

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

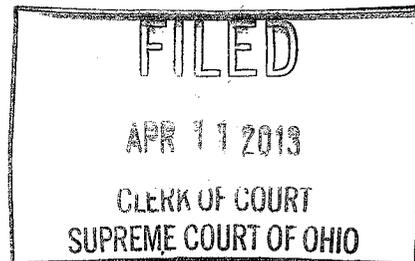
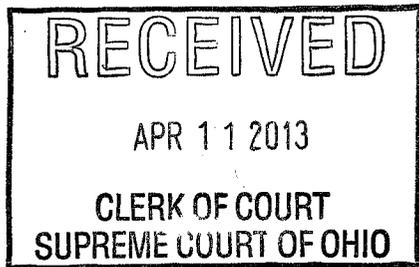
MEMORANDUM IN OPPOSITION TO JURISDICTION
PURSUANT TO S.C.T. PRAC. R. 7.03

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ORIGINAL

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MEMORANDUM IN OPPOSITION TO JURISDICTION
PURSUANT TO S.CT. PRAC. R. 7.03

**EXPLANATION AS TO WHY THIS CASE IS NOT ONE OF PUBLIC OR GREAT
GENERAL INTEREST, NOR DOES IT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

Defendant-Appellant Eric Lee Porterfield's ("Appellant's") Explanation of Why this Case is Case of Public or Great General Interest and Involves a Substantial Constitutional Question is as short on words as it is on substance. He makes passing reference to a "breached" contract, but fails to share any further details as to the contract itself, the parties thereto, or the nature of the breach.

In his action in the court below, he referenced an "adhesion contract," as an apparent misnomer for his validly executed Crim. R. 11 agreement signed back in 2001. As will be discussed infra, "adhesion" contract is a total mischaracterization of his plea agreement. With much fanfare and considerable legal maneuvering, Appellant agreed to plead guilty to the double murder of two men and the attempted murder of a third. He has worked relentlessly to back out of that agreement which spared him a possible death sentence. See, *State v. Porterfield*, 11th Dist. No. 2006-T-0001, 2006-Ohio-741, jurisdiction declined Ohio Supreme Court(OSC) No.

2006-694; *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 & 2009-1477(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.

The only case of Appellant's which this Court found worthy of review was an appeal filed by the Plaintiff-Appellee, the State of Ohio ("State"), *State v. Porterfield*, 11th Dist. No. 2004-T-0417, 2004-Ohio--520, wherein the Eleventh District reversed and remanded his agreed-upon sentence. This Court overturned the Eleventh District in *State v. Porterfield*, 106 Ohio St.3d 5, 829 N.E.2d 690, 2005 -Ohio- 3095, and affirmed his 53-years to life sentence. This Court has twice rejected appeals focusing on Appellant's knowing, voluntary and willing nature of his hyper-negotiated plea agreement. OSC Case Nos. 2008-2436 and 2010-1827.

As the court below correctly noted: "After the disposition of his Supreme Court appeal, appellant submitted a series of post-judgment motions before the trial court. In turn, the rulings on his motions led to the filing of six additional appeals before this court. However, notwithstanding the amount of his post-judgment litigation, appellant has not obtained any modification of his conviction or sentence." *State v. Porterfield*, 11th Dist. No. 2012-T-0039, 2013-Ohio-0014, at ¶4. This case merits no exception.

If any party is guilty of "breaching" Appellant's plea agreement – or contract - it is the Appellant, and not the State. Since 2001, the State has stood by its agreement and recommended

sentence. Appellant's entire memorandum presents no constitutional question, let alone a substantial one. He also fails to articulate a case of public or great general interest. Therefore, this Court must reject jurisdiction in this matter.

STATEMENT OF THE CASE AND FACTS

Defendant-Appellant Eric Lee Porterfield ("Appellant"), appeals from a denial of his "Motion to Rescind Adhesion Contracts" which he filed April 14, 2012. The trial court denied said motion April 20, 2012. Appellant's case began back in 2002 when he entered a guilty plea to two counts of aggravated murder, one count of attempted aggravated murder, two counts of kidnapping, one count of aggravated burglary and one count of aggravated robbery. Each count included a firearm specification. *State v. Porterfield*, 11th Dist. No. 2002-T-0045, 2004-Ohio-520, at ¶1. ("*Porterfield I*").

