

ORIGINAL

IN THE SUPREME COURT OF OHIO, FRANKLIN COUNTY

STATE ex rel. CHRISTOPHER A. MCGLOWN )  
639-847 )  
ALLEN OAKWOOD CORRECTIONAL INSTITUTION )  
P.O. BOX 4501 )  
LIMA, OHIO 45802, )  
RELATOR, )

12-1563

CIVIL CASE NO.

v.

ORIGINAL COMPLAINT:

WRIT OF MANDAMUS and/or WRIT OF )  
PROHIBITION PURSUANT TO O.R.C. )  
2731 et seq. )

JUDGE JAMES D. BATES )  
700 ADAMS STREET )  
TOLEDO, OHIO 43624, )  
RESPONDENT. )

Christopher A. McGlown, pro se, 639-847  
Allen Oakwood Correctional Institution  
P.O. Box 4501  
Lima, Ohio 45802  
Relator, pro se

Judge James D. Bates  
700 Adams Street  
Toledo, Ohio 43624  
Respondent

Respectfully submitted,

*Christopher A. McGlown, pro se*  
Christopher A. McGlown, pro se 639-847  
Allen Oakwood Correctional Institution  
P.O. Box 4501  
Lima, Ohio 45802

RECEIVED  
SEP 14 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
SEP 14 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

I.

JURISDICTION

1. The Relator, Christopher A. McGlown, is an adult citizen of the United States of America, in the State of Ohio, city of Lima.
2. The Respondent, Judge James D. Bates, is a duly elected public official with respect to the Ohio Revised Code et seq.
3. This Court has original jurisdiction in this matter pursuant to Ohio Constitution art IV §3(B)(1)(b)&(c)(2), O.R.C. 2731 et seq.

II.

STATEMENT OF THE CASE AND FACTS

A. Nature of the case

4. This is a civil action by Christopher A. McGlown, pro se, Relator from the Respondent's refusal to perform a clear legal duty and vacate all unauthorized acts and to comply with O.R.C. 2505.02 and Crim. R. 32(C).
5. On or about March 17, 2007, Relator was arrested in Columbus, Ohio, for an incident unrelated to this action. He was in possession of a fake ID discovered after arrest. However, this fraudulent identification card was not manufactured in a home. It was spuriously obtained from a license agency in Columbus months earlier in October 2006. As a result Relator had already been indicted on March 2, 2007 at the time of his arrest. He was charged with tampering with evidence, a violation of O.R.C. 2921.12(A)(2), a third degree felony. He was also indicted, for the same conduct, on March 29, 2007 with a violation of O.R.C. 2913.31(A)(3)&(C)(1)(a), forgery, a fifth degree felony and a violation of O.R.C. 2913.42(A)(1)&(B)(4), tampering with records, a third degree felony (Opinion and Judgment Entry Journalized January 24, 2012, Pg.2). Moments before trial tampering with evidence was dismissed. A jury trial was conducted and Relator was found guilty of the two remaining charges on October 26, 2007 and was sentenced on the same date (Opinion and Judgment Entry, Pg.2). On the felony of the fifth degree, forgery, Relator was sentenced to ten (10) months in the Department of Rehabilitation and Corrections ("ODRC"). On the felony of the third degree, tampering with records the court (Respondent) sentenced Relator

to four (4) years in the ODRC. These sentences were ordered, as described prior to trial by Respondent, to be served consecutively and were additionally specifically ordered to run prior (Trial transcript, Pg. 227.) and consecutively to a federal sentence that had not been imposed (Opinion and Judgment Entry, Pg.2).

6. The sentence above was the result of Respondent's representations of Ohio sentencing statutes that was expressly explained to Relator as he was contemplating whether to accept Respondent's new plea deal, or go to trial. These representations are relevant to this action and are provided herein in part as communicated to Relator by his counsel and Respondent moments before trial:

Respondent: Your attorney negotiated a deal for you that I probably should not have agreed to, and that deal was you would get one year consecutive to whatever federal time you're going to get.

\* \* \*

Respondent: If we proceed to trial today, if you're convicted of anything, if I impose a sentence before your federal judge does, you will be doing your time, my time, whatever that might be, in state court because whoever imposes the first sentence gets you in first even though you're in federal custody. You will be doing your 3 or 4 or 5 years in state custody before you even start whatever you're subjected to in federal custody.

\* \* \*

Respondent: If you are convicted here in state court and I give you 3, 4, 5 years, you're going to be doing that time in state court before you serve any time on the federal case. **So that's something additional you need to consider.**

\* \* \*

Relator: You [Respondent] told me right here in front of me if we go to trial and I get convicted I'll probably, [get] 2, 3, 4, whatever the sentence carry and I will serve that time first because you sentence me first.[?].

Respondent: That's correct.

\* \* \*

Counsel for Relator: I said you would \* \* \* be sentenced by the state first and then -- however, if we entered into that plea agreement, the State of Ohio sentencing entry would state that sentence would be stayed, it would be served after the completion of your federal sentence. (Motion to Suppress transcripts, Pg. 12 20).

7. Respondent's said representations were in fact false statements of law and such did not exist under any Ohio statute.

8. Respondent, at the time, knew them to be false and inapplicable when Respondent misled Relator into believing them to be true then required Relator to take into account false statements of law before considering whether he wanted to go to trial, "you **need** to consider." (MTS transcripts, Pg. 15).

9. Respondent was not authorized to act when it imposed Relator's sentence to run consecutively to a federal sentence that did not exist.

### III.

#### MEMORANDUM IN SUPPORT OF WRIT

10. Relator could not have known said representations were false because he relied on Respondent's authority vested onto him to interpret and enforce all statutes under the Ohio Revised Code accurately. State v. Clark, 119 Oh St.3d 239.

11. Relator did not serve his sentence as imposed, in fact, he served the federal sentence in its entirety first which was imposed some nine months later on July 7, 2008. In reliance of said representations Relator maintained his belief that the state sentence had started on October 26, 2007 even though he was in federal custody. Thus, the state sentence started when pronounced and ran uninterrupted. Relator's direct appeal to the Sixth District Appellate Court affirmed Respondent's sentence (Opinion and Judgment Entry, Pg.2).

12. On March 27, 2009, Relator, while under legal custody of the State of Ohio by virtue of Respondent's judicial order of confinement, was mistakenly released back into society after his federal sentence expired. By no fault of his own this mistakenly release by mere prison officials was tantamount to an escape. Jefferson v. Morris, 548 N.E.2d 296, 1988 Oh App.LEXIS 1892 at \*\*298 & \*\*8.

13. Relator's "escape" after sentencing and before he was delivered to a state institution violated O.R.C. 2949.06. State v. Hughes, 2009 Ohio 3499 (6 Dist.).

14. Respondent was mandatorily required to resentence Relator prior to re-

incarcerating him. Relator's sentence was clearly not being served as imposed.

15. The effects of Respondent's said representations caused Relator irreparable damage; Relator would not had went to trial if said representations accurately represented correct sentencing laws; Relator would not had been sentenced consecutively to a federal sentence that had not been imposed. Relator would had accepted the original one year plea deal which would had expired before the federal sentence was imposed, thereby eliminating any mistaken release.

16. Respondent has refused to perform a clear legal duty to correct Relator's void sentence based on the illegal sentence ordered without authority.

17. On June 16, 2009 Respondent had set a Hearing for Relator to appear after Respondent discovered the mistaken release. Relator was never informed of the Hearing by process of service and the State issued a warrant for his arrest.

18. Respondent set a Resentencing Hearing for September 21, 2010 after Relator was arrested while living in Fort Worth, Texas. Respondent refused to resentence Relator without making any findings of facts and conclusions of law.

19. Relator subsequently filed multiple motions with Respondent on October 19, 2010; May 23, 2011; July 25, 2011; August 18, 2011; and February 21, 2012. . Respondent denied them all (Opinion and Judgment Entry, Pgs.2-3).

20. On December 8, 2010 Respondent issued an order to enforce Relator's clearly void sentence that would now be ordered to run after the federal sentence that did not exist at the time Relator was sentenced. This enforcement of sentence is also contrary to law and is not authorized by the General Assembly because such sentence ordered to run consecutively after the federal sentence expired when at the time of sentencing no federal sentence had been imposed constitutes a new act by Respondent not authorized by any Ohio statute.

**IV.**

**LEGAL CLAIMS**

21. Respondent must comply with the sentencing statute to lawfully impose a

sentence. No sentence was imposed upon Relator by Respondent. The sentence that was imposed is void and has no legal effect, it is as if no original sentence had been imposed by Respondent. Respondent had ordered an unlawful sentence as alleged in paragraph 5 and thus, this first claim allege Respondent has refused to impose a lawful sentence after Relator moved Respondent to issue a new entry that complied with the basic requirements for a proper judgment under O.R.C. 2505.02 and Crim. R. 32(C).

22. Relator was prejudiced by the Respondent's incorrect statement of the law as alleged in paragraph 6 so as to warrant vacation his conviction. Respondent acted without authority when it misinformed Relator of applicable law then required him to incorporate misinformation in decisionmaking, thereby causing decision to go to trial to be less than knowing and voluntary rendering the subsequent conviction void. Respondent failed to perform a legal duty and vacate Relator's conviction.

23. Respondent became aware Relator's conviction and judgment was void on or about June 4, 2009 when it set a "Hearing" to enforce his sentence when Respondent knew the sentence was not enforced as intended on October 26, 2007. The new warrant to convey ordered by Respondent on December 8, 2010 is void and unenforceable because Respondent was mandated to hold a hearing, vacate the conviction and judgment, or resentence Relator according to law. Therefore, Respondent had a clear legal duty to perform and failed to vacate Relator's conviction and judgment.

24. Relator was at large by no fault of his own and was on the same plane as an escapee. By virtue of Respondent's order of confinement Relator escaped the limitations of his sentence. Respondent failed to resentence him accordingly, as mandated by statute if Relator was in custody by virtue of a judicial order, i.e., Respondent's sentence albeit illegal:

Legal duty to vacate Relator's conviction and judgment and sentence Relator to

V.

