ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, Plaintiff-Appellee	)	SUPREME COURT NO. 13-0265
-vs-	)	
ERIC LEE PORTERFIELD, Defendant-Appellant	)	Eleventh District Court of Appeals No. 2012-T-0039

MOTION TO STRIKE PURSUANT TO S. CT. PRAC. R. 3.11(D)(2)

DENNIS WATKINS (#0009949)
Prosecuting Attorney, by
DIANE L. BARBER (#0069639)
Assistant Prosecuting Attorney
Trumbull County Prosecutor's Office
160 High Street, N.W.
4th Floor, Administration Building
Warren, Ohio 44481
Telephone No. (330) 675-2426

ATTORNEY FOR
PLAINTIFF-APPELLEE
STATE OF OHIO

ERIC LEE PORTERFIELD
Inmate #420-502
Mansfield Correctional Institution
1150 N. Main St.
Mansfield, Ohio 44901

ATTORNEY IN PRO SE

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MAR 07 2013
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Now comes the Plaintiff-Appellee, the State of Ohio ("State"), who moves this Court to strike Defendant-Appellant Eric Lee Porterfield ("Appellant's) Notice of Appeal and Memorandum in Support of Jurisdiction docketed February 11, 2013, for failure to serve the State with a copy of said filings.

As detailed in the attached affidavit by Assistant Prosecuting Attorney LuWayne Annos, the Trumbull County Prosecutor's Office only became aware of this filing on or about March 1, 2013, while perusing this Court's website. Contrary to Appellant's Certificate of Service, Atty. Annos was decidedly not served a copy of Appellant's Notice of Appeal or Memorandum in Support of Jurisdiction. S.Ct. Prac. R. 3.11(D)(1) requires, in pertinent part, that "[w]hen a party or an *amicus curiae* files any document with the Clerk***, that party or *amicus curiae* shall also serve a copy of the document on all parties to the case." When a party fails to serve opposing counsel, S.Ct. Prac. R. 3.11 (D)(2) provides that the adversely affected party "may file a motion to strike the document that was not served."

The State submits it was adversely affected by Appellant's utter failure to serve the State a copy of his notice and memorandum. Because Appellant filed well ahead of his February 21,

2013, due date and failed to forward a copy to the prosecutor's office, the State's 30-day response time to Appellant's memorandum has been seriously eroded. The Eleventh District Court of Appeals ruling which is the subject of the instant appeal was filed January 7, 2013. S.Ct. Prac. R.6.01 requires: "**(A) Perfection of appeal** (1) To perfect an appeal of right as defined by S.Ct.Prac.R. 5.01(A)(3), the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed." Appellant's notice and memorandum were not due in this Court until February 21, 2013, and counsel for the State had no reason to embark on its usual scavenger hunt for Appellant's pro se filings until after that date. The State had no way of knowing its Memorandum in Response was due March 11, 2013, pursuant to S.Ct. Prac. R. 7.03(A)(1) because of the lack of service. Counsel for the State has insufficient time now to compose and file a timely Memorandum in Response and therefore the State has been adversely affected by Appellant's failure to comply with S.Ct. Prac. R. 3.11(D)(1).

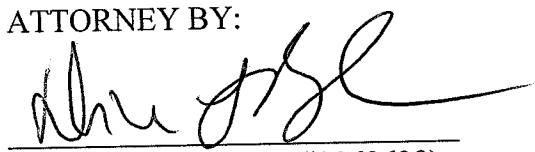
Appellant's status as a pro se litigator does not excuse his failure to follow the rules of procedure propounded by this Court. "It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *Meyers v. First National Bank* (1981), 3 Ohio App. 209, 210. Appellant is an experienced pro se litigator in this Court. He is well aware of his duties to serve opposing counsel with his filings as is evidenced by his inclusion of a "certificate of service."

Undersigned counsel further submits that Appellant regularly disregards his obligation to serve opposing counsel in this Court, as well as the Eleventh District Court of Appeals and the Trumbull County Common Pleas Court. In addition to Atty. Annos' attached affidavit,

undersigned counsel asks that this Court take judicial notice of Ohio Supreme Court Case Nos. 2008-2436, 2012-1977, 2010-1827, wherein this Court was placed on notice of Appellant's failure to serve opposing counsel.

For these reasons, the State moves this Court, pursuant to S.Ct. R. 3.11(D)(2), to strike Appellant's Notice of Appeal and Memorandum in Support of Jurisdiction.