The genesis of the plea agreement was a very bloody ambush and home invasion occurring in Newton Township, Trumbull County, Ohio. On June 23, 2000, Appellant along with Ronald Shaffer ("Shaffer") and Dennis Gossett ("Gossett") arrived at the residence of Dave Harper ("Dave") with the intent of robbing him of money and drugs. Appellant armed himself with an assault rifle, while Shaffer was armed with a twelve-gauge shotgun. Karen Mathey ("Karen") and Dave were sitting on his front porch as Appellant and Shaffer approached. Appellant and Shaffer forced Karen and Dave into the house by gunpoint. At this time, Gary Bell ("Gary"), Chuck Mathey ("Chuck"), John Lago ("John"), Jennifer Atkinson ("Jennifer") and her infant son Dillon were gathered inside the house. When Appellant, Shaffer, Karen, and Dave entered the house, Karen immediately ran to Jennifer and Dillon, and the three of them quickly ran up a flight of stairs to hide in a loft. Karen testified that moments after she reached the top of the stairs she heard multiple gunshots. *Porterfield I* at ¶2.

After the gunfire ceased and Appellant and Shaffer had left, Karen and Jennifer went back down stairs. Karen found Chuck lying face down, shot in the back and not breathing. Gary had also been shot and was lying on the kitchen floor. Dave was found wandering the house in shock, bleeding profusely from gunshot wounds to the head, arm and thigh. Ultimately, Chuck was pronounced dead at the scene. Gary was transported to a level one trauma center where he was later pronounced dead. Dave was transported via life-flight to Cleveland Metro Hospital where he was treated for and survived three separate gunshot wounds. *Porterfield I* at ¶3.

Appellant was ultimately arrested and charged with the following counts: two counts of aggravated murder with aggravating circumstances and firearm specifications, in violation of R.C. 2903.01(B), R.C. 2929.04(A)(5) and (7), R.C. 2929.14(C), and R.C. 2941.145 (counts one and two); one count of attempted aggravated murder with a firearm specification, in violation of R.C. 2923.02, R.C. 2905(A)(2), and R.C. 2941.145 (count 3); two counts of kidnapping with firearm specifications, in violation of R.C. 2905.01(A)(2) and R.C. 2941.145 (counts four and five); one count of aggravated burglary with a firearm specification, in violation of R.C. 2911(A)(1) and/or (2) and R.C. 2941.145 (count 6); and one count of aggravated robbery with a firearm specification, in violation of R.C. 2911.01(A)(1) and/or (3) and R.C. 2941.145 (count 7). Following his indictment, Appellant filed a motion to determine his competency to stand trial and a motion to suppress. After a hearing, the trial court found Appellant competent to stand trial and denied his motion to suppress. *Porterfield I* at ¶4.

Appellant then entered into a plea agreement he pled guilty to an amended indictment. Prior to accepting Appellant's guilty plea, the trial court discussed with Appellant his constitutional rights and the effect his guilty plea would have on those rights. The trial court accepted appellant's guilty plea; however, Appellant, acting pro se, moved to withdraw his plea

prior to sentencing. The trial court granted Appellant's motion to withdraw his guilty plea and reinstated the original indictment. *Porterfield I* at ¶5.

After having new counsel appointed, Appellant executed a jury waiver, and a three-judge panel was assembled to hear the matter. Following one full day of trial, Appellant and the Plaintiff-Appellee, the State of Ohio (“State”) entered into yet a second plea agreement. Appellant pleaded guilty to an amended indictment which eliminated all aggravating circumstances contained in the two counts of aggravated murder (counts one and two). During a plea hearing, the trial court again advised Appellant of his constitutional rights and the effect his guilty plea would have on those rights. Appellant stated that he understood his rights and the effect of his guilty plea and requested that the trial court accept his guilty plea. Accordingly, the trial court accepted Appellant's guilty plea and immediately entered sentence. *Porterfield I* at ¶6.

