

ORIGINAL

IN THE SUPREME COURT OF OHIO

FILED

Feliks Goldshtein)
Petitioner)
v)
Margaret Bradshaw, Warden)
Respondent)

Case No. **12-1459**

AUG 27 2012

CLERK OF COURT
SUPREME COURT OF OHIO

PETITION FOR WRIT OF HABEAS CORPUS

I, Feliks Goldshtein (Petitioner), am petitioning this Court for a writ of Habeas Corpus, pursuant to R.C.§2725.01, R.C.§2725.02, R.C.§2725.06, et al. The Ohio Constitution Article 4 Section 2 (B)(1)(c) states that the Supreme Court shall have original jurisdiction in Habeas Corpus cases. So therefore, this Court has jurisdiction to rule on this petition.

I am currently imprisoned by the Warden of Richland Correctional Institution (the Respondent in this case). I'm currently being held at Richland Correctional Institution, which is located in Mansfield, Ohio.

Copies of the causes of imprisonment are attached to this petition as Exhibits A, B, & C. I was sentenced in June of 2009. A copy of that journal entry is attached as Exhibit A. Thereafter, I was granted judicial release and put on community control. A copy of that Journal Entry is attached as Exhibit B. Then my community control was revoked, and I was sentenced to finish the remainder of my 4 year sentence. A copy of that journal entry is attached as Exhibit C.

It is well established that habeas corpus is appropriate if a person is imprisoned and entitled to immediate release. In Swinger v. Seidner (1996) 660 N.E. 2d 1214, This Court held that "Habeas corpus lies only if petitioner is entitled to immediate release upon determination that the claim urged in action is well founded..." In Larsen v. The State of Ohio (2001) 748 N.E. 2d 72, this Court held that "Habeas Corpus is generally appropriate in the criminal context only if the petitioner is entitled to immediate release from prison." In The State ex rel. Smirnoff, MD v. Greene (1998) 702 N.E. 2d 423, This court held that "Habeas corpus in Ohio is generally appropriate in the criminal context only if the petitioner is entitled to immediate release from prison or some other type of physical confinement." In Rollins v. Haskins (1964) 176 Ohio St. 394 this Court held that "Habeas Corpus lies only if petitioner is entitled to immediate release upon the determination that the claim urged in the action is well founded." So, it is well established that, if the court sees merit in my reasons for release, the writ that I am petitioning for ought to be granted. Since the Ohio Constitution gives this Court original jurisdiction, I have the option of appealing the 5th district Appeal Court's recent decision or filing an original action in this Court. This Court held that "Habeas Corpus actions are exempt from res judicata because conventional notions of finality of litigation have no place where life or liberty is at stake." Hudlin v. Alexander (1992) 63 Ohio St 3d 153, 586 N.E. 2d 86. So res judicata does not apply to Habeas Corpus actions.

REASONS FOR RELEASE:

My first reason for release has to do with the fact that the Trial Court refused my offer to post a special bond. On October 27, 2010, I said "I would like to post a special bond." The trial court said "There will be no bond." I explained that what I am doing is pursuant to rules of procedure. The judge again refused and commented on my "uniquely held political beliefs." This has nothing to do with my political beliefs. The transcript (attached as Exhibit D) page 5 lines 6-14 show this dialog between the judge and I. To clarify for this Court, so there is no confusion, a special bond has nothing to do with bail. Bail is governed by other rules of procedure, statutes, etc.

Now getting back to the issue at hand, Supplemental Rule (E)(5)(a) of the Federal Rules of Civil Procedure states in part:

"Special Bond. Whenever ...[a] process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security...conditioned to answer the judgement of the court..."(Emphasis Added)

So in an in rem action, the case shall be stayed or the property released when a special bond is posted. I offered to post a special bond, but the court refused. The case in question, Summit County Common Pleas Court case number CR2009-01-0232, is an in rem action. Rule 57(B) of the Ohio Rules of Criminal Procedure states in part:

"If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure... if no rule of criminal procedure exists." (Emphasis Added)

So pursuant to Criminal Rule 57(B), the Court shall look to the civil rules, if no criminal

rule of procedure exists. Since no criminal rule governs special bonds, the Court shall look to Supplemental Rule E(5)(a), supra.

Since the Court refused my offer to post a special bond, the judgement of the court is discharged. R.C.§1303.68(B) states in part "If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge..." In Green, Inc. v. Smith (1974) 317 N.E. 2d 227, the 4th district Court of Appeals held:

"Tender serves two purposes: it puts the other party in default, and, as an offer to do equity, it gives the tenderer the standing to invoke equitable relief."

So pursuant to Green, Inc. v. Smith and R.C.§1303.68(B), tendering a payment puts the other party in default, if the tender is refused.

In Eckenroth v. Stone (1959) 158 N.E. 2d 382, the Court held that "Tender does not mean the actual presenting the specie in the entire amount." So my tender to the Court was good even though I did not actually give the bond to the Court. I offered, but the Court refused. The specie in this case is the bond.

In Kinkopf v. Martoni (1942) 37 Ohio L. Abs 523, 9 Ohio Supp. 134, the Court held:

"Tender must be made in money or in that which by law passes as money for the payment of debts." AND ALSO

"Even though tender be not made in a medium that is legal tender, it may be good tender if objection is not made on that ground."

So my tender is good even though it is a bond. The Court never objected to the fact that my tender was in a form of a bond (Transcript page 5). The Court did not have a right to object that I was offering a bond as opposed to some other type of payment.

So to summarize, since the Court refused my offer to pay the judgement, the judgement is discharged because the Court is in default. Since the Trial Court is in default, the debt (judgement of the Court) is discharged. Because the judgement is discharged, I am entitled to immediate release. Since I am entitled to immediate release, the Respondent is imprisoning me unlawfully. Also since I am entitled to immediate release, the writ that I am petitioning for should be granted.

The second reason for release is because my plea is void. This matter has not been ruled on by any Court so far. I am currently being incarcerated by the Respondent for the crimes of Robbery, Failure to Comply with Order or Signal of Police Officer, and Resisting Arrest (Exhibit C). I plead guilty to the crimes back in 2009 (Exhibit A). That guilty plea is void because the court did not comply with Crim. R. 11(C)(2)(b) and Crim. R. 11(C)(2)(c).

