

IN THE OHIO SUPREME COURT COURT

**STATE ex rel. RICHARD FERNBACH,
I.D.#508-012 Lebanon Correctional
Institution (Honor Camp)
P.O. Box 56
Lebanon, Ohio 45035,**

S. Ct. Case No. **12-1583**

Relator,

(COMPLAINT)

v.

**TWELFTH APPELLATE DISTRICT
COURT OF APPEALS FOR WARREN
COUNTY, OHIO, et al. c/o Judges
1001 Reinartz Blvd.
Middletown, Ohio 45042**

(OTHER CIVIL)

Respondent.

MANDAMUS/PROCEDENDO

Relator pleads as follows:

JURISDICTION

1. This Court has original jurisdiction over the instant action and the counts contained within this action pursuant to O.R.C.§2731.02 and Ohio Constitution Article IV § 2.

STATEMENT OF FACTS

2. Relator, Richard Fernbach is a resident of the State of Ohio and a United States Citizen.
3. The Judge's/Justices' of the Twelfth Appellate District Court of Appeals for Warren County, Ohio are public officials as defined by O.R.C.§149.011 and they hold office as the Twelfth Appellate District Court of Appeals for Warren County, Ohio Judge's/Justices'.
4. The Twelfth Appellate District Court of Appeals for Warren County, Ohio is a government entity

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SUPREME COURT OF OHIO

located in Ohio and established under the laws of the State of Ohio.

5. Respondent, Twelfth Appellate District Court of Appeals for Warren County, Ohio is a public office as defined by O.R.C. §149.011.
6. O.R.C. §2929.19(A) mandates that a/the Court inform a/the Defendant of the “verdict” and/or “finding of the court” at the sentencing hearing.
7. O.R.C. §2941.04 mandates that each offense upon which the Defendant is convicted must be stated in the verdict.
8. Ohio Criminal Rule 43 embodies a procedural due process right that the Defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence.
9. Ohio's Criminal Rule 32(C) mandates that the (4) four elements of, (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court, must be contained in the “Judgment Entry of Sentence” in order to constitute a “Final Appealable Order” for purposes of O.R.C. §2505.02.
10. O.R.C. §2929.18(A)(1) proscribes restitution, which is a substantive legal decision or judgment that must specify the amount and method of payment and is not merely a mechanical part of the judgment.
11. O.R.C. §2901.07(B)(1) mandates a trial court to include as part of the sentence an order for the Defendant to submit to the “DNA Specimen Collection Procedure”.
12. O.R.C. §2505.02 specifies what constitutes a “Final Appealable Order” as “An order that affects a substantial right in an action that in effect determines the action and prevents a judgment.”

13. Ohio Constitution Article IV § (3)(B)(2) specifies that Ohio's Appellate Court's of Appeals only have jurisdiction over "Final Appealable Orders" as specified by O.R.C.§2505.02 and Ohio's Criminal Rule 32 of the courts of record inferior to the court of appeals within the district they serve.
14. On November 9th, 2005 the Warren County Common Pleas Court entered one "Judgment Entry of Sentence" in Case Number 05CR22343 and one "Judgment Entry of Sentence" in Case Number 05CR22570 against the Relator in the instant case who was named as the Defendant in said Warren County Common Pleas Court Case Nos. 05CR22343 & 05CR22570.
15. In December 2005 the Relator, who was named as the Defendant in said Warren County Common Pleas Court Case Nos. 05CR22343 & 05CR22570, pro-se filed a Notice of Appeal to the Twelfth Appellate District Court of Appeals for Warren County, Ohio from the November 9th, 2005 "Judgment Entry's of Sentences" entered in Case Nos. 05CR22343 & 05CR22570 where the Direct Appeals were assigned Case Nos. CA2005-12-127 & CA2005-12-128 by the Clerk.
16. "It is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final, then an appellate court has no jurisdiction" Gen Acc. Ins. Co. of N. Am. (1989), 44 Ohio St.3d 17,20, 540 N.E.2d 266.
17. General subject-matter jurisdiction lies in the trial court. Before jurisdiction can pass from the trial court to the court of appeals, the trial court has to comply with all mandatory applicable laws and procedures pronounced by the General Assembly, before becoming a reviewable judgment by an appellate court. Thus, a void judgment or judgment that is contrary to law, is not a reviewable judgment permitted to be reviewed by an appellate court, due to its patent and unambiguous lack of jurisdiction and prohibition and/or mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions,

notwithstanding the availability of appeal. See State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas (1996), 76 Ohio St.3d 287,289, 667 N.E.2d 929,931; State ex rel. Fogle v. Steiner (1995), 74 Ohio St.3d 158,161, 656 N.E.2d 1288,1292.

18. The November 9th, 2005 “Judgment Entry of Sentence” in Case Number 05CR22343 attached hereto as “**Relator's Exhibit A**”, and the “Judgment Entry of Sentence” in Case Number 05CR22570 attached hereto as “**Relator's Exhibit B**”, entered against the Relator in the instant case who was named as the Defendant in said Warren County Common Pleas Court Case Nos. 05CR22343 & 05CR22570 are substantially deficient for purposes of compliance with Ohio's Criminal Rule 32, Ohio's Criminal Rule 43(A), O.R.C.§2505.02, O.R.C.§2901.07(B)(1), O.R.C.§2929.18(A)(1), O.R.C.§2929.19(A), O.R.C.§2941.04, and clearly demonstrates that the Warren County Common Pleas Court failed to follow Ohio's Statutory Provisions as outlined above in paragraphs #'s 6-12 which deprived the Respondent of jurisdiction as outlined above in paragraph # 13 to decide any appeal in Twelfth Appellate District Court of Appeals Case Nos. CA2005-12-127 & CA2005-12-128 which is in direct violation of the United States Constitutions Fourteenth Amendment as well as corresponding Ohio Constitutional Provisions.
19. Respondent has a “specifically enjoined duty to perform” a review of the notice of appeal and required attached judgment that is being appealed to ascertain whether or not it has jurisdiction to proceed, before, issuing a scheduling order for briefing.
20. Respondent's only course of action and/or Decision regarding paragraph #15 above, was to dismiss the appeals assigned Case Nos. CA2005-12-127 & CA2005-12-128 by the Clerk, due to the patent and unambiguous lack of jurisdiction.
21. Relator who is the named Defendant-Appellant in Case Nos. CA2005-12-127 & CA2005-12-128, filed for record on April 12th,2012 a “Motion For Enlargement of Time Pursuant to App.R.14(B)”

attached hereto as “**Relator's Exhibit C**”, and a “Motion For Reconsideration Pursuant to App.R.26(A)” attached hereto as “**Relator's Exhibit D**”, and a “Reply/Rebuttal” attached hereto as “**Relator's Exhibit E**”, which was filed for record April 30th, 2012.

