

IN THE SUPREME COURT OF OHIO

JESSE L. GOODEN,	:	
	:	Case No. 2011-1943
Petitioner-Appellant,	:	
	:	
v.	:	Appeal from the Richland County
	:	Court of Appeals
MARGARET BRADSHAW, WARDEN,	:	Fifth Appellate District
Richland Correctional Institution,	:	
	:	Court of Appeals Case
Respondent-Appellee.	:	No. 11-CA-55

BRIEF OF RESPONDENT-APPELLEE WARDEN BRADSHAW

MICHAEL DEWINE
Attorney General of Ohio

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Richland Correctional Institution
1001 Olivesburg Road
P.O. Box 8107
Mansfield, Ohio 44901-8107

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Pro se

Attorney for Respondent-Appellee

<p>FILED</p> <p>FEB 02 2012</p> <p>CLERK OF COURT SUPREME COURT OF OHIO</p>

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I. STATEMENT OF THE CASE

Petitioner Jesse Gooden (“Gooden”), state prisoner number 517-717, is in the custody of Respondent, Margaret Bradshaw, Warden of the Richland Correctional Institution, pursuant to a judgment entry issued by the Summit County Court of Common Pleas. According to his petition, Gooden was indicted on two counts of felonious assault (counts one and four), one count of Failure to Comply with Order or Signal of Police (count two), and one count of Vandalism (count three). (Appendix A, Petition, Exhibit B). A supplemental indictment charged Gooden with felonious assault for Count Four. (Appendix A, Petition, Exhibit C-1). Prior to trial, count one of felonious assault was dismissed. (Appendix A, Petition, Exhibit H-1, Case No. 08 10 338). Following a jury trial, Gooden was found guilty of counts two, three, and four. (Appendix A, Petition, Exhibit A-1). On the verdict forms, Gooden was found guilty of felonious assault as charged in count one. There was no verdict form for count four. (Appendix A, Petition, Exhibit D-1). On July 24, 2009, the court ordered Gooden to serve one year on Count Two, failure to comply with order or signal of police officer, a term of one year for Count Three, his vandalism conviction, and eight years on Count Four, Felonious Assault. The court further ordered that Counts 2 and 4 be served consecutively to each other, and concurrently with Count Three for an aggregate sentence of nine years of incarceration. (Appendix A, Petition, Exhibit A-1).

Gooden’s conviction was affirmed on direct appeal. *State v. Gooden*, 9th Dist. No. 24896, 2010-Ohio-1961, 2010 Ohio App. Lexis 1630; *State v. Gooden*, 126 Ohio St. 3d 1584, 2010 Ohio 4542, 934 N.E.2d 356.

On October 8, 2010, Gooden filed a motion for proper sentencing order and final order in the trial court. (Appendix B, Motion). He asked for a corrected sentencing order, as the journal

entries reflected that Count One was dismissed, while the jury verdict forms reveal that he was convicted on Count One. On October 20, 2010, the trial court stated that the July 24, 2009 sentencing entry was a clerical error for stating that Gooden was guilty on count four and that count one was dismissed, when, apparently, the opposite actually occurred. (Appendix C, Journal Entry). The trial court, however, did not correct the sentencing entry as Gooden's verdict was already affirmed on appeal, and that he was convicted of count one under the law-of-the-case doctrine.

Gooden appealed this decision to the Third Appellate District. On September 30, 2011, the court of appeals affirmed the denial of Gooden's motion. The court found that the trial court had jurisdiction to sentence Gooden on the felonious assault conviction, and that an error in the jury verdict forms did not affect it. *State v. Gooden*, 9th Dist. No. 25677, 2011-Ohio-4993, 2011 Ohio App. Lexis 4416.

On June 16, 2011, Gooden filed the instant habeas corpus petition with the Richland County Fifth District Court of Appeals. Gooden argued that he has served his time for Counts Two and Three in full and because Count One was dismissed and no verdict was rendered against him as to Count Four, he was entitled to immediate release

On October 12, 2011, the Fifth Appellate District dismissed Gooden's petition. It provided the following rationale to support the dismissal:

{¶1} Petitioner, Jesse Gooden, filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon an alleged void sentence. Petitioner claims the sentence is void because the trial court sentenced Petitioner on Count One despite the fact Count One was dismissed prior to trial.

{¶2} Petitioner was indicted on four counts. Count One of the indictment was a charge of Felonious Assault which the State moved to dismiss prior to trial. A jury trial was held on the three remaining counts: Count Two was a charge of Failure to Comply with an Order of a Police Officer, Count Three was a charge of

Vandalism, and Count Four was a charge of Felonious Assault. The jury found the Petitioner guilty of all three counts. The trial court essentially renumbered the jury verdict forms in a way which did not correspond to the same numbers listed on the indictment. It is undisputed Petitioner was convicted on three counts and sentenced on three counts. Petitioner argues his sentence was void because the count numbers assigned in the sentencing entry do not exactly correspond to the numbers contained in the indictment.

{¶3} The Ninth District Court of Appeals approved the use of verdict forms which were labeled with numbers that did not correspond with the numbering on the indictment, “To avoid confusion, the crimes pertaining to Defendant in the jury verdict forms were simply labeled beginning on “Count One” rather than on “Count Three.” It is clear that Defendant was convicted for the crimes with which he was charged in the indictment. The different numbering of the counts in the indictment and verdict forms was neither error nor prejudicial to Defendant. See *Crim.R. 52(A)*.” *State v. Washington* 1997 WL 775666, 7 (Ohio App. 9 Dist.).

{¶4} We find Petitioner has or had an adequate remedy at law by way of direct appeal to challenge any defect in his sentence. “Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law.” *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6.

{¶5} Finally, as the Supreme Court has held, “[H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully. *Morgan v. Ohio Adult Parole Auth.* (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941.” *Heddleston v. Mack* 84 Ohio St.3d 213, 213-214, 702 N.E.2d 1198, 1198 (Ohio,1998); *Hughley v. Duffey*, 2009 WL 3790667, 1 (Ohio App. 5 Dist.). {¶6} Here Petitioner was sentenced on July 24, 2009 to a term of nine years in prison which has not expired. Because Petitioner remains incarcerated pursuant to a valid, unexpired sentence, habeas corpus does not lie.

Gooden v. Bradshaw, 5th Dist. No. 11-CA-55, 2011-Ohio-5300, 2011 Ohio App. Lexis 4370.

A. Habeas relief is not available when an alternative legal remedy is (or was) available.

Habeas corpus is an extraordinary remedy and normally is appropriate only when there is no alternative legal remedy. *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995). In the context of a criminal conviction, habeas corpus normally may be used

to challenge the jurisdiction of the sentencing court. *Wireman v. Ohio Adult Parole Authority*, 38 Ohio St.3d 322, 322, 528 N.E.2d 173 (1988).

A habeas corpus petition cannot substitute for other forms of action, such as a direct appeal, post-conviction relief, or mandamus. *Adams v. Humphreys*, 27 Ohio St.3d 43, 43, 500 N.E.2d 1373 (1986); *Beard v. Williams Cty. Dept. of Social Services*, 12 Ohio St.3d 40, 42, 465 N.E.2d 397 (1984). The Ohio Supreme Court held in *McFaul*, “[H]abeas corpus will lie in certain extraordinary circumstances where there is an unlawful restraint on a person’s liberty ... but only where there is no adequate legal remedy, e.g., appeal or post-conviction relief.” *Id.* at 186. The existence of an alternative legal remedy is enough to remove a petitioner’s allegations from habeas consideration, whether the remedy is still available or not, as long as the petitioner could have taken advantage of it previously. *See State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967).

