court of Common Pleas to have a lawful judgment pronounced in regards to each of the firearm specifications attached to Counts 1, 2, 3, 4, 5, and 6 in his presence, as required by Crim.R. 43(A), in **State v. Jones**, Sandusky County Court of Common Pleas Case No. 08CR208, and to have issued a judgment entry of conviction and sentence that fully complies with Crim.R. 32(C) and constitutes a final appealable order. “[P]rocedendo and mandamus will lie when a trial court has refused to render, or unduly delayed rendering, a judgment.” **State ex rel. Reynolds v. Basinger**, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶5. See, also, **State ex rel. Culgan v. Medina Cty. Court of Common Pleas**, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, ¶¶9-11. **State v. Gilmer**, 160 Ohio App.3d 75, 2005-Ohio-1387, 825 N.E.2d 1180, ¶5

Wherefore, the facts alleged being uncontrovertible and showing beyond doubt that the Relator is entitled to relief as a matter of fact as well as law, the Relator respectfully requests this Court to issue a Peremptory Writ of Mandamus and/or Procedendo compelling the Respondent to cause the Relator to be brought before the Sandusky County Court of Common Pleas without unnecessary delay and to then and there proceed to a final judgment in **State v. Jones**, Sandusky County Court of Common Pleas Case No. 08CR208, and to issue a judgment entry which fully complies with Crim.R. 32(C) and constitutes a final appealable order .

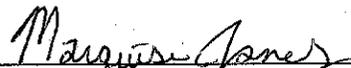
Respectfully submitted,


Marquise Jones
#A554 678
1150 N. Main Street
Mansfield, Ohio 44901

APPELLANT- RELATOR, PRO SE

CERTIFICATE OF SERVICE

I, Marquise Jones, do hereby certify that a true copy of the foregoing MERIT BRIEF OF APPELLANT MARQUISE JONES with attached SUPPLEMENT TO MERIT BRIEF OF APPELLANT MARQUISE JONES was sent via regular U.S. Mail pre-paid postage to counsel for Appellee, Tom Stierwalt, Sandusky County Prosecutor, at Sandusky County Prosecutor's Office 100 N. Park Ave., Fremont, Ohio 43420 on this 29 day of September 2011.



Marquise Jones #A554 678

APPELLANT- RELATOR, PRO SE

IN THE SUPREME COURT OF OHIO

11-1517

STATE OF OHIO, ex rel.,
MARQUISE JONES

*

Appellant-Relator,

*

On Appeal from the Sandusky County Court
of Appeals, Sixth Appellate District

v.

*

Court of Appeals Case No. S-11-024

JUDGE BARBARA J. ANSTED

*

Appellee-Respondent.

*

NOTICE OF APPEAL OF APPELLANT MARQUISE JONES

Marquise Jones #A554-678
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Mansfield, Ohio 44901

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COUNSEL FOR APPELLEE, SANDUSKY COUNTY
COURT OF COMMON PLEAS JUDGE BARBARA Jpeals of Ohio,
Ninth District, . ANSTED

SANDUSKY COUNTY
COURT OF APPEALS
FILED

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CLERK OF COURT
SUPREME COURT OF OHIO

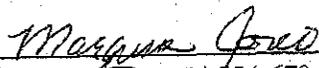
App. p. 1

Notice of Appeal of Appellant Joseph Foster

Appellant Marquise Jones #A554-678 hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Sandusky County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. S-11-024 on July 25, 2011.

This case originated in the Sandusky County Court of Appeals, Sixth Appellate District, on an original action in Mandamus and/or Procedendo.

Respectfully submitted,



Marquise Jones #A554-678
APPELLANT - PRO SE

CERTIFICATE OF SERVICE

I, Marquise Jones #A554-678 do hereby certify that a true copy of this Notice of Appeal, with attached Affidavit of Indigency, was sent via ordinary U.S. Mail to counsel for Appellee, Thomas Stierwalt, Sandusky County Prosecutor, Sandusky County Prosecutor's Office, 100 N. Park Ave., Fremont, Ohio 43420 on this 30 day of Aug. 2011



Marquise Jones #A554-678
APPELLANT - PRO SE

SANDUSKY COUNTY
COURT OF APPEALS
FILED
JUL 25 2011

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio, ex rel. Marquise Jones

Court of Appeals No. S-11-024

Relator

v.

Judge Barbara J. Ansted

DECISION AND JUDGMENT

Respondent

Decided:

JUL 25 2011

Marquise Jones, pro se.

OSOWIK, J.

Relator, Marquise Jones, has filed a petition for a writ of mandamus against respondent, Judge Barbara J. Ansted, judge of the Sandusky County Court of Common Pleas. The underlying facts, taken from the trial court's record, are as follows. In 2008, appellant was convicted, following a jury trial, of six felony offenses¹ in connection with

¹Appellant was originally charged with 17 separate offenses.

FAXED

1.

State of Ohio, Sandusky County, SS:
I hereby certify that this is a true copy of
the original document shown to me in my
office this 25th day of July
2011.

TRACY M. OVERMYER
Sandusky County Clerk of Courts
By: *[Signature]*
Deputy Clerk

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App. p. 3

an orchestrated, armed assault and robbery that took place in Fremont, Ohio. In its judgment entry of sentencing issued on October 28, 2008, the trial court stated that each of those six offenses carried a firearm specification, and sentenced appellant to serve a total of 21 years in prison. Relator asserts in his petition that he should have been sentenced separately for each of the six firearm specifications; however, the sentencing judgment entry stated that relator's 21-year sentence included "a MANDATORY term of THREE (3) YEARS for the firearm specification."