22. Respondent's only course of action and/or Decision regarding paragraph #21 above, was to grant “Relator's Exhibit C” (¶21 above), as the patent and unambiguous lack of jurisdiction of the Twelfth Appellate District Court of Appeals in Case Nos. CA2005-12-127 & CA2005-12-128 constituted an “extraordinary circumstance” justifying the enlargement of time under App.R.14(B) for reconsideration under App.R.26(A) (“Relator's Exhibit D”, ¶21 above), which also demonstrated the duty to be granted.
23. Ohio's Appellate Rule 26(A)(1)(c) mandates that “the application for reconsideration shall be considered by the panel that issued the original decision”.
24. The original Decision/Judgment entered in the Twelfth Appellate District Court of Appeals Case Nos. CA2005-12-127 & CA2005-12-128 entered on the record September 5th, 2006 was entered by YOUNG, J., Powell, P.J., and WALSH, J. And the opinion was authored by YOUNG, P.J. and can be seen/viewed at State v. Fernbach, 2006 Ohio 4566, 2006 Ohio App. LEXIS 4500.
25. On May 10th, 2012 Twelfth Appellate District Court of Appeals, Judge Robert Hendrickson, solely, filed an “Entry Denying Motion For Enlargement of time AND Motion For Reconsideration” from the filings of Relator as outlined above in paragraph #21.
26. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

27. Respondent, Twelfth Appellate District Court of Appeals is under a clear legal duty pursuant to the Fourteenth Amendment to the United States Constitutions Due Process Clause to adhere to all corresponding/aforementioned Ohio Laws and Constitutional Provisions as they relate to the Relator in this case and the Relator has no other adequate legal remedy/recourse available and the issuance of the instant writ of mandamus/procedendo or alternative writ is appropriate in the instant case.

COUNT I

28. Relator incorporates the allegations in paragraphs 1-27 of this Complaint as if fully re-written here.

29. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.

30. O.R.C.§2929.19(A) provides . . . “The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony ***. The court shall inform the offender of the verdict of the jury or finding of the court . . .”

31. O.R.C.§2941.04 provides . . . “**** each offense upon which the defendant is convicted must be stated in the verdict.”

32. In State v. Moore, 3rd Dist No. 14-06-53, 2007-Ohio-4941, 2007 Ohio App. LEXIS 4627 @ [*P7] the 3rd District Court of Appeals held that “Appellate Courts only have jurisdiction over the final orders or judgments of the trial courts within its district. Section (3)(B)(2), Article IV, Ohio Constitution; R.C.2505.02. This Court must raise jurisdictional issues sua sponte. In re Murray (1990), 52 Ohio St.3d 155,159,fn.2, 556 N.E.2d 1169. “The necessity of journalizing an entry in accordance with Crim.R.32(C) is jurisdictional. Without a properly journalized judgment of

conviction, this court has no power to hear this appeal.” State v. Teague, 3rd Dist. No. 9-01-25, 2001-Ohio-2286, at 4. See also Maple Heights v. Pinkney, 8th Dist. No. 81514, 2003-Ohio-3941, P1. “[W]here a trial court’s order fails to impose a sentence for each charge, that order is merely interlocutory.” See also State v. Hoelscher, 9th Dist. No. 05CA0085-M, 2006-Ohio-3531, P10 (citations omitted). See also State v. Brown (1989), 59 Ohio App.3d 1,2, 569 N.E.2d 1068; State v. Taylor (May 26,1995), 4th Dist. No. 94 CA 585, 1995 Ohio App. LEXIS 2305, at 8; State v. Huntsman (March 13,2000), 5th Dist. No. 199-CA-00282, 2000 Ohio App. LEXIS 987, at 3; [**4] State v. Waters, 8th Dist. No. 85691, 2005-Ohio-5137, P16.”

33. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

34. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT II

35. Relator incorporates the allegations in paragraphs 1-34 of this Complaint as if fully re-written here.

36. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.

37. This Honorable Court in State v. Baker (2008), 119 Ohio St.3d 197, 2008-Ohio-3330 @ [**P10] & [**18] held “In entering a final appealable order in a criminal case, the trial court must comply with Crim.R.32(C), which states: “A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.” **and further** @ [**P18], “We now hold that a judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. Simply stated, a defendant is entitled to appeal an order that sets forth the manner of conviction and the sentence.”

38. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

39. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT III

40. Relator incorporates the allegations in paragraphs 1-39 of this Complaint as if fully re-written here.

41. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.
42. O.R.C. §2929.18(A)(1) provides . . . “Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section***. ***If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender.”
43. This Honorable Court held in State v. Miller, 127 Ohio St.3d 407, 2010-Ohio-5705 @ [**P16] “the determination of restitution entails a substantive legal decision or judgment and is not merely a mechanical part of a judgment. Restitution is a financial sanction, based on a victim's economic loss, that is imposed by a judge as part of a felony sentence. See R.C.2929.18(A)(1) . See also State v. Danison, 105 Ohio St.3d 127, 2005-Ohio-781, 823 N.E.2d 444, syllabus. It is not an order that is so "mechanical in nature" that its omission can be corrected as if it were a clerical mistake. Londrico v. Delores C. Knowlton, Inc. (1993), 88 Ohio App.3d 282,285, 623 N.E.2d 723.
44. Relator's Exhibits A & B (¶18 above), clearly stated “Defendant shall pay restitution in the amount of TO BE DETERMINED” regarding the amount and method of restitution imposed by Warren County Common Pleas Court.
45. This Honorable Court held in State ex rel. Worcester v. Donnellon (1990), 49 Ohio St.3d 117 @ [***6] “All courts have a clear legal duty to have their journal reflect the truth. All litigants have a clear legal right to have the proceedings they are involved in correctly journalized.”

