

IN THE SUPREME COURT OF OHIO

DOUGLAS J. WINE	:	CASE NO. 2012-1611
	:	
Appellant	:	On Appeal from the Auglaize County
	:	Court of Appeals, Third Appellate Dist.
v.	:	
	:	C.A. Case No. 2-12-01
STATE OF OHIO	:	
	:	EXPEDITED REVIEW REQUESTED
Appellee	:	
	:	Trial Court has set hearing for October 22
	:	2012

EMERGENCY MOTION TO CONTINUE THE BOND ALREADY ESTABLISHED BY THE COURT OF APPEALS, MAKE 2 MODIFICATIONS TO SAID BOND, AND TO ISSUE AN INJUNCTION/ORDER PROHIBITING THE TRIAL COURT FROM CONDUCTING ANY HEARINGS REGARDING THIS CASE WHILE ON APPEAL

The Appellant, Douglas J. Wine, through counsel requests that this honorable Court enter an order continuing the Appellate bond established by the Third District Court of Appeals as well as grant the return of the Appellant's passport, grant the Appellant work privileges in Jamaica and issue an injunction enjoining the trial court from conducting any type of bail or bond hearing regarding this case until the instant appeal is resolved by this Court. The reasons for this request are outlined in the attached Memorandum in Support.

FILED
OCT 17 2012
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
OCT 17 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Respectively submitted,



LORIN J. ZANER (0008195)
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Toledo, Ohio 43604
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Counsel of Record for the Appellant

MEMORANDUM IN SUPPORT

I. Relief Requested

The Appellant, Douglas J. Wine, is before this Court on appeal from the Third Appellate District's denial of his Motion for Reconsideration entered on August 7, 2012. *Notice of Appeal, A-1, A-2, attached. Journal Entry denying the Motion for Reconsideration, A-3. A-4, attached.*

The Appellant is first requesting that this Court continue the Appellate Bond that was established by the Third District Court of Appeals prior to its reversal of the Appellant's felony conviction and remand order for a finding of guilt on a third degree misdemeanor. *Bond Conditions set by the Court of Appeals, A-5, A-6, attached.* This Court has the authority to continue or set bail under R.C. §2953.10, paragraph 1. *A-7, attached.*

“When an appeal is taken from a court of appeals to the supreme court, the supreme court has the same power and authority to suspend the execution of sentence during the pendency of the appeal and admit the defendant to bail as does the court of appeals.....” R.C. §2953.10, para. 1.

Secondly, the Appellant is requesting that this Court modify the Bond so that he can have his passport returned and be allowed to travel back and forth to Jamaica for employment. A notarized letter from Dr. Douglas McCloy, Executive Director of Mission of Sight, details the work offer/requirements. *A-8, A-9 attached.*

Dr. McCloy is offering a paid position to the Appellant working at his two clinics in Jamiaca. The Appellant is an optometrist and has worked at these clinics in the past. While his appeals have been pending, the Appellant has had difficulty in obtaining employment as his optometry license has been revoked in Ohio. If this Court accepts the Appellant's appeal and/or the Cross-Appeal from the State of Ohio, the resolution of this case likely will take

one to two years. The Appellant is not required to have his Ohio license for this opportunity. Allowing the Appellant this work opportunity seems fair and just.

Thirdly, the Appellant requests this Court to issue an order and/or injunction enjoining the trial court from conducting any type of bail or bond hearing while this case is before this Court. This Court has the authority to do this under R.C. §2727.05, “Injunction may be granted in cases of appeal”.

**“Upon like proof, an injunction also may be allowed by the supreme court or court of appeals, or by a judge of either, as a temporary remedy, during the pendency of a case on appeal in such courts.
R.C. §2727.05**

Attached is an affidavit as required by the statute. *A-12.*

The trial court, sua sponte, has verbally notified Appellant’s counsel that it intends to hold some type of bail hearing next Monday, October 22, 2012. *A-10, copy of docket sheet attached.*

The Appellant requests this extraordinary relief due to two factors. First, the bond set by the Court of Appeals has not been rescinded and, pending an appeal, the trial court lacks jurisdiction to hold any such hearing. The only court with jurisdiction is this Court.

