

IN THE SUPREME COURT OF OHIO
FRANKLIN COUNTY, OHIO

ORIGINAL
ORIGINAL

12-1539

STEPHEN W. BYERLY

APPELLANT,

Vs.

STATE OF OHIO

APPELLEE,

DATE:

ON APPEAL FROM THE
FIFTH DISTRICT COURT OF
APPEALS - RICHLAND County

COURT OF APPEALS
CASE No. - 2012-CA-0041 or
2012-CA-0048

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT STEPHEN W. BYERLY
CONTAINS A FELONY ACTION
NEWLY DISCOVERED EVIDENCE

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

[THIS CAUSE REPRESENTS PETITIONER STEPHEN W. BYERLY, ILLEGALLY BEING "CONVICTED"
A "FALSE CHARGE," OF "AGGRAVATED BURGLARY," - R.C. § 2911.11 - "NO JURISDICTION
OR "NAME" OR "IDENTITY" - "VIOLATED" GRAND JURY INDICTMENT, BY NOT COMPLYING
WITH THE GRAND JURY ISSUANCE OF "AGGRAVATED ROBBERY," - R.C. § 2911.01,
INSTEAD COURT/PROSECUTOR/, FALSELY INSTRUCTED JURY OF A FALSE CHARGE - OF
"AGGRAVATED BURGLARY - R.C. § 2911.11 "VIOLATED" - "DUE PROCESS CLAUSE,"
AND CONSTITUTIONAL AMENDMENT IN: V, VI, XIV, VIII AND OHIO CONSTITUTION,
ARTICLE - I § 10 § 14 § 16.]

ASSIGNMENT OF ERROR - I

["DE FACTO AMENDMENT"]

State Vs. Mullins, 124 Ohio App.3d 112, 114, 705 N.E. 709 (12th Dist. Warren
County 1997).

"We find that the Trial Court's "De Facto Amendment" to the "Complaint"
below by "Convicting," Appellant of an "Offense," with which he was "Never"
"Charged," amounts to a Change in the "Name" and "Identity," of the [CRIME]
Charged and according was in "Violation," of Criminal Rule 7 (D) -

Under the circumstances we find that Appellant's "Conviction," for "Violating"
- R.C. § 2903.01 - R.C. § 2911.11 - R.C. § 2905.01 and Gun Specification
- Violation of a T.P.O. must be "Reversed," and Appellant Discharged."

(B) The "Complaint," against Appellant cannot be Amended to show a "Violation,"
of R.C. § 2911.11.

(C) Because it would change the "IDENTITY" of the "Crime" and would be a
"Violation of Criminal Rule 7 (D)

MEMORANDUM IN SUPPORT

(2)

Grand Jury Indictment, issued - Date: - 07/09/02 - ["Duly" Recorded on Docket Sheet Number - 1 - of page - 1 - Case Number - 02-CR-0021 - Court/Prosecutor/Defense Counsel also, issued a copy.]

[State Vs. Corrill, 133, Ohio App.3d. 550, 552, 729 N.E.2d 403 (12th Dist. Butler County 1999.)]

"Upon examination of the Statute, it is readily apparent that the Amendment in the instant matter did change the "Name" and "Identity" of the [CRIME] Charged."

Because of the two separate "Name" and "Identity" shown as.

1. Aggravated Robbery - R.C. § 2911.01 - "Theft Offense."
2. Aggravated Burglary - R.C. § 2911.11 - "Trespass Offense."

"Does change the "Name" and "Identity" of the charge, does "Taint/Contaminate" my Case, by said instruction of a "False Charge" to Jury with Prior knowledge of 3 Months of this "Defective Indictment."

"DEFECTIVE INDICTMENT"

1. Sentenced and Convicted of a False Charge of Aggravated Burglary - R.C. § 2911.11 - Despite the "Original" Grand Jury issuance of "Original" Charge of Aggravated Robbery - R.C. § 2911.01 - (Not an Aggravated Burglary).

[Evid. R. 403 - CA] - [Evid. R. 401].

[Crim. R. 3] - [Crim. R. 7 (A)(D)] - [Crim. R. 10 (A)(C)].

Court/Prosecutor/Defense Counsel - Received this Indictment of Aggravated Robbery - R.C. § 2911.01 - on Date: - 07/09/02 as is stated on Docket Sheet Number - 1 - of Page - 1 - Case Number - 02-CR-0021.

[Crim. R. 6 (A)(F)]

MEMORANDUM IN SUPPORT

(3)

Court/Prosecutor/Defense Counsel, received this Indictment of AGGRAVATED ROBBERY - R.C. § 2911.01 - on Date: 07/09/02 - as is stated [Crim.R. 6 (A)(F).]

1. The Indictment shall be returned by the Foreman or Deputy Foreman to a "Judge," of the Court of Common Pleas, and Filed with the Clerk who shall endorse thereon the Date of Filing and enter each Case upon the Appearance and Trial Dockets.
2. Shows on Docket Sheet Number - 1 - of Page - 1 - Case Number - 02-CR-424-D - Date of Filed Indictment, (Case Number - 02-CR-424-D) as of 07/09/02, Thus, Court/Prosecutor/Defense Counsel, had this Indictment of "Aggravated Robbery," - R.C. § 2911.01, and did receive according to above stated Docket Sheet the "Original" issuance by Grand Jury of this Indictment.
3. Yet, my Trial Court did not take place till 10/05/02 - showing about 3 Month(s) time span between Receipt of said Grand Jury Indictment, before Trial began (See Exhibits) Docket Sheet for Case Number - 02-CR-424-D. Thus, showing Prior knowledge of 3 Month(s) of this "Defective Indictment." And "False Charge," and "Conviction," - Date: of Indictment given on 07/09/02 - Date, Trial began was on 10/05/02.
4. Court/Prosecutor/Defense counsel, on their own did "Instruct Jury," of the "False Charge," and "Conviction," of "Aggravated Burglary," - R.C. § 2911.11, (Violating, Due Process Clause,) - Constitutional Amendment in: V, VI, XIV, VIII. Plus, Ohio Constitution, Article I § 10 § 14 § 16.
5. In Addition, with Prior Calculation and Design and 3 Month(s) Prior knowledge of this "Defective Indictment," - "False Charge," by Instructing said Jury of this "False Charge," and "Conviction," did "Enhance," my Offense to an "Aggravated Murder," with a "Death Penalty," knowingly and purposely did try to Commit Legalized Murder and all Court and Prosecution and Defense Counsel, Plus, unknown Accomplices had Prior knowledge of said defective indictment 3 Month(s) and has committed a Felony Action, "Duly" Recorded on Docket Sheet Number - 1 - of Page - 1 - Case Number - 02-CR-424-D.
6. Suppression of "Defective Indictment," - "Criminal Rule 7 (D), states,

MEMORANDUM IN SUPPORT

(4)

No "Jurisdiction," or "Name," or "Identity," of this "Charge," was ever done in Open Court or on "Arraignment."

Thus, I'am not Charged with this issue of either an "Aggravated Robbery," - R.C. § 2911.01 or an "Aggravated Burglary," - R.C. § 2911.11.

HISTORY/STATEMENT OF THE CASE AND FACTS

BACKGROUND:

Defendant was convicted in a Jury Trial in Common Pleas, Richland County - No: - 02-CR-424-D of "Aggravated Murder," & another "Aggravated Murder," with Prior Calculation and Design, "Aggravated Burglary," Kidnapping," a "Violation of a T.P.O. and a Firearm Specification(s). Defendant, Appealed.

HOLDING:

The Court of Appeals, Boggins, J., held that.

(1) There was Insufficient Evidence, that Defendant was Provoked by Victim into using Deadly Force, and Thus, Defendant, was not entitled to instruction on Voluntary Manslaughter and

(2) Record did not indicate that Defendant was under influence of Sudden Passion or in Sudden Rage, and Thus, Defendant was not entitled to instruction on Voluntary Manslaughter.

AFFIRMED.

Appellant Appeals, the decision of the Trial Court refusing to give a Jury Instruction on Voluntary Manslaughter or other options to Jury for lesser sentence(s).

[First Time Offender!"]

MEMORANDUM IN SUPPORT

(5)

[Fundamentally Defect which inherently results in a complete "Miscarriage," of Justice," or is inconsistant with "Rudimentary," Demands of "Fair Procedure."]

(Currently Sentence has been "ENHANCED," by a previous (ABORT - ABANDONMENT or Acquittal), was obtained, Which in Pre-Attorney (Working) before his/her Appointment, in Arraignment, before Assigned in Open Court of Law, to Represent, Indigent Client, (See B & C Docket Sheet - Exhibits - Case Number - 02-CR-0021.)

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW No. I: "DUE PROCESS CLAUSE - VIOLATION(S)."

FIFTH AMENDMENT: Guarantees a Defendant the Right to be tried for only those Offenses presented in an indictment returned by a "Grand Jury." Indictments may not be substantively Amended without Reconvening of the "Grand Jury."

When the Evidence presented at Trial proves a "Crime" different from that Charged in the Indictment, or when Jury, instructions broaden the scope of the Indictment by permitting "Conviction," for an Uncharged Offense, Infringement on the Defendant's Right to be tried "ONLY" upon Charges Returned by "Grand Jury," My Case was "Defective Indictment," and "False Charge," demonstrates substantial Prejudice by knowledge of said "Defective Indictment," (Prior) Recorded as 3 Months - Prior to Trial. No Correction, only Surpression of "Evidence" and "Tampering with Records," R.C. § 2913.42 introducing a "False Charge," of Aggravated Burglary -- R.C. § 2911.11.

RULE OF THE RULES OF CRIMINAL PROCEDURE: - (12)

Requires the Defendant, to bring all Motions to Dismiss "Defective Indictment(s), before Trial began: "However," Challenges to the Court's Jurisdiction and Claims that the Indictment fails to state and Offense may be brought up anytime!

MEMORANDUM IN SUPPORT

(6)

A Defendant, may move to Dismiss Indictment to Remedy Government Misconduct, including "Vindictive Prosecution," - Prosecutorial Misconduct in Grand Jury Proceedings, - Prosecution Misconduct outside the Indictment Process. And unnecessary Delay in Presenting Charges to the Grand Jury, filing and Misinformation against a Defendant.