In support of his petition, relator argues that the sentencing order is not final and appealable because, pursuant to Crim.R. 32(C), he should have been separately sentenced for each of the firearm specifications attached to his six felony convictions. Relator now asks this court to issue a writ of mandamus and/or procedendo, pursuant to R.C. Chapter 2731, ordering respondent to issue a corrected "judgment entry of conviction and sentence that fully complies with Criminal Rule 32(C) and constitutes a final appealable order." Attached to relator's petition is a memorandum in support, an "Affidavit of Verity," an affidavit pursuant to R.C. 2969.25(A) stating that he has not filed any civil actions or an appeal from a civil action in the previous five years, an affidavit of indigency, the trial court's judgments of conviction and sentencing, and a portion of the transcript from his sentencing hearing held on October 27, 2008.

Relator also states that on March 14, 2011, he filed a motion asking respondent to issue a judgment entry in compliance with Crim.R. 32(C). In addition to the above

attachments, relator has attached to his petition a copy of a judgment entry issued by respondent on March 29, 2011, in which respondent stated:

"Upon consideration of the Motion and the Response filed by the State of Ohio, the court finds the Motion not well taken and is hereby denied for the reason that a firearm specification is merely a sentencing enhancement, not a separate offense that would require vacating the prior sentence."

Pursuant to Crim.R. 32(C), "[a] judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. * * *" See, also, *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. (In a criminal case, a final, appealable order must have: "(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." *Id.* at syllabus.) In order to obtain a remedy for an allegedly improper order that lacks any of above-stated requirements, a defendant must first file a motion in the trial court seeking correction of the judgment entry. If such a request is refused, the defendant may seek to compel the trial court to act by filing an action for mandamus or procedendo. *State ex rel. Moore v. Krichbaum*, 7th Dist. No. 09 MA 201, 2010-Ohio-1541, ¶ 9, citing *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, ¶ 8.

A writ of procedendo will not issue from a superior court to compel a lower court to make a specific ruling, or where an adequate remedy at law exists. *State ex rel. Lisboa v. Gold*, 8th Dist. No. 96164, 2011-Ohio-2666, ¶ 2, citing *State ex rel. Utley v. Abruzzo*

(1985), 17 Ohio St.3d 202, and *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597.

Because we cannot compel respondent to make a specific finding that relator's sentence was improper, a writ of procedendo will not issue in this case. We will next consider whether relator is entitled to a writ of mandamus.

"A writ of mandamus is an order to a public officer, to perform an act which the law specifically enjoins as a duty resulting from his office. R.C. 2731.01. In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law." *State ex rel. Hodges v. Taft* (1992), 64 Ohio St.3d 1, 3, citing *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41.

R.C. 2929.14(D)(1)(b) states that "a trial court shall not impose more than one prison term for multiple firearm specifications if the specifications involve the same 'act or transaction.'" *State v. Young*, 2d Dist. No. 23642, 2011-Ohio-747, ¶ 53. "Same act or transaction does not have the same meaning as course of criminal conduct." *State v. Walker* (June 30, 2000), 2d Dist. No. 17678. For purposes of R.C. 2929.14(D)(1)(b), the phrase "means a series of continuous acts bound together by time, space and purpose, and directed toward a single objective." *State v. Young*, supra, at ¶ 54, quoting *State v. Walker*, supra.

Appellant does not claim that all of his convictions did not arise out of the "same act or transaction." Accordingly, we find no basis on which to conclude that respondent erred by merging the six firearm specifications for purposes of sentencing.

On consideration of the foregoing, we find that respondent is under no clear legal duty to do the act requested in relator's petition for mandamus. This mandamus action is dismissed at relator's costs.

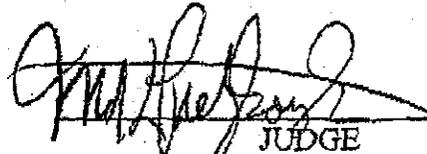
It is so ordered.

WRIT DENIED.

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.

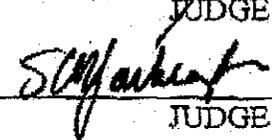
Stephen A. Yarbrough, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This 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/newpdf/?source=6>.

IN THE COURT OF COMMON PLEAS OF SANDUSKY COUNTY, OHIO

The State of Ohio)	
)	
Plaintiff)	CASE NO. 08CR208
)	
vs.)	JUDGMENT ENTRY
)	
Marquise I. Jones)	October 27, 2008
)	
Defendant)	

2008 OCT 23 11:31:12

CLERK

SANDUSKY COUNTY

Sentencing
Jury
Entry

On this 27th day of October 2008, came Assistant Prosecuting Attorney John P. Kolesar, on behalf of the State of Ohio, and the Defendant, with his court-appointed counsel, Terry J. Dunn, for sentencing, the Defendant having previously been found **GUILTY** by a Jury of the offenses of **COMPLICITY TO COMMIT AGGRAVATED ROBBERY** (with firearm specifications), as charged in Counts One, Two, Three, Four, Five, Six, Seven, Ten and Eleven of the Amended Indictment, Violations of R.C. 2911.01(A)(1) and R.C. 2923.03, Felonies of the First Degree; and also having previously been found **GUILTY** by a Jury of the offenses of **COMPLICITY TO COMMIT FELONIOUS ASSAULT** (with firearm specifications), as charged in Counts Thirteen, Fourteen and Fifteen of the Amended Indictment, violations of R.C. 2903.11(A)(2) and 2923.03, Felonies of the Second Degree; and also having previously been found **GUILTY** by a Jury of the offenses of **COMPLICITY TO COMMIT ROBBERY** (with firearm specifications), as charged in Counts Eight and Twelve of the Amended Indictment, violations of R.C. 2911.02(A)(2) and R.C. 2923.03, Felonies of the Second Degree; and also having previously been found **GUILTY** by a Jury of the offense of **COMPLICITY TO COMMIT AGGRAVATED BURGLARY** (with a firearm specification), as charged in Count Seventeen of the Indictment, a violation of R.C. 2911.11(A)(2) and 2923.03, a Felony of the First Degree; and also having been previously found **GUILTY** by a Jury of the offense of **COMPLICITY TO COMMIT ROBBERY** (with a firearm specification), as charged in Count Nine of the Amended Indictment, a violation of R.C. 2911.02(A)(3) and R.C. 2923.03, a Felony of the Third Degree; and having also been previously found **GUILTY** by a Jury of the offense of **THEFT**, as charged in Count Sixteen of the Amended Indictment, a violation of R.C. 2913.02(A) and R.C. 2923.02, a Felony of the Fifth Degree.