Secondly, when the bond was granted by the Court of Appeals, the Appellant stood convicted of gross sexual imposition, a fourth degree felony and was appealing that conviction. The conditions have significantly changed which, if anything, would mandate less stringent conditions of bail/bond, not more stringent conditions.

The Appellant was incarcerated on December 15, 2011. *A-13, A-14, A-15.* The Appellant was released via the Appellate Bond on February 29, 2012. *A-16.*

Subsequently, the Court of Appeals has reversed the Appellant’s conviction and ordered the trial court to enter a finding of guilt of sexual imposition, a third degree

misdemeanor. The maximum jail sentence for this offense is 60 days. *A-17, A-18.* The Appellant has already served more than that number of days at the Ohio Department of Rehabilitation and Corrections.

II. Procedural History

The Appellant, Douglas J. Wine, was indicted by the Auglaize County Grand Jury for one count of rape in violation of R.C. 2907.02(A)(2), a first degree felony on February 4, 2011. *State v. Wine, 2012-Ohio-2837. Op at ¶2.*

The case proceeded to a jury trial on October 25, 2011. *Opinion at ¶7.* The alleged victim was Mr. Wine's mother-in-law who testified that she had fallen asleep in her grandson's bed and awoke to Mr. Wine having his finger in her vagina. *Opinion at ¶8, ¶10.*

At the conclusion of the State's case, the Appellant made a Crim, R. 29 motion which was denied by the trial court. Trial Transcript, p. 334-335.

Mr. Wine denied the allegations during the defense case. The defense renewed its Crim R. 29 motion at the close of evidence which was, again, denied. Trial Transcript, p. 541.

The trial court, sua sponte, instructed the jury on rape as well as the lesser-included offenses of sexual battery, R.C. 2907.03(A)(1), a third degree felony and gross sexual imposition, R.C. 2907.05(A)(1), a fourth degree felony. The Appellant, Mr. Wine, objected to any lesser-included offenses as being part of jury instructions. Mr. Wine's trial counsel specifically informed the court that the defense had not been and was not prepared for lesser-included offenses. Trial Transcript, p. 550-551.

After three days of deliberations, the jury returned a verdict of not guilty to rape, not guilty to the lesser-included sexual battery, but guilty of the lesser-included gross sexual

imposition. *Opinion* at ¶12. Trial Transcript, p. 620-621.

The trial court sentenced the Appellant, Mr. Wine, to 15 months imprisonment and classified him as a Tier I sexual offender. *Opinion* at ¶13.

On January 9, 2012, the Appellant timely filed a notice of appeal. One month later, a Motion for Release on Bail and Suspension of Sentence Pending Appeal was granted by the Third District Court of Appeals.

On June 25, 2012, the Third District Court of Appeals vacated the judgment and determined that the evidence was insufficient in regards to the gross sexual imposition charge/conviction. However, the Court felt the evidence was sufficient for a conviction on sexual imposition and ordered a remand to the trial court to make a finding of guilt on that charge and sentence accordingly. *Opinion* ¶63.

The Appellant, Mr. Wine, timely-filed a Motion for Reconsideration on July 5, 2012 raising four assignments to reconsider. The Court of Appeals denied the Motion for Reconsideration on August 7, 2012.

The Appellant filed a Notice of Appeal and Memorandum in Support of Jurisdiction with this Court on September 21, 2012. The State of Ohio filed a Cross-Appeal on October 1, 2012.

The trial court, sua sponte, has notified the Appellant last week that it intends to hold a bond hearing next Monday, October 22, 2012. The trial court has not indicated any reason or basis for conducting such a hearing. As of this date, the bond established by the Court of Appeals still stands. Any jurisdiction resides with this Court.

III. The Appellant faces the risk of immediate and, irreparable harm if his Appellate bond is not continued.

The Appellant's conviction for the fourth degree felony and his 15 month prison sentence has been reversed. The reversal was based upon insufficient evidence.

The Court of Appeals has ordered the trial court to enter a judgment of conviction for a third degree misdemeanor with a maximum sentence of 60 days.

The Appellant has already served over 60 days of incarceration. He should not be put at any further risk of incarceration when his incarceration has already been longer than his potential, maximum sentence nor should he have more odious terms put upon him.