[Procedural Violations in Grand Jury in this part:]

Courts will Dismiss Indictments for Government Misconduct outside the Indictment process on "Due Process Grounds," of such conduct is so outrageous, that it, "Violates" Fundamental Fairness" or is "Shaking to the Universal sense of Justice." As "Leave of the Court," to correct these issues.

OHIO CONSTITUTION

SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION:

Guarantee's the accused the right to demand the "Nature" and "Cause," of the accusation against him.

Therefore, the "Complaint," must contain all the Essential Elements of the Offense Charged.

Although the "Complaint," need not state all specific Facts, relied on to sustain the Charge it must state the Essential Elements of the Offense. The Essential Elements, are those Facts, which must be proven to obtain a "Conviction." (Defective Indictment," - "No Jurisdiction," or "Name," or "Identity," or "Element," proven!)

[State V. Villagomez, 44 Ohio App.2d 209, 211, 73 Ohio op.2d 215, 337, N.E.2d (The complaint must contain the Essential Elements required by Criminal Rule 3.)

[State V. Biedenharn, 19 Ohio App.2d 204, 43 Ohio op.2d 338, 250 N.E.2d 778 (1st. Dist. Hamilton County 1969]

[City of Cleveland V. Weaver, 10 Ohio Misc.2d 15, 461 N.E.2d 32.]

[State V. Mullins, 124 Ohio App.3d 112, 114, 705 N.E.2d 709 (12th Dist. Warren County 1997]

MEMORANDUM IN SUPPORT

(7)

[2903.01 (A)(1)(2) & 2923.02 (A)(E)]

[Due to the Constitutional Nature of the Burden of Proof beyond a Reasonable Doubt, a Trial Court must strickly comply with the Mandates of Criminal Rule 11 (C)(3) when advising a defendant of his right to a Jury Trial during which the State must prove his Guilt Beyond a Reasonable Doubt.]

[U.S. V. Poole, 407 F.3d 767, 774 (6th Cir. 2005).]

[U.S. v. Stokes, 124 F.3d 39, 45-46 (1st Cir. 1997)]

[U.S. V. Paramo, 998 F.2d 1212,1220 (3rd Cir. 1993)]

[U.S. V. Jackson, 327 F.3d 273, 294 (4th Cir. 2003)]

[U.S. V. Goodwin, 457 U.S. 368, 373(1982)]

[Criminal Rule 7 (A)(D)]

A) A Felony that may be punished by "Death," or "Life in Prisonment," shall be Prosecuted by Indictment.

D) The Court may at any time before, During, or After, a Trial Amend, the Indictment, Information, Complaint, or Bill of particulars, in respect to any Defect, imperfection or omission in Form or substance, or of any Variance with the Evidence, provided "NO CHANGE," is made in the "NAME," or "IDENTITY," of the "CRIME."

[ARGUMENT]

This "Defective Indictment," - "False Charge," Sentenced/Convicted for 9 years - "No Jurisdiction," or "Named," or "Identity," by the Court, has also Tainted/Contaminated, my entire Case inwhich Aggravated Murder, kidnapping, Gun Specification, T.P.O. all was given to a Jury to rule on except Court/ Prosecutor went one step farther with said 3 Month prior knowledge of "Defective Indictment," - Enhanced my Case by adding a "DEATH PENALTY," showing Prior Calculation and Design and placed this Vindictive Sentencing and done in aBias and Prejudice manner. "Violation of my "Due Process Clause," - "Constitutional Amendment in: V, VI, XIV, VIII. and Ohio Constitution Article I § 10 § 14 § 16.

MEMORANDUM IN SUPPORT

(8)

[Fundamentally Defect which inherently results in a complete "Miscarriage of Justice," or is inconsistent with "Rudimentary," Demands of "Fair procedure."]

(Currently Sentence has been "Enhanced," by a previous (Abort, Abandonment or Acquittal) Conviction was obtained, which resulted in pre-Attorney (Working) before his/her Appointment in arraignment before assigned in open Court of Law, to Represent Indigent Client, (See B & C Docket Sheet - Exhibits - Case Number - 02-CR-0021.)

When there was a Failure to Appoint Counsel in an open court, (Or give "Jurisdiction," and "Name," the "Identity," of the Alleged "Crime," in Open Court of Law."

["For an Indigent Client in Violation of the Sixth Amendment."]

[Has "Created," a fundamentally unfairness and Violated Petitioner's Fourteenth (14) Amendment Right to "Due Process," (Double-Jeopardy does attach) "Obstruction of Justice."]

1. Court/Prosecutor/Defense Counsel had prior knowledge of 3 Months - Date: Received on Docket sheet - 07/09/02 and Date: - of Trial began 10/05/02 showing prior to Trial beginning.

3. Court/Prosecution - with prior calculation and Design by receipt copy a Defective Indictment issued on 07/09/02 and knowledge of 3 Months before Trial began instructing Jury of a false Charge of aggravated Burglary - R.C. § 2911.11 against Grand Jury Indictment Charge of Aggravated Robbery issued on 07/09/02.

3. Court/Prosecutor - Enhanced my Case by adding a "Death Penalty," 10/05/02, with knowledge of a "Defective Indictment," and "False Charge." - 3 Month Prior knowledge! Thus, Violation of my "Due Process Clause, and Const. Amend, In: V, VI, XIV, VIII (Caused Legalized Murder, with Prior Calculation and Design, Withheld/Added Fabricated Evidence!"

MEMORANDUM IN SUPPORT

(9)

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW No. - II: "Double - Jeopardy" Violation(s)
and attachment - Constitutional Amendment in: V, VI, XIV, and Ohio Constitution
Article I § 10 § 16.

Court's denial of my Postconviction R.C. 2953.23 failed to view said Violations.
Double- Jeopardy - attaches when Defendant in Jeopardy for the Same Offense
Placing him "Twice in Jeopardy of Life and Limb and charged "Twice" with
two separate Case Numbers for the same offense, on Docket Sheet - Mansfield
Police Dept. Vs. Stephen W. Byerly, (Municipal) states Case Number - 2002CRA00033
Criminal/Traffic, Date: 01/02/02 - Charge of "Murder" was issued (Not Severed
till 01/29/02) Warrant Served on 01/02/2002.

Also, Kidnapping Charge (With its own Case Number?) - Case Number - 2002CRA-
00040, on Date: 01/03/2002. [Original Offense - First Charge(s) not severed
till 01/29/2002.]

Now, on 01/09/2002 - Stated served by "Grand Jury" Indictment for Aggravated
Murder with Death Penalty, Case Number - 02-CR-0021 or 02-CR-21-D, (Second
Charge to Original Charge - Case Number - 2002CRA00033 & 2002CRA00040 not
severed till 01/29/2002 as "Duly" Recorded and stated on Docket Sheets.
Thus, "Twice," Charged with the same offense with two separate Case Numbers,
1. 2002CRA00033 & 2002CRA00040 2. 02-CR-0021 or 02-CR-21-D

[On two Case Numbers - "TWICE" placed in Jeopardy for the same Offense/Conduct/
Charge.]

Also, stated on July 31st, 2002 an Additional Charge of Aggravated Murder
with Death Penalty, and again Charge "TWICE" for the same Offense and "TWICE"
placed in Jeopardy of Life and Limb, (No Joinder till 8/02/02 Charged with
Aggravated Murder with Death Penalty), (See Warrant/Indictment) Case Number
02-CR-424-D, (Same Case Carry's a Defective Indictment - Double-Jeopardy
attaches, No severance.)

[State V. Rance, 85 Ohio St.3d 632, 710 N.E.2d 699, 1999-Ohio-291.]

MEMORANDUM IN SUPPORT

(10)

[People of the State of Illinois, Vs. Somerville, 93 S.Ct. 1066, 92 S.Ct. 1247 U.S. 2004.]

[Arizona Vs. Washington, 434 U.S. 497, 96 S.Ct. 824, 54 L.Ed.2d 717.]

Where a Basis of "Mistrial" was adequately disclosed by the record, absence of explicit finding of "Manifest Necessity" and Failure to explain Ruling, Nor disclose "Defective Indictment," did render it Constitutionally Defective.

Constitutionally Protection against Double-Jeopardy prohibits Second Trial Following Abort, Abandonment, or Acquittal, even if it was based on egregiously Erroneous Foundations U.S.C.A. Const. Amend. 5.

Constitutional Protection against Double-Jeopardy embraces Defendant's Valued Right to have his Trial Completed by a Particular Tribunal.

In Determining whether there is a "Manifest Necessity," for "Mistrial."

[U.S. Vs. Jorn, 547 1969 WL 120182 (U.S.).]

[Fong Foo Vs. United States Standard Coil Products Co. Inc. United States 369 U.S. 141, 82 S.Ct. 671, 7 L.Ed.2d. 629.]

[North Carolina Vs. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656.]

SPEEDY TRIAL VIOLATION

Also, "Violation" of my "Speedy Trial Right's and Time Limits."

[Klopfer Vs. North Carolina, 396 U.S. 213, 87 S.Ct. 18 L.Ed.2d 1, Court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment Right to a Speedy Trial, is enforceable against the States as one of the most basic Rights Preserved by our Constitution at 226, 875, Ct. at 995.]

This Case involves the "Nature" and the "Nature and Extent" of the obligation imposed upon a State by the Constitutional Guarantee, when the person of the State Criminal Charge is serving a Prison Sentence by another Jurisdiction.

FNI. In all Criminal prosecutions, the accused shall enjoy the Right to a Speedy Trial.

[Speedy Trial Right attaches when accused is Arrested and Charged or Indictment Rights start. - Speedy Trial Rights were "Violated" - Double-Jeopardy attaches!]

MEMORANDUM IN SUPPORT

(11)

ARGUMENT IN PROPOSITION OF LAW

PROPOSITION OF LAW No. - III - "ALLIED OFFENSE(S)

Ohio Trial Courts decisions, affirmed by Courts of Appeal, are Inconsistent in interpreting this Court's Rulings in State V. Beasley, (1984), 14 Ohio St.3d 74, and State V. Wharton (2011) WL 6749831 (Ohio 9th Dist.) 2011-Ohio-6601, and State V. Simpkins, (2008), 117 Ohio St3d 420, and State V. Johnson, (2010), 128 Ohio St3d. 153, 942 N.E.2d 1061, 2010-Ohio-6314, that a Court's disregard of statutory requirements when imposing a sentence Renders the attempted sentence a Nullity or Void. It seems that the Court's attention has been focused so intently on the proper imposition of those statutes Mandating Postconviction, they have developed a Form of Judicial Myopia that has prevented them from Realizing that there are other sentencing statutes which Regularly Neglected is O.R.C. § 2941.25. This Law was enacted by the General Assembly to protect Defendant's against Double-Jeopardy. It reads in Pertinent Part:

["Where the same conduct by defendant can be construed to constitute two or more "Allied Offenses," of Similar Import, the Indictment or Information may contain Counts for all such Offenses, But, the Defendant, may be Convicted of "ONLY" one. [Emphasis Added].