Errors or irregularities that occur in the trial proceedings or sentence are best addressed on appeal. *See Walker v. Maxwell*, 1 Ohio St.2d 136, 137-8, 205 N.E.2d 394 (1965). *See also Bellman v. Jago*, 38 Ohio St.3d 55, 56, 526 N.E.2d 308 (1988), citing *Walker*, 1 Ohio St.2d at 137: “Habeas corpus ‘is not and never was a post-conviction remedy for the review of errors or irregularities of an accused’s conviction or for a retrial of the guilty or innocence of the accused.’”

Consequently, under the doctrine of res judicata, a convicted defendant is barred from litigating, in a collateral proceeding, any claim which either was raised or which could have been raised at his trial or in his direct appeal. *Perry*, 10 Ohio St.2d at 180.

Gooden did not raise an issue concerning his sentence on appeal, although he had every opportunity to do so. Consequently, this Court affirmed his conviction for Count One. Gooden

has also already attempted to correct his judgment entry before the trial court via his motion for proper sentencing and final order. Gooden has had an adequate remedy at law by appeal or postconviction relief to raise any error regarding his sentence. Because Gooden had an adequate, alternative legal remedy, his claims are not cognizable and they cannot be heard in a habeas corpus action.

In his brief, Gooden counters that res judicata does not apply because there was no final appealable order stemming from his original conviction, and that his sentence is void. This is incorrect. “[A] judgment of conviction is a final order subject to appeal under R.C. 2505.02 when the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk.” *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶14. There is no dispute that Gooden’s judgment entry contained these elements. As the state appellate court found, there is also no doubt that the jury convicted Gooden of felonious assault. A final appealable order was issued in this case, and Gooden has no excuse for not raising any issues concerning the jury verdict forms on direct appeal.

B. Gooden is not entitled to immediate release from prison because his maximum sentence has not expired.

Habeas relief is available only when the petitioner is entitled to immediate release from confinement. *McFaul*, 73 Ohio St.3d at 188, 1995-Ohio-228; O.R.C. 2725.01, *et seq.*; O.R.C. 2725.17. An inmate is not entitled to release after serving his minimum sentence, but an inmate may petition for a writ of habeas corpus if his maximum sentence has expired and that individual is being held unlawfully. *Heddleston v. Mack*, 84 Ohio St. 3d 213, 214, 702 N.E.2d 1198 (1998). The burden of proof is on the petitioner to show that he is illegally detained and, therefore,

entitled to immediate release. *Halleck v. Koloski*, 4 Ohio St. 2d 76, 78, 212 N.E.2d 601 (1965).

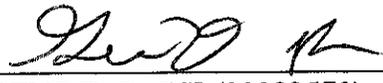
Gooden was ordered to serve an aggregate sentence of nine years of incarceration. According to his institutional records, Gooden was admitted into the custody of the Ohio Department of Rehabilitation and Corrections on July 29, 2009; his projected expiration of sentence date is June 10, 2018. (Appendix D, ODRC Offender Details). Therefore, his maximum sentence has not expired and Gooden is not entitled to a writ of habeas corpus. Gooden seems to believe that the clerical error made by the trial with respect to the jury verdict forms voids his sentence for felonious assault. As cited by the state appellate court, errors in the jury verdict form do not void a sentence. *State v. Washington*, 9th Dist. No. 18199, 1997 Ohio App. LEXIS 5304, at *19-20 (Nov. 26, 1997); *see also State ex rel. Dothard v. Warden, Trumbull Correctional Inst.*, 11th Dist. No. 2002-T-0145, 2003-Ohio-325, 2003 Ohio App. Lexis 348, ¶15. Gooden was lawfully convicted of felonious assault by the jury, and still must serve his maximum sentence.

III. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the dismissal of the petition for writ of habeas corpus.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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Associate Assistant Attorney General
Criminal Justice Section

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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Dismiss was sent to Jesse Gooden, #571-717, Richland Correctional Institution, 1001 Olivesburg Rd, P.O. box 8107, Mansfield, Ohio 44901-8107, via regular U.S. mail on this 2nd day of February, 2012.



Gene D. Park
Associate Assistant Attorney General

APPENDIX

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2011 JUN 16 PM 12:43

LINDA H. FRARY
CLERK

THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH DISTRICT

JESSE L. GOODEN 571-717 :
Richland Correctional Institution :
1001 Olivesburg Rd. :
P.O. Box 8107 :
Mansfield, Ohio 44901-8107 :

Petitioner

vs.

MARGARET BRADSHAW, Warden :
Richland Correctional Institution :
1001 Olivesburg Rd. :
P.O. Box 8107 :
Mansfield, Ohio 44901-8107 :

Respondent

Case No. 11ca55

ORIGINAL ACTION

VERIFIED COMPLAINT FOR HABEAS CORPUS

Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

I, Linda H. Frary, Clerk of Courts
Richland County, Ohio, hereby certify that
the foregoing is a true and correct copy of the
complaint for Habeas Corpus

filed with me 6-16-11
PS
Deputy C

State Appendix
A

**THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH DISTRICT**

JESSE L. GOODEN 571-717
 Richland Correctional Institution
 1001 Olivesburg Rd.
 P.O. Box 8107
 Mansfield, Ohio 44901-8107

Petitioner

vs.

MARGARET BRADSHAW, Warden
 Richland Correctional Institution
 1001 Olivesburg Rd.
 P.O. Box 8107
 Mansfield, Ohio 44901-8107

Respondent

Case No. _____

ORIGINAL ACTION

**COMPLAINT FOR A WRIT
OF HABEAS COSPUS**

To the Honorable Judges of the Richland County Court of Appeals:

1. The Petitioner Jesse L. Gooden acting *pro se* is unlawfully restrained of his liberty by Margaret Bradshaw, Warden at the Richland Correctional Institution, without legal authority, but under the color of a pretented commitment, a true copy which is attached. See, Exhibit A (Commitment Papers).
2. On October 23, 2008 and November 10, 2008 the Summit County Grand Jury indicted the Petitioner with Count One, Felonious Assault involving a peace officer, a second degree felony pursuant to O.R.C. § 2903.11(A)(2); Count Two, Failure to Comply with Order or Signal of Police Officer, a third degree felony pursuant to O.R.C. § 2921.331(B);

Count Three, Vandalism, a fifth degree felony pursuant to O.R.C. § 2909.05(B)(2) and Count Four, felonious assault involving a peace officer, a felony of the first degree, pursuant to O.R.C. § 2903.11(A)(2). See, Exhibits B and C (Indictments)

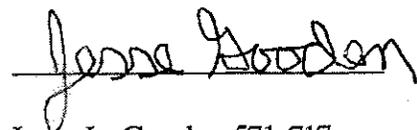
3. Prior to trial, Count One was dismissed with prejudice by the Summit County Court of Common Pleas (“trial court”). See, Exhibit A.
4. On June 18, 2009, the jury returned a guilty verdict against Count One, Count Two and Count Three.¹ See, Exhibits D, E and F (Jury Verdict Forms).
5. The trial court imposed a definite sentence of **One (1) Year for Count Two – FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER**, pursuant to O.R.C. § 2921.331(B), a felony of the third degree; **One (1) Year for Count Three – VANDALISM**, pursuant to O.R.C. § 2909.05(B)(2), a felony of the fifth degree and **Eight (8) Years for Count Four² – Felonious Assault** involving a peace officer pursuant to O.R.C. § 2903.11(A)(2), a felony of the first degree. A total of Nine (9) years was imposed by the trial court, Exhibit A.
6. The Petitioner successfully completed his sentence for Count Two (2) and Count Three (3) on June 12, 2011 and the Respondent refuses to release the Petitioner from the pretended/erroneous commitment order issued by the trial court.
7. The Petitioner asserts that he is unlawfully restrained of his liberty and is entitled to a writ of habeas corpus pursuant to O.R.C. § 2725.01 et seq., Article I, Section 9 of the Ohio Constitution and the Fourteenth Amendment of the United States Constitution for

¹ A verdict was not rendered against the Petitioner concerning Count Four.

