

ORIGINAL

IN THE OHIO SUPREME COURT

Michael Liming,	:	Case Nos. 2011-1170
Plaintiff-Appellant,	:	2011-1985
vs.	:	On appeal from the Athens
	:	County Court of Appeals
Denday Damos,	:	Fourth Appellate District
	:	Case No. 10 CA 39
Defendant-Appellee.	:	

EMERGENCY MOTION TO STAY

On October 26, 2012, the trial court ordered Plaintiff Michael Liming to begin serving his previously suspended ten-day jail sentence for contempt. Mr. Liming immediately moved to stay and/or modify that sentence. The trial court and the Fourth District Court of Appeals have denied Mr. Liming's request for a stay. See Nov. 6, 2012 journal entry and Nov. 7, 2012 Entry. As will be explained in the attached Memorandum in Support, Mr. Liming asks for an emergency stay so that his sentence is held in abeyance until the ninety-day period for filing a petition for a writ of certiorari to the United States Supreme Court has expired.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

FILED
 NOV 08 2012
 CLERK OF COURT
 SUPREME COURT OF OHIO

E. Kelly Mihocik
 E. Kelly Mihocik (0077745)
 Assistant State Public Defender
 0069870

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
kelly.mihocik@opd.ohio.gov

Counsel for Michael Liming

MEMORANDUM IN SUPPORT

On July 28, 2012, the Athens County Court of Common Pleas ordered Mr. Liming to serve a ten-day jail sentence for contempt. July 28, 2010 Order of Commitment Southeastern Ohio Regional Jail. But that sentence was stayed pending appeal. Aug. 10, 2010 Journal Entry Granting Stay Pending Appeal. On May 27, 2011, the Court of Appeals affirmed Mr. Liming's sentence. *Liming v. Damos*, 4th Dist. No. 10CA39, 2011-Ohio-2726. Mr. Liming then appealed to this Court.

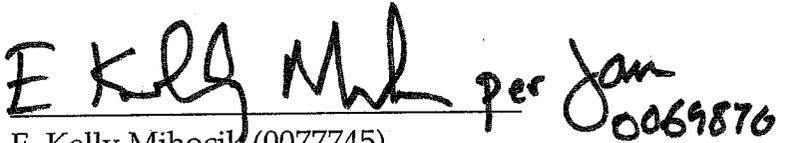
On October 24, 2012, this Court affirmed Mr. Liming's sentence, ruling that Mr. Liming did not have a constitutional right to counsel at the "purge hearing." *State v. Liming*, --- Ohio St.3d ---, 2012-Ohio-4793. Consequently, undersigned counsel is considering filing a petition for a writ of certiorari in the United States Supreme Court asking that court to hear this case.

Ordinarily, a petitioner has ninety days in which to ask the United States Supreme Court to hear an appeal. Rule 13, Rules of the United States Supreme Court. If this Court requires Mr. Liming to serve a sentence that may have been imposed in violation of his constitutional rights, it may moot his claims and/or cause him

irreparable harm. Therefore, Mr. Liming asks that this Court stay his sentence in accordance with App.R. 7, until Tuesday, January 22, 2012.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

 per Jan 0069876

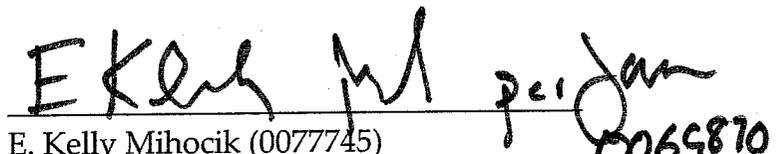
E. Kelly Mihocik (0077745)
Assistant State Public Defender

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
kelly.mihocik@opd.ohio.gov

Counsel for Michael Liming

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by regular U.S. Mail, postage, prepaid, this 8th day of November, 2012, to the office of Keith Wiens, ACCSEA, 184 N. Lancaster Street, Athens, Ohio 45701.

 per Jan 0069876

E. Kelly Mihocik (0077745)
Assistant State Public Defender

Counsel for Michael Liming

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

FILED
ATHENS COUNTY, OHIO
NOV 07 2012

Christina
CLERK
OF COMMON PLEAS COURT

Michael Liming,	:	
	:	Case No. 01DR0318
Plaintiff,	:	
	:	Judge Michael Ward
v.	:	
	:	Journal Entry Vacating October 26,
Denday Damos,	:	2012 Entry and Ordering Sentence to
	:	be Served on Weekends Only
Defendant.	:	

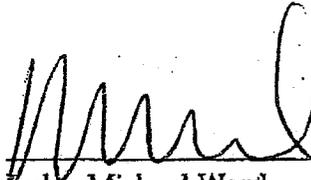
Plaintiff Michael Liming's November 2, 2012 emergency motion to stay and/or vacate sentence is granted in part and denied in part. This Court's entry dated October 26, 2012, ordering Mr. Liming to begin serving his previously suspended jail sentence on Monday, November 12, 2012 is VACATED. To the extent that Mr. Liming requested a stay of his sentence until January 22, 2012 that motion is DENIED. Mr. Liming's request that his sentence be modified is GRANTED.

This Court orders Mr. Liming to serve his ten-day jail sentence on weekends only. He is directed to report to the Southeastern Ohio Regional Jail facility on the next five Fridays at 6:00 p.m., where he shall remain incarcerated until Sunday at 6:00 p.m., at which time he shall be released. Mr. Liming's sentence shall consist of the following five weekends:

- Friday, November 9, 2012 at 6:00 p.m. until Sunday, November 11, 2012 at 6:00 p.m.;

- Friday, November 16, 2012 at 6:00 p.m. until Sunday, November 18, 2012 at 6:00 p.m.;
- Friday, November 23, 2012 at 6:00 p.m. until Sunday, November 25, 2012 at 6:00 p.m.;
- Friday, November 30, 2012 at 6:00 p.m. until Sunday, December 2, 2012 at 6:00 p.m.; and
- Friday, December 7, 2012 at 6:00 p.m. until Sunday, December 9, 2012 at 6:00 p.m.

IT IS SO ORDERED



Judge Michael Ward

FILED
ATHENS COUNTY, OHIO

NOV 07 2012

Autry, CLERK
COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

Michael Liming,

Plaintiff-Appellant,

v.

Denday Damos (fka Liming),

Defendant-Appellee.

Case No. 10CA39

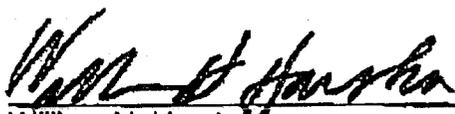
ENTRY

This matter comes before the Court on Appellant Michael Liming's emergency motion to stay. Because we believe the decision whether to stay the sentence in this matter lies with the Supreme Court of Ohio, we **DENY** the motion.

The clerk shall **immediately** serve a copy of this entry on all counsel and unrepresented parties at their last known addresses by fax and by ordinary mail. **SO ORDERED.**

Abele, P.J. & McFarland, J.: Concur.

FOR THE COURT



William H. Harsha
Administrative Judge

JOURNALIZED



10CA0039
00014801582
ENOR

NOV. 07 2012
JR: 25
PG: 174