In the Case at hand, Petitioner Challenged that his sentence was "Void," Because it failed to provide the "Mandated Protections against Double-Jeopardy," by failing to conform to the Requirements of O.R.C. § 2941.25, Merging "Allied Offenses," of Similar Import.

[Case Number - 02-CRA-00033 a Murder Charge, same Offense/Conduct - Date: - 01/02/02 and Case Number 02-CR-0021 - Aggravated Murder with Death Penalty, Date: - 01/09/02.]

[2. Case Number - 02-Cr-424-D - ("Defective Indictment & False Charge - instructed my Jury of False Charge - "Original Grand Jury issuance shows Aggravated Robbery - R.C. § 2911.01 and Kidnapping Charge R.C. § 2905.01 Both are "Allied Offenses.")]

Also, Aggravated Murder with Death Penalty Dated: 01/09/02 - Case Number 02-Cr-0021 and 2nd added Aggravated Murder with Death Penalty issued on 07/31/02 - case Number - 02-CR-424-D are "Allied Offenses."]

MEMORANDUM IN SUPPORT

(12)

The Court of Appeals did not address if Defendant's Charges were "Allied Offenses," of Similar Import; Did not discuss the statutor requirements to Merge "Allied Offenses," of Similar Import, and; Did not make any referances to this Court's Decision in Beasley, Johnson, or Simpkins and Wharton. Instead, the Court of Appeals ignores this Court Ruling in State V. Fisher, 128 Ohio St.3d 92, at 92 at § 40, that an unlawful sentence that is "Void," Is not precluded from Appellate Review, by Principles of Res Judicata, and may be reviewed at any time, on Direct Appeal or by Collateral Attack" and Renders a decision that bars Petitioner's Challenges of this "Void," sentence based upon the Dotrine of Res Judicata, is itself "Void."

A sentence is either "Void," ab initio, or it is not "Void." In this Case, Offenses, under O.R.C. § 2941.25 were not Merged as Mandated. The result must be a "Void," sentence, there is no other choice, and not Merged as Mandated. The result is a "Void," sentence that may be Challenged at any time and doesn't require the Retroactive Application of any Court ruling.

The Court of Appeals does not seem to realize this and this Court, should accept to consider the Double-Jeopardy, implications of errant decisions such at that Rendered by the Fifth District Court of Appeals in this Case.

HISTORY/STATEMENT OF FACTS

The Trial Court sentenced Mr. Byerly, to 44 years to Life with the possibility of Judicial Release after 25 years have been served. The Court of Appeals upheld the decision of the lower Court.

On July 27th, 2012, Mr. Byerly filed a Motion to Vacate and set aside his sentence as a "Void," issue, for failing to Merge "Allied Offenses," of Similar Import. The TRIAL Court overruled the Motion to Vacate a "Void," sentence and the Court of Appeals Affirmed the decision of the Trial Court basing its decision on the Doctrine of Res Judicata.

Mr. Byerly, now Challenges this decision to the SUPREME COURT of OHIO, relying upon this Court's decision in Beasley, that a sentence that does not conform to Ohio Statutes is "Void."

MEMORANDUM IN SUPPORT

(13)

have Consistently defined "Allied Offenses," as those types of Offenses subject to Merger, State Vs. Johnson, 128 Ohio St.3d 153 Fnl. and United States Vs. Ball 470 U.S. 856, 105 S.Ct. 1668, 84 L.Ed.2d 740, 53 USLW 4395. and Oregon Vs. Ice, 555 U.S. 160, 129 S.Ct.711. and City of Newark Va. Vazirani, 48 Ohio St.3d 81, 549 N.E.2d 520. and State Vs. Brown, 2011 WL 808986 (Ohio App.1 Dist.)

[O.R.C. § 2941.25, which has never been Amended, reads is Pertinent Part:

(A) - "Where the same conduct by Defendant, can be Construed to Constitute two or more "Allied Offenses," of Similar Import, the Indictment or Information may contain Counts for all such Offenses, But, the Defendant may be Convicted of "ONLY" one.]

In Determining whether Offences are "Allied Offenses," of Similar Import under R.C. § 2941.25 (A) the question is whether to commit one offense and commit the other with the same conduct, not whether it is possible to committing, the other. State Vs. Blankenship, 30 Ohio St.3d 116, 119. In other words if the Conduct Associated with the Offenses arose out of the same animus and the Commission of one Offenses Constitutes the Commission of the other, then the Offenses are of Similar Import.

If the "Multiple Offenses," can be Committed by the same Conduct, i.e., a single act Committed with a single state of mind. State Vs. Brown, 119 Ohio St.3d 477.

If the answer to both questions is yes, then the Offenses are "Allied Offenses," of Similar Import and will be Merged. Johnson, at 1070. In the cause Sub Judica the answer is no Disagreement that the answer to both questions is yes, and his Offenses were "Allied Offenses," of Similar Import.

[Proposition of Law, A sentence that does not Merge "Allied Offenses of Similar Import," is "VOID."]]

The decisions of this Court have been very Clear, Unambiguous, and Unchanged since Inception. The Failure of the Trial and Appellate Courts to Recognize these decisions as Building Blocks to a single Conclusion is as much disappointing as it is Surprising.

MEMORANDUM IN SUPPORT

(14)

A sentence that does not Conform to Ohio Statutory Mandates is "VOID." State Vs. Beasley, 14 Ohio St.3d 74, 75; and State Vs. Simpkins, 117 Ohio st.3d 502. This Court did not say the sentence was "Voidable," and not nor this Court Maintain that this Principle Applied only to the Improper Imposition of Postconviction. Since there are many Statutory Mandates that Dictate the way a sentence must Impose Punishments, it follows there are many ways in which a sentence may be "VOID."

In Challenging a "VOID," sentence, the Principle of Res Judicata do not apply and Appellate Review is not Precluded. The sentence may be Reviewed at any Time, on Direct Appeal or by Collateral Attack. State Vs. Fisher, 128 St.3d 92.

Ohio Revised Code § 2941.25 - Mandates that "Allied Offenses," of Similar Import must Merge. State Vs. Logan, (1979), 60 Ohio St.2d 126, 131. While this Statute uses the term "Allied Offenses," rather than "Merge," Ohio Courts.

CONCLUSION

For the reasons discussed above, this Case involves matters of public and great general interest and a substantial Constitutional Question(s). The Appellant requests that this Court accept Jurisdiction in this Case so that the important issues will be reviewed on the "MERITS!" It is Legally and Institutively obvious that Appellant's sentence does not reflect the Mandate of the General Assembly that "Defective Indictment and False Charge and Violating Due Process Clause as well as Constitutional Amendment Violations in: V, VI, XIV, VIII, and Ohio Constitution Article I § 10 § 16, and Double-Jeopardy, also denied as well as "Allied Offenses of Similar Import Merge."

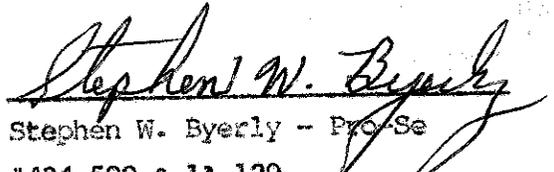
Because the Court of Appeals decision Contra, does not Recognize this, Jurisdiction must be accepted by the Supreme Court of Ohio to insure and in the interest of Justice and that Justice will be served!

"I THANK THIS HONORABLE COURT FOR ITS TIME AND ANY AND ALL CONSIDERATIONS."

CONCLUSION

(15)

Respectfully Submitted,


Stephen W. Byerly - Pro-Se

#434-590 & 1A-129

Ross Correctional Inst.

~~P.O.~~ Box 7010

16149 State Route 104

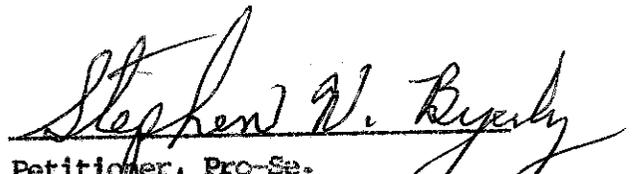
Chillicothe, Ohio 45601

COUNSEL OF RECORD

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Notice of Appeal and Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to the Office of the Prosecutor(s) Office to James Mayer/Jill Cochran, at 38 South Park Street, Mansfield ,ohio 44902, on this 7 day of September, 2012.


Petitioner, Pro-Se.

IN
STATE OF OHIO
FRANKLIN COUNTY, OHIO

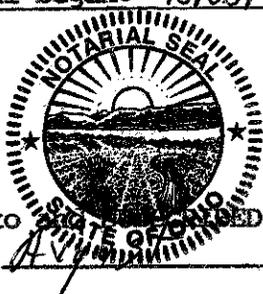
SS:

AFFIDAVIT OF VERITY

I the undersigned, after first being duly cautioned and Sworn to my Oath, depose and say that I'am aware of the Penalty for Perjury, and that any False Statement made by me in the foregoing Legal Documents, attached hereto will subject me to such Penalties for Perjury.

I, further state that the allegations, averments, or Contents of the Legal Documents attached hereto are "TRUE," and "CORRECT," to the Best of my Personal Knowledge, Information, and Belief.