² No verdict was rendered against Count Four of the Indictment.

- immediate release of the commitment order issued by the trial court.
8. It is axiomatic that a court speaks only through its journal; however, it is imperative that it reflect the truth. State ex rel. Worcester v. Donnellon (1990), 49 Ohio St.3d 117, 118, 551 N.E.2d 183.
 9. O.R.C. § 2725.01 et seq permits an individual to petition for a writ of habeas corpus if his maximum sentence has expired and that individual is being held unlawfully.
 10. Section 3(B)(2), Article IV, of the Ohio Constitution prohibits an appeal in the court of appeals if outstanding counts remain prohibiting a final order from being issued. State v. Baker, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163.
 11. The Petitioner has completed the authorized sentence imposed by the trial court.
 12. The Petitioner must be immediately released from his confinement since he has completed the authorized time by the trial court.
 13. The Petitioner seeks other relief as deemed appropriate by this Honorable Court.

Respectfully submitted,

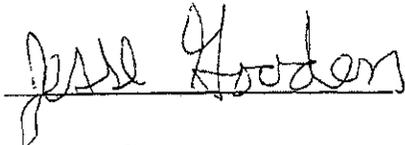


Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

STATE OF OHIO)
) SS: AFFIDAVIT OF JESSE L. GOODEN
COUNTY OF RIHLAND)

The above named Jesse L. Gooden, begin duly sworn, says that the facts stated and matters contained in the foregoing complaint and application are true.

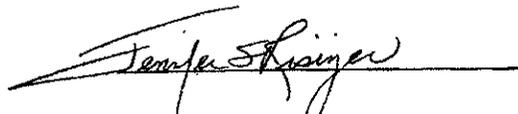
AFFIANT FURTHER SAYETH NAUGHT



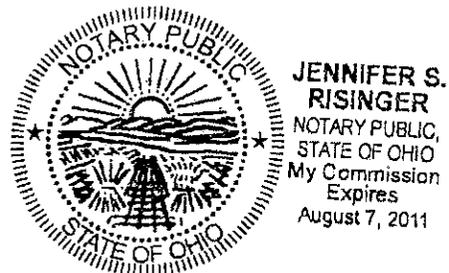
Jesse L. Gooden

NOTARY

The foregoing has been sworn to and subscribed before me on this 13TH day of June, 2011.



Notary Public



IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

DANIEL M. HERRIGAN

THE STATE OF OHIO

2009 JUL 24 PM 2:25

Case No. CR 08 10 3381

vs.

SUMMIT COUNTY
CLERK OF COURTS

JESSE L. GOODEN

JOURNAL ENTRY

THIS DAY, to-wit: The 9th day of July, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, CHARLES OLMINSKY, was present as was the Defendant, who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court finds that the Defendant heretofore on June 18, 2009 was found GUILTY by a Jury of FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER contained in Count 2 of the Indictment; VANDALISM, as contained in Count 3 of the Indictment; and FELONIOUS ASSAULT, as contained in Count 4 of the Supplement One to Indictment, which offense(s) occurred after July 1, 1996, which plea(s), voluntarily made and with a full understanding of the consequences, is(are) accepted by the Court, and the Court finds the Defendant guilty of the above offense(s). IT IS FURTHER ORDERED that the charge of FELONIOUS ASSAULT, as contained in Count 1 of the Indictment was DISMISSED prior to trial.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that by plea and sentence agreement, the Defendant, JESSE L. GOODEN, be committed to the OHIO DEPARTMENT OF REHABILITATION AND CORRECTION for a definite term of One (1) year, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER, Ohio Revised Code Section 2921.331(B), a felony of the third (3rd) degree; for a definite term of One (1) year, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of VANDALISM, Ohio Revised Code Section 2909.05(B)(2), a felony of the fifth (5th) degree; and for a definite term of Eight (8) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FELONIOUS ASSAULT, Ohio Revised Code Section 2903.11(A)(2), a felony of the first (1st) degree, and that the said Defendant pay the costs of

COPY

this prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

IT IS FURTHER ORDERED that the sentence imposed in Counts 2 and 4 be served CONSECUTIVELY and not concurrently with each other, and CONCURRENTLY with the sentence imposed in Count 2.

IT IS FURTHER ORDERED that the Defendant is to serve a total of Nine (9) years in the Ohio Department of Rehabilitation and Correction.

After release from prison, the Defendant is ordered to serve Five (5) years of post-release control. Defendant is ORDERED to pay all prosecutions costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that the Defendant be granted credit for 27 days served in Summit County Jail as of the date of sentencing, July 9, 2009, as agreed to by all parties.

IT IS FURTHER ORDERED that the Defendant's driver's license and all driving privileges be SUSPENDED for a definite period of 3 years.

Thereupon, the Court informed the Defendant of his right to appeal pursuant to Rule 32A2, Criminal Rules of Procedure, Ohio Supreme Court, and further the Court will appoint counsel to represent the said Defendant for purposes of appeal due to said Defendant's indigency.

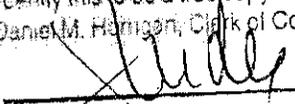
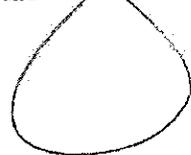
APPROVED:
July 10, 2009
mh


ALISON MCCARTY, Judge for

BRENDA BURNHAM UNRUH, Judge
Court of Common Pleas
Summit County, Ohio

cc: (Prosecutor Jay Cole - **EMAIL**)
(Lisa Newsome - **EMAIL**)
Criminal Assignment
(Attorney Charles Olminsky)
Adult Probation Department
(Registrar's Office - Email)
(Court Convey - Email)
(OBMV)
Bureau of Sentence Computation **CERTIFIED**

I certify this to be a true copy of the original
Daniel M. Harman, Clerk of Courts


Deputy


DANIEL M. HERRIGAN

2008 OCT 23 AM 11:18

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO

SUMMIT COUNTY
CLERK OF COURTS

2

CASE NO. 2008-10-3381

INDICTMENT TYPE: DIRECT

INDICTMENT FOR: FELONIOUS ASSAULT (1) 2903.11(A)(2) F-2;
FAILURE TO COMPLY WITH ORDER OR SIGNAL
OF POLICE OFFICER (1) 2921.331(B) F-3;
VANDALISM (1) 2909.05(B)(2) F-5

In the Common Pleas Court of Summit County, Ohio, of the term of SEPTEMBER in the year of our Lord, Two Thousand and Eight,

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, being duly impaneled and sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO,

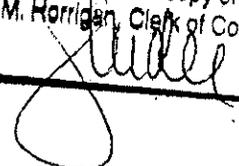
COUNT ONE

DO FIND AND PRESENT that **JESSE L. GOODEN**, on or about the 9th day of October, 2008, in the County of Summit and State of Ohio aforesaid, did commit the crime of **FELONIOUS ASSAULT** in that he did knowingly cause or attempt to cause physical harm to an undercover police officer by means of a deadly weapon or dangerous ordnance, to wit: an automobile, in violation of Section 2903.11(A)(2) of the Ohio Revised Code, A **FELONY OF THE SECOND DEGREE**, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

COUNT TWO

And the Grand Jurors of the State of Ohio, within and for the body of the County of Summit aforesaid, on their oaths, in the name and by the authority of the State of Ohio, DO FURTHER FIND AND PRESENT that **JESSE L. GOODEN**, on or about the 9th day of October, 2008, in the County of Summit aforesaid, did commit the crime of **FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER** in that he did operate a motor vehicle so as to willfully elude or flee a police officer after receiving a visible or audible signal from a police officer to bring his motor vehicle to a stop, and the operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property, in violation of Section 2921.331(B) of the Ohio Revised Code, A **FELONY OF THE THIRD DEGREE**, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