A member of one of the victim's family was given an opportunity to address the Court.

Counsel for the Defendant, the Defendant, and Pastor C.J. Burel were given the opportunity to address the Court in mitigation of punishment.

~~XXXXXXXXXX~~

10/28/08 [Signature]

The Court finds that the Defendant is not amenable to Community Control, and it is therefore ordered, adjudged and decreed that the Defendant be, and hereby is, sentenced to the control, care and custody of the Ohio Department of Rehabilitation and Correction for a term of **THREE (3) YEARS** on each of Counts One, Two, Three, Four, Five and Six, said sentences to be served **CONSECUTIVELY**, and is also sentenced to a **MANDATORY** term of **THREE (3) YEARS** for the firearm specification, said sentence to be served **CONSECUTIVELY** to the previously imposed sentences, for a total of **TWENTY ONE (21) YEARS**.

For purposes of sentencing, the following Counts in the Amended Indictment are merged:

Counts Seven and Thirteen merge with Count One;
Count Eight merges with Count Two;
Count Nine merges with Count Three;
Counts Ten and Fourteen merge with Count Four;
Counts Eleven and Fifteen merge with Count Five;
Count Twelve merges with Count Six;
Counts Sixteen and Seventeen merge with Counts One through Six.

As of the date of sentencing, the Defendant is entitled to **66 DAYS** credit against the sentence imposed.

The Court advised the Defendant that, under federal and state law, persons convicted of felonies can **NEVER** lawfully possess a firearm. The Court advised the Defendant that if he is ever found with a firearm, even one belonging to someone else, he will be prosecuted by federal authorities and subject to imprisonment for several years.

The Court advised the Defendant that he is subject to the provisions of R.C. 2901.07(B), which requires all persons who are convicted of or plead guilty to a felony offense to submit to DNA specimen collection procedures.

The Court advised the Defendant that when he is released from prison the Parole Board will impose post release control for a period of five years, and that any violation of the conditions of post release control may, at the option of the Parole Board, result in the imposition of a residential sanction, which may include a new prison term, of up to one-half of the stated prison sentence imposed.

The Court advised the Defendant that if the violation of the terms of post release control involves commission of a new felony, the Court which imposes sentence for the new felony may also impose an additional prison sentence for this violation of post release control, which sentence must be served consecutively to any sentence imposed for the new felony. This additional prison sentence will be equal to the amount of time remaining on post release control, or twelve

OHIO VS. JONES -- 3-- CASE NO. 08CR208

The Court advised the Defendant of his right to appeal, that an attorney will be appointed to represent him, that all necessary documents required to perfect an appeal will be provided at no expense and that a timely Notice of Appeal will be filed on his behalf.

Ron O. Nisch, Esq., 428 Fremont Road, Port Clinton, Ohio, is hereby appointed to represent the Defendant for appeal.

The Sheriff shall transport the Defendant to the Reception Center, Grafton, Ohio, for execution of sentence.



ROGER W. HAFFORD, Judge

Copies to: Prosecuting Attorney
Community Control
Terry J. Dunn, Esq.
Sheriff
Ron O. Nisch, Esq.

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO, ex rel.,
MARQUISE JONES**

*

Case No. 11-1517

Appellant-Relator,

*

v.

*

**JUDGE BARBERA J. ANSTED,
JUDGE OF SANDUSKY COUNTY
COURT OF COMMON PLEAS**

*

On Appeal From the Sandusky County Court of
Appeals, Sixth Appellate District

*

Appellee-Respondent.

SUPPLEMENT TO MERIT BRIEF OF APPELLANT MARQUISE JONES

Marquise Jones #A554 678
Mansfield Correctional Inst.
1150 N. Main St.
Mansfield, Ohio 44901

APPELLANT-RELATOR, PRO SE

Tom Stierwalt
Sandusky County Prosecutor
Sandusky County Prosecutor's Office
100 N. Park Ave.
Fremont, Ohio 43420

**COUNSEL FOR APPELLEE-RESPONDENT, SANDUSKY COUNTY
COURT OF COMMON PLEAS JUDGE BARBERA J. ANSTED**

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IN THE COMMON PLEAS COURT OF SANDUSKY COUNTY, OHIO
CRIMINAL DIVISION

SANDUSKY COUNTY
COMMON PLEAS COURT
2011 MAR 29 PM 3:08
TRACIA D. DEERHAYER
CLERK

STATE OF OHIO,

Plaintiff

v.