I solemnly Swear that I received recently this year of 2012, a copy of two indictments from Richland County Prosecutor's Office upon request for said Documents to be sent to me as such, I need all indictments and Waivers alleged signed by this Appellant/Petitioner/Defendant, Stephen W. Byerly, I received only two indictments and "NO" "WAIVER" S. and that all, the Court/Prosecutor/Defense Counsel had Prior Knowledge of this Defective Indictment Case Number - Q2-CR-424-D, shown on Docket Sheet Number - 1 - Page - 1 - Date: 7/09/02, and that this information was given to all on the above Date: Thus, Court/ Prior Knowledge of this Defective Indictment for 3 Months before scheduled Trial began? All did nothing to correct this Defective Indictment, But, Openly and with Prior Knowledge did instruct (Empaneled) Jury of a False Charge of Aggravated Burglary R.C. § 2911.11 with knowledge of 3 Months of this Defective Indictment, and still with this Knowledge did also, instruct Jury on a "DEATH PENALTY" by doing this has committed a "FELONY OF ATTEMPTED MURDER," of this Appellant/Petitioner/Defendant. with Prior Calculation and Design. This is a "TRUE FACT!" with Prior knowledge of 3 Months before my Trial began. - 10/03/02.



Patti Parsons
Notary Public
State of Ohio
My Commission Expires
6-11-2014

Stephen W. Byerly
Defendant Pro-Se/Indigent

SWORN to before me, a duly commissioned Notary Public, this 3 day of AVGUST, 2012.

Patti Parsons - Notary

"Exhibit"

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED
2012 AUG 20 AM 10:30
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff - Appellee

Case No. 12-CA-0041

-vs-

STEPHEN W. BYERLY

JUDGMENT ENTRY

Defendant - Appellant

This matter comes before the Court upon Appellant's "Formal Complaint and Reconsideration & Violation of Due Process Clause." Appellant's motion is denied.

MOTION DENIED.

IT IS SO ORDERED.

W. Scott G.
JUDGE

*TWO CASE NUMBERS FOR SAME
POST CONVICTION DNA AT SAME
TIME PERIOD, SAME OFFENSE, CONDUCT.*

1. 2012-CA-0041
2. 2012-CA-0048

"Double-Jeopardy Attacks"

2012 CASE NUMBER
R.C. 2953.23

EXHIBIT

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED
2012 AUG 20 AM 10:29
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff - Appellee

Case No. 12-CA-0048

-vs-

STEPHEN W. BYERLY

JUDGMENT ENTRY

Defendant - Appellant

This matter comes before the Court upon Appellant's "Formal Complaint and Reconsideration & Violation of Due Process Clause." Appellant's motion is denied.

MOTION DENIED.

IT IS SO ORDERED.

W. Scott Hi
JUDGE

cc: pros.

Stephen Byerly

Date: 08/08/12

TWO BILLS
for some post conviction
Double-jeopardy
Attaches

Case: 2012 CA 0048
Judge: COURT OF APPEALS

"Two separate case numbers"

From: RICHLAND COUNTY CLERK OF COURTS
LINDA H FRARY, CLERK
50 PARK AVENUE EAST
MANSFIELD, OHIO 44902
(419) 774-5544 DOMESTIC
(419) 774-5655 CIVIL/CRIMINAL

PLAINTIFF: STATE OF OHIO
DEFENDANT: BYERLY, STEPHEN W

To:

BYERLY, STEPHEN W *Correct Address*
#434-590 & 1A-129
ROSS CORRECTIONAL INST PO BOX 7010
16149 ST RT 104
CHILlicothe, OH 45601

This bill must be paid in full within 30 days. If not paid within 30 days, your account will be charged a \$10.00 billing fee. Payment arrangements can be made by calling 419-526-7937

Case: 2012 CA 0048

Party Name: BYERLY, STEPHEN W

Date	Item	Docket Amount	Amount Due
	<i>SAME Postconviction 2953.23</i>		
06/19/2012	CLERK'S COMPUTER FEE-GEN DIV	10.00	10.00
06/19/2012	COURT'S COMPUTER FEE	3.00	3.00
06/19/2012	NOTICE OF APPEAL TO COURT OF APPEALS FILED 02CR21	1.00	1.00
06/19/2012	CLERKS FEES	25.00	25.00
06/27/2012	ENTRY FILED. ORDERED: APPELLANT IS ORDERED TO	2.00	2.00
06/29/2012	TRANSCRIPT DOCKET & ALL ORIGINAL PAPERS WITHOUT <i>Sec 2 P 3(G)</i>	5.00	5.00
06/29/2012	COPY MAILED TO STEPHEN BYERLY	1.00	1.00
07/18/2012	MOTION FOR LEAVE OF THE COURT FOR RECONSIDERATION	12.00	12.00
07/26/2012	MOTION FOR LEAVE OF THE COURT FOR RECONSIDERATION	6.00	6.00
07/27/2012	COPY MAILED TO STEPHEN BYERLY	1.00	1.00
07/27/2012	COURT OF APPEALS ENTRY FILED ORDERED: APPELLAN	2.00	2.00
07/31/2012	COURT OF APPEALS ENTRY FILED ORDERED: THE COURT	2.00	2.00
07/31/2012	COPY MAILED TO STEPHEN BYERLY	1.00	1.00
	Balance:		71.00

Total Plan Amount:

71.00

Total Plan Amount Due:

71.00

Comments:

*TWO CASE NUMBERS
DOUBLE-ENTRY
MISTAKES*

EXHIBIT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2012 JUL 31 AM 11:14
LINDA H. FRARY
CLERK OF COURTS

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

CASE NO. 12CA48

Plaintiff-Appellee

-vs-

JUDGMENT ENTRY

STEPHEN W. BYERLY

Defendant-Appellant

This matter came before the Court for consideration of this Court's sua sponte judgment entry filed on or about June 27, 2012, ordering Appellant to file a fully completed docketing statement on or before July 11, 2012. Appellant has failed to file a fully completed docketing statement with a time- stamped copy of the trial court's order being appealed attached. For this reason, the Court hereby dismisses the within appeal pursuant to Loc.App.R. 5(D) for failure to prosecute.

CAUSE DISMISSED.

COSTS TAXED TO APPELLANT.

IT IS SO ORDERED.

W. Scott A.

JUDGE

William B. Johnson

JUDGE

Julie A. Edwards

JUDGE

cc: pros.
Stephen Byerly

*1- Precise Filed
AND Request Filed
TO OBTAIN REQUEST
AND Complete Copy
Docketing Statement
Filed TO Court
see Bill's listed items in a timely manner!*

Two case number EXHIBIT
Double - Zapman
attaches

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

IN THE COURT OF APPEALS FOR RICHLAND COUNTY OHIO
JUL 27 PM 12:58

FIFTH APPELLATE DISTRICT

LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff - Appellee

Case No. 12-CA-0041

-vs-

STEPHEN W. BYERLY

JUDGMENT ENTRY

Defendant - Appellant

This matter comes before the Court upon Appellant's "Motion for Leave of the Court for 'Reconsideration & Fabrication of Records.'" Appellant asserts he did file a docketing statement as ordered by this Court, however, the Clerk of Courts does not have any record of a Docketing Statement being filed.

Appellant's motion is denied.

MOTION DENIED.

IT IS SO ORDERED.

W. Scott Gi

JUDGE

*Sent to Richland
County Court House
FOR FIFTH DIST. Appellate
Court See Bill/Receipt*

Two Case Numbers
Doubt - Jeopardy
Attaches

EXHIBIT

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2012 JUL 25 AM 10:00
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff - Appellee

-vs-

STEPHEN W. BYERLY

Defendant - Appellant

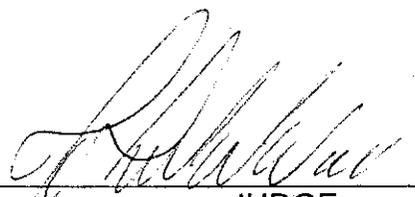
Case No. 12-CA-41

JUDGMENT ENTRY

This matter comes before the Court upon Appellant's "Motion for Appointment of Counsel." Appellant's motion is denied.

MOTION DENIED.

IT IS SO ORDERED.



JUDGE

Violation of Rules of Criminal
Procedure 41B

SCANNED

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY
FILED
2012 JUN 13 AM 8:58
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEVEN W. BYERLY

Defendant-Appellant

CASE NO. 12-CA-41

JUDGMENT ENTRY

This matter came before the Court for review of Appellant's Notice of Appeal filed on May 29, 2012. Upon review, the Court notes that Appellant has failed to file a Docketing Statement along with an attached time-stamped copy of the judgment entry being appealed, as required by Loc.App.R. 6(A).

Appellant is hereby ordered to file a fully completed Docketing Statement in accordance with Loc.App.R. 6(A) on or before June 22, 2012. Failure to file a fully completed Docketing Statement may result in the dismissal of the within appeal pursuant to Loc.App.R. 5(D).

IT IS SO ORDERED.

W. Scott Gisi
JUDGE

Received on June 21st
2012 signed inst.
Registry for legal mail
Receipt R.C.T

EXHIBIT

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2012 JUN 13 AM 8:56
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff - Appellee

Case No. 12-CA-41

-vs-

STEVEN BYERLY

JUDGMENT ENTRY

Defendant - Appellant

This matter comes before the Court upon Appellant's "Motion for the Reduction of Documents and Legal Copies." Appellant's motion is denied.

MOTION DENIED.

IT IS SO ORDERED.

W. Scott Gi
JUDGE

Received on
2012 June 21st
Sign Inst. Registry
For legal mail Receipt. R.C.I.

Date: 07/09/12

TWO BILLS FOR SOME POSTCONVICTION DOUBLE-FEE PARTY ATTACHES TWO SEPARATE CASE NUMBERS

Case: 2012 CA 0041
Judge:

From: RICHLAND COUNTY CLERK OF COURTS
LINDA H FRARY, CLERK
50 PARK AVENUE EAST
MANSFIELD, OHIO 44902
(419) 774-5544 DOMESTIC
(419) 774-5655 CIVIL/CRIMINAL

PLAINTIFF: STATE OF OHIO
DEFENDANT: BYERLY, STEPHEN W

To: BYERLY, STEPHEN W
S.O.C.F. 434-590
P.O. BOX 45699
LUCASVILLE, OH 45699

WRONG ADDRESS AT R.C.I. FOR 6 YEARS

This bill must be paid in full within 30 days. If not paid within 30 days, your account will be charged a \$10.00 billing fee. Payment arrangements can be made by calling 419-526-7932.

