

IN THE SUPREME COURT OF OHIO

Mario Montgomery
Ross Correction Institution
P.O. Box 7010
Chillicothe, Ohio 45601

12-0886

Relator,

vs

MANDAMUS TO COMPEL
THE STATE OF OHIO
COMPLY WITH COURT ORDER
AND PROVIDE TRIAL TRANSCRIPTS
AT STATES EXPENSE AND CARRY
OUT A CLEAR LEGAL DUTY

State Of Ohio;
Franklin County Common Pleas Court
Franklin County Common Pleas Court
345 South high Street
Columbus, Ohio 43215

Respondent.

Here comes Relator, Pro Se, bringing this Mandamus To Compel with a Court Order issued on April 20, 1999 ordering the State of Ohio to provide Relator with a copy of his trial transcripts at states expense.

Relator satisfies his claims and request in the following Memorandum In Support.

Respectfully submitted,

Mario Montgomery

Mario Montgomery

RECEIVED
MAY 22 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Ross Correction Institution
P.O. Box 7010
Chillicothe, Ohio 45601

FILED
MAY 22 2012
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

Under the Fifth and Fourteenth Amendments to the United States Constitution, and Sections 10 and 16, Article I, Ohio Constitution, a defendant has a right to a due process of law.

On January 26, 1996, Defendant was charged on an eight count indictment. On June 3, 1996, Defendant went to trial on all counts except for one, in which a nolle prosequi was entered.

At trial, Defendant was represented by Lewis Dye. Defendant was found guilty by a jury of his peers on seven counts. Mr. Dye assured Defendant that an appeal would be filed. However, Mr. Dye never filed an appeal. Mr. Dye was later disbarred and James Watson took over as defense counsel. Due to many facts in discrepancy, both Mr. Dye and Watson informed Relator that he had a very viable appeal. At the time of trial, Relator was only nineteen years of age and he relied solely on the expertise of his defense counsel. After he began to learn more about the events that transpired during trial, Relator found that Mr. Dye was ineffective. Mr. Watson agreed, however, he failed to effectively file an appeal.

On July 29, 1997, Mr. Watson filed a Motion For The Production Of Trial Transcripts At The States Expense. However, Mr. Watson failed to file a Notice Of Appeal, which is the standard followed by any competent attorney in order to comply with appellate rules. On November 26, 1997, the trial court filed a decision and entry denying Relators motion for trial transcripts. In its decision, the court

relied on Crim. R(A) (2) (d). Crim. R(A) (2) (d) states that transcripts only be provided to a indigent defendant for the purposes of an appeal or a post-conviction petition.

On June, 29, 1999, attorney Watson finally filed a notice of appeal and a motion to file a delayed appeal. The Tenth District Court of Appeals found no good cause for the delay. Once again, Relator relied on his counsel to be competent and file a timely appeal. In Relators case, both trial and appellate counsel were ineffective and his claim easy satisfies the needed prongs of *Strickland v. Washington, 466 U.S. At 687.*

On April 20, 1999, the trial court found Relators motion for trial transcripts at the states expense well taken and Ordered the State of Ohio to provide Relator with a copy of his trial transcripts at the states expense. It could not be more clear that the court felt the need to provide Relator with a complete set of trial transcripts in order for him comply with appellate procedures. Relator also was trying to collaterally submit a post-conviction petition. However, the State of Ohio has failed to provide Relator with a copy of his trial transcripts, thus, violating a court order.

Once the State did not provide the trial transcripts, Relator knew that there were grave errors and constitutional violations committed during his trial. One could asses that since Mr. Dye did not file a Notice of Appeal, or that Mr. Watson did not file a proper appeal, there may be strong reasons as to why Relator was being denied his constitutional right to a frail trial, a fair appeal/post

conviction petition and to a due process of law.

On September 3, 2000, Relator contacted the Office of the Ohio Public Defender requesting aid. On September 27, 2000, Attorney Jo Ellen Cline, responded and claimed the only option was to perfect an appeal since Attorney Watson delayed appeal was denied. In her letter, Attorney Cline mentioned that Attorney Watson was, in deed, ineffective.

Wherefore, due to the nature of the ineffectiveness of Relator counsel and the Court Order for the production of trial transcripts at the state of Ohio's expenses, Relator requests that this Honorable Court grant his Mandamus for a copy of the trial transcripts. The trial courts April 20, 1999 Order states that the State of Ohio provide the defendant a copy of his trial transcripts at states expense. It became the duty of the state to abide by the court order. Therefore, the State of Ohio is in direct violation of a court order.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mario Montgomery". The signature is written over a horizontal line.