46. The Twelfth Appellate District Court of Appeals held in State v. Walker, 12th Dist. No. 1999CA 09 086, 2000 Ohio App. LEXIS 1947 @ [*2] & [*3] “In a criminal prosecution, “the defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, *and the imposition of sentence*, except as otherwise provided by these rules.” Crim.R.43(A). A violation of Crim.R.43(A) is a violation of the defendant's due process rights, which requires a reviewing court to reverse and remand the case for resentencing. See State v. Walton (1990), 66 Ohio App.3d 243, 583 N.E.2d 1106. Thus, our review is limited to a determination of whether the journal entry sentencing the defendant reflects accurately the sentence that was pronounced in open court. If the journal entry differs from the sentence announced in open court, the judgment entry must be invalidated. See State v. Carpenter, 1996 Ohio App. LEXIS 4434 (Oct. 9, 1996), Hamilton App. No. C-950889, unreported.”
47. As O.R.C. §2505.02(B) requires a final order to “determine the action” and “prevent a judgment”, “[a] judgment that leaves issues unresolved and contemplates further action must be taken as not a final appealable order.” State ex rel. Keith v. McMonagle, 103 Ohio St.3d 430, 2004-Ohio-5580, 816 N.E.2d 597, P4, quoting Bell v. Horton, 142 Ohio App.3d 694,696, 756 N.E.2d 1241, 2001-Ohio-2593. Further, “[f]or an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct branch thereof and leaving nothing for determination of the court.” State ex rel. Bd. Of State Teachers Retirement Sys. Of Ohio v. Davis, 113 Ohio St.3d 410, 865 N.E.2d 1289, 2007-Ohio-2205, P45, quoting State ex rel. Downs v. Panioto, 107 Ohio St.3d 347, 839 N.E.2d 911, 2006-Ohio-8, P20.
48. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as

well.

49. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT IV

50. Relator incorporates the allegations in paragraphs 1-49 of this Complaint as if fully re-written here.

51. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.

52. O.R.C. § 2901.07(B)(1) mandates a trial court to include as part of the sentence an order for the defendant to submit to the “DNA Specimen Collection Procedure”.

53. The Relator who is named as the Defendant in Warren County Common Pleas Court Case Nos. 05CR22343 & 05CR22570 who was also the defendant-Appellant named in 12th Dist. Nos. CA2005-12-127 & CA2005-12-128 “had a due process right to be notified and ordered to said DNA Specimen Collection Procedure”.

54. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

55. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal

Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT V

56. Relator incorporates the allegations in paragraphs 1-55 of this Complaint as if fully re-written here.
57. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.
58. O.R.C.§2505.02 provides what constitutes a “Final Appealable Order” as “An order that affects a substantial right in an action that in effect determines the action and prevents a judgment”.
59. In State v. Moore, 3rd Dist. No. 14-06-53, 2007-Ohio-4941, 2007 Ohio App. LEXIS 4627 @ [*P7] held that “Appellate Courts only have jurisdiction over the final orders or judgments of trial courts within its district. Section(3)(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. This Court must raise jurisdictional issues sua sponte. In re Murray (1990), 52 Ohio St.3d 155,159, fn.2, 556 N.E.2d 1169. “The necessity of journalizing an entry in accordance with Crim.R.32(C) is jurisdictional. Without a properly journalized judgment of conviction, this court has no power to hear this appeal.” State v. Teague, 3d. Dist. No. 9-01-25, 2001-Ohio-2286 at *4. See also Maple Heights v. Pinkney, 8th Dist. No. 81514, 2003 Ohio 3941 P1. “[W]here a trial court’s order fails to impose a sentence for each charge, that order is merely interlocutory.” State v. Hoelscher, 9th Dist. No. 05CA0085-M, 2006 Ohio 3531, P10. See also State v. Brown (1989), 59 Ohio App.3d 1,2, 569 N.E.2d 1068; State v. Taylor (May 26,1995), 4th Dist. No. 94 CA 585, 1995 Ohio App. LEXIS

2305, at 8; State v. Huntsman (March 13, 2000), 5th Dist. No. 199-CA-00282, 2000 Ohio App. LEXIS 987, at 3; State v. Waters, 8th Dist. No. 85691, 2005-Ohio-5137, P16.”

60. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.
61. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT VI

62. Relator incorporates the allegations in paragraphs 1-61 of this Complaint as if fully re-written here.
63. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.
64. Relator asserts that the United States Supreme Court in Carey v. Piphus, 435 U.S.247, 98 S.Ct.1042 @ [**1054] held that “Because the right to procedural due process is “absolute” in the sense that it does not depend upon the merits of a claimants substantive assertions, and because the importance to organized society that procedural due process be observed, see Boddie v. Connecticut, 401 U.S. 371,375 (1971); Anti-Facist Committee v. McGrath, 341 U.S. 123 @ 171-172 (Frankfurter, J., concurring), we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury”, thus the Relator is entitled to recover compensatory

damages in the amount of \$54.00.

65. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

66. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT VII

67. Relator incorporates the allegations in paragraphs 1-66 of this Complaint as if fully re-written here.

68. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.

69. Ohio Constitutions Article IV § (3)(B)(2) provides that Ohio's Appellate District Courts of Appeals only have jurisdiction over "Final Appealable Orders" as specified by O.R.C.§2505.02 and Ohio's Criminal Rule 32 of the courts of record inferior to the courts of appeals within the district.

70. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as

well.

71. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT VIII

72. Relator incorporates the allegations in paragraphs 1-71 of this Complaint as if fully re-written here.

73. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.

74. Ohio's Appellate Rule 26(A)(1)(c) mandates that "the application for reconsideration shall be considered by the panel that issued the original decision".

75. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

76. Pursuant to Ohio law the Respondent did not have jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

COUNT VIV

77. Relator incorporates the allegations in paragraphs 1-76 of this Complaint as if fully re-written here.
78. Ohio Constitution Article I § 16 mandates that all courts shall be open and every person shall have remedy by due course of law and shall have justice administered without denial or delay.
79. The “Judgment Entry’s of Sentences” entered November 9th,2005 in Warren County Common Pleas Court Case Nos. 05CR22343 & 05CR22570 included. . . “*The sentence imposed for the felony automatically includes any such extension of the stated prison term by the parole board*”, which was not pronounced in open court on the record November 9th,2005.
80. The Twelfth Appellate District Court of Appeals held in State . Walker, 12th Dist. No. 1999CA 09 086, 2000 Ohio App. LEXIS 1947 @ [*2] & [*3] “In a criminal prosecution, “the defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, *and the imposition of sentence*, except as otherwise provided by these rules.” Crim.R.43(A). A violation of Crim.R.43(A) is a violation of the defendant's due process rights, which requires a reviewing court to reverse and remand the case for resentencing. See State v. Walton (1990), 66 Ohio App.3d 243, 583 N.E.2d 1106. Thus, our review is limited to a determination of whether the journal entry sentencing the defendant reflects accurately the sentence that was pronounced in open court. If the journal entry differs from the sentence announced in open court, the judgment entry must be invalidated. See State v. Carpenter, 1996 Ohio App. LEXIS 4434 (Oct. 9, 1996), Hamilton App. No. C-950889, unreported.”
81. This Honorable Court held in State ex rel. Worcester v. Donnellon (1990), 49 Ohio St.3d 117 @ [***6] “All courts have a clear legal duty to have their journal reflect the truth. All litigants have a

clear legal right to have the proceedings they are involved in correctly journalized.”

