

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, EX REL.  
MARQUISE JONES,**

**Appellant - Relator,**

**vs.**

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

**Appellee - Respondent.**

**Case No. 2011-1517**

**On Appeal from the  
Sandusky County Court  
of Appeals, Sixth  
Appellate District  
Case No. S-11-024**

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**APPELLEE'S BRIEF**

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## STATEMENT OF FACTS AND CASE

On October 22, 2008, the Appellant was convicted of seventeen separate offenses, with sixteen of the offenses having a gun specification and one offense without a firearm specification, all in connection with an armed assault and robbery of six victims in Fremont, Ohio. On October 27, 2008, the trial court sentenced the Appellant to three years each on the six counts of complicity to commit aggravated robbery said sentences to be served consecutively. All of the six counts contained a firearm specification. The trial court then sentenced the Appellant to one mandatory term of three (3) years on the firearm specification. The remaining counts were merged with the aggravated robbery counts. The Appellant appealed his sentence. The Sixth Appellate District affirmed his conviction and sentence on April 23, 2010 in Case No. S-08-034, 2010-Ohio-1780 and this Court denied jurisdiction on September 29, 2010 in 128 Ohio St.3d 1582. On March 25, 2011, the Appellant filed a Motion with the trial court for a judgment that complies with Crim.R. 32(C). The trial court denied that motion on March 29, 2011. On June 8, 2011, the Appellant filed a Petition for a Writ of Mandamus and/or Procedendo in the Sixth District Court of Appeals requesting that an order be issued to the trial court to file a corrected judgment entry. The Court of Appeals dismissed the Petition on July 25, 2011. It is from this decision that the Appellant has filed his appeal.

**ARGUMENTS IN OPPOSITION TO PROPOSITION OF LAW NO. 1**

**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.**

A writ of procedendo is an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. Yee v. Erie County Sheriff's Department (1990), 51 Ohio St.3d 43. A writ of procedendo will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. 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. Therefore the Appellate Court properly determined that it could not compel the trial court to make a specific finding that relator's sentence was improper and denied the writ of procedendo.

R.C. 2731.01 provides that:

“Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

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 before it can grant a writ of mandamus. State ex rel. Hodges v. Taft (1992), 64 Ohio St.3d 1 and State ex rel. Harris v. Rhodes (1978), 54 Ohio St.3d 41.

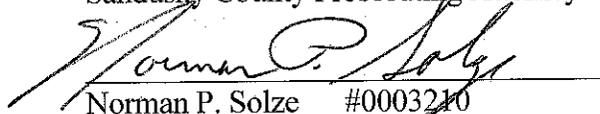
R.C. 2929.14(D)(1)(b) provides in part that “a court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction. “Same act or transaction” for purposes of R.C. 2929.14(D)(1)(b) means a series of continuous acts bound together by time, space and purpose, and directed toward a single objective. State v. Wills (1994), 69 Ohio St.3d 690. This is a broader concept than the separate animus test associated with R.C. 2941.25. The appellant has not claimed that all of his convictions did not arise out of the “same act or transaction.” Further, this Court has held that the firearm specification is not a separate offense but a sentencing enhancement. See State v. Ford (2011) 128 Ohio St.3d 398, 401. The trial court in its Judgment Entry of October 27, 2008 properly sentenced the Appellant on all of his convictions pursuant to the requirements of Crim.R. 32(C) to an additional term of three (3) years for the firearm specification. Therefore, there is no clear legal to duty to act as asserted by the Appellant and the writ of mandamus was properly denied by the Sixth District Court of Appeals.

**CONCLUSION**

For the reasons stated herein, the Appellant's assignment of error should be denied.

Respectfully submitted,

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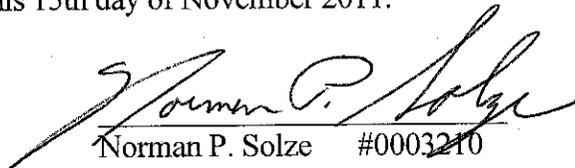
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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Brief was sent by ordinary U.S. mail to Marquies Jones #A554678, Appellant, Mansfield Correctional Institution, 1150 N. Main Street, Mansfield, Ohio 44901 this 15th day of November 2011.



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