Crim. R. 11(C)(2)(c) states that in a felony case the Court must personally address the defendant and determine that the defendant understands that by entering a guilty plea the defendant is waiving his right to compulsory process for obtaining witnesses in the defendant's favor. In State v. Younger(1975) 349 N.E. 2d 322 the Court held:

"Crim. R. 11(C)(2) requires the performance of specific acts by trial judge before the acceptance of a guilty plea in a felony case, and such performance is mandatory and not discretionary." ALSO

"Ohio R.Crim. P. 11(C)(2) was promulgated in recognition of the fact that when a defendant in a state criminal trial enters a plea of guilty he waives his privilege against compulsory self-incrimination, his right to a trial by jury, and his right to confront his accusers. In order for such a waiver to be valid under the Due Process Clause of the United States Constitution, it must be shown to have been an intentional relinquishment or abandonment of a known right or privilege. Thus, if a guilty plea is not knowingly, voluntarily, and intelligently made, it has been obtained in violation of due process and is therefore void. Rule 11(C)(2) was implemented to ensure, by a meaningful determination that a defendant entering a plea of guilty does so knowingly and with the understanding that he is waiving his critical constitutional rights." ALSO

"Ohio R. Crim. P. 11(C)(2) provides that the court shall not accept a guilty plea without first personally addressing the defendant and : (a) Determining that he is making the plea voluntarily, with understanding of the nature of the charge and of the maximum penalty involved, and, if applicable, that he is not eligible for probation;(b) Informing him of and determining that he understands the effect of his plea of guilty or no contest, and that the court upon acceptance of the plea may proceed with judgment and sentence; and (c) Informing him and determining that he understands that by his plea he is waiving his rights to jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to require the state to prove his guilt beyond a reasonable

doubt at a trial at which he cannot be compelled to testify against himself." In State v. Caudill (1976) 2 O.O. 3d 467, 358 N.E. 2d 601 the Court held:

"In accepting a written plea of no contest to a felony charge, the trial court must adhere scrupulously to the provisions of Crim. R. 11(C)(2)."

In State v. Richter (1993) 635 N.E. 2d 1295 the Court held:

"When defendant enters guilty plea, court must personally speak with defendant and assure itself that defendant is fully informed of all rights possessed by defendant before defendant waives those rights." (Emphasis Added)

The first of two reasons my plea is void is because it does not comply with Crim. R. 11(C)(2)(c), supra. The Court said "You're giving up the right to subpoena your own witnesses." (Transcript Page 12 Exhibit E). The court did not comply with Crim. R. 11(C)(2)(c) because the court did not explain that the witnesses that I can subpoena would be in my favor. According to State v. Caudill, supra, the trial Court has to scrupulously adhere to Rule 11(C)(2). What the Court said was not exactly what the Criminal Rule states the court had to say. How was I supposed to know that the witnesses that I could of subpoenaed would be in my defense. In State v. Richter, supra, it was held that the court has to personally speak to defendant and assure itself that defendant is fully informed of all rights.

The second of two reasons my plea is void is because the court did not comply with Crim. R. 11(C)(2)(b). Crim. R. 11(C)(2)(b) states that the court needs to address the defendant personally and inform the defendant that upon acceptance of a guilty plea, the court may proceed with judgement and sentence. the Court did not comply at all with this rule (Exhibit E). At no time during the hearing does the court inform me that upon acceptance of my plea, the court may proceed with judgement and sentence.

The written plea agreement states that I was advised that by pleading guilty, I was waiving my right to subpoena witnesses in my favor and that upon accepting my guilty plea, the court may proceed with judgement & sentencing. However, according to Crim. R. 11(C)(2) and the cases cited above, the court has to personally advise me of this. Furthermore, my lawyer never explained that I was giving up all these rights, she just asked me to sign the plea agreement. Since she is supposed to do what is in my best interest, I just signed it. If I would of known that I was giving up these rights, I would not of entered the guilty plea.

My plea was not knowingly made because I did not know all the rights that I was giving up. Thus, it is void because it violates the due process clause of the U.S. Constitution. Since my plea is void, it is unlawful for the Respondent to imprison me. How could someone be held under arrest in prison without a valid plea, and without a finding of guilt by the court or a jury? Since my plea is void, I am entitled to immediate release. Since I am entitled to immediate release, this court ought to grant a writ of habeas corpus so that I can be brought before this Court and released.

CONCLUSION:

For the foregoing reasons, I ask this Court to issue a writ of habeas corpus forthwith.

RESPONDENT'S ATTORNEY'S ADDRESS:
Mike DeWine, Ohio Attorney General
Criminal Justice Section
150 East Gay Street 16th floor
Columbus, OH 43215

Respectfully Submitted,

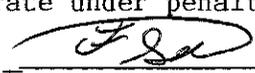
Feliks Goldshtein
Petitioner
inmate number 570541
Rici
PO Box 8107
Mansfield, OH 44901

VERIFICATION

I hereby state that the facts in this petition are true and accurate under penalty of perjury.

Feliks Goldshtein

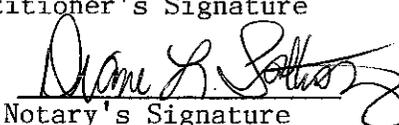
Petitioner's Name


Petitioner's Signature

Sworn to and subscribed before me on this 21st day of August, 2012.

My Commission Expires: 4-3-17

page 3 of 3


Notary's Signature



DIANE L. SOLTESZ
NOTARY PUBLIC,
STATE OF OHIO
My Commission Expires
April 3, 2017

DANIEL M. HARRIGAN

2009 JUN -5 PM 2:05

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

SUMMIT COUNTY
CLERK OF COURTS
THE STATE OF OHIO

vs.

