

ORIGINAL

OHIO SUPREME COURT
STATE OF OHIO

Sup. Ct No. 2012-0529

STATE OF OHIO
LA'MON R. AKEMON JR.
Ross Correctional Institution
P.O. Box 7010
Chillicothe, Ohio 45601
RELATOR

APP. CASE NO. C-110855

ORIGINAL ACTION FOR
WRIT OF MAMDAMUS

V.
LEE H. HILDEBRANDT, JR, et.al (Judge)
FIRST APPELLATE DIST. OF OHIO
HAMILTON, COUNTY, OHIO
12th Floor, 230 East Ninth Street
Cinati, Ohio 45202-2138

TRIAL CASE NO B-0309830
COMMON PLEA COURT

RELATOR'S RESPONSE TO RESPONDENT REQUEST TO DISMISS MANDAMUS

Now comes **Relator, La'Mon R. Akemon**, actong pro-se, to reply to Respondent Motion To Dismiss Relator's Mandamus mail by respondent on **May 22, 2012** and received by Relator **May 24, 2012** . (See **Attachment A**) For reason are more fully articulated and explained in the accompanying memorandum in support.

RECEIVED
MAY 29 2012
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAY 28 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Relator has submitted overwhelming evidence that the trial court had failed to provide him service of June 15, and July 9, 2010 decision. Furthermore, the trial court has demonstrated a repeated pattern of breaching their legal duties and obligations three (3) times on **August 31, 2009, June 15, 2010 and July 9, 2010** to (1) that “the court shall endorse” on the judgment, a direction to the clerk to serve “notice of the judgment” and “its date of entry upon the journal” upon parties; (2) that “[w]ithin three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by **Civ. R. 58(B)**,” and, (3) that the clerk shall also “note the service in the appearance docket.” Respondent continues to interfere by not accepting appeal timely and has failed to refute the claim and evidence that prove the court had not served him with said decision and whereby creating a conflict within its own tribune. Respondent has conceded that the “**Motion to Proceed Instante**” filed on **October 21, 2009** was rendered moot and considered the appeal timely due to the courts failure to properly notify **Relator**. Now the Respondent recognized in that case from **Relator's** motion to proceed Instante (**at once**) the particular and facts for the motion and accepted the appeal (**at once**) as timely filed (**See Exhibit B, C**). Respondent could have entered a “Nunc Pro Tunc” entry ordering the trial court to reissue its decision and properly serve notice on **Relator** but Respondent clearly recognized Relator's due diligent and accepted notice of appeal timely because Relator had established service had not been made at all.

Relator incurred the same circumstance once again and submitted “Motion to Proceed Instante” (**at once**) with the particular facts and clearly establishing once again trial court failure to provide Relator service of decision and whereas Respondent can't refute the claim in which service was not made. (**See Exhibit D6 and K Institutional Inspector verification of Legal Mail Log of Relator for those month**). The evidence and facts are overwhelming that no service was render. (See Exhibit D6, K). Whereby Respondent rather place the entire blame and burden upon Relator, and leave no accountability on the court. **Relator 14th Amendment** rights of **The United States Constitution** were violated of a procedural due process right which prohibit a State from depriving a person of life, liberty, or property, without due process of law guaranteed both by the **United States and Ohio Constitution**. The Respondent has clearly abused its discretion and setting a standard of precedent in which allow a trial court in Hamilton County to breach their legal duties and obligations. Thus, violating Defendant's rights of proper service of said decision and affording them an opportunity to file a timely appeal without seeking permission by the appellant court to an appeal as of right.

1) **Relator** has a clear legal right to the requested relief; Whereas, this Court has held in *Moldovan* and *Atkinson*, this court recognized the harm caused by a court's failure to provide **1** notice of final orders to

litigants. *Moldovan* at 295; *Atkinson* at 83. In both cases, this court recognized that the failure to give reasonable notice of a final appealable order is a denial of the right to appeal without due process of law. *Moldovan* at 295; *Atkinson* at 81-82.

2) Respondent does have a clear legal duty and obligation to ensure that the lower courts has not infringe upon **Relator's "Equal Protection"** and **"Due Process Rights"** under the course of the law guaranteed under the **14th Amendment** of the **United States Constitution** and **Ohio Constitution** and furthermore to abide and enforce the governing rules of Ohio rules of practice and procedure of the courts.