IV. Preserving the status quo is appropriate in this case.

The Appellant has a bond, granted by the Court of Appeals, being held at the Auglaize County of Courts. That bond was issued pursuant to the same terms and conditions ordered by the trial court pre-trial. If anything, with the Appellant's felony conviction being reversed by the Court of Appeals, this Court should grant a less stringent bond which would be the Appellant's two requested modifications of bond.

The Appellant posted \$15,000.00 cash. The Appellant has been reporting to the Auglaize County Sheriff's Department on a weekly basis. The Appellant has registered pursuant to the requirements of R.C. §2950. The Appellant has not been arrested or charged with any new crimes. The Appellant has been law-abiding and has maintained close contact with legal counsel.

V. Conclusion

While the Appellant has been on an Appellate bond, his felony conviction has been overturned based upon insufficient evidence and the Appellate Court has ordered a conviction for a third degree misdemeanor.

The Appellant has filed a Notice of Appeal and Memorandum in Support of

Jurisdiction with this Court as he believes the remand for misdemeanor conviction is improper.

Weeks after the Appellant has filed his appeal with this Court, the trial court has suddenly decided to hold another bail/bond hearing. The trial court is without jurisdiction on this matter. The jurisdiction lies with this Court.

Accordingly, the Appellant requests that this Court order that the Appellant bond issued by the Third District Court of Appeals be continued with modifications, i.e., the release of the Appellant's passport and permission be granted to allow the Appellant to make work trips to Jamaica, and that the trial court be issued an order that it does not have jurisdiction regarding this case while the appeal is in the Ohio Supreme Court.

Respectively submitted,



Lorin J. Zaner (0008195)

545 Spitzer Bldg.

Toledo, Ohio 43604

(419) 242-8214

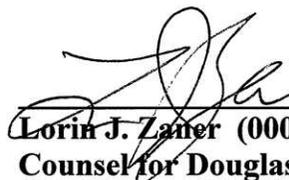
(419) 242-8658

lorinzaner@accesstoledo.com

Counsel for Appellant, Douglas J. Wine

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was faxed to counsel for the Appellee, Edwin A. Pierce, Auglaize County Prosecuting Attorney, at 419-739-6786, on this 16th day of October, 2012 and a file-stamped copy will be sent by ordinary U.S. mail to Edwin A. Pierce, Auglaize County Prosecuting Attorney, P.O. Box 1992, Wapakoneta, Ohio, 45895 upon my receipt from the Ohio Supreme Court Clerk.



Lorin J. Zaner (0008195)

Counsel for Douglas J. Wine

IN THE SUPREME COURT OF OHIO

DOUGLAS J. WINE	:	CASE NO. 2012-1611
	:	
Appellant	:	On Appeal from the Auglaize County
	:	Court of Appeals, Third Appellate Dist.
v.	:	
	:	C.A. Case No. 2-12-01
STATE OF OHIO	:	
	:	EXPEDITED REVIEW REQUESTED
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	:	Trial Court has set hearing for October 22
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APPENDIX TO

EMERGENCY MOTION TO CONTINUE THE BOND ALREADY ESTABLISHED BY THE COURT OF APPEALS, MAKE 2 MODIFICATIONS TO SAID BOND, AND TO ISSUE AN INJUNCTION/ORDER PROHIBITING THE TRIAL COURT FROM CONDUCTING ANY HEARINGS REGARDING THIS CASE WHILE ON APPEAL

Notice of Appeal of Douglas J. Wine in the Supreme Court of Ohio.....	A-1
Judgment Entry denying the Appellant’s Motion for Reconsideration.....	A-3
Bond Conditions set by Appellate Court, entered 02/28/2012.....	A-5
R.C. § 2953.10, Power and authority to suspend execution of sentence.....	A-7
Notarized letter of Dr. Douglas McCloy.....	A-8
Docket entry of October 22, 2012 Bond hearing by trial court.....	A-10
R.C.§ 2727.05, Injunction may be granted in cases of appeal.....	A-11
Affidavit of Lorin Zaner per R.C. §2727.05.....	A-12
Docket entries showing the incarceration of Appellant on 12/16/2011.....	A-13
Docket entry showing the filing of the Appellate Bond on 02/29/2012.....	A-16
R.C.§2907.06, Sexual Imposition.....	A-17
R.C. §2929.24, Definite jail terms for misdemeanors.....	A-18

Notice of Appeal of Appellant Douglas J. Wine

Appellant, Douglas J. Wine, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Auglaize County Court of Appeals, Third Appellate District, entered in Court of Appeals case No. 02-2012-0001 on June 25, 2012 and from a denial of a Motion for Reconsideration entered on August 7, 2012.