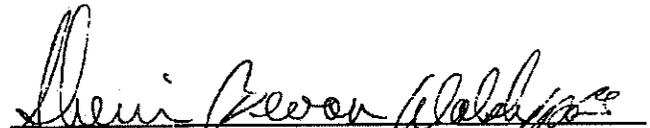
I certify this to be a true copy of the original
Daniel M. Herrigan, Clerk of Courts


Deputy

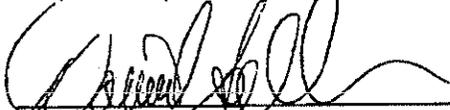
CASE NO. 2008-10-3381
PAGE TWO OF TWO

COUNT THREE

And the Grand Jurors of the State of Ohio, within and for the body of the County of Summit aforesaid, on their oaths, in the name and by the authority of the State of Ohio, DO FURTHER FIND AND PRESENT that **JESSE L. GOODEN**, on or about the 9th day of October, 2008, in the County of Summit aforesaid, did commit the crime of **VANDALISM** in that he did knowingly cause serious physical harm to property that is owned, leased, or controlled by a governmental entity, to wit: police vehicle, in violation of Section 2909.05(B)(2) of the Ohio Revised Code, A FELONY OF THE FIFTH DEGREE, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.


SHERRI BEVAN WALSH, Prosecutor /dg
County of Summit, Ohio

Prosecutor, County of Summit, by


Assistant Prosecuting Attorney

10/24/08
Date


Grand Jury Foreperson/Deputy Foreperson

A TRUE BILL

COPY

DANIEL M HERRIGAN

2008 NOV 10 PM 2: 54

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO

SUMMIT COUNTY
CLERK OF COURTS

12

INDICTMENT TYPE: SUPPLEMENTARY CASE NO. 2008-10-3381

INDICTMENT FOR: FELONIOUS ASSAULT (1) 2903.11(A)(2) F-1

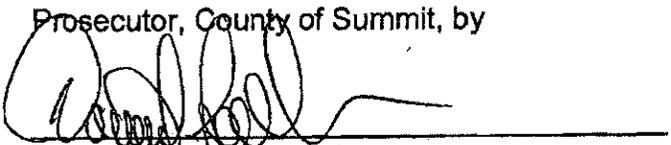
In the Common Pleas Court of Summit County, Ohio, of the term of NOVEMBER in the year of our Lord, Two Thousand and Eight,

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, being duly impaneled and sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO,

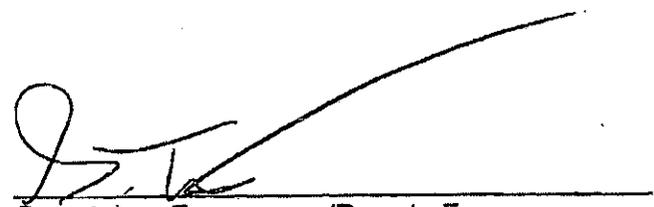
COUNT FOUR

DO FIND AND PRESENT that **JESSE L. GOODEN**, on or about the 9th day of October, 2008, in the County of Summit and State of Ohio aforesaid, did commit the crime of **FELONIOUS ASSAULT** in that he did knowingly cause or attempt to cause physical harm to an undercover police officer by means of a deadly weapon or dangerous ordnance, to wit: an automobile, in violation of Section 2903.11(A)(2) of the Ohio Revised Code, A FELONY OF THE FIRST DEGREE, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.


SHERRI BEVAN WALSH, Prosecutor Tdg
County of Summit, Ohio

Prosecutor, County of Summit, by

Assistant Prosecuting Attorney

11/6/08
Date


Grand Jury Foreperson/Deputy Foreperson

A TRUE BILL

DANIEL M. HERRIGAN

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

2009 JUN 18 PM 12:43

THE STATE OF OHIO, COUNTY OF SUMMIT
CLERK OF COURTS
Plaintiff,

-vs-

JESSE L. GOODEN,
Defendant.

) CASE NO. CR 2008 10 3381
)
) JUDGE BRENDA BURNHAM UNRUH
)
) FELONIOUS ASSAULT
)
) COUNT ONE
)

We, the Jury, being duly impaneled and affirmed, do find the Defendant, Jesse L. Gooden, * Guilty of the offense of FELONIOUS ASSAULT.

*Insert in ink either "Guilty" or "Not Guilty."

We, the Jury, further find that the Nick Gray ** was working as a police officer.

**Insert in ink "was" or "was not."

And we do so render our verdict upon the concurrence of twelve (12) members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 18th day of June, 2009.

1. [Redacted]
2. [Redacted]
3. [Redacted]
4. [Redacted]
5. [Redacted]
6. [Redacted]

7. [Redacted]
8. [Redacted]
9. [Redacted]
10. [Redacted]
11. [Redacted]
12. [Redacted]

DANIEL M. HORTIGAN

IN THE COURT OF COMMON PLEAS

2009 JUN 18 PM 12:43

SUMMIT COUNTY, OHIO

THE STATE OF OHIO
SUMMIT COUNTY
CLERK OF COURTS

Plaintiff,

-vs-

JESSE L. GOODEN,

Defendant.

) CASE NO. CR 2008 10 3381
)
) JUDGE BRENDA BURNHAM UNRUH
)
) FAILURE TO COMPLY WITH ORDER
) OR SIGNAL OF POLICE OFFICER
)
)
) COUNT TWO

We, the Jury, being duly impaneled and sworn, do find the Defendant, Jesse L. Gooden,
* Guilty of the offense of FAILURE TO COMPLY WITH ORDER OR
SIGNAL OF POLICE OFFICER.

*Insert in ink either "Guilty" or "Not Guilty."

We, the Jury, further find the Defendant's operation of the motor vehicle
** did cause a substantial risk of serious physical harm to person or property.

**Insert in ink either "did" or "did not."

And we do so render our verdict upon the concurrence of twelve (12) members of our
said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this
18th day of June, 2009.

2. [Redacted]
3. [Redacted]
4. [Redacted]
5. [Redacted]
6. [Redacted]

7. [Redacted]
8. [Redacted]
9. [Redacted]
10. [Redacted]
11. [Redacted]
12. [Redacted]

DANIEL M. HERRIGAN

2009 JUN 18 PM 12:43

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

THE STATE OF OHIO
CLERK OF COURTS

Plaintiff,

-vs-

JESSE L. GOODEN,

Defendant.

) CASE NO. CR. 2008 10 3381
)
) JUDGE BRENDA BURNHAM UNRUH
)
) VANDALISM
)
) COUNT THREE
)
)

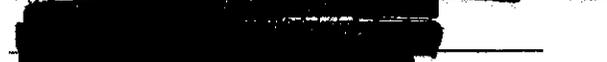
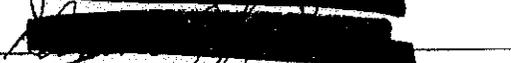
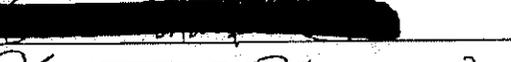
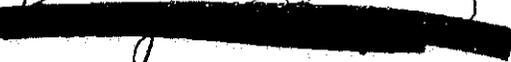
We, the Jury, being duly impaneled and sworn, do find the Defendant,
JESSE L. GOODEN * Guilty of the offense of VANDALISM.

*Insert in ink either "Guilty" or "Not Guilty."

We, the Jury, further find the amount of the damage ** WAS \$500 or
more.

**Insert in ink either "was" or "was not."

And we do so render our verdict upon the concurrence of twelve (12) members of
our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this
18th day of June, 2009.

1. 	7. 
2. 	8. 
3. 	9. 
4. 	10. 
5. 	11. 
6. 	12. 

Docket Report

CRIMINAL CASE

Court of Common Pleas of Summit County, Ohio

THE STATE OF OHIO
vs
JESSE GOODEN L.