MARQUISE JONES,

Defendant

Case No. 08 CR 208

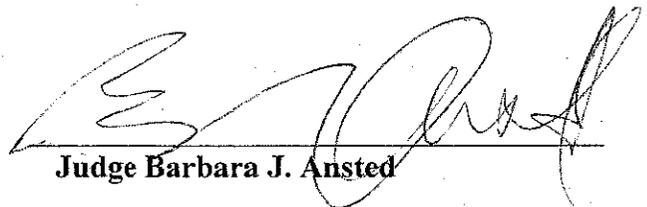
JUDGMENT ENTRY

* * *

This case came before the Court this day upon a Motion filed by the defendant to Issue a new sentencing Judgment Entry by vacating the prior sentencing order and re-sentencing the defendant due to the fact that all the firearm specifications were not addressed in the prior entry.

Upon consideration of the Motion and the Response filed by the State of Ohio, the Court finds the Motion not well taken and is hereby denied for the reason that a firearm specification is merely a sentencing enhancement, not a separate offense that would require vacating the prior sentence.

IT IS SO ORDERED



Judge Barbara J. Ansted

cc: Prosecuting Attorney
Defendant Marquise Jones

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Sentance transcript

SANDUSKY COUNTY COURT OF APPEALS FILED

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IN THE COMMON PLEAS COURT OF SANDUSKY COUNTY, OHIO

STATE OF OHIO **WARREN P. BROWN**
 Clerk
 Plaintiff,) C. A. No. S-08

vs.) C. P. No. 08CR

MARQUISEE JONES) **SENTENCING**

Defendant)

SANDUSKY COUNTY
 COMMON PLEAS COURT
 FILED
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 WARREN P. BROWN
 CLERK

The testimony in the above-captioned case was taken from audio tape by me, Sally J. Turner, Court Reporter, and Notary Public in and for the State of Ohio, at the Sandusky County Courthouse, 100 N. Park Avenue, Fremont, Ohio 43420 on October 27, 2008; The Honorable Roger W. Hafford, presiding.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

John Kolesar, Esq.
Asst. County Prosecutor

ON BEHALF OF THE DEFENDANT:

Terry Dunn, Esq.

[Handwritten signature]

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1 THE COURT: We're back on the record in
2 08CR208, State of Ohio versus Marquise Jones coming
3 on today for sentencing.

4 Mr. Prosecutor, would you like to address
5 the Court?

6 MR. KOLESAR: Your Honor, just briefly.

7 The Court is well familiar with the facts
8 in this case. I would also mention that the
9 Defendant does have a juvenile record, which
10 included drug trafficking and I know he did spend
11 some time in a treatment facility.

12 The Court is aware of the sentences that
13 were given in the other cases and I would remind the
14 Court that these are all felony ones. From the
15 perspective of the State, the Court would sentence
16 on the first six counts and the rest of the counts
17 should merge and there's a three-year firearms
18 specification.

19 Finally, Your Honor, we have three victims
20 here in the courtroom although there will just be
21 one statement from their representative and I would
22 ask that she be permitted to come up.

23 THE COURT: Who is that?

24 MR. KOLESAR: It is Martha Nieto.

25 THE COURT: Yes, come all the way up.

1 This is Mrs. Nieto?

2 MR. KOLESAR: Yes.

3 THE COURT: Candelario's wife?

4 MRS. NIETO: Good morning.

5 THE COURT: Good morning, ma'am.

6 MRS. NIETO: My name is Martha Nieto, I am
7 the wife of one of the victims. My husband has
8 suffered very much from the incident. He has
9 headaches all the time, he is losing the function in
10 his arm. He was life-flighted -- and as you can see
11 it is very emotional and very hard for all of us to
12 get through all of this.

13 My husband and his friends were the
14 victims of the physical part of this incident, but
15 we also are victims, his family, his children, his
16 wife. Your family (inaudible) also. They're going
17 through what, possibly what I'm going through. I
18 don't know because I have not spoke with your
19 mother. But I know they are hurting just like we
20 have, emotionally and physically and mentally,
21 because we all have to go through this and we all
22 have to live with the what happened now.

23 All we ask that we be left in peace. Let
24 us go our way and you guys go your way and, you
25 know. Try to live to go like we did before. We

1 never had problems before.

2 My children are very hurt by what has
3 happened. They don't know and they don't understand
4 why. They are having problems also, emotional
5 problems because of all their -- they see what their
6 dad is going through, they see what I'm going
7 through.

8 And some of the other victims asked me if
9 I could also address to you, Judge, that all they
10 want to do is be left in peace and let them go on
11 with their lives.

12 THE COURT: Let me interrupt you,
13 Mrs. Nieto.

14 MRS. NIETO: Yes, sir.

15 THE COURT: You have made a couple
16 references to being able to be left alone.

17 MRS. NIETO: Yes, sir.

18 THE COURT: This incident happened back in
19 December, December 31st. Have there been any
20 problems since then?

21 MRS. NIETO: No, sir.

22 THE COURT: So there's been no --

23 MRS. NIETO: No.

24 THE COURT: -- threats or anything of that
25 nature?

1 MRS. NIETO: No. There was just the one
2 -- there were just some remarks made on Wednesday
3 evening that this was not the end of it. I don't
4 know who made the statements because I was here
5 inside. My daughters heard the statements, but like
6 I said, I don't know who made the statements. And
7 Mr. Jimenez, his sister called me because he said
8 that when they were bringing him from the jail to
9 the Courthouse, that he was threatened and that we
10 were all threatened at that point, but I cannot --

11 THE COURT: You say Mr. Jimenez was --

12 MRS. NIETO: He was one of the victims.

13 THE COURT: In Tiffin and he was
14 (inaudible) and he was threatened on the way here?

15 MRS. NIETO: Yes, sir, from the Sandusky
16 County Jail to here.

17 THE COURT: And you weren't personally
18 threatened?

19 MRS. NIETO: Personally, no, I was not.

20 THE COURT: And none of your family was
21 threatened?

22 MRS. NIETO: No, sir.

23 THE COURT: And the most interesting
24 comment you personally heard was somebody in the
25 audience said "this is not over"?