The trial court sentenced Appellant to an agreed-upon sentence as follows: “[a] prison term of ten (10) years on Count three; ten (10) years on each of Counts Four, Five, Six, and Seven to be served concurrently to the sentence imposed in Count Three; Life with parole eligibility after serving twenty (20) years of imprisonment on Count One to be served consecutively to the sentence imposed in Count Three; and Life with parole eligibility after serving twenty (20) years of imprisonment on Count Two to be served consecutively to the sentences imposed in Counts One and Three. Defendant to be sentenced to three (3) years on the firearm specification in Count Three which shall be served prior to and consecutive to the principle sentence. The firearm specification in Counts One Two, Four, Five, Six, and Seven will merge with the firearm specification in Count Three, for an aggregate sentence of fifty-three (53) years to life.” *Porterfield I* at ¶7.

Appellant again filed a motion to withdraw his guilty plea and a petition to vacate or set aside the judgment of conviction or sentence. Both the motion to withdraw and petition to vacate were denied. Appellant then appealed that decision to the Eleventh District Court of Appeals which agreed with the trial court's denial of Appellant's post-sentence motion to withdraw guilty plea, but reversed and remanded the case for resentencing. *Porterfield I* at ¶78. However, the State appealed that decision to this Court which reversed this Court's decision with respect to the sentencing. *State v. Porterfield*, 106 Ohio St. 3d 5, 2005-Ohio-3095. ("*Porterfield II*").

Despite multiple affirmations of Appellant's guilty plea, he nevertheless has filed no further than three other motions, regardless of their captions, with the aim of extricating himself from his lawfully executed plea agreement. The subject of the instant appeal is his "Motion to Rescind Adhesion Contract," but this is nothing more than a thinly veiled, successive, post-sentence Crim. R. 32.1 motion.

The Eleventh District Court of Appeals affirmed the trial court's denial in a decision issued January 7, 2013. That 18-paragraph opinion is the subject of the instant action. The State would respectfully remind the Court that Appellant also failed to serve the State of Ohio with a copy of his Notice of Appeal and Memorandum in Support of Jurisdiction to this Court. The State made a Motion to Strike pursuant to Supreme Ct. Prac. R. 3.11(D)(2) which this Court denied. The Court did, however, extend the deadline for the State to submit a Memorandum in Opposition to Jurisdiction to April 15, 2013. For the following reasons, the State argues this Court should deny jurisdiction in this matter.

ARGUMENTS IN OPPOSITION TO JURISDICTION

APPELLANT'S PROPOSITION OF LAW No. 1: Does a court lack subject matter jurisdiction when a sentence is void.[sic]

APPELLANT'S PROPOSITION OF LAW No. 2: Is a plea bargain considered a contract. [sic]

APPELLANT'S PROPOSITION OF LAW No. 3: Are contracts enforceable if all parties does [sic] not sign or stipulate terms and conditions orally on the record. [sic]

APPELLANT'S PROPOSITION OF LAW No. 4: Can a secured party creditor be held as surety for debtor actions if security agreement stipulates contract between both parties [sic]

S.Ct. Prac. R. 7.02 (C) lists the following four components for an appellant's memorandum in support of jurisdiction: **Parts of the memorandum:**

A memorandum in support of jurisdiction shall contain all of the following:

- (1) A table of contents, which shall include numbered propositions of law arranged in order;
- (2) A thorough explanation of why a substantial constitutional question is involved, why the case is of public or great general interest, or, in a felony case, why leave to appeal should be granted;
- (3) A statement of the case and facts;
- (4) A brief and concise argument in support of each proposition of law.

