

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2013-0109
Plaintiff-Appellant,	:	
	:	On Appeal from the Lucas
v.	:	County Court of Appeals, Sixth
	:	Appellate District, Case No. L-10-1194
THOMAS CAINE WHITE,	:	
	:	
Defendant-Appellee.	:	

MOTION FOR APPOINTMENT OF COUNSEL

JULIA R. BATES
LUCAS COUNTY PROSECUTOR

OFFICE OF THE OHIO PUBLIC DEFENDER

EVY M. JARRETT #0062485
Assistant Prosecuting Attorney
(Counsel of Record)

PETER GALYARDT #0085439
Assistant State Public Defender

Lucas County Courthouse
700 Adams Street
Toledo, Ohio 43604
(419) 213-2001
(419) 213-2011 - Fax

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 - Fax
peter.galyardt@opd.ohio.gov

COUNSEL FOR PLAINTIFF-APPELLANT
STATE OF OHIO

COUNSEL FOR DEFENDANT-APPELLEE,
THOMAS CAINE WHITE

FILED

JUN 12 2013

CLERK OF COURT
SUPREME COURT OF OHIO

MOTION FOR APPOINTMENT OF COUNSEL

Defendant-Appellee, Thomas Caine White, respectfully requests that this Court appoint the Office of the Ohio Public Defender to represent him in this case. This Court has accepted the State of Ohio's appeal. (March 13, 2013 Entry). Mr. White was represented in the Sixth District Court of Appeals by attorney Deborah Rump. Attorney Rump moved this Court to withdraw as counsel. (May 23, 2013 Motion to Withdraw as Counsel). This Court granted that request. (June 6, 2013 Entry).

This Court should appoint the Office of the Ohio Public Defender for this appeal.

Supreme Court Practice Rule 3.7 reads:

If the Supreme Court grants leave to appeal in a discretionary appeal involving a felony and an unrepresented party to the appeal is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel to represent the indigent party or order the court of appeals to appoint counsel as provided in S.Ct.Prac.R. 2.2(D)(2).

Mr. White is indigent. *See* Affidavit of Indigency, filed with this motion; *see also* Financial Disclosure Form, filed with this motion. Consequently, Mr. White requests that this Court appoint the Office of the Ohio Public Defender as counsel in this case. S.Ct.Prac.R. 3.7.

Although Mr. White works and maintains an income above the initial poverty threshold, his expenses and debt bring him below that threshold and make it impossible for him to pay for an attorney. *See* Affidavit of Indigency and Financial Disclosure Form. The Office of the Ohio Public Defender has fully vetted Mr. White's financial status and has determined that his net financial means qualify him for appointed counsel. *Id.*

Mr. White's monthly expenses exceed his monthly gross income. *See* Financial Disclosure Form. Further, Mr. White owes \$8,700 in legal fees to his trial counsel and \$10,000 to his appellate counsel. *Id.* Finally, the trial court ordered Mr. White to pay court costs. *See* Exhibit A - June 21, 2010 Judgment Entry in Lucas County Court of Common Pleas Case No. 2009-2300. Although those costs have not been calculated and assessed, they are a pending debt that impacts Mr. White's current financial status.

In full disclosure, Mr. White's family—specifically his stepfather, Merle Francis—has posted a full \$100,000 cash bond on his behalf. *See* Exhibit B - June 21, 2010 Recognizance of Accused in Lucas County Court of Common Pleas Case No. 2009-2300. But that money will be returned to Mr. Francis upon the conclusion of all legal proceedings associated with this case, and Mr. White receives no financial support from his family. *See* Affidavit of Indigency and Financial Disclosure Form.

Because Mr. White is indigent and cannot pay an attorney for this case, and because the Office of the Ohio Public Defender has concluded that Mr. White qualifies for appointed counsel, Mr. White requests that this Court appoint the Office of the Ohio Public Defender as counsel in this case. S.Ct.Prac.R. 3.7.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



PETER GALYARDT #0085439
Assistant State Public Defender

250 East Broad Street - Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (Fax)
peter.galyardt@opd.ohio.gov

COUNSEL FOR DEFENDANT-APPELLEE,
THOMAS CAINE WHITE

CERTIFICATION OF SERVICE

A copy of the foregoing **Motion for Appointment of Counsel** was forwarded by regular U.S. mail to Evy M. Jarrett, Assistant Prosecuting Attorney, Lucas County Prosecutor's Office, Lucas County Courthouse, 700 Adams Street, Toledo, Ohio 43604, on this 12th day of June, 2013.



