

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case Number 11-1737
Appellee, : On Appeal from the Richland
County Court of Appeals,
v. : Fifth Appellate District
THOMAS LAMPLEY, : Court of Appeals
Case No. 2010-CA-0030
Appellant. :

APPELLEE, STATE OF OHIO'S
MEMORANDUM IN OPPOSITION TO JURISDICTION

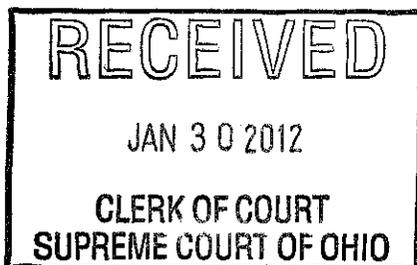
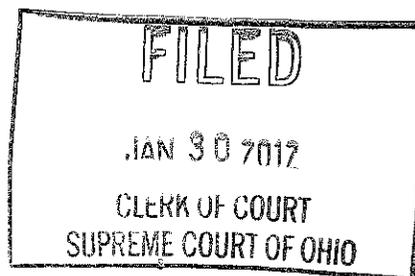
JAMES J. MAYER, JR.
PROSECUTING ATTORNEY
RICHLAND COUNTY, OHIO

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APPELLANT, PRO SE



Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question:

The State of Ohio submits that this case presents absolutely no unique facts, rulings, or issues. Nor does it raise any substantial constitutional questions worthy of review by this Court. The Appellant's arguments at this point are either not ripe or moot.

The Appellant in this case was convicted after a full jury trial of murder with a gun specification, having weapons under disability and tampering with evidence. He was sentenced on March 2, 2010 to a total of twenty-five years (25) to life in prison. On March 10, 2010, trial counsel Robert Whitney filed a notice of appeal and a motion to withdraw as counsel for appellate purposes. The trial court appointed attorney R. Josh Brown to complete the Appellant's direct appeal. The Fifth District Court of Appeals granted Attorney Brown numerous extensions, not only to allow for completion of the trial transcript below, but also to complete the Appellant's Merit Brief.

On October 29, 2010, the Appellant's direct appeal was dismissed for failure to prosecute. On January 28, 2011 the Appellant filed a motion to re-instate his direct appeal and for appointment of new appellate counsel. On the same date, Attorney Brown filed a motion to reopen the direct appeal and a motion to file the Appellant's brief instant. The Fifth District granted the motion of Attorney Brown and denied the Appellant's pro se motions. The only assignment of error raised in Attorney Brown's brief involved the failure of the trial court to instruct the jury on involuntary manslaughter as a lesser included offense to murder.

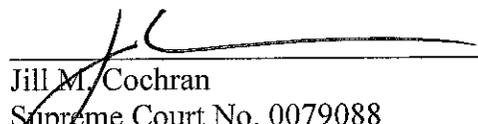
On August 2, 2011, the Fifth District affirmed the trial court decision below, finding that an instruction on involuntary manslaughter was inconsistent with the Appellant's claim of self-defense. Subsequently, the Appellant filed a notice of appeal in

this Honorable Court to appeal the August 2, 2011 decision. However, the Office of the Public Defender filed an application to reopen the Appellant's appeal in the Fifth District on October 31, 2011. The Fifth District granted the Appellant's application to reopen on December 9, 2011. The Fifth District appointed the Office of the Public Defender to continue its representation. The appeal is currently pending.

The Appellant now appeals to this Honorable Court raising issues of ineffective assistance of appellate counsel and abuse of discretion by the Fifth District for re-appointing appellate counsel after appellate counsel allowed the appeal to be dismissed after failing to file a timely brief. The Appellant also raises issues of manifest weight and ineffective assistance of trial counsel below.

The issues raised by the Appellant are moot or unripe. As the Fifth District has ruled that the Appellant's appellate counsel was ineffective and has granted him the opportunity to reopen his appeal, any issues involving a failure by Appellant's appellate counsel are moot. Since the Appellant has been granted the ability to file a new direct appeal, any arguments regarding the trial court below are not yet ripe for this Honorable Court to determine. Therefore, the State would request that this Honorable Court deny the Appellant jurisdiction to pursue his appeal.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of Appellee's Memorandum in Opposition to Jurisdiction was sent to Thomas Lampley, #A 582-243, c/o Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, Ohio 44430, by regular U.S. Mail, this 8th day of January, 2012.



Jill M. Cochran (# 0079088)
Assistant Prosecuting Attorney