

AFFIDAVIT OF REALATOR GENERAL SMITH III AS TO SPECIFIC STATEMENT OF FACTS REGARDING HIS CLAIM FOR EXTRAORDINARY RELIEF FOR WRIT.

I General Smith III duly deposes and states,

Relator's motion stems from two void judgments from the Franklin County Court of Common Pleas, Judge Richard Sheward (Case No.03-CR-3195) (09-CR-2547)

If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.

On December 5th 2003 Realator pled guilty to one count of robbery with a one year gun specification Realtor was sentence to nine years for the robbery and one year for the gun specification for a total of ten years, Realtor appealed to the Tenth district court of appeals, on the issue that the trial court abused its discretion by not allowing Realtor to withdraw his guilty plea freely before sentencing the Tenth district court affirmed the trial courts decision February 23rd 2005 04ap-326 ;and jurisdiction to hear the case was denied by this Supreme court

.Court of Ohio State v. Smith NO. 2005-0703 July 13, 2005 APPEALS NOT ACCEPTED FOR REVIEW Franklin App. No. 04AP-326.

On November 29th 2007 the trial court heard a motion to withdraw Realtors previously enter guilty plea the trial court allowed Realtor to enter a new plea of robbery and attempted weapons under disability for a sentence of 9 years and 6 months . On December 1st of 2008 Realtor was given a judicial release from the new conviction and 9 year 6 month sentence. However plaintiffs new sentence and conviction was void and the trial court had a **total and complete want of jurisdiction** to grant plaintiffs November 29th 2007 motion to withdraw guilty plea please see **State ex rel. Special Prosecutors v. Judges, Court of Common Pleas** 55 Ohio St.2d 94, 378 N.E.2d 162 Ohio,1978. Which holds

Furthermore, Crim.R. 32.1 does not vest jurisdiction in the trial court to maintain and determine a motion to withdraw the guilty plea subsequent to an appeal and an affirmance by the appellate court. While Crim.R. 32.1 *98 apparently enlarges the power of the trial court over its judgments without respect to the running of the court term, it does not confer upon the trial court the power to vacate a judgment which has been affirmed by the appellate court, for this action would affect the decision of the reviewing court, which is not within the power of the trial court to do. Thus, we find a total and complete want of jurisdiction by the trial court to grant the motion to withdraw appellee's plea of guilty and to proceed with a new trial.

On April 22nd 2009 Relator was arrested for two counts of robbery(09-CR-2547). On January 25th 2010 Relator pled guilty to one count of attempted felonious assault part of the plea agreement was that the **void judgment and sentence in case no. (03CR-3195)which was a void legal nullity;** would run consecutive to the new sentence in case no. (09-CR-2547) this agreement was not legally fulfillable [a] guilty plea induced by 'unfulfilled or unfulfillable promises,' made by either the prosecution, the court, or defendant's counsel is not voluntary." . **See, also, Katz & Giannelli, 2 Crim State v. Hawk (1992), 81 Ohio App.3d 296, 299, 610 N.E.2d 1082inal Law (1996) 152, Chapter 44.6 ("An unfulfillable promise is an insufficient basis for a plea bargain.").** In State v. Bowen (1977), 52 Ohio St.2d 27, 29, 6 O.O.3d 112, 368 N.E.2d 843, Supreme Court held that a plea was not voluntary, and therefore void, where it was induced by a promise to recommend to the trial court the imposition of a sentence not authorized by law. Further, subject matter jurisdiction may not be conferred upon a court by agreement of the parties, nor may lack of subject matter jurisdiction be waived. . One takes nothing under a void judgment." Lincoln Tavern, Inc. v. Snader (1956), 165 Ohio St. 61. the written plea agreement in case no.(09-CR- 2547) makes abundantly clear that case no .(03-CR-3195) was that consideration for the plea was the sentence, please see attached journal entry.