Respectfully Submitted,
DENNIS WATKINS (#009949)
TRUMBULL COUNTY PROSECUTING
ATTORNEY BY:

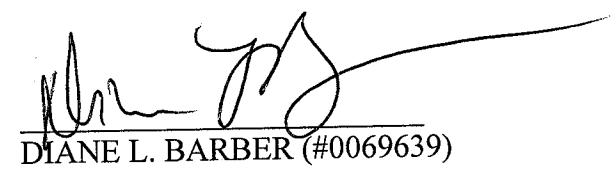


DIANE L. BARBER (#0069639)
Assistant Prosecuting Attorney
Trumbull County Prosecutor's Office
160 High St. NW, 4th Floor
Warren, Ohio, 44481
Telephone No.: (330) 675-2426
Fax No.: (330) 675-2431

COUNSEL FOR THE PLAINTIFF-
APPELLEE. THE STATE OF OHIO

CERTIFICATION

I do hereby certify that a copy of the foregoing motion was sent by ordinary U.S. Mail to Defendant Appellant Eric Lee Porterfield, Inmate # 420-502, Mansfield Correctional Institution, 1150 N. Main St., Mansfield, Ohio 44901 on this 5th Day of March 2013.



DIANE L. BARBER (#0069639)
Assistant Prosecuting Attorney

AFFIDAVIT

STATE OF OHIO

COUNTY OF TRUMBULL, ss.

I, LuWAYNE ANNOS, of the Trumbull County Prosecutor's Office, 160 High St., 4th Floor, Warren, Ohio, being duly sworn say:

1. I am a licensed Ohio Attorney, registration number 0055651, in good standing.

2. Since November, 1991, I have served as an assistant prosecuting attorney with the Trumbull County Prosecutor's Office.

3. Since 1995, I have served as the Chief of the Appellate Division in that office and regularly handle felony cases in the Eleventh District Court of Appeals and the Ohio Supreme Court.

4. In that capacity, I have filed the State of Ohio's response to numerous pro se documents generated by Eric Lee Porterfield, a convicted felon and double murderer, in the Trumbull County Court of Common Pleas, the Eleventh District Court of Appeals, and the Ohio Supreme Court. See, *State v. Porterfield,* 11th Dist. No. 2006-T-0001, 2006-Ohio-741, jurisdiction declined Ohio Supreme Court No. 2006-695; *State v. Porterfield,* 11th Dist. No. 2007-T-0017, 2007-Ohio-2054, jurisdiction declined OSC No. 2007-1013; *State v. Porterfield,* 11th Dist. No. 2007-T-0016, 2007-Ohio-2053, jurisdiction declined OSC No. 2007-1016; *State v. Porterfield,* 11th Dist. No. 2008-T-0002, 2008-Ohio-5948, jurisdiction declined OSC No. 2008-2436 & 2009-1427(Murnahan); *State v. Porterfield,* 11th Dist. No. 2010-T-0005, 2010-Ohio-4287, jurisdiction declined OSC No. 2010-1827; *State ex rel. Porterfield v. McKay,* 11th Dist. No. 2012-Ohio-5027, dismissed for want of prosecution OSC No. 2012-1977; *State v. Porterfield,* 11th Dist. No. 2012-T-0039, 2013-Ohio-0014, pending OSC No. 2013-265.

5. Eric Porterfield habitually fails to serve the Affiant with copies of his pro se filings as was brought to this Court's attention in OSC No. 2008-2436 in State's Motion to Dismiss and in OSC Nos. 2010-1827 and 2012-1977 in the State's Memorandum in Opposition to Jurisdiction.

6. Eric Porterfield also failed to serve the State with a copy in OSC No. 2013-265. By the time Affiant discovered this surreptitious filing on this Court's website on or about March 1, 2013, it was too late to research, compose, and mail a timely Memorandum In Response as permitted by S.Ct. Prac. R. 7.03(A)(1).

7. The State of Ohio is adversely affected and obviously prejudiced by Eric Porterfield's frequent and flagrant disregard for the most basic rules of Supreme Court practice.

Further Affiant Sayeth Not.

LuWAYNE ANNOS
Assistant Prosecuting Attorney
Trumbull County Ohio

NOTARY ATTEST

Sworn before me and subscribed in my presence on this March 5th, 2013.

Notary Public

FRANCES A. HIVELY, Notary Public
State of Ohio
My Commission Expires 6-30-2013