

ORIGINAL

IN THE SUPREME COURT OF OHIO

13-0086

EDWARD JACKSON
#A213-197 B2-W63
PICKAWAY CORRECTIONAL
P.O. BOX 209
ORIENT, OHIO 43146
RELATOR,

CASE NO. _____

APA No. 89AP 1015

TRIAL CT. NO. 88CR-09-3371

VS

RONALD J. O'BRIEN
PROSECUTING ATTORNEY
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215
RESPONDENT,

ORIGINAL ACTION

AND

PETITION FOR THE ISSUANCE OF
A WRIT OF MANDAMUS

JUDGE DAVID CAIN et al.
345 SOUTH HIGH STREET Rm 7A
COLUMBUS, OHIO 43215
RESPONDENT.

Comes now the Relator, Mr. Edward Jackson, Pro Se and Indigent, who respectfully request that this Court "issue" a Writ Of mandamus and direct it towards the Respondents in this case. The Relator asserts that the Respondents has failed to carry out a clear legal duty and therefore, he has no other legal recourse than to file this action.

The Relator asserts that this action is being taken in accordance with and pursuant to R.C. 2731.01, R.C. 2941.25(A), R.C. 2929.71, Article 4, Section 3(B)(2) of the Ohio Constitution as well as Article I, Sections 10 and 16 of the Ohio Constitution.

The Relator asserts that the reason for this action is more fully stated in the Memorandum In Support attached hereto.

RESPECTFULLY SUBMITTED

Edward Jackson

FILED

JAN 15 2013

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SUPREME COURT OF OHIO

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JAN 15 2013

CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

Comes now the Relator, Mr. Edward Jackson, who respectfully request that this Court issue a Writ Of Mandamus and direct it towards the Respondent in this case. The Relator asserts that the Respondent has failed to carry out a clear legal duty and therefore, he has no other recourse than to file this action. In support of this contention, the Relator asserts the following:

- 1.) That in July of 1989 he was convicted of 8 felony counts deriving from his conduct on September 15th, 1988.
- 2.) That a timely appeal was filed by his counsel, Mr. Paul Skendelas and that the Tenth District Court of Appeals asserted that the Trial Court had erred by giving a 25 year maximum penalty for a second degree felony when the statutory limit was 15 years.
- 3.) That the remaining charges were a part of 3 transactions and therefore, remanded for re-sentencing so that the Trial Court could reduce the number of firearm specifications from 5 to 3 and to make a determination as to which of the charges should merge and which should survive the merging.
- 4.) That the Trial Court after Remand for re-sentencing should have conducted a De Novo sentencing Hearing. However, it instead just Amended the Judgment by Nunc Pro Tunc Order. see STATE V WILSON, 951 N.E. 381(Nunc Pro Tunc Order not cognizable).
- 5.) That the Nunc Pro Tunc Amendment of the Judgment violated the Relator's rights guaranteed by Article 4, section 3(B)(2) and Article I, Sections 10 and 16 of the Ohio Constitution.
- 6.) That the Relator was never notified of the 1990 Amended Entry until December, 2012.
- 7.) That he had a right to be present during the re-sentencing hearing pursuant

to Criminal Rule 43.

8.) That there has been unnecessary and unreasonable delay of 22 years since the remand for re-sentencing and to this date there still has not been a hearing.

9.) That the Tenth District Court of Appeals in STATE V SMITH, 964 N.E. 2d 3 (2011) asserted that the remedy for unreasonable delay in sentencing after remand, was the vacation of the sentence and to release the defendant from custody.

10.) That the Federal Court in UNITED STATES V FLEISH, 227 F. Supp. 967 (E.D. Mich. 1964) held that the proper remedy in a such a case as this is to vacate the sentence and release the defendant from custody.

11.) That the Ohio Supreme Court asserted in The STATE ex rel CARNAIL V McCORMICK 2010 WL 2430963, 2010-Ohio-2671, that although Procedendo is the more appropriate remedy, Mandamus will lie when a Trial Court has refused to render, or unduly delayed rendering a Judgment.

12.) That by having the extra 24 to 50 years on his sentence, that the Relator was prejudiced at Security Screenings, Parole Board Hearings and denied Due Process because he was not issued a Final Appealable Order and therefore could not Appeal his case pursuant to R.C. 2505.03.

13.) That a 22 year delay from the date of the Remand for re-sentencing and a sentencing hearing resulting from that remand constituted a unreasonable delay in sentencing when there was no reason given for the delay.

14.) That he prays that this Court will find this Petition meritorious and issue the requested Writ with instructions to vacate the sentence and release the Relator from custody.

RESPECTFULLY SUBMITTED

Edward Jackson

CERTIFICATE OF SERVICE

I, Edward Jackson, do hereby certify that a copy of the foregoing Petition For The Issuance Of A Writ Of Mandamus was mailed by regular U.S. Mail to the office of the Prosecutor for Franklin County, Ohio on this the 11th day of

January 2013.

Edward Jackson

STATE OF OHIO

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)
)

S.S.

A F F I D A V I T

COUNTY OF PICKAWAY

I, Edward Jackson, do hereby solemnly swear that the information submitted in this Affidavit pursuant to R.C. 2969.25 is true and correct. I further assert that I have file only one Civil Action in the last five years, that being a Motion To Impose A Valid Sentence.

Edward Jackson

A213-197 B2-W64

P.O. BOX 209

ORIENT, OHIO 43146

AFFIDAVIT OF VERITY

I, Edward Jackson, deposes and say that I have read the information submitted in the attached PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS and to the best of my knowledge and belief true.

RESPECTFULLY SUBMITTED

Edward Jackson

BEFORE ME, A NOTARY IN AND FOR PICKAWAY COUNTY, OHIO CAME THE RELATOR, Mr. EDWARD JACKSON, WHO ACKNOWLEDGED THAT HE DID SIGN THE ABOVE LEGAL DOCUMENT AND THAT THEY ARE TRUE. I ATTEST TO THIS FACT WITH MY SIGNATURE AND OFFICAL SEAL.



OSCAR YOUNG, Notary Public
In and for the State of Ohio
My Commission Expires Feb. 28, 2017

Oscar Young

NOTARY PUBLIC

In his seventh assignment of error, appellant asserts that the trial court erroneously imposed five consecutive three-year terms of actual incarceration on firearm specifications even though the underlying offenses arose from two continuous transactions. According to appellant, the trial court should only have imposed two consecutive [*30] three-year terms of actual incarceration.

R.C. 2929.71(B) provides:

HN14Go to the description of this Headnote."If an offender is convicted of, or pleads guilty to, two or more felonies and two or more specifications charging him with having a firearm on or about his person or under his control while committing the felonies, each of the three-year terms of actual incarceration imposed pursuant to this section shall be served consecutively with, and prior to, the life sentences or indefinite terms of imprisonment imposed * * * unless any of the felonies were committed as part of the same act or transaction. If any of the felonies were committed as part of the same act or transaction, only one three-year term of actual incarceration shall be imposed for those offenses, which three-year term shall be served consecutively with, and prior to, the life sentences or indefinite terms of imprisonment imposed * * *."

In *State v. Demons* (Sept. 29, 1988), Franklin App. No. 88AP-251, unreported (1988 Opinions 3609), this court quoted as follows from *State v. Crawford* (Feb. 6, 1986), Franklin App. No. 85AP-324, unreported (1986 Opinions 175):

"* * * Essentially, the reviewing courts have held that HN15Go to the description of this Headnote.the word 'transaction,' [*31] used in R.C. 2929.71, contemplates a series of criminal offenses which develop from a single criminal adventure, bearing a logical relationship to one another, and bound together by time, space, and purpose directed toward a single objective. * * *" Id. at 181.

In the case at bar, this court finds that the kidnapping and the rape of Renee and Shawn arose out of the same transaction. The kidnapping and attempted rape of Alicia Bohanon arose out of the result of of a second transaction. The fact that appellant was also convicted of carrying a weapon while under disability is separate from the other two transactions as above outlined. Accordingly, the trial court should have imposed three consecutive three-year terms of actual incarceration on firearm specifications because the underlined offenses arose from three transactions.

Accordingly, appellant's seventh assignment of error is well-taken to the extent that the trial court erroneously imposed five consecutive three-year terms of actual incarceration. The matter is remanded for the trial court to correct this sentencing error.

Based on the foregoing, appellant's first, second, third, fourth, and fifth assignments of error are [*32] overruled. Appellant's sixth and seventh assignments of error are sustained. The judgment of the Franklin County Court of Common Pleas is affirmed as to the conviction but reversed and remanded in order to correct the sentencing errors in accordance with this opinion.

Judgment affirmed in part, reversed in part; remanded with instructions.

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State v. Jackson, 1990 Ohio App. LEXIS

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COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

STATE OF OHIO,
Plaintiff
-v-
EDWARD JACKSON,
Defendant

12149A17

:
:
: Case No. 88CR-09-3371
: Judge Close
:
: Indictment: Rape with
: Specifications R.C.2907.02)
: (A/F-1)(2 counts);Kidnapping
: with Specifications
: (R.C. 2905.01)(A/F-1)
: (2 counts); Attempted Rape
: with Specifications
: (R.C. 2923.02) (A/F-
: (1 count); Felonious
: Assault with Specifications
: (R.C. 2903.11) (A/F-2)
: (2 counts); Gross Sexual
: Imposition with Specifica-
: tions (R.C. 2907.05) (F-4)
: (2 counts); Having Weapon
: While Under Disability with
: Specifications(R.C. 2923.11)
: (F-4) (1 count)
: (Total 10 counts)

INDICTED
FILED

AMENDED ENTRY

In the Court of Common Pleas for the County of Franklin, State of Ohio, during the term begun on January 4, 1989.

On August 1, 1989 came the Prosecuting Attorney on behalf of the State of Ohio, the defendant being in Court in custody of the Sheriff and the Court being fully advised in the premises that the defendant was in Court and being represented by counsel, J. Tullis Rogers.

The Court finds that on July 24, 1989 the jury returned a verdict finding the defendant Guilty of Count One of the indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Ohio Revised Code, an Aggravated Felony of the first degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery and with the specification the defendant did not release the victim in a safe place, unharmed. Guilty of Count Two of the indictment, to wit: Rape, in violation of Section 2907.02 of

the Ohio Revised Code, an Aggravated Felony of the first degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery. 2149A18

Guilty to Count Three of the indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Ohio Revised Code, an Aggravated Felony of the first degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery and with the specification the defendant did not release the victim in a safe place, unharmed.

Guilty to Count Four of the indictment, to wit: Rape, in violation of Section 2907.02 of the Ohio Revised Code, an Aggravated Felony of the first degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery. Guilty of Count Five of the indictment, to wit: Kidnapping, in violation of Section 2905.01 of the Ohio Revised Code, an Aggravated Felony of the first degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery and with the specification the defendant did not release the victim in a safe place, unharmed.

Guilty of Count Six of the indictment, to wit: Attempted Rape, in violation of Section 2923.02 of the Ohio Revised Code, an Aggravated Felony of the second degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; with the specification the defendant was previously convicted of the offense of Aggravated Robbery. Guilty to Count Nine of the indictment, to

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wit: Gross Sexual Imposition, in violation of Section 2907.05 of the Ohio Revised Code, a Felony of the fourth degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense, and with the specification the defendant was previously convicted of the offense of Aggravated Robbery. Guilty to Count Ten of the indictment, to wit: Having a Weapon Under Disability, in violation of Section 2923.13 of the Ohio Revised Code, a Felony of the fourth degree, with the specification that the defendant had a firearm on or about his person or under his control while committing the said offense; and with the specification the defendant was previously convicted of the offense of Aggravated Robbery.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the defendant personally affording him an opportunity to make a statement in his own behalf and present information in mitigation of punishment.

The Court has considered all matters required by Sections 2929.12 and 2951.02 of the Ohio Revised Code, and it is the sentence of the Court that the Defendant pay the costs of this prosecution and serve a period of not less than twelve (12) years nor more than twenty-five (25) years on Count One, with additional three (3) years actual incarceration for use of firearm, to run concurrent with Count Three, and consecutive to all of the other counts. Serve a period of not less than twelve (12) years nor more than twenty-five (25) years on Count Two, to run concurrent with Count Nine and consecutive with all other counts. Serve a period of not less than twelve (12) years nor more than twenty-five (25) years on Count Three, to run concurrent with Count One and consecutive to all other counts. Serve a period of not less than twelve (12) years nor more than twenty-five (25) years on Count Four, with additional three (3) years actual incarceration for use of firearm, to run consecutive with all other counts. Serve a period of not less than twelve (12) years nor more than twenty-five (25) years on Count Five, to run concurrent with Count Six and consecutive with all other counts. Serve a period of not less than twelve (12) years nor more than

fifteen (15) years on Count Six, to run concurrent with Count Five and consecutive with all other counts. Serve a sentence of not less than three (3) years nor more than five (5) years on Count Nine of the indictment, to run concurrent with Count Two consecutive with all other counts. Serve a sentence of not less than three (3) years nor more than five (5) years on Count Ten of the indictment, with additional three (3) years actual incarceration for use of firearm, to run consecutive with all other counts. Sentence to be served at the Orient Correction and Reception Center.

The Court dismissed Count Eight at the end of the trial and the Jury found Defendant Not Guilty on Count Seven of the indictment.

The Court has factually found that the Defendant is to receive seven hundred and sixty (760) days of jail credit as of October 5, 1990 and hereby certifies the same to the Ohio Department of Corrections. The defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.


MICHAEL L. CLOSE, JUDGE
COMMON PLEAS COURT FRANKLIN COUNTY

FILED
CLERK OF COURTS
FRANKLIN COUNTY
90 OCT -9 AM 8:00

COSTS: \$ _____
JURY FUND \$ _____
TOTAL \$ _____