A review of Appellant's Memorandum in Support of Jurisdiction as it appears on this Court's website (which is, of course, the only way undersigned counsel can review Appellant's memorandum), reveals that Appellant has omitted the "brief and concise argument in support of each proposition of law" part of his memorandum. Other than the four propositions of law which he lists in his Table of Contents, and which the State has repeated on this very page, he

makes no argument, even a brief and concise one, for this Court to consider. Brevity and conciseness of this magnitude makes it a little hard for the State to respond. As a courtesy to this Court, the State will reprint arguably relevant portions its "Law and Argument" portion of its brief to the Eleventh District here:

APPELLANT'S ASSIGNMENT OF ERROR I: The trial court erred by not accepting Appellant's motion to rescind all adhesion contracts (nunc pro tunc) under UCC 1-207 when the contract would not make the full term due to an unduly agreement.

APPELLANT'S ASSIGNMENT OF ERROR II: The trial court erred by not accepting Appellant's motion to rescind all adhesion contracts (nunc pro tunc) under U.C.C. 1-207 when the contract is void.

APPELLANT'S ASSIGNMENT OF ERROR III: The trial court erred by not accepting Appellant's motion to rescind all adhesion contracts (nunc pro tunc) under U.C.C. 1-207, when the contract is void due to the fraud of the court.

APPELLEE'S ISSUE PRESENTED FOR REVIEW AND ARGUMENT: Do repetitive, baseless, post-sentence motions to vacate a valid and legally binding plea of guilty negate the doctrine of res judicata?

The State submits that the trial court properly, if not tersely, dismissed Appellant's *fourth* motion in the court below aimed at extricating himself from a plea agreement which this Court affirmed in *State v. Porterfield*, 11th Dist. No. 2002-T-0045, 2004-Ohio-520, *Porterfield I*. Though labeling his Crim. R. 11(C) plea agreement "an adhesion contract," Appellant was nevertheless filing yet another post-sentence motion to withdraw his guilty plea pursuant to Crim. R. 32.1. The issue of the knowing and voluntary nature of Appellant's plea is long-settled, and the trial court had no basis under which to allow him to "rescind" what Appellant is now dubbing an "adhesion contract."

First, Appellant's plea agreement does not constitute an "adhesion contract." An adhesion contract is a type of contract in which one party has most if not all of the bargaining

power and uses its superior bargaining position to impose its terms on the weaker party. See, e.g., *Winters v. Hart*, 162 Ohio App.3d 15, 2005-Ohio-3367, at ¶ 11, citing Black's Law Dictionary (8th Ed.1999) 342 (“For the most part, insurance policies are ‘adhesion contracts,’ which are standardized agreements offered to consumers on an essentially ‘take it or leave it’ basis, wherein the buyer has no realistic choice as to its terms”). *Worldwide Asset Purchasing, L.L.C. v. Easterling* 186 Ohio App.3d 478, 482, 928 N.E.2d 1148, 1151 (10th Dist. 2009). Appellant’s plea to the amended indictment sparing him the death penalty was not a “take it or leave it” proposition. He could have opted to “leave it” and take his chances with a jury and a possible death sentence. Appellant elected to plead guilty to a criminal plea agreement pursuant to Crim. R. 11, not a civil adhesion contract.

Second, the Eleventh District has made clear that the only method recognized in Ohio for a criminal defendant to extract himself or herself from a plea agreement is to file a motion pursuant to Crim. R. 32.1. “The sole means provided for the withdrawal of guilty pleas is found in Crim.R. 32.1, which provides, in relevant part, that “*the court * * * may * * ** permit the defendant to withdraw his or her plea.” (Emphasis original). *Hall v. Watkins*, 11th Dist. No. 2006-T-0034, 2006-Ohio-209, at ¶19. As previously stated, Appellant has tried several times over to invalidate his plea agreement even though he captions his actions in what he perceives to be alternative theories of relief. However, his creative captioning does not change the nature of his legal objective; he is attempting to disavow an agreement that he knowingly and voluntarily signed.

