

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,
Plaintiff,
vs.

: Case No's 12-1325
:
: 12-1441

HENRY ALLEN HOLDCROFT,
Defendant.

:
:
:

MOTION FOR A RECONSIDERATION ON THE ENTRY
DATED OCTOBER 10, 2012, ON PROPOSITION OF LAW NO. 3,
PROPOSITION OF LAW NO. 4 AND PROPOSITION OF LAW NO. 6

In all of the above proposition of Law numbers, the Defendant Constitutional Rights were violated. The Defendant was indicted by the Grand Jury in November 1998 and on September 10, 1999 the Defendant was sentenced to a Ten year sentence for Aggravated Arson and Arson and 5 years for Arson to be served consecutively . This was one crime not two crimes.

Wherefore, this Defendant Requests this Honorable Court to Consider his Motion for a Reconsideration as there are other Constitutional Issues which this Honorable Court should have considered in its decision dated October 10, 2012 and received by the Defendant on October 12, 2012.

Defendant has Attached an Memorandum in support attached herein.

Respectfully Submitted,

Henry Allen Holdcroft
Henry Allen Holdcroft, A381-888
Hocking Correctional Facility
P.O. Box 59 A-22
Nelsonville, Ohio 45764

FILED
OCT 16 2012
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

PROPOSITION OF LAW NO. 3

THE TRIAL COURT AND APPEALS COURT ERRED IN CONVICTING AND SENTENCING THE APPELLANT ON AGGRAVATED ARSON AND ARSON COUNTS IN VIOLATION OF DOUBLE JEOPARDY CLAUSE OF THE 5th AMENDMENT OF THE U.S. CONSTITUTION, ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION AND OHIO'S MULTIPLE – COUNT STATUTE

The Defendant was charged and sentenced on Aggravated Arson and Arson. The Courts could have convicted the Defendant on both but only sentence him on one crime. The Fire Marshall Mr. Hossler testified , it was one fire and Mrs. Hurst said her car was parked especially close to the residence. This was one Act, one state of mind and both offenses where committed by the same conduct State -v- Johnson 2010-Ohio-6314, R.C. §2941.25. In this instant case all acts was committed by the same conduct. Insomuch as Fire Marshall Hossler testified as fact, the Court must next determine whether the offenses were in fact committed by a single Act and performed with a single state of mind.

In the case at bar, it can be determined one act, and one state of mind prevails . This Defendant should have been sentenced to a 10 year sentence. Whereby Holdcroft has been over sentenced five (5) years and therefore it violates §2941.25 in State -vs-. Johnson Ohio St.3d., 2010-Ohio-6314.

Therefore, this Honorable Court should reconsider the Proposition of Law No. 3 and allow the Defendant to file a Brief on these issues.

The Defendant could have been found guilty of all charges, but sentence to only one. **Walter -v- Sheets** 2011 U.S. Dist. LEXIS 111631. Insomuch as the Defendant was sentenced for each of the listed violations, it is considered that the trial Court issued a sentencing Order Contrary to law and clearly not in compliance with **Ohio Revised Code §2941.25**.

PROPOSITION OF LAW NO. 4

THE APPEALS COURT SHOULD HAVE REVERSED AS IT VIOLATES CRIMAL RULE 32, AND THE 5th AND 14th AMENDMENTS TO THE U.S. CONSTITUTION BECAUSE IT WAS IMPOSED OVER TEN YEARS AFTER THE GUILTY VERDICT

This is a very important as it contains a valid Constitutional Issue. The Defendant had been incarcerated for 10 ½ years on a void sentence. He appealed his sentence and the Court of Appeals they had no jurisdiction to hear the case and remanded the case to the trial court for a re-sentence. After 11 years, the Defendant had a final Appealable Order see **State -v- Holdcroft, Wyandot App. No. 16-10-01, 2010-Ohio-4290**.