Relator appealed the plea in the newer case as well (09-CR-2547) that attempted felonious assault was not a lesser included offense of robbery and that the trial court failed to amend the indictment the Tenth district court of appeals upheld the conviction Nos.10AP-143,10AP-144.Decided September 30th 2010 but held that the trial court did not apply the right amount of jail time credit to case no. (03-CR-3195) and remanded it back to the trial court for proper calculation as of date **Judge Richard Sheward** has not done this yet, however Judge Richard Sheward is about to exercise an **unauthorized usurpation of judicial power**, by applying jail time credit to the void sentence and judgment of nine years six months, where t the trial court was without jurisdiction whatsoever to act **State ex rel. Special Prosecutors v. Judges, Court of Common Pleas** 55 Ohio St.2d 94, 378 N.E.2d 162 Ohio,1978.

Realator ask that this honorable Supreme Court grant the relief prayed for by Realator the requirements for the issuance of a writ of prohibition expressed in State ex rel. Flower v. Rucker (1977), 52 Ohio St.2d 160, 370 N.E.2d 479. (1) The court or officer against whom it is sought must be about to exercise a judicial or quasi-judicial power; (2) it must appear that the refusal of the writ would result in injury for which there is no adequate remedy; (3) the exercise of such power must amount to an unauthorized usurpation of judicial power,

The Petitioner swears under oath this affidavit is true and accurate according to the relators belief and knowledge. As well as the attached transcripts and journal entries

The Relator now prays that this honorable Court find this motion well-taken and grant the same, thereby issuing a Writ of prohibition directed toward the respondent in this case to provide reasons and causes of law.

Respectfully submitted,

Samuel Q Smith

Defendant, *Pro Se*

General Smith #619-955

Noble Correctional Institution

15708 McConnelsville Rd

Caldwell, Ohio 43724

SWORN TO AND SUBSCRIBED IN MY PRESENCE

THIS 24 DAY OF Oct, 2011.

SEAL:

Deborah King
NOTARY PUBLIC



DEBORAH L. KING
Notary Public, State of Ohio
My Commission Expires

2-12-14

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for writ of prohibition was forwarded by regular U. S. mail to the Supreme Court of Ohio 65 south front street Columbus Ohio 43215, on this

Oct day of 24, 2011.



Defendant pro se

IN THE SUPREME COURT OF OHIO

PROHIBITION ACTION

RE:GENERAL SMITH III vs. RICHARD SHEWARD, Judge et al.

SS:CIVIL HISTORY AND AFFIDAVIT OF CIVIL INDIGENCY AND WAIVER OF FEE'S PURSUANT TO R.C.§ 2969.25. & OTHER RELEVANT STATUTES.

(ATTACHED HERETO:PRINTOUT OF INMATE ACCOUNT AND INDIGENT FORM.)

NOW COMES General Smith III AFFIANT(S) PRO SE, FIRST BEING DULY SWORN AND CAUTIONED ACCORDING TO LAW AND DECLARES THAT:

- 1. I(WE) AM (ARE) A PARTY IN THE FOREGOING ACTION,
- 2. I(WE) AM (ARE) SEEKING A WAIVER OF PAYMENT OF FEE'S AND COST ASSESSED BY THIS COURT IN THIS ACTION, AND
- 3. I(WE) HAVE PREVIOUSLY FILED THE FOLLOWING CIVIL ACTIONS:

1- CASE NO. HABEAS CORPUS COMPLAINT FOR :GENERAL SMITH III VS. WARDEN OF NOBLE CORRECTIONAL INSTITUTION.

FILED:4/6/2011 DISPOSITION HABEAS CORPUS PENDING CURRENTLY.SEVENTH DISTRICT COURT OF APPEALS

1983 SUIT GENERAL SMITH III VS. JUDGE RICHARD SHEWARD

FILED:10/12/2011 DISPOSITION PENDING

AS PRESENTED ABOVE, I (WE) HAVE HAD NO CIVIL ACTIONS DISMISSED DUE TO BEING DEEMED FRIVILIOUS OR MALACE. IN ADDITION, I (WE) AM(ARE) A TRUE PAUPER(S) IN THE TRUE MEANING AND SPIRIT OF R.C. § 2323.31 AND FEDERAL LAW WHEN SO REQUIRED AND I (WE) DO NOT POSSESS SUFFICIENT FUNDS, PRPERTY, NOR CHATEL TO OFFER AS SECURTIY TO ANY FEE'S OR COSTS. I HEREBY REPRESENT THAT MY IMPECUNIOUS STATUS SHOULD NOT DENY ME (US) OUR DAY IN COURT CONCERNING THE FOREGOING ACTION NOR RELIEF SOUGHT. IN FINAL, AFFIANT(S) ASSERTS THAT THIS AFFIDAVIT COMPLIES WITH THE HOLDINGS OF THE OHIO SUPREME COURT SYLLABUS PURSUANT TO SUP.R.1(B) AND STATE EX REL ALFORD vs. WINTERS 685 Ne 2d 1242 (1999).