This case raises substantial constitutional questions and is one of public or great general interest.

Respectively submitted,



Lorin J. Zaner (0008195)
545 Spitzer Bldg.
Toledo, Ohio 43604
(419) 242-8214
(419) 242-8658
lorinzaner@accesstoledo.com

Counsel for Appellant, Douglas J. Wine

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was faxed to counsel for the Appellee, Edwin A. Pierce, Auglaize County Prosecuting Attorney, at 419-739-6786, on this 21st day of September, 2012 and a file-stamped copy will be sent by ordinary U.S. mail to Edwin A. Pierce, Auglaize County Prosecuting Attorney, P.O. Box 1992, Wapakoneta, Ohio, 45895 upon my receipt from the Ohio Supreme Court Clerk.



Lorin J. Zaner (0008195)
Counsel for Douglas J. Wine

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 2-12-01

v.

DOUGLAS J. WINE,

JUDGMENT
ENTRY

DEFENDANT-APPELLANT.

This matter comes on for determination of Appellant's motion for reconsideration of this Court's opinion and final judgment, and Appellee's memorandum in opposition to the motion.

Upon consideration the Court finds that the motion fails to raise any error in the decision or any issue not properly considered in the first instance. See *Garfield Hts. City School Dist. v. State Bd. of Edn.* (1992), 85 Ohio App.3d 117; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68. The issues raised in Appellant's motion were fully considered and there was no error in any part of the Court's

Accordingly, the motion is not well taken.

AUGLAIZE COUNTY
COURT CLERK'S OFFICE
FILED

2012 AUG -7 A 10:25

I. JEAN HENSTROTH
CLERK OF COURTS

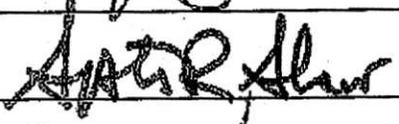
A-3

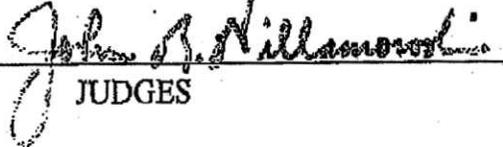
VOL. 2 PAGE 291

Case No. 2-12-01

It is therefore **ORDERED** that Appellant's motion for reconsideration be,
and the same hereby is, denied.







JUDGES

DATED: AUGUST 7, 2012
/hlo

A-4

VOL 2 PAGE 292

PLAINTIFF/APPELLEE
FILED

02/28/2012 COPIES	0.60	0.60
02/28/2012 COPY OF JUDGMENT ENTRY TRANSMITTED TO: EDWIN A. PIERCE, PROS. ATTY.	0.00	0.00
02/28/2012 Issue Date: 02/28/2012 Service: CERTIFIED COPY OF JOURNAL ENTRY Method: REGULAR US MAIL Cost Per: \$ 0.00 WINE, DOUGLAS J c/o ATTY: ZANER ESQ, LORIN J (THIS COPY WAS NOT CERTIFIED AS ORDERED BY THE COURT) OHIO SUPREME CT #008195 545 PITZER BUILDING TOLEDO, OH 43604 Tracking No: R000062933 OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS CENTRAL OFFICE, GARY MOHR, DIRECTOR 770 W. BROAD STREET COLUMBUS, OH 43222 Tracking No: R000062934 CORRECTIONAL RECEPTION CENTER RHONDA RICHARD, WARDEN 11271 STATE ROUTE 762 ORIENT, OH 43146 Tracking No: R000062935	2.35	2.35
02/28/2012 JUDGMENT ENTRY FILED. IT IS ORDERED THAT UPON RECEIPT OF THIS JUDGMENT ENTRY, THE ODR&C SHALL IMMEDIATELY RELEASE THE DEFENDANT,	6.00	6.00