CONCLUSION

25. The Respondent clearly did not have authority to act as alleged below and has exceeded its authority to; 1. Require Relator to make a knowing, voluntary, intelligent decision to go to trial using incorrect law to make the decision. 2. Order Relator's sentence to run consecutively to a sentence that had not been imposed. 3. Issued an order to convey Relator to prison knowing the sentence incorporated in the order was void on its face. The decisions Respondent made are fundamentally wrong under the Ohio Revised Code and has caused tremendous injury to Relator whose twelve children are unlawfully being denied their right to have their father present to provide for them, to guide them, to be a figure they can be influenced by who has experienced the ungodly prison life and steer them in the right direction. Respondent's illegal sentence affects more lives than Relator's, his uncertainty is overwhelmed by the uncertainty his children are experiencing as a result of false representations that has extended to them inadvertently. Their faith in the judicial system has been damaged as well as Relator's. For instance; some of Relator's children who act up on occasion was accustomed to Relator's stern response and quickly learned from their mistakes. However, since January 2012, that voice of reason was not available to some of them who are in Toledo jails charged with mandatory prison crimes, including Relator's 15 year old son who was the teenager seen carrying a flat screen T.V. from an elderly woman's home. She was found dead inside and he's the suspect. With no father figure for them to reach out to the streets become a source for guidance, albeit catastrophic and at a tragic cost to society. Relator is **deeply** remorseful for his crimes, he had no ideal the impact it would have on his growing children or the impact his children's conduct would have on society as a whole, and the people directly affected.

25. **Wherefore**, Relator pray for relief against Respondent as follows:

1. The Court issue writ against Respondent to compel him to perform a clear legal duty to vacate Relator's conviction, or judgment and to resentence the

Relator according to law and enter a judgment that complies with Crim. R. 32(C) that is a final appealable order under O.R.C. 2505.02.

2. Declare Relator's conviction and judgment void and compel Respondent to vacate the conviction and judgment against Relator based on Respondent's said false representations that Relator solely relied on in making a decision to go to trial. Had said false representations been accurate Relator would not have gone to trial. Said false representations could not have been raised on any appeal because Relator had believed he was being credited with all time after sentencing and was informed by Respondent that Relator's sentence will now start after the federal sentence (Judgment Entry Journalized October 26, 2010, Pg.2). Thereby, preventing Relator from making a knowingly, intelligently, and voluntarily decision while considering going to trial. This detrimental reliance was highly prejudicial to Relator. *State v. Alexander*, 2005 Ohio 3564 at ¶5.

3. Vacate all orders Respondent issued following the fact Relator's sentence became obviously void while he was at liberty, and after his arrest where due process required a hearing to afford Relator his right to argue that he has a viable liberty interest claim and could have demonstrated his sentence was contrary to law and mandated resentencing pursuant to *White*, quoted in *Alexander*.

4. Issue an order notifying Relator's custodian that the order conveying Relator to the ODRC is void and to return service of Relator back to the court that issued the warrant to convey immediately (by writ of prohibition).

5. Or, in the alternative, compel Respondent to vacate Relator's conviction and sentence and allow Relator to plead guilty to the original plea agreement and sentence him according to law. Relator consents to the above terms to be effectuated via, video conferencing available at Allen Oakwood Correctional Institution. Thereby, preserving the State's conviction and rectifying justice that has gone awry. Relator has no plain and adequate remedy at law and is not relegated to appealing Respondent's decisions, which would be dismissed for lack of jurisdiction.

6. For cost of action.

7. For such other relief as the Court deems just.

Dated: September 6, 2012

Respectfully submitted,

Christopher A. McGlown, pro se  
Christopher A. McGlown, pro se, 639-847  
Allen Oakwood Correctional Institution  
P.O. Box 4501  
Lima, Ohio 45802

AFFIDAVIT OF VERIFICATION

I, Christopher A. McGlown, am Relator in the above entitled action. I have read the foregoing Complaint. I have reviewed the copies/papers attached. The facts stated therein and copies/papers therein are within my personal knowledge and are true and correct to the best of my personal knowledge. I have filed two civil actions within 5 years: (1) In the Sixth Appellate District on June 8, 2012, State ex rel. McGlown v. Judge James D. Bates, No. CL-2012-1156. Still pending with no response. (2) In the Franklin County Common Pleas Court on August 13, 2012, State ex rel. McGlown v. Gary C. Mohr, Director, Ohio Department of Rehabilitation and Corrections et al, No. 12 CVH-08-10222. Pending.

A. Respondent has a clear and legal duty to comply with the law in the following manner:

- 1) Vacate Relator's conviction and Judgment Entry Journalized October 26, 2007.
- 2) Resentence Relator in compliance with applicable Ohio statutes.
- 3) Void all judgments, orders and decisions issued by Respondent who had no authority to act at time said judgments, orders and decisions were issued.
- 4) Notify Relator's custodian (Allen Oakwood Correctional Institution) that warrant to convey issued by Respondent on December 8, 2010, is void and release Relator back to the custody of the court that issued the order.
- 5) In the alternative, compel Respondent to vacate Relator's conviction and sentence and permit him to plead to original plea agreement.



**DELORES M. MYERS**  
Notary Public, State of Ohio  
My Commission Expires  
August 31, 2015

Christopher A. McGlown, pro se  
Christopher A. McGlown, pro se

Subscribed and sworn to before me on September 6<sup>th</sup>, 2012.

Delores M. Myers  
NOTARY

My commission expires on 8/31/2015

FILED  
LUCAS COUNTY

2007 OCT 30 A 9:02

COMMON PLEAS COURT

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO  
Plaintiff.

v.

CHRISTOPHER ALEXANDER  
MCGLOWN  
Defendant.

\* CASE NO:  
\* G-4801-CR-0200701661-000  
\*

\* JUDGMENT ENTRY  
\*

\* JUDGE JAMES D. BATES  
\*  
\*

\*\*\*\*\*

October 26, 2007. Court Reporter KIM KOHL, Assistant Prosecutor JEREMY SANTORO, MERLE R. DECH on behalf of the Defendant, and Defendant CHRISTOPHER ALEXANDER MCGLOWN present in court.

Trial resumes. Exhibits admitted. Oral Request of defendant for Rule 29 Motion for Acquittal is DENIED. Closing arguments heard. Jury retired for deliberations.

Defendant found Guilty by a jury of the offense of Forgery (to wit BMV form 2026) in violation of R.C. 2913.31(A)(3) & (C)(1)(a) a felony of the 5th degree as to count 1 as well as Tampering with Records in violation of R.C. 2913.42(A)(1) & (B)(4) a felony of the 3rd degree as to count 2.

Defendant and State waived any rights to a presentence investigation and report. Matter proceeded to sentence.

Pursuant to Crim. R. 32, all individuals afforded opportunity to be heard. Sentencing hearing held pursuant to R.C. 2929.19. Court considered the record, oral statements, any victim impact statement, as well as principles and purposes of sentencing under R.C. 2929.11 balancing seriousness and recidivism factors under R.C. 2929.12.

Court found prison sentence consistent with the purposes of R.C. 2929.11.

E. JOURNALIZED: 10/30/2007  
LUCAS COUNTY IMAGING SYSTEM  
JOURNALIZED: 10/30/2007  
JOURNAL ID: 2008515

amenable to community control.

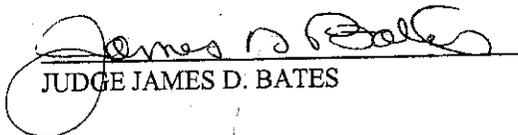
Defendant ordered to serve 10 months in the Ohio Department of Rehabilitation and Corrections as to count 1 and 4 years in the Ohio Department of Rehabilitation and Corrections as to count 2 to be served consecutively to each other and consecutively to the federal sentence.

Defendant given notice of appellate rights under R.C. 2953.08 and post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28.

Defendant granted credit for -0- days up to and including this sentencing date and granted credit for all additional in-custody days while awaiting transportation to the appropriate institution.

Defendant found to have, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law. Defendant ordered to reimburse the State of Ohio and Lucas County for such costs. This order of reimbursement is a judgment enforceable pursuant to law by the parties in whose favor it is entered. Defendant further ordered to pay the cost assessed pursuant to R.C. 9.92(C), 2929.18 and 2951.021. Notification pursuant to R.C. 2947.23 given.

Defendant ordered remanded into custody of Lucas County Sheriff for immediate transportation to appropriate state institution.

  
JUDGE JAMES D. BATES

THE STATE OF OHIO, LUCAS COUNTY, ss

I, BERNIE QUILTER, Clerk of Common Pleas Court, and Court of Appeals, hereby certify this document to be a true and accurate copy of entry from the Journal of the proceedings of said Court filed 30 October 2007 on case number CR 07 1661.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name officially and affixed the seal of said court at the Courthouse in Toledo, Ohio, in said County, this 28 day of June A.D., 2012

BERNIE QUILTER, Clerk

SEAL

By   
Deputy

FILED  
LUCAS COUNTY  
2007 OCT 30 A 9:02  
COMMON PLEAS COURT

Exhibit B

WARRANT TO CONVEY TO  
CORRECTIONAL RECEPTION CENTER, ORIENT, OHIO

The State of Ohio, Lucas County Court of Common Pleas

THE STATE OF OHIO

G-4801-CR-0200701661-000

-vs-

JAMES D. BATES

CHRISTOPHER ALEXANDER MCGLOWN

\* \* \* \* \*

RECEIVED  
2010 DEC - 8 A 11:01 AM  
LUCAS COUNTY  
COURT CLERK'S OFFICE

2913.42A1&B4 -- TAMPERING WITH RECORDS (F3) - GUILTY AT JURY TRIAL on  
October 26, 2007

2913.31A3&C1a F5 -- FORGERY (F5) - GUILTY AT JURY TRIAL on October 26, 2007

To The Sheriff of Said County:

On March 29, 2007 an indictment was filed in the Lucas County Court of Common Pleas , Toledo, Ohio against the defendant **CHRISTOPHER ALEXANDER MCGLOWN** . The defendant plead to or was found guilty of the above listed charges and was sentenced by the Court to the Corrections Reception Center, Orient, Ohio. A certified copy of the Judgment Entry of sentence and an Itemized Statement reflecting the outstanding costs and fines are attached.