The Eleventh District affirmed the trial court’s first denial of Appellant’s Crim. R. 32.1 motion over a decade ago and this Court declined jurisdiction. *Porterfield, I*. And while he attempts to raise new theories for relief, his post-2005 endeavors are barred by the doctrine of res

judicata. “Res judicata bars claims raised in a Crim.R. 32.1 post-sentence motion to withdraw guilty plea that were raised or could have been raised in a prior proceeding. *State v. Young*, 4th Dist. No. 03CA782, 2004-Ohio-2711.* * * Because the trial court's denial of appellant's first motion to withdraw his guilty plea was an adjudication on the merits of his claims and was based upon the same facts and sought the same relief as the second motion, the trial court's denial of his first motion operated under res judicata to bar the successive motion. * * * Thus, appellant's motion is barred by res judicata.” *State v. McDonald*, 11th Dist. No.2003-L-155, 2004-Ohio-6332, at ¶ 22.

In *State v. Lorenzo*, 11th Dist. No.2007-L-085, 2008-Ohio-1333, the defendant pled guilty to operating a motor vehicle under the influence of alcohol. The trial court sentenced him to two years in prison to be served consecutively to the repeat offender specification. The defendant appealed challenging only the court's imposition of consecutive sentences. After the Eleventh District affirmed the lower court's decision, the defendant moved to withdraw his guilty plea. The trial court denied the motion and the defendant appealed, arguing that his counsel was ineffective and that his plea was not voluntarily entered. The Eleventh District held:

“ ‘Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in that judgment of conviction, or on an appeal from that judgment.’ [*State v. Green*, 11th Dist. Nos.2005-A-0069 and 2005-A-0070, 2006-Ohio-6695,] at ¶ 12, quoting *State v. Szefcyk*, 77 Ohio St.3d 93, 671 N.E.2d 233, 1996-Ohio-337, * * * at syllabus. ‘This doctrine bars claims raised in a Crim.R. 32.1 post-

sentence motion to withdraw [a] guilty plea that were raised or could have been raised in prior proceedings.’ *Young*, [supra]; accord, *McDonald*, [supra] at ¶ 22.” *Lorenzo*, supra, at ¶20.

Finally, regardless of how Appellant elected to caption his motion, the trial court lacked jurisdiction to permit a “rescission” of his plea agreement. “Crim.R. 32.1, however, ‘does not confer upon the trial court the power to vacate a judgment which has been affirmed by the appellate court, for this action would affect the decision of the reviewing court, which is not within the power of the trial court.’ *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94, 98, 378 N.E.2d 162. Thus, the trial court cannot grant a Crim.R. 32.1 motion over issues that would be inconsistent with the appellate court’s earlier decision on appeal. *Id.* at 97, 378 N.E.2d 162.” *State v. Gegia* 11th Dist. No. 2003-P-0026, 2004-Ohio-1441, ¶22.

If the trial court had permitted Appellant to “rescind” the plea agreement Appellant now labels as an adhesion contract, the court would have granted the motion in a manner inconsistent with the Eleventh District’s decision in *Porterfield I*, as well as the Ohio Supreme Court’s decision in *State v. Porterfield*, 106 Ohio St. 3d 5, 2005-Ohio-3095. The court below considered a lengthy brief which raised several purported errors, none of which had merit. The trial court is without jurisdiction to undo *Porterfield I* by granting Appellant’s motion to rescind his plea agreement.

For the reasons thus stated, i.e. failure to serve opposing counsel and failure to comply with S.Ct. Prac. R. 7.02(C), Appellant’s entire appeal is subject to dismissal. In the alternative, his three Assignments of Error to the court below were completely without merit. Appellant filed a “Motion to Rescind Adhesion Contract” which is not recognized in criminal law. The sole method of “rescinding” a valid plea agreement in Ohio is through a Crim. R. 32.1 motion.

Appellant did not enter an adhesion contract; he signed a valid plea agreement pursuant to Crim. R. 11(C). These three arguments are barred by the doctrine of res judicata. The court below lacked authority to grant relief in this matter when the Eleventh District and the Ohio Supreme Court have previously affirmed his guilty plea and sentence. Thus, this Court should find these arguments meritless.