Case: 2012 CA 0041

Party Name: BYERLY, STEPHEN W

Date	Item	Amount	Docket	Amount Due
	<i>SAME POSTCONVICTION</i>		<i>2953.23</i>	
05/29/2012	NOTICE OF APPEAL TO COURT OF APPEALS JE 01.02.02 F	166.00		166.00
05/29/2012	MOTION FOR THE REDUCTION OF DOCUMENTS AND LEGAL CO	2.00		2.00
05/29/2012	COURT'S COMPUTER FEE	3.00		3.00
05/29/2012	CLERK'S COMPUTER FEE-GEN DIV	10.00		10.00
05/29/2012	CLERKS FEES	25.00		25.00
05/31/2012	COPY CHARGE TO CASE OF APPEAL & MOTION FOR NO COPI	16.60		16.60
06/08/2012	PLTF APPELLEE, STATE OF OHIO MOTION TO DISMISS APP	5.00		5.00
06/08/2012	TRANSCRIPT DOCKET & ALL ORIGINAL PAPERS -WITHOUT T <i>1ST</i>	5.00		5.00
06/13/2012	ENTRY FILED. ORDERED: APPELLANTS MOTION FOR TH	2.00		2.00
06/13/2012	ENTRY FILED. ORDERED: APPELLANT IS HEREBY ORDERE	2.00		2.00
06/18/2012	MOTION FOR APPOINTMENT OF COUNSEL FILED: XXX	1.00		1.00
	Attorney:			
06/18/2012	MOTION FOR LEAVE OF COURT FILED:	1.00		1.00
	Attorney: PRO SE			
06/18/2012	AFFIDAVIT OF INDIGENCY: XXX	1.00		1.00
06/26/2012	MOTION FOR EXTENSION OF TIME AND DUE PROCESS CLAUS <i>XXX</i>	2.00		2.00
07/05/2012	COPY OF DOCKET FILED:	5.00		5.00
07/05/2012	STATEMENT AND PRAECIPE FILED:	2.00		2.00
07/06/2012	ENTRY FILED. ORDERED: APPELLEES MOTION TO DISMI	2.00		2.00
07/06/2012	ENTRY FILED. ORDERED: APPELLANTS FOR FOR APPOINT	2.00		2.00
07/06/2012	ENTRY FILED. ORDERED: CASE DISMISSED scanned	2.00		2.00
07/06/2012	ENTRY FILED. ORDERED: APPELLANTS MOTION FOR LEAV	2.00		2.00
	Balance:			256.60

Total Plan Amount: 256.60 Total Plan Amount Due: 256.60

Comments:

Ignored indigent, Team sent 6/18/2012 interview statement to Amanda my access to courts. Copy my things to be taken.

Two case numbers
FCA
Same post conviction
Double - Jeopardy
Attaches

COPY
ORIGINAL

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2012 JUN 27 PM 12:38
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEPHEN W. BYERLY

Defendant-Appellant

CASE NO. 12-CA-48

JUDGMENT ENTRY

This matter came before the Court for review of Appellant's Notice of Appeal filed on June 18, 2012. Upon review, the Court notes that Appellant has failed to file a Docketing Statement along with an attached time-stamped copy of the judgment entry being appealed, as required by Loc.App.R. 6(A).

Appellant is hereby ordered to file a fully completed Docketing Statement in accordance with Loc.App.R. 6(A) on or before July 11, 2012. Failure to file a fully completed Docketing Statement may result in the dismissal of the within appeal pursuant to Loc.App.R. 5(D).

IT IS SO ORDERED.

W. Scott G.
JUDGE

Some Postconviction Fed
COPY ORIGINAL

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED
2012 JUL -6 AM 9:27
LINDA H. FRARY
CLERK OF COURTS

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEPHEN W. BYERLY

Defendant-Appellant

CASE NO. 12-CA-41

JUDGMENT ENTRY

This matter came before the Court for consideration of this Court's sua sponte judgment entry filed on or about June 13, 2012, ordering Appellant to file a fully completed docketing statement on or before June 22, 2012. Appellant has failed to file a fully completed docketing statement with a time-stamped copy of the trial court's order being appealed attached. For this reason, the Court hereby dismisses the within appeal pursuant to Loc.App.R. 5(D) for failure to prosecute.

CAUSE DISMISSED.

COSTS TAXED TO APPELLANT.

IT IS SO ORDERED.

W. Scott G.

JUDGE

M. J. Faerman

JUDGE

[Signature]

JUDGE

COPY
EXHIBIT

FIFTH DISTRICT COURT OF APPEALS
RICHLAND COUNTY, OHIO
CASE NO. 2012 CA 0041

STEPHEN W BYERLY
APPELLANT

VS STATE OF OHIO
APPELLEE

PRO SE

JAMES J MAYER JR
PROSECUTOR - RICHLAND CO
38 S PARK ST
MANSFIELD, OH 44902

SEND TO:
STEPHEN W BYERLY

NOTICE OF FILING TRANSCRIPT OF THE RECORD

YOU ARE HEREBY NOTIFIED THAT ON: **June 8, 2012**

Transcript of the Docket and All Original Papers have been filed in the Court of Appeals

- With Transcript of Proceedings filed.
 Without Transcript of the Proceedings filed.

Please comply with the Court of Appeals Local Rule 3 (A). Attorney's Ohio Supreme Court Bar Registration Number must follow name of counsel on all documents.

Please check the Appellate Rules and Local Appellate Rules to determine when your brief is due and all filing requirements.

Thank you for your kind cooperation.

JUDITH A. BLACK
Assignment Commissioner
50 Park Avenue East, 3rd Floor
Mansfield, Ohio 44902
(419) 774-5655

Date: **June 8, 2012**

cc:
STEPHEN W BYERLY
JAMES J MAYER JR

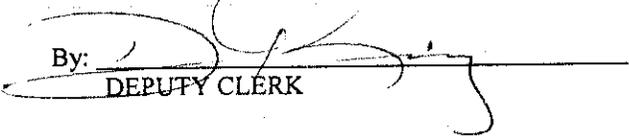
CERTIFICATION OF RECORD UPON
TRANSMITTAL TO COURT OF APPEALS

In accordance with App. R. 9(A), I hereby certify that the attached is the record in this case, consisting of the original papers and exhibits to those papers; the transcript of proceedings and exhibits, and any certified copies of the journal entries and the certified docket of the case.

I further certify that the documents in the record are numbered and the corresponding entries on the docket or separate index have been identified.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affix the seal of said Common Pleas Court on
8th day of June, 2012

LINDA H. FRARY, CLERK OF COURT

By: 
DEPUTY CLERK

TO:
RICHLAND COUNTY COMMON PLEAS COURT
c/o CLERK OF COURTS
50 PARK AVENUE EAST
P.O. BOX 127
MANSFIELD, OHIO /~~43101~~ 44902

DATE: 7/02/12

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED
2012 JUL -5 AM 10:18
LINDA H. FRARY
CLERK OF COURTS

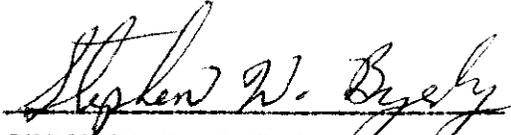
FROM:
STEPHEN W. BYERLY
#434-590
ROSS CORRECTIONAL INSTITUTION
16149 STATE ROUTE 104
P.O. BOX 7010
CHILLICOTHE, OHIO 45601

Sir/Ma'am:

I'am requesting also, that a copy of the dismissal of
my Postconviction Judgement Entry also be added to this Praecipe
on Case Number 2012 - CA - 0048 be accompanied this issue and
current issues that were filed for this Case Number. To the
Fifth District Appellate Court Directly to comply with outstanding
Local Rules. Do to my extreme Poverty, I'am forced to comply
with one issue at a time. I ask this letter be apart of the
Record and Docket Sheet entry. For Case Numbers - 02-CR-0021
& 02-CR-424-D & 2012-CA-0041, I thank you kindly for any and
all considerations!

Respectfully Submitted,

[COUNSEL OF RECORD FOR APPELLANT]


STEPHEN W. BYERLY Pro-Se
#434-590 & 1A-129
ROSS CORRECTIONAL INSTITUTION
16149 STATE ROUTE 104
P.O. BOX 7010
CHILLICOTHE, OHIO 45601

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO
PLAINTIFF-APPELEE

DATE: 6/21/12

Vs.

CASE NO. 12-CA-41

STEPHEN W. BYERLY
DEFENDANT-APPELLANT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED
2012 JUN 26 AM 9:36
LINDA H. FRARY
CLERK OF COURTS

"MOTION FOR EXTENSION OF TIME"
AND
DUE PROCESS CLAUSE PROTECTION

Now, comes the Defendant, Stephen W. Byerly, acting in Pro-Se, asks this Honorable Court for an Extension of Time, in the amount of 30 days to invoke the Protection of my "Due Process Clause," and "Equal Protection of the Law," under the Fifth and Fourteenth United States Constitutional Amendment(s), Do to the "Fact," time lines were not complied with by the Court shown receipt of Document from Court on June 21st, 2012, Dated June 13th, 2012 and to comply with by June 22nd, 2012, not even Mail system is that effecient, Thus, this Court is fully aware of the seriousness of this Case and the "Fact," that the Defendant is Pro-Se Litigant, and is untrained in the Law, That he has to be reliant upon the untrained Law Clerk's at the Prison he is Incarcerated at for Help with any and all Pleadings, Thus, time line is inadequate to approach the Date/Time Institutional Library is available to complete a Legal Process, this is being denied access by this Court do to Time Lines.

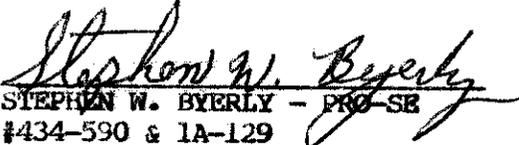
Also, Defendant has had to file a Stay to the United States District Court, Southern District of Ohio, Columbus, Ohio 43215, on this below issue which is relievant to my entire Case(s) (Documents Previously Submitted)

[Defective Indictment - issued by "Grand Jury," Aggravated Robbery
R.C. § 2911.01]

["DE FACTO AMENDMENT"]

"WE FIND THAT THE TRIAL COURT'S "DE FACTO AMENDMENT," TO THE COMPLAINT BELOW BY CONVICTING APPELLANT OF AN OFFENSE WITH WHICH HE WAS NEVER CHARGED AMOUNTS TO A CHANGE IN THE NAME AND IDENTITY OF THE CRIME CHARGED AND ACCORDINGLY WAS IN VIOLATION OF CRIMINAL RULE 7 (D) UNDER THESE CIRCUMSTANCES WE FIND THAT APPELLANT'S CONVICTION FOR VIOLATING R.C. § 2903.01 AND R.C. § 2911.11 MUST BE REVERSED AND APPELLANT DISCHARGED."