You are commanded to carry out and enforce the judgment and sentence of the Court according to law, and make due return of your proceedings to this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed seal of said Court at Toledo, Ohio on December 08, 2010.

J. BERNIE QUILTER  
CLERK OF COURTS

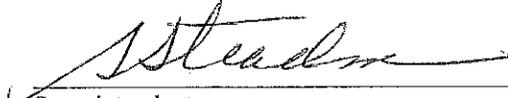
By

  
Deputy Clerk  
Form # JT3 - 000013742

CORRECTIONAL RECEPTION CENTER

Orient, Ohio 12/9, 2010

Received this day, from JAMES A. TELB, Sheriff of Lucas County Ohio, the prisoner named in the within warrant.

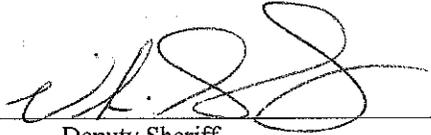
  
\_\_\_\_\_  
Superintendent

Inmate # 639847  
(Please complete)

SHERIFF'S RETURN

Received this writ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and on the \_\_\_\_\_ day of 12-9, 2010, I executed the same by conveying the person named to the place designated, as shown by the receipt endorsed hereon.

JAMES A. TELB, Sheriff

By   
\_\_\_\_\_  
Deputy Sheriff

FILED  
LUCAS COUNTY  
2010 DEC 14 10 51  
CLERK OF COURT

Exhibit C

United States District Court  
Northern District of Ohio

2008 JUL -9 PM 2:57  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA  
v.  
Christopher A. McGlown

JUDGMENT IN A CRIMINAL CASE  
Case Number: 3:07cr202-01  
USM Number: 42597-060  
Merle Dech  
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) one and two of the indictment.
- pleaded nolo contendere to counts(s) \_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 1344	Bank Fraud	5/6/2006	1
18 USC 513(a)	Possession of counterfeit securities	6/15/2005	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) \_\_\_.
- Count(s) \_\_\_ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in the defendant's economic circumstances.

I hereby certify that this instrument, document no. 62, filed on 7/9/08, is a true and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio

By: Dianne Grouney  
Deputy Clerk

7/7/2008  
Date of Imposition of Judgment

[Signature]  
Signature of Judicial Officer

DAVID A. KATZ, United States Senior Judge  
Name & Title of Judicial Officer

7/9/08  
Date

CASE NUMBER: 3:07cr202-01  
DEFENDANT: Christopher A. McGlown

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 26 months on each count to be served concurrently and consecutive to the sentence in Lucas County Common Pleas Case CR-2007-01661.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.  
 at \_\_\_ on \_\_\_\_.  
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2:00 p.m. on \_\_\_\_.  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

CASE NUMBER: 307cr202-01

DEFENDANT: Christopher A. McGlown

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years on each count to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CASE NUMBER: 307cr202-01

DEFENDANT: Christopher A. McGlown

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE**

The defendant shall provide the probation officer access to all requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

The defendant shall participate in an approved program of outpatient, inpatient or detoxification substance abuse treatment, which will include drug and alcohol testing to determine if the defendant has reverted to substance abuse.

The defendant shall submit his/her person, residence, place of business, computer, or vehicle to a warrantless search, conducted and controlled by the U.S. Pretrial Services and Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

The defendant shall pay restitution in the amount of \$116,904.00 to Huntington Bank, c/o Bethany McKinney, 2310 W. Laskey Road, Toledo, Ohio 43613, through the Clerk of the U.S. District Court. Restitution is due and payable immediately.

The defendant shall pay 25% of his gross income per month, through the Federal Bureau of Prisons Inmate Financial Responsibility Program. If a restitution balance remains upon release from imprisonment, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release of 10% of defendant's gross monthly income during the term of supervised release and thereafter as prescribed by law.

The money obtained at the time of defendant's arrest in May, 2007 on the fugitive warrant shall be utilized toward the payment of restitution.

CASE NUMBER: 3:07cr202-01  
 DEFENDANT: Christopher A. McGlown

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 200.00	\$	\$ 116,904.00

- The determination of restitution is deferred until \_\_. An amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Huntington Bank c/o Bethany McKinney 2310 W. Laskey Road Toledo, Ohio 43613			
<u>TOTALS:</u>	<u>\$ 116,904.00</u>	<u>\$ 116,904.00</u>	

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - The interest requirement is waived for the  fine  restitution.
  - The interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

CASE NUMBER: 3:07cr202-01  
DEFENDANT: Christopher A. McGlown

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ due immediately, balance due  
 not later than or  
 in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C  D, or  F below); or
- C  Payment in equal installments of \$ over a period of , to commence days after the date of this judgment; or
- D  Payment in equal installments of \$ over a period of , to commence days after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:
  - A special assessment of \$200.00 is due in full immediately as to count(s) one and two.  
PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT
  - After the defendant is release from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several (Defendant name, Case Number, Total Amount, Joint and Several Amount and corresponding payee):
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest; (4) fine principal; (5) fine interest; (6) community restitution; (7) penalties; and (8) costs, including cost of prosecution and court costs.

Exhibit D

FILED  
LUCAS COUNTY

2010 OCT 26 A 8:22

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO

Plaintiff.

v.

CHRISTOPHER ALEXANDER  
MCGLOWN

Defendant.

\* CASE NO: G-4801-CR-0200701661-000

\*

\*

\*

\*

JUDGMENT ENTRY

\*

\*

\*

\*

JUDGE JAMES D. BATES

\* \* \* \* \*

This matter came on to be heard upon the Motion for a New Trial filed by the Defendant, Christopher Alexander McGlown, on October 19, 2010.

I. Facts Presented

1. The defendant, Christopher Alexander McGlown, was indicted by the Lucas County Grand Jury for one count of forgery in violation of R.C. Section 2913.31(A)(3)&(C)(1)(a) and one count of Tampering with Records in violation of R.C. Section 2913.42(A)(1) & (B)(4).

2. The case was initially assigned to Honorable Stacy L. Cook and David Klucas was appointed to represent the defendant. Mr. Klucas withdrew as counsel and Merle Dech was appointed to replace Mr. Klucas. Judge Cook then recused herself from that case and the matter

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OCT 27 2010

was administratively reassigned to Honorable James D. Bates.

3. A Motion to Suppress was heard and denied prior to the commencement of the trial. The trial concluded when a jury found the defendant guilty of Forgery of a BMV Form a felony of the fifth (5th) degree and Tampering with Records a felony of the third (3rd) degree. The defendant was sentenced to 10 months on the forgery and four (4) years on the tampering. The case was appealed to the Sixth District Court of Appeals and affirmed on April 24, 2009.

4. The record notes that the defendant was in Federal custody and was transported to the Lucas County Common Pleas Court each time by the U.S. Marshall pursuant to a writ issued by the Common Pleas Court. Therefore, it was obvious from the record that he was in federal custody at the time of the trial in State court.

5. The defendant was in federal custody and was eventually released and the state holder was not honored. He apparently absconded and is back in federal custody. The defendant has not served any time, as of yet, on this offense.

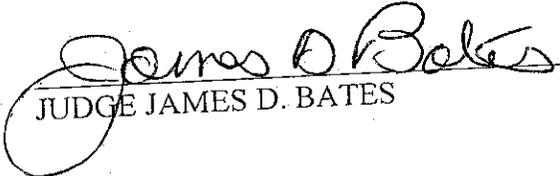
6. The defendant's Motion for a New Trial alleges that Judge Bates should have advised the defendant that his federal prosecutor was his brother-in-law, Tom Secor.

7. This Court may have known of the federal charges but no specifics. Mr. Secor's name was mentioned at the Motion to Suppress as the federal prosecutor but we have had no conversations concerning this defendant, the facts of either case or it's outcome in either court proceeding.

JUDGMENT ENTRY

It is therefore ORDERED, ADJUDGED and DECREED that the Motion for a New Trial filed by the defendant, Christopher Alexander McGlown, is hereby DENIED.

Date: 10/25/10

  
JUDGE JAMES D. BATES

FILED  
LUCAS COUNTY

2011 AUG 23 P 3:02

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

STATE OF OHIO,

COMMON PLEAS  
BERNIE OULTER  
CLERK OF COURTS

Case No. G-4801-CR-2007-1661

Plaintiff-Respondent,

(Hon. James D. Bates)

-vs-

**Memorandum in Opposition to Defendant's Motion to Correct Sentence**

CHRISTOPHER ALEXANDER  
McGLOWAN,

Defendant-Petitioner,

Brenda J. Majdalani (0041509)  
Assistant Prosecuting Attorney  
700 Adams Street, Ste. 250  
Toledo, Ohio 43604  
Phone: 419-213-2001  
Fax: 419-213-2011

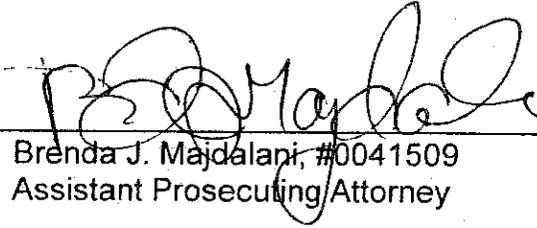
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The State of Ohio, by and through Assistant Prosecuting Attorney, Brenda J. Majdalani, hereby opposes defendant's Motion to Correct Illegal Sentence, filed recently in this Court. The grounds for this Motion are more fully set out in the Memorandum below.

Respectfully submitted,

**JULIA R. BATES, PROSECUTING ATTORNEY  
LUCAS COUNTY, OHIO**

By:

A handwritten signature in black ink, appearing to read "B. Majdalani", written over a horizontal line.