The Eleventh District found no merit to any of Appellant's three Assignments of Error. With respect to the first assignment, the Court below wrote: "Although worded in terms of a contract of adhesion, the first assignment of error actually raised a challenge to the trial court's subject matter jurisdiction. Appellant maintains that the trial court, as a common pleas court, lacked the authority to convict him because the original complaints against him in the municipal court failed to comply with the requirements of Crim.R. 3. As a general proposition, the lack of compliance with Crim.R. 3 will render void any ensuing conviction which is based upon the flawed complaint. *State v. Green*, 48 Ohio App.3d 121, 122, 548 N.E.2d 334 (11th Dist.1988). However, in this action, there is no dispute that appellant's ultimate conviction was not based upon the complaints in the municipal court; rather, the criminal proceeding against him was predicated upon an indictment which superseded the complaints. Under such circumstances, any actual defects in the complaints were harmless and had no effect upon the subject matter jurisdiction of the trial court. *See State v. Turner*, 3rd Dist. No. 1-11-01, 2011-Ohio-4348, ¶ 21." *State v. Porterfield*, 11th Dist. No. 2012-T-39, 2013-Ohio-00014 at ¶10 & 11.

The court was equally unimpressed with Appellant's argument that he needed to be sentenced by a three-judge panel, instead of a single judge. "In interpreting R.C. 2945.06 and Crim.R. 11(C), the courts of this state have concluded that the requirement of a three-judge panel is not applicable when the criminal defendant is no longer charged with a crime that is

punishable by death. *See, e.g., State v. West*, 9th Dist. No. 04CA008554, 2005–Ohio–990, ¶ 37. Hence, a three-judge panel is not mandated when the state has dismissed from the indictment all death penalty specifications pursuant to a plea agreement. *Id.* In the instant case, when the state agreed to eliminate all death penalty specifications, it meant that appellant was no longer charged with a capital offense. As a result, no jurisdictional violation occurred when his sentence was imposed by a single judge. For this reason, appellant's second assignment is without merit.” *State v. Porterfield*, 11th Dist. No. 2012-T-39, 2013-Ohio-00014 at ¶12 & 13.

Finally, in the court below, Appellant made a completely incomprehensible argument using the Uniformed Commercial Code to contest the invalidity of his repeatedly affirmed plea agreement. This argument gained no traction with the Eleventh District. “As noted above, the premise of his entire motion was that his conviction must be overturned because the laws of this state are inapplicable to any living person. Except for a vague reference to the Uniform Commercial Code, appellant has failed to adequately support his unique argument with citations to accepted legal authorities. Pursuant to App.R. 16(A)(7), the party seeking reversal of the trial court's decision has burden of demonstrating the merits of his assignment through citations to legal authority and facts in the record. *See State v. Taylor*, 9th Dist. No. 2783–M, 1999 Ohio App. LEXIS 397, *8–9 (Feb. 9, 1999). In the absence of the necessary citations, an argument or assignment can be overruled without discussion. *Id.*” *State v. Porterfield*, 11th Dist. No. 2012-T-39, 2013-Ohio-00014 at ¶15, 16.

CONCLUSION

Appellant has filed a memorandum in support of jurisdiction which is in total non-compliance with S.Ct.Prac. R. 7.02(C). The document was improvidently filed and should have been dismissed two months ago. Moreover, he continues to fail to serve opposing counsel with his nonsensical filings. Given that he cites to absolutely no error in the Eleventh District's 18-paragraph opinion, this Court has no choice but to decline jurisdiction in this discretionary appeal.

Respectfully submitted by:
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Prosecuting Attorney



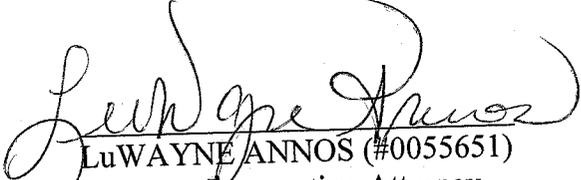
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PROOF OF SERVICE

I do hereby certify that a copy of the foregoing memorandum was sent by ordinary U.S. mail to Defendant-Appellant Pro Se Eric Porterfield, Inmate #420502, Mansfield Correctional Institution, P.O. Box 788, Mansfield, Ohio, 44901, on this 8th Day of April, 2013, as is clearly required by S. Ct. Prac. R. 3.11(D)(1).


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