PETER GALYARDT #0085439
Assistant State Public Defender

COUNSEL FOR DEFENDANT-APPELLEE,
THOMAS CAINE WHITE

FILED
LUCAS COUNTY

2010 JUN 21 P 3:18

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

SCANNED

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO
Plaintiff.

v.

THOMAS CAINE WHITE
Defendant.

* CASE NO:
* G-4801-CR-0200902300-000
*
* JUDGMENT ENTRY
*
* JUDGE GARY G. COOK
*
*

On June 21, 2010 defendant's sentencing hearing was held pursuant to R.C. 2929.19. Court reporter CHRISTINE ARDLEY, defense attorney JEROME PHILLIPS and the State's attorney JEFF LINGO and J. CHRISTOPHER ANDERSON were present as was the defendant THOMAS CAINE WHITE, who was afforded all rights pursuant to Crim.R. 32. The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

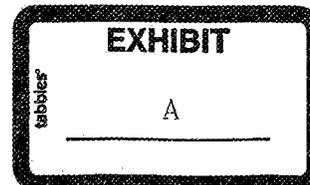
On May 14, 2010 the defendant was found guilty by a jury of the offense of Felonious Assault, a violation of R.C. 2903.11(A)(2), a felony of the 2nd degree.

It is ORDERED that defendant serve a term of 7 years in prison. An additional term is imposed as a mandatory and consecutive term pursuant to R.C. 2929.14(D)(1) of 3 years for a total of 10 years in prison.

It is further ORDERED the defendant is subject to 3 years mandatory post-release control as to count 1 after the defendant's release from imprisonment pursuant to R.C. 2967.28 and 2929.14.

E-JOURNALIZED

JUN 22 2010



SCANNED

Defendant given notice of appellate rights under R.C. 2953.08. Defendant notified of 3 years mandatory post-release control as to count 1.

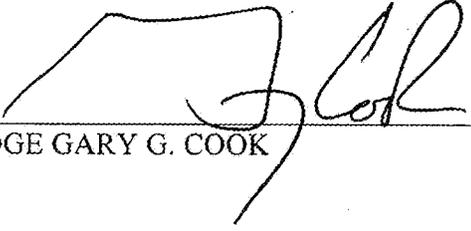
Defendant notified that if post release control conditions are violated the adult parole authority or parole board may impose a more restrictive or longer control sanction or return a defendant to prison for up to nine months for each violation, up to a maximum of 50% of the stated term originally imposed. Defendant further notified that if the violation of post release control conditions is a new felony, a defendant may be both returned to prison for the greater of one year or the time remaining on post release control, plus receive a prison term for the new felony.

Defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Corrections forthwith. Credit for 1 day is granted as of this date along with future custody days while defendant awaits transportation to the appropriate state institution.

Defendant found to have, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, assigned counsel, and prosecution as authorized by law. Defendant ordered to reimburse the State of Ohio and Lucas County for such costs. This order of reimbursement is a judgment enforceable pursuant to law by the parties in whose favor it is entered. Defendant further ordered to pay the cost assessed pursuant to R.C. 9.92(C), 2929.18 and 2951.021. Notification pursuant to R.C. 2947.23 given.

Defendant ordered remanded into custody of Lucas County Sheriff for immediate transportation to appropriate state institution.

Defendant's oral motion for appellate bond is hereby GRANTED. Appellate Bond is set at \$100,000.00 cash, no 10%.



JUDGE GARY G. COOK

RECOGNIZANCE OF ACCUSED

THE STATE OF OHIO

CASE NO: G-4801-CR-0200902300-000

VS.

LUCAS COUNTY COURT OF COMMON PLEAS

THOMAS CAINE WHITE
3418 CHELTENHAM RD
TOLEDO, OH 43606

JUDGE GARY G. COOK

SCANNED

The State of Ohio, Lucas County, ss:

Be It Remembered, That on the 21 day of June in the year 2010, THOMAS CAINE WHITE Principal and MERLE FRANCIS, 638 RICHLAND, MARION, OHIO 43302-5718 (740) 389-2660 Surety, personally appeared before me and jointly and severally acknowledged themselves to owe the State of Ohio the sum of \$100,000.00 and having paid the full amount in cash. The condition of this Recognizance is such that if the above bound THOMAS CAINE WHITE personally be and appear before said Lucas County Common Pleas Court at the call of the court, then and there to answer a charge of FELONIOUS ASSAULT W/ FIREARM SPEC. and/or any other charges that the Grand Jury of Lucas County, Ohio may present, and abide the order and judgment of the Court, or of any appellate court to which an appeal may be taken, and appear from day to day and not depart without leave until such case is finally disposed of, then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