Brenda J. Majdalani, #0041509  
Assistant Prosecuting Attorney

**I. STATEMENT OF THE CASE AND FACTS**

The State essentially agrees with defendant's Statement of the Case and Facts, as outlined in paragraphs 1-7 of defendant's motion, with the following additions and/or corrections:

1. The State denies that defendant was induced to proceed to trial (see defendant's Motion at ¶7).

**Argument:**

**I. Allied Offenses:**

**First Proposition of Law:** The Ohio Supreme Court's decision in *State v. Johnson* establishing a new test for determining whether two or more offenses are allied offenses of similar import is not and cannot be applied retroactively to defendant's case.

Defendant asserts that his sentence is "illegal" because after his conviction and sentencing, the Ohio Supreme Court announced a new test for determining whether or not two or more offenses are allied offenses of similar import. Defendant asserts that his convictions should have been merged and that he was improperly sentenced to a consecutive term of incarceration.

The new standard for determining whether two offenses are allied offenses that should be merged is: 1) "whether it is possible to commit one offense and commit the other with the same conduct," 2) if so, then it must be determined "whether the offenses were committed by the same conduct." *State v. Johnson* 128 Ohio St.3d 153, 2010 Ohio 6314, ¶¶48-49, 942 N.E.2d 1061. "If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged." *Id.* at ¶ 50. The Court stated that "the purpose of R.C. 2941.25 is to prevent shotgun convictions, that is, multiple findings of guilt and corresponding punishments heaped on a defendant for closely related offenses arising from the same occurrence." *Id.* at ¶ 3.

However, a new judicial ruling may be applied only to cases that are pending on the announcement date. *State v. Evans* (1972), 32 Ohio St.2d 185, 186, 61 O.O.2d 422, 291 N.E.2d 466; *Ali v. State*, 104 Ohio St.3d 328, 2004-Ohio-6592, 819 N.E.2d 687 at ¶6. The new judicial ruling may not be applied retroactively to a conviction that

has become final, i.e., where the accused has exhausted all of his appellate remedies.

Id. "[A] subsequent change in the controlling case law in an unrelated proceeding does not constitute grounds for obtaining relief from final judgment under Civ.R.

60[B]". Id.

Both the United States and Ohio Constitutions prohibit ex post facto legislation, and similar restrictions have been placed on judicial opinions. See, e.g., *Bouie v. Columbia* (1964), 378 U.S. 347, 84 S. Ct. 1687, 12 L. Ed. 2d 894. In *Bouie*, the United States Supreme Court held that **due process prohibits retroactive application of any judicial decision construing a criminal statute that "is 'unexpected and indefensible by reference to the law which has been expressed prior to the conduct in issue[.]'"** Id. at 354, quoting Hall, *Gen. Principles of Crim. Law* (2d ed. 1960) at 61 (emphasis added). While *Bouie* referenced ex post facto principles, the United States Supreme Court later explained that *Bouie's* "rationale rested on core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct." *Rogers v. Tennessee* (2001), 532 U.S. 451, 459, 121 S. Ct. 1693, 149 L. Ed. 2d 697. This principle has also been recognized by the Ohio Supreme Court. See *State v. Garner* (1995), 74 Ohio St.3d 49, 57, 1995-Ohio-168, 656 N.E.2d 623, 633.

"[A]n unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law and can thereby violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution

\*\*\* even though the constitutional prohibition against ex post facto laws is applicable only to legislative enactments." (Internal citations and quotations omitted.) *Id.* at 57, quoting *Bouie*, 378 U.S. at 353; *Marks v. United States* (1977), 430 U.S. 188, 191-92, 97 S. Ct. 990, 51 L. Ed. 2d 260.

As a result, and based on these principles, new judicial rulings may only be applied only to cases which are pending on the announcement date. *Ali v. State* (2004), 104 Ohio St.3d 328, 2004-Ohio-6592, 819 N.E.2d 687 at ¶6; see also *State v. Evans* (1972), 32 Ohio St.2d 185, 186, 61 O.O.2d 422, 291 N.E.2d 466. The new judicial ruling may not be applied retroactively to a conviction that has become final, i.e., where the accused has exhausted all of his appellate remedies. *Id.*

Based on the principles outlined above, defendant is not entitled to be re-sentenced according to the "new" *Johnson* test for allied offenses. In this case, defendant has either exhausted or failed to pursue direct appeals prior to the Ohio Supreme Court's decision in *Johnson*<sup>1</sup>. And since the Ohio Supreme Court did not hold that its decision was to be applied retroactively, defendant was properly sentenced to consecutive terms of incarceration under the law in effect at the time of his sentencing.

**Second Proposition of Law: Under the law at the time of defendant's sentencing, defendant was properly sentenced to consecutive terms of incarceration.**

As stated above, defendant asserts that the trial court erred by imposing consecutive sentences for offenses he now maintains were allied offenses of similar

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<sup>1</sup>Defendant filed an unsuccessful appeal of his conviction in *State v. McGlowan*, 6th Dist. App. No. L-07-1384. Defendant has not appealed the denial of any other motion.

import.<sup>2</sup> However, in 2007, at the time of defendant's sentencing, the proper test for deciding whether or not two crimes are allied offenses of similar import was to determine whether the elements of the offenses corresponded to such a degree that the commission of one offense necessarily resulted in the commission of the other. If the elements did not so correspond, the offenses were considered to be of dissimilar import and multiple convictions were permitted. *State v. Rance* (1999), 85 Ohio St.3d 632, 636, 1999-Ohio-291, 710 N.E.2d 699, overruled, *State v. Johnson* (2010), 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061<sup>3</sup>.

Defendant has exhausted his direct appeals and has failed to pursue appeals of the denial of his other motions. Defendant was properly sentenced according to the law that was in existence at the time of the commission of his offenses. *Ali*, supra. As

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<sup>2</sup> Ohio Rev. Code Ann. § 2941.25 concerns when multiple punishment may be imposed. It provides:

(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.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

<sup>3</sup> In *Johnson*, the Ohio Supreme Court held that when determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must now be considered. *Johnson*, supra at ¶44.

a result, the State maintains that under *Rance*, the law in existence at the time of the commission of the offenses, defendant was properly sentenced to consecutive terms of incarceration because record Tampering is not an allied offense of Forgery, *State v. Musselman*, 2d Dist. App. No. 22210, 2009-Ohio-424 at ¶38, and because the Forgery was an offense committed with separate animus from the Tampering offense. As a result, defendant was properly sentenced to consecutive terms of incarceration under the law in existence at the time the offenses were committed.

**Third Proposition of Law: Even if the new law was applied to this case, defendant was still properly sentenced to consecutive terms of incarceration.**

The State further asserts that even if the Ohio Supreme Court's "new" test for allied offenses was applied to this case (i.e. when considering the conduct of the accused), defendant was still properly sentenced to consecutive terms of imprisonment. As stated above, on Oct. 26, 2007, the defendant was sentenced to ten (10) months of imprisonment relative to Count One, consecutive to four (4) years of imprisonment relative to Count Two, totaling four (4) years and ten (10) months of imprisonment. The State asserts that defendant's sentence for the Forgery was properly run consecutively to the terms for the Tampering charge since both offenses were committed with separate animus. See *State v. Irbey*, Sixth Dist. App. No. L-10-1139, 2011-Ohio-2079 at ¶¶13-15, citing *Johnson*, supra at ¶¶ 44, 51.

## II. Post-Release Control:

**Fourth Proposition of Law: After July 11, 2006, a failure to provide notice of mandatory post-release control and the consequences of a post-release control violation does not affect the validity of the sentencing judgment entry.**

Defendant's Motion also asserts that at the time of sentencing, post-release control was not properly imposed. The sentence in this case was imposed on Oct. 26, 2007, after the effective date of the statutory amendments contained in H.B. 137. R.C. 2967.28 unambiguously provides that when a sentence is imposed on or after July 11, 2006, the trial court's failure to include in the judgment entry a statement that he will be supervised under R.C. 2967.28 after he leaves prison does not "negate, limit, or otherwise affect the mandatory period of sup that is required for the offender under this division." See also *State v. Baker*, 1st Dist. No. C-050791, 2006-Ohio-4902, at fn. 5 (noting that after the effective date of H.B. 137, "a trial court's failure to inform an offender of the possibility of post-release control does not prevent the offender from being placed under post-release-control supervision."). As a result, even assuming for sake of argument that this Court's sentencing entry was defective in notifying defendant of his post-release control obligations, R.C. 2967.28 nevertheless imposes post-release control obligations on defendant.

Likewise, after July 11, 2006, a trial court's failure to notify the offender of the consequences of a violation of post release control does not affect the authority of the parole board to impose a prison term as a result of violations of the terms of post-release control. R.C. 2929.19(B)(8). See also *State v. Walls*, 8th Dist. No. 92280, 2009-Ohio-4985 at ¶10, appeal denied at 2010-Ohio-354 (stating that "[u]nder

the terms of amended R.C. 2929.19(B)(3)(e), we cannot agree that the sentence is void if the court fails to notify the offender at the sentencing hearing about the consequences of violating postrelease control").

**The Revised Code thus clearly provides that after July 11, 2006, a trial court's failure to provide the notices anticipated by R.C. 2929.19(B)(3) will not affect either the length of mandatory post-release control or the ability of the parole board to impose a prison term for a violation of conditions of post-release control. The Revised Code's provisions were obviously intended to supersede certain decisions by the Ohio Supreme Court:**

The Ohio General Assembly's revision of Section 2967.28 in response to *Jordan* and *Hernandez* suggests the legislature intended that the Adult Parole Authority impose post-release control despite any failure to include this sanction in the sentencing judgment. In July and August 2006, the statute's [sic] plain language changed when the Ohio General Assembly added "savings clauses" to the law's operative provisions. The new language provides that "the failure of a court to include a post-release control requirement in the sentence pursuant to [the relevant division] does not negate, limit, or otherwise affect the mandatory period of post-release control that is required under division (B) of section 2967.28 of the Ohio Revised Code." See OHIO REV. CODE ANN. § 2929.14(F). See also OHIO REV. CODE ANN. § 2929.19(B)(3)(c),(e); 2967.28(B). On their face, the Ohio General Assembly's 2006 amendments apparently intend to reverse the *Hernandez* decision.