IN CONCLUSION, I, THE ABOVE MENTIONED AND UNDERSIGNED HEREBY STATE UNDER OATH AND WITH THE FULL KNOWLEDGE OF THE PENALTIES FOR FOR PERJURY DO DECLARE THAT I (WE)A M (ARE) OF LEGAL AGE OF CONSENT IN THIS STATE AND I(WE)AN(ARE) NOT AN ACTIVE MILITARY PERSONNEL AND THAT ALL THE ABOVE IS TRUE TO THE BEST OF MY (OUR) PERSONAL KNOWLEDGE.

General Smith III
AFFIANT(S) PRO SE

NOTARY *Debrah King*

SWORN TO AND SUBSCRIBED THIS 24 DAY OF Oct 2011

 DEBORAH L. KING
Notary Public, State of Ohio
My Commission Expires
2-12-14

IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCY

I, General Smith III, hereby solemnly swear that I presently this Oct day of 29th, 2011, no means of financial support and no assets of any value and, therefore, **cannot afford** to pay for **any legal service, fees or court costs** in the above captioned case.

So, Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

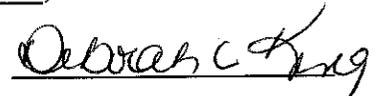
Respectfully submitted,



Defendant, *Pro Se/Affiant*
General Smith III 619-955
Noble Correctional Institution
15708 McConnelsville Rd
Caldwell, Ohio 43724

SWORN TO AND SUBSCRIBED IN MY PRESENCE
THIS 24 DAY OF Oct, 2011.

SEAL:



NOTARY PUBLIC



DEBORAH L. KING
Notary Public, State of Ohio
My Commission Expires

2-12-14

Ohio Department of Rehabilitation and Correction

SECTION I - To be completed by cashier prior to this form being presented to the inmate for completion of SECTION II - Affidavit of Indigency.

I, V. Wallace, cashier at the Noble Correctional Inst., certify that the following is a true and accurate reflection of the status of the account maintained at this institution for the benefit of:

Inmate Name: <u>Daniel Smith</u>	Inmate Number: <u>619-955</u>
----------------------------------	-------------------------------

The Prison Litigation Reform Act (PLRA) requires that the time period to be considered is the preceeding six months. It also requires that, "...if financial activity is less than six months due to less than six months of incarceration, then note this fact on the statement. If lack of history is due to recent transfer, then obtain missing month-end reports from sending cashier to complete the six month period. The sending cashier must similarly certify the monthend reports."

The time period being reported below is: Six months Fewer than six months, beginning _____
 The time period is fewer than six months, because: Period of Incarceration Transfer

Account Balance as of 2/10/11:
 Total state pay credited for the report period; \$ 16.52
 Average monthly state pay for the report period; \$ 18.16 109.00
 Funds received from all sources, excluding state pay, for the report period; \$ 18.16
 Total amount spent in inmate's commissary during the same period; \$ 175.00
 Signature of Cashier: V. Wallace Date: 2/10/11

AFFIDAVIT OF INDIGENCY

SECTION II - To be completed by inmate after cashier's statement is completed.

Daniel O Smith, being first duly sworn, says that he/she does not have sufficient funds to pay the filing fee and other costs of prosecuting this complaint against the State of Ohio, Department of Rehabilitation and Correction, in the Court of Claims of Ohio and submits the cashier's statement (Section I) in support of said allegation of indigency.

I hereby represent that the information set forth in the cashier's statement concerning my financial condition is true and complete to the best of my knowledge and belief.

Signature of Inmate: <u>Daniel O Smith III</u>	Inmate Number: <u>619-955</u>
--	-------------------------------

Witnessed and subscribed to me in my presence this 29 day of April, 2011.

Notary Public: Deborah King

2-12-11

Court of Appeals of Ohio,
Tenth District, Franklin County.

