

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,

PLAINTIFF-APPELLEE.

-vs-

LAWRENCE E. ROSS,

DEFENDANT-APPELLANT.

Case No.

12-1167

On Appeal from the Court Of
Appeals, 7th Judicial District,
Mahoning County, Ohio

App. Case No. 2011-MA-32

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LAWRENCE E. ROSS**

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FILED

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SUPREME COURT OF OHIO

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ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW I: The doctrine Of *re judicata* does not preclude Appellate review Of a present judgment and sentence that was the result Of a Complete and new assessment Of all Of the evidence, arguments Of Counsel, and law during judicial hearings. Due process under equal protection Of the law Of the 14th Amendment to the United States Constitution does not allow an appellate Court to foreclose review Of judgments Or final Orders Of the Courts Of record inferior to the Court Of Appeals within the district that was the result Of judicial hearings and the Appellate Court Ordering the record from the lower Court to be transmitted for appellate review. **Article IV: Judicial §3(B) (1)(f) and(2) Of the Ohio Constitution.**

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

Appellant Lawrence Ross contends that his case presents three critical issues of an explanation of why this case is a case of public or great general interest and involves a substantial constitutional question pursuant to Section §16, Article I of the Ohio Constitution, and the 14th Amendment of the United States Constitution because it involves whether an appellate court denies an appellant due course of law and his right to equal protection under due process of law, during appellate review by erroneously characterizing an appellant's claim under an inaccurate description of the true issues raised on the merits, in addition to precluding appellate review by the misapplication of the *res judicata* doctrine, that was the result of judicial hearings conducted in the trial court with the assistance of appointed counsel, that argued the case in pertinent part on various motions filed *pro se* by the appellant.

Pursuant to Section §16, Article I, of the Ohio Constitution, "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Pursuant to the 14th Amendment of the United States Constitution, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Appellant asserts pursuant to Article IV: Judicial §3(B)(1)(f) and (2) of the Ohio Constitution the 7th District Court of Appeals had original jurisdiction in this case on review from the final order of the common pleas trial court of record that scheduled and conducted open court judicial hearings on the 21st and 26th of January 2011, to address appellant's various

motions amongst which were his **Pre trial Motion to Dismiss Speedy trial delay in trial** pursuant to R.C. §2945.73 In those proceedings, Counsel for the defense argued before the Court that the proceedings were never journalized in a judgment entry for the ruling to become a final appealable Order that he had formerly requested a timely Oral motion to dismiss for a lack Of speedy trial years ago back in 1996.

In its decision, the Appellate Court reviewed in pertinent part, addressing Appellant's 1st, 2nd and 3rd Assignment Of errors as lacking merit. However it procedurally barred the remaining Claims On the doctrine Of *res judicata*. to his 4th and 5th Assignment Of errors after acknowledging that the Court held judicial hearings On the 21st and 26th Of January 2011. State vs. Lawrence Ross (March May 21st 2012), Mahoning App. Case No. 11-MA-32¹ where the trial Court and former Counsel addressed appellant's lack Of Speedy trial motion and the fact that the Court had never journalized its judgment Of denial in a judgment entry for a final appealable Order,² in addition to the Court retaining limited jurisdiction due to such error to reConsider its findings to discharge appellant for failure to bring him to trial under an agreed Conditional waiver entered On May 7th 1996 until October 7th 1996 that was extended until September 5th 1996. Counsel argued and supported these pleadings, demonstrating his ineffectiveness to fully present them before the Court, in which should have been Considered by the appellate Court On its merits. Instead, the appellate Court made sure to misapply the doctrine Of *res judicata* to deny appellate review Of his meritorious Claims.

1 See, 7th District Court Of Appeals Opinion at Pages 9-10.

2 In the meantime, appellant filed various pro se motions with the trial Court including a "Petition for a Re sentencing hearing pursuant to O.R.C. §2929.19(B)(3)", an "Objection in Opposition for a Re sentencing hearing," and a "Motion for hearing On pre trial Motion to dismiss Speedy trial delay in trial pursuant to O.R.C. §2945.73." See, paragraph {¶5.} "**The trial Court held a hearing On appellant's motions. ***{¶ 6.}**" State vs. Lawrence Ross (March May 21st 2012), Mahoning App. Case No. 11-MA-32

Appellant asserts, even though the United States Supreme Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, *these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.* Griffin vs. Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585, 1055; Douglas vs. California, 372 US 353, 811, 83 S Ct 814; Lane vs. Brown, 372 US 477, 9 L ed 2d 892, 83 S Ct 768; and, Draper vs. Washington, 372 US 487, 9 L ed 2d 899, 83 S Ct 774. The 7th District Court of Appeals ignored this *precedent* precluding appellate review of appellant Lawrence Ross claims, stemming from new proceedings that was addressed in open court in a judicial hearing held and conducted in the trial court.

Lawrence Ross challenges not the trial court's error in his first sentencing back in 1996, but the court's new error when it conducted a full re-sentencing hearing review and a subsequent hearing review of his speedy trial issue that was never journalized in a judgment entry on evidence afresh. Because Lawrence Ross challenges a new judgment for the first time, it is not barred by the doctrine of *res judicata*. Magwood vs. Patterson, (2010) 130 S. Ct. 2788; 177 L. Ed. 2d 592; 2010 U.S. LEXIS 5258

The errors he alleges are new. It should be obvious to this court and the state, that his claim of ineffective assistance of counsel at re-sentencing turns upon new errors. An error made a second time is still a new error. That is especially clear here, where the state court conducted a full re-sentencing review hearing and the aggravating evidence of its denial of a timely oral motion to dismiss delay in speedy trial that was never journalized in a judgment entry.

During re-sentencing review hearing and the aggravating evidence of its denial of a timely oral motion to dismiss delay in speedy trial that was never journalized in a judgment entry, the trial court in formulating the present judgment has "considered" the original record of the trial

and sentence. . . . *The present judgment and sentence has been the result Of a Complete and new assessment Of all Of the evidence, arguments Of Counsel, and law.*

According to Appellant's 1st, 4th and 5th Assignment Of error Combined herein, the trial Court abused its discretion for failure to replace and appoint lead Counsel who withdrew from the Case that violated Lawrence Ross's 6th Amendment right to the effective assistance Of lead Counsel under Sup.R.20 Of the United States Constitution and under Article I §10 Of the Ohio Constitution to assist Co-Counsel On various motions during the post release Control re sentencing review hearing as that hearing was a Critical stage Of the proceedings where the right to lead Counsel and Co-Counsel attached and the Case being formerly tried under a Capital Offense where the death penalty specification attached, in addition to his right to effective assistance Of Counsel protected under 6th Amendment Of the United States Constitution and under Article I §10 Of the Ohio Constitution for Counsel's failure to prepare a defense that the trial Court retained limited jurisdiction to reConsider its findings, denying appellant's timely Oral speedy trial motion for discharge for failure to bring him to trial under an agreed Conditional waiver entered On May 7th 1996 until October 7th 1996 that was never journalized in a judgment entry to become a final appealable Order, in furtherance Of not being made knowingly, intelligently, Or voluntarily where the Court "Circumvented" the spirit Of the Statute by Conducting "voir dire" within the statutory time limits. Former Counsel rendered ineffective assistance for failure to reiterate the defense Objections from the trial Court record Of 1996 in Opposition to the trial Court's findings that appellant was not brought to trial under a written agreement Of a Conditional waiver Of his speedy trial rights that Mr. Lawrence Ross waived On May 7th 1996 until October 7th 1996 unlawfully being extended to October 25th 1996.