RESPECTFULLY SUBMITTED,


STEPHEN W. BYERLY - PRO-SE
#434-590 & 1A-129
ROSS CORRECTIONAL INSTITUTION
16149 STATE ROUTE 104
P.O. BOX 7010
CHILLICOTHE, OHIO 45601

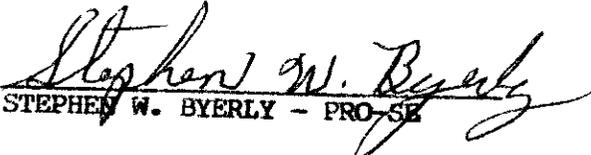
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served accordingly to local rules and sent by regular U.S. Mail this 21st, day of June, 2012 to the following:

James J. Mayer, Prosecuting Attorney, Richland County, Ohio and Jill Cochran, Assistant Richland County Prosecutor.

38 South Park Street
Mansfield, Ohio 44902.

COUNSEL OF RECORD FOR APPELLEE.


STEPHEN W. BYERLY - PRO-SE
COUNSEL OF RECORD FOR APPELLANT

["ALL DOCUMENTS AND EVIDENCE PREVIOUSLY SUBMITTED TO THIS COURT IN THE POSSESSION AND CONTROL OF THE FIFTH APPELLATE DISTRICT COURT FOR RICHLAND COUNTY, OHIO"]

IN THE FIFTH DISTRICT COURT OF APPEALS
RICHLAND COUNTY, OHIO

TIME STAMPED AND RETURNED

STEPHEN W. BYERLY

APPELLEE,

Vs.

STATE OF OHIO

APPELLANT

DATE: 8/17/12

CASE No. 2012-CA-0041 &

2012-CA-0048

**"FORMAL COMPLAINT"
AND
RECONSIDERATION &
VIOLATION OF DUE PROCESS CLAUSE**

STEPHEN W. BYERLY (PRO-SE) (COUNSEL OF RECORD)

#434-590 & 1A-129

ROSS CORRECTIONAL INSTITUTION

16149 STATE ROUTE 104

P.O. BOX 7010

CHILLICOTHE, OHIO 45601

(740) 774-7050

COUNSEL FOR APPELLANT - STEPHEN W. BYERLY

JILL M. COCHRAN

SUPREME COURT No. 0079088

ASSISTANT RICHLAND COUNTY PROSECUTOR

38 SOUTH PARK STREET

MANSFIELD, OHIO 44902

(419) 774-5589

(419) 774-5589 - FAX.

COUNSEL OF RECORD FOR APPELLEE

FORMAL COMPLAINT

BRIEF

(1)

I, Petitioner, ask this Court for all findings "Requested," by Petitioner, to answer in prior filed Motions, that Court has received But, never Responded to according to Rules of Criminal Procedure (48)(B) **"DISMISSAL BY THE COURT,"**

[If the Court over objection of the State, Dismiss Information, or Complaint it shall state on Record its Findings of Fact and Reasons for Dismissal and since, "Questions Requested never answered by this Court," and were presented to this Court to Respond to "Newly Discovered Evidence," of a "Defective Indictment and shows I'am on a "False Charge," and according to "De Facto Amendment," which state's "COMPLAINT," (Stated to this Court!) and (Documentation proving said "False Charge!") by Conviction of Petitioner/ Appellee, of an offence with which he was "NEVER," "CHARGED," amounts to a Change in the "NAME," and "IDENTITY," of the "CRIME," and accordingly "Violated," Criminal Rule 7 (D), this Court, was **"DULY NOTIFIED"** and was my **"DUTY TO INFORM THIS OR ANY COURT AVAILABLE"**, in my filings, Thus, Court ignores this issue knowing my Alleged Case is/has changed the **"NAME AND IDENTITY,"** of my Case and is now **"NULL AND VOID,"** since Court/Prosecutor/Defense Counsel (Trying to cover this up!) had prior knowledge of this **"DEFECTIVE INDICTMENT,"** that **"GRAND JURY,"** issued on (7/09/02), and on Case Number - 02-CR-424-D an **"AGGRAVATED ROBBERY"** - R.C. § 2911.01, But, Trial Court/Prosecutor/Defense Counsel instructed my "Jury," of a "False Charge" of ("Aggravated Burglary - R.C. § 2911.11 - (Issued on 7/09/02), Thus, **"TAINTED/CONTAMINATED MY JURY,"** AND **"CHARGES,"** since, All Charges were run on one indictment, Case Number - 02-Cr-424-D and **"NO" "JOINDER"** - till (8/02/02 or 8/08/02?) two recorded Times, on two different Case Numbers, - 1. 02-CR-0021 & 2. 02-CR-424-D.)

(See Docket Sheet Number - 1 - of Page - 1 - Case Number - 02-CR-424-D - Date: - 7/09/02 to Date of Trial which began on 10/05/02 - shows Court/Prosecutor/ Defense Counsel had prior knowledge of this **"DEFECTIVE INDICTMENT;"** **3 MONTHS PRIOR TO MY TRIAL!** Case Number - 02-CR-424-D, did Instruct my Jury of a **"FALSE CHARGE,"** that "Grand Jury", had no knowledge of and never Corrected said Indictment and had no knowledge since Court Surpressed this issue no Correction done.

FORMAL COMPLAINT

BRIEF

(2)

Nor was it sent back to "Grand Jury" for Correction, Thus, I have been illegally Detained, (FALSE INCARCERATION!) and most diffenately "FALSELY CONVICTED!- UNITED STATES CONSTITUTION AMENDMENT VIOLATION IN: V,VI,XIV,VIII - OHIO CONSTITUTION - ARTICLE I § 10 § 14 § 16. and "Due Process Clause," all "VIOLATED" when "JURY" was Instructed of a False Charge of "Aggravated Burglary - R.C. § 2911.11 and was never given "Jurisdiction or Named," on Arraignment. "Thus, "Rule of Criminal Procedure, 12 - Pleadings and Motions before Trial: (C)(2) - Defense and Objections based on Defects in the Indictment, Information, or Complaint, (Other than "Failure to show "Jurisdiction" in the "Court," or to "Charge," an "OFFENCE," which objections shall be "Notice," by the Court at any time, during the pendency of the proceedings);

CRIMINAL RULE 10 ARRAIGNMENT (A)(C)

(A) Arraignment shall be conducted in open Court, and shall consist of Reading the indictment, information, or Complaint to the Defendant or stating to him to plead, therefore. The Defendant shall be given a copy of the indictment, information, or Complaint, or shall acknowledge receipt, there of "Before" being called to plead.

[Only open Court "DULY" Recorded shown on Docket Sheet - Case Number 02- CR-424-D (C)(2).

He has a right to Counsel, and the Right to reasonable continuance in the proceedings to secure Counsel, and pursuant to Criminal 22 & 44, the right to have Counsel Assigned without costs to himself if he is unable to employ Counsel. Also, have all "Duly" Recorded under Criminal Rule 22.

(C) EXPLANATION OF RIGHTS:

Judge or Magestrate shall cause him to be informed and shall determine that he understands all of the following:

FORMAL COMPLAINT

BRIEF

(3)

[See, "Complaint:" § 35.2 Essential Elements of Charge (Ohio Constitution Article I § Section 10 - Guarantees of the accused the Right to Demand the nature and cause of the accusation.)]

CRIMINAL RULE 9 - Warrant or Summons upon indictment or information.

(A) ISSUANCE:

The Clerk shall forthwith issue a Warrant for each Defendant "NAMED" in the "INDICTMENT" or in the Information!"

Clarify if this is the Indictment for the same Offense for which he was Bound over to pursuant to Rule 5.

[CRIMINAL RULE 5:]

When a Defendant "FIRST" appears before a "Judge" or Magistrate," the Judge or Magistrate, or "Magistrate," the Judge or Magistrate," the Judge or Magistrate the accused or his Counsel or his Counsel, (Without Consent) to read Complaint or a copy thereof, and shall inform the Defendant (No Explanations (2)(3)(4) (E)(1)(2)(1)(2)(3)(A)(b)

CRIMINAL RULE 6 - (F)

Finding and Return of Indictment - indictment - the Indictment shall be Returned by the Court of Common Pleas, and "Filed" (7/09/02), with the Clerk who shall "ENDORSE," thereon the Date: of filing and enter each Case upon the Appearance, and Trial Dockets.

ASSIGNMENT OF ERROR 2

Court Errors - Placement on two Case Numbers for the same Offenses - 2012-CA-0041 and 2012-CA-0048.

"FACT" I sent Requested Documents by Regular U.S. Mail Service - Dated: on Docket Sheet as July 5th, 2012, (Under Case Number 2012-Ca-0048, I was given a Time Line till July 11th, 20012

FORMAL COMPLAINT

BRIEF

(4)

ASSIGNMENT OF ERROR 2

But, Court Dismissed this issue "EARLY" on June 22nd, 2012, against extension of Time and "Fact" I sent in a Praecipe on July 5th, 2012, for all Documents, including the Requested Documents for a complete Record of Docketing Statement, inwhich Richland County Common Pleas Court has Failed to provide to the Fifth District Court of Appeals as was Requested, (See attached Document(s) and Exhibits.) Court Failed to provide said Documents and seems have misplaced one I sent as well on same Date/Time according to what was granted me on Case Number 2012-CA-0048, Judge Scott Authorization. in accordance with Loc. App. R. 6(A) on or before July 11th, 2012.

(V) Amendment Violation - Unethical Practice(s).

(No adequate "Notice," or severance of Original stated Case Number - 2012-CA-0041, Yet, sent another Case Number Same Offense/issues of Postconviction, Case Number Same Offense/issues on at the same time period - Constitutional Amendment V & XIV, under Due Process Clause - that I'am Twice being placed in Jeopardy for the same offense/Charge/Petition? So, which is the correct answer? I seem to have two Court in Judicial Misconduct by adding second Case Number and decisions. (Two different Case Numbers for the same issues and PETITION?)