STATE of Ohio, Plaintiff-Appellee,
v.
General SMITH, III, Defendant-Appellant.
State of Ohio, Plaintiff-Appellee,
v.
General Smith, III, Defendant-Appellant.

Nos. 10AP-143, 10AP-144.
Decided Sept. 30, 2010.

West KeySummary

- ◊ 110 Criminal Law
- ◊ 110XXIV Review
- ◊ 110XXIV(Q) Harmless and Reversible Error
- ◊ 110k1167 Rulings as to Indictment or Pleas
- ◊ 110k1167(5) k. Plea or Demurrer.

Defendant was not prejudiced by pleading guilty to attempted felonious assault as opposed to robbery, even though attempted felonious assault was not in the indictment and not a lesser-included offense of robbery. Defendant gained a benefit by having three remaining charges and specifications against him dismissed. Further, defendant was represented by counsel and signed a statement indicating that he understood the offense to which he was pleading guilty. R.C. § 2911.02; R.C. 2903.11(A); Rules Crim.Proc., Rule 7(A); Const. Art. 1, § 10.

Appeals from the Franklin County Court of Common Pleas.
Ron O'Brien, Prosecuting Attorney, and John Cousins, IV, for appellee.

Yeura R. Venters, Public Defender, and Allen V. Adair, for appellant.

BROWN, J.

*1 {¶ 1} General Smith, III, defendant-appellant, appeals from two judgments of the Franklin County Court of Common Pleas. In one judgment, the court found him guilty, pursuant to a plea of guilty, of attempted felonious assault, in violation of R.C. 2923.02 as it relates to R.C. 2903.11, which is a felony of the third degree. In the other judgment, the trial court revoked appellant's community control.

{¶ 2} In case No. 03CR-05-3195, appellant was found guilty on February 20, 2004, of

aggravated robbery and a one-year firearm specification. On October 18, 2007, appellant filed a motion to vacate his guilty plea or, in the alternative, motion for new trial. On November 29, 2007, the parties disposed of the motion by entering into an agreement, in which it was agreed, among other things, that appellant would plead guilty to aggravated robbery without firearm specification and attempted having a weapon while under a disability, and the parties would enter a joint recommendation as to a total sentence of nine years and six months. The trial court issued a judgment entry on December 6, 2007, with regard to such. On December 1, 2008, appellant was granted judicial release with community control for a period of two years.

{¶ 3} On April 30, 2009, appellant was charged with four counts of robbery in case No. 09CR-04-2547. On May 27, 2009, the probation department requested revocation of appellant's community control in case No. 03CR-05-3195 due to the offenses in case No. 09CR-04-2547. On January 27, 2010, with regard to case No. 09CR-04-2547, a judgment was entered in which appellant pleaded guilty to attempted felonious assault, which was characterized as a lesser-included offense of robbery. The trial court sentenced appellant to a prison term of four years.

{¶ 4} Also on January 27, 2010, the trial court issued a judgment revoking appellant's community control in case No. 03CR-05-3195. The court imposed a prison term of nine years on the aggravated robbery charge to be served consecutively to a six-month term on the attempted having a weapon while under disability charge. The trial court also ordered the sentence in case No. 03CR-05-3195 to be served consecutively to the term imposed in case No. 09CR-04-2547. In this consolidated appeal, appellant appeals the judgments of the trial court. Through counsel, appellant asserts the following assignments of error:

[I.] The trial court erred by accepting a guilty plea to an offense that is not a lesser included offense to the specified count within the indictment. Doing so denied appellant his right to indictment by a grand jury, as guaranteed by Article I, Section 10, of the Ohio Constitution, and due process as guaranteed by the Fourteenth Amendment to the United States

{¶ 28} Appellant argues in his eighth assignment of error that the trial court failed to give credit for time served. Appellant claims he was entitled to additional jail credit in case No. 03CR-05-3195 when the court revoked his community control on January 25, 2010. In that case, the trial court granted appellant jail credit of 2,312 days. Appellant contends he is actually entitled to jail credit of 2,466 days.