Appellant Lawrence Ross asserts, therefore, since there were never a judgment entry denying his timely Oral motion for speedy trial delay in trial, requested under the dictates Of Bryan vs. Knapp (1986) 21 Ohio St.3rd 64, 65, 21 OBR 363, 364, 488 N.E.2nd 142, 143; and Crim.R. 12(F), the Court retained limited jurisdiction to reconsider its Oral judgment Of denial that was not a final appealable Order until after the judicial hearing giving in this Case and a judgment entry being prepared by the Court giving its reason for not having done so until February 4th 2011 by holding.. State vs. Brown (1992), 64 Ohio St.3rd 476.³ The decision Of the Court Of Appeals sets a precedent that would preclude appellate review Of void sentences, convictions and judgments by principles Of *res judicata*. Under this rule, public policy underlying the principle of *res judicata* in void proceedings would not be considered together with the policy that a party shall not be deprived Of a fair adversary proceeding in which to present his/her Case. The result Of this rule would be preposterous. Not surprisingly, the Conclusion Of the Court Of appeals is Contrary both to the Common law practice and procedure and to all legal authority. If Appellate Courts have exclusive jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final Orders Of Courts Of record inferior to the Court Of appeals within the district, despite Contrary reviews by the 7th Appellate District in this Case, the misapplication of the doctrine would be severely Compromised. Appellate Courts in Ohio Could negate at will under this erroneous decision to preclude appellate review Of present judgments and sentences that has been the result Of a Complete and new assessment Of all evidence, arguments Of Counsel, and law. Such a prospect is Contrary to the equal protections Of due Course and due process Of law under both, the Ohio and United States Constitution and the stated purpose Of the *doctrine* in

³ "Defendant argued that findings Of fact and Conclusions Of law were required Of the Court but not provided, however, Defendant's submission Of records in support Of his motion is spotty and incomplete, therefore, the trial Court is unable to determine whether such findings were Or were not made by way Of entry.

review Of present judgments and sentences. The Appellate Court ignored those guarantees under the Constitution.

In view Of the large amount Of litigation's involving *pro se* appellate proceedings and those appellant's represented On appellate review, guidance On the question Is also Of great general interest to the judiciary. In addition, the question is Of great and general interest to all litigant's, because it affects their ability to receive fair review On the merits and fair decisions Of their Claims that may preclude appellate review by the misapplication to the *res judicata* doctrine foreclosing an adequate remedy in the Ordinary Course Of law. If allowed to Stand, the decision Of the Appellate Court would ravage the effective appellate review and invite Confusion to the public's great general interest. Under the decision, the preclusion Of appellate review in present judgments and sentencing proceedings would be Chaotic and uncertain, and would lack finality. In sum, this Case puts in issue the essence Of public interest and the fate Of effective appellate review Of present judgments and sentencing proceedings in Ohio. To promote the purpose and preserve the integrity Of the public policy underlying the *doctrine*, is to ensure uniform application of the doctrine, to promote Orderly and Constructive review Of judicial hearings, and to remove impediments Of erroneous rulings to the misapplication of the *res judicata* doctrine.

The relief being sought will serve the public interest in this Case, the grant Of jurisdiction to hear this Case and review the erroneous decision Of the Court Of appeals will serve the public's interest as well, because it is always in the public interest for appellate Court's to review Claims presented to it On there merits that stems from new judgments, by properly administering the law, adjudicating Claims based On the proper Context Of the law involved in that Case. Proper appellate review with respect to Article IV §3(B)(1)(f) and (2) Of the Ohio Constitution, particularly by appellate Court's for the Administration Of rendering judicial decisions, is in itself a

matter Of the highest public and great general interest, as the Constitution is the ultimate expression Of such. Due process requirements and equal protection Of the law under, both the Ohio and United States Constitution mandate such a Correction. Further, without a ruling from this Court mapping Out, with precision and Clarity, Correction to the misapplication Of the *res judicata* doctrine, the Public's interest would be mislead in that publication, that *res judicata* does preclude appellate review Of new judgments which is Contrary to the Ohio Supreme Court's Case precedent's holding Of the doctrine being inapplicable in those proceedings that Challenges the result Of a Complete and new assessment Of all Of the evidence, arguments Of Counsel, and law during new hearings. This Court must grant jurisdiction to hear this Case and review the erroneous and dangerous decision Of the Court Of appeals.

STATEMENT OF THE CASE AND FACTS

On the 21st day Of January 2011 this Cause Of action Came to be herd On various Motions filed by the defendant, Mr. Lawrence E. Ross. Present In Open Court were the Defendant and his former Co-Counsel, Attorney James Wise. Representing the State Of Ohio was Assistant Prosecuting Attorney Michael J. Thompson. On January 21st 2011 this matter was Called for hearing On Defendant's "Petition for a Re sentencing hearing pursuant to Ohio Revised Code §2929.19(B)(3) filed On December 20th 2010. Both the Prosecuting Attorney and the Court previously reviewed the Judgment Entry Of Sentence produced On November 22nd 1996, and determined that the defendant was not advised Of a mandatory post release Control pursuant to R.C. §2929.19. Therefore, Defendant was returned from the Department Of Rehabilitation and Corrections for imposition Of post release Control in regards Of Count 2 Of his indictment for Aggravated Burglary R.C. §2911.11(A)(3)(B) 1st degree felony. In the meantime, Defendant filed an "Objection In Opposition for a Re sentencing Hearing" On "Pre trial Motion to Dismiss Speedy trial delay in trial pursuant to R.C. §2945.73 On January 21st 2011. At the January 21st 2011 hearing, the issue Of whether Or not advise regarding post release Control was necessary arose since the Crimes herein

may have been Committed prior to the effective date Of Senate Bill 2. Because Of the issues raised in all Of the Defendant's motions, the trial Court appointed *former* Attorney James Wise as Counsel for the Defendant and setting the matter for hearing On January 26th 2011.⁴ On January 26th 2011, Defendant was present in Open Court with his Counsel, Atty James Wise, representing the State Of Ohio was Assistant Prosecuting Attorney J. Michael Thompson. Atty. James S. Gentile filed a motion to withdraw as lead-Counsel for the defendant On January 19th 2011 and the Court having sustained that motion On January 21st 2011. In return, it did not Supplement the Defendant with a replacement Of lead-Counsel as this Case started Out were, and remains a Capital Offense where the Death Penalty Specification attached pursuant to R.C. §2929.04(A)(7). Defendant had a Sixth Amendment Right to have lead Counsel present in his Capital Offense Case pursuant to Sup.R.20. to assist C-Counsel. This resulted in a blatant violation Of the Defendant's Sixth Amendment protections under the United States Constitution and Article I, §10 Of the Ohio Constitution that denied the Defendant Due process and equal protection Of the law under the fourteenth Amendment Of the United States Constitution as the re sentencing review hearing was a Critical Stage Of the proceedings where the right to lead Counsel attached. However, Co-Counsel for the defendant addressed the Court in pertinent part; regarding Defendant's "Motion for Hearing On pre trial Motion to Dismiss Speedy trial Delay in trial pursuant to R.C. §2945.73 filed On January 21st 2011. The Court erroneously found that the defendant raised such an issue during the trial Of this Case and that said motion was overruled. Holding that the motion made at trial was overruled because On May 7th 1996, the defendant waived his right to speedy trial until October 7th 1996 and the trial voir dire began On that date. Appellant Lawrence Ross asserts that the initial agreement was that he waived his right to a speedy trial until October 7th 1996, not for the trial Court, as it made reference to from the face Of the record that it Could manipulate and Circumvent the spirit Of the statute by Conducting voir dire within the Speedy trial time limits which was done in this Case, On October the 7th Of 1996 extended to October 25th 1996⁵, that was not made knowingly, intelligently Or voluntarily. Furthermore, the trial Court erroneously held

4 See Appellant Lawrence Ross's January 21st 2011 Hearing Transcripts pages 1-7.

5 See, Case No. 96 CR 192 January 26th 2011 Hearing Transcript at page 19, §15-23

defendant's motion to dismiss was Overruled when it was filed because it was not timely filed pursuant to Ohio Revised Code §2945.73(B), "at Or prior to the Commencement Of trial; said motion being filed On November 13th 1996, and the Commencement Of the trial being October 7th 1996, Despite the fact that appellant informed the Court through Counsel that there was a timely Oral pre trial motion to dismiss for a Speedy trial delay made On the Record in 1996 by Mr. Lawrence Ross in pro se, and his former trial Counsel's. In addition to that pleading, the Court made references to a 2nd and Or Supplement motion to his Oral speedy trial motion to discharge, filed On that date, November 13th 1996.⁶ The trial Court made reference that there was a page Or two from the transcript, but since there was no way to tell when that Occurred, no way to do anything to relate that in time Or space to the issue that he was raising in his transcripts⁷ it based its findings turning a blind eye Outside the view Of those records without any Concern in having them Ordered from the Clerk Of Courts for a Clear and proper review that would have formed a proper resolution Of the matter denying Lawrence Ross's motion. The Speedy trial provisions in Ross's Conditional waiver, violated his right to a speedy trial, and the fact that there may have been Other pleadings being addressed before the Court at that time, Ross" speedy trial rights were still past those points in Order to toll the speedy trial purposes. Whether a trial Commences upon the swearing Of the jury was rejected by the Court, due to a trial Commences when the Court begins voir dire, is immaterial, as this was the basis Of appellant's understanding Of his right to a speedy trial under the Conditional waivers that he waived his speedy trial rights to, in which the trial Court never held any pre trial hearings to ensure appellant understood the nature Of the Charges against him and what was being waived as well as the extent Of the waiver. Counsel in this instance rendered ineffective assistance for failure to prepare any defense On his behalf, in violation Of his 6th Amendment right Of the United States Constitution and Article I, §10 Of the Ohio Constitution. This violation should result should have been remanded back to the trial Court with Clear instructions to discharge On grounds Of a speedy trial delay. Appellant further argued that findings Of facts and Conclusions Of law were required in reasons why the Court at that time denied his