1 MRS. NIETO: Right. One of my children
2 heard that, I did not.

3 THE COURT: Okay.

4 MRS. NIETO: And all we want to do is be
5 left in peace now at this point. Thank you.

6 THE COURT: Any other victims, Mr.
7 Kolesar? Just Mrs. Nieto?

8 MR. KOLESAR: No other statements, Your
9 Honor.

10 THE COURT: Okay. Mr. Dunn?

11 MR. DUNN: Thank you, Your Honor.

12 What the evidence that we heard during the
13 trial of this case made clear is that this incident
14 was being planned throughout that day. There were
15 four people involved, six people involved in its
16 original planning, but what's clear is that Marquise
17 was not among that group of people. No one
18 testified that he had anything to do with the
19 planning of this case.

20 There seems to be a gap in the evidence of
21 exactly what happened, but I think it's clear at
22 some point he was home. He and his brother were at
23 home that day. And based on the evidence again that
24 was presented, it appears that he got or they got a
25 phone call and that phone call must have been in the

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nature of, we need more guys. I don't know if that's what happened, but I'm just indicating, based on the evidence, that that seems like the only way that this could have gone down.

I think what's also important is that there was only evidence given by one witness and I think the Court is immanently aware of the questionable candor of that witness who indicated that Marquise had anything to do with there being guns involved in this incident. I don't think the evidence supports that -- certainly, the evidence supports that there were guns involved, but I don't think it supports the idea that Marquise brought the guns to this incident. There were guns there, but there was no good evidence that he brought them.

So I think that even based on the evidence the Court can look at who played what roles in this entire thing and I think it's clear that Marquise's role, based on the evidence that we heard, was significantly less than other people who have been before this Court already.

And as Mr. Kolesar indicated, the Court's aware of the sentences those people are serving and I would ask the Court to view Marquise with an eye toward his level of culpability in this entire

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1 affair weighed against the culpability of others who
2 have come before the Court and who have been
3 sentenced and to -- the Court can fashion a sentence
4 in a way that it takes away any motivation Marquise
5 has to make himself a better person or it can
6 sentence him in a fashion that motivates him to be
7 better. People can get better. They can make
8 themselves better humans in prison and the Court
9 could fashion a sentence and we would ask the Court
10 to fashion a sentence that gives him some
11 motivation, gives him a reason to go to the
12 institution and get his GED, to get drug and alcohol
13 counseling if that's what he needs, to get anger
14 management counseling. I have a client now who is
15 just finishing his college degree in prison, but he
16 was given a sentence that motivated him to make
17 himself better and we would ask the Court to do that
18 in this case.

19 Marquise is only 19 years old, Judge, and
20 as Mr. Kolesar indicated, he's been through the
21 juvenile justice system here in Sandusky County. He
22 went through the school system here in Sandusky
23 County and I don't know where this kid was failed,
24 Your Honor, but he was failed somewhere along the
25 line. I didn't represent him in his juvenile

1 justice cases, so I can't speak to every detail
2 about what happened there, but certainly this is a
3 situation that seems to me that someone should have
4 caught and done something to help this young man
5 before now. Again, it wasn't the school system, it
6 wasn't his family, it wasn't the juvenile justice
7 system, the only thing we're sure about is it's
8 partially his own fault, he failed himself.

9 I'm sure that other people gave him
10 opportunities that he didn't take advantage of, but
11 as this Court is aware, not all young guys do that.
12 And so it requires follow-up and that they be pushed
13 and forced into making themselves better sometimes,
14 especially at a very young age like that and I'm
15 just not sure that was done in this case with this
16 young man.

17 I would ask the Court to consider all
18 those factors and issue a sentence appropriate with
19 that. And I know there is one individual who would
20 like to speak on behalf of the Defendant's family as
21 well.

22 THE COURT: Good morning, CJ.

23 REV. BUREL: Good morning, Your Honor. My
24 name is Reverend CJ Burel, I'm the pastor of
25 Ebenezer Church of God and Christ, which Marquise is

1 a member of and his family is a member of.

2 I haven't been able to be here during the
3 trial and I know sentence has already given, but I
4 kept close contact with what was going on through
5 the family and also through my wife and first of
6 all, I would like to say that, you know, I felt like
7 Marquise was not given a fair shake when he came to
8 jury selection because I think the law states that
9 you should be tried by jurors of your peers and to
10 my knowledge, there was no African American people
11 on the jury and definitely, right there, that's one
12 strike against him, a jury of his peers.

13 Secondly, I think there was too much
14 conflicting evidence for him to be convicted of all
15 the charges that he was convicted on. I think, I
16 know it's beyond a reasonable doubt, but he needed
17 to have somebody that can definitely identify what's
18 going on. I mean, there's been too many people that
19 have been -- and I have faith and trust in the jury
20 system and in the law enforcement system. I respect
21 people in authority, I've been taught that all my
22 life, but one thing that bothered me and this is
23 personally bothering to me that during this trial,
24 my wife was threatened to be put in jail if she did
25 not exit the Court system, give me the opinion of a

1 man and a husband that if you wear that badge to
2 bully people, then you're less of a man and you have
3 no business wearing that badge.

4 UNKNOWN VOICE: Amen.

5 REV. BUREL: I feel that also that, yes,
6 Marquise did get into a bad situation and I do feel
7 that people should be punished for that. I did
8 watch that TV show, *Grown Up Already*, if you don't
9 want to do the time, don't do the crime. But I also
10 believe that justice should be just what it says it
11 is, justice and not a bully session.