FELIKS GOLDSHTEIN

) Case No. CR 09 01 0232
)
)
)

JOURNAL ENTRY

THIS DAY, to-wit: The 3rd day of June, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, ANNETTE POWERS, was present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court finds that the Defendant heretofore on May 6, 2009, pled GUILTY to the charge of ROBBERY, as contained in Count 1 of the Indictment, Ohio Revised Code Section 2911.02(A)(2), a felony of the second (2nd) degree; FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER, as contained in Count 3 of the Indictment, Ohio Revised Code Section 2921.331(B), a felony of the third (3rd) degree and RESISTING ARREST, as contained in Count 4 of the Indictment, Ohio Revised Code Section 2921.33(A), a misdemeanor of the second (2nd) degree, which offenses occurred after July 1, 1996, which pleas, voluntarily made, and with a full understanding of the consequences, were accepted by the Court, and the Court found the Defendant guilty of the above offenses.

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

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, FELIKS GOLDSHTEIN, be committed to the Ohio Department of Rehabilitation and Corrections for a definite term of Three (3) Years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of ROBBERY, Ohio Revised Code Section 2911.02(A)(2), a felony of the second (2nd) degree; and for a definite term of One (1) Year, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER, Ohio Revised Code Section 2921.331(B), a felony of the third (3rd) degree; and that he serve 90 days in either the Summit County Jail or the Summit County Minimum Security Misdemeanant Facility as determined by the Summit County Sheriff's Office for punishment of the crime of RESISTING ARREST, Ohio Revised Code Section 2921.33(A), a misdemeanor of the second (2nd) degree to be served at the appropriate penal institution, and that the said Defendant pay the costs of this prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205

South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the fines are WAIVED. The Defendant is responsible to pay any Court costs or attorney fees associated with the case.

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

IT IS FURTHER ORDERED that the sentence imposed in Counts 1 and 3 be served CONSECUTIVELY and not concurrently with each other.

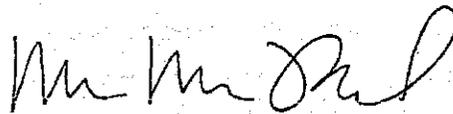
IT IS FURTHER ORDERED that the sentence imposed in Count 4 be served CONCURRENTLY and not consecutively with the sentence imposed in Counts 1 and 3, for a total sentence of 4 years.

As part of the sentence in this case, the Defendant may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for Three (3) years, which is mandatory on Count 1, as determined by the Adult Parole Authority. If the Defendant violates post-release control supervision or any of its conditions, the Adult Parole Authority May impose a prison term, as part of the sentence, of up to Nine (9) months, with a maximum for repeated violations of Fifty percent (50%) of the stated prison term. If the Defendant commits a new felony while subject to post-release control, the Defendant May be sent to prison for the remaining post-release control period or Twelve (12) months, whichever is greater. This prison term shall be served consecutively to any prison term imposed for the new felony of which the Defendant is convicted. Defendant is ORDERED to pay all prosecution costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that any motion for post-conviction relief is to be filed within 6 months from the date of sentencing.

IT IS FURTHER ORDERED that credit for time served as of the date of sentencing is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

APPROVED:
June 3, 2009
cld



MARY MARGARET ROWLANDS, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Dan Sallerson/Michael Cody
Criminal Assignment
(Registrar's Office - EMAIL)
Adult Probation Department - JAIL CREDIT
(Attorney Annette Powers)
(Court Convey - EMAIL)

COPY

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

Exhibit B
Page 1 of 2

THE STATE OF OHIO
vs.

DANIEL M. HERRIGAN

Case No. CR 09 01 0232

FELIKS GOLDSHTEIN

2010 OCT -1 AM 9:34

SUMMIT COUNTY
CLERK OF COURTS

JOURNAL ENTRY

On September 29, 2010, now comes the Prosecuting Attorney, BRIAN STANO, on behalf of the State of Ohio, the Defendant, FELIKS GOLDSHTEIN, being in Court with counsel, ANTHONY BONDRA, for a hearing on the Defendant's Motion for an Order for Judicial Release pursuant to Ohio Revised Code Section 2929.20.

Upon due hearing and consideration of this Court, IT IS HEREBY ORDERED that the Defendant's Motion herein be GRANTED.

WHEREUPON, the Court ordered that the prison sentence imposed in this case be SUSPENDED and the Defendant placed on community control for a period of Two (2) years upon the following terms and conditions, to-wit:

1. Report to the Adult Probation Department as directed and abide by the rules and regulations of said Department and/or the Adult Parole Authority. A single infraction in this area involving arguing with his probation officer, court officer, etc., WILL RESULT in the Defendant being returned to prison for the remainder of his sentence.
2. Refrain from offensive conduct of every nature and obey all laws.
3. Pay a \$20.00 per month fee for services rendered by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. The Clerk of Courts shall collect such fees and deposit the monies into the Summit County Probation Services Fund established in the County Treasury.
4. Provide a DNA sample pursuant to Sections 2901.07 and 2152.74 of the Ohio Revised Code.
5. If employed by his father, may not have keys to any occupied residences in his possession.
6. Report to the Court every Wednesday between 9:00 and 10:00 A.M. for a status with Anna Stormer.
7. Take responsibility for all communication with the Court and the Adult Probation Department and not rely on family members or others to do so for him.
8. If unemployed, the Court will order volunteer work in this case.

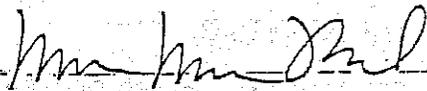
9. Reside with parents.

10. Pay the costs of this prosecution as directed by the Adult Probation Department; and judgment is granted against the Defendant in favor of the County of Summit for the court costs; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the Summit County Clerk of Courts shall collect monies from the Defendant in the following order of priority: (1) court costs and Adult Probation Department fees; (2) restitution, if applicable; (3) fines, if applicable.

SAID COMMUNITY CONTROL TO COMMENCE THIS 29TH DAY OF SEPTEMBER, A.D., 2010.

APPROVED:
September 30, 2010
cld



MARY MARGARET ROWLANDS, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Brian Stano
Criminal Assignment
Adult Probation Department
(Registrar's Office - EMAIL)
Richland Correctional Institution - CERTIFIED
Attorney Anthony Bondra
(Kristen Arapp, Prosecutor's Office - EMAIL)

THE STATE OF OHIO
vs.