Mario Montgomery
Ross Correction Institution
P.O. Box 7010
Chillicothe, Ohio 45601

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Ross Correction Institution
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Relator,

vs.

State Of Ohio;
Franklin County Common Pleas Court
Franklin County Common Pleas Court
345 South high Street
Columbus, Ohio 43215

Respondent.

AFFIDAVIT OF MARIO MONTGOMERY

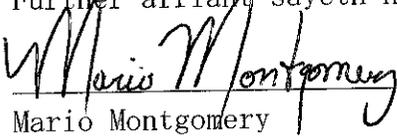
ROSS COUNTY)

)

STATE OF OHIO)

- I, Mario Montgomery, being first duly sworn according to law, state the following:
1. On April 20, 1999, I received an Order from Judge Miller ordering the State of Ohio of provide me with a copy of my trial transcripts at the states expense.
 2. As of this date, I have yet to receive a copy of my trial transcripts.
 3. The state is in clear violation of a Court Order.
 4. I further state that all claims made in this Mandamus and Memorandum In Support are both truthful and accurate.

Further affiant sayeth naught.


Mario Montgomery

Sworn to and subscribed in my presence on this 15 day of MAY, 2012.





Janet E. Spearry
Notary Public - Ohio
My Commission Expires 8-25-2013

IN THE SUPREME COURT OF OHIO

Mario Montgomery
Relator,

vs.

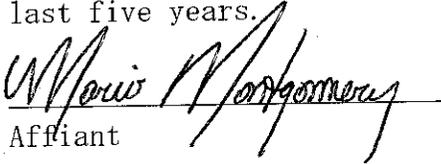
State of Ohio;
Franklin County Common Pleas Court
Franklin County Clerk of Courts
Respondent.

AFFIDAVIT OF INDIGENCY

I, Mario Montgomery, do hereby state that I am without the necessary funds to pay the cost of this action for the following reasons: I am currently incarcerated and I have no assets or income whatsoever in order to pay for court cost or filing fees.

Pursuant to Rule 15.3, 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.

Pursuant to Civ.R 10, I hereby verify that I have filed no civil complaints in the last five years.


Affiant

Sworn to and subscribed in my presence on this 15 day of MAY, 2012.


Notary Public



Janet E. Spearry
Notary Public - Ohio
My Commission Expires 8-25-2013

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

99 APR 20 PM 3:45
State of Ohio
CLERK OF COURTS

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

31774811

Plaintiff,

vs

Case# 96 CR 01 641
Judge Miller

Mario L. Montgomery

Defendant,

ENTRY

This cause of action came on to be heard via defendant's Motion of this ___ day of March, 1999. The court having the defendant's affidavit of indigency as evidence of his pauper's status finds the motion to be well-taken and accordingly sustains the same.

Therefore, it is the Order of this court that the State of Ohio provide the defendant with a copy of his trial transcript at state expense.

IT IS SO ORDERED

MM 4-19-99

Judge Miller



Office of the Ohio Public Defender
8 East Long Street
Columbus, Ohio 43215-2998
(614) 466-5394
FAX NUMBER: (614) 752-5167

DAVID H. BODIKER
State Public Defender

September 27, 2000

Mr. Mario Montgomery
335-632
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Dear Mr. Montgomery,

I am writing in response to your letter dated September 3, 2000. I am currently preparing the delayed application to reopen your direct appeal.

In your letter you asked about the transcript from your trial. After some investigation I have found that your transcript has never been transcribed by the court reporter due to the ineffectiveness of your former appellate counsel. Mr. Watson has never contacted the court reporter to give the necessary documentation for your transcript to be transcribed. My best advice is to contact the court reporter's office at the Franklin County Court of Common Pleas to see if you can get your transcript done. As I will not be needing the transcript in order to file the application for reopening, this office cannot request one at this time.

As for options if the application to reopen the direct appeal denied, we may consider perfecting an appeal to the Ohio Supreme Court. However, this office would have to consider that option only at that time.

If you have any other questions, please contact me. I will forward a copy of the application to reopen the direct appeal when it is filed. Take care.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo Ellen Cline", is written over a circular stamp. The signature is fluid and cursive.

Jo Ellen Cline
Assistant State Public Defender