

ORIGINAL

In The Supreme Court of Ohio

State of Ohio, :
 Appellee, :
 -vs- : Case No. 12-1644
 Nathaniel Jackson, :
 Appellant. : This is a death penalty case

Nathaniel Jackson's Response to the State's Motion to Strike

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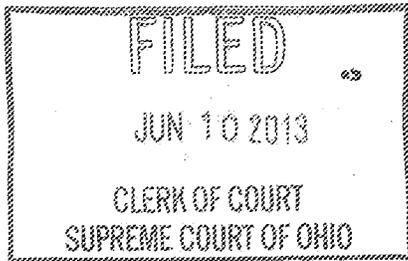
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COUNSEL FOR APPELLANT

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On May 23, 2013, the Appellant filed with this Court a suggestion that the trial court's sentencing entry and opinion did not constitute a final appealable order. On May 31, 2013, the State filed its responsive pleading titled "State's Motion to Strike/Response to Appellant's 'Suggestion of Lack of a Final Appealable Order.'" The State therein offers several reasons that its motion to strike should be granted.¹

I. Appellant Did Not File His Suggestion for Purposes of Delay

The State claims that Appellant's Suggestion is "a stall tactic, filed solely for the purpose of delay and therefore should be stricken." [State's Motion, p. 2]. It is unclear the manner in which Appellant's motion will delay these proceedings. It will not change the date for the filing

¹In its pleading, the State does not distinguish those arguments that are relevant to the striking of Appellant's motion as opposed to responding to the merits of Appellant's motion. The rules of this Court preclude Appellant from submitting a reply in support of his motion. S.Ct.Prac.R. 4.01(B)(2). Appellant has attempted to distinguish between the two types of arguments for purposes of this pleading. Appellant's lack of response as to an argument contained in the State's May 31, 2013 pleading should not be viewed as a concession. Instead, Appellant believed that a response was precluded by the rules of this Court.

of his merit brief, unless this Court finds the suggestion well taken in which case it will dismiss this appeal.

In fact just the opposite is true, the suggestion could expedite these proceedings to the extent that this Court finds that it is well taken. Appellant could have waited to raise the issue in his merit briefing and this Court would not have addressed the issue until after the completion of briefing and oral argument. If the sentencing entry and opinion do not constitute a final appealable order, it makes sense to remand the case now, rather than wait until after oral argument. It has been the experience of undersigned counsel that most appellate courts prefer to address the final appealable order in the initial portion of the appeal, rather than consume limited judicial issues reviewing the record and briefs and then dismissing the appeal.

II. This Court Can Go Beyond the Sentencing Entry and Opinion to Determine the Existence of a Final Appealable Order.

The State claims that Appellant's pleading should be stricken because this Court in deciding the issue "is required to go beyond the face of the documents upon which the instant appeal has been raised." [State's Motion, p. 3]. The State makes this argument in response to Appellant, in his Suggestion, having cited to the transcript of the August 14, 2013 sentencing hearing. The State's argument is not well taken.

A judgment entry to constitute a final appealable order is required to contain certain information. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 839 N.E.2d 163, ¶ 18. Whether the entry contains all of the requisite information must be determined upon a case by case basis which often necessitates reviewing the record and not just the notice of appeal. For instance, a final appealable order must contain all of the charges for which the defendant was convicted. *State, ex rel. Davis v. Cuyahoga County Court of Common Pleas*, 127 Ohio St.3d 29, 2010-Ohio-4728, 936 N.E.2d 41, ¶ 2; *State, ex rel. Duncan v. Deweese*, 132 Ohio St.3d 525,

2012-Ohio-3835, 974 N.E.2d 1197, ¶ 2. An appellate court can only determine if this requirement is satisfied by examining the jury findings. A final appealable order in which the trial court has imposed an order of restitution often requires that the trial court include the amount, method, and recipient of the restitution. *State v. State v. Hartley*, 3rd Dist. No. 14-09-02, 201-Ohio-2018, ¶ 5; *State v. Thompson*, 4th Dist. No. 11CA3257, 2012-Ohio-639, ¶ 9. An appellate court will often have to search the record and sentencing transcript to ascertain if the trial court entered an order of restitution that meets the requirements of a final appealable order. *State v. Phillips*, 8th Dist. No. 90124, 2008-Ohio-5101, ¶ 4; *State v. Fite*, 4th Dist. No. 10CA888, 2011-Ohio-507, ¶6.²

Conclusion

Appellant requests that this Court deny the State's Motion to Strike and address the merits of Suggestion.

Respectfully submitted,

Office of the
Ohio Public Defender

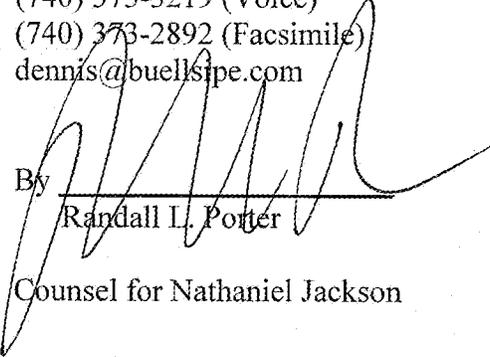
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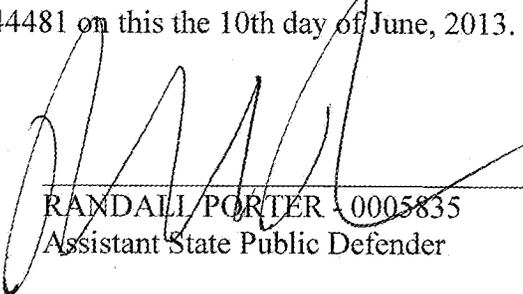
² The State, in its conclusion, offers that “this Court should be offended at Appellant’s insinuation that it would accept for filing a document which is neither final nor appealable.” [State’s Motion, p. 9]. Appellant never made any such insinuation, nor does he believe that this Court erroneously accepted any pleading in this matter.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Response To The State's Motion To Strike* was forwarded by electronic and regular U.S. Mail to Luwayne Annos and Charles Morrow, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 10th day of June, 2013.


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