{¶ 29} Alleged errors regarding jail-time credit may be raised in a defendant's direct appeal of his criminal case. *State v. Young*, 5th Dist. No. 03-CAA-10051, 2004-Ohio-4002, ¶ 13, citing State ex rel. Jones v. O'Connor, 84 Ohio St.3d 426, 704 N.E.2d 1223, 1999-Ohio-470. R.C. 2967.191 requires that a felony offender's prison term be reduced by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial. The number of days the defendant spent in jail prior to his guilty plea and sentencing is confinement arising out of the offense for which he was convicted and sentenced within the express parameters of R.C. 2967.191. *Young* at ¶ 10. Accordingly, defendant is entitled to jail-time credit for the number of days of that confinement.

*8 {¶ 30} The trial court is responsible for properly calculating the number of days for which jail-time credit should be given. State ex rel. Corder v. Wilson (1991), 68 Ohio App.3d 567, 589 N.E.2d

113; *Young* at ¶ 12; R.C. 2949.12. The trial court's failure to properly calculate a felony offender's jail-time credit, pursuant to R.C. 2967.191, and to include the amount of jail-time credit in the body of the offender's sentencing judgment is plain error. *State v. Miller*, 8th Dist. No. 84540, 2005-Ohio-1300, ¶ 10.

{¶ 31} We have reviewed the record and agree that appellant's jail credit may have been miscalculated. At the November 29, 2007 sentencing hearing, the trial court indicated that appellant had jail credit of 1,825 days as of that date. On December 1, 2008, the trial court granted judicial release. At the bottom of the December 1, 2008 entry granting judicial release, there is an indication that appellant had jail credit of 2,034 days, which appears to be in error, as 368 days had passed between November 29, 2007 and December 1, 2008. The record also represents that appellant was arrested on April 22, 2009, for the crimes in case No. 09CR-04-2547. The trial court applied the jail time served after April 22, 2009, as time served for violation of judicial release in case No. 03CR-05-3195. The revocation of judicial release occurred in this case on January 25, 2010, the same date of the plea and sentencing in case No. 09CR-04-2547. There is no indication in the record that appellant was not imprisoned during this entire period. Two hundred and seventy-eight days elapsed between April 22, 2009 and January 25, 2010. Therefore, given the state of the record, it appears the trial court's calculation of jail credit of 2,312 days was incorrect. Therefore, we sustain appellant's eighth assignment of error.

{¶ 32} Accordingly, appellant's first, second, third, fourth, fifth, sixth, and seventh assignments of error are overruled, appellant's eighth assignment of error is sustained, and the judgments of the Franklin County Court of Common Pleas are affirmed in part and reversed in part. **These matters are remanded to the trial court to re-examine and recalculate, if necessary, the jail-time credit entitled in case No. 03CR-05-3195.**

Judgments affirmed in part; reversed in part; causes remanded with instructions.

TYACK, P.J., and FRENCH, J., concur.

Ohio App. 10 Dist., 2010.
State v. Smith
Slip Copy, 2010 WL 3835772 (Ohio App. 10 Dist.), 2010 -Ohio- 4744

END OF DOCUMENT

(c) 2011 Thomson Reuters. No Claim to Orig. US Gov. Works

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

State of Ohio,

Termination 13 by PG

Plaintiff,

vs

Case No 03CR-3195 (Sheward, J)

General Smith,

Defendant

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2007 DEC -6 AM 8:15
CLERK OF COURTS

JUDGMENT ENTRY
(Prison Imposed)

Upon joint agreement of the parties, Defendant's motion to withdraw his previously entered plea is hereby granted. The joint agreement and conditions of the parties regarding Defendant's withdrawal of his plea is hereby approved.

On November 29, 2007, the State of Ohio was represented by Assistant Prosecuting Attorney Sue Ann Reulbach and the Defendant was represented by Attorney, J Scott Weisman. The Defendant, after being advised of his rights pursuant to Crim R 11, entered a plea of guilty to Count One of the Indictment, to wit Aggravated Robbery, in violation of Section 2911.01 of the Revised Code, a Felony of the First Degree, and guilty to the stipulated lesser included offense of Count Four of the Indictment, to wit Attempted Weapon Under Disability, in violation of Section 2923.02 as it relates to Section 2923.13 of the Revised Code, a Felony of the Fourth Degree. Upon application of the Prosecuting Attorney and for good cause shown, it is ORDERED that a Nolle Prosequi be entered for Counts Two, Three, and all Specifications of the Indictment.