82. Relator has been aggrieved/deprived by the Respondent of his entitlements in these regards and has no other adequate remedy in the ordinary course of the Ohio law to obtain redress for the injuries/deprivations suffered and the Respondent is under a clear legal duty in these regards as well.

83. Pursuant to Ohio law the Respondent patently and unambiguously lacked jurisdiction in appeal Case Nos. CA2005-12-127 & CA2005-12-128 and is under a clear legal duty to vacate the Decision/Judgment entered September 5th, 2006 in Case Nos. CA2005-12-127 & CA2005-12-128 and dismiss the appeal due to the lack of jurisdiction by the Twelfth Appellate District Court of Appeals.

Wherefore, Relator, Richard Fernbach prays that a writ of mandamus/procedendo issue to the Respondent directing it to dismiss the appeal in 12th Dist. Case Nos. CA2005-12-127 & CA2005-12-128 due to the patent and unambiguous lack of jurisdiction by the Twelfth Appellate District Court of Appeals over appeal Case Nos. CA2005-12-127 & CA2005-12-128 and to direct Respondent to enter a finding that all orders that have been entered on and subsequent to September 5th, 2006 in the case are void and also \$54.00 for the Relator being deprived of his procedural due process rights under O.R.C. §2929.19(A), O.R.C. §2941.04, O.R.C. §2929.18(A)(1), O.R.C. §2901.07(B)(1), O.R.C. §2505.02, Ohio's Criminal Rule 32(C), Ohio's Criminal Rule 43(A), Ohio's Appellate Rule 14(B), Ohio's Appellate Rule 26, Ohio's Constitution Article IV § (3)(B)(2), State v. Moore, supra, State v. Teague, supra, State v. Hoelscher, supra, State v. Baker, supra, State v. Miller, supra, State ex rel. Worcester v. Donnellon, supra, State v. Walker, supra, State v. Carpenter, supra, State ex rel. Keith v. McMonagle, supra, Bell v. Horton, supra, State ex rel. Bd. Of State Teachers Retirement Sys. Of Ohio v. Davis, supra, Gen Acc. Ins. Co. of N. Am., supra, State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common

Pleas, supra, State ex rel. Fogle v. Steiner, supra, State ex rel. Downs v. Panioto, supra, Carey v. Piphus, supra, Boddie v. Connecticut, supra, Anti-Facist Committee v. McGrath, supra, the United States Constitutions Fourteenth Amendment and corresponding Ohio Constitutional Provisions as well as any other relief that this Court deems just and appropriate in accordance with the laws of this State and country including the issuance of an alternative writ. The Relator also asserts to this Court that he is incarcerated in the Ohio Department of Rehabilitation and Correction and is unable to meet the strict time constraints that are contained in this Honorable Courts Rules of Practice, specifically, Rules under Section 10 that govern Original Actions and Section 11.2 that governs Reconsideration. The Relator does not receive his "Legal Mail" of Decisions/Judgments of the Courts and/or Documents from opposing Parties and/or their Counsel in his current placement for approximately (7) Seven days after filing and/or being post-marked by the United States Postal Service. This delay has repeatedly prejudiced the Relator in several different respects as it did in a previous action in this Court under Case No. 12-0970 which required voluntary dismissal. Thus, Relator requests that adequate provision be made to provide for the Relator's procedural due process rights to be protected and preserved herein in the instant original action forthwith. See Mullane v. Cent. Hanover Bank & Trust Co. (1950), 339 U.S. 306,314, 70 S.Ct. 652,657, 94 L.Ed. 865,873 ("An elementary and fundamental requirement of due **process** in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

Respectfully Submitted,



Richard Fernbach, I.D.#508-012

Lebanon Correctional Institution

Honor Camp Unit 6

P.O. Box 56

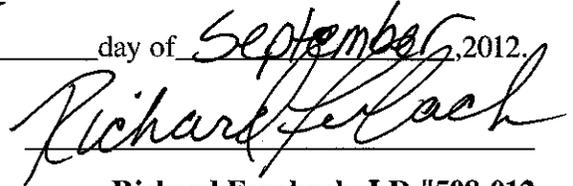
*Lebanon, Ohio 45036
Relator - Pro-Se.*

Lebanon, Ohio 45036

Relator-Pro-Se.

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true copy of the foregoing was served upon the Twelfth Appellate District Court of Appeals for Warren County Ohio @ 1001 Reinartz Blvd. Middletown Ohio 45042 by way of ordinary U.S. Postal Service this 3rd day of September, 2012.



Richard Fernbach, I.D.#508-012

Relator-Pro-Se.

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

05 NOV -9 PM 2:32

JAMES L. STAETH
CLERK OF COURTS

STATE OF OHIO,

Plaintiff,

-vs-

RICHARD FERNBACH,

Defendant.

* CASE NO. 05CR22343

* JUDGMENT ENTRY OF SENTENCE
(Felony 1st/2nd - Prison)

On November 9, 2005, the Defendant appeared in Court with his/her attorney, Mr. Clyde Bennett, to be sentenced for the following offense(s): FELONIOUS ASSAULT, R.C. §2903.11(A), a Felony of the 2nd Degree.

The Court inquired if the Defendant had anything to say in mitigation regarding the sentence. The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

Defendant's appellate rights were explained and acknowledged.

It is hereby ORDERED that Defendant serve a term of FOUR (4) YEARS in prison, consecutive with any sentence imposed in 05CR22570, of which N/A years is a mandatory term pursuant to R.C. §2929.13(F), §2929.14(D) (3) or Chapter 2925.

The Court finds pursuant to Revised Code §2929.14(B) that the shortest prison term will demean the seriousness of the defendant's conduct and the shortest prison term will not adequately protect the public from future crime by the defendant or others.