DANIEL M. HERRIGAN

Case No. CR 09 01 0232

FELIKS GOLDSHTEIN

2010 NOV - 1 PM 12:59

JOURNAL ENTRY

SUMMIT COUNTY
CLERK OF COURTS

On October 29, 2010 the Prosecuting Attorney, BRIAN STANO, and the Defendant with counsel, JEFF JAMES, appeared on a charge of violating the terms and conditions of community control. The Defendant entered a plea of GUILTY.

The Court finds the Defendant guilty, and asked the Defendant if he had anything to say why judgment should not be pronounced against him. Having nothing but what he had already said, and showing no good and sufficient cause why judgment should not be pronounced:

The Court further finds the following pursuant to O.R.C. 2929.13(B): not to sentence the Defendant to a period of incarceration would not adequately protect society from future crimes by the Defendant, and would demean the seriousness of the offense; and the Court further finds the Defendant is not amenable to community control and that prison is consistent with the purposes of O.R.C. 2929.11.

The Defendant's community control herein is REVOKED.

The Defendant is committed to the Ohio Department Of Rehabilitation And Correction for punishment of the crimes of:

- 1) Count 1, Robbery, Ohio Revised Code Section 2911.02(A)(2), a felony of the second (2nd) degree, for a definite term of Three (3) years
- 2) Count 3, FAILURE TO COMPLY WITH ORDER OR SIGNAL OF POLICE OFFICER, Ohio Revised Code Section 2921.331(B), a felony of the third (3rd) degree, for a definite term of One (1) year
- 3) Count 4, RESISTING ARREST, Ohio Revised Code Section 2921.33(A), a misdemeanor of the second (2nd) degree, for a definite local term of 90 days, to be served at the appropriate penal institution

The Defendant is to pay the costs of this prosecution for which execution is awarded, and judgment is granted against the Defendant in favor of the County of Summit for the court costs and attorney fees. The monies are to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

COPY

Pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, FORTHWITH, to commence the prison intake procedure.

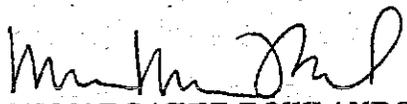
The imposed sentences in Counts 1 and 3 are to be served consecutively with each other and concurrently with Count 4 for a total sentence of Four (4) years.

As part of the sentence in this case, on Count 1, the Defendant **shall** be supervised on post-release control by the Adult Parole Authority for a **mandatory** period of **3 years** after being released from prison. On Count 3, the Defendant **may** be supervised on post-release control by the Adult Parole Authority for a **discretionary** period of **up to 3 years** after being released from prison, as determined by the Adult Parole Authority. If the Defendant violates the terms and conditions of post-release control, the Adult Parole Authority may impose a residential sanction that may include a prison term of up to nine months, and the maximum cumulative prison term for all violations shall not exceed one-half of the stated prison term. If the Defendant pleads guilty to, or is convicted of, a new felony offense while on post-release control, the sentencing court may impose a prison term for the new felony offense as well as an additional consecutive prison term for the post-release control violation of twelve months or whatever time remains on the Defendant's post-release control period, whichever is greater.

Pursuant to Section 2967.28(F)(4)(c) of the Ohio Revised Code, the period of post-release control for all of the above sentences shall be the period of post-release control that expires last, as determined by the parole board or court. Periods of post-release control shall be served concurrently and not consecutively to each other.

Credit for time served is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

APPROVED:
October 29, 2010
cld


MARY MARGARET ROWLANDS, Judge
Court of Common Pleas
Summit County, Ohio

cc: (Prosecutor Brian Stano - **EMAIL**)
Attorney Jeff James
(Court Convey - **EMAIL**)
(Registrar's Office - **EMAIL**)
Adult Probation Department - Jail Time Credit
Bureau of Sentence Computation - **CERTIFIED**

1

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

STATE OF OHIO,) CASE NO. CR2009-01-0232
Plaintiff,) C.A. NO. 25700
vs.) TRANSCRIPT OF PROCEEDINGS
FELIKS GOLDSHTEIN,)
Defendant.)

APPEARANCES:

BRIAN STANO, Assistant Prosecuting Attorney,
On behalf of the State of Ohio.

BE IT REMEMBERED that upon the
hearing of the above-entitled matter in the Court
of Common Pleas, Summit County, Ohio, before the
HONORABLE MARY MARGARET ROWLANDS, Judge Presiding,
and commencing on Wednesday, October 27, 2010, the
following proceedings were had: (HEARING)

ERIC G. SMEAD, RPR
Official Court Reporter
Summit County Courthouse
Akron, Ohio 44308

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AFTERNOON SESSION, WEDNESDAY, OCTOBER 27, 2010
PROCEEDINGS

MR. STANO: Please the court, Your
Honor, State of Ohio vs. Feliks
Goldshtein. This is 2009-01-0232. The
Defendant is present in court. We are
here for CCV arraignment and note for the
record the Defendant is present without
counsel.

THE COURT: Mr. Goldstein, you know
you have been charged with violating the
terms of your community control?

THE DEFENDANT: Yes.

THE COURT: You got a copy of the
memo, right?

THE DEFENDANT: Yes, ma'am.

THE COURT: You're entitled to have
a hearing on this. Your lawyer has chosen
not to show up today despite having been
notified of this, so I have a question for
you: Are you indigent? Do you wish to
have me appoint a lawyer to represent you
at the hearing?

THE DEFENDANT: No, I do not want a
lawyer.

3

THE COURT: You're going to
represent yourself?

THE DEFENDANT: Yes.

THE COURT: Okay. The hearing is
set for Friday, this Friday --

THE DEFENDANT: Your Honor --

THE COURT: That's it. We're going
to give you a hearing date.

THE DEFENDANT: Your Honor, I was
going to -- if I could plead guilty
today --

THE COURT: Oh, fine.

THE DEFENDANT: -- under certain
terms and conditions if you could --

THE COURT: No, there is no terms
and conditions. You can plead guilty.

You're certainly free to do that. I have
a series of questions to ask you if you
want to enter a guilty plea to your
violation.