Case #: CR-2008-10-3381
10/15/2008

C2008103381

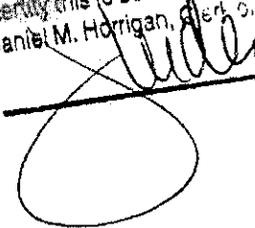
C2008103381

C2008103381

--- Docket Entries ---

All Docket Entries

1. 10/15/08 DIRECT INDICTMENT INFORMATION SHEET
2. 10/23/08 INDICTMENT FILED
NO ATTY. REQUIRED
3. 10/23/08 SUMMONS ISSUED
NO ATTY. REQUIRED
4. 10/29/08 PRETRIAL SUPERVISION PROGRAM CONDITIONS
NO ATTY. REQUIRED
5. 10/31/08 STATE'S DEMAND FOR DISCOVERY.
CHARLENE SELINSKY HARDY
6. 11/03/08 AKRON MUNI COURT COSTS - 08CRA13230
7. 11/03/08 CASE TRANSFERRED FROM AKRON MUNI COURT
NO ATTY. REQUIRED
8. 11/03/08 ON 10-29-08 JOURNAL ENTRY OF ARRAIGNMENT: PLED NOT
GUILTY. BOND 25K SURETY BOND W/BDM BAILBONDS
W/MAX. PT SUPERVISION. NO CONTACT! CASE ASSIGNED
TO JUDGE UNRUH. DEF. RELEASED TO AWAIT PRETRIAL
SET FOR 11-06-08 AT 9 A.M. JHS
9. 11/06/08 AKRON MUNI BOND FILED
NO ATTY. REQUIRED
10. 11/06/08 MOTION FOR BILL OF PARTICULARS
CHARLES W. OLMINSKY, JR.
11. 11/06/08 DEFENDANT'S DEMAND FOR DISCOVERY.
CHARLES W. OLMINSKY, JR.

I certify this to be a true copy of the original
Daniel M. Harrigan, Clerk of Courts

Deputy

12. 11/10/08 SUPPLEMENTAL INDICTMENT FILED
NO ATTY. REQUIRED

13. 11/10/08 SUPPLEMENTAL SUMMONS ISSUED

14. 11/13/08 11/06/2008 PRETRIAL CONT TILL 12/03/2008 9AM. RPV
FOR BBU

15. 12/10/08 JOURNAL ENTRY OF ARRAIGNMENT ON SUPPLEMENT 1: ON
12-3-08, PLEAD NOT GUILTY. RELEASED, TRIAL 1-21-09
@ 9 AM. FINAL PRETRIAL 1-16-09 @ 9 AM. JJG/BBU

16. 12/23/08 ON 12-11-08, BOND MODIFIED TO REMOVE THE COND. OF
P.T. SUPERVISION. BBU

17. 01/16/09 ON 1-12-09, FINAL PRETRIAL RE-SET 1-15-09 @ 9 AM.
BBU

18. 01/20/09 ON 1-15-09, TRIAL 2-18-09 @ 9 AM. BBU

19. 02/09/09 SUBPOENA RETURNED: K.LEE (MAIL)
NO ATTY. REQUIRED

20. 02/09/09 SUBPOENA RETURNED: DET.N.GRAY (MAIL)
NO ATTY. REQUIRED

21. 02/09/09 SUBPOENA RETURNED: L.BEECHER (MAIL)
NO ATTY. REQUIRED

22. 02/09/09 SUBPOENA ISSUED: K. LEE
JAY A COLE

23. 02/09/09 SUBPOENA ISSUED: N. GRAY DET.
JAY A COLE

24. 02/09/09 SUBPOENA ISSUED: L. BEECHER
JAY A COLE

25. 02/17/09 MOTION TO CONTINUE
CHARLES W. OLMINSKY, JR.

26. 02/23/09 SUBPOENA RETURNED: L.BEECHER 14.00
NO ATTY. REQUIRED

27. 02/23/09 ON 2-18-09, TRIAL CONT'D. 4-20-09 @ 9 AM. BBU

28. 04/08/09 SUBPOENA RETURNED: K.LEE (MAIL)
NO ATTY. REQUIRED

29. 04/08/09 SUBPOENA RETURNED: L.BEECHER (MAIL)
NO ATTY. REQUIRED

30. 04/08/09 SUBPOENA ISSUED:K. LEE
JAY A COLE

31. 04/08/09 SUBPOENA ISSUED: L. BEECHER
JAY A COLE

32. 04/16/09 SUBPOENA RETURNED: K.LEE 52.50
NO ATTY. REQUIRED

33. 04/16/09 SUBPOENA ISSUED: E. MORTON

JAY A COLE

34. 04/16/09 SUBPOENA ISSUED: N. OWENS-STOCKARD
JAY A COLE
35. 04/23/09 SUBPOENA RETURNED: L.BEECHER 22.00
NO ATTY. REQUIRED
36. 04/27/09 ON 4-20-09, TRIAL CONT'D. 6-15-09 @ 9 AM. BBU
37. 06/08/09 SUBPOENA RETURNED: L.BEECHER (MAIL)
NO ATTY. REQUIRED
38. 06/08/09 SUBPOENA RETURNED: K.LEE (MAIL)
NO ATTY. REQUIRED
39. 06/08/09 SUBPOENA RETURNED: E.MORTON (MAIL)
NO ATTY. REQUIRED
40. 06/08/09 SUBPOENA RETURNED: N.OWENS-STOCKARD (MAIL)
NO ATTY. REQUIRED
41. 06/08/09 SUBPOENA ISSUED: L. BEECHER
JAY A COLE
42. 06/08/09 SUBPOENA ISSUED: K. LEE
JAY A COLE
43. 06/08/09 SUBPOENA ISSUED: E. MORTON
JAY A COLE
44. 06/08/09 SUBPOENA ISSUED: N. OWENS-STOCKARD
JAY A COLE
45. 06/12/09 SUBPOENA RETURNED: L.BEECHER 14.00
NO ATTY. REQUIRED
46. 06/12/09 SUBPOENA RETURNED: N.OWENS-STOCKARD 14.00
NO ATTY. REQUIRED
47. 06/12/09 OPN 6-11-09, TRIAL CONFIRMED 6-15-09 @ 9 AM.
JGH/BBU
48. 06/17/09 SUBPOENA RETURNED: K.LEE 14.00
NO ATTY. REQUIRED
49. 06/17/09 SUBPOENA RETURNED: E.MORTON 22.00
NO ATTY. REQUIRED
50. 06/18/09 VERDICT: GUILTY - FELONIOUS ASSAULT, CNT. 1.
WE, FURTHER FIND THAT NICK GRAY **WAS WORKING AS
A POLICE OFFICER.
51. 06/18/09 VERDICT: GUILTY - FAILURE TO COMPLY W/ORDER/SIGNAL
OF POLICE OFFICER, CNT. 2. WE, FURTRE FIND THE
DEPT.'S OPERATION OF THE MOTOR VEHICLE **DID
CAUSE A SUBSTANTIAL RISK OF SERIOUS PHYSICAL
HARM TO PERSON OR PROPERTY.
52. 06/18/09 VERDICT: GUILTY - VANDALISM, CNT. 3. WE, FURTHER
FIND THE AMOUNT OF DAMAGE ***WAS \$500.00 OR
MORE.

53. 06/18/09 JURY CHARGE FILED.