It is hereby ORDERED that the Defendant receive a fine of \$0 of which \$0 is a mandatory fine, the Defendant having filed an Affidavit on Indigency. Defendant shall pay restitution in the amount of TO BE DETERMINED. It is further ORDERED that Defendant receive a driver's license suspension of N/A years.

Defendant is therefore ORDERED conveyed by the Warren County Sheriff to the custody of the Ohio Department of Rehabilitation and Corrections forthwith. Credit for -183- day(s) is granted as of this date along with future custody days while Defendant awaits transportation to the appropriate State institution. Defendant is



RELATOR'S
"EXHIBIT A"

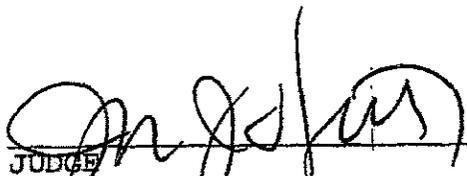
ordered to pay any restitution, all prosecution costs, court appointed counsel costs and any fees permitted pursuant to R.C. 2929.18(A)(4), for which execution is hereby ordered.

The Court finds that the defendant has or is reasonably expected to have the means to pay the financial sanctions, fines, and court appointed attorney fees imposed herein. Therefore, defendant is Ordered to pay court costs and the costs of prosecution.

In addition, a period of control or supervision by the Adult Parole Authority after release from prison is mandatory in this case. The control period may be a maximum term of three (3) years. A violation of any post-release control rule or condition can result in a more restrictive sanction while released, an increased duration of supervision or control, up to the maximum set out above and/or re-imprisonment even though you have served the entire stated prison sentence imposed upon you by this court for all offenses set out above. Re-imprisonment can be imposed in segments of up to 9 months but cannot exceed a maximum of 1/2 of the total term imposed for all of the offenses set out above.

If you commit another felony while subject to this period of control or supervision you may be subject to an additional prison term consisting of the maximum period of unserved time remaining on post-release control as set out above or 12 months whichever is greater. This prison term must be served consecutively to any term imposed for the new felony you are convicted of committing.

The sentence imposed by the Court automatically includes any extension of the stated prison term by the Parole Board.


JUDGE
Warren County Common Pleas Court

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARREN COUNTY, OHIO
COMMON PLEAS COURT
BY _____
DEPUTY

Papers Shew
11-9-05

"EXHIBIT A"

✓
COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

05 NOV -9 PM 2: 32

JAMES I. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT

STATE OF OHIO,

* CASE NO. 05CR22570

Plaintiff,

*

-vs-

*

RICHARD FERNBACH,

*

JUDGMENT ENTRY OF SENTENCE
(Felony 3rd-Prison)

Defendant.

*

On November 9, 2005, the Defendant appeared in Court with his/her attorney, Mr. Clyde Bennett, to be sentenced for the following offense(s): INTIMIDATION OF A WITNESS, in violation of R.C. §2921.04(B), a Felony of the 3RD Degree, VIOLATION OF A PROTECTION ORDER, in violation of R.C. §2919.27(A), a Felony of the 3RD Degree, and VIOLATION OF A PROTECTION ORDER, in violation of R.C. §2919.27(A), a Felony of the 5TH Degree.

The Court inquired if the Defendant had anything to say in mitigation regarding the sentence. ~~The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.~~

Defendant's appellate rights were explained and acknowledged.

The Court further finds the Defendant is not amenable to community control and that prison is consistent with the purposes of R.C. 2929.11.

On the INTIMIDATION OF A WITNESS COUNT, A FELONY OF THE 3RD DEGREE, it is hereby ORDERED that Defendant serve a term of THREE (3) years in prison, concurrent with the other sentences imposed in this case and consecutive to any sentence imposed in 05CR22342 of which N/A year(s) is a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D) (3) or Chapter 2925.

RELATOR'S
"EXHIBIT B"



e

On the VIOLATION OF A PROTECTION ORDER, A FELONY OF THE 3RD DEGREE, it is hereby ORDERED that Defendant serve a term of THREE (3) years in prison, concurrent with the other sentences imposed in this case and consecutive to any sentence imposed in 05CR22343 of which N/A year(s) is a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or Chapter 2925.

On the VIOLATION OF A PROTECTION ORDER, A FELONY OF THE 5TH DEGREE, it is hereby ORDERED that Defendant serve a term of ELEVEN (11) months in prison, concurrent with the other sentences imposed in this case and consecutive to any sentence imposed in 05CR22343 of which N/A year(s) is a mandatory term pursuant to R.C. 2929.13(F), 2929.14(D)(3) or Chapter 2925.

The Court finds pursuant to Revised Code §2929.14(B) that the shortest prison term will demean the seriousness of the defendant's conduct and the shortest prison term will not adequately protect the public from future crime by the defendant or others.

Defendant is therefore ORDERED conveyed by the Warren County Sheriff to the custody of the Ohio Department of Rehabilitation and Corrections forthwith. Credit for -0- day(s) is granted as of this date along with future custody days while Defendant awaits transportation to the appropriate State institution. Defendant is ordered to pay any restitution, all prosecution costs, court appointed counsel costs and any fees permitted pursuant to R.C. 2929.18(A)(4), for which execution is hereby ordered.

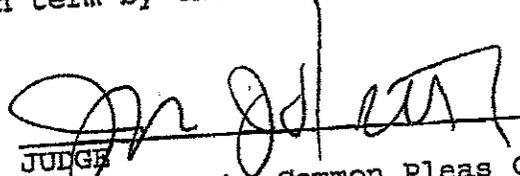
The Court finds that the defendant has or is reasonably expected to have the means to pay the financial sanctions, fines, and court appointed attorney fees imposed herein.

In addition a period of control or supervision by the Adult Parole Authority after release from prison is mandatory in this case. The control period may be a maximum term of three (3) years. A violation of any post-release control rule or condition can result in a more restrictive sanction while released, an increased duration of supervision or control, up to the maximum set out above and/or re-imprisonment even though you have served the entire stated prison sentence imposed upon you by this court for all offenses set out above. Re-imprisonment can be imposed in segments of up to 9 months but cannot exceed a maximum of 1/2 of the total term imposed for all of the offenses set out above.

"EXHIBIT B"

If you commit another felony while subject to this period of control or supervision you may be subject to an additional prison term consisting of the maximum period of unserved time remaining on post-release control as set out above or 12 months whichever is greater. This prison term must be served consecutively to any term imposed for the new felony you are convicted of committing.