A-5

DOUGLAS J. WINE,
 INMATE #A655817 FROM
 CUSTODY. IT IS FURTHER
 ORDERED THAT UPON
 RELEASE FROM CUSTODY,
 DEFENDANT-APPELLANT
 SHALL IMMEDIATELY
 REPORT TO THE
 AUGLAIZE COUNTY
 COMMON PLEAS COURT
 CLERK'S OFFICE, TO POST
 BOND PURSUANT TO THE
 SAME TERM AND
 CONDITIONS ORDERED
 INT HE TRIAL COURT'S
 FEB. 8, 2011 JOURNAL
 ENTRY- ORDERS ON
 BOND. A NEW OR BOND
 AND \$150,000.00 - 10%
 PROVISION BOND SHALL
 BE EXECUTED BY
 APPELLANT BEFORE THE
 CLERK, AND THE
 \$15,000.00 THAT 8IS BEING
 HELD BY THE AUGLAIZE
 COUNTY CLERK OF
 COURTS SHALL BE
 TRANSFERRED TO THE
 NEW BOND. IT IS
 FURTHER ORDERED THAT
 UPON POSTING OF THE
 NEW BONDS,
 DEFENDANT-APPELLANT
 SHALL REPORT TO THE
 AUGLAIZE COUNTY
 SHERIFF'S DEPARTMENT
 PURSUANT TO HIS
 REQUIREMENTS TO
 REGISTER UNDER THE
 PROVISIONS OF ORC. 2950.

02/17/2012 POSTAGE FEES	0.90
02/17/2012 COPY OF JUDGMENT	0.20

ENTRY MAILED TO: **A-6**

sentence has been set by the supreme court, good cause is shown for the suspension, the defendant files a motion requesting the suspension, and only after notice has been given to the prosecuting attorney of the appropriate county.

(B) Notwithstanding any provision of Criminal Rule 46 to the contrary, a trial judge of a court of common pleas shall not release on bail pursuant to division (A)(2)(a) of this section a defendant who is convicted of a bailable offense if the defendant is sentenced to imprisonment for life or if that offense is a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2905.01, 2905.02, 2905.11, 2907.02, 2909.02, 2911.01, 2911.02, or 2911.11 of the Revised Code or is felonious sexual penetration in violation of former section 2907.12 of the Revised Code.

(C) If a trial judge of a court of common pleas is prohibited by division (B) of this section from releasing on bail pursuant to division (A)(2)(a) of this section a defendant who is convicted of a bailable offense and not sentenced to imprisonment for life, the appropriate court of appeals or two judges of it, upon motion of the defendant and for good cause shown, may release the defendant on bail in accordance with division (A)(2) of this section.

Effective Date: 09-03-1996

2953.10 Power and authority to suspend execution of sentence.

When an appeal is taken from a court of appeals to the supreme court, the supreme court has the same power and authority to suspend the execution of sentence during the pendency of the appeal and admit the defendant to bail as does the court of appeals unless another section of the Revised Code or the Rules of Practice of the Supreme Court specify a distinct bail or suspension of sentence authority.

When an appeal in a case in which a sentence of death is imposed for an offense committed on or after January 1, 1995, is taken directly from the trial court to the supreme court, the supreme court has the same power and authority to suspend the execution of sentence during the pendency of

A-7



1723 Marion Mt. Gilead Road Marion, Ohio 43302
www.MissionofSight.org

October 10, 2012

RE: Douglas Jay Wine, O.D.

To Whom it may concern,

I am writing this letter in request for the release Dr. Wine's passport in order for him to fulfill his role as Coordinator of Eye Surgery for our missional clinics in Jamaica. Dr Wine has been actively involved in our clinics from as far back as 2001, and with the advancement of our Surgical Center, his physical presence is crucial to the success of our operation.

Presently, we are scheduled for a Surgical Cataract mission in early March of 2013 which demands an extensive amount of coordination and pre-operative care with the patients that have been identified in need. This pre and post-operative care are his specialty, as well as his purpose within our organization. Additionally, Dr Wine realistically cannot be replaced when you take into account his assimilation with the culture of our Jamaican people, and the trust of the Surgical Volunteers who come to perform the surgery. Without his physical presence to facilitate the surgical mission, the function, coordination, and success of all we have worked for over the years will be greatly affected. Dr Wine's ability to travel is directly related to the blindness of hundreds of patients who are anticipating surgical correction to regain their sight.