54. 06/22/09 JURY FEE \$1,080.00

56. 06/29/09 ON 6-18-09, THE JURY RETURNED THEIR VERDICT FINDING THE DEFENDANT: GUILTY - FELONIOUS ASSAULT, CNT. 1, O.R.C. 2903.11(A)(2), F-2; GUILTY - FAILURE TO COMPLY W/ORDER OR SIGNAL OF POLICE OFFICER, CNT. 2, O.R.C. 2921.331(B), F-3; GUILTY - VANDALISM, CNT. 3, O.R.C. 2909.05(B)(2), F-5; AND GUILTY - FELONIOUS ASSAULT, CNT. 4 OF SUPPLE. 1, O.R.C. 903.11(A)(2), F-1. BOND IS REVOKED! REMANDED, SENTENCING 7-2-09 @ 9 AM. TS/AMC/BBU

55. 07/01/09 STENO FEE-\$100.00

57. 07/14/09 ON 7-2-09: ON 6-18-09, DEFT. WAS FOUND GUILTY BY JURY OF: FAILURE TO COMPLY W/ORDER/SIGNAL OF POLICE OFFICER, CNT. 2, O.R.C. 2921.331(B), F-2; GUILTY - VANDALISM, CNT. 3, O.R.C. 2909.05(B)(2), F-5; AND GUILTY - FELONIOUS ASSAULT, CNT. 4 OF SUPPLE. 1, O.R.C. 903.11(A)(2), F-1. DISMISSED CHARGE-CNT. 1, FELONIOUS ASSAULT. CASE BE REFERRED FOR P.S.I. AND REPORT W/VICTIM IMPACT STATEMENT. REMANDED, SENTENCING SET 7-9-09 @ 9 AM. AMC/BBU

58. 07/17/09 ON 7-14-09, NUNC PRO TUNC ORDER TO CORRECT THE 1ST & 3RD PARAGRAPHS OF THE J.E. DATED 6-18-09, AS FOLLOWS: "6-15-09, COURT DISMISSED THE CHARGE OF FELONIOUS ASSAULT, CNT. 1. ON 6-18-09, THE JURY RETURNED THEIR VERDICT FINDING THE DEFENDANT GUILTY - FAILURE TO COMPLY W/ORDER OR SIGNAL OF POLICE OFFICER, CNT. 2, O.R.C. 2921.331(B), F-3; GUILTY - VANDALISM, CNT. 3, O.R.C. 2909.05(B)(2), F-5; AND GUILTY - FELONIOUS ASSAULT, CNT. 4 OF SUPPLE. 1, O.R.C. 903.11(A)(2), F-1. BOND IS REVOKED! REMANDED, SENTENCING SET 7-2-09 @ 9 AM. AMC/BBU O.R.C

59. 07/17/09 ON 7-13-09, ATTY. THOMAS DICAUDO - APPOINTED FOR PURPOSES OF APPEAL. BBU

60. 07/24/09 WARRANT TO CONVEY ISSUED
NO ATTY. REQUIRED

61. 07/24/09 7/9/09: DEFENDANT WAS FOUND GUILTY BY A JURY OF FAILURE TO COMPLY W/ORDER OR SIGNAL OF POLICE OFFICER, CT. 2, O.R.C. 2921.331(B), F-3; VANDALISM, CT. 3, O.R.C 2909.05(B)(2), F-5; AND FELONIOUS ASSAULT, CT. 4 OF SUPPLE. 1, O.R.C. 2903.11(A)(2), F-1. REMAINING CHARGE WAS DISMISSED- SEE IMAGE. SENT'D. TO 1 YR. INCARCERATION ON EACH OF CTS. 2 AND 3, AND 8 YRS. ON CT. 4. PAY COSTS. CTS. 2 AND 4 BE SERVED CONSEC. W/ EACH OTHER BUT CONCURR. W/ CT. 3 FOR A TOTAL OF 9 YRS. DEF. CREDITED FOR 27 DAYS TIME SERVED. LICENSE SUSP'D. 3 YRS. BBU
NO ATTY. REQUIRED

62. 07/24/09 (BCI) DISPOSITION MAILED TO ARRESTING AGENCY

76. 07/25/09 **CASE COSTED THRU 07-24-09 (09-21-09 ORIGINAL DATE COSTED) FOR ORIGINAL (\$1,675.50 PRISON)

63. 08/04/09 PRAECIPE TO COURT REPORTER

64. 08/04/09 MOTION TO TAX TRANSCRIPT TO COSTS
THOMAS MICHAEL DICAUDO

65. 08/04/09 NOTICE OF APPEAL
THOMAS MICHAEL DICAUDO

66. 08/04/09 DOCKETING STATEMENT

67. 08/05/09 ORDER FOR TRANSCRIPT. A COMPLETE TRANSCRIPT OF PROCEEDINGS BE FURNISHED AND BE TAXED TO COSTS.
BBU

68. 08/26/09 CERTIFICATE OF SHORTHAND REPORTER

69. 09/03/09 CERTIFICATE OF SHORTHAND REPORTER

70. 09/04/09 EXHIBIT LIST

71. 09/09/09 TRANSCRIPT OF PROCEEDINGS VOL. 1 OF 4

72. 09/09/09 TRANSCRIPT OF PROCEEDINGS VOL. 2 OF 4

73. 09/09/09 TRANSCRIPT OF PROCEEDINGS VOL. 3 OF 4

74. 09/09/09 TRANSCRIPT OF PROCEEDINGS VOL. 4 OF 4

75. 09/09/09 TRANSCRIPT OF PROCEEDINGS. SENTENCING

77. 01/05/10 PRE SENTENCE MOTION FOR NEW TRIAL
PRO SE

78. 01/07/10 MEMORANDUM
RICHARD S. KASAY

79. 01/21/10 ON 1-7-2010, ORDER DENYING MOTION FOR NEW TRIAL.
BBU

80. 05/05/10 JOURNAL ENTRY/9TH DISTRICT COURT OF APPEALS C.A.
24896: JUDGEMENT AFFIRMED. JUDGE CYNTHIA WESTCOTT RICE

81. 05/05/10 JOURNAL ENTRY/9TH DISTRICT COURT OF APPEALS C.A.
24896: JUDGEMENT AFFIRMED. JUDGE CYNTHIA WESTCOTT RICE

82. 05/05/10 JOURNAL ENTRY/9TH DISTRICT COURT OF APPEALS C.A.
24953: JUDGEMENT AFFIRMED. DONNA J. CARR JUDGE CYNTHIA WESTCOTT RICE

----- (COST) -----

Posted	Action	Amount
07/24/2009	ORIGINAL COSTS	1,675.50

----- (DEPOSITS) -----

--- All Services ---

Issued	Number	Status	Served	\$Amount	Party
10-23-2008	14620	SERVED	10-27-2008	8.50	GOODEN, JESSE L.
11-10-2008	15153	SERVED	12-03-2008	8.50	GOODEN, JESSE L.
07-24-2009	21867	SERVED	07-29-2009	55.50	LORAIN CORRECTIONAL

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

DANIEL M. HERRIGAN

THE STATE OF OHIO

2009 JUL 17 AM 11:43

Case No. CR 08 10 3381

vs.

SUMMIT COUNTY
CLERK OF COURTS

JESSE L. GOODEN

JOURNAL ENTRY

THIS DAY, to-wit: The 14th day of July, A.D., 2009, upon due consideration of this Court, IT IS HEREBY ORDERED that this Journal Entry be filed NUNC PRO TUNC to correct the 1st and 3rd paragraphs of the Journal Entry dated June 18, 2009 as follows:

"THIS DAY, to-wit: The 18th day of June, A.D., 2009, now comes the Assistant Prosecuting Attorney, JAY COLE, on behalf of the State of Ohio, the Defendant, JESSE L. GOODEN, being in Court with counsel, CHARLES OLMINSKY, for trial herein. Heretofore on June 15, 2009 at 1:00 P.M., a Jury was duly empanelled and sworn, and the Court **DISMISSED the charge of FELONIOUS ASSAULT, as contained in Count 1 of the Indictment prior to trial.** Thereupon, the trial commenced.

Thereafter, the trial not being completed, adjourned and reconvened on June 17, 2009 until 2:30 P.M., at which time the Jury having heard the testimony adduced by both parties hereto, the arguments of counsel and the charge of the Court, retired to their room for deliberation.