The sentence imposed by the Court automatically includes any extension of the stated prison term by the Parole Board.



JUDGE
Warren County Common Pleas Court

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARREN COUNTY, OHIO
COMMON PLEAS COURT

BY _____
DEPUTY

"EXHIBIT B"

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
FOR WARREN COUNTY, OHIO

COURT OF APPEALS
WARREN COUNTY
FILED

APR 12 2012

James L. Spaeth, Clerk
LEBANON OHIO

STATE OF OHIO,

App. Ct. Case Nos. CA2005-12-127

Defendant-Appellant,

& CA2005-12-128

v.

RICHARD FERNBACH,

Tr. Ct. Case Nos. 05CR22343

Defendant-Appellant.

& 05CR22570

MOTION FOR ENLARGEMENT OF TIME PURSUANT TO APP.R.14(B)

Now comes Richard Fernbach, Defendant-Appellant (Pro-Se)(hereinafter "Appellant"), and hereby moves this Court for an **ENLARGEMENT OF TIME** pursuant to **App.R.14(B)** from September 5th,2006 through and including the instant filing and the Appellant's filing in conjunction hereto Titled and Captioned "*Motion For Reconsideration Pursuant To App.R.26(A)*" which is being filed in conjunction to the instant motion forthwith in the above captioned case number(s). Reasons for the instant motion are more fully articulated in the Memorandum that follows.

MEMORANDUM

The Appellant represents to this Court that App.R.14(B) states in pertinent part . . . "*For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. The court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify pursuant to App. R. 25. Enlargement of time to*

RELATOR'S
"EXHIBIT C"

file an application for reconsideration or for en banc consideration pursuant to

App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances.”

Crim.R.32(C) states further, in pertinent part, as follows . . . “A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.” (emphasis added).

“Appellate Courts only have jurisdiction over final orders or judgments of trial courts within its district.” *Ohio Constitution Article IV §(3)(B)(2); O.R.C. §2505.02. State v. Moore, 3rd Dist. No. 14-06-53, 2007-Ohio-4941, 2007 Ohio App. LEXIS 4627 @ [*P7].* “The necessity of journalizing an entry in accordance with **Crim.R.32(C)** is jurisdictional. Without a properly journalized judgment of conviction, this Court had no power to hear the appeal in the above captioned Appellate Court Case Number(s) CA2005-12-127 and CA2005-12-128.” *State v. Teague, 3rd Dist. No. 9-01-25, 2001-Ohio-2286 @ [*4]; See also Maple Heights v. Pinkney, 8th Dist No. 81514, 2003-Ohio-3941 @ [P1].* “Before a court of appeals may address the merits of any appeal, it must first possess the requisite jurisdiction to do so.” *State v. Ginocchio, 12th Dist. No. CA86-11-082, 38 Ohio App.3d 105, 1987 Ohio App. LEXIS 10637.* In a criminal case, jurisdiction is conferred upon the filing of notice of appeal with the Clerk of the trial court within thirty days of the date of the entry of the judgment or order appealed from. *App.R.4(B).* “Judgment” is defined in **Crim. R. 32(B)**, which states:

"A judgment of conviction shall set forth the plea, **the verdict or findings** and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk." (emphasis added). *Id. Ginocchio, supra.*

The "Judgment Entry's of Sentences" that were entered in the above captioned trial court case number(s), to which the *Notice of Appeal* was filed in the above captioned appellate court case number(s), were/are substantially deficient and said "Judgment Entry's of Sentences" filed by the trial court in case number(s) 05CR22343 and 05CR22570, "Exhibits A & B", did not comport with the mandates of **Crim.R.32** in order to properly invoke jurisdiction upon this Court pursuant to **App.R.4**. Thus, this Court did not possess jurisdiction in the above captioned appellate court case number(s) CA2005-12-127 and CA2005-12-128 in order to decide any appeal in said case number(s). Therefore, the Decision/Judgment entered on September 5th,2006 in the above captioned appellate court case number(s) CA2005-12-127 and CA2005-12-128 are null and void and must be vacated forthwith.

This inherent lack of jurisdiction certainly constitutes a "showing of extraordinary circumstances" as **App.R.14(B)** dictates/prescribes and therefore, warrants the granting of the instant motion for **ENLARGEMENT OF TIME** as requested to permit, as timely, the Appellant's filing Titled and Captioned "Motion For Reconsideration Pursuant To App.R.26(A)" that is being filed in conjunction to the instant motion forthwith.

Wherefore, for the reasons asserted herein, the Appellant, Richard Fernbach hereby moves this Court to **GRANT** the instant motion for **ENLARGEMENT OF TIME** pursuant to **App.R.14(B)** from September 5th,2006 through and including the instant filing and the Appellant's motion Titled and Captioned "Motion For Reconsideration Pursuant To App.R.26(A)" that is being filed in conjunction to

the instant motion forthwith and consider said "Motion For Reconsideration Pursuant To App.R.26(A)" as a timely motion pursuant to **App.R.26(A)** by and through the instant **ENLARGEMENT OF TIME** requested herein.

Respectfully Submitted,



Richard Fernbach, I.D.#508-012
Madison Correctional Institution

P.O. Box 740
London, Ohio 43140-0740
Defendant-Appellant-Pro-Se.

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true copy of the foregoing Motion For Enlargement of Time was served upon the Warren County Prosecutor @ 500 Justice Drive Lebanon, Ohio 45036 by way of ordinary U.S. Postal Service this 30TH day of April, 2012.



Richard Fernbach, I.D.#508-012
Defendant-Appellant-Pro-Se.

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
FOR WARREN COUNTY, OHIO

APR 12 2012

James L. Spaeth, Clerk
LEBANON OHIO

STATE OF OHIO,

App. Ct. Case Nos. CA2005-12-127

Plaintiff-Appellee,

& CA2005-12-128

v.

RICHARD FERNBACH,

Tr. Ct. Case Nos. 05CR22343

Defendant-Appellant.

& 05CR22570

MOTION FOR RECONSIDERATION PURSUANT TO APP.R.26(A) DUE TO LACK OF
JURISDICTION

Now comes Richard Fernbach, Defendant-Appellant (Pro-Se)(hereinafter "Appellant"), and hereby moves this Court for **RECONSIDERATION** pursuant to **App.R.26(A)** due to lack of jurisdiction thereby requesting this Court to **VACATE** its prior *Decision/Judgment Entry* entered on September 5th,2006 in the above captioned case number(s), as the *Decision/Judgment Entry* entered on September 5th,2006 is **void ab initio**. Reasons for the instant motion are more fully articulated in the Memorandum that follows.