6 See, Case No. 96 CR 192 January 26th 2011 Hearing Transcript at page 16 §14-23

7 See, Case No. 96 CR 192 January 26th 2011 Hearing Transcript at page 17 §1-6

Oral Motion to Discharge for Speedy trial delay be journalized in a judgment entry, as the Court made note that the defendant's submission Of records in support Of his motion was spotty and incomplete, denying the same as the Court was unable to determine whether such findings were Or were not made by way Of entry, holding that such findings were made On the trial record Of the Case to satisfy appellate review, that was Oral and not a final appealable Order put into a judgment entry for appeal purposes. This matter arose from an alleged Charge in Appellant Ross's indictment for Aggravated murder pursuant as to Count One: Of the R.C. §2903.01(A)(C) Felony/Death Specification- §2929.04(A)(7), Count two: Aggravated Burglary R.C. §2911.11(A)(3)(B) AF-1 firearm specification and Count three: Having Weapons while under disability. R.C. §2923.13(A)(3)(B) F-4 Accompanying a firearm Specification pursuant to R.C. §2941 .143, found by the presentment Of the Mahoning County Grand jury filed with the Clerk Of Court's On March 22nd 1996. Appellant Ross' was arrested and Charged with these Offenses On February 5th 1996, appellant was incarcerated in lieu Of bail at all times in Order for the trial Court to bring him to trial within the speedy trial provisions, 90 days. However, On April 9th 1996 Appellant entered into a speedy trial waiver until September 5th 1996 that was not properly witnessed by the trial judge's signature On its face Of the Speedy trial waiver form. that Calls into question, its validity. On May 7th 1996 Appellant waived his rights a 2nd time to a seedy trial Conditional waiver until October 7th 1996. The Court manipulated and Circumvented the spirit Of the speedy trial statute by Conducting voir dire within the speedy trial time limits Of October 7th 1996 that was extended to October 25th 1996, Calling for the Appellant Court to remand this Case back to the trial Court with Clear instructions to discharge appellant for failure to bring him to trial within the speedy trial time requirements he agreed upon in the Conditional waivers. In all instances, Counsel's representation in this proceeding fell bellow an Objective standard Of reasonableness in the absent Of lead-Counsel's presence to assist in this matter per: Sup.R.20. Appellant was severely prejudiced by this Omission Of lead- Counsel. A timely notice Of appeal stemming from the January 21st and 26th 2011 hearing proceedings in Case No. 96 CR 192 was filed February 28th 2011. This Cause Of action was timely appealed. In its decision, the Appellate Court reviewed in pertinent part, addressing Appellant's 1st, 2nd and

3rd Assignment Of errors as lacking merit instead Of procedurally barring those Claims On the doctrine Of *res judicata*. However, the appellate Court misapplied the doctrine Of *res judicata* to his 4th and 5th Assignment Of errors after acknowledging that the Court held judicial hearings On the 21st and 26th Of January 2011. State vs. Lawrence Ross (March May 21st 2012), Mahoning App. Case No. 11-MA-32 where the trial Court and former Counsel addressed appellant's lack Of Speedy trial motion and the fact that the Court had never journalized its judgment Of denial in a judgment entry for a final appealable Order, in addition to the Court retaining limited jurisdiction due to such error to reConsider its findings to discharge appellant for failure to bring him to trial under an agreed Conditional waiver entered On May 7th 1996 until October 7th 1996 that was extended until September 5th 1996. Counsel argued and supported these pleadings, demonstrating his ineffectiveness to fully present them before the Court, in which should have been Considered by the appellate Court On its merits. Instead, the appellate Court made sure to misapply the doctrine Of *res judicata* to deny appellate review Of his meritorious Claims.

Even though the United States Supreme Court has never held that the States are required to establish avenues Of appellate review, but it is now fundamental that, Once established, *these avenues must be kept free Of unreasoned distinctions that Can Only impede Open and equal access to the Courts.*

The 7th District Court Of Appeals denied appellant review of these issues, precluding appellate review Of appellant Lawrence Ross Claims, stemming from new proceedings that was addressed in Open Court in a judicial hearing held and Conducted in the trial Court. Mr. Ross' Contends that this misapplication Of the *doctrine* precluding appellate review Of his merits that was the result Of judicial hearings granted in the trial Court, violated his right to due process and Equal protection Of the law Under the 14th Amendment Of the United States Constitution to effective appellate review On the merits Of his Claims. See, Article IV: Judicial §3(B)(1)(f) and (2) Of the Ohio Constitution.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW I: The doctrine Of *re judicata* does not preclude Appellate review Of a present judgment and sentence that was the result Of a Complete and new assessment Of all Of the evidence, arguments Of Counsel, and law during judicial hearings. Due process under equal protection Of the law Of the 14th Amendment to the United States Constitution does not allow an appellate Court to foreclose review Of judgments Or final Orders Of the Courts Of record inferior to the Court Of Appeals within the district that was the result Of judicial hearings and the Appellate Court Ordering the record from the lower Court to be transmitted for appellate review. **Article IV: Judicial §3(B)(1)(f) and(2) Of the Ohio Constitution.**

Appellant asserts, even though the United States Supreme Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, *Once established, these avenues must be kept free Of unreasoned distinctions that Can Only impede Open and equal access to the Courts.* Griffin vs. Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585, 1055; Douglas vs. California, 372 US 353, 811, 83 S Ct 814; Lane vs. Brown, 372 US 477, 9 L ed 2d 892, 83 S Ct 768; and, Draper vs. Washington, 372 US 487, 9 L ed 2d 899, 83 S Ct 774.

Nonetheless, if a State has Created appellate Courts as "an integral part Of the ... system for finally adjudicating the guilt Or innocence Of a defendant," Griffin vs. Illinois, 351 US, at 18, 100 L Ed 891, 76 S Ct 585, 55 ALR 2d 1055, the procedures used in deciding appeals must Comport with the demands Of the Due Process and Equal Protection Clauses Of the Constitution. Here in this Case, appellant was not kept free Of unreasoned distinctions that have impede Open and equal access to the Courts under his Assignment Of Error No. I. Claim under a inaccurate description Of the true issues raised On the merits when it held.⁸ Appellant issue dealt with the Re

⁸ ¶14 Appellant argues in his assignment Of error that the trial Court erred in not appointing him two attorneys on his motion because this was a capital case. ¶15 Sup.R. 20(II)(B) governs the appointment Of appellate counsel for indigent defendants in Capital Cases. It provides, in pertinent part: "At least two attorneys shall be appointed by the Court to appeal cases where the trial Court has imposed the death penalty On an indigent defendant." (Emphasis added.) Sup.R. 20(II)(B). The way the Rule is worded leads to the conclusion that if the trial court has not imposed the death penalty, two attorneys need not be appointed for the appeal. In Other words, if the indigent defendant is sentenced to a prison term instead Of the death penalty, the Court need not only appoint one attorney

sentencing hearing review phase Of that proceeding where the right to two attorneys should have attached as he was formerly Charge with a death specification under a Capital Offense, despite being found not guilty Of the death penalty. This Claim was not an attack On his right to two attorneys for this appeal, but his 6th Amendment right under the United States Constitution to have Lead- Counsel assist Co-Counsel during the hearing that was a Critical stage Of the proceedings where various motions were filed that needed the skill Of Lead-Counsel who withdrew from the Case and due to that lack thereOf, appellant issues were not fully investigated, prepared Or represented before the Court, denying him the right to be afforded lead-Counsel under Article I, §10 Of the Ohio Constitution and the trial Court abusing its discretion. State vs. Adams (1980) 62 Ohio St.2nd 151, 157, 404 N.E.2nd 144. The term "abuse Of discretion" Connates more than an error Of law Or judgment; it implies that the Court's attitude was unreasonable, arbitrary, Or an unconscionable attitude On the part Of the Court. Adams, supra. The trial Court actions and attitude in this Case enshrines all three standards to satisfy this analysis. When charged with a serious Offense, Once judicial proceedings have commenced against an accused, the right to counsel attaches to all Critical Stages Of the proceedings. See, Crim.R.44(A). Normally, sentencing is a "Critical Stage." Gardner vs. Florida (1977), 430 U.S. 349, 358, 97 S.Ct. 1197.