And thereafter, to-wit: On June 18, 2009 at 11:00 A.M., said Jury came again into the Court and returned their verdict in writing finding said Defendant **GUILTY of the crime of GUILTY of the crime of FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER, as contained in Count 2 of the Indictment, Ohio Revised Code Section 2921.331(B), a felony of the third (3rd) degree; GUILTY of the crime of VANDALISM, as contained in Count 3 of the Indictment, Ohio Revised Code Section 2909.05(B)(2), a felony of the fifth (5th) degree; and GUILTY of the crime of FELONIOUS ASSAULT, as contained in Count 4 of the Supplement One to Indictment, Ohio Revised Code Section 903.11(A)(2), a felony of the first (1st) degree.**

COPY

4

IT IS FURTHER ORDERED that the Defendant's bond be REVOKED and that he be remanded to the Summit County Jail to await sentencing set for July 2, 2009 at 9:00 A.M.

APPROVED:
July 14, 2009
mh


ALISON MCCARTY, Judge for

BRENDA BURNHAM UNRUH, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Jay Cole
Criminal Assignment
(Attorney Charles Olminsky)
(Registrar's Office - Email)

THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2011 JUN 16 PM 12:43
LINDA H. FRARY
CLERK

JESSE L. GOODEN 571-717
Richland Correctional Institution
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

Case No. 11ca55

ORIGINAL ACTION

Petitioner

vs.

MARGARET BRADSHAW, Warden
Richland Correctional Institution
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

Respondent

O.R.C. § 2969.25 STATUTORY REQUIREMENTS

Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

I, Linda H. Frary, Clerk of Courts
Richland County, Ohio, hereby certify that
the foregoing is a true and correct copy of the
statutory requirements
filed with me 6-16-11
LF
Deputy Clerk of Courts

STATE OF OHIO)
)
COUNTY OF RICHLAND)

AFFIDAVIT PURSUANT TO O.R.C. § 2969.25

I, Jesse L. Gooden do hereby depose under the laws of perjury in the State of Ohio, the following statements are true to the best of my knowledge:

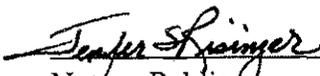
1. Affiant states he commenced an original action in the Ohio Ninth District Court of Appeals for Summit County, Ohio for mandamus relief against the late Honorable Brenda Burnham Unruh¹ and the Honorable Alison McCarty, Judges of the Summit County Court of Common Pleas in December of 2010. The case is currently pending with the court of appeals and is docketed under case number 25739.
2. Affiant states this is the only civil action filed in the past five years.
3. Affiant states he has attached a certified copy of his inmate account statement from the cashier at the Richland Correctional Institution and does not own or possess any finances or material of value to pay for this complaint pursuant to O.R.C. § 2969.25(C).

AFFIANT FURTHER SAYETH NAUGHT



Jesse L. Gooden

The foregoing has been sworn to and subscribed before me on this 2ND day of June, 2011.



Notary Public

¹ Judge Unruh is deceased



JENNIFER S.
RISINGER
NOTARY PUBLIC,
STATE OF OHIO
My Commission
Expires
August 7, 2011

DANIEL M. HERRIGAN
2010 OCT -8 PM 2:24
SUMMIT COUNTY
CLERK OF COURTS

THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

ORIGINAL

STATE OF OHIO)	Case No. 08 10 3381
Plaintiff)	
vs.)	Judge Burnham-Unruh
JESSE GOODEN)	
Defendant)	

MOTION FOR PROPER SENTENCING ORDER AND FINAL ORDER

The Defendant Jesse Gooden respectfully moves this Court for a journal entry that speaks the truth, in concert, with a final journal entry allowing the Defendant to appeal his conviction and sentence. Upon the attached memorandum in support, incorporated herein, as rewritten this Court should find relief is warranted.

Respectfully submitted,

Jesse Gooden

Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901

State Appendix
B

MEMORANDUM IN SUPPORT

Procedure Posture

On October 23, 2008, Defendant was indicted with one count, of failure to comply with order or signal of police officer, a felony of the third degree; one count of vandalism, a felony of the fifth degree; one count of felonious assault against a peace officer a felony of the second degree. On November 10, 2008, Defendant was indicted through a supplemented indictment for felonious assault against a peace officer, a felony of the first degree.

On or about June 15, 2009 a jury was duly empaneled and sworn and this Court dismissed the charge of felonious assault as contained to Count 1 of the Indictment prior to trial and the jury trial proceeded. On June 18, 2009, the jury returned their verdict in writing, finding the Defendant Guilty of Felonious Assault against a peace officer, as contained to Count 1 of the Indictment, a Felony of the Second Degree; Failure to Comply With Order or Signal of Police Officer as contained in Count 2 of the Indictment, a Felony of the Third Degree; Guilty of the the Crime of Vandalism, as contained in Count 3 of the Indictment, a Felony of the Fifth Degree.¹ On July 24, 2009, this Court issued a commitment (sentencing) order; however, fatal errors are detected that represents a sentencing order that does not speak the truth.

1 No jury verdict form exists on record for Count Four in the Supplemented Indictment of Felonious Assault against a peace officer, a felony of the First Degree.

Sentencing Order

It is axiomatic that "a trial court only speaks through [its] journal entry[.]" State v. Overstreet, 9th Dist. No. 21367, 2003-Ohio-4530, at ¶ 8. See also, Schenley v. Kauth (1953), 160 Ohio St. 109, 113 N.E.2d 625, ¶ one of the syllabus.

In State ex rel Worcester, (1990) 49 Ohio St.3d 117, 118, 551 N.E.2d 183, 184 the Supreme Court of Ohio stated in dictum that: "There is a factual distinction between a court fraudulently altering its records and ordering an incorrect journal entry. Nevertheless, we have the same result: a court record which is not accurate, so "it is imperative that the court's journal reflect the truth. Id. at pg. 118.

In the case at bar, this Court's July 24, 2009 sentencing order has a fatal error that is not supported by the record. The sentencing order reads the Defendant was found Guilty by a jury for the crime of Felonious Assault, Ohio Revised Code Section 2903.11(A)(2), a felony of the first (1st) degree; however, the record does not contain a written jury verdict for Count Four of the Indictment since Count One was dismissed.

The only written verdict form on record, concerning Count One, the Felonious Assault Charge against a police officer is the charge that was dismissed. Therefore, the sentencing order must be corrected to read what actually occurred in this case, concerning the written jury forms.

Accordingly, this Court is required by law to correct the sentencing order to

speak the truth.

Final Order

The Ohio Supreme Court has held that “a judgment of conviction qualifies as an order that ‘affects a substantial right’ and ‘determines the action and prevents a judgment’ in favor of the defendant.” State v. Baker, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at ¶ 9. It has further held that “[a] judgment of conviction is a final appealable order under R.C. 2505.02 [if] it sets forth (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. The trial court’s journal entry fails to set forth the jury’s verdict for Count Four after the proper corrections are made from above.

The Eight District Court of Appeals recently addressed a similar case when all counts in the indictment are not addressed in the sentencing order. In State ex rel. Albourque v. Terry, 2010 WL 3595966 (Ohio App. 8 Dist.), 2010-Ohio-4362 the Eight District Court of Appeals entertained a case in the trial court that included five counts. The Court was unable to identify a journal entry in the record in which the court of common pleas disposed of the fifth count, having a weapon while under disability. It is well established that Crim.R. 32(C) requires that a trial court dispose of each count before the determination of a criminal action is final and appealable. See, e.g., State v. White, Cuyahoga App. No. 92972, 2010-Ohio-2342, at

¶ 60.

Since the record in this case de hors any written and signed verdict form from the jury relating to Count Four and Count One was dismissed, an outstanding charge still exists prohibiting a final order from being issued.