COPY

Additional Conditions: NEXT COURT DATE: CHK W/ATTY. FOR FUTURE COURT DATES

Thomas C. White
Signature and Phone number of Accused

Merle Francis
Signature of Surety

Address of Accused if different than above

Phone Number if different or not indicated above

City, State, Zip if different than indicated above

Address of Surety if different or not above

City, State, Zip if different or not indicated above

BERNIE QUILTER, CLERK

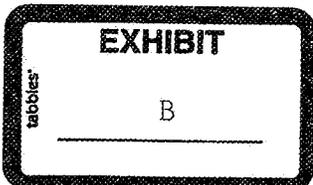
By: Randy Blatz Deputy Clerk

Form No: CAS - 000000158

Participant ID: 631883

Any address changes must be reported immediately to the Lucas County Clerks Office
(419) 213-4483

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS
FILED
LUCAS COUNTY
2010 JUN 21 P 4:06



Cash Bond
G-4801-CR-0200902300-000
THOMAS CAINE WHITE
6/21/10

FINANCIAL DISCLOSURE / AFFIDAVIT OF INDIGENCY

(\$25.00 application fee may be assessed—see notice on reverse side)

I. PERSONAL INFORMATION

Applicant's Name Thomas Caine White	D.O.B. 6/28/1982	Person Represented's Name (if juvenile)	D.O.B.
Mailing Address P.O. Box 1127	City Marion	State Ohio	Zip Code 43301
Case No.	Phone (937) 434-7100	Cell Phone (740) 244-0078	

II. OTHER PERSONS LIVING IN HOUSEHOLD

Name	D.O.B.	Relationship	Name	D.O.B.	Relationship
1)			3)		
2)			4)		

III. PRESUMPTIVE ELIGIBILITY

The appointment of counsel is presumed if the person represented meets any of the qualifications below. Please place an 'X'

Ohio Works First / TANF: ___ SSI: ___ SSD: ___ Medicaid: ___ Poverty Related Veterans' Benefits: ___ Food Stamps: ___

Refugee Settlement Benefits: ___ Incarcerated in state penitentiary: ___ Committed to a Public Mental Health Facility: ___

Other (please describe): _____ Juvenile: ___ (if juvenile, please continue at Section VIII)

IV. INCOME AND EMPLOYER

	Applicant	Spouse <small>(Do not include spouse's income if spouse is alleged victim)</small>	Total Income
Gross Monthly Employment Income	\$2,308.00		\$2,308.00
Unemployment, Worker's Compensation, Child Support, Other Types of Income			
TOTAL INCOME			\$2,308.00

Employer's Name: Penick & Deters, Mark Deters Phone Number: (937) 434-7100

Employer's Address: 1800 Lyons Road, Dayton, Ohio 45458

V. LIQUID ASSETS

Type of Asset	Estimated Value
Checking, Savings, Money Market Accounts	\$ 900
Stocks, Bonds, CDs	\$ 0
Other Liquid Assets or Cash on Hand	\$ 0
Total Liquid Assets	\$ 900

VI. MONTHLY EXPENSES

Type of Expense	Amount	Type of Expense	Amount
Child Support Paid Out		Telephone	\$120
Child Care (if working only)		Transportation / Fuel	\$620
Insurance (medical, dental, auto, etc.)		Taxes Withheld or Owed	\$482
Medical / Dental Expenses or Associated Costs of Caring for Infirm Family Member		Credit Card, Other Loans	\$400
Rent / Mortgage	\$400	Utilities (Gas, Electric, Water / Sewer, Trash)	\$110
Food	\$300	Other (Specify)	\$18,700 (Debt - legal fees)
EXPENSES	\$700.00	EXPENSES	\$1,732.00

VII. DETERMINATION OF INDIGENCY

If applicant's Total Income in Section IV is at or below 187.5% of the Federal Poverty Guidelines, counsel must be appointed.

For applicants whose Total Income in Section IV is above 125% of the Federal Poverty Guidelines, see recoupment notice in Section XI.