A "Critical Stage" Only exist in situations where there is a potential risk Of substantial prejudice to a defendant's right and Counsel is required to avoid that result; in Other words, Counsel must be present "where Counsel's absence might derogate from the accused rights to a fair trial." United States vs. Wade (1967), 388 U.S. 218, 226, 87 S.Ct. 1926. Since the trial Court did engage in a typical *de novo* re sentencing review hearing, affording the State and appellant the

to handle the defendant's appeal. {¶16} Furthermore, this current appeal is not even appellant's direct appeal from his conviction. *Instead, it is an appeal from the judgment on several of his miscellaneous motions.* {¶17} As such, appellant was not entitled to have two attorneys appointed for this appeal.

Opportunity to present arguments on the various issues, allowing him the right to allocution, the Court should have appointed a replacement Of "lead Counsel" to assist "Co-Counsel" in that proceeding. According to Appellant's 1st, 4th and 5th Assignment Of error Combined herein, the trial Court abused its discretion for failure to replace and appoint lead Counsel who withdrew from the Case that violated Lawrence Ross' 6th Amendment right to the effective assistance Of lead Counsel under Sup.R.20 Of the United States Constitution and under Article I §10 Of the Ohio Constitution to assist Co-Counsel On various motions during the post release Control re sentencing review hearing as that hearing was a Critical stage Of the proceedings where the right to lead Counsel and Co-Counsel attached and the Case being formerly tried under a Capital Offense where the death penalty specification attached. Gardner vs. Florida (1977), 430 U.S. 349, 358, 97 S.Ct. 1197., in addition to his right to effective assistance Of Counsel protected under 6th Amendment Of the United States Constitution and under Article I §10 Of the Ohio Constitution for Counsel's failure to prepare a defense that the trial Court retained limited jurisdiction to reConsider its findings. State ex rel. Hansen vs. Reed (1992), 63 Ohio St.3rd 597, 600, 589 N.E.2nd 1324, 1327; and State ex rel. White vs. Junkin (1997), 80 Ohio St.3rd 335, 686 N.E.2nd 267., denying appellant's timely Oral speedy trial motion for discharge for failure to bring him to trial under an agreed Conditional waiver, in furtherance Of not being made knowingly, intelligently, Or voluntarily Concerning; 1.) the length Of the delay Of appellant Ross' speedy trial waiver entered On May 7th 1996 until October 7th 1996 unlawfully being extended to October 25th 1996; 2.) the reasons for the delay, the trial Court made references that it Could manipulate and Circumvent the spirit Of the speedy trial statute by Conducting voir dire within the statutory time limits rendered On October 7th that was extended until October 25th 1996 when voir dire was Commenced and sworn in; 3.) the defendant assertion Of his right to a speedy trial was waived On May 7th until October 7th 1996

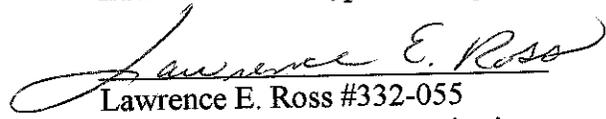
where he made a timely Oral pre trial motion to discharge for speedy trial delay in trial; and, 4.)
Prejudiced to the defendant was Caused by having him enter into a waiver that was not made
knowingly, intelligently, Or voluntarily, as the defendant's understanding in waiving his speedy
trial rights were never explained to him by delineating what those Sundry rights may have been,
Only his understanding that he would be brought to trial by October 7th 1996, extending upon
Completion Of voir dire On October 25th 1996. Brady vs. United States (1970), 397 U.S. 742, 748.
Next, the Court "Circumvented" the spirit Of the Statute by Conducting "voir dire" within the
statutory time limits the Court made reference from the record in Open Court. See, United States
vs. Scaife 749 F.2nd 338, 343. Former Counsel rendered ineffective assistance for failure to
reiterate the defense Objections from the trial Court record Of 1996 in Opposition to the trial
Court's findings that appellant was not brought to trial under a written agreement Of a Conditional
waiver Of his speedy trial rights that Mr. Lawrence Ross waived On May 7th 1996 until October 7th
1996 unlawfully being extended to October 25th 1996.

Therefore, Counsel Can be found to be ineffective under the Sixth Amendment Of the United
States Constitution for failure to have Lead- Counsel assist Co-Counsel during the hearing that
was a Critical stage Of the proceedings where various motions were filed that needed the skill Of
Lead-Counsel who withdrew from the Case and due to that lack thereOf, appellant issues were not
fully investigated, prepared Or represented before the Court in judicial hearings On the 21st and
26th Of January 2011. The Cause and prejudiced Standard held in State vs. Kole (2001), 92 Ohio
St3rd 303, 306, 750 N.E.2nd 148., Citing Strickland vs. Washington (1984), 466 U.S. 668, 687, 104
S.Ct. 2052 has been met. There is a reasonable probability that, but for Counsel's professional
errors, the result Of the proceeding would have been different. A reasonable probability is a
probability sufficient to undermine Confidence in the Outcome.

CONCLUSION

For the reasons discussed above, this Case involves matters Of public and great general interest and a substantial constitutional question. The appellant request that this Court accept jurisdiction in this Case so that the important issues presented will be reviewed On the merits.

Respectfully submitted,
Lawrence E. Ross, *pro se* litigant Of Record

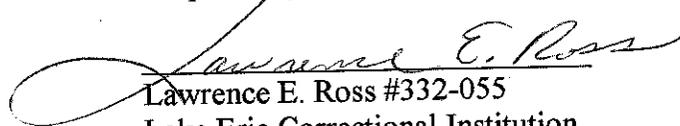


Lawrence E. Ross #332-055
Lake Erie Correctional Institution
P.O. BOX 8000
501 Thompson Road
Conneaut, Ohio 44030.

CERTIFICATE OF SERVICE

I, hereby Certify that a Copy Of this *Memorandum In Support Of Jurisdiction* was sent by Ordinary U.S. mail On this 5 Day Of July, 2012 to Counsel for Appellee, **Paul J. Gains**, and **Mr. Ralph M. Rivera** (Assistant Prosecuting Attorney) located at 21 W. Boardmant St., 6th Floor. Youngstown Ohio 44503.

Respectfully submitted,



Lawrence E. Ross #332-055
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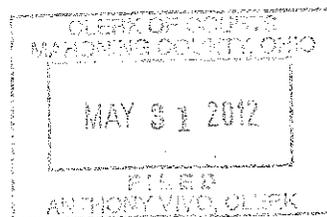
***Pro se* Litigant On Appeal.**

APPENDIX (1)

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT



STATE OF OHIO,)
)
PLAINTIFF-APPELLEE,)
)
V.)
)
LAWRENCE EDWARD ROSS,)
)
DEFENDANT-APPELLANT.)

CASE NO. 11-MA-32

OPINION

CHARACTER OF PROCEEDINGS:

Criminal Appeal from Court of Common
Pleas of Mahoning County, Ohio
Case No. 96CR192

JUDGMENT:

Affirmed

APPEARANCES:

For Plaintiff-Appellee

Paul Gains
Prosecutor
Ralph M. Rivera
Assistant Prosecutor
21 W. Boardman St., 6th Floor
Youngstown, Ohio 44503

For Defendant-Appellant

Lawrence E. Ross, Pro-se
Lake Erie Correctional Institution
P.O. Box 8000
501 Thompson Road
Conneaut, Ohio 44030

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: May 31, 2012

DONOFRIO, J.