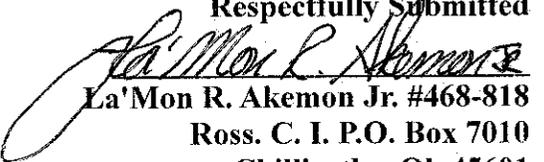
The Respondent claims in his response to **Relator's** Mandamus S.Ct. Case No. 2011-1020 that he had actually telegraph **Relator** a relief, which was to file a delayed appeal, but **Relator** clearly recognized that the Respondent was changing an "Appeal as of Right" into a discretionary appeal, which was unreasonable and unsound because the evidence was overwhelming to support the appeal should be accepted (at once) due to the fact no service or notice of final appealable order was made. **Relator** as well telegraphed a solution for relief for both the appellate court and trial court ~~XXXXX~~, was to reissue the decision entered on June 15, 2010 and July 9, 2010. In 2008, this Court concluded that when a notice of a judgment is not timely made, a court must "reissue" judgment. **State ex rel, Sautter v Grey Judge, et al, 117 Ohio St. 3d 465, 2008-Ohio-1444.** **Relator** recognized that he must exhaust states remedy and filed a delayed. **Relator** represents facts and evidence in this case cannot be changed by the overwhelming preponderance of the evidence that absolutely no notice of final order was served on **Relator**. Whereby this court has held in *Moldovan* and *Atkinson*, this court recognized the harm caused by a court's failure to provide *1 notice of final orders to litigants. *Moldovan* at 295; *Atkinson* at 83. In both cases, this court recognized that the failure to give reasonable notice of a final appealable order is a denial of the right to appeal without due process of law. *Moldovan* at 295; *Atkinson* at 81-82.

The respondent, trial court and clerk office are taking advantage of **Relator** who clearly has a disability and handicap due to the fact he is incarcerated, who is indigent, who has no outside help or excess to the internet. Whereas to check the statics of decision by the court but being solely dependent upon the court and clerk office to perform their legal duties and obligation in the requirements set forth in Civ. R. 58(B): (1) that "the court shall endorse" on the judgment, a direction to the clerk to serve "notice of the judgment" and "its date of entry upon the journal" upon parties; (2) that "[w]ithin three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 58(B);" and, (3) that the clerk shall also "note the service in the appearance docket.

Thus, it's by the overwhelming preponderance of the evidence presented by the Dayton Institutional Inspector verification letter (Ex. D6,K) of Relator's legal mail received at D.C.I. That absolutely there was never any attempt made by the courts or clerk' office to serve notice of final appealable order, in which this Court recognized the harm caused by a court's failure to provide *1 notice of final orders to litigants. *Moldovan* at 295; *Atkinson* at 83. In both cases, this court recognized that the failure to give reasonable notice of final appealable order is a denial of the right to appeal without due process of law. *Moldovan* at 295; *Atkinson* at 81-82.

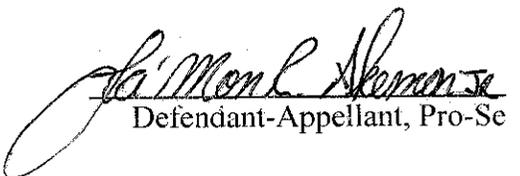
Therefore, it's for the evidence and facts stated in this great Writ of Mandamus. Relator has provide sufficient reason proving why he was unable to perfect an appeal as of right. This Court should summarily reverse the decision of the First District Court of Appeals and reinstate **Relator's** appeal.

Respectfully Submitted


La'Mon R. Akemon Jr. #468-818
Ross. C. I. P.O. Box 7010
Chillicothe, Oh 45601
Defendant-Appellant, Pro-Se

CERTIFICATE OF SERVICE

This is to Certify that a copy of the foregoing Motion was served by regular mail and served upon Joseph T. Deters, Hamilton County Prosecutor at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 on this 26 day of April, 2012


Defendant-Appellant, Pro-Se



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Constitutional Offices Section
Office: (614) 466-2872
Fax: (614) 728-7592

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

May 22, 2012

La'Mon Akemon, Jr.
Ross Correctional Institution
P. O. Box 7010
Chillicothe, Ohio 45601

Re: *State ex rel. La'Mon R. Akemon, Jr. v. Lee H. Hildebrandt, Jr., et al.*
Supreme Court of Ohio Case No. 2012-0529

Dear Mr. Akemon:

Please find enclosed for your records a copy of the *Motion to Dismiss of Respondents Judge Hildebrandt and the First District Court of Appeals.*

Thank you.

Very truly yours,

MIKE DEWINE
Ohio Attorney General

Sarah Pierce /bmr

Sarah Pierce
Assistant Attorney General

/bmr
Enclosure (1)