THE DEFENDANT: If I enter a guilty
plea, what would the sanctions be?

THE COURT: You will be sent back
to prison immediately.

THE DEFENDANT: And if I wait for

4

the hearing?

THE COURT: And you are found
guilty, you will sent back to prison
immediately.

THE DEFENDANT: Would it take,
what, a couple weeks for the next hearing?

THE COURT: The hearing would be
Friday.

MS. DENARD: 10 a.m.

THE DEFENDANT: This Friday, a
couple days?

THE COURT: Yes, at 10 a.m.

THE DEFENDANT: Is there -- have
you talked to my P.O.? What are they
recommending because maybe they're not
even recommending --

THE COURT: I am telling you what
the sentence will be, what the consequence
will be.

THE DEFENDANT: I see.

THE COURT: Your P.O. has no role
in this other than to report the
violation.

THE DEFENDANT: I see. Is there a
way I could talk to you privately in

Exhibit D
page 2 of 2

C E R T I F I C A T E

1 chambers?
2 THE COURT: No, there is not,
3 absolutely not. Okay. So today, you want
4 to plead today or have a hearing on Friday
5 at 10 a.m.? Those are your choices.

6 THE DEFENDANT: I would like to
7 post a special bond.

8 THE COURT: There will be no bond.

9 THE DEFENDANT: I would like to
10 post pursuant to the rules.

11 THE COURT: There is no -- you do
12 not have a bond. Mr. Goldshtein, we are
13 not going to go into your uniquely held
14 political beliefs. The choice is to enter
15 a plea today or you can wait and you are
16 entitled to a hearing, and if you want to
17 have that hearing, it is scheduled for
18 Friday at 10 o'clock. If you wish me to
19 appoint a lawyer for you, I will do that.

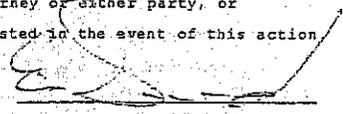
20 THE DEFENDANT: Yes, if you could
21 appoint me lawyer.

22 THE COURT: All right. We will
23 appoint you a lawyer for you.

24 THE DEFENDANT: Is there a way you
25 could lift the hold?

1
2
3
4 I, ERIC G. SHEAD, Official Shorthand
5 Reporter, Court of Common Pleas, Summit County,
6 Ohio, do hereby certify that I reported in
7 stenotype the proceedings had in the
8 foregoing-entitled matter, being a Transcript of
9 Proceedings, HEARING, and do further certify that
10 the foregoing Transcript of Proceedings,
11 consisting of 7 pages, is a true and accurate
12 record of said transcript.

13
14 I further certify that I am not a relative,
15 counsel, or attorney of either party, or
16 otherwise interested in the event of this action



ERIC G. SHEAD, RPR
Official Court Reporter

22 DATED: Akron, Ohio
23 January 11, 2011

1 THE COURT: I will not.

2 THE DEFENDANT: Okay.

3 THE COURT: We will see you back on
4 Friday at 10 o'clock and a lawyer will be
5 appointed for you.

6 THE DEFENDANT: Do you know who the
7 lawyer is?

8 THE COURT: I will make decision
9 later.

10 - - - -

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

STATE OF OHIO,)
Plaintiff,)
vs.)
FELIKS GOLDSHTEIN,)
Defendant.)

CASE NO. CR 2009-01-0232
JUDGE MARY MARGARET ROWLANDS
TRANSCRIPT OF
PROCEEDINGS
PLEA
VOLUME 1 (of 1 Volumes.)

Exhibit E
1 of 5
Petition

MORNING SESSION

****Wednesday, May 6, 2009

PROCEEDINGS

APPEARANCES:

DANIEL SALLERSON, Assistant County Prosecutor,
On behalf of the State of Ohio.

ANNETTE POWERS, Attorney at Law,
On behalf of the Defendant.

BE IT REMEMBERED that upon the hearing of the
above-entitled matter in the Court of Common Pleas, Summit
County, Ohio, before the HONORABLE MARY MARGARET ROWLANDS,
Judge Presiding, commencing on May 6, 2009, the following
proceedings were had, being a Transcript of Proceedings:

LEANN L. ORNER
Official Court Reporter
Summit County Courthouse
209 South High Street - Third Floor Annex
Akron, Ohio 44308

MR. SALLERSON: May it please the
court. Your Honor, this is Case No.
2009-01-0232, State of Ohio versus Feliks
Goldshtein. The defendant is present in
court represented by his attorney, Annette
Powers. It's my understanding that a plea
agreement has been reached whereby the
defendant is changing his plea to guilty
to Count One, robbery, a felony of the
second degree; Count Three, failure to
comply with order or signal of police
officer, a felony of the fourth degree and
Count Four, resisting arrest, misdemeanor
of the second degree, for a PSI and victim
impact statement to the -- and the State
would ask as part of the plea agreement
that the tampering with evidence charge be
dismissed.

THE COURT: Ms. Powers.

MS. POWERS: Your Honor, may it
please the court. I did meet with my

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1 client again yesterday evening at the
2 Summit County Jail. I reviewed what would
3 happen in court this morning. I also
4 spoke with my client's father. My
5 client's father, his father's wife and a
6 brother are present here in the courtroom,
7 Your Honor. I have spoken with all of
8 them as well this morning. We did fill
9 out the written plea form. My client has
10 signed it. I would ask the court to
11 inquire of my client.

I've explained the penalties, about
the probation process, him being referred
for probation, that it would include the
evaluation that's already been done for
competency, there would also be a victim
impact statement which would involve any
of the folks at the bank or the pursuing
police officers' input.

THE COURT: Okay. Mr. Goldshtein.

THE DEFENDANT: Yes.

THE COURT: I going to ask you some
questions and I would ask you to answer
them. Failure to answer them directly
will result in termination of this

hearing, okay?

THE DEFENDANT: Okay. I do have
some -- a couple issues.

THE COURT: I'm not interested.
You don't get to speak at the plea. You
get to speak at the sentencing. I'm not
interested. If you conduct yourself
appropriately during this plea portion I
will allow you to ask me a couple
questions. If I have a question --

THE DEFENDANT: So I can ask them
after you ask me your question?