12 UNKNOWN VOICE: Amen.

13 REV. BUREL: Also one of the officers left
14 the mother know that Marquise got convicted on all
15 the charges before the statement was read. I don't
16 think that should have been done. I think that was
17 not something that is the way that should have been
18 done.

19 Like I say, I respect our law enforcement
20 system. I've always done that. I have been for the
21 law. I've even in my years of school coached some
22 of the officers that are even in the courtroom today
23 and I do have high respect for them, but they are
24 already in a position of authority, you don't need
25 to bully and buffalo people, but you can show your

1 authority.

2 So I think that there were some things in
3 this trial were not as it should have been and I
4 think that you need to really take into
5 consideration that this is a young man.

6 There have been people who have taken
7 people's lives that maybe not are going to get --
8 but have not got as much time as maybe Marquise, as
9 you plan to give Marquise. Yes, we want Marquise to
10 learn, we want Marquise to turn his life around, but
11 we want Marquise -- and the lawyer said also that
12 maybe we have failed Marquise.

13 Well, Marquise is still alive and he's
14 still here and I have sympathy for the injuries that
15 were inflicted upon the families and the other
16 people, but I think that we should really surround
17 Marquise, even if it does take for -- Marquise has
18 stayed in my house and there was times when I put my
19 foot down on Marquise when he was in my house,
20 because I took him as one of my boys also because of
21 the relationship I have with this family.

22 And I feel at this point and at this stage
23 not (inaudible) if he is guilty of any charge that
24 he must get, but I believe we need to have some
25 people surround Marquise and correct where we have

1 failed. We have failed at opportunities, but
2 we have not failed with life with Marquise and I
3 think we need the opportunity to surround Marquise
4 with some help love from us to let him know there is
5 a better way. Thank you for your time.

6 THE COURT: Thank you, CJ. CJ, I would
7 like -- is Dolores here today?

8 REV. BUREL: No, she is not.

9 THE COURT: I would like you and Dolores
10 to come back and visit me at your convenience so
11 we can discuss some of the things that you said
12 about the officers here. Okay? That needs to be
13 addressed.

14 Unfortunately, for Marquise, you and I
15 should have had this conversation two years ago when
16 he was 17, or four years ago when he was 15. I'm
17 clearly in a box as far as -- I understand what
18 you're saying and I would love to be able to go
19 along with what you're saying, but we'll address
20 some of the things that you said here. As far as
21 there being no African Americans on the jury, you
22 understand the way our system works. Somebody
23 punches a button in the clerk's office and spits out
24 40 or 50 names and we randomly call them. And I've
25 heard, you know, I sat through a three-day jury

1 trial of Amy Hall and I heard all that testimony. I
2 sat through a three-day trial with Marquise.

3 There is no question in my mind that if we
4 had twelve African jurors on that jury, they still
5 would find him guilty of all 17 counts had they been
6 able to hear all the statements that I have.

7 Mr. Kolesar, for some very logical
8 reasons, was not going to put Amy Hall back on the
9 stand, okay, and obviously, wasn't going to put
10 Daniel Elkins back on the stand. But Marquise's
11 brother didn't want to testify, which I certainly
12 understand. I don't hold anything against Traveon
13 for not wanting to testify against his brother. But
14 there is absolutely no question in my mind that if
15 you and 11 other African Americans were sitting in
16 that jury box and heard all the the evidence from
17 day one, you still would find him guilty of all 17
18 counts.

19 So the idea that -- I mean the only
20 solution I have for you is get more African
21 Americans to get registered to vote so they are on
22 the jury list. But it's -- you are never going to
23 change the demographics of Sandusky County. African
24 Americans are always going to be a minority and
25 therefore, statistically, when we pull those names

1 out of a hat, we're always going to end up with more
2 white people than black people. But this is not a
3 case where Marquise didn't get a fair trial because
4 there were no African Americans.

5 REV. BUREL: May I interject something?

6 THE COURT: Yes.

7 REV. BUREL: Your Honor, it was brought to
8 my attention that one of the officers that was
9 directly involved with this case had a relative on
10 the jury.

11 THE COURT: Okay, and you and Dolores come
12 talk to me and we'll talk about all these things and
13 that, the items that you and I are going to talk
14 about are personal items and they certainly, they
15 absolutely have to be discussed, they have to be
16 addressed, but what we're here today is to sentence
17 Marquise and maybe more importantly, try to figure
18 out how we don't get in this situation again.

19 REV. BUREL: Right.

20 THE COURT: Unfortunately, his fate was
21 probably cast the day I sentenced Amy Hall. I have
22 to be consistent in my sentencing regardless of the
23 color of the Defendant.

24 REV. BUREL: I'm not interjecting that at
25 the moment, Your Honor, but I just feel like

1 according to the law where it states people of your
2 peers and in my estimation people that look like me,
3 you know.

4 THE COURT: Let me ask this: CJ, when was
5 your first contact with Marquise?

6 REV. BUREL: As far as?

7 THE COURT: Yeah.

8 REV. BUREL: You know, I --

9 THE COURT: I know you, I know other
10 people in the community, people talk to me, they
11 talk to me about him. I'm going to read you a line,
12 this is out of (inaudible) which is a treatment
13 center for juveniles that got caught selling drugs,
14 you understand he was caught selling drugs as a
15 juvenile two or three times?