ASSIGNMENT OF ERROR 3

Richland County Common Pleas Court issuance of Fines/Fees - Document on 7/09/12, even before all issues were decided on, 7/09/12 and in ignorance of a filed Document of AffidAVIT OF Indigency and in regards to [Prison Litigation Reform Act, Administrative Order No. 97-01 Part II (C), 105 F.3d at 1133, only 20% of inmates Monthly Account can be attached!]

and since it indigency was Filed on 5/7/12 & 6/18/12 - (Gave no Findings and Reasons, (Rules of Criminal Procedure 48) I therefore ask this Honorable Court to Rule on my Indigency Filed accepted by Clerk and Duly recorded on Docket Sheet it shows Clerk has accepted my indigency Forms Twice now claims otherwise.

FORMAL COMPLAINT

BRIEF

(5)

ASSIGNMENT OF ERROR 3

There has never been any change in 11 years concerning my indigency and no Change in my Extreme Poverty Yet, now all has Changed yet, not the previous Rulings in the past on my indigency as stated all is the same except now State wishes to charge for issue knowing this inmate has no adequate funds to Challenge said Courts and seems this Court wishes to Hinder this Inmates abilities to be able to Challenge in the Courts specially when a Court has Committed a Grievous Error and Charged me with a False Charge of Aggravated Burglary - R.C. § 2911.11, All seem to be trying to ignore Defective Indictment or Cover it up? and want to Hinder my Due Process Right to Access to Courts and Fact that shows Richland County Common Pleas Court committed a Grievous Error and I'am under a False Charge.

[Lewis V. Casey, 75 F.3d 1137, 1145 -1146 (7th Cir. 1996)]

Suprem Court help that a Prisoner must show some actual injury.

CONCLUSION

Denied my Affidavit, of Indigency and my entire Record shows my past has always had Indigency and extreme Poverty and I have no increase in Money. This places a Burdon on this Prisoner's abiltiy for Access to Courts and extreme Hindrance, to obtain funds for copies and Postage and nothing to spare for Fines/Fees/costs, and hinderd my Filings to Courts a serious Problem also, by not sending out "Notices in a Timely manner also, denys me access to Courts by delaying sending of these Notices for Reconsideration time lines, and does Violate VI Amendment Right to adequate Notification to effectively Challeng as is my Right to Access to Courts and Violation of Due Process Clause under V and XIV Amendments. Withholding Access to Notices that allow only two days to complete a Filing issue is not adequate time to File! Violates my Time to File in Courts, and is Vindictive trait to hinder Petitioners ability to Effectively Challenge his Conviction/Sentence.

FORMAL COMPLAINT

BRIEF

(6)

CONCLUSION

As stated this is an Extreme Amount to pay when no increase in State Pay to cover it. and that I already am under a State Obligation to Monthly deductions for the amount of \$51,000.00 dollars and I'am under D.R.C. Policy 5120-5-03 (I), for Crime Victims. Which openly shows Trial Court and Clerk's Office trying to Hinder and still hide "Defective Indictment," which now Federal Court is very aware of. (See attached Documents/Exhibits.

This Honorable Court is very aware of my issues, since Prosecution, has sent me said "Defective Indictment," shows prior knowledge of and did Taint/Contaminated my entire Case also, I had to sign for the package sent to R.C.I. by Richland County Common Pleas Court. shows all had 3 month prior knowledge of this Defective Indictment. by signing a registry upon arrival. I have to sign before I can receive.

And by denial of Rule 16 Discovery for 11 Plus years from obtaining this Favorable Evidence.

And by denial of my Discovery Rule 16 Surpressed so I would not find out about Defective Indictment Dated 7/09/02, I had to receive a Printout from and outside source to obtain Discovery (Partial) to find another Newly Discovered Evidence, Because state Charged me originally with a Murder Charge, (02-CR-0021) Now claims a different Case Number of 02-CRA-00033, Dated 1/02/02 - But, Dismissed on 1/29/02 according to Docket Sheet - (Warrant/Indictment/Waiver, inwhich I was stated by Prosecutor that I was served by Grand Jury indictment for Aggravated Murder Charge with "Death Penalty on 01/09/02 - So, if this is correct then I have been Charged "Twice," for same Crime/same Conduct two seperate Case Numbers - (Double - Jeopardy does attach) 1. Case Number 02-CRA-00033 and 2. Case Number - 02-CR-0021, All has been Ignored or Surpressed purposely to cover-up said Defective Indictment and Conviction this Petitioner on a False Charge of Aggravated Burglary and All are covering up to prevent a black mark on Court and Justice System!. Court needs to investigate Defective Indictment and Richland County Common Pleas Court and Prosecution was on Case Number - 02-CR-424-D.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion ~~for [REDACTED]~~

was served upon the RICHLAND County Prosecutor, by U.S. Mail
(YOUR COUNTY)

addressed to his/her office at 38 SOUTH PARK STREET
(ADDRESS FOR YOUR COUNTY'S PROSECUTOR)
MANSFIELD, OHIO 44902 + Court IN House MAIL!

on the _____ day of _____, 2____.
(DATE YOU ARE PLACING MOTION IN MAIL)

Stephen W. Byerly
DEFENDANT, pro se

FORMAL COMPLAINT
BRIEF
(7)

CONCLUSION

"NO ONE IS ABOVE THE LAW," AND THIS IS A "FORMAL COMPLAINT"
AND RECONSIDERATION DO TO ERRORS OF TWO SEPERATE CASE NUMBERS -
2012-CA-0041 & 2012-CA-0048 for the SAME OFFENSE IN POSTCONVICTION,

I ask this Court for Reconsioderation & Investigation since I sent specific documents as requested and since Clerk accepted and Filed my Indigency is now liable Thus, cannot Charge me excessivly nor impose Charge without Civil Action, two Indigencies were sent and are Duly Recorded on Docket Sheet as accepted - Date Filed on 5/7/2012 & 6/18/2012 - In the Interest of Justice I claim All is True to the Best of my knowledge and a False Charge was issued on (7/09/02) to PETITIONER/APPELLEE.

AFFIDAVIT OF INDIGENCY

I, Stephen W. Byerly hereby solemnly swear that I have presently this 8 day of August, 2012, no assets of any value, and cannot afford to pay for any Legal Services, Fees or Costs in the above-styled case.
(Extreme Poverty)

Stephen W. Byerly
PLAINTIFF-APPELLEE

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS 8 DAY OF August, day of 2012, 2012.

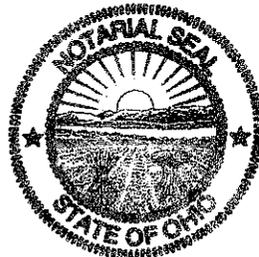
Janet E. Spearry
NOTARY PUBLIC

Respectfully Submitted

Stephen W. Byerly
STEPHEN W. BYERLY - PRO-SE

#434-590 & 1A-129
ROSS CORRECTIONAL INSTITUTION
16149 STATE ROUTE 104
P.O. BOX 7010
CHILLICOTHE, OHIO 45601

COUNSEL OF RECORD
COUNSEL FOR APPELLEE



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

EXHIBIT - Copy

IN THE FIFTH DISTRICT APPELLATE COURT
RICHLAND COUNTY, OHIO

STATE OF OHIO
PLAINTIFF,

Vs.

STEPHEN W. BYERLY
DEFENDANT,

DATE: 8/20/12

CASE NO: 2012-CA-0041
2012-CA-0048

NOTION FOR RECONSIDERATION
OF
INDIGENCY AFFIDAVIT
"DULY - SWORN/NOTORIZED"

JAMES J. MAYER, Jr.
PROSECUTING ATTORNEY
RICHLAND COUNTY, OHIO

Jill M. Cochran
Supreme Court No. 0079088
Assistant Richland County Prosecutor
38 South Park Street
Mansfield, Ohio 44902

Stephen W. Byerly
#434-590 & 1A-129
Ross Correctional Inst.
P.O. BOX 7010
Chillicothe, Ohio 45601

COUNSEL FOR RESPONDENTS

RELATOR, PRO-SE

[TERMINATION OF FINE'S/FEE'S/COSTS IN
IN ANY LEGAL SERVICES OR MATTERS.]

COUNSEL FOR DEFENDANT

MEMORANDUM IN SUPPORT

(2)

ASSIGNMENT OF ERROR I

I have submitted and was "Duly" Accepted by the Clerk of Courts and Filed - 2 - Indigency's Dated: - May 7th, 2012, and one was "DULY" filed and accepted by the Clerk of Courts and entered on Docket Sheet - Date: May 7th, 2012, and one was "Duly," Filed and was accepted by Clerk of Courts and entered on Docket Sheet - Date: - 6/18/2012. Thus, it has been "Duly" Sworn/Notorized Statement, And with this statement that was accepted by this Court;

I Stephen W. Byerly, Hereby solemnly swear that I have presently this 7th day of May 2012, and 18th day of June - 2012, have no means of Financial Support and No Assets of any Value, and cannot Afford to Pay for Any Legal Services, Fee's, or Cost's in any manner/matter, in the above styled Case(s) - Case Number: - 2012-CA-0041 or 2012-CA-0048, cannot have (2) two Case Numbers for the same Postconviction and "Double-Jeopardy does Attach, and in Violation of the Sixth Amendment.

I ask this Honorable Court to Reconsider my Indigency Affidavit Forms, which are "Duly" submitted and was accepted and Filed by the Richland County Clerks Office and Duly recorded on Docket Sheet. I ask this Honorable Court to "Eliminate," am and all Fine's, Cost's, Fee's for the two (2) submitted in the months of May/June/July/August for the (2) two stated amounts:

1. \$256.60 - - - 2. \$71.00 for these Case Numbers: 1. Case No: 2012-CA-0041 and Case Number - - - - 2012-CA-0048.

I have stated and Sworn and gave a Legalized Statement to this "Fact" which will make this "Court" "Liable" for this issue, "ONLY" have stated this because the "Fact" I only make \$15.00 Dollars, per month, and I seem to be Pentalized, because of my inability to Pay for Fines/Costs/Fees, [Supreme Court] states I cannot be Pentalized do to my inability to Pay, Thus, would "HINDER" my Due Process Clause, and my ability to challenge my Conviction and/or Sentence to seek a creditable Defense for my Relief! And thus, these

MEMORANDUM IN SUPPORT

(3)

costs would "HINDER" all Filings, Plus ability to send said Filings out, do to lack of Postage and the ability to obtain Copies ect. Or any other Legal Aspect to challenge my Conviction and seek my Relief for my Case.

