

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO

:

Case No.: 2012-1611

Appellee/Cross Appellant:

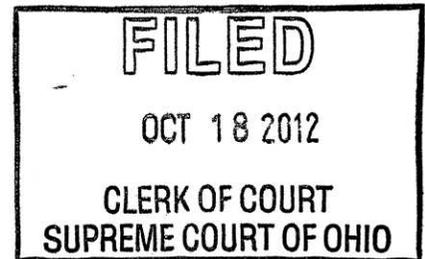
VS.

:

DOUGLAS J. WINE

:

Appellant/Cross Appellee:



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***APPELLEE'S OPPOSITION TO DEFENDANT'S  
MOTION TO CONTINUE BOND ALREADY  
ESTABLISHED BY THE COURT OF APPEALS***

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Now comes the Appellee/Cross Appellant, State of Ohio, hereinafter Appellee, and respectfully requests this Honorable Court to deny Appellant/Cross Appellee's, hereinafter Appellant, emergency motion. Appellant erroneously asserts that Appellant has a bond order and conditions of bond from the Third District Court of Appeals. Further, as set forth in the Memorandum of Support below, the other requests of Appellant are not appropriate.



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### ***MEMORANDUM IN SUPPORT***

Appellant is incorrect when he states the appellate bond set by the Third District Court of Appeals, Auglaize County, Ohio has not been rescinded. Appellant was released from the Ohio Department of Rehabilitation and Corrections on appellate bond by consent entry dated February 29, 2012. Subsequently, Appellee filed a motion on June 4, 2012 to revoke Appellant's bond in the Court of Appeals asserting various allegations concerning Appellant's conduct while out on bond. Prior to addressing the motion to revoke, the Third District Court of Appeals, Auglaize County, Ohio rendered its decision on Appellant's appeal, affirming in part and reversing in part the jury's verdict and Journal Entry of Guilt from which the Appellant appealed. On June 27, 2012, the

Third District Court of Appeals entered a Judgment Entry concerning Appellee's motion to revoke bond. (Said Entry of June 27, 2012 is attached to the Appendix hereto as Exhibit 1) The Third District Court of Appeals held that based upon the decision of the underlying appeal and the remand to the trial court, the stay of execution and release on bond granted "pending appeal" terminated with disposition of the appeal, finding the motion to revoke moot. As such, there is no current nor has there been a bond in place on the Appellant since June 27, 2012. Therefore, when Appellant states that the appellate bond is in place and should be continued such statement is erroneous.

The record in this matter does not reflect any stay of execution of the remand by the Third District Court of Appeals to the trial court. The trial court has set a hearing to set bond as bond is currently not set and no stay is in place. The trial court is in the best position to determine the nature of the bond to be set and conditions to be placed thereon. The trial court has had the opportunity to hear the evidence in this matter and the other relevant factors in determining bond.

The record in this case will reveal not only has Appellant filed an appeal of the decision of the Third District Court of Appeals and a denial of the motion for reconsideration; but the record will further reflect that the Appellee has also filed a cross appeal of the decision of the Third District Court of Appeals vacating Appellant's conviction for gross sexual imposition and remanding for entry of conviction on the lesser included offense of sexual imposition. Said cross appeal was based upon the Third District Court of Appeals' misconstruing the evidence,

failing to apply the appropriate standard for granting a Rule 29 motion; and applying a definition of “force” not supported by the law or the applicable facts of this case. It is also critical in this matter to recognize that either under a conviction for gross sexual imposition or sexual imposition, the Appellant has mandated reporting requirements under the sex offender registration laws of Ohio; Ohio Revised Code §2950 et seq. Allowing the Appellant to leave the jurisdiction of the Court, Jamaica or otherwise, renders compliance with such reporting requirements unenforceable. Again, it is the trial court which is in the best position to determine the requirements on any bond.

As the Appellant is presently without bond, the appellate bond having been terminated, it is Appellee’s position that the trial court should proceed to establish such bond. This position is supported as there is:

1. no bond currently established;
2. there has not been an application or order granting a stay of the decision of the Third District Court of Appeals;
3. this matter is presently pending before this Honorable Court;
4. the Appellant being subject to sexual notification reporting requirements;  
and
5. the Appellant failing to demonstrate any prejudice in the establishment of a reasonable bond.

This Court should not enjoin or otherwise prohibit the trial court from issuing further orders on this matter.

Respectfully submitted,

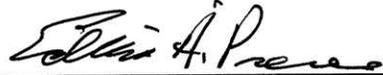


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PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U. S. Mail this 18<sup>th</sup> day of October, 2012 to attorney for Appellant/Cross Appellee, Lorin J. Zaner, 545 Spitzer Bldg., Toledo, OH 43604.



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STATE OF OHIO : Case No.: 2012-1611

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vs. :

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**APPENDIX TO**

***APPELLEE'S OPPOSITION TO DEFENDANT'S  
MOTION TO CONTINUE BOND ALREADY  
ESTABLISHED BY THE COURT OF APPEALS***

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Third District Court of Appeals Entry of June 27, 2012

Exhibit 1

RECEIVED  
AUGLAIZE CO. OH.  
JUN 29 2012

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

PROSECUTING ATTORNEY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 2-12-01

v.

DOUGLAS J. WINE,

JUDGMENT  
ENTRY

DEFENDANT-APPELLANT.

This cause comes on for determination of Appellee's motion to revoke bond and Appellant's response in opposition.

Upon consideration the Court finds that this appeal was decided and the case remanded to the trial court with the filing of the Court's opinion and final judgment on June 25, 2012. Accordingly, the order on the stay of execution and release on bond granted "pending appeal" terminated with disposition of the appeal, and the instant motion should be denied as moot.

It is therefore **ORDERED** that the motion to revoke bond be, and the same hereby is, denied as moot.

AUGLAIZE COUNTY  
COURT OF APPEALS  
FILED

2012 JUN 27 A 11: 54

DATED:  
/hlo

I. JEAN MESSSTROTH  
CLERK OF COURTS

*[Signature]*  
*[Signature]*  
*[Signature]*  
JUDGES