The present schedule in preparation for the March surgery dates are for Dr Wine to assist me with assessing the over 400 patients that have been identified in our 3 clinics as in need for cataract and glaucoma surgery. While in Jamaica we would begin our week assessing patients in our Montego Bay Clinic (Bay West Mall, Montego Bay, St. James Parish), then travel to our Clinic in Mandeville (11 Caledonia Rd., Mandeville, Manchester Parish), and end our week at the Surgical Center in Frome (Frome, Westmoreland Parish). As we travel between our Clinics, we be accommodated at the Missionary housing in Mandeville and Frome.

Although his Clinical Assistance for our mission work in Jamaica is highly dependent on volunteerism, Dr Wine does qualify as Administrative Clinical staff, and therefore will be compensated financially for his involvement. This we know would also be highly beneficial to his life situation and support of his family. However, without the ability to travel to Jamaica, his impact in this position is extremely limited.

Now that justice has come closer to the truth, and has removed the felonious charges, our plea to you is to reinstate his passport and allow Dr. Douglas Jay Wine, to regain his ability to travel outside the USA and serve the people of Jamaica with his expertise.

Professionally yours,

Douglas R McCloy

Dr Douglas McCloy

Executive Director

State of Ohio
County Marion

Dr. Douglas McCloy came before me this 10th day
of October 2012.

Comm Exp. 6/13/13

Rita Ruge
Notary

A-9

CourtView 2000**General Inquiry**

New Search...

Summary

Parties

Events

Dockets

Disposition

Costs

Docket Search

2011 CR 0026 WINE, DOUGLAS J FDP

Search CriteriaDocket
Desc.

ALL

Begin Date

Sort

End Date

- Ascending
 Descending

Search Results First 100 of result set displayed, Please limit search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
10/05/2012	HEARING SET ON MONDAY, OCTOBER 22, 2012 AT 8:30 AM ON BOND HEARING FILED.	0.00	0.00	
08/07/2012	STATE'S RESPONSE TO PETITION TO VACATE OR SET ASIDE SENTENCE AND CONVICTION FILED.	0.00	0.00	
07/25/2012	THE RECORD INCLUDING THE TRIAL TRANSCRIPTS AND THE EXHIBITS ADMITTED DURING TRIAL THAT WERE PREVIOUSLY SUBMITTED TO THE COURT OF APPEALS PROVIDED TO THE COURT AS E	0.00	0.00	

A-10

2727.05 Injunction may be granted in cases of appeal.

When an injunction has been allowed and during the pendency of the action in the court of common pleas has been vacated, either by a judge thereof in vacation or by the court previous to the trial of the action, and after such trial an appeal is taken from the judgment or final order of the court of common pleas to the court of appeals, an injunction may be granted before judgment or final order in the action, by the court of appeals in which it is pending or by a judge thereof, when it appears satisfactorily to such court or judge, by affidavit of the party seeking the injunction or his agent, that such party is entitled thereto. Upon like proof, an injunction also may be allowed by the supreme court or court of appeals, or by a judge of either, as a temporary remedy, during the pendency of a case on appeal in such courts.

Effective Date: 10-01-1953

2727.06 to 2727.10 [Repealed].

Effective Date: 1970 HB1201 07-01-1971

2727.11 Enforcing an injunction or restraining order.

An injunction or restraining order granted by a judge may be enforced as the act of the court, and disobedience thereof may be punished by the court, or by a judge who granted it in vacation, as a contempt.

Effective Date: 10-01-1953

2727.12 Procedure if injunction or restraining order is disobeyed.

Upon being satisfied, by affidavit or otherwise, that there has been a breach of an injunction or restraining order, the court or

A-11 the breach of an injunction or order issued such injunction or order

IN THE SUPREME COURT OF OHIO

Douglas J. Wine, Appellant
vs.
State of Ohio, Appellee

Supreme Court No. 2012-1611

AFFIDAVIT OF LORIN J. ZANER

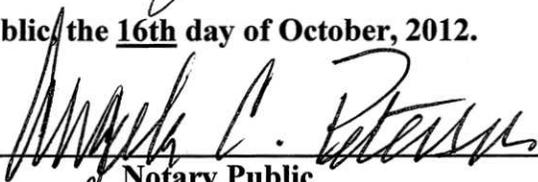
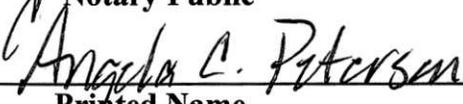
I, Lorin J. Zaner, being first duly sworn upon my oath, do depose and state the following:

1. I am the attorney for the Appellant, Douglas J. Wine.
2. I attest that the information contained within the "Emergency Motion to Continue Bond Already Established by the Court of Appeals, Make 2 Modification to Said Bond, and to Issue an Injunction/Order Prohibiting the Trial Court from Conducting Any Hearings Regarding this Case" is true and accurate to the best of my knowledge.
3. I believe that this Court is the proper venue and has the jurisdiction on this matter.
4. I believe there is a substantial risk that should the trial court attempt to create conflicting bond conditions, it may cause immediate and irreparable injury to the Appellant, Douglas J. Wine such as incarceration.
5. The Appellant has already served a longer period of incarceration than what his maximum sentence would be if he were to be sentenced for a third degree misdemeanor.
6. I believe that injunctive relief will preserve the status quo pending this Court's final determination of the appeal which would be in accordance to established caselaw. *Ohio Urology Inc. v. Poll* (1991), 72 Ohio App.3d 446, 454; *Dunkelman v. Cincinnati Bengals, Inc.*, 2004-Ohio-6425, ¶45.
7. I know of no other suitable means to prevent harm to the Appellant except through this action.

Further Affiant sayeth naught.


Lorin J. Zaner

Sworn and subscribed before me, a Notary Public, the 16th day of October, 2012.


Notary Public

Printed Name



Angela C. Petersen
Notary Public, State of Ohio
My Commission Expires April 15, 2017

CAUSE SAID
 TRANSCRIPT TO BE
 PREPARED AND THAT
 THE COSTS THEREOF BE
 ASSESSED TO THE
 DEFENDANT.

01/09/2012	POSTAGE FEES	0.44	0.44
01/09/2012	COPY OF NOTICE OF APPEAL MAILED TO PROSECUTING ATTORNEY EDWIN A PIERCE	0.00	0.00
01/09/2012	MOTION FOR TRANSCRIPTION OF TRIAL RECORD PER LOCAL RULE 30 FILED.	0.00	0.00
01/09/2012	STATEMENT AND PRAECIPE FILED	0.00	0.00
01/09/2012	CRIMINAL APPEAL DOCKETING STATEMENT FILED	0.00	0.00
01/09/2012	DEPOSIT Receipt: 98209 Date: 01/09/2012	150.00	0.00
01/09/2012	NOTICE OF APPEAL FILED.	0.00	0.00
12/19/2011	RETURN RECEIPT FILED (SIGNED BY OHIO BCI & I 12/16/2011)	0.00	0.00
12/19/2011	LETTER REQUESTING PARENT INSTITUTION MAILED	0.00	0.00
12/16/2011	WARRANT TO CONVEY RETURNED AND FILED. ORIENT, OHIO. RECEIVED THIS DAY, FROM ALLEN F SOLOMON SHERIFF OF AUGLAIZE COUNTY, OHIO, THE PRISONER NAMED IN THE WITHIN WARRANT. D. ELLIS/SUPERINTENDENT.	227.00	227.00

A-13

SHERIFF'S RETURN:
 RECEIVED THIS WRIT ON
 THE 15 DAY OF
 DECEMBER, 2011, AT 8:50
 O'CLOCK A.M., AND ON
 THE 15 DAY OF
 DECEMBER, 2011 I
 EXECUTED THE SAME
 BY CONVEYING THE
 PERSON NAMED TO THE
 PLACE DESIGNATED, AS
 SHOWN BY THE RECEIPT
 ENDORSED HEREON.
 ALLEN F. SOLOMON,
 SHERIFF, BY: RUSTY O
 KRUGH/DEPUTY.

12/16/2011 NOTICE TO SERVE 6.00 6.00
 RETURNED AND FILED.