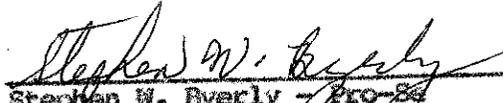
CONCLUSION/RELIEF

To eliminate all Costs/Fines/Fees of any kind in any manner/material, to allow me to continue to challenge, and do to the "Fact" This Court, has ignored my Newly Discovered Evidence of a "Defective Indictment," and "False Charge and Conviction. This was and is submitted to this Court and it was my "DUTY," to "INFORM," this Court of Trial Courts Error's and that Trial Court, also, did commit a "PELONY ACTION" in this as well! - Sufficient Evidence was Submitted to this Court, But, Fails to Acknowledge the Trial Courts Error's? My "DUTY," Ends and was done by clearly presenting this presentation of "Newly Discovered Evidence," which was submitted to this Court and was sent to Confirm said Error's! - When a Court Fails to Recognize or Acknowledge an Error Shown/Stated and Submitted as Proof to this Court Places said Court in "Liable" - My "ONLY" concern is to eliminate my Cost/Fines/Fee's and to Establish the "Miscarriage of Justice," and Violations of my "Due Process Clause," also, Constitutional Amendment in: V,VI,XIV,VIII and Ohio Constitution - Article I § 10 § 14 § 16.

I ask this Honorable court in the "Interest of Justice," and Common Sense to allow me this "RELIEF," and for my ability to still challenge for said Relief. Also, I am under a Court Obligation for Crime Victim's and in D.R.C. Policy - 5120-5-03. (I)

"I DO THANK THIS HONORABLE COURT FOR ITS TIME AND ANY AND ALL CONSIDERATIONS"

Respectfully Submitted,


Stephen W. Byerly - Pro-Se
#434-590 & 1A-129
P.O. BOX 7010 - R.C.I.
Chillicothe, Ohio 45601

1st charge

CASE NUMBER - 2002-CRA-00033

Name	Party Type	Opp. Litigant	Case	Case Type	Filed
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	1991CRB03126	Criminal/Traffic	10/23/91
STEPHEN S BYERLY	Defendant	Ohio State Patrol	1992TRD00223	Criminal/Traffic	01/07/92
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	1993CRB01442	Criminal/Traffic	05/05/93
STEPHEN S BYERLY	Defendant	Mansfield Police Dept	1993CRB03842	Criminal/Traffic	11/24/93
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	1994CRB00956	Criminal/Traffic	04/01/94
STEPHEN S BYERLY	Defendant	Sheriff Dept. of Richland Co.	1994CRB03189	Criminal/Traffic	09/19/94
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	1999CRB00490	Criminal/Traffic	02/17/99
STEPHEN W BYERLY	Defendant	Ohio State Patrol	1999TRD02258	Criminal/Traffic	02/26/99
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	2001CRB06801	Criminal/Traffic	12/27/01
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	2002CRA00033	Criminal/Traffic	01/02/02

* MURDER CHARGE

Name	Party Type	Opp. Litigant	Case	Case Type	Filed
STEPHEN W BYERLY	Defendant	Mansfield Police Dept	2002CRA00040	Criminal/Traffic	01/03/02
STEPHEN S BYERLY	Defendant	Sheriff Dept. of Richland Co.	2003TRC05856	Criminal/Traffic	05/12/03
STEPHEN S BYERLY	Defendant	State Criminal Cases	2011CRB03488	Criminal/Traffic	08/01/11
Stephen W Byerly	Defendant	Wilbur H Flippin	1991CVG04891	Civil-Eviction	09/18/91
Stephen Byerly	Defendant	L Jack Waddell	1992CVG02312	Civil-Eviction	05/06/92
STEPHEN BYERLY	Defendant	CITY LOAN FINANCIAL SERVICES I	1997CV00704	Civil-Small Claims	02/27/97
Stephen Byerly	Defendant	Debt Recovery Solutions of Ohio, Inc. as Assignee for Creditors of Clifford C. Riley	2009CVH02862	Civil-Other	09/21/09

IN CAR CORA 01/02/0

Public Docket Information

Mansfield Police Dept vs STEPHEN W BYERLY
Case: 2002CRA00033

Date Filed Case Type Judge Balance Owed
 01/02/02 Criminal/Traffic [Unassigned] \$0.00
 Parties

Name Type Address Attorney(s)
 STEPHEN W BYERLY Defendant 1247 CALDWELL STREET
 MANSFIELD, OH 44906

Offenses
 Arrest Date Arresting Officer Agency
 01/02/02 PTL. BRIAN CASSIDY Mansfield Police Dept

Code Description Date Finding Finding Date Degree
 2903.02 Murder 01/02/02 Dismissed 01/10/02 F1
 Docket (Show Entries Paged)

Date Text Type
 01/02/02 New Warrant issued ON WHAT? [NA]
 01/02/02 Warrant returned on 01/02/2002 ? none [NA]
 01/02/02 Warrant served on 01/02/2002 [NA]
 01/03/02 Preliminary Pre-Trial Hearing scheduled on 01/08/2002 09:00AM [NA]
 01/03/02 Preliminary Hearing scheduled on 01/10/2002 01:00PM ? none [NA]
 01/10/02 MOTION TO DISMISS FILED what case number? [NA]
 01/29/02 CASE DISMISSED PG 228-833 [NA]

None

None

where is warrant / indictment

Public Docket Information

Mansfield Police Dept vs STEPHEN W BYERLY

2 CABAS STAFF OFFICE

newer received? - 102-CRA-00033, 2. 02-CRA-00040
All dismissed on 01/09/02

1. CASE NUMBER NOW SHOWS ENTRY DATE 01/02/02, yet, states
 for 02-CRA-00033 - C note: I signed documents for release/dismiss of
 MURDER CHARGE - CASE NO. - 02-CR-0021 & KIDNAPPING. DATE - 7/09/02
 "CONFLICT OF INTEREST" US00 THE SAME CODES AS NEW CASE NUMBERS took

EXHIBIT

INDICTMENT FOR:

AGGRAVATED MURDER
WITH SPECIFICATIONS

THE STATE OF OHIO, RICHLAND COUNTY, SS.
COURT OF COMMON PLEAS

Of the term of July in the Year of our Lord two thousand two.

The jurors of the grand jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

STEPHEN W. BYERLY, DOB: 12/03/1948, SSN: 277/46/1292, on or about the 2nd day of January, 2002, at the County of Richland, did purposely, and with prior calculation and design, cause the Death of another, in Violation of Section 2903.01 (A) of the Ohio Revised Code, a Felony.

SPECIFICATION I: The Grand Jurors further find and specify that the offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit AGGRAVATED ROBBERY, THE OFFENDER WAS THE PRINCIPAL OFFENDER IN THE COMMISSION OF THE AGGRAVATED MURDER and further, the AGGRAVATED MURDER was committed with prior calculation and design.

SPECIFICATION II: The Grand Jurors further find and specify that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and used the firearm to facilitate the offense.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

James J. Mayer
Prosecuting Attorney

ENDORSED: A TRUE BILL.

Lou Ashworth
Foreman of the Grand Jury

The Supreme Court of Ohio & The Ohio Judicial System

Clerk's Office
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431
800.826.9010
614.387.9530

Kristina D. Frost
Clerk of Court

Search Results: Party Last Name = byerly, First Name = stephen

Party Name Search Criteria
Party Last Name: byerly
Party First Name: stephen

Records 1 to 4 of 4

View Case	Case Number	Party Name	Party Type	Case Type
View Case	2004-0175B	yerly, Stephen	Appellant	Discretionary Appeal (Non-felony); Claimed Appeal of Right
View Case	2007-2206B	yerly, Stephen	Appellant	Appeal from App.R. 26(B) Application (Murnahan Appeal)
View Case	2011-1280B	yerly, Stephen	Relator	Original Action in Procedendo
View Case	2011-1653B	yerly, Stephen	Appellant	Discretionary Appeal (Felony); Claimed Appeal of Right

Records 1 to 4 of 4

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WARRANT TO CONVEY
COURT OF COMMON PLEAS, RICHLAND COUNTY, OHIO

STATE OF OHIO

VS

~~STEPHEN W BYERLY~~

The State of Ohio, Richland County, ss.

Whereas the defendant, ~~STEPHEN W BYERLY~~

Was found guilty of: **AGGRAVATED MURDER CNVDGOF**

IN THE COURT OF COMMON PLEAS of said County on October 18, 2002

And is hereby sentenced by said court to: **OHIO STATE PRISON SYSTEM, YOU ARE THEREFORE COMMANDED** to take charge of and convey the

Said defendant to the: **OHIO STATE PRISON SYSTEM**, And deliver **STEPHEN W BYERLY**

With the certified copy of the judgment and the sentence of the Court hereto annexed, to the Superintendent or director thereof, and make due return of your proceedings hereon to this Office forthwith.

WITNESS my signature and the seal of said Court this, October 18, 2002

PHILLIP E. SCOTT, CLERK

By Debra King
Deputy Clerk

SHERIFF'S RETURN

Rev. Code 311.08, .09; 2335.3
Sheriff's Office, Richland County, Mansfield, Oct 18, 2002 TRIAL ENDED

Received this Writ on OCT 18 2002, and on the _____ day of _____, 20____, pursuant to its command, I forthwith executed the same by conveying the person named to the place designated, as shown by the receipt indorsed hereon.

SHERIFF'S FEES RICHLAND COUNTY SHERIFF
Service & Return \$ 3.00
Mileage 23.10
TOTAL \$ 26.10
By: Chiller
Deputy

WORC PLEASE COMPLETE FORM BELOW AND RETURN
(Institution) received this _____ day of 10/18/02, 20____
by Sheriff of Richland County, Mansfield, the prisoner named in the within warrant.

K. A. - [Signature]
Superintendent--Director

PHILLIP E. SCOTT
CLERK OF COURTS
02 OCT 23 AM 11:01
RICHLAND COUNTY
CLERK OF COURTS
FILED