The Ohio Supreme Court has previously ruled in **State -v- Maxwell (1963) 175 Ohio St.201, 24 O.O.2d.281, 192 N.E.2d.798**, the a delay in sentencing can be attributed to unreasonableness, such should be rendered invalid. In the case at bar, this was an unreasonable delay of 11 years .The Cuyahoga County Eighth District Court of Appeals held in **State -v- Mack Cuyahoga App. No. 92606, 2009-Ohio-6460, ¶ 14** (Vacating sentences “[b]ecause the sentences... imposed at the August 2006 sentencing hearing are void, there finding of a delay of over 26 Months between Appellants finding of guilt and the imposition of sentence on those counts in December 2008”) was reversed . This should have been deemed a certified conflict with the **State -v- Holdcroft Wyandot County App. 16-10-13 , 2012-Ohio-3066**.

In the 7th **Judicial District Court of Appeals in State of Ohio -v- Ownes (Mahoning App.2009), 181 Ohio App.3d. 725,731-733, 2009-Ohio 1508, at 27-28 , held that failure to effectuate valid sentence result in it being vacated).** Wherefore because the Eighth and Seventh Judicial District Courts had ruled in favor of the defendant, and the Third Judicial District ruled against the defendant, there appears to be Certified Conflict on the defendant's Proposition of Law No. 4.

PROPOSITION OF LAW NO. 6

THE MAXIMUM, CONSECUTIVE SENTNECE AND THE RESTITUTION ORDER WERE CONTRARY TO LAW AND ABUSIVE

The Trial Court erred by telling Mrs. Hurst to pay the Insurance Carrier back for Restitution. She as of today has not done that. She had received payment for her damages **State of Ohio -v- Holdcroft Wyandot County App. 16-10-01, 2010-Ohio-4290. ¶19.** Thus she did not suffer a actual loss in violation of Ohio Revised Code §2929.18 (A)(1). The amount of restitution Ordered by a trial Court must bear a reasonable relationship to the loss suffered. **State -v- Blay, Franklin App. No. 10 AP-247, 2010-Ohio-4749 ¶7.** Mrs. Hurst admitted she was reimbursed by the insurance Company for damages and it was the Insurance Company obligation to file a Civil Action against the Defendant if they wanted there money reimbursed .

After the Defendant specifically objected to the Amount of restitution Order its an abuse of discretion standard for the Court to fail to have an evidentiary hearing pursuant to Ohio revised Code §2929.18 (A)(1). **State -v- Whiting 2d. Dist. No. 20168, 2004-Ohio-5284 P.7 , citing State -v- Williams (1986) 34 Ohio App.3d. 33, 516 N.E. 2d. 1270. Also see State -v- Lamere 3d Dist No. 1-07-11, 2007 Ohio 4930, P10;** In this case at bar, there was none.

In the case at bar, the defendant should have been sentenced current for a total of 10 years because of allied offenses and State -v Johnson ,Ohio-- St.3d.--, 2010-Ohio-6314 under R.C. 2941.25 See also Walter -v- Sheets Supra. .

Other District Court have voided sentences under Foster due to improper trial Court Citation to unconstitutional sentencing provisions. There is a conflict with the State -v- Adams , 4th Judicial District App.No. 04CA2959, 2009-Ohio-6491, §¶11; State -v- Profanchik, 7th Judicial District Manoning App. No. 06-MA-143, 2007-Ohio-6430, ¶25 with the Third Judicial District case of State -v- Holdcroft, Wyandot County App. 16-10-13, 2012-Ohio-3066, which should have been deemed a certified conflict.

Wherefore, this Honorable Court should reconsider this case at bar, and consider these issues as listed above. Wherefore the Defendant prays for the relief requested and any other deemed proper, appropriate and necessary by this Honorable Court.

Respectfully Submitted,


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CERTIFICATE OF SERVICES

I DO HEREBY SWEAR AND STATE THAT A TRUE AND CORRECT COPY OF THIS MOTION WAS SERVED UPON THE WYANDOT COUNTY PROSECUTING ATTORNEY ON THIS 14, DAY OF OCTOBER, 2012.


Henry Holdcroft, A381-888