*Hernandez v. Wilson* (N.D. Ohio Nov. 27, 2006), Case No. 1:06cv-158, 2006 U.S. Dist. LEXIS 85506.

The Revised Code's plain language, consistent with the statutory intent, compels the conclusion that even if an error existed in the judgment entry or post-release control notice given to defendant, such an error does not affect the attachment of mandatory post-release control. In other words, mandatory post-release

control still attaches as a matter of law. See e.g., *Parker v. Ohio Adult Parole Auth.*, 8th Dist. No. 89693, 2007-Ohio-3262 at ¶¶4-5 (noting that the intent of H.B. 137 was to supersede *Hernandez* and to confirm that mandatory post-release control sanction existed "by operation of law and without any need for prior notification or warning").

**Sixth Proposition of Law: The Sixth District Court of Appeals' recent decision in *State v. Rossbach* is controlling.**

The State also notes that the Sixth District Court of Appeals' recent decision in *Rossbach* controls the result in this case. Like Mr. McGlowan, the defendant in *Rossbach* was charged with multiple counts of offenses stemming from incidents which occurred after July 11, 2006. *State v. Rossbach*, Sixth Dist. App. No. L09-1300, 2011-Ohio-281 at ¶¶1-2. As in *Rossbach*, the version of R.C. 2967.28 in effect at the time of McGlowan's sentencing required a mandatory period of postrelease control. R.C. 2967.28 (B)(3) & (C)(LexisNexis 2007). Therefore, based on *Rossbach*, McGlowan's sentence properly includes a term of postrelease control and his sentence is not void. For this, as well as all of the above reasons, Defendant Motion must be denied.

**Seventh Proposition of Law: Defendant is not entitled to be re-sentenced.**

Defendant's motion urges this Court to re-sentence him so as to properly impose terms of post-release control provisions as a part of his original sentence. Defendant argues that *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332 requires that he be re-sentenced. In *Fischer*, the Ohio Supreme Court

modified the rule in *State v. Bezak*, 114 Ohio St.3d 94, 2007- Ohio -3250, 868 N.E.2d 961, and held that a complete, de novo resentencing is not required for postrelease control sentencing errors. *Fischer* at 6-29. Under *Fischer*, "the new sentencing hearing to which an offender is entitled under *Bezak* is limited to proper imposition of postrelease control." *Fischer* at 29.

However, under the Ohio Supreme Court's decision in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, the defendant is not entitled to be re-sentenced. "[T]he de novo sentencing procedure detailed in the decisions of the Ohio Supreme Court is the appropriate method to correct a criminal sentence imposed prior to July 11, 2006, that lacks proper notification and imposition of postrelease control. However, because R.C. 2929.191 applies prospectively to sentences entered on or after July 11, 2006, that lack proper imposition of postrelease control, a trial court may correct such sentences in accordance with the procedures set forth in that statute." *Id.* at §35 (emphasis added).

In McGlowan's case, defendant was sentenced after July 11, 2006. Therefore, a de novo sentence hearing is not required. Rather, the Court may utilize the procedures outlined in R.C. 2929.191 to impose post-release control obligations .

### III. Future Sentence:

**Eighth Proposition of Law: Defendant's Ohio sentence was properly imposed consecutively to his federal sentence.**

Finally, defendant argues that the trial court erred when it imposed its sentence to be run consecutively to any federal sentence that might be imposed on defendant.

In support of his assertion that the trial court exceeded its authority, defendant cites *State v. White* (1985), 18 Ohio St.3d 340, 342-343, 481 N/E.2d 596. However, *White* is clearly distinguishable from McGlowan's case because in *White*, the defendant was not under federal indictment. In *White*, the trial court of Delaware county imposed its sentence consecutively to any sentence that might be imposed on defendant in Clermont county. In *White*, both of the defendant's cases involved Ohio trial courts. McGlowan, however, was standing trial in both Ohio and federal court. R.C. 2929.41(B)(2) clearly allows a trial court to impose a sentence consecutively to "any sentence imposed upon the offender by . . . the United States."

This case deals with charges contained in separate indictments-one issued by the State of Ohio and one by a federal court. As a result, the "dual sovereignty" doctrine governs. *State v. McKinney* (1992), 80 Ohio App.3d 470, 474, 609 N.E.2d 613 ("The dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. When a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences [sic].'" (citation omitted).

Further, "the Supreme Court of the United States has determined that the constitutional prohibition against double jeopardy does not apply to trials by separate sovereigns; therefore, a person may be sentenced *for the same conduct* by both a state and a federal government." *State v. Dye* (May 14, 1993), 3rd Dist. No. 3-92-47, 1993 Ohio App. LEXIS 2520, at \*25-26, citing *United States v. Lanza* (1922), 260 U.S. 377, 382, 43 S. Ct. 141, 67 L. Ed. 314. Moreover, "[t]he legislature of this state has

deemed it appropriate for a trial court to have the discretion to impose a sentence consecutive to a sentence imposed by another state or the federal government." *Dye*, supra at \*25.

Based on the above, as well as R.C. 2929.41(B)(2), defendant was properly sentenced to consecutive terms of incarceration.

**Conclusion:** Defendant's Motion must be denied for all of the foregoing reasons.

Respectfully submitted,

**JULIA R. BATES, PROSECUTING ATTORNEY  
LUCAS COUNTY, OHIO**

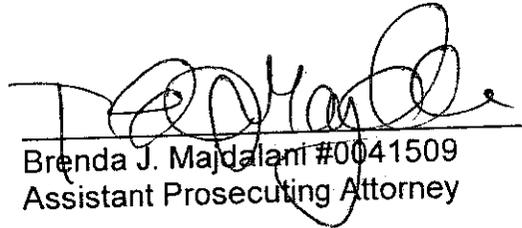
By: \_\_\_\_\_



Brenda J. Majdalani, #0041509  
Assistant Prosecuting Attorney

**CERTIFICATION**

This is to certify that a copy of the foregoing was sent via ordinary U.S. mail this  
23<sup>rd</sup> day of August, 2011, to Christopher A. McGlowan, #A639-847, C.C.I., P.O.  
Box 5500, Chillicothe, Ohio 45601.

  
Brenda J. Majdalani #0041509  
Assistant Prosecuting Attorney

SCANNED

Exhibit F

FILED  
LUCAS COUNTY

2012 JAN 24 A 11:57

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO**

State of Ohio,

Case No. CR07-1661

Plaintiff,

Judge James D. Bates

vs.

Christopher McGlown,

**OPINION AND JUDGMENT ENTRY**

Defendant.

\* \* \* \* \*

This matter is before the court on the Motion to Vacate Judgment, Motion To Correct An Illegal Sentence and Motion for Leave to File a Delayed Motion For a New Trial, all filed by defendant, Christopher McGlown. This court, having considered the arguments and the applicable law, finds all three motions not well-taken.

**E-JOURNALIZED**

JAN 25 2012

SCANNED

### STATEMENT OF FACTS

On or about March 29, 2007, defendant was charged by way of indictment with forgery, in violation of R.C. 2913.31(A)(3) and (C)(1)(a), a felony of the fifth degree, and with tampering with records, in violation of R.C. 2913.42(A)(1) and (B)(4), a felony of the third degree. A trial was held on the matter, and on October 26, 2007, a jury found defendant guilty of both counts. On that same date, defendant was ordered to serve ten months in the Ohio Department of Rehabilitation and Corrections as to the forgery conviction, and four years as to the tampering with records conviction. These sentences were to be served consecutively to each other, and consecutive to a federal sentence that had not yet been imposed. This sentence was appealed to the Sixth District Court of Appeals, and was affirmed on April 24, 2009.

On October 19, 2010, defendant filed a motion for a new trial, arguing that he was not informed that Thomas Secor, the federal prosecutor prosecuting a case against defendant, was this judge's brother-in-law. The court denied this motion on October 26, 2010.

Defendant filed a motion for reconsideration of this decision, arguing that there was no proper waiver of the judge's relationship with Mr. Secor. In this motion, defendant also states that he was led to believe that he would first serve his state sentence, but, in fact, he served his federal sentence first. This motion was denied.

On May 3, 2011, defendant filed a second motion requesting that the court reconsider his motion for a new trial and additionally argued that the judge should have recused himself from the case based upon the fact that his wife is the Lucas County Prosecutor. He also inferred that it was improper to sentence him consecutively to a sentence that had not yet been imposed, citing to *State v. Biegaj*, 6th Dist. No. L-07-1070, 2007-Ohio-5992. This motion was also denied.

SCANNED

On July 25, 2011, defendant filed a Motion To Vacate Judgment. Then, on August 18, 2011, defendant filed a motion requesting a new trial on the basis of newly discovered evidence and a motion seeking to correct an "illegal sentence." These motions are all decisional.

I. Motion to Vacate and Motion for Leave to File a Delayed Motion For a New Trial

In both his motion to vacate and his motion for leave to file a delayed motion for a new trial, defendant contends that this judge should have disqualified himself from this case based upon the judge's relationship with the county prosecutor and the federal prosecutor, and that the remittal of disqualification procedure is ineffective. The court notes that these arguments have been raised numerous times, and considered by this court. *See, e.g.*, Orders dated July 8, 2011 and October 26, 2010. Accordingly, this court finds these motions not well-taken. *See State v. Sanders*, 11th Dist. No. 99-P-0067 (11th Dist.2000) (Arguments raised in previous motions were barred by the doctrine of res judicata.).<sup>1</sup>

II. Motion to Correct an Illegal Sentence

In this motion, defendant raises numerous issues, including (1) that he is entitled to be resentenced as his convictions of forgery and tampering with records are allied offenses of similar import and the court did not make any determination regarding this issue, (2) that he was not properly notified of post-release control, and (3) that the court acted contrary to law by ordering that his sentence be served consecutively to any sentence imposed by the federal court.