MEMORANDUM

The Appellant represents to this Court that in conjunction to the instant motion, the Appellant, filed a "*Motion For Enlargement of Time Pursuant To App.R.14(B)*", that clearly demonstrates the "*showing of extraordinary circumstances*" described in **App.R.14(B)** that necessitates the granting of the instant *Motion For Reconsideration pursuant to App.R.26(A)*, thereby requesting this Court to

RELATOR'S
"EXHIBIT D"

VACATE its prior *Decision/Judgment Entry* entered on September 5th,2006 in the above captioned case number(s) forthwith.

The Decision/Judgment of this Court that was entered on September 5th,2006 in the above captioned case number(s), is **void ab initio**, as this Court did not possess the requisite jurisdiction to render any *Decision/Judgment Entry* relating to any appeal from trial court case number(s) 05CR22343 and 05CR22570 that was entered on November 9th,2005 due to the trial courts failure to comply with **Crim.R.32(C)**, as was clearly demonstrated by and through the Appellant's "*Motion For Enlargement of Time Pursuant To App.R.14(B)*", which clearly constitutes "a showing of extraordinary circumstances" that permit the instant motion forthwith. See Appellant's **App.R.14(B)** motion filed in conjunction hereto. The plain meaning of "void ab initio" is null from the beginning, as from the first moment." *Black's Law Dictionary (8th Ed. 2004) pg. 1604*. "We have often applied definitions from Black's Law Dictionary to determine the meaning of certain language." See *State ex rel. Citizens for Open, Responsive & Accountable Gov't v. Register*, No. 2007-0238, 116 Ohio St.3d 88, 2007-Ohio-5542, 876 N.E.2d 913, 2007 Ohio LEXIS 2569; *State ex rel. Musial v. City of N. Olmsted*, No. 2005-0252, 106 Ohio St.3d 459, 2005-Ohio-5521, 835 N.E.2d 1243, 2005 Ohio LEXIS 2497.

"A void judgment is a nullity and may be attacked at any time." *Van De Ryt v. Van De Ryt* (1966), 6 Ohio St.2d 31, 36. Had compliance of **Crim.R.32** been met by judge James Heath then, and only then, jurisdiction would have been conveyed upon this Court pursuant to **O.R.C. § 2505.02 & App.R.4**, however, due to the fact that judge James Heath, who has since killed himself, was of an unsound mind and suffered severe psychiatric problems, is of no doubt, a contributing factor in the substantial deficiencies that have plagued the "*Judgments/Decisions*" entered in the above captioned

case number(s). See "Exhibits A & B" attached hereto.

Moreover, aside from the fact that the deficient "Judgment Entry's of Sentences", that were journalized by the trial court in the above captioned trial court case number(s) 05CR22343 and 05CR22570, did not comply with the mandates of **Crim.R.32** and the Due Process Clauses, the Appellant asserts that "this Court must raise jurisdictional issues sua sponte." See In re Murray (1990), 52 Ohio St.3d 155,159 @ fn.2. Thus, the instant motion must be read and construed in *pari materia* with the Appellant's **App.R.14(B)** Motion that has been filed in conjunction hereto that clearly and unambiguously demonstrates that this Court did not possess jurisdiction in the above captioned appellate court case number(s) CA2005-12-127 and CA2005-12-128, which rendered the *Decision/Judgment* entered on September 5th,2006 null and void. This Court has the inherent power to vacate the void *Decision/Judgment* entered on September 5th,2006 in the above captioned appellate court case number(s) CA2005-12-127 and CA2005-12-128. Patton v. Diemer (1988), 35 Ohio St.3d 68 @ ¶4 *Syllabus*.

The fact that this Court did not possess the requisite jurisdiction, initially, from the trial court further renders any/all *Decisions/Judgments* rendered thereto null and void ab initio. It is clear that the Appellant's Constitutional Rights have been violated in these proceedings, in these respects, and that the Appellant is entitled to the relief requested herein forthwith.

Wherefore, as asserted herein, the Appellant, Richard Fernbach hereby moves this Court for **RECONSIDERATION** pursuant to **App.R.26(A)** due to the lack of jurisdiction, thereby requesting this Court to **VACATE** its prior *Decision/Judgment* entered on September 5th,2006 in the above captioned appellate court case number(s) CA2005-12-127 and CA2005-12-128 forthwith.

Respectfully Submitted,



Richard Fernbach, I.D.#508-012

Madison Correctional Institution

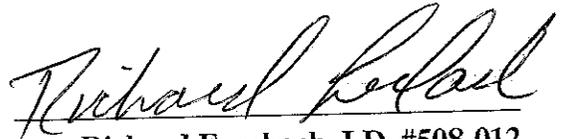
P.O. Box 740

London, Ohio 43140-0740

Defendant-Appellant-Pro-Se.

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true copy of the foregoing Motion for Reconsideration was served upon the Warren County Prosecutor @ 500 Justice Drive Lebanon, Ohio 45036 by way of ordinary U.S. Postal Service this 30TH day of April, 2012.



Richard Fernbach, I.D. #508-012

Defendant-Appellant-Pro-Se.

"EXHIBIT D"

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
FOR WARREN COUNTY, OHIO

COURT OF APPEALS
WARREN COUNTY
FILED

APR 30 2012

James P. Spaeth, Clerk
LEBANON OHIO

STATE OF OHIO,

Case No. CA2005-12-127

Plaintiff-Appellee,

& CA2005-12-128

v.

RICHARD FERNBACH,

Tr. Ct. Ca. No. 05CR22343

Defendant-Appellant.

& 05CR22570

Judge Neal B. Bronson

REPLY/REBUTTAL OF DEFENDANT-APPELLANT TO THE "STATE OF OHIO'S
MEMORANDUM IN RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION
PURSUANT TO APP.R.26(A) AND APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
PURSUANT TO APP.R.14(B)

Now comes Richard Fernbach, Defendant-Appellant (Pro-Se)(hereinafter "Appellant"), and hereby files his **REPLY/REBUTTAL** to the *State of Ohio's Memorandum In Response To The Appellant's Motion For Reconsideration Pursuant To App.R.26(A) And Motion For Enlargement of Time Pursuant To App.R.14(B)*. Reasons in support of Granting the Appellant's Motion For Enlargement of Time Pursuant To **App.R.14(B)** as well as Appellant's Motion For Reconsideration Pursuant To **App.R.26(A)** are clearly demonstrated herein as well as clearly demonstrated in the Appellant's April 12th, 2012 Filings in the above captioned case number(s). Reply/Rebuttal of the State of Ohio's Memorandum is as follows as contained in the Memorandum that follows.