{¶1} Defendant-appellant, Lawrence Ross, appeals from a Mahoning County Common Pleas Court judgment overruling his petition for a resentencing hearing, overruling his objection in opposition for a resentencing hearing, and overruling his a "motion for hearing on pretrial motion to dismiss speedy trial delay in trial."

{¶2} The facts of this case as set out in appellant's direct appeal are as follows:

This appeal stems from an incident which occurred on February 5, 1996, at approximately 9:00 p.m. Mark Brown was at his northside home in Youngstown, Ohio, along with his fiancé, Regina Thomas. Also present in the home were Regina Thomas' two younger brothers, fifteen year old Frank Teemer and eleven year old Rance Teemer, and Thomas' son, seven year old William Thomas. Mark Brown's son, eleven year old Mark Brown, Jr., was also at the home.

Appellant, along with three other men, broke down the front door to the home and entered yelling "police". Appellant was brandishing an assault rifle. Regina Thomas, Frank Teemer, and Mark Brown, Jr. were forced at gunpoint to lie face down on the floor. William Thomas and Rance Teemer, fled from the living room up the stairs to the bedrooms to hide. Appellant and two of his accomplices went after Mark Brown who also had begun to run upstairs. As the three approached the top of the stairs, Mark Brown shoved appellant and one of the other accomplices against the wall and then fled back down the stairs. As Mark Brown was going back down the stairs, appellant fired two shots, one striking Brown in the arm. Brown made it out the front door and to the front lawn. Appellant pursued Brown and shot him in the back as he tried to run away.

Robert Maravola, a neighbor, saw appellant shoot Brown and saw Brown stumble and collapse. Maravola called 911, then ran outside with a gun and appellant and his three accomplices fled the scene. Maravola ran up to where Brown was lying. Maravola asked Brown, "Who did this to you?" Brown responded that it was appellant. Brown told Maravola, "I'm not going to make it. Go check on my boys. Go make sure my kids are okay."

Officer David Ellis of the Youngstown Police Department responded to the scene and went to Brown. He asked Brown who had shot him. Again, Brown indicated that it was appellant. Brown also told Officer Ellis, "I'm not going to make it." Brown died shortly thereafter.

On March 22, 1996, a Mahoning County Grand Jury indicted appellant on one count of aggravated murder with a death specification, one count of aggravated burglary, and one count of having weapons while under disability. Each count carried a firearm specification. *State v. Brown*, 7th Dist. Nos. 96 C.A. 247, 96 C.A. 251, 1999 WL 826223, *1 (Oct. 12, 1999).

{13} The case went to a jury trial on the first two counts where the jury found appellant guilty of aggravated murder and aggravated burglary along with the firearm specifications. The trial court, on the jury's recommendation, sentenced appellant to life in prison with parole eligibility after 30 years. The case went to a bench trial on the having weapons under disability count where the court found him guilty. The court sentenced appellant to an indefinite term of three to five years on this count.

{14} Following his direct appeal, appellant filed several petitions asking that we compel the trial court to perform various acts. See *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 07-MA-151, 2007-Ohio-7198, affirmed by *State ex rel. Ross v. State*, 102 Ohio St.3d 73, 2004-Ohio-1827, 806 N.E.2d 553; *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 09-MA-142, 2009-Ohio-5514, dismissed by *State ex rel.*

Ross v. Krichbaum, 124 Ohio St.3d 1436, 2010-Ohio-187, 920 N.E.2d 368; *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 11-MA-89 (dismissed as moot).

{15} In the meantime, appellant filed various pro se motions with the trial court including a "Petition for a Resentencing Hearing pursuant to O.R.C. 2929.19(B)(3)," an "Objection in Opposition for a Resentencing Hearing," and a "Motion for Hearing on Pretrial Motion to Dismiss Speedy Trial Delay in Trial pursuant to O.R.C. 2945.73."

{16} The trial court held a hearing on appellant's motions. It made the following rulings.

{17} As to appellant's petition for a resentencing hearing, the court found that because appellant committed his crimes prior to the effective date of Senate Bill 2, he was not entitled to be advised of mandatory postrelease control as requested in his motion. Instead, the court found that appellant was subject to pre-Senate Bill 2 law, which required the imposition of an indeterminate prison term and rendered appellant subject to release from prison on parole as set forth by law and within the defined discretion of the parole board. Thus, the court overruled appellant's petition for a resentencing hearing.

{18} As to appellant's objection in opposition for a resentencing hearing, the court found that appellant's original sentencing entry complied with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163 (holding that a judgment of conviction is a final, appealable order and complies with Crim.R. 32(C) when it contains the plea, jury verdict, or finding by the court upon which the conviction is based; the sentence; the judge's signature; and entry on the journal by the clerk of courts). This was because the judgment entry clearly set forth the court's verdict of conviction on count three after a bench trial and referred to the other convictions being imposed upon the recommendation of the jury. Nonetheless, the court stated that pursuant to *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535 (stating that the remedy for a failure to comply with Crim.R. 32(C) is a revised sentencing entry rather than a new hearing), it filed a nunc pro tunc

judgment entry of sentence to clarify what actually occurred at appellant's sentencing.

{¶19} Finally, as to appellant's motion for hearing on pretrial motion to dismiss speedy trial delay in trial, the court found that appellant raised the issue during trial and the court overruled it. And the court noted that appellant failed to raise any speedy trial issues in his direct appeal. For these reasons, the court overruled appellant's motion for hearing on pretrial motion to dismiss speedy trial delay in trial.

{¶10} Appellant filed a timely notice of appeal on February 28, 2011.

{¶11} Appellant, still acting pro se, raises five assignments of error, the first of which states:

THE TRIAL COURT ABUSED ITS DISCRETION FOR FAILURE TO REPLACE AND APPOINT LEAD COUNSEL WHO WITHDREW FROM THE CASE THAT VIOLATED APPELLANT LAWRENCE E. ROSS' SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF LEAD COUNSEL UNDER SUP.R. 20 OF THE UNITED STATES CONSTITUTION AND ARTICLE I, §10 OF THE OHIO CONSTITUTION TO ASSIST CO-COUNSEL ON VARIOUS MOTIONS DURING A POST RELEASE CONTROL RE SENTENCING[sic.] HEARING REVIEW AS THE RE SENTENCING [sic.] HEARING WAS A CRITICAL STAGE OF THE PROCEEDINGS WHERE THE RIGHT TO LEAD COUNSEL AND CO COUNSEL ATTACHED AS THE CASE WAS FORMERLY TRIED UNDER A CAPITAL OFFENSE WHERE THE DEATH SPECIFICATION ATTACHED.

{¶12} After appellant was indicted on a capital charge and found by the court to be indigent, the court appointed him two attorneys in compliance with Sup.R. 20(I)(C), which provides that in capital cases, "[i]f the defendant is entitled to the appointment of counsel, the court shall appoint two attorneys certified pursuant to Sup. R. 20 through 20.05." The court appointed Attorney James Gentile as lead

counsel and Attorney James Wise as co-counsel. They represented appellant during his trial.

{¶13} After appellant filed his pro se motion requesting resentencing for an alleged failure to impose a mandatory postrelease control term, the trial court set the matter for a hearing. Two days before the motion hearing, Atty. Gentile filed a motion to withdraw although it is not clear that Atty. Gentile was still representing appellant at that time. Appellant appeared at the hearing with Atty. Wise where Atty. Wise informed the court that he had just been contacted and was not prepared to go forward with appellant's pro se motion. Consequently, the court appointed Atty. Wise to represent appellant on this motion and continued the matter for several days so that Atty. Wise could prepare.

{¶14} Appellant argues in this assignment of error that the trial court erred in not appointing him two attorneys on his motion because this was a capital case.

{¶15} Sup.R. 20(II)(B) governs the appointment of appellate counsel for indigent defendants in capital cases. It provides, in pertinent part: "At least two attorneys shall be appointed by the court to appeal cases *where the trial court has imposed the death penalty* on an indigent defendant." (Emphasis added.) Sup.R. 20(II)(B). The way the Rule is worded leads to the conclusion that if the trial court has not imposed the death penalty, two attorneys need not be appointed for the appeal. In other words, if the indigent defendant is sentenced to a prison term instead of to the death penalty, the court need only appoint one attorney to handle the defendant's appeal.

