

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel.	:	
EMANUEL NEWELL,	:	
	:	
Relator,	:	Case No. 2013-0862
	:	
v.	:	Original Action in Mandamus and
	:	Prohibition
JUDGE: WILLIAM E. MAHON, et al.,	:	
	:	
Respondents.	:	

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**MOTION TO DISMISS OF RESPONDENTS  
JUDGES OF THE COURT OF APPEALS OF THE EIGHTH DISTRICT**

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EMANUEL NEWELL  
#206-453  
Allen Correctional Institution  
2338 North West Street  
Lima, Ohio 45801

*Relator.*

TIMOTHY MCGINTY (0024626)  
Prosecuting Attorney

JAMES E. MOSS (0061958)  
\*Counsel of Record  
Assistant Prosecuting Attorney  
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*Counsel for Respondent  
Judge William E. Mahon*

MICHAEL DEWINE (0009181)  
Ohio Attorney General

ERIN BUTCHER-LYDEN (0087278)  
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DARLENE FAWKES PETTIT (0081397)  
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*Counsel for Respondents  
Judges of the Court of Appeals  
of the Eighth District*

**FILED**  
JUN 25 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

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EMANUEL NEWELL,	:	
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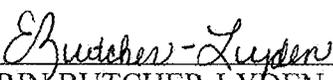
**MOTION TO DISMISS OF RESPONDENTS  
JUDGES OF THE COURT OF APPEALS OF THE EIGHTH DISTRICT**

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Pursuant to Sup. Ct. Prac. R. 12.01, 12.04(A) and Civ.R. 12(B)(6), Respondents Judges of the Court of Appeals of the Eighth District hereby moves this Court to dismiss Relator’s petition for a writ of mandamus and prohibition. A memorandum in support is attached.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

  
ERIN BUTCHER-LYDEN (0087278)

\*Counsel of Record

DARLENE FAWKES PETTIT (0081397)  
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*Counsel for Respondents  
Judges of the Court of Appeals  
of the Eighth District*

## MEMORANDUM IN SUPPORT

### I. INTRODUCTION

Relator Emanuel Newell initiated this action to compel Respondents, Judges of the Court of Appeals of the Eighth District (“Appellate Judges”), to vacate a 1990 appellate decision upholding his conviction. Relator is not entitled to such extraordinary relief. For the following reasons, the Appellate Judges respectfully ask this Court to dismiss Relator’s complaint.

### II. STATEMENT OF FACTS

On October 26, 1988, a jury found Emanuel Newell guilty of one count of felonious assault of a police officer (Count One) and one count of having weapons under disability (Count Two). *See* Compl., p. 2; Docket for CR-88-226066-ZA, attached as Exhibit 1.<sup>1</sup> On October 26, 1988, the trial court sentenced relator to three years for the firearms specification of both counts to run consecutively, fifteen years for count one to run consecutively, and one year for count two, to run concurrently with count one, for a total of 21 years. *See* Exhibit 1. On December 2, 1988, the trial court issued a nunc pro tunc entry noting that Relator’s sentence was “a term of fifteen (15) actual incarceration to twenty-five (25) years, due to prior aggravated specifications.” *Id.*

On December 6, 1990, the Court of Appeals for the Eighth District affirmed the conviction, but remanded for resentencing on the firearm specification of count two. