

ORIGINAL

IN SUPREME COURT OF OHIO

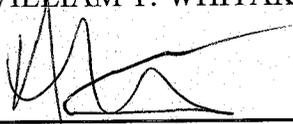
STATE OF OHIO,	:	CASE NO.: 2012-0216
	:	
<b>Cross-Appellant</b>	:	<b>ON APPEAL FROM</b>
	:	<b>THE NINTH DISTRICT</b>
vs.	:	<b>COURT OF APPEALS</b>
	:	<b>CASE NO. CA-24894</b>
DAVID WILLAN	:	<b>CROSS-APPELLEE'S MOTION</b>
<b>Cross-Appellee</b>	:	<b>TO SUPPLEMENT THE RECORD</b>

**FILED**  
 NOV 14 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

Now comes David Willan, Cross-Appellee, by and through the undersigned attorneys, and pursuant to Ohio Supreme Court Rule 5.8, hereby moves to supplement the record in this matter with documents related to the conviction and sentencing of Craig Conner and Daniel Mohler. Mr. Conner and Mr. Mohler were Defendants in the same case as David Willan and the documents are related to the State's position on ORC §2929.14 (D)(3)(a) and are material to Mr. Willan's conviction and sentence under ORC §2923.32. While the documents are part of Case No.: CR-2007-12-4233 (Mr. Willan's case number in the Court of Common Pleas) and arise from the same indictment, each defendant receives a distinguishing letter at the end of the case number. Only the documents associated with each letter are part of the record of that case. Therefore, because Mr. Willan is Case No.: CR-2007-12-4233(A), documents from Case Nos.: CR-2007-12-4233(B), for Mr. Conner, and CR-2007-12-4233 (E), for Mr. Mohler, are not a part of the record before this Court. These documents are referenced in David Willan's brief that is being filed simultaneously with this motion and are attached hereto as Exhibits A through D.

- Exhibit A: Case No.: CR-2007-12-4233; Summit County Court of Common Pleas; Conner June 25, 2009 Journal Entry.
- Exhibit B: Case No.: CR-2007-12-4233; Summit County Court of Common Pleas; Mohler June 25, 2009 Journal Entry.
- Exhibit C: Case No.: CR-2007-12-4233; Summit County Court of Common Pleas; Conner January 19, 2010 Journal Entry.
- Exhibit D: Case No.: CR-2007-12-4233; Summit County Court of Common Pleas; Mohler October 30, 2009 Journal Entry.

Respectfully submitted,  
WILLIAM T. WHITAKER CO., L.P.A.



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Attorneys for Cross-Appellee, David Willan

### **CERTIFICATE OF SERVICE**

A copy of the foregoing motion was served by First Class U.S. mail this 14<sup>th</sup> day of November, 2012 upon:

Colleen Sims  
Assistant Summit County Prosecutor  
53 University Avenue  
Akron, Ohio 44308

Brad L. Tammaro  
Assistant Attorney General  
P.O. Box 968  
Grove City, Ohio 43123



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Andrea L. Whitaker

**IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT**

2009 JUN 25 AM 7:50

**THE STATE OF OHIO** )  
 )  
**vs.** **SUMMIT COUNTY** )  
 **CLERK OF COURTS** )

**Case No. CR 07 12 4233 (B)**

**JOURNAL ENTRY**

**CRAIG E. CONNER**  
(PAGE 1 OF 4)

THIS DAY, to-wit: The 22nd day of June, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, LARRY WHITNEY, was present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

Prior to his sentencing the Prosecutor, Colleen Sims, made an oral motion to modify the plea agreement by deleting incident one from count one. The defense had no objection to the change, and it is so ordered.

The Court finds that the Defendant heretofore on December 20, 2007, pled GUILTY to ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1 of the Bill of Information, Ohio Revised Code Section 2923.32(A)(1) and (B)(1), a felony of the first (1<sup>st</sup>) degree; AGGRAVATED THEFT, as contained in Count 2 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), a felony of the first (1<sup>st</sup>) degree; GRAND THEFT, as contained in Counts 3, 4, 5, 6, 7 and 10 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), all felonies of the fourth (4<sup>th</sup>) degree; AGGRAVATED THEFT, as contained in Counts 8, 9 and 11 of the Bill of Information, Ohio Revised Code Section 2913.02(A)(3), all felonies of the third (3<sup>rd</sup>) degree; FRAUD RELATING TO MORTGAGE DOCUMENTS, as contained in Counts 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Bill of Information, Ohio Revised Code Section 1322.07(E), all felonies of the 5th degree; and TELECOMMUNICATIONS FRAUD, as contained in Counts 21 and 22 of the Bill of Information, Ohio Revised Code Section 2913.05(A), both felonies of the third (3<sup>rd</sup>) degree, which offenses occurred after July 1, 1996, which pleas were accepted by the Court, and the Court found the Defendant guilty of the above offenses.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, CRAIG E. CONNER, be committed to the Ohio Department of Rehabilitation and Corrections for a definite term of Four (4) Years, which is **not** a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1, Ohio Revised Code Section 2923.32(A)(1) and (B)(1), a felony of the first (1<sup>st</sup>) degree; for a definite term of Four (4) Years, which is **not** a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of AGGRAVATED THEFT, as contained in Count 2, Ohio Revised Code Section 2913.02(A)(3), a felony of the first (1<sup>st</sup>) degree; for a definite term of One (1) Year on each of Counts 3, 4, 5, 6, 7, and 10, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for

**COPY**

punishment of the crime of GRAND THEFT, Ohio Revised Code Section 2913.02(A)(3), felonies of the fourth (4th) degree; for a definite term of One (1) Year on each of Counts 8, 9, and 11, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of AGGRAVATED THEFT, Ohio Revised Code Section 2913.02(A)(3), felonies of the third (3rd) degree; for a definite term of One (1) Year on each of Counts 12, 13, 14, 15, 16, 17, 18, 19, and 20, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of FRAUD RELATING TO MORTGAGE DOCUMENTS, Ohio Revised Code Section 1322.07(E), felonies of the fifth (5th) degree; and for a definite term of One (1) Year on each of Counts 21 and 22, which are **not** mandatory terms pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of TELECOMMUNICATIONS FRAUD, Ohio Revised Code Section 2913.05(A), felonies of the third (3rd) degree, and that the said Defendant pay the costs of this prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS HEREBY ORDERED that the Court suspends the sentence on Counts 2 through 22, **except Count 1**, upon the condition that the Defendant complete 3 years of community control **following his incarceration**, with the following sanctions being imposed:

1. Report to the Adult Probation Department upon his release from prison and abide by the rules and regulations of said Department and/or the Adult Parole Authority.
2. Refrain from offensive conduct of every nature and obey all laws.
3. Pay a \$20.00 per month fee for services rendered by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. IT IS FURTHER ORDERED that the Defendant shall satisfy in full their costs and restitution accounts before any monies can be paid toward the supervision fees. The Clerk of Courts shall collect such fees and deposit the monies into the Summit County Probation Services Fund established in the County Treasury.
4. Provide a DNA sample pursuant to Sections 2901.07 and 2152.74 of the Ohio Revised Code.
5. He is to surrender his assets in the approximate amount of \$76,341.57 to be paid to OHIO ORGANIZED CRIME INVESTIGATION COMMISSION TASK FORCE 06-4, by executing the necessary paperwork through his attorney.
6. Pay the costs of this prosecution as directed by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the Summit County Clerk of Courts shall collect monies from the Defendant in the following order of priority: (1) restitution, if applicable; (2) costs; (3) Adult Probation Department fees; (4) fines, if applicable.

Defendant is therefore ORDERED to report to the Summit County Adult Probation Department, UPON RELEASE FROM PRISON.

SAID COMMUNITY CONTROL TO COMMENCE UPON DEFENDANT'S RELEASE FROM PRISON.

IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT

THE STATE OF OHIO

vs.

CRAIG E. CONNER  
(PAGE 3 OF 4)

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Case No. CR 07 12 4233 (B)

**JOURNAL ENTRY**

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

IT IS FURTHER ORDERED that the sentence imposed in Counts 2 through 22 are be served CONCURRENTLY and not consecutively with each other.

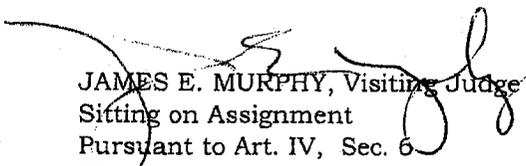
As part of the sentence in this case, the Defendant may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for Five (5) years as determined by the Adult Parole Authority. If the Defendant violates post-release control supervision or any of its conditions, the Adult Parole Authority May impose a prison term, as part of the sentence, of up to Nine (9) months, with a maximum for repeated violations of Fifty percent (50%) of the stated prison term. If the Defendant commits a new felony while subject to post-release control, the Defendant May be sent to prison for the remaining post-release control period or Twelve (12) months, whichever is greater. This prison term shall be served consecutively to any prison term imposed for the new felony of which the Defendant is convicted. Defendant is ORDERED to pay all prosecution costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that any motion for post-conviction relief is to be filed within 6 months from the date of sentencing.

IT IS FURTHER ORDERED that credit for time served **as of the date of sentencing** is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

**IT IS FURTHER ORDERED THAT THE DEFENDANT IS TO REMAIN IN THE SUMMIT COUNTY JAIL AND NOT TRANSPORTED TO THE PENAL INSTITUTION PENDING THE DEFENDANT EXECUTING THE NECESSARY PAPERWORK TO HIS ATTORNEY, THEN HE MAY BE TRANSPORTED TO THE PENAL INSTITUTION.**

APPROVED:  
June 23, 2009  
pmw

  
JAMES E. MURPHY, Visiting Judge  
Sitting on Assignment  
Pursuant to Art. IV, Sec. 6  
Ohio Constitution for

THOMAS A. TEODOSIO, Judge  
Court of Common Pleas  
Summit County, Ohio

**COPY**

cc: . Prosecutor Colleen Sims  
Criminal Assignment  
Adult Probation Department - **JAIL CREDIT**  
(Registrar's Office - **EMAIL**)  
(Attorney Larry Whitney)  
(Court Convey - **EMAIL**)

DANIEL M. HERRIG

**IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT**

2009 JUN 25 AM 7:50

THE STATE OF OHIO )  
SUMMIT COUNTY )  
CLERK OF COURTS )  
VS. )

Case No. CR 07 12 4233 (E)

**JOURNAL ENTRY**

**DANIEL MOHLER**

Page 1 of 3

THIS DAY, to-wit: The 22nd day of June, A.D., 2009, the Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. Defense counsel, PAUL ADAMSON, was present as was the Defendant who was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, statements of counsel, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12.

The Court finds that the Defendant, heretofore on April 17, 2008, pled GUILTY of the charge of ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, as contained in Count 1 of the Indictment, Ohio Revised Code Section 2923.32(A)(1), a felony of the first (1<sup>st</sup>) degree, UNLICENSED DEALER, as contained in Count 14 of the Indictment, Ohio Revised Code Section 1707.44(A)(1), a felony of the first (1<sup>st</sup>) degree, and SECURITIES FRAUD, as contained in Count 28 of the Indictment, Ohio Revised Code Section 1707.44(G), a felony of the first (1<sup>st</sup>) degree, which offenses occurred after July 1, 1996, which pleas, voluntarily made, and with a full understanding of the consequences, were accepted by the Court, and the Court found the Defendant guilty of the above offenses.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said and showing no good and sufficient cause why judgment should not be pronounced:

IT IS HEREBY ORDERED that the Defendant be sentenced to 4 years of incarceration on each of Counts 1, 14 and 28, to be served concurrently; suspended, upon the condition that the Defendant complete 5 years of community control, with the following sanctions being imposed:

1. Report to the Adult Probation Department as directed and abide by the rules and regulations of said Department and/or the Adult Parole Authority.
2. Refrain from offensive conduct of every nature and obey all laws.
3. Pay a \$20.00 per month fee for services rendered by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662. IT IS FURTHER ORDERED that the Defendant shall satisfy in full their costs and restitution accounts before any monies can be paid toward the supervision fees. The Clerk of Courts shall collect such fees and deposit the monies into the Summit County Probation Services Fund established in the County Treasury.
4. Provide a DNA sample pursuant to Sections 2901.07 and 2152.74 of the Ohio Revised Code.
5. Sign a waiver releasing Defendant's medical records to his probation officer in order to determine his supervision.
6. Continue all current treatment plans.

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7. Enter into, **when a bed becomes available, if accepted,** and successfully complete the Community Based Correctional Facility Program operated by the Oriana House for a term of up to one year as directed by the Adult Probation Department, and follow through with all aftercare counseling and treatment for a term of up to one year as directed.
8. Upon successful discharge from CBCF, enter into and successfully complete the transitional services component program at CBCF, operated by the Oriana House, and further, follow any recommendations and conditions as directed by the Adult Probation Department.
9. If Defendant is unable to complete the Community Based Correctional Facility Program due to his medical condition, the Adult Probation Department may use home incarceration as an alternative.
10. Pay \$500.00 toward the costs of this prosecution as directed by the Adult Probation Department; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 South High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED that the Summit County Clerk of Courts shall collect monies from the Defendant in the following order of priority: (1) restitution, if applicable; (2) costs; (3) Adult Probation Department fees; (4) fines, if applicable.

IT IS FURTHER ORDERED that the Defendant be screened for placement into the CBCF program operated by the Oriana House, Inc. The Defendant is to report to the CBCF intake staff as directed. The Summit County Sheriff's Office, Adult Probation Department and/or Court Psycho-Diagnostic Clinic shall cooperate with and make all records available to the CBCF staff, including pre-sentence investigations, to facilitate the screening process.

IT IS FURTHER ORDERED that if the Defendant fails to follow the rules and regulations of the Community Based Correction Facility Program as interpreted by the Community Based Correction Facility or probation staff, said Defendant shall be taken into custody by the Summit County Sheriff's Office and/or Akron Police Department and transported to the Summit County Jail and held without bail until further order of this Court.

IT IS FURTHER ORDERED that leaving the CBCF without authorization, including failure to return after being granted temporary leave, will constitute a violation of R.C. 2921.34 (ESCAPE) and will cause an independent subsequent prosecution, in addition to a probation violation.

Violation of this sentence shall lead to more restrictive sanctions for the Defendant, up to and including a prison term of 4 years, as well as post release control of 5 years.

Defendant is therefore ORDERED to report to the Summit County Adult Probation Department, FORTHWITH.

**IT IS FURTHER ORDERED that the Defendant was released on the same bond which was continued until a bed becomes available at the Community Based Correctional Facility, IF ACCEPTED, at which time the Defendant is to report to the Community Based Correctional Facility to commence serving the sentence imposed in this case.**

SAID COMMUNITY CONTROL TO COMMENCE THIS 22ND DAY OF JUNE, A.D., 2009.

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**IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT**

**THE STATE OF OHIO**

**vs.**

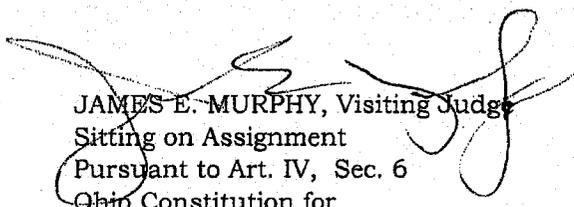
**DANIEL MOHLER**

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**Case No. CR 07 12 4233 (E)**

**JOURNAL ENTRY**

APPROVED:  
June 23, 2009  
cld

  
JAMES E. MURPHY, Visiting Judge  
Sitting on Assignment  
Pursuant to Art. IV, Sec. 6  
Ohio Constitution for

THOMAS A. TEODOSIO, Judge  
Court of Common Pleas  
Summit County, Ohio

cc: Prosecutor Colleen Sims  
Criminal Assignment  
Adult Probation Department  
(Attorney Paul Adamson)  
(CBCF & Oriana House - **EMAIL**)

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DANIEL M. HERRIGAN

2010 JAN 19 PM 3:10

SUMMIT COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

CR

STATE OF OHIO

\* CASE NO. 07 12 4233 (B)

Plaintiff

\*

-vs-

\* JUDGE JAMES MURPHY

CRAIG E. CONNER

\*

Defendant

\* JOURNAL ENTRY

\* \* \*

This cause came on to be heard upon the motion of Defendant for judicial release filed pursuant to R.C. 2929.20. It appears to this Court that, heretofore, the Defendant and the state entered into a written plea agreement and that the parties announced to this Court at the time of Defendant's sentencing that Defendant had fulfilled his agreement and that thus the state would abide by terms of the agreement; that at the time of sentencing this Court among other things ordered Defendant to surrender assets; that it has been announced to this Court that Defendant has surrendered assets as this Court had ordered him to do; that this Court, on June 22, 2009, suspended the Defendant's prison term on all counts but Count One and ordered the Defendant to complete three years of community control following his incarceration; and ordered other conditions of community control, all set forth in this Court's Journal Entry filed June 25, 2009; that Defendant is currently serving a four year sentence, not a mandatory term on Count One of the indictment herein; that a period of 180 days has passed since Defendant has been transferred to the institution to serve his sentence.

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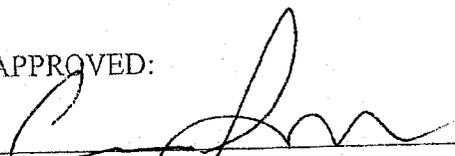
THEREFORE, it is hereby ORDERED that the Court suspends the sentence on Count One upon condition that the Defendant complete three years of community control, said community control to be served concurrently with the community control ordered on Counts Two through Twenty-two, said community control to begin following his release from his incarceration.

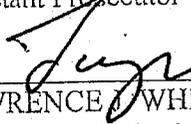
As previously ordered, Defendant is to report to the Summit County Adult Probation Department upon his release. All other orders contained in this Court's Journal Entry filed June 25, 2009, not inconsistent with this order shall remain in full force and effect.

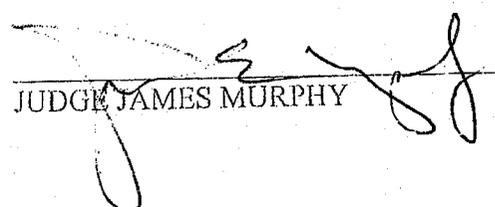
IT IS FURTHER ORDERED that a warrant of the Court be issued by the Clerk of this Court, directed to the Summit County Sheriff to remove the Defendant, CRAIG E. CONNER, Inmate #571-044, who is now confined at the Marion Correctional Institution, or any other place he may be found, forthwith, and return him to Summit County, Ohio and thereupon, after the Defendant is processed by said sheriff, the Defendant is to be released and placed on community control, under the terms and conditions set forth in this order and the order filed by this Court on June 25, 2009.

IT IS SO ORDERED.

APPROVED:

  
COLLEEN SIMS  
Assistant Prosecutor

  
LAWRENCE WHITNEY #0023738  
Attorney for Defendant

  
JUDGE JAMES MURPHY

COPY

DANIEL M. HOFFIGAN  
2009 OCT 30 AM 11:21  
SUMMIT COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT**

**THE STATE OF OHIO**

**vs.**

**DANIEL MOHLER**

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**Case No. CR 07 12 4233 (E)**

**JOURNAL ENTRY**

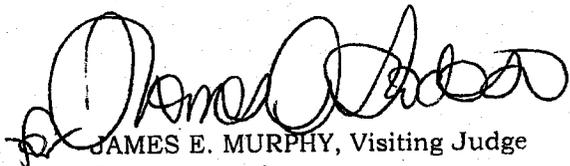
THIS DAY, to-wit: The 30th day of October, A.D., 2009, upon due consideration of this Court, IT IS HEREBY ORDERED that the Journal Entry dated October 28, 2009 be amended to read as follows:

THIS DAY, to-wit: The 28th day of October, A.D., 2009, upon application of the Defendant, and having investigated the circumstances in this case, the Court hereby amends the prior order of June 22, 2009 granting community control.

IT IS HEREBY ORDERED that the sanctions 7, 8 and 9 of the terms of the Defendant's community control be SUSPENDED, and the Defendant shall be released from the **ORIANA HALFWAY HOUSE at the TERRENCE MANN RESIDENTIAL CENTER (TMRC)**, FORTHWITH and shall be remanded to the Summit County Adult Probation Department to serve the balance of his community control under the same terms and conditions heretofore given.

Defendant is therefore ORDERED to report to the Summit County Adult Probation Department, FORTHWITH.

APPROVED:  
October 30, 2009  
cld



JAMES E. MURPHY, Visiting Judge  
Sitting on Assignment  
Pursuant to Art. IV, Sec. 6  
Ohio Constitution for

THOMAS A. TEODOSIO, Judge  
Court of Common Pleas  
Summit County, Ohio

cc: (Prosecutor Colleen Sims)  
(Attorney Paul Adamson)  
Adult Probation Department - Shari Kastor  
(CBCF & Oriana House - EMAIL)