The court notes that this motion was filed more than three and a half years after defendant was sentenced, and over two years from the date the court of appeals affirmed the trial court's

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<sup>1</sup> In addition, the court notes that the Ohio Supreme Court has exclusive jurisdiction over claims that a judge is biased and therefore that a judgment should be vacated on that basis. *See State v. Peoples*, 5th Dist. No. 09 CA 102, 2010-Ohio-2940, ¶ 22.

sentence. With respect to defendant's arguments regarding allied offenses and ordering that the sentence be served consecutively to a future sentence, the court finds that these arguments are barred by the doctrine of res judicata as they could have been raised in the initial appeal. See *State v. Perry*, 10 Ohio St. 2d 175, 180, 226 N.E.2d 104 (1967); *State v. Hintz*, 6th Dist. No. S-10-051, 2011-Ohio-5944, ¶ 12. Although defendant has argued that his sentence is void as he was not properly advised regarding post-release control, the Ohio Supreme Court has held that, even if a sentence is void based on failure to include the statutorily mandated term of post-release control, res judicata still applies to "other aspects of the merits of the conviction, including \*\*\* the lawful elements of the ensuing sentence." *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 40. Additionally, the fact that there was a change in the law regarding allied offenses does not alter the application of res judicata. *State v. Lintz*, 11th Dist. No. 2010-L-067, 2011-Ohio-6511.

Although the doctrine of res judicata bars most of defendant's arguments, it does not bar his claim that he was improperly advised regarding post-release control. *Fischer*, at ¶ 40.

At the time of defendant's sentencing, R.C. 2967.28(C) read as follows.

"Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (B)(1) or (3) of this section shall include a requirement that the offender be subject to a period of post-release control of up to three years after the offender's release from imprisonment, if the parole board, in accordance with division (D) of this section, determines that a period of post-release control is necessary for that offender. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to the effective date of this amendment, a court imposed a sentence including a prison term of a type described in this division and failed to notify the offender pursuant to division (B)(3)(d) of section 2929.19 of the Revised Code regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence pursuant to division (F)(2) of section 2929.14 of the Revised Code a statement regarding post-release control."

R.C. 2929.19(B)(3)(d) and (e)<sup>2</sup> require the following.

"(d) Notify the offender that the offender may be supervised under section 2967.28 of the Revised Code after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to division (B)(3)(c) of this section. \*\*\* Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in division (B)(3)(d) of this section and failed to notify the offender pursuant to division (B)(3)(d) of this section regarding post-release control or to include in the judgment of conviction entered on the journal or in the sentence a statement regarding post-release control.

"(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision \*\*\* the parole board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offender's release of the board's authority to so impose a prison term. Section 2929.191 [2929.19.1] of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term and failed to notify the offender pursuant to division (B)(3)(e) of this section regarding the possibility of the parole board imposing a prison term for a violation of supervision or a condition of post-release control."

Defendant contends that this notification was improper in the following ways. Defendant first claims that the court did not notify defendant that he would be subject to post-release control after release from prison, as opposed to "any time." Defendant also contends that "[t]he trial court further failed to notify Defendant he could be sentenced to up to one-half of his original sentence for

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<sup>2</sup> The statutes cited in this opinion are the statutes in effect at the time of defendant's sentencing.

any violation of his post-release control" and that the court failed to notify him of the discretionary nature of the term of post-release control, and the length of that discretionary term.

With respect to the notification given at the sentencing hearing, this court finds that the notification meets the requirements set forth in R.C. 2929.19(B)(3) and R.C. 2967.28(C). Defendant was informed that he may be subject to up to three years of post-release control. This statement includes notification of both the discretionary nature of the post-release control, and the possible length of the term. Despite the court's use of the term "if at any time," it is clear that post-release control would occur after defendant was released from prison. Defendant was also notified at sentencing that "the parole authority can increase your sentence up to the maximum of 50 percent of the stated sentence."

With respect to the sentencing entry, the sentencing entry stated "Defendant given \*\*\* post release control notice under R.C. 2929.19(B)(3) and R.C. 2967.28." The Sixth District Court of Appeals has found this identical language to be sufficient for purposes of R.C. 2929.19(B)(3). *E.g., State v. Rossbach*, 6th Dist. No. L-09-1300, 2011-Ohio-281. Following *Rossbach*, the court finds that the sentencing entry sufficiently notified defendant regarding his post-release control. Accordingly, defendant's motion to correct sentence is found not well-taken.

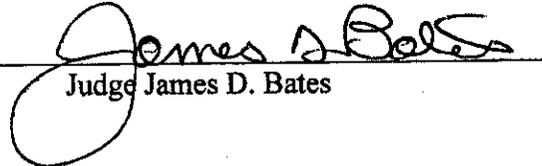
**JUDGMENT ENTRY**

It is **ORDERED, ADJUDGED, AND DECREED** that defendant's Motion to Vacate Judgment is hereby **DENIED**.

It is further **ORDERED, ADJUDGED, AND DECREED** that defendant's Motion To Correct An Illegal Sentence is hereby **DENIED**.

It is further **ORDERED, ADJUDGED, AND DECREED** that defendant's Motion for Leave to File a Delayed Motion For a New Trial is hereby **DENIED**.

January 23, 2012

  
\_\_\_\_\_  
Judge James D. Bates

SCANNED

SCANNED

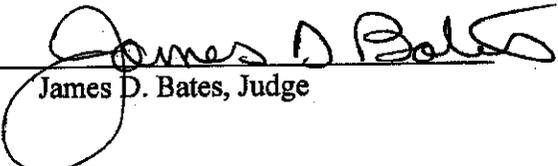
Case No. G-4801-CR-0200701661  
*State of Ohio v Christopher Alexander McGlown*

**PRAECIPE**

TO THE CLERK:

Within three days of journalization, please serve upon all parties notice of the judgment in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket (see below).

January 23, 2012

  
James D. Bates, Judge

CHRISTOPHER ALEXANDER MCGLOWN  
A639-847  
A.C.I.  
P.O. Box 4501  
Lima, Ohio 45802

BRENDA J. MAJDALANI  
Assistant Prosecuting Attorney  
Lucas County Common Pleas Court

Motion To  
Suppress  
Hearing  
16-25-2007  
Pgs. 12-20

1 request to represent yourself. You're obviously  
2 not in a position to represent you. Mr. Dech is  
3 very qualified.

4 DEFENDANT: Do you have a mental  
5 evaluation? I'm not about - I'm representing  
6 myself.

7 THE COURT: That's pretty simple. I want  
8 to see the counsel and the defendant in chambers.

9 - - -

10 THE COURT: Let the record reflect that  
11 we're in chambers outside of the presence of any  
12 potential jurors. Mr. McGlown, you're obviously  
13 very familiar with the court system, maybe as  
14 familiar as I am from being here for 35 years.  
15 The only reason I wanted to come into chambers,  
16 we have to have a little understanding before we  
17 start the trial.

18 Your attorney negotiated a deal for you  
19 that I probably should not have agreed to, and  
20 that deal was you would get one year consecutive  
21 to whatever federal time you're going to get.

22 That deal is no longer on the table. Did Mr.  
23 Dech advise you of that proposed resolution of

1 the case?

2 DEFENDANT: Yes, he did.

3 THE COURT: And it was your decision to  
4 decline that?

5 DEFENDANT: I told you I decline it  
6 because he effectively deny me receiving halfway  
7 house with the Federal Government because you  
8 cannot receive halfway house with consecutive  
9 sentence.

10 THE COURT: All I want on the record is  
11 he advised you of that and you declined.

12 DEFENDANT: Yes.

13 THE COURT: This particular offense we're  
14 dealing with - I read your letter to me. I don't  
15 know if that's going to be used. You admitted  
16 every element of the crime in that letter. I  
17 don't want you to say anything at this point. I  
18 don't know what is on this tape to the police  
19 department. I've never heard it. I don't know  
20 what they say. If you're convicted, with your  
21 prior record you're easily subjecting yourself to  
22 the maximum sentence or close to the maximum  
23 sentence.

1           The other difference in the deal that Mr.  
2           Dech negotiated for you, the time was going to be  
3           spent after your federal time. If we proceed to  
4           trial today, if you're convicted of anything, if  
5           I impose a sentence before your federal judge  
6           does, you will be doing your time, my time,  
7           whatever that might be, in state court because  
8           whoever imposes the first sentence gets you in  
9           first even though you're in federal custody. You  
10          will be doing your 3 or 4 or 5 years in state  
11          custody before you even start whatever you're  
12          subjected to in federal custody.

13                 I want you to know that before we start  
14                 the case, that's very significant. Most  
15                 prisoners that I ever dealt with that are  
16                 potentially in federal custody wanted to remain  
17                 in federal custody. Your attorney negotiated a  
18                 deal for you where you would remain in federal  
19                 custody for that 36 or 48 month, 25 months - I  
20                 don't even know what it is. My brother-in-law is  
21                 your prosecutor, Mr. Secor. I don't know  
22                 anything about the federal case. I now know the  
23                 parameters of the potential sentence, and if you

1 are convicted here in state court and I give you  
2 3, 4, 5 years, you're going to be doing that time  
3 in state court before you serve any time on the  
4 federal case. So that's something additional you  
5 need to consider.

6 I'm not going to allow you to represent  
7 yourself. Mr. Dech is very well qualified  
8 attorney. He's spent much more time on this case  
9 than he should have spent. I've spent more time  
10 talking to him and the prosecutor about this case  
11 than I should have spent. It's easier to try the  
12 case, put the evidence on, make a decision. I  
13 don't know if you're guilty of this crime. I  
14 don't know if you're not guilty of this crime.  
15 We're going to try the case. We're going to do  
16 it in a very professional manner. We're going to  
17 have jurors come up here and make a decision, and  
18 whatever happens happens.