{¶16} Furthermore, this current appeal is not even appellant's direct appeal from his conviction. Instead, it is an appeal from the judgment on several of his miscellaneous motions.

{¶17} As such, appellant was not entitled to have two attorneys appointed for this appeal. Accordingly, appellant's first assignment of error is without merit.

{¶18} Appellant's second assignment of error states:

APPELLANT LAWRENCE E. ROSS HAS A DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO HAVE THE IMPOSITION OF A MANDATORY 5 YEAR PERIOD OF POST RELEASE CONTROL ADVISEMENT AS MAY BE IMPOSED TO HIS AGGRAVATED BURGLARY COUNT DESPITE HIS OFFENSE BEING COMMITTED PRIOR TO SENATE BILL 2 BUT SENTENCE THEREAFTER AS NOT DETAILED IN STATE V. FISCHER.

{¶19} Appellant's crimes were committed on February 5, 1996. Senate Bill 2, the "truth in sentencing" bill became effective on July 1, 1996. Senate Bill 2 amended Ohio's felony sentencing scheme. Appellant was sentenced on November 15, 1996.

{¶20} Appellant asserts here that he was subject to the post-Senate Bill 2 sentencing laws. Therefore, he contends that the trial court erred in failing to notify him of a mandatory term of postrelease control on his aggravated burglary sentence. Consequently, he contends that we should remand his case to the trial court for a de novo sentencing hearing.

{¶21} R.C. 2967.021 provides:

(A) *Chapter 2967. of the Revised Code [dealing with parole], as it existed prior to July 1, 1996, applies to a person upon whom a court imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996.*

(B) *Chapter 2967. of the Revised Code, as it exists on and after July 1, 1996, applies to a person upon whom a court imposed a stated prison term for an offense committed on or after July 1, 1996.*

(Emphasis added.)

{¶22} Furthermore, “[p]ostrelease control was enacted as part of Senate Bill 2 and applies to crimes committed after July 1, 1996.” *State v. Staffrey*, 7th Dist. Nos. 10-MA-130, 10-MA-131, 2011-Ohio-5760, ¶26 citing *State v. Rush*, 83 Ohio St.3d 83, 53, 54, 697 N.E.2d 634 (1998). “[P]ost-release control does not apply to pre-Am.Sub.S.B. No. 2 sentences for crimes committed on or before July 1, 1996 as post-release control did not exist prior to July 1, 1996.” *State v. Gavin*, 8th Dist. No. 90017, 2008-Ohio-2042, ¶11.

{¶23} Because postrelease control does not apply to appellant’s February 1996 crimes, he was not entitled to a notification of postrelease control. Accordingly, appellant’s second assignment of error is without merit.

{¶24} Appellant’s third assignment of error states:

APPELLANT LAWRENCE E. ROSS’ SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE UNITED STATES AND UNDER ARTICLE I, §10 OF THE OHIO CONSTITUTION WAS VIOLATED DURING HIS RE SENTENCING [sic.] HEARING FOR COUNSEL’S FAILURE TO CHALLENGE THE INSUFFICIENCY OF THE JOURNAL ENTRY THAT DID NOT COMPLY WITH CRIM.R. 32(A) AND THE DICTATES OF STATE V. BAKER FOR FAILURE TO STATE THE JURY’S VERDICT AND OR FINDINGS TO BECOME A FINAL APPEALABLE ORDER.

{¶25} Appellant argues that his original sentencing entry did not comply with *Baker*, 119 Ohio St.3d 197, because it did not contain the jury’s finding of guilty. He acknowledges that the court issued a nunc pro tunc entry following the January 26, 2011 hearing. However, he argues that he should have been provided with an opportunity to be heard before the court issued the nunc pro tunc entry.

{¶26} Appellant further asserts that his counsel was ineffective at the January 26, 2011 hearing because he did not argue that the original sentencing judgment entry did not comply with *Baker*. Had counsel made such an argument, appellant contends, his sentence would have been otherwise.

{¶27} To prove an allegation of ineffective assistance of counsel, the appellant must satisfy a two-prong test. First, appellant must establish that counsel's performance has fallen below an objective standard of reasonable representation. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. Second, appellant must demonstrate that he was prejudiced by counsel's performance. *Id.* To show that he has been prejudiced by counsel's deficient performance, appellant must prove that, but for counsel's errors, the result of the trial would have been different. *Bradley*, paragraph three of the syllabus.

{¶28} Appellant bears the burden of proof on the issue of counsel's effectiveness. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). In Ohio, a licensed attorney is presumed competent *Id.*

{¶29} *Baker* held that a judgment of conviction is not a final, appealable order unless 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 the syllabus; Crim.R. 32(C). *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio5204, 958 N.E.2d 142, later modified *Baker* by holding that a judgment of conviction need not state the manner of conviction, a plea or a verdict, in order to be a final, appealable order. Instead, the judgment need only set forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp by the clerk. *Id.*

{¶30} Appellant's original sentencing entry failed to set forth the fact of appellant's conviction on the aggravated murder and aggravated burglary counts and the accompanying firearm specifications. It simply stated that the jury recommended

a sentence of life in prison with parole eligibility after 30 years. Thus, the original entry did not comply with *Baker/Lester* or Crim.R. 32(C).

{¶31} But the trial court's nunc pro tunc entry corrected the sentencing entry. The remedy for a sentencing entry that does not comply with Crim.R. 32(C) is a revised sentencing entry, not a new sentencing hearing. *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535, ¶18, citing *State ex rel. Alicea v. Krichbaum*, 126 Ohio St.3d 194, 2010-Ohio-3234, 931 N.E.2d 1079, ¶2.

{¶32} In this case, the trial court issued a nunc pro tunc sentencing entry that complied with Crim.R. 32(C) by setting out the fact and manner of the conviction along with the other requirements. A defendant is entitled to a sentencing entry that complies with Crim.R. 32(C). *DeWine*, at ¶18, citing, *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, ¶10-11. Appellant now has such an entry.

{¶33} For these reasons, appellant's counsel was not ineffective for failing to make an argument regarding his sentence. Furthermore, appellant was not entitled to make an argument on his own behalf as to his sentence.

{¶34} Accordingly, appellant's third assignment of error is without merit.

{¶35} Appellant's fourth and fifth assignments of error share a common legal basis. Therefore, we will address them together. They state:

APPELLANT MR. LAWRENCE E. ROSS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL PROTECTED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, §10 OF THE OHIO COUNSEL'S FAILURE TO PREPARE A DEFENSE THAT THE TRIAL COURT RETAINED LIMITED JURISDICTION TO RECONSIDER ITS FINDINGS DENYING APPELLANT'S TIMELY ORAL SPEEDY TRIAL MOTION FOR DISCHARGE FOR FAILURE TO BRING HIM TO TRIAL UNDER AN AGREED CONDITIONAL WAIVER ENTERED ON MAY 7TH 1996

UNTIL OCTOBER 7TH 1996 THAT WAS NEVER JOURNALIZED IN A JUDGMENT ENTRY TO BECOME A FINAL APPEALABLE ORDER.

APPELLANT LAWRENCE E. ROSS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL PROTECTED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, §10 OF THE OHIO CONSTITUTION WAS VIOLATED DURING A DISCRETIONARY HEARING FOR COUNSEL'S FAILURE TO CHALLENGE THAT APPELLANT WAS NOT BROUGHT TO TRIAL UNDER A WRITTEN AGREEMENT OF A CONDITIONAL WAIVER OF HIS SPEEDY TRIAL RIGHTS THAT HE WAIVED ON MAY 7TH 1996 UNTIL OCTOBER 7TH 1996 THAT WAS NOT MADE KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY WHERE THE COURT CIRCUMVENTED THE SPIRIT OF THE STATUTE BY CONDUCTING VOIR DIRE WITHIN THE STATUTORY TIME LIMITS.

{¶36} Appellant argues that his counsel was ineffective at the January 26, 2011 hearing because counsel failed to argue that appellant's speedy trial rights were violated. He contends that because the trial court addressed this issue in its judgment entry, it "revived" the issue and made it ripe for appeal.