Invalid Post Release Control

O.R.C. § 2929.191, effective July 11, 2006, promulgated a statutory remedy for trial courts to use to correct an error in imposing postrelease control. In State v. Singleton, 124 Ohio St .3d 173, 2009-Ohio-6434, 920 N.E.2d 958, the Ohio Supreme Court addressed the effect of R.C. 2929.191 on a trial court's failure to properly impose postrelease control. The court held that for criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing. Id. at paragraph one of the syllabus. There is no dispute the Defendant was sentenced after July 11, 2006 and this Court has the authority to correct the sentencing order applying O.R.C. § 2929.191.

In the case at bar, the sentencing order issued by this Court reads five years of post release control that applies to a First Degree Felony. Since Count Four has not received a judgment of guilt, there is no first degree felony conviction in this case and the five year post release control in the sentencing order must be corrected for each count of conviction. Furthermore, the two remaining counts that are third

and fourth degree felonies, do not mandate five years of post release control supervision and this Court is required to impose proper post release control supervision for the third and fourth degree felonies pursuant to O.R.C. § 2929.191, or, in the alternative when the final order is issued by this Court.

Court of Appeals

The Ohio Constitution restricts an appellate court's jurisdiction over trial court decisions to the review of final orders. Section 3(B)(2), Article IV, Ohio Constitution. "[I]n order to decide whether an order issued by a trial court in a criminal proceeding is a reviewable final order, appellate courts should apply the definitions of 'final order' contained in R.C. 2505.02." State v. Muncie (2001), 91 Ohio St.3d 440, 444, 746 N.E.2d 1092. "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, [if] it is * * * [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." R.C. 2505.02(B)(1).

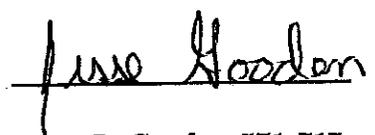
There is no dispute, the Defendant filed an appeal with the Ninth District Court of Appeals and the case was docketed under number 24896. See also, State v. Gooden, 2010 WL 1781597 (Ohio App. 9 Dist.), 2010-Ohio-1961. Even though the Ninth District Court affirmed the decision of this Court, the lack of a final order was never addressed. Since this Court never issued a final order, the court of appeals lacked jurisdiction to entertain the Defendant's appeal; therefore, the

Defendant can not be barred by the doctrine of res judicata. State v. Simpkins, 117 Ohio St.3d 420, 2008-Ohio-1197, ¶ 25.

Conclusion

This Court has a responsibility to correct the journal entry and finalize count four of the indictment according to Ohio law.

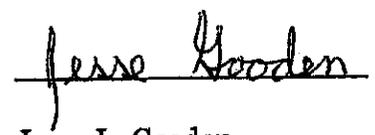
Respectfully submitted,



Jesse L. Gooden 571-717
RiCi
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

CERTIFICATE OF SERVICE

A copy of the foregoing has been mailed to the Summit County Prosecutor's Office at 53 University Ave., Akron, Ohio 44308 on this 6 day of October, 2010.



Jesse L. Gooden

DANIEL M. HERRIGAN
2010 OCT 20 PM 2:22
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO,)	CASE NO. CR 2008 10 3381
)	
Plaintiff,)	JUDGE BURNHAM UNRUH
)	
vs.)	
)	
JESSE GOODEN,)	<u>JUDGMENT ENTRY</u>
)	
Defendant.)	
)	

This matter comes before the Court on Defendant, Jesse Gooden's Motion for Proper Sentencing Order and Final Order. The Defendant argues that the Court must correct its journal entry and finalize count IV of the indictment. The Court has considered Defendant's Motion, the State's Memorandum and applicable law. Upon due consideration, the Court DENIES Defendant's October 8, 2010 Motion. The Court's decision is discussed in further detail below.

Defendant was indicted on two counts of felonious assault on a police officer. Both offenses occurred on or about October 9, 2008. These counts were numbered one and four in the indictment.

On or about June 15, 2009, a jury was duly impaneled on the present case. The Jury returned a verdict on June 18, 2009 and found the Defendant guilty on Count I of the indictment. The sentencing entry, dated July 24, 2010 indicates that the jury found defendant

State Appendix
C

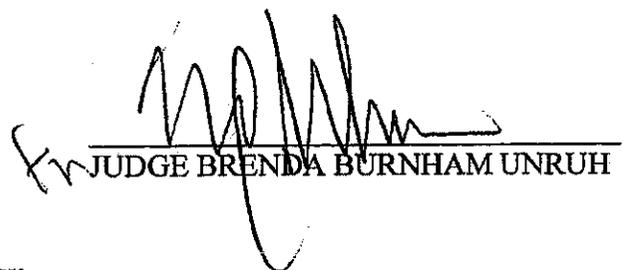
guilty on count four and that count one was dismissed. Thus, the sentencing entry appears to contain a clerical error.

Defendant appealed the case and it was affirmed on appeal. *State v. Gooden*, 9th Dist. App. No. 24896, 2010-Ohio-1961. Defendant did not raise this issue on appeal. He did not complain about the clerical error on the journal entry. The Court of Appeals found that Defendant was convicted on count one. The Court of Appeal's decision is now the law of the case. See *Nolan v. Nolan* (1984), 11 Ohio St.3d 1. It is not necessary for this Court to issue a different sentencing order in this case. Accordingly, the Defendant's Motion for a Proper Sentencing Order and Final Order is DENIED.

CONCLUSION

WHEREFORE, upon due consideration, the Court DENIES the Defendant's Motion for Proper Sentencing Order and Final Order.

IT IS SO ORDERED.



JUDGE BRENDA BURNHAM UNRUH

Assistant Prosecuting Attorney Richard S. Kasay
Jesse L. Gooden, *pro se*



[No Menu inside the Offender Search.]

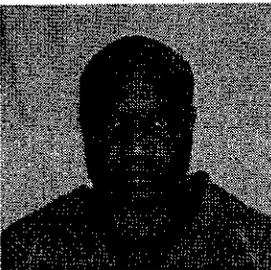


Ohio Department of Rehabilitation and Correction Offender Search Detail

<< Search Page

Your search only returned one record.

JESSE L GOODEN	
Number:	A571717
DOB:	10/23/1978
Gender:	Male
Race:	Black
Admission Date:	07/29/2009
Institution:	Richland Correctional Institution
Status:	INCARCERATED



Victim Info	Ohio Revised Code	Pre-S.B. 2 Felony Sentencing Chart	S.B. 2 Felony Sentencing Chart
Offense Information			
FAIL TO COMPLY Committing County: SUMMIT	Admission Date: 07/29/2009	Counts: 1 ORC: 2921.331 4 Degree of Felony: Third	Victim Info
FEL ASSAULT Committing County: SUMMIT	Admission Date: 07/29/2009	Counts: 1 ORC: 2903.11 4 Degree of Felony: First	Victim Info
VANDALISM Committing County: SUMMIT	Admission Date: 07/29/2009	Counts: 1 ORC: 2909.05 4 Degree of Felony: Fifth	Victim Info

Sentence Information	
Stated Prison Term:	9 years
Expiration Stated Term:	06/10/2018

Notes

The above information may not contain a complete list of sentencing information for each offender.

The supervision period may not coincide with the current offense, but may reflect the offender's remaining supervision obligation from a previous offense.

Any person, agency or entity, public or private, who reuses, publishes or communicates the information available from this server shall be solely liable and responsible for any claim or cause of action based upon or alleging an improper or inaccurate disclosure arising from such reuse, re-publication or communication, including but not limited to, actions for defamation and invasion of privacy.

Questions concerning the information contained in these documents should be sent via the U.S. Mail to the appropriate correctional institution, attn: Record Office. Addresses are available at at this link: [INSTITUTIONS](#).

State Appendix
D