16 REV. BUREL: Yes.

17 THE COURT: "He has a very limited set of
18 life expectations." That's one of the things they
19 said about him. "His experiences have been
20 primarily around those involved with either drug use
21 or sales. He demonstrates the traits normally
22 associated with this group. These traits include
23 minimizing personal responsibility, manipulation,
24 distrust of authority figures and disregard for
25 behavioral legal boundaries. From our understanding

1 Marquise was a wonderful, wonderful athlete." Is
2 that your understanding?

3 REV. BUREL: Most definitely.

4 THE COURT: I have been told by
5 (inaudible) Wolenslagle that he was the best
6 football player he ever saw in junior high. I have
7 been told by Bobby Dorsey, Bobby Atkins, he is one
8 of the best boxers.

9 REV. BUREL: That's so.

10 THE COURT: You and I know how Fremont
11 works. If there is an exceptional athlete, people
12 will take care of him. What happened? I mean if
13 you were as good as everybody tells me you were as
14 good as, I want to know where we as a community
15 failed you?

16 REV. BUREL: I feel that there can be
17 athletes that can be that good, but as you know,
18 here in Fremont there is a social game that you play
19 to get taken care of also.

20 THE COURT: Right.

21 REV. BUREL: You have to sometimes what we
22 say outside of the courtroom, "kiss up to people"
23 and Marquise never did that, he was a good kid and a
24 good athlete and he should have been given some
25 opportunities and he was told that he was going to

1 and the opportunity didn't come and when it was
2 asked for an explanation, there was no explanation
3 given other than I can do what I want to do, you're
4 lucky I have you where I have you. I heard that
5 from one coach myself, so there are some things that
6 some kids states that others don't and like I said,
7 I heard that explanation. I'm a coach too,
8 Marquise, and when a kid keeps hearing that, when he
9 is told at practice all week long, you're going to
10 play on Friday night, you're going to play on
11 Saturday, we're going to give you opportunities to
12 do this. The kid prepares themselves and this is
13 what causes a lot of kids to go the other direction.
14 They prepare themselves for that opportunity, then
15 that opportunity never comes and the only
16 explanation given to them is, you're lucky to be
17 where you are. To me that's not fair.

18 If he screwed up or messed up and you
19 didn't -- I know I said I was going to do it and I
20 didn't do it, well, then tell them that, but don't
21 get on this story, well, I can do what I want to do.

22 THE COURT: You and I can talk about what
23 coaches said that but I know that in the general
24 coaching fraternity that you know, race has
25 absolutely nothing to do with who plays.

1 REV. BUREL: I didn't mention that, sir.

2 THE COURT: I know, but I'm just saying
3 that we coaches are competitive and we put the best
4 kids out there and if he is as good of an athlete as
5 everybody tells me he was, then I'm saying that
6 there were opportunities for him that he didn't take
7 advantage of.

8 REV. BUREL: I agree (inaudible) all kids
9 do that also, too, but like I said, when you're told
10 you're going to -- and maybe sometime if they would
11 keep their word, that might move that kid in the
12 right direction. Sometime my kids said, well, I
13 won't never get a chance, I really wasn't going to
14 do that so I'm just going to go on and be like
15 (inaudible) because he's not going to keep his word.
16 That's important, Your Honor.

17 THE COURT: Did Marquise go to your
18 church?

19 REV. BUREL: Yes, he did.

20 THE COURT: Regularly?

21 REV. BUREL: Not every week, but pretty
22 much so.

23 THE COURT: How about Jordan?

24 REV. BUREL: Pretty much so, the same.

25 THE COURT: Do we have the same problem

1 with Jordan?

2 REV. BUREL: (inaudible) I'm not of their
3 knowledge that we do.

4 THE COURT: Okay. Like I said, I don't
5 think there is a whole lot we can do about Marquise
6 at this point, but it seems to me that the community
7 needs to address the Jordans of the world and
8 15-year-olds of the world, the Shanequise of the
9 world. You and I can identify them.

10 REV. BUREL: Yes.

11 THE COURT: I can identify them in 7th
12 grade. And it's like by the time they get to be 19,
13 by the time they get to me, it's too late. We got
14 to get them when they are in 7th grade, we've got to
15 get them when they are in 8th grade.

16 REV. BUREL: Yeah.

17 THE COURT: So I mean he can be a learning
18 experience for Jordan, he can be a learning
19 experience for Shanequise.

20 REV. BUREL: (inaudible).

21 THE COURT: Okay. I'll see you later, CJ.

22 REV. BUREL: Your Honor, can I give him a
23 hug?

24 THE COURT: Yes.

25 THE COURT: Marquise, would you like to

1 address the Court?

2 THE DEFENDANT: No, sir. No, sir.

3 THE COURT: All right, I need to read you
4 some language, Marquise, and I'll read it to you
5 before I sentence you.

6 As a convicted felon, you can never own
7 possess or use a firearm. Under federal law a
8 person convicted of a felony can never lawfully
9 possess a firearm. So if you are ever found with a
10 firearm, even one belonging to someone else, you can
11 be prosecuted by federal authorities and be subject
12 to imprisonment for several years.

13 As a convicted felon, you are now required
14 to submit to DNA specimen collection procedure.

15 When you are released from prison, the
16 parole board may impose post-release control for up
17 to five years after you are released from prison.
18 If you violate post-release control, you can be
19 sentenced to an additional term of imprisonment for
20 up to nine months for each violation up to a maximum
21 of one-half the original sentence.

22 If the new violation is a felony, you can
23 be required to serve an additional term of
24 imprisonment of the greater of one year of the time
25 remaining under post-release control and that

1 sentence may run consecutive to the sentence for the
2 new felony.

3 You have a right to appeal. Mr. Dunn, I
4 assume Marquise would like someone appointed for him
5 to appeal this case?

6 MR. DUNN: Yes, Your Honor.

7 THE COURT: Okay, that will be done.

8 We had eight players in this and you are
9 the last and so, as Judge, I can give you an
10 overview, give everyone in the audience an overview
11 of how the system works.