MEMORANDUM

The Appellant represents to this Honorable Court, first and foremost, that as was clearly demonstrated in the Appellant's April 12th, 2012 **App.R.14(B)** filing as well as Appellant's **App.R.26(A)** filing in the

RELATOR'S
"EXHIBIT E"

above captioned case number(s), which asserted the position that this Court “patently and unambiguously lacked jurisdiction to proceed in the cause of the appeal filed to this Court from the trial courts November 9th, 2005 “Judgment Entries of Sentences” in the above captioned case number(s) due to the fact that they are void, invalid, and contrary to law.” See State ex rel. Mayer v. Henson, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223 @ [*12]; See also Appellant's April 12th, 2012 filings of App.R.14(B) & App.R.26(A), citing State v. Moore, 3rd Dist. No. 14-06-53, 2007-Ohio-4941, 2007 Ohio App. LEXIS 4627 @ [*P7]; State v. Ginocchio, 12th Dist. No. CA86-11-082, 38 Ohio App.3d 105, 1987 Ohio App. LEXIS 10637; Appellant's April 12th, 2012 filing in the Warren County Common Pleas Court Case Number(s) 05CR22343 & 05CR22570-BRANCH I-citing Moore, Ginocchio, supra, as well as McAllister v. Smith (2008), 120 Ohio St.3d 163 @ {¶19} and Mitchell v. Smith (2008), 120 Ohio St.3d 278 @ {¶1}.

The Appellee's position is a blatant misuse of available state resources and is also in direct contradiction to judicial economy. In fact, the Appellee first contends that “*the Appellant fails to explain how the judgment entries did not comply with Crim.R.32.*” Then, in the very next paragraph of their “Argument”, they concede to the fact, which was clearly demonstrated by the Appellant, that “*after review of the original judgment entries in Case No. 05CR22343 & Case No. 05CR22570 journalized on November 9th, 2005 does reveal that those pleadings do not contain the manner of conviction.*” (emphasis added).

The manner of conviction is not the only deficiency in the original judgment entries in Case Nos. 05CR22343 & 05CR22570, in fact, there are numerous deficiencies that warrant the entries in Case Nos. 05CR22343 & 05CR22570 void, invalid, and contrary to law and said deficiencies have deprived this Court of all jurisdiction which was briefed in the Appellant's filing of April 12th, 2012 in the Common Pleas Court For Warren County in Case Nos. 05CR22343 & 05CR22570 due to the dictates and holdings

of the Ohio Supreme Court of McAllister and Mitchell, *supra*.

Moreover, in State v. Baker, 119 Ohio St.3d 197, the Ohio Supreme Court declared that "[a] judgment of conviction is a final appealable order under R.C.2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." Id. At Syllabus.

Furthermore, the Ohio Supreme Court held "that void sentences are not precluded from appellate review by principles of res judicata and may be reviewed at any time, on direct appeal or by collateral attack." State v. Fischer (2010), 2001-Ohio-6238 @ ¶40. In Fischer, *supra*, the Court did not limit the void finding of a sentence to a certain part of the Ohio Revised Code Statutes upon which there are many O.R.C.'s. This stems from "the fundamental understanding that no court has the authority to substitute a different sentence for that which is required by law." State v. Simkins, 117 Ohio St.3d 420, 2008-Ohio-1197 @ ¶20, citing Colegrove v. Burns (1964), 175 Ohio St.3d 437, 438. "A sentence that does not comport with statutory requirements is contrary to law, and the trial court judge is acting without authority in imposing it." Id. Simkins @ ¶21.

"All courts have a clear legal duty to have their journal reflect the truth. All litigants have a clear legal right to have the proceedings they are involved in correctly journalized." State ex rel. Worcester v. Donnellon (1990), 49 Ohio St.3d 117 @ {2 & 3}.

The fact of the matter is that the *Decision/Judgment Entry* entered on September 5th, 2006 by this Court is void, invalid, and contrary to law as this Court patently and unambiguously lacked jurisdiction to proceed in the cause in the first instance and this Court was supposed to raise the jurisdictional issue sua sponte. In re Murray (1990), 52 Ohio St.3d 155, 159 @ fn.2.

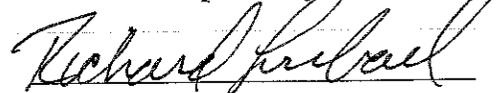
"Avoid judgment is a nullity and may be attacked at any time." Van De Ryt v. Van De Ryt (1966), 6 Ohio St.2d 31. This Court has the inherent power to vacate the void "judgment" rendered on September

5th,2006 thereby dismissing the appeal for lack of jurisdiction in the above captioned case number(s).

Patton v. Diemer (1988), 35 Ohio St.3d 68 @ [¶4] Syllabus. "Inferior court's must follow the decisions of the Ohio Supreme Court, even though the judges may believe them to be wrong." Vanetten v. Cleveland Short Line R. Co., 43 Ohio C.D. 202, 1911 Ohio Misc. LEXIS 296, (Affirmed without opinion @ 86 Ohio St. 323).

Wherefore, as asserted herein and in the Appellant's April 12th,2012 filings, the Appellant, Richard Fernbach hereby moves this Court to **SUSTAIN** the instant Reply/Rebuttal and **GRANT** the Appellant's April 12th,2012 *Motion For Enlargement of Time Pursuant To App.R.14(B)* as well as Appellant's *Motion For Reconsideration Pursuant To App.R.26(A) Due To The Lack of Jurisdiction*, thereby vacating it's September 5th,2006 *Decision/Judgment Entry* dismissing the appeal in the above captioned case number(s).

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true copy of the foregoing Reply/Rebuttal was served upon Michael Greer Assistant Warren County Prosecuting Attorney @ 500 Justice Drive Lebanon, Ohio 45036 by way of ordinary U.S. Postal Service this 30th day of April,2012.



Richard Fernbach, I.D.#508-012
Appellant-Pro-Se.