The Court found the Defendant guilty of the charges to which the plea was entered.

The Assistant Prosecuting Attorney and the Defendant's Attorney jointly recommended a sentence of nine (9) years as to Count One, six (6) months as to Count Four, no agreement as to Judicial Release.

The Court proceeded immediately to sentencing.

On November 29, 2007, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney Sue Ann Reulbach and the Defendant was represented by Attorney J. Scott Weisman.

2

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed

The Court has considered the purposes and principles of sentencing set forth in R C 2929 11 and the factors set forth in R C 2929 12 In addition, the Court has weighed the factors as set forth in the applicable provisions of R C 2929 13 and R C 2929 14 The Court further finds that a prison term is not mandatory pursuant to R C 2929 13(F)

The Court hereby imposes the following sentence NINE (9) YEARS as to Count One CONSECUTIVE with SIX (6) MONTHS as to Count Four at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

After imposing sentence the Court gave its finding and stated its reasons for the sentence as required by R C 2929 19(B)(2)(a)(b) and (c)(d) and (e)

The Court disapproves of the Defendant's placement in a shock incarceration program or an intensive prison program

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R C 2929 18, hereby render judgment for the following fine and/or financial sanctions No fine imposed Court costs are suspended due to Defendant's incarceration

The total fine and financial sanction judgment is \$ 0

After the imposition of sentence, the Court notified the Defendant, orally and in writing, that the applicable periods of post-release control pursuant to R C 2929 19(B)(3)(c), (d) and (e) is five (5) years mandatory

The Court finds that the Defendant has 1825 days of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Corrections The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence


RICHARD S SHEWARD, JUDGE

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

State of Ohio,

Plaintiff,

vs.

General Smith,

Defendant.

Case No. 03CR-3195 (Sheward, J.)

FILED
CLERK OF COURTS
2008 JAN 27 4 22 PM
COMMUNAL PLEAS

REVOCAATION ENTRY
(Prison Imposed)

Upon joint agreement of the parties, Defendant's motion to withdraw his previously entered plea is hereby granted. The joint agreement and conditions of the parties regarding Defendant's withdrawal of his plea is hereby approved.

On November 29, 2007, the State of Ohio was represented by Assistant Prosecuting Attorney Sue Ann Reulbach and the Defendant was represented by Attorney, J. Scott Weisman. The Defendant, after being advised of his rights pursuant to Crim. R. 11, entered a plea of guilty to Count One of the Indictment, to wit: Aggravated Robbery, in violation of Section 2911.01 of the Revised Code, a Felony of the First Degree; and guilty to the stipulated lesser included offense of Count Four of the Indictment, to wit: Attempted Weapon Under Disability, in violation of Section 2923.02 as it relates to Section 2923.13 of the Revised Code, a Felony of the Fourth Degree. Upon application of the Prosecuting Attorney and for good cause shown, it is ORDERED that a Nolle Prosequi be entered for Counts Two, Three, and all Specifications of the Indictment.

The Court found the Defendant guilty of the charge to which the plea was entered.

On December 1, 2008, the Defendant was sentenced to TWO (2) YEARS Community Control. Defendant, having violated the terms of Defendant's Community Control, is now before the Court for reconsideration of Defendant's previous sentence.

On January 25, 2010, a re-sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney Sue Reulbach and the Defendant was represented by Attorney J. Tullis Rogers.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is not mandatory pursuant to R.C. 2929.13(F).

The Court hereby imposes the following sentence: Defendant shall serve NINE (9) YEARS as to Count One CONSECUTIVE to SIX (6) MONTHS as to Count Four. Sentence is to be served CONSECUTIVE to Case No. 09CR-2547 at the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS. The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, hereby renders judgment for the following fine and/or financial sanctions: Court costs suspended due to incarceration. No fine imposed.

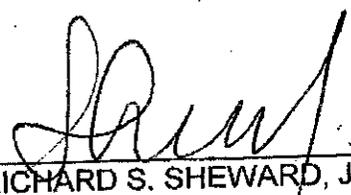
The total fine and financial sanction judgment is \$0.

After imposing sentence the Court gave its finding and stated its reasons for the sentence as required by R.C. 2929.19(B)(2)(a)(b) and (c)(d) and (e).