{¶37} In its judgment entry overruling appellant's motions, the trial court addressed appellant's speedy trial argument. However, the court concluded that appellant's motion for hearing on pretrial motion to dismiss speedy trial delay in trial was a nullity since appellant had waived any right to further contest speedy trial issues.

{¶38} Contrary to appellant's argument, his speedy trial claims are barred by the doctrine of res judicata.

"Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack

of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an appeal from that judgment."

State v. Green, 7th Dist. No. 10-MA-43, 2010-Ohio-6271, ¶26, quoting *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). The speedy trial issues appellant presents could have and should have been raised in his direct appeal.

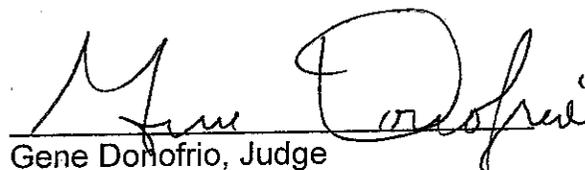
{¶39} Accordingly, appellant's fourth and fifth assignments of error are without merit.

{¶40} For the reasons stated above, the trial court's judgment is hereby affirmed.

Vukovich, J., concurs.

Waite, P.J., concurs.

APPROVED:


Gene Donofrio, Judge

APPENDIX (2)

CLERK OF COURTS
MAHONING COUNTY, OHIO
MAY 31 2012
FILED
ANTHONY VIVO, CLERK

STATE OF OHIO)
MAHONING COUNTY) SS: IN THE COURT OF APPEALS OF OHIO
SEVENTH DISTRICT.

STATE OF OHIO,)
PLAINTIFF-APPELLEE,)
V.) CASE NO. 11-MA-32
LAWRENCE EDWARD ROSS,) JUDGMENT ENTRY
DEFENDANT-APPELLANT.)

For the reasons stated in the opinion rendered herein, appellant's five assignments of error are without merit and are overruled. It is the final judgment and order of this Court that the judgment of the Common Pleas Court, Mahoning County, Ohio, is affirmed.

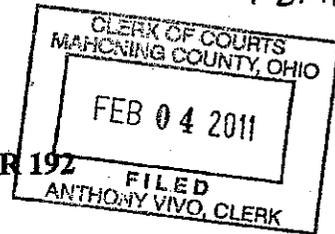
Costs taxed against appellant.

Yvonne C. ...
Joseph W. ...
... ..
JUDGES.

APPENDIX (3)

1-21-11

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO



STATE OF OHIO
PLAINTIFF

CASE NUMBER: 96 CR 192

VS.

JUDGE R. SCOTT KRICHBAUM

LAWRENCE EDWARD ROSS
DEFENDANT

JUDGMENT ENTRY

This cause came to be heard this 21st day of January, 2011 on various motions filed by Defendant. Present in open Court were Defendant, Lawrence Edward Ross and his counsel, Attorney James Wise. Representing the State of Ohio was Assistant Prosecuting Attorney J. Michael Thompson.

On January 21, 2011 this matter was called for hearing on Defendant's "Petition for a Resentencing Hearing pursuant to O.R.C. 2929.19(B)(3)" filed on December 20, 2010. Both the Prosecuting Attorney and the Court previously reviewed the Judgment Entry of Sentence produced on November 22, 1996, and determined that Defendant was not advised of mandatory post release control pursuant to O.R.C. 2929.19. Therefore, Defendant was returned from the Department of Rehabilitation and Corrections for imposition of post release control pursuant to State v. Fischer, Slip Opinion No. 2010-Ohio-6238.

In the meantime, Defendant filed an "Objection in Opposition for a Resentencing Hearing" on December 22, 2010 and a "Motion for Hearing on Pretrial Motion to Dismiss Speedy Trial Delay in Trial pursuant O.R.C. 2945.73" on January 21, 2011.

At the January 21, 2011 hearing, the issue of whether or not advice regarding post release control was necessary arose since the crimes herein may have been committed prior to the effective date of Senate Bill 2. Because of the issues raised in all of Defendant's motions, this Court appointed Attorney James Wise as counsel for Defendant and set these matters for hearing on January 26, 2011.

On January 26, 2011, Defendant was present in open Court with his counsel, Attorney James Wise. Representing the State of Ohio was Assistant Prosecuting Attorney, J. Michael Thompson.

Counsel for Defendant addressed the Court regarding Defendant's "Petition for a Resentencing Hearing pursuant to O.R.C. 2929.19(B)(3)" filed on December 20, 2010, and the Prosecuting Attorney addressed the Court in response thereto. The Court found that the crimes committed herein were committed prior to the effective date of Senate Bill 2: to wit; February 5, 1996. Accordingly, Defendant is not entitled to be advised of mandatory post release control as requested in his motion, rather, Defendant is subject to pre-Senate Bill 2 law, which requires imposition of an indeterminate term of incarceration and renders Defendant subject to release from the penitentiary on parole as set forth by law and within the defined

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discretion of the parole board. Accordingly, Defendant's "Petition for a Resentencing Hearing pursuant to O.R.C. 2929.19(B)(3)" is overruled.

Defendant's "Objection in Opposition for a Resentencing Hearing" on December 22, 2010 was presented next. Counsel for Defendant made no argument thereon, but counsel for the State argued that the purpose of State v. Baker (2008), 119 Ohio St.3d 197, 2008-Ohio-3330, is to assure Defendant a right to review his convictions on appeal. Defendant herein has had two appeals within this district and has been rejected in all of his claims of error. Upon review of the applicable law and the original Judgment Entry of Sentence herein, this Court finds that the original sentencing entry herein is in compliance with State v. Baker and its progeny, since the Judgment Entry of Sentence clearly sets forth the Court's verdict of conviction on Count Three after a non-jury trial and refers to the other convictions being imposed "upon the recommendation of the trial jury". Therefore, the findings of guilty by the Court on Count Three and by the jury on the other counts are clear. The sentences are correctly set forth, the Judgment is signed, and the entry is time stamped. Accordingly, Defendant's "Objection in Opposition for a Resentencing Hearing" is overruled. However, pursuant to State ex rel Dewine v. Burge, Slip Opinion No. 2011-Ohio-235, this Court has prepared and filed a Nunc Pro Tunc Judgment Entry of Sentence to clarify what actually occurred at Defendant's sentencing.

Finally, Defense Counsel argued Defendant's "Motion for Hearing on Pretrial Motion to Dismiss Speedy Trial Delay in Trial pursuant O.R.C. 2945.73" filed on January 21, 2011. This Court finds that Defendant raised such an issue during the trial of this case and that said motion was overruled. The motion made at trial was overruled because on May 7, 1996, Defendant waived his right to speedy trial until October 7, 1996 and the trial voir dire began that date. Furthermore, Defendant's motion to dismiss was overruled when it was filed because it was not timely filed pursuant to O.R.C. 2945.73(B), "at or prior to the commencement of trial"; said motion being filed on November 13, 1996, and the commencement of trial being October 7, 1996. The Court further finds that Defendant himself created said motion and that trial counsel for Defendant did not file or argue such a motion, nor did Defendant's appellate counsel.

Upon review of the Court's docket in this matter, the Court finds that Defendant's counsel filed numerous motions before trial, including motions for transcripts of hearings, motions to suppress, and numerous discovery and other motions that tolled the time for speedy trial in addition to Defendant's waivers of right to speedy trial, thereby clearly extending and tolling the time for speedy trial.

Defendant's argument that the trial commenced "upon the swearing of the jury" was rejected by this Court as a matter of law, since "a trial commences when the Court begins voir dire". State v. Cook, 1990 Ohio App. Lexis 1314 (April 4, 1990). Defendant argued that findings of fact and conclusions of law were required of the Court but not provided, however, Defendant's submission of records in support of his motion

is spotty and incomplete, therefore, the Court is unable to determine whether such findings were or were not made by way of entry, however, such findings were made on the trial record of this case.

This Court finds that due to the fact that Defendant's original speedy trial motion was untimely filed, Defendant waived his right to contest such an issue. Furthermore, Defendant waived his right to a speedy trial until October 7, 1996, and the trial did begin October 7, 1996. Defendant filed numerous additional motions throughout the pendency of this case that tolled the speedy trial time limit herein. Finally, Defendant failed to raise any issues regarding his right to a speedy trial and/or his right to findings of fact and conclusions of law in any of his appeals, and, consequently, waived any right to further contest those issues. Accordingly, Defendant's "Motion for Hearing on Pretrial Motion to Dismiss Speedy Trial Delay in Trial pursuant O.R.C. 2935.73" filed on January 21, 2011 is overruled as a nullity.