19 I just want you to know what your  
20 attorney negotiated for you that you're turning  
21 down. You're the one that has to do the time.  
22 If that's what your decision is, let's just go  
23 out, have the motions, do the trial and see what

1 happens.

2 DEFENDANT: When you were saying about  
3 the sentence and me doing federal time first,  
4 this attorney told me something totally  
5 different. You told me right here in front of me  
6 if we go to trial and I get convicted I'll  
7 probably, 2, 3, 4 whatever the sentences carry  
8 and I will serve that time first because you  
9 sentence me first.

10 THE COURT: That's correct.

11 DEFENDANT: I asked him yesterday that on  
12 the bargain that you offered, he said I will be  
13 sentenced before my federal sentence, that I know  
14 if I get sentenced I have to serve state time. I  
15 would have to serve my state time first if I get  
16 convicted by the state first.

17 THE COURT: The agreement was that I was  
18 going to stay the imposition of the sentence.

19 DEFENDANT: That's what I was wondering.

20 THE COURT: Whichever federal judge you  
21 have sentence you, and that sentence would be  
22 subsequent to your federal sentence. That was  
23 the original agreement with Mr. Dech that you

1 have turned down.

2 DEFENDANT: Yesterday when you came over  
3 there and I asked you about that sentence on a  
4 piece of paper I saw, I clearly saw defendant  
5 will be sentenced after federal sentencing. You  
6 told me yesterday it wasn't going to happen.

7 MR. DECH: Yesterday I said to you that  
8 the sentencing if, in fact, this was on Monday,  
9 remember, I tried to hand you a letter and you  
10 refused to sign the letter, in fact. Do you  
11 recall that?

12 DEFENDANT: I recall I wouldn't sign, but  
13 I read it.

14 MR. DECH: As part of your sentence  
15 judgment entry, any sentence, if we were to enter  
16 that plea agreement entered into in the Lucas  
17 County Common Pleas Court it would be stayed  
18 until the completion of your federal sentence.  
19 You brought up the fact that you would be facing  
20 denial of a halfway house. I explained to you  
21 that traditionally in the halfway house it's ten  
22 percent of your sentence or six months. What we  
23 would have done if this Court were to have



1 be sentenced first by the state and then --  
2 however, if we entered into that plea agreement,  
3 the State of Ohio sentencing entry would state  
4 that sentence would be stayed, it would be served  
5 after the completion of your federal sentence. I  
6 did state that to you. I know I did a couple  
7 times.

8 THE COURT: That was part of the plea  
9 arrangement that had -- which has been turned  
10 down.

11 DEFENDANT: Uh-huh. It was turned because  
12 the reason why I was under impression I would be  
13 sentenced by your court first before the federal  
14 court. Now, if I wasn't under that impression I  
15 would have signed a plea. At this time we can,  
16 if I have your word for it that I will be  
17 sentenced after my federal sentence I'll go away  
18 with a plea.

19 THE COURT: The problem is the plea isn't  
20 available at this point. The only thing I wanted  
21 to put on the record is that you turned that down  
22 prior to today's date. I would impose a two year  
23 sentence at this point if he desires to enter a

1 plea but I'm not going to reinstitute the plea  
2 that was -- and we have 30 jurors sitting  
3 downstairs. Let's go back in the --

4 MR. DECH: May I have one moment?

5

6 THE COURT: Thank you. You can be  
7 seated. As previously indicated, the defendant  
8 has filed a motion to suppress the statement  
9 allegedly given on March 17th to the Westerville  
10 Police Department. Mr. Santoro, would you like  
11 to make any opening statement before we proceed  
12 with this motion?

13 MR. SANTORO: Just, we're going to put  
14 the detective on who read him his rights. It was  
15 a knowing, intelligent, voluntary waiver,  
16 throughout the testimony, the video, that he  
17 never said he wanted to stop the entire interview  
18 or request an attorney at any time, and we  
19 believe that you'll find it was a knowing and  
20 voluntary intelligent waiver.

21 THE COURT: Thank you. Mr. Dech, would  
22 you like to make any statement, type of opening  
23 statement?

Sentencing  
10-26-2007  
Pgs. 221-227

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to you. If at this time you'll just retire to the jury room and I'll release you from the jury room in just a few moments.

- - -

THE COURT: The jury, having returned a verdict of guilty as relates to count one of the indictment charging the defendant with forgery, a felony of the fifth degree as well as having returned a verdict of guilty as relates to tampering with records, a felony of the third degree, the matter is presently before the Court for the purpose of sentencing.

Mr. Dech, would you like to make a statement before sentence is imposed?

MR. DECH: Could I respectfully request a brief continuance? I'd like to prepare a sentencing memorandum.

THE COURT: I don't need a sentencing memorandum. I have the defendant's record in front of me. Federal Court they love a sentencing memorandum.

MR. DECH: May I have a few moments to confer with my client?

1 THE COURT: Sure.

2 MR. DECH: Your Honor, I would note the  
3 defendant is before the Court, he does have 12  
4 children. He is presently serving anywhere from  
5 27 to 46 month in Federal Court.

6 He's presently being held on the federal  
7 holder, would be going do the Mylan Federal  
8 Detention Center.

9 Your Honor, I would ask that the forgery  
10 charge and also the tampering with records charge  
11 merge for sentencing purposes in that it's one  
12 instance and one of the same. Actually, the  
13 tampering with records one of the elements is  
14 forgery, so I would ask they merge for sentencing  
15 purposes.

16 I would note my client has been in  
17 custody throughout the pendency of this matter.  
18 I would respectfully ask for credit as it relates  
19 to his in-custody status. He had a bond on this  
20 matter. That bond was never posted.

21 THE COURT: He's been in federal custody  
22 the entire time? He'll get no credit for that  
23 case.

1 MR. DECH: Thank you. I would note those  
2 matters for mitigation.

3 THE COURT: Yes. Mr. Santoro, do you wish  
4 to make any statement?

5 MR. SANTORO: Yes, Your Honor the two  
6 counts I would argue -- the State would argue  
7 they are they should not merge. We argue the  
8 forgery part was the form 2026 which altered the  
9 government record, but we also would argue the  
10 tampering records the 2002 form and that the  
11 photo that was created were separate records, and  
12 a separate incident so we would argue that he  
13 should receive a one year sentence on the forgery  
14 and four year sentence on the tampering with  
15 records and they should run consecutive to each  
16 other.

17 THE COURT: Thank you. Mr. McGlown, would  
18 you like to make any statement before sentence is  
19 imposed?

20 A. No.

21 THE COURT: It will be the order of the  
22 Court, the defendant having been convicted of the  
23 offense of forgery in count one of the indictment

1 in violation of Ohio Revised Code Section  
2 2913.31(a)(3) and (c)(1)(a), felony of the 5th  
3 degree, as well as the defendant having been  
4 convicted of the offense of tampering with  
5 records in violation of Ohio Revised Code Section  
6 2913.42 (a)(1) and (b)(4), a felony of the third  
7 degree, the Court having considered the criteria  
8 set forth, having conducted a hearing pursuant to  
9 2929.19 having afforded the defendant and counsel  
10 rights to make statements pursuant to criminal  
11 Criminal Rule 32, as well as having considered  
12 the principles and purposes of sentencing set  
13 forth in 2929.11, it will be the order of the  
14 Court as relates to count one of the indictment  
15 the defendant will be sentenced to Ohio  
16 Department of Rehabilitation and Correction for a  
17 period of ten months until released according to  
18 law and is ordered to pay the cost of  
19 prosecution.

20 It's further the order of the court  
21 relates to count two of the indictment the  
22 tampering with evidence, the defendant is  
23 sentenced to the Ohio Department of

1           Rehabilitation and Correction for a period of  
2           four years until released according to law.  
3           Those sentences to be run consecutive.

4                     The defendant has been in custody in  
5           federal custody, and will not be given credit  
6           for any time served as relates to this case.  
7           Mr. McGlown, I need to further advise you as  
8           relates to the felony of the third degree, you  
9           also may be subject up to three years of  
10          post-release control.

11                    Post-release control is something that we  
12          use to refer to as parole. If at any time you  
13          are granted post-release control and if you  
14          violate the terms and conditions of that  
15          post-release control, the balance of that three  
16          year sentence could be imposed. As relates to  
17          the felony of the 5th degree, you also maybe  
18          subject up to three years of post-release  
19          control.

20                    If you violate the terms and conditions  
21          of that post-release the parole authority can  
22          increase your sentence up to the maximum of 50  
23          percent of the stated sentence.

1           And if you commit a new felony, a Judge  
2 could impose a balance of an additional year.

3           I have taken into account a very  
4 extensive record. I contemplated in this case  
5 imposing the maximum sentence of five years as  
6 relates to the tampering with records. The  
7 reason I contemplated that, I think this is the  
8 worse form of this type of offense that could be  
9 committed in this particular area of the law,  
10 I've been dealing with criminals for 35 years,  
11 Mr. McGlown. You are as bad an individual I have  
12 had to deal with. I'm sorry you ended up getting  
13 stuck with me in this courtroom, and I'm sure you  
14 feel the same way.

15           There's a number of issues that may be  
16 raised on appeal. You have 30 days. If you  
17 advise me you want to appeal, I assume you do  
18 want an appeal, I will appoint an attorney. If  
19 you cannot afford an attorney for the purpose of  
20 that appeal, and if the Court of Appeals reverses  
21 this, we'll be back here in another year doing  
22 the same thing again, and you'll get the same  
23 sentence at the end of that second trial. I hope

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it doesn't result in that.

You will be remanded to the custody of the Lucas County Sheriff and transported to the Correction Reception Center at Orient, Ohio.

Your sentence will be run prior and consecutive with any sentence imposed in federal court.

Court will be in recess.

- - -

WHEREUPON, COURT ADJOURNED AT 11:35 AM.

