

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JESSE L. PAIGE,

Defendant-Appellant.

CASE NO. 12-1220

On Appeal from the First Appellate  
District Case No. C-110533

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MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT  
JESSE L. PAIGE

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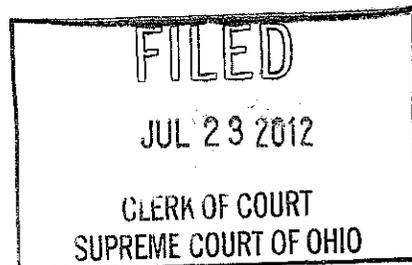
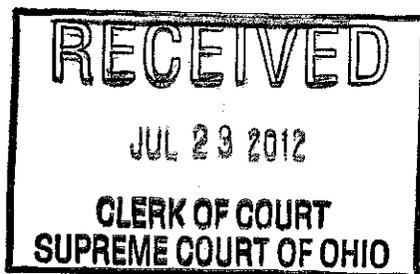


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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves a substantial constitutional question and is a case of public or great general interest. First, the jury verdicts in this case make no reference to the name or degree of the offense for which Paige was supposedly found guilty. As such these verdicts are void and carry no legal authority. It certainly follows that the resultant sentences are also void and unlawful. Paige is imprisoned on void sentences and that amounts to a violation of due process. *See* U.S. Const., amend. XIV. Second, the Double Jeopardy Clause of the Fifth Amendment has been violated in this case by virtue of Paige being sentenced for both domestic violence and felonious assault when these offenses involved the same victim and the same animus. These two offenses are allied offenses of similar import and Paige can only be lawfully sentenced on one of the counts.

This Court must accept jurisdiction of this case in order to address these very important constitutional issues on the merits.

STATEMENT OF THE CASE AND FACTS

In 1998, it was alleged that Paine held his girlfriend against her will and assaulted her over a period of some days.

As a result, Paige was indicted for: Kidnapping [R.C. 2905.01(B)(2)]; Felonious Assault [R.C. 2903.11(A)(2)]; and, Domestic Violence [R.C. 2919.25(A)].

Paige pled not guilty and his case proceeded to trial by jury. The jury found Paige guilty on all counts. The trial court sentenced Paige to 15 years in prison. Paige appealed to the First District Court of Appeals. His convictions and sentences were affirmed.

In the years that followed, Paige filed a series of *pro se* motions challenging his convictions and sentences, but was given no relief.

In 2011, Paige properly pointed out to the trial court that he was serving a void sentence due to the trial court's failure to advise him of the mandatory post-release control sanctions. The trial court brought Paige back for imposition of a lawful sentence. Paige also filed a motion for discharge on the basis that his original jury verdicts were void.

The trial court resentenced Paige to his original sentence with the only change being that it included the mandatory post-release control language.

Once again, Paige appealed to the First District Court of Appeals for relief. On June 6, 2012, the court of appeals affirmed his convictions and sentences.

Paige asks this Honorable Court to accept jurisdiction of his case in order to correct the egregious constitutional errors committed in the courts below.

#### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

##### **Proposition of Law No. 1: Jury verdicts are void if they fail to specifically identify the names or degrees of the offenses.**

In *State v. Reed*, 23 Ohio App.3d 119, 491 N.E.2d 723 (1985), the First District Court of Appeals held that a verdict was void because: "we cannot determine from the verdict (1) the name of the offense, or (2) the degree of the offense, which determines the penalty, or (3) the name or classification of the drug, from which the name and degree of the offense could be determined." Such a verdict is an incurable defect and is void. *Id.*

In the case at bar, none of the jury verdicts make reference to the name or degree of the offense for which Paige was supposedly found guilty. They simply refer back to the indictment. Thus, Paige's verdicts are void as a matter of law. If Paige's verdicts are void, then it necessarily follows that his sentences are void and without legal authority. *See* Crim. 32(C)(a judgment of

conviction is the plea, the verdict or findings, and the sentence). The verdicts are void and incurable. Paige is entitled to immediate discharge.

Additionally, even if this Court determined that Paige's verdicts are not void, he is still entitled to be resentenced on lesser offenses. R.C. 2945.75 states that when the verdict does not state the degree of the offense for which the offender is found guilty or that such additional elements are present; a guilty verdict constitutes the finding of guilty on the least degree of the offense charged. R.C. 2945.75(B)(2). The least degree of kidnapping is a felony of the second-degree. *See* R.C. 2905.01. The least degree of domestic violence is a misdemeanor of the fourth-degree. *See* R.C. 2919.25. Paige is entitled to be resentenced on these lesser offenses.

### ***Res Judicata Cannot Be Used to Defend a Void Judgment***

In the trial court, the State of Ohio argued that *res judicata* prohibited Paige from raising the void verdict issue at his re-sentencing because he should have raised it on his direct appeal. The trial court agreed with prosecutor and stated: "When you don't appeal an error, and the time has expired, then the court doesn't have the authority." The court of appeals agreed with the lower court and avoided addressing this issue on the merits by applying *res judicata*. The courts below are wrong.

This Court recognizes *res judicata* as a rule of substantial justice. It cannot be applied to defeat the ends of justice or so as to work an injustice. *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d 488, 2001-Ohio-1593, 756 N.E.2d 657. In keeping with this rule, *res judicata* does not attach to a void sentence. *See Tari v. State*, 227 Ohio St. 481, 159 N.E.2d 594 (1927); *Babala v. Babala*, 68 Ohio App. 63, 33 N.E.2d 845 (1940). If a court acts without legal authority, "its judgment and orders are regarded as nullities." "They are not voidable, but simply void; and form no bar to recovery sought, even prior to a reversal in opposition to them." *Elliot v. Lessee of*

*Peirsol*, 26 U.S. 328, 340 (1828). No court of law must ever condone or endorse the enforcement of a void judgment. A void judgment can be “disregarded entirely,” and “attacked collaterally.” See *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594 (1927).