After the imposition of sentence, the Court notified the Defendant, orally and in writing, that the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e) is five (5) years mandatory.

The Court **disapproves** of the offender's placement in a shock incarceration or an intensive prison program.

The Court finds that the Defendant has 2312 days of jail credit and hereby certifies the time to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.


RICHARD S. SHEWARD, JUDGE

20666 - U98
57423 - Y22

Exhibit

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

State of Ohio,

Termination No. 13 by PG

Plaintiff,

vs.

Case No. 09CR-2547 (Sheward, J.)

General Smith, III,

Defendant.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
JAN 27 PM 2:26
CLERK OF COURTS

JUDGMENT ENTRY
(Prison Imposed)

On January 25, 2010, the State of Ohio was represented by Assistant Prosecuting Attorney Sue Reubach and the Defendant was represented by Attorney, J. Tullis Rogers. While Count One is Robbery, a Felony of the Second Degree in violation of Section 2911.02 of the Revised Code, the Defendant, after being advised of his rights pursuant to Crim. R. 11, entered a plea of guilty to the stipulated lesser included offense of Count One of the indictment, to wit: Attempted Felonious Assault, in violation of Section 2923.02 as it relates to Section 2903.11 of the Revised Code, a Felony of the Third Degree. Upon application of the Prosecuting Attorney and for good cause shown, it is ORDERED that a Note Prosequi be entered for Counts Two, Three, Four, and Specifications of the Indictment.

The Court found the Defendant guilty of the charge to which the plea was entered.

The Assistant Prosecuting Attorney and the Defendant's Attorney jointly recommended a sentence of four years incarceration consecutive to Case No. 03CR-3185.

The Court proceeded immediately to sentencing.

On January 25, 2010, a sentencing hearing was held pursuant to R.C. 2929.18. The State of Ohio was represented by Assistant Prosecuting Attorney Sue Reubach and the Defendant was represented by Attorney, J. Tullis Rogers.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording Defendant an opportunity to make a statement on Defendant's own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

2
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exhibit
(A)

Thursday Afternoon Session,
November 29, 2007.

- - -

THE COURT: This is the matter of State of Ohio vs. General Smith. This is Case No. 03CR-05-3195. The Defendant is present in open court along with his attorney. The Prosecuting Attorney is also present.

This case came before the Court some time ago on a motion to withdraw his earlier-entered guilty plea, and pursuant to that we have an agreed entry. It's been signed by the Defendant, the Prosecutor and Defense counsel. I will make this a part of the record, of course, but I will go over it briefly so there is no misunderstanding.

Upon joint agreement of the parties Defendant's motion to withdraw his guilty plea is hereby granted. The joint agreement of the parties regarding Defendant's withdrawal of his plea is conditioned upon the following:

The Defendant shall immediately enter a plea of guilty to the following two counts, Count One, aggravated robbery without a gun specification, a felony of the first degree, and Count Four, attempted having a weapon while under a disability as a felony of the

2 1 fourth degree. All other counts will be nollied.

2 The parties will enter into a joint
3 recommendation as to the sentence for Count One of nine
4 years and Count Four of six months, to be served
5 consecutively to each other, for a total of nine years
6 and six months.

7 The Defendant shall receive 1,825 days of jail
8 time credit as of the date of the new plea being
9 entered, that being today obviously.

10 The Defendant further agrees he shall not seek
11 judicial release prior to November 15, 2008. All
12 parties are aware that the acceptance of any plea and/or
13 joint recommendation as to sentence is up to the Court.

14 Further, neither the Court nor the
15 Prosecutor's Office has made any promises concerning
16 judicial release.

17 Mr. Weisman, is that your agreement?

18 MR. WEISMAN: That is the agreement, Your
19 Honor.

20 THE COURT: Mr. Smith, is that also your
21 agreement?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, Ms. Reulbach?

24 MR. REULBACH: Yes, Your Honor.

25 THE COURT: Alright. That agreement

2 1 being in place and being verified by the parties I am
2 going to move on to the entry of guilty plea that that
3 agreement speaks to. First of all, Mr. Smith, will you
4 state your full name for the record?