THE COURT: I'm not saying that.
I'm saying I will ask you some questions
and failure to give answers would result
in you being removed and taken back to the
jail and this hearing is over.

In Count One you are charged with
robbery, a felony of the second degree.
It is punishable by a maximum -- by a
prison term of two to eight years, a
possible fine of \$15,000. Do you
understand the charge and the potential
prison sentence for that, Count One, Mr.
Goldshtein?

5 Exhibit E
2 of 5
Petition
2

1 THE DEFENDANT: No.
2 THE COURT: Okay. Then this
3 hearing is over and deputy you can take
4 him back.
5 THE DEFENDANT: So this is going to
6 trial?
7 MS. POWERS: Yes.
8 THE COURT: Yes.
9 THE DEFENDANT: Okay. But I do
10 have some issues that I want to address.
11 THE COURT: That's unfortunate.
12 Your lawyer -- because you have a lawyer
13 she will be the person and the only
14 person. I'm sorry?
15 THE WITNESS: Your Honor, I was
16 listening to him so I didn't hear what you
17 just said.
18 THE COURT: Just a minute.
19 Mr. Sallerson.
20 MR. SALLERSON: If we are
21 terminating the plea I would ask for a
22 trial date at this time.
23 THE COURT: Yes, exactly. We will
24 give you a trial date. We will get a
25 trial date because it's going to trial.

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7

1 THE COURT: So if you want to enter
2 a plea today we will accept that plea
3 assuming you understand what you're doing.
4 If you don't, I'm not going to accept the
5 plea and the case will be resolved at
6 trial.
7 THE DEFENDANT: Okay. As far as
8 the current plea is -- excuse me. Is
9 there a plea entered on our end?
10 THE COURT: There's a current plea
11 of not guilty to all of the charges.
12 That's the plea that's in place. You
13 would be changing your plea for this
14 proceeding today.
15 THE DEFENDANT: Okay. Did the
16 court get my letter dated either April
17 10th or April 11th --
18 THE COURT: I got everything.
19 THE DEFENDANT: -- along with my
20 indictment?
21 THE COURT: Mr. Goldstein, you
22 have a lawyer and the only communication
23 that the court is going to consider are
24 those communications from your lawyer.
25 THE DEFENDANT: I understand that.

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1 THE DEFENDANT: Can I change that
2 to, yes, I do understand? I have an issue
3 that I want to raise regarding my
4 citizenship. I told Ms. Powers -- she
5 asked me on the plea --
6 THE COURT: Your citizenship, Mr.
7 Goldshtein, is going to be determined by
8 INS. I'm going to make that finding in
9 court. If you're not sure or you're not
10 positive about your citizenship and
11 there's a discrepancy between what your
12 family members believe and what you
13 believe, then your citizenship will be
14 determined by the division of the Federal
15 Government and they will determine that
16 and that will be the answer.
17 THE DEFENDANT: Okay.
18 THE COURT: Now, the question is
19 this: Do you understand? I'm not asking
20 you to give me an answer that isn't true.
21 I'm interested in getting at the truth of
22 the matter. Is anyone coercing you? No
23 one here wants to make you do anything you
24 do not want to do.
25 THE DEFENDANT: Okay.

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8

1 I sent her that. I sent her a copy of the
2 indictment about a week before the 10th.
3 And then on the 10th that was that pro se
4 hearing she failed to give it to the
5 court. So I figured I would take matters
6 into my own hands.
7 THE COURT: The court has it.
8 THE DEFENDANT: Okay. So it seems
9 like the charges are settled then.
10 THE COURT: Mr. Goldshtein, you
11 misunderstood what I was staying at the
12 beginning. I'm going to ask you some
13 questions. You're going to answer them.
14 You're not going to ask me questions,
15 okay? Do you understand? We're done with
16 the questioning on your part. Done.
17 THE DEFENDANT: Okay. Just one
18 more thing, my speedy trial --
19 THE COURT: No. Nope. You have no
20 -- your -- your speedy trial rights will
21 be preserved and they are -- all of your
22 time has been waived. You are so far from
23 being close to a speedy trial problem that
24 that --
25 THE DEFENDANT: Who waived my time?

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Exhibit B
3 of 5
petition

1 THE COURT: Your time has been
 2 waived. Your questioning of the court is
 3 over.
 4 THE DEFENDANT: Okay.
 5 THE COURT: I'm going to ask you,
 6 do you want to proceed with your plea
 7 here?
 8 THE DEFENDANT: Yes.
 9 THE COURT: Mr. Goldshtein, in
 10 Count One you are charged with robbery, a
 11 felony of the second degree. It is
 12 punishable by two to eight years in prison
 13 and a maximum fine of \$15,000. Do you
 14 understand the charge and the potential
 15 penalties?
 16 THE DEFENDANT: Yes.
 17 THE COURT: In Count Three you are
 18 charged with failure to comply with signal
 19 of a police officer, a felony of the third
 20 degree, punishable by a maximum prison
 21 sentence of five years and a possible fine
 22 of \$10,000. And it also carries with it a
 23 mandatory driver's license suspension.
 24 MR. SALLERSON: It's a mandatory
 25 three-year driver's license suspension.

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1 with Count Four?
 2 THE DEFENDANT: Yes, I do.
 3 THE COURT: Furthermore, if you are
 4 sent to prison you will be supervised --
 5 upon your release from prison you will be
 6 supervised under post-release control,
 7 which is like parole, for a period of up
 8 to five years. If you violate any term of
 9 that post-release control you could be
 10 sent back to prison for up to one half of
 11 your original sentence or the terms of the
 12 post-release control. Do you understand
 13 the possibility of that?
 14 THE DEFENDANT: So kind of like
 15 probation?
 16 THE COURT: It's like parole. It's
 17 more like parole. When you serve your
 18 prison sentence, when you're released you
 19 would be subject to conditions of parole
 20 basically.
 21 THE DEFENDANT: Yes.
 22 THE COURT: By entering this plea
 23 you are giving up your right to a trial to
 24 either this court or to a jury. Do you
 25 understand you're giving that right up?