If applicant's Liquid Assets in Section V exceed figures provided in OAC 120-1-03, appointment of counsel may be denied if applicant can employ counsel using those liquid assets.

If applicant's Total Income falls above 187.5% of Federal Poverty Guidelines, but applicant is financially unable to employ counsel after paying monthly expenses in Section VI, counsel must be appointed.

VIII. \$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure / Affidavit of Indigency Form, you will be assessed a non-refundable \$25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within seven (7) days of submitting this form to the entity that will make a determination regarding your indigency. No applicant may be denied counsel based upon failure or inability to pay this fee.

IX. AFFIDAVIT OF INDIGENCY

I, Thomas C. White (applicant or alleged delinquent child) being duly sworn, state:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county or the court that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years from the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with this application for legal representation, pursuant to Ohio Revised Code sections 120.05 and 2921.13.
5. I hereby certify that the information I have provided on this financial disclosure form is true to the best of my knowledge.



STEPHANIE M. TAYLOR, Notary Public
In and for the State of Ohio
My Commission Expires Feb. 28, 2018

Thomas C. White 6/12/13
Affiant's signature Date

Individual duly authorized to administer oath:

and duly sworn before me according to law, by the above named applicant this 12 day of June, 2013, at 1800 Lyons, County of Montgomery, State of Ohio.
Signature of person administering oath: Stephanie M. Taylor
Title (example: Notary, Deputy Clerk of Courts, etc.): Notary

X. JUDGE CERTIFICATION

I hereby certify that above-noted applicant is unable to fill out and / or sign this financial disclosure / affidavit for the following reason: _____ I have determined that the party represented meets the criteria for receiving court-appointed counsel.

Judge's signature Date

XI. NOTICE OF RECOUPMENT

ORC §120.03 allows for county recoupment programs. Any such program may not jeopardize the quality of defense provided or act to deny representation to qualified applicants. No payments, compensation, or in-kind services shall be required from an applicant or client whose income falls below 125% of the federal poverty guidelines. See OAC 120-1-05.

Through recoupment, an applicant or client may be required to pay for part of the cost of services rendered, if he or she can reasonably be expected to pay. See ORC §2941.51(D)

XII. JUVENILE'S PARENTS' INCOME* -- FOR RECOUPMENT PURPOSES ONLY -- NOT FOR APPOINTMENT OF COUNSEL

	Custodial Parents' Income (Do not include parents' income if parent or relative is alleged victim)	Total
Employment Income (Gross)		
Unemployment, Workers Compensation, Child Support, Other Types of Income		
TOTAL INCOME		\$

*Please complete Section VI on page 1 of this form if you would like the court to consider your monthly expenses when determining the amount of recoupment which you can reasonably be expected to pay.

IN THE SUPREME COURT OF OHIO

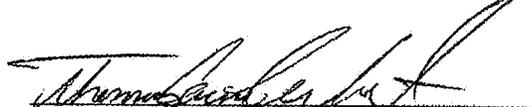
STATE OF OHIO,	:	
	:	Case No. 2013-0109
Plaintiff-Appellant,	:	
	:	On Appeal from the Lucas
v.	:	County Court of Appeals, Sixth
	:	Appellate District, Case No. L-10-1194
THOMAS CAINE WHITE,	:	
	:	
Defendant-Appellee.	:	

AFFIDAVIT OF INDIGENCY

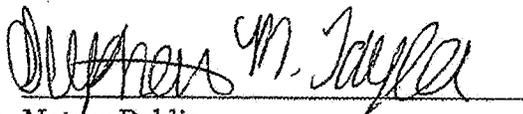
I, Thomas White, do hereby state that I am without the necessary funds to pay the costs of this action, including attorney fees, for the following reasons:

As detailed in the accompanying Financial Disclosure Form, my expenses and debts exceed my gross monthly income and I have no other means to pay an attorney to represent me in this case.

Pursuant to Rule 3.7 of the Rules of Practice of the Supreme Court of Ohio, I am requesting that this Court appoint the Office of the Ohio Public Defender as counsel.


 THOMAS CAINE WHITE

Sworn to, or affirmed, and subscribed in my presence this 12th day of June, 2013.


 Notary Public

My Commission Expires: Feb. 28 2018

#395401



STEPHANIE M. TAYLOR, Notary Public
 In and for the State of Ohio
 My Commission Expires Feb. 28, 2018