5 THE DEFENDANT: General Smith III.

6 THE COURT: And how old are you, sir?

7 THE DEFENDANT: 35.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: GED.

10 THE COURT: From that may I assume you
11 read and write and understand the English language?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I have before me an entry of
14 guilty plea. It has this signature on it that is
15 supposed to be yours. Is that yours?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Before you signed it did you
18 review it with Mr. Weisman?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Do you feel you understand
21 it?

22 THE DEFENDANT: Yes.

23 THE COURT: Alright. Did you sign it
24 voluntarily?

25 THE DEFENDANT: Yes, I did.

2 1 THE COURT: No one forced you to sign it,
2 threatened you to sign it, or promised you anything?

3 THE DEFENDANT: No.

4 THE COURT: You signed it of your own
5 free will?

6 THE DEFENDANT: Yes, I did, sir.

7 THE COURT: The first thing I have to
8 review with you is when you sign a document such as this
9 and submit it to the Court you waive or give up your
10 right to a jury trial. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that what
13 we are doing right now is not a jury trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: When you waive your right to
16 a jury trial I am required by law to advise you that you
17 waive all of the rights that you would have had during
18 the trial. Those rights are the right to remain silent,
19 the right to require the Prosecutor to prove your guilt
20 beyond a reasonable doubt, you would have the right to
21 issue subpoenas for any of your own witnesses and have
this court enforce those subpoenas so your witnesses
would come to court also. You would have the right to
confront and cross-examine your accusers, and if the
jury found against you, you would have the right to

1 IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
2 CRIMINAL DIVISION

3 - - -

4 State of Ohio, :

5 Plaintiff, :

6 vs. : Case No. 03CR-3195

7 General Smith, :

8 Defendant. :

9 - - -

10 TRANSCRIPT OF PROCEEDINGS

11 Before Hon. Richard S. Sheward, Judge, on Monday,
12 December 1, 2008.

13 - - -

14 APPEARANCES:

15 James Lowe, Assistant Prosecuting Attorney,
16 On behalf of the State of Ohio, Plaintiff.

17
18 Scott Weisman,
19 On behalf General Smith, Defendant.

20 - - -

21 - - -

22 - - -

23 COPY

24 - - -

25 - - -

1 Monday Morning Session

2 December 1, 2008

3 - - -

4 THE COURT: This is the matter of State of
5 Ohio versus General Smith, 03CR-05-3195. The
6 defendant is present in open court, along with
7 counsel. He is here for judicial release.

8 Mr. Lowe, is there anything you want to say
9 on the subject?

10 MR. LOWE: Thank you, Your Honor. Sue Ann
11 Reulbach originally handled this case. She is out of
12 town today. She left the file and spoke to me last
13 week and told me she was not opposed to this. She did
14 tell me she relayed that, I think, to Pat. I don't
15 know if she talked to the Judge or not, but she was
16 not in opposition to this. We have had discussions
17 with the Court before about the things that Mr. Smith
18 has done, and with that, we would not oppose.

19 THE COURT: All right. Thank you. Mr.
20 Weisman, anything you would like to say?

21 MR. WEISMAN: Judge, a motion was filed and
22 we were here last November. The Court indicated at
23 that time that if General were to stay out of trouble,
24 he would look favorably upon this motion; and not only
25 did he stay out of trouble, but he has actually gotten

1 into and successfully completed a number of programs.
2 We would ask the Court to entertain the motion that
3 has been filed.

4 THE COURT: All right. Mr. Smith, anything
5 you want to say?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. I will grant his
8 judicial release. I will put him on probation
9 initially for two years, and it will be intensive
10 supervision. And he is to obtain and maintain
11 employment.

12 I am required by law to tell him that he
13 will have to pay the court costs. If he violates, he
14 will be sent back to prison for the balance of 15
15 years. I want him to sign that indicating that I have
16 so notified him, and I believe that is everything.

17 MR. LOWE: Thank you, Judge.

18 MR. WEISMAN: Thank you very much, Your
19 Honor.

20 - - -

21 Thereupon, at 9:37 a.m., Monday, December 1,
22 2008, the hearing in this matter concluded.

23 - - -

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings held in this matter on Monday, December 1, 2008, taken by me in machine shorthand and thereafter reduced to computerized transcription under my direction and supervision.

COPY

LINDA S. SHUPE, RPR, RMR
Assistant Court Reporter