12 This case is very typical as to how the
13 system works. We have one juvenile who is juvenile
14 court and my guess is not a lot happens to her.
15 That's Sierra.

16 We have Mindy who is on probation. Those
17 are the girls that were just kind of along for the
18 ride.

19 Rochelle is still going to get sentenced
20 at some point.

21 We then go to one of the three principals
22 that actually went into the house and did the
23 robbery and the burglary. Raymond Jones gets five
24 years. Raymond Jones in all likelihood is just as
25 culpable as you as far as the crimes that were

1 committed. My guess is he had a gun, but he came
2 forward and cooperated with the State and got five
3 years. And the girls, obviously, rolled and are
4 going to receive minimal sentences.

5 Your brother, Traveon, gets six years in
6 prison, not because he cooperated but because he
7 didn't go into the house. He was, he was guilty of
8 a conspiracy involving you and Daniel Elkins and
9 Amy.

10 We then move up to Amy Hall who was the
11 individual that planned all this. I certainly don't
12 believe that you had anything to do with the
13 planning of this, but I think you were a willing
14 participant once the phone calls were made. I went
15 through three days of trial with Amy, I heard her
16 motions to suppress, she had this in her mind from
17 that point on that she was going to try to set
18 somebody up and there is no question in my mind that
19 the three of you that went in there had guns. You
20 weren't going to be able to knock on that door and
21 politely go in and say, give us all your cocaine,
22 give us all your money; so you had to take weapons
23 in there. Amy had to know that. She was the one
24 that planned it, but she did not participate in the
25 crime and for her involvement in it she gets 18

1 years.

2 Daniel Elkins gets 24 years because I'm of
3 the opinion that he's the one that inflicted the
4 most harm, he is the one that kicked Mr. Nieto, he
5 is the one that -- testimony was he hurt his foot,
6 significantly hurt his foot to the point that it was
7 bleeding. So your sentence has to be somewhere
8 between Amy and Daniel Elkins.

9 So as I said Rev. Burel, once I sentenced
10 Amy to 18 years, you're sentence, if convicted, had
11 to be consistent with her. The courts have to be
12 consistent in their sentencing. I understand that
13 you are a young man, but Amy is not that much older
14 than you, she's 24 or 235. I look at the maximum
15 number of years that a court could give you. You
16 were convicted of 17 felonies. If a court were to
17 give you the maximum sentence on all 17, it would
18 total 146 years.

19 It's truly unfortunate that a young man
20 with your talent, with your potential is going to
21 spend a significant amount of time in prison, but as
22 your pastor said, hopefully, you can use that time
23 to better yourself.

24 My concern is with your brother, my
25 concern is with other younger people. Hopefully,

1 you can have an influence. Hopefully, you can write
2 your brother and, hopefully, he doesn't -- and there
3 is three of you in your family and two of you are in
4 prison now going to be in prison so, hopefully, you
5 can talk to Jordan. Hopefully, I don't see Jordan
6 in two or three years.

7 When on your counts, Count 1, which is a
8 first degree felony, I sentence you to a minimum
9 term possible, which is three years in prison and
10 along with that you are sentenced to three years for
11 the gun specification.

12 Count 1 being a first degree felony
13 involving the use of a firearm with the victim
14 Candelario Nieto.

15 On Count 2, Sylvestre Alonso, I sentence
16 you to three years consecutive to the first count.

17 On Count 3 involving the victim Jose
18 Jimenez, I sentence you to three years to run
19 consecutive with Counts 1 and 2.

20 Count 4, Fransico Salazar being the
21 victim, once again I give you the minimum prison
22 term of three years, once again to run consecutive
23 to Counts 1, 2, and 3.

24 Count 5, the victim being Rogelio Alonso,
25 once again I sentence to you to minimum term of

1 three years in prison to run consecutively with the
2 first four counts.

3 Count 6 the victim being Oscar Toledo,
4 that was the young man that cried, he cried twice on
5 my stand and so what Miss Nieto was talking about is
6 the impact that you have had. He is the one victim
7 that wasn't hurt, but he cried both times he was up
8 here and my guess is that he has night mayors every
9 night for along long time so you need to understand
10 the impact that you have on these people.

11 On Count 6 involving go the victim Oscar
12 Toledo, I sentence you to three years in prison,
13 said sentence to run consecutive with the first
14 five.

15 So, therefore, if there is confusion, you
16 have been given the minimum prison term in all six
17 of those, which is three years on each count for a
18 total of 18 years.

19 You have one gun specification for an
20 additional three years, so you have been sentenced
21 to 21 years in prison.

22 Counts 7 through 17 are merged. There is
23 no order as to fine, court costs or restitution.

24 Anything else, Mr. Kolesar?

25 MR. KOLESAR: Nothing else, Your Honor.

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THE COURT: Mr. Dunn?

MR. DUNN: No, Your Honor.

THE COURT: Court is adjourned.

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STATE OF OHIO)
) SS.
COUNTY OF ERIE)

CERTIFICATE

I, Sally J. Turner, Court Reporter and Notary Public in and for the State of Ohio, duly appointed and qualified, do hereby certify that the foregoing transcript is a true and accurate transcription of my sstenotype notes taken by me from an electronic recording in the aforesaid cause;

I certify that I am not a relative, counsel, nor attorney of any party nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 23rd day of September,



SALLY J TURNER
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 5-16-2012

Sally J. Turner
Sally J. Turner, Court Reporter
Notary Public, State of Ohio
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My commission expires May 16, 2012