The trial court committed reversible error when it concluded that *res judicata* precluded Paige from addressing the void verdict issue at the time of his re-sentencing. The court of appeals compounded this error by affirming his sentences. Paige is entitled to attack his unlawful sentence at every opportunity, in any court, and as often as he could.

**Proposition of Law No. II: The offenses of felonious assault and domestic violence are allied offenses of similar import when they involve the same victim and same animus.**

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” This prohibition also protects against multiple punishments for the same offense. In *Albernaz v. United States*, 450 U.S. 333, 344, 101 S.Ct. 1137 (1981), the Supreme Court of the United States held that “the question of what punishments are constitutionally permissible [under the Double Jeopardy Clause] is no different from the question of what punishment the Legislative Branch intended to be imposed.” Accordingly, where the statutory provision proscribes the “same offense” they are construed not to authorize cumulative punishment.” *Whalen v. United States*, 445 U.S. 684, 100 S.Ct. 1432 (1979). See also U.S. Const., amend. V, XIV; R.C. 2941.25.

Recently, in *State v. Damron*, 129 Ohio St.3d 86, 2011-Ohio-2268, 95 N.E.2d 512, this Court found that the offenses of domestic violence and felonious assault were allied offenses of similar import when committed with the same animus against the same victim.

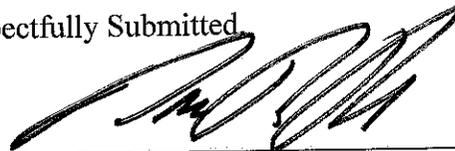
In the case at bar, Paige’s offenses of domestic violence and felonious assault involved the same victim and with the same animus. At his re-sentencing, Paige properly moved the trial

court to merge counts two (felonious assault) and three (domestic violence). The trial court declined to do so under the mistaken belief that it did not have the authority to alter the original sentence. The court stated: “And, yes, maybe today two of these offenses would merge, perhaps. And I don’t have the authority to do that, I’m not going to do that today.” Paige submits that the trial court always has the authority to correct an unlawful sentence, and it should have done so in this case. Further, the sentence in this case was void for reasons beyond the failure to include mandatory post-release control; and as such Paige’s resentencing hearing was not limited to the simple imposition of the post-release control language as the State contended.

CONCLUSION

For the reasons discussed above, this case involves a matter of great general interest and involves a substantial constitutional question. Appellant Jesse Paige requests that this Court accept jurisdiction of this case so that important issues presented will be reviewed on the merits.

Respectfully Submitted,



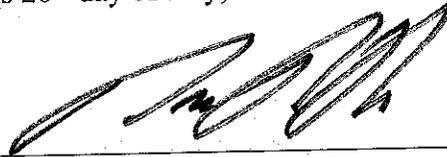
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COUNSEL FOR APPELLANT,  
JESSE PAIGE

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction was served upon the Hamilton County Prosecutor, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202, by personal service on this 20<sup>th</sup> day of July, 2012.



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BRYAN R. PERKINS (0061871)

COUNSEL FOR APPELLANT,  
JESSE PAIGE

IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO

ENTERED

JUN - 6 2012

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JESSE L. PAIGE,

Defendant-Appellant

APPEAL NO. C-110533

TRIAL NO. B-9803381

JUDGMENT ENTRY.



D97898306

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Following a jury trial in 1998, defendant-appellant Jesse Paige was found guilty of kidnapping, felonious assault, and domestic violence. The trial court sentenced Paige to an aggregate term of 15 years' incarceration. He appealed. This court affirmed. In 2011, Paige was returned to Hamilton County to be notified of post-release control. At that hearing, Paige moved the trial court to vacate his convictions, arguing that the verdict forms in his trial were flawed. In the alternative, he asked the court to merge his felonious assault and domestic violence convictions as allied offenses of similar import. The court overruled both motions. Paige now appeals.

In his first assignment of error, citing *State v. Reed*, 23 Ohio App.3d 119, 491 N.E.2d 723 (1st Dist.1985), Paige claims that his convictions were void because the jury's verdict forms did not specify the names or degrees of the offenses. In *Reed*,

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unlike here, the jury's verdict form described an offense that did not exist. *Reed*, at 122-123, 491 N.E.2d 723. *Reed* is therefore distinguishable. This argument has no merit.

Paige next contends that, based on *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, 860 N.E.2d 735, he should have been convicted of a lesser degree of kidnapping and domestic violence. Paige could have raised this issue in his appeal from his convictions. He did not. The issue is, therefore, res judicata. *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Paige's first assignment of error is overruled.

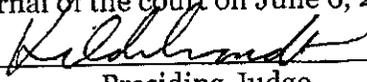
In his second assignment of error, Paige argues that the trial court erred by failing to merge his felonious assault and domestic violence convictions. Paige is incorrect. The trial court had no authority to merge these offenses. We overrule this assignment of error on the basis of *State v. Harris*, 1st Dist. Nos. C-100470 and C-100471, 2011-Ohio-2729. The second assignment of error is overruled.

The trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on June 6, 2012  
per order of the court   
Presiding Judge