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And should this court impose prison, any
 prison term on the failure to comply would
 have to be consecutive to any other prison
 term.
 THE COURT: What Mr. Sallerson has
 stated, that is the potential penalty
 associated with Count Three. Do you
 understand the charge and the potential
 penalties?
 THE DEFENDANT: Yes.
 THE COURT: In Count Four you are
 charged with resisting arrest, a
 misdemeanor of the second degree,
 punishable by a maximum jail sentence in
 the Summit County Jail of 90 days and a
 possible fine of \$750. Do you understand
 that?
 THE DEFENDANT: Let me talk to my
 lawyer.
 - - -
 (Pause in proceedings.)
 - - -
 THE DEFENDANT: Yes, I do.
 THE COURT: Do you understand the
 charge and potential penalties associated

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1 THE DEFENDANT: I'm not giving up
 2 my right to a speedy trial though, right?
 3 THE COURT: You're giving up your
 4 right to a trial.
 5 THE DEFENDANT: Those are two
 6 separate issues.
 7 THE COURT: Speedy trial rights
 8 pertain to the number of days that the
 9 State has to bring you to trial.
 10 THE DEFENDANT: Right.
 11 THE COURT: And your right to a
 12 trial is a separate right.
 13 THE DEFENDANT: Okay.
 14 THE COURT: You're giving up your
 15 right to a trial.
 16 THE DEFENDANT: Yes. Yes.
 17 THE COURT: By giving up your right
 18 to a trial you're also giving up other
 19 rights. And you're giving up the right to
 20 have these charges proven against you
 21 beyond a reasonable doubt. You're giving
 22 up the right to have -- to cross-examine
 23 witnesses that would testify against you.
 24 You're giving up the right to subpoena
 25 your own witnesses. And you're giving up

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Exhibit E
4 of 5
petition

1 the right to testify or not to testify.
 2 Do you understand that you give up all of
 3 those rights?
 4 THE DEFENDANT: Yes.
 5 THE COURT: Lastly, you're going to
 6 give up the right to an appeal that you
 7 would have if you were found guilty at
 8 trial. Do you understand that you're
 9 going to give that right up?
 10 THE DEFENDANT: I don't know about
 11 that one. Yes. I can enter that plea
 12 without giving up that right, is that
 13 correct?
 14 THE COURT: The right that you have
 15 to appeal matters during -- during the
 16 trial basically that's gone.
 17 THE DEFENDANT: I understand that.
 18 THE COURT: All right. Are you a
 19 U.S. citizen?
 20 THE DEFENDANT: No. I just wanted
 21 to state something about the plea
 22 agreement. It's marked off that I'm not.
 23 THE COURT: Okay. I see that. I
 24 see that. Again, I'm going to have
 25 this -- your citizenship determined

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1 independently by immigration.
 2 THE DEFENDANT: I just wanted to
 3 add that the writing that's around it, my
 4 lawyer put that there.
 5 THE COURT: I understand that. And
 6 what she said is that per your parents you
 7 are a citizen and I understand you deny
 8 your citizenship.
 9 THE DEFENDANT: I just want to make
 10 that clear.
 11 THE COURT: That will be figured
 12 out administratively.
 13 THE DEFENDANT: Okay.
 14 THE COURT: All right.
 15 THE DEFENDANT: What does
 16 administratively mean?
 17 THE COURT: That will be done by
 18 the department of immigration.
 19 THE DEFENDANT: All right.
 20 THE COURT: If I accept your plea
 21 I'm going to order a presentence
 22 investigation be --
 23 MR. SALLERSON: I'm sorry to
 24 interrupt, Your Honor, but if he is not a
 25 citizen he's to be advised of the

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1 potential consequences at the time of the
 2 plea. We should err on the side of
 3 caution.
 4 THE COURT: You're right, Mr.
 5 Sallerson. If it turns out that you are
 6 not a United States citizen by entering
 7 this plea there may be immigration
 8 consequences for you. And those
 9 consequences would include deportation
 10 upon -- immediately upon your release. In
 11 other words, you would not be released
 12 from prison you would be immediately
 13 deported to the country of your birth.
 14 THE DEFENDANT: I understand.
 15 THE COURT: All right. If I accept
 16 this plea I'm going to order that a
 17 presentence investigation be conducted.
 18 That is a report done by the probation
 19 department that would advise me as to
 20 information regarding which -- what
 21 sentence I should impose. I'm not bound
 22 by the recommendation of the probation
 23 department. I'm not bound by the
 24 recommendation of the prosecutor. That
 25 will include all the matters related to

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1 the competency evaluation which has
 2 already been done. And it will also
 3 include a victim impact statement related
 4 to the people who were at the bank at the
 5 time of this offense. Do you understand
 6 that?
 7 THE DEFENDANT: Yes.
 8 THE COURT: All right. What is
 9 your plea, Mr. Goldshtein, to Count One,
 10 robbery, a felony of the second degree?
 11 THE DEFENDANT: I thought we
 12 already covered that?
 13 THE COURT: What is your plea?
 14 THE WITNESS: I would like to plead
 15 no contest.
 16 THE COURT: I won't take a plea of
 17 no contest. What is your plea?
 18 THE DEFENDANT: I would plead
 19 guilty then.
 20 THE COURT: All right. Thank you.
 21 What is your plea to Count Three, failure
 22 to comply with the signal of a police
 23 officer, felony of the third degree?
 24 THE DEFENDANT: Guilty.
 25 THE COURT: And what is your plea

LEANN L. ORNER - OFFICIAL COURT REPORTER

Exhibit
5 of 5
petition

1 to Count Four resisting arrest,
 2 misdemeanor of the second degree?
 3 THE DEFENDANT: Guilty.
 4 THE COURT: All right. I will
 5 accept your pleas, Mr. Goldshtein, as
 6 knowingly, intelligently and voluntarily
 7 having been made. And I will find you
 8 guilty on Counts One, Three and Four. And
 9 I will dismiss the charges against you as
 10 contained in Count Two of the indictment.
 11 After the presentence investigation that
 12 will bring us back here in four weeks.
 13 THE DEFENDANT: Is there any way
 14 you can do it quicker?
 15 THE COURT: I don't believe we can
 16 get it done quicker. Ms. Denard will give
 17 us a new date.
 18 MS. DENARD: We're going to come
 19 back on June 3rd at ten a.m.
 20 MS. POWERS: That would be fine,
 21 Your Honor.
 22 THE COURT: Thank you.
 23 MS. POWERS: Since he entered his
 24 plea without incident I would ask the
 25 court to consider a modification of his

