

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case Number 12-1539
Appellee,	:	On Appeal from the Richland County Court of Appeals,
v.	:	Fifth Appellate District
Stephen W. Byerly,	:	Court of Appeals
Appellant.	:	Case Nos. 2012-CA-41 2012-CA-48

APPELLEE, STATE OF OHIO'S
MEMORANDUM IN OPPOSITION TO JURISDICTION

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

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APPELLANT, PRO SE

RECEIVED

OCT 01 2012

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

OCT 01 2012

CLERK OF COURT
SUPREME COURT OF OHIO

Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question:

The State of Ohio submits that this case presents absolutely no unique facts, rulings, or issues. Nor does it raise any substantial constitutional questions worthy of review by this Court.

The Appellant has filed a notice of appeal indicating a desire to appeal two rulings by the Fifth District Court of Appeals in two separate appeals filed by the Appellant below. On July 6, 2012, the Fifth District Court of Appeals dismissed case number 12-CA-41 due to the Appellant's failure to prosecute. The Appellant had been previously ordered to complete a docketing statement with a copy of the judgment being appealed by June 22, 2012. The Appellant failed to do so. The Appellant's appeal in 12-CA-48 was dismissed for the same reason.

Rather than file a proper appeal arguing that the Fifth District Court of Appeals was wrong in dismissing his appeals below, the only issue relevant at this time and place, the Appellant has filed what amounts to a full appellate argument on the merits of his conviction and sentence in the trial court below.

The Appellant's appeals were dismissed for procedural reasons and the Appellant fails to address these reasons in his brief. The Appellate Court below did not make any findings regarding the facts of the Appellant's case and so it would be improper for this Honorable Court to consider any facts or circumstances involved in the Appellant's conviction or sentence. An issue not properly presented to the appeals court for its consideration, will not be reviewed by the Supreme Court. This is true even if the issue was argued before the trial court. *Thirty-Four Corp. v. Sixty-Seven Corp.* (1984), 15 Ohio St.3d 350 at 362.

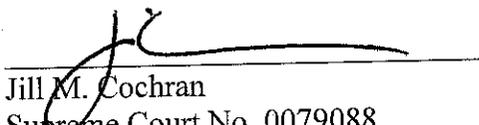
The Appellant has a lengthy appellate history. He has been filing the same or similar motions and appeals since 2005. These arguments have long been barred by res judicata. The Appellant continuously fails to follow procedural rules or to file briefs responsive to the actual issue, as demonstrated in this case.

As the Appellant's memorandum does not make any arguments as to how the Fifth District Court of Appeals erred in dismissing the appeals at issue for the Appellant's failure to file a docketing statement, the Appellant's memorandum fails to present an issue for this Court to review.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests that the Court deny the Appellant jurisdiction to pursue his appeal.

Respectfully Submitted,

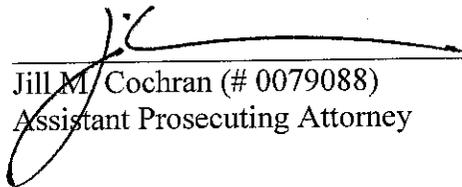


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of Appellee's Memorandum in Opposition to Jurisdiction was sent to Stephen Byerly, # 434-590, c/o Ross Correctional Institution, P.O. Box 7010, 16149 State Route 104, Chillicothe, Ohio 45601, by regular U.S. Mail, this 27th day of September, 2012.



Jill M. Cochran (# 0079088)
Assistant Prosecuting Attorney