- - -

DAY TWO  
SENTENCING  
AFTER TRIAL  
10-26-2007

# Exhibit H

What's up Pops

1-31-12

Me I'm tryna keep ma head up in here but its hard with no support from no one on the outs no lawyer or nonthing I got a PD thats gona get me sinked. Ah fucked up so bad I really dont kno how to handle this like I'm really loosing it mama aint tryna help me ma bitch talking she pregnant wit ma baby and I'm in here stressing they got me on suicide watch, in medical cus of my heart, I feel like jas giving up like fuck it. Bt they got me with F-2 Robbery I gave a statement, [REDACTED] to it didn't tell on nobody who was with me [REDACTED] but long story short [REDACTED]

I wasn't in my right state of mind off so much drugs kecks, X pills, weed, lean, liquid pain killer, henny, Ah was fucked 2 dad. If ah wasn't off dat shit Ah wouldn't done hat shit. Im tryna get CTF time so ah can get help got mental problems and whole I didnt have no crowbar a nigga [REDACTED] did, hit him wif it, I bought more rags with the money. I need Advice, help, a father rite now to lead me in the rite way. I really need a lawyer as they just hit me with another Agg Robbery on he side and this a F-1 for another pizza Robbery, that area that I didnt do but [REDACTED] is like 3 of them they mite try to hit me wif So please help any help frm the outs you can

Wats good Pops,

7-3-12

Yup back up in the county on a F-1 Aw. Burglary. Ah know  
wat you bout to say that im tripping and need to slow down but sht  
you know its hard out here nobody really helping me really aint got a  
place to lay ma head on sum self shit. Nobody doin sht for me only  
lil money ah get is food stamps ~~ah~~ and dats only \$100 after ah sell  
them so you tell me wat ah should be doin. I'm out here ~~██████████~~  
so ah can maintain. And this sht aint cool man ah need yo help wit  
~~██████████~~ man like real live last move type sht. My case aint sht  
no victim been cumin to court im in common pleas Judge Stacy Cooks  
errian in on the same sht he been here longer than me July 17 we go  
back this will be his 3rd and ma second so most likley charges will  
be dropped if the victim dont show rite? But I need yo help bad or  
ih kno for a fact ima be doin time for real, ~~██████████~~  
~~██████████~~ Ah really want to leave the city it ~~ah~~ aint coo  
n toledo niggas getting shot and killed left and rite. Ah feel ma time  
s coming Dats y im lile way coo in here Ah feel god put me here for a  
reason you feel me If any thing you could do for me is write back with  
some help. But ma lawyer is rebecca west-Estell she paid but Ah got  
ere to rep. me as a PD Aunt Irish just ~~did~~ Died 7-2-12 im in here  
tressing off dat you know. But tell marvin to write and to give me  
his number so when ah get out we can keep in touch

KM

No.

CR 12-1905

Lucas County Common  
Pleas Court

FILED  
LUCAS COUNTY

2012 JUN -7 P 12:04

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

THE STATE OF OHIO

vs.

Terion White

and

Kalvin McGlown

INDICTMENT FOR

AGGRAVATED BURGLARY - §2911.11(A)(1)

5

FILED  
LUCAS COUNTY  
JUN 8 2012  
CLERK OF COURTS

FOREPERSON OF THE GRAND JURY

*[Handwritten signature]*

ISSUE WARRANT

PROSECUTING ATTORNEY

*[Handwritten signature]*  
2419

Julia R. Bates

PROSECUTING ATTORNEY

THE STATE OF OHIO, LUCAS COUNTY, ss.

I, J. BERNIE QUILTER, Clerk of the Court of Common Pleas in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the instruments thereon, now on file in my office.

WITNESS my hand and seal of said court at

Toledo, Ohio, this 7 day of June, 2012.

J. BERNIE QUILTER, Clerk.

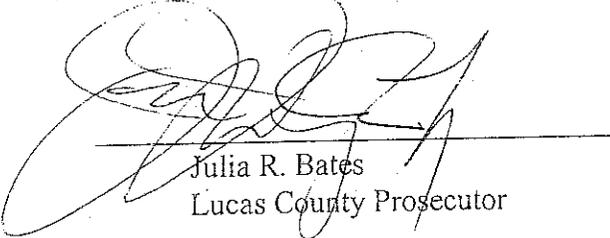
*[Handwritten signature]*

# INDICTMENT

THE STATE OF OHIO,  
Lucas County, } ss.

*Of the May, Term of 2012, A.D.*

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for Lucas County, Ohio, on their oaths, in the name and by the authority of the State of Ohio, do find and present that **TERION WHIE and KALVIN MCGLOWN**, on or about the 30th day of May, 2012, in Lucas County, Ohio, knowingly by force, stealth, or deception, did trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender was present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, and the offender knowingly inflicted, or attempted or threatened to inflict physical harm on another, in violation of **§2911.11(A)(1) OF THE OHIO REVISED CODE, AGGRAVATED BURGLARY, BEING A FELONY OF THE FIRST DEGREE**, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

  
\_\_\_\_\_  
Julia R. Bates  
Lucas County Prosecutor

## NOTICE TO DEFENDANT

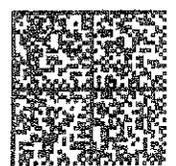
§2929.14(A)(3)(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04 or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11 or

NAVIN MCGLOWN  
1622 Spillbusch  
Toledo OH, 43604

Kavin MCGLOWN 0781219  
1622 Spillbusch  
Toledo OH 43604

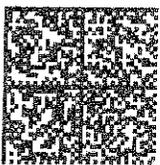
Christopher MCGLOWN # A639847  
Allen CI P.O. Box 4501  
Lima, OH 45802 SDB

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Christopher MCGLOWN 639847  
A.C.I. SDB

P.O. Box 4501  
Lima, Ohio 45802

L-PBPMP 45802



January 27, 2012 The Blade

January 26, 2012 The Blade

back room used for storage, authorities said. The rest of the structure had smoke damage.

### Man held in robbery of pizza delivery driver

A 21-year-old Toledo man wanted for the robbery of a pizza delivery driver was arraigned Thursday morning in Toledo Municipal Court.

Kalvin McGlown of 614 Winthrop St. is held in the Lucas



McGlown

County jail in lieu of \$50,000 bond. A preliminary hearing was scheduled for next Thursday. He was arrested Wednesday.

Mr. McGlown is accused of robbing Eric Gould,

24, a Vito's delivery driver. Mr. Gould was delivering pizza to 444 Kenilworth Ave. about 5 p.m. Monday when he was robbed, according to a Toledo police report.

Mr. McGlown has not been named as a suspect in two other pizza delivery robberies on Kenilworth in the last two weeks.

### Bid unsuccessful to oust Vanlue school leader

VANLUE, Ohio — A bid to oust Vanlue Schools Superintendent Rod Russell was unsuccessful.

At a special meeting Wednesday, the school board voted 4-1 against a resolution to not renew his contract. Board Vice President Terri Blair voted to terminate Mr. Russell, who has been superintendent of the tiny Hancock County school district since 2007.

At a November meeting, residents criticized him, saying he was negative about the district. They had a petition signed by more than 160 residents asking that his contract not be renewed.

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shaken in his home.

Pheils, 19, of Perrysburg Township was sentenced to three years in prison, defense attorney Chris Zografides said. An appeal is planned. *MY SON!*

### Arrest warrant issued in pizza-delivery robberies

Toledo police Wednesday issued an arrest warrant for a man wanted in at least one of three robberies of pizza-delivery drivers in Toledo's central city.

Kalvin McGlown, 21, of 614



McGlown

Winthrop St. is charged in the robbery of Eric Gould, 24, a Vito's delivery driver. Mr. Gould was delivering pizza to 444 Kenilworth about 5 p.m.

Monday when he was robbed, the report says. A Cottage Inn delivery driver was robbed at the same Kenilworth address Jan. 13.

On Jan. 19, a Marco's driver was robbed at 344 Kenilworth.

### Grand Rapids man hurt in collision on U.S. 6

GRAND RAPIDS, Ohio — A Grand Rapids man was hurt when a semi pulled in front of him Wednesday evening while he was westbound on U.S. 6 at the Wood-Henry county line, the Ohio Highway Patrol said.

Donivan Mullins, 45, was driving a pickup when the southbound semi driven by Ricardo Medina, 36, of El Paso, tried to turn left onto U.S. 6 after stopping at a stop sign, troopers said.

Mr. Mullins was taken to Toledo Hospital, where his condition was not available.

Mr. Medina was cited for failure to yield the right-of-way.

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BLADE STAFF WRITER

From a wooded area at Putnam National Park, to abandoned parked cars near an I-75 interchange, John Whitlow knows where the most homeless people can be found.

Mr. Whitlow, an outreach worker with Neighborhood Properties, hit the streets Wednesday to count the unsheltered as part of an annual count of the area's homeless population.

The 24-hour count was conducted by the Toledo Lucas County Homelessness Board, the Toledo Area Alliance to End Homelessness and hundreds of volunteers.

The U.S. Department of Housing and Urban Development makes an annual count of all homeless individuals to give a snapshot of the local situation every year. In recent years, the total number of homeless individuals counted in Toledo has ranged from about 900 to 1,000 people, said Donna Perras, executive director of Harbor House, a transitional house for homeless women.

Mr. Whitlow's day began about 5 a.m., so he and co-worker Lori Berry could find as many homeless as possible, administer a survey, distribute information about services, as well as assistance.

PUTNAM

## Defendant in alleged threatening message

By MARK REITER  
BLADE STAFF WRITER

OTTAWA, Ohio — Kenneth Richey returned Wednesday to the Putnam County courtroom where he was convicted and sentenced to death nearly 25 years ago.

This time, Richey, 47, appeared in Common Pleas Court for arraignment on felony charges of retaliation and violating a civil protection order.

He is accused of leaving a threatening message on a courthouse phone on New Year's Eve to Judge Randall Basinger, who was an assistant prosecutor in 1987 when Richey