1 bond which is presently very high, it's
 2 half a million, ten percent. In the
 3 courtroom, Your Honor, are his parents and
 4 they are very supportive of their son but
 5 not of any violation of the law, Your
 6 Honor.
 7 THE COURT: Of course.
 8 MS. POWERS: They are very good
 9 people.
 10 THE COURT: I think this court has
 11 actually spoken with maybe both of Mr.
 12 Goldshtein's parents. I will review it if
 13 Mr. Sallerson can leave us a copy of the
 14 risk assessment at some point.
 15 MR. SALLERSON: I probably don't
 16 have it because it came over from Muni in
 17 Cuyahoga Falls.
 18 THE COURT: Okay. I will review
 19 some matters related to your bond. And I
 20 will consider a modification. It will not
 21 happen within the next day or so. I will
 22 do it next week.
 23 THE DEFENDANT: About a week.
 24 MR. SALLERSON: Briefly, Your
 25 Honor, for the record the State opposes

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1 it. He has some ties to this county.
 2 He's looking at a presumption of prison to
 3 the offenses that he just plead to. We
 4 view him as a flight risk.
 5 THE COURT: I understand that.
 6 Thank you. I will look at it next week.
 7 Thank you, Ms. Powers, for bringing
 8 that to my attention.
 9 MS. POWERS: Thank you, Your Honor.

C E R T I F I C A T E

I, Leann L. Orner, Official Shorthand
 Reporter, Court of Common Pleas, Summit County,
 Ohio, do hereby certify that I reported in
 Stenotypy the proceedings had and testimony taken
 in the foregoing-entitled matter, and I do
 further certify that the foregoing-entitled
 TRANSCRIPT OF PROCEEDINGS, consisting of nineteen
 (19) typewritten pages, is a complete, true, and
 accurate record of said matter and TRANSCRIPT OF
 PROCEEDINGS.

Leann L. Orner
 LEANN L. ORNER
 Official Court Reporter

Dated: AKRON, OHIO
 June 9, 2009

IN THE SUPREME COURT OF OHIO

Feliks Goldshtein)
 Petitioner)
 v)
 Margaret Bradshaw, Warden)
 Respondent)

Case No. _____

AFFIDAVIT OF PRIOR CIVIL ACTIONS

I, Feliks Goldshtein, hereby solemnly affirm under penalty of perjury that the facts in this affidavit are true:

The following chart contains the civil actions that I filed within the last 5 years. I did not appeal any of the civil actions.

	ACTIONS			
	1	2	3	4
Description of action	Habeas Corpus	Habeas Corpus	Habeas Corpus	Habeas Corpus
Case Number	09-1344	11-0240	11-0868	11-1413
Court Name	Supreme Court of Ohio			
Name of Parties	Feliks Goldshtein v State of Ohio Respondent	Feliks Goldshtein v State of Ohio Respondent	Feliks Goldshtein v Margaret Bradshaw, Warden Respondent	Feliks Goldshtein v Margaret Bradshaw, Warden Respondent
Outcome of Action	Dismissed	Dismissed	Dismissed	Dismissed
	5	6	7	8
Description of Action	Habeas Corpus	Habeas Corpus	Habeas Corpus	Habeas Corpus
Case Number	11CV1240	11CV0732	12CV12	
Court Name	Richland County Common Pleas Court	Richland County Common Pleas Court	Richland County Common Pleas Court	Federal District Court
Name of Parties	Feliks Goldshtein v Margaret Bradshaw, Warden Respondent	Feliks Goldshtein v Margaret Bradshaw, Warden Respondent	Feliks Goldshtein v Margaret Bradshaw, Warden Respondent	Feliks Goldshtein v
Outcome of Action	Dismissed	Dismissed	Overruled	Dismissed

9	Description of Action	Case Number	Court Name	Name of Parties	Outcome of Action
	Habeas Corpus	12CV32	5th District Appeal Court (Ohio)	Feliks Goldshtein v Margaret Bradshaw, Warden	Dismissed

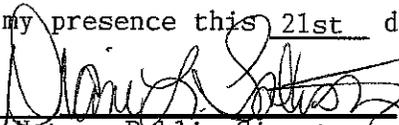

 Affiant's Signature

Feliks Goldshtein
 Affiant's Name

Sworn to before me and signed in my presence this 21st day of August, 2012.



DIANE L. SOLTESZ
 NOTARY PUBLIC,
 STATE OF OHIO
 My Commission
 Expires
 April 3, 2017


 Notary Public Signature

Diane L. Soltesz
 Notary Public Name

My Commission Expires: 4-3-2017

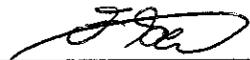
IN THE SUPREME COURT OF OHIO

affidavit of indigency

I, Feliks Goldshtein, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

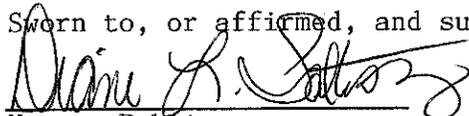
- I do not have the amount of money required for costs and security deposit in my inmate account;
- Since I am incarcerated, I do not have the means of getting a job to get the money to pay the costs;
- I do not have any other assets that I can liquidate to raise the money for the deposit & filing fee;

Pursuant to Rule 15.3, of the Rules of Practice of the Supreme Court of Ohio, and for the reasons stated above, I am requesting that the filing fee and security deposit be waived.



Affiant Signature

Sworn to, or affirmed, and subscribed in my presence this 21st day of August, 2012.



Notary Public

My Commission Expires: 4-3-17.



**DIANE L.
SOLTESZ**
NOTARY PUBLIC,
STATE OF OHIO
My Commission
Expires
April 3, 2017