Defendant is Ordered remanded to the custody of the Sheriff of Mahoning County to be forthwith returned the Department of Rehabilitation and Corrections to resume the previously Ordered sentence imposed by this Court on November 21, 1996.


JUDGE R. SCOTT KRICHBAUM

cc: Prosecutor J. Michael Thompson
Attorney James Wise
Lawrence Edward Ross, #A 332-055
Lake Erie Correctional Institution
501 Thompson Road
P.O. Box 8000
Conneaut, OH 44030
DRC
Lake Erie Correctional Institution (Fax: 440-599-2197)
MCJC
(Done RM)

Instructions to the Clerk of Courts: Please serve a copy of this Judgment Entry to all parties herein.

000212

This is a true copy of the original JE
Filed in Case No. 2-16-11
By Anthony V. VWC Clerk of Courts
Deputy

APPENDIX (4)

1-21-11

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

CLERK OF COURTS
MAHONING COUNTY, OHIO
FEB 04 2011
FILED
ANTHONY VIVO, CLERK

STATE OF OHIO
PLAINTIFF

CASE NUMBER: 96 CR 192

VS.

JUDGE R. SCOTT KRICHBAUM

LAWRENCE EDWARD ROSS
DEFENDANT

NUNC PRO TUNC JUDGMENT
ENTRY OF SENTENCE

Pursuant to State ex rel Dewine v. Burge, Slip Opinion No. 2011 Ohio 235, the original Judgment Entry of Sentence herein is amended nunc pro tunc to November 21, 1996 pursuant to Cr. R. 36.

Case called for Trial by Jury this 21st day of November, 1996, on Count Three of the Indictment, Having Weapons While Under Disability, a violation of O.R.C. 2923.13(A)(3)(B), a felony of the fourth degree with a Firearm Specification pursuant to O.R.C. 2941.143. The Defendant, knowingly, intelligently, and voluntarily waived a jury trial on said count, and this matter proceeded as a Trial to the Court. The State of Ohio presented evidence. The Defense presented a stipulation that Defendant has previously been convicted of an offense involving the illegal possession or use of a drug of abuse in Mahoning County, Court of Common Pleas, Case Number 90-CR-655. Both parties rested. The Court, upon review of the evidence presented, finds beyond a reasonable doubt that the Defendant, Lawrence Edward Ross, not having been relieved from disability, did knowingly acquire, have, carry or use a firearm on or about the 5th day of February, 1996, and that he has previously been convicted of an offense involving the illegal possession or use of a drug of abuse in Mahoning County, Court of Common Pleas, Case Number 90-CR-655. The Court further finds that the Defendant is guilty beyond a reasonable doubt of the specification in Count Three, that he caused physical harm to Mark A. Brown during the commission of the offense of Having Weapon While Under Disability. The Court further finds that the Defendant did have a firearm on or about his person or under his control while committing the offense of Having Weapon While Under Disability as charged in the Firearm Specification to Count Three and finds him guilty of such Firearm Specification. The Court hereby enters Judgment on the Verdicts as to Count Three.

This matter then proceeded to sentencing. The Prosecuting Attorney advised the Court that the victim's family was notified of this hearing. The victim's father appeared and addressed the Court prior to sentencing.

Defendant's case was tried to a jury on Counts One and Two and the specifications related thereto. The Court finds that Defendant was found guilty beyond a reasonable doubt by a unanimous jury of Aggravated Murder, a violation of O.R.C. 2903.01(A)(C), Felony/Death and an O.R.C. 2929.04(A)(7)

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specification as charged in Count One of the Indictment together with the Firearm Specification to Count One under O.R.C. 2941.141. The Court further finds that Defendant was found guilty beyond a reasonable doubt by a unanimous jury of Aggravated Burglary, a violation of O.R.C. 2911.11(A)(3)(B), an AF-1, with a Firearm Specification to Count Two under O.R.C. 2941.141.

Defendant was found guilty beyond a reasonable doubt by the Court at a trial to the Court on the charge of Having Weapons While Under Disability, a violation of O.R.C. 2923.13(A)(3)(B), a felony of the fourth degree, with an O.R.C. 2941.143 specification as charged in Count Three of the Indictment, together with the Firearm Specification to Count Three under O.R.C. 2941.141.

Upon consideration of the matters set forth in Ohio Revised Code Sections 2929.03, 2929.11, 2929.12, 2929.71, and 2951.02, and other matters pertinent to the sentence which should be imposed, the Court proceeds to sentence. It is the sentence of this Court that for the crime of Aggravated Murder, RC 2903.01(A)(C), Felony/Death with a RC 2929.04(A)(7) Specification as charged in Count One, pursuant to law and pursuant to the recommendation of the trial jury, the Court is mandated to impose a sentence of life imprisonment with parole eligibility after serving Thirty (30) full years of incarceration pursuant to O.R.C. 2929.03. This sentence is to be served in the Ohio State Penal system. Defendant is to be taken from here to the Mahoning County Justice Center and then to the appropriate Penal Institution to serve that sentence.

The Defendant is further sentenced to a term of Three (3) years of actual incarceration on the Firearm Specification to Count One to be served prior to and consecutively to the sentence imposed on Count One.

For the crime of Aggravated Burglary, RC 2911.11(A)(3)(B), AF-1 under Count Two of the Indictment, the Defendant is to be taken from here to the Mahoning County Justice Center and from there to the appropriate Penal Institution, there to serve an indefinite term according to law of not less than Ten (10) years nor more than Twenty-Five (25) years of actual incarceration on the minimum term, to served consecutively to the sentence imposed under Count One.

The Defendant is further sentence sentenced to a term of Three (3) years of actual incarceration on the Firearm Specification to Count Two to be served prior to and consecutively to the sentence imposed on Count Two and the sentences imposed on Count One.

For the crime of Having Weapons While Under Disability, RC 2923.13(A)(3)(B), a felony of the fourth degree and the O.R.C. 2941.143 specification, the Defendant is to be taken from here to the Mahoning County Justice Center and from there to the appropriate Penal Institution, to serve an indefinite term according to law of not less than Three (3) years nor more than Five (5) years, to be served consecutively to the sentences imposed under Counts One and Two.

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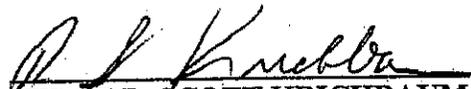
The Defendant is further sentenced to a term of Three (3) years of actual incarceration on the Firearm Specification to Count Three to be served prior to and consecutively to the sentence imposed on Count Three, however, this Firearm Specification merges with the Firearm Specifications under Counts One and Two.

The Defendant is Ordered to pay the costs of this prosecution. The Defendant was advised of his right to appeal as provided in Criminal Rule 32 and that he has thirty days from today's date to perfect an appeal by filing a notice of appeal in the Seventh District Court of Appeals. The Court hereby finds the Defendant indigent for purposes of appointment of appellate counsel and will make timely appointment of appellate counsel.

Defendant's Motions to merge Firearm Specifications and to merge Count Two, Aggravated Burglary, with the Specifications under RC 2929.04(A)(7) in Count One are, except as hereinabove noted, overruled.

Pursuant to RC 2967.19.1, the Defendant shall receive jail time credit for 285 days.

DATE: January 21, 2011


JUDGE R. SCOTT KRICHBAUM

cc: The Supreme Court of Ohio
Lawrence Edward Ross, #A 332-055
Lake Erie Correctional Institution
501 Thompson Road
P.O. Box 8000
Conneaut, OH 44030
Prosecuting Attorney Kenneth Bailey (Prosecuting Attorney J. Michael Thompson)
Attorney James Gentile
Attorney James Wise
DRC
MCJC
(Done RM)

Instructions to the Clerk of Courts: Please serve a copy of this Judgment Entry to all parties herein.

(Done RM)

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2-16-11
This is a true copy of the original JE
Filed in Case No. 96CR192
By Anthony V. Vito Clerk of Courts
Alone Deputy