SHERIFF'S RETURN:
 RECEIVED THIS WRIT ON
 15 DECEMBER, 2011 AT
 8:51 O'CLOCK A.M. AND
 ON 15 DECEMBER, 2011, I
 SERVED THE WITHIN
 NAMED WARDEN BY
 PERSONALLY HANDING
 TO EACH OF THEM A
 TRUE AND CERTIFIED
 COPY THEREOF WITH
 ALL THE
 ENDORSEMENTS
 THEREON. ALLEN F.
 SOLOMON, SHERIFF, BY:
 RUSTY O
 KRUGH/DEPUTY.

12/16/2011 NOTICE TO SERVE 8.00 8.00
 RETURNED AND FILED.

SHERIFF'S RETURN:
 RECEIVED THIS WRIT ON
 15 DECEMBER, 2011 AT
 8:51 O'CLOCK A.M. AND
 ON 15 DECEMBER, 2011, I
 SERVED THE WITHIN

A-14

NAMED DOUGLAS J
WINE BY PERSONALLY
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THEREON. ALLEN F.
SOLOMON, SHERIFF, BY:
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12/15/2011	COPY OF JOURNAL ENTRY ORDERS DENYING DEFENDANTS MOTION TO CONTINUE DEFENDANT ON BAIL AND TO SUSPEND EXECUTION OF SENTENCE PENDING APPEAL TRANSMITTED TO: PROS ATTY	1.00	1.00
12/15/2011	Issue Date: 12/15/2011 Service: COPY OF JOURNAL ENTRY ORDERS DENYING DEFENDANTS MOTION TO CONTINUE DEFENDANT ON BAIL AND TO SUSPEND EXECUTION OF SENTENCE PENDING APPEAL Method: REGULAR US MAIL Cost Per: \$ 0.00 WINE, DOUGLAS J c/o ATTY: HOLLENBAUGH ESQ, H. RITCHEY 366 EAST BROAD STREET COLUMBUS, OH 43215 Tracking No: R000061898 WINE, DOUGLAS J c/o ATTY: ZANER ESQ, LORIN J OHIO SUPREME	2.88	2.88

A-15

03/15/2012	MOTION FOR CORRECTION OR MODIFICATION OF RECORD PURSUANT TO APP R. 9(E) FILED. Attorney: ZANER ESQ, LORIN J (0008195)	25.00	25.00
02/29/2012	OWN RECOGNIZANCE BOND FILED.	2.00	2.00
02/29/2012	RECOGNIZANCE OF ACCUSED (10%) FILED	2.00	2.00
02/29/2012	BAIL AND 10% BOND LETTER SIGNED	0.00	0.00
01/25/2012	RECORD ON APPEAL FILED IN COURT OF APPEALS.	0.00	0.00
01/25/2012	TRANSCRIPT OF PROCEEDINGS FILED. (3 BINDERS)	0.00	0.00
01/11/2012	Issue Date: 01/11/2012 Service: COPY OF JOURNAL ENTRY ORDERS ON TRANSCRIPT Method: REGULAR US MAIL Cost Per: \$ 0.00 WINE, DOUGLAS J c/o ATTY: ZANER ESQ, LORIN J OHIO SUPREME CT #008195 545 PITZER BUILDING TOLEDO, OH 43604 Tracking No: R000062194	1.44	1.44
01/11/2012	COPY OF JOURNAL ENTRY ORDERS ON TRANSCRIPT TRANSMITTED TO: PROS ATTY	1.00	1.00
01/10/2012	JOURNAL ENTRY- ORDERS ON TRANSCRIPT FILED. THE COURT ORDERS THAT THE COURT REPORTER	2.00	2.00

A-16

2907.06 Sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12 of the Revised Code, a violation of this section is a misdemeanor of the first degree.

Effective Date: 05-14-2002

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Effective Date: 01-01-2004; 2007 SB10 01-01-2008

2929.24 Definite jail terms for misdemeanors.

(A) Except as provided in section 2929.22 or 2929.23 of the Revised Code or division (E) or (F) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

- (1) For a misdemeanor of the first degree, not more than one hundred eighty days;
- (2) For a misdemeanor of the second degree, not more than ninety days;
- (3) For a misdemeanor of the third degree, not more than sixty days;
- (4) For a misdemeanor of the fourth degree, not more than thirty days.

(B)(1) A court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (B) of section 2929.26 of the Revised Code. The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

(2)(a) If a prosecutor, as defined in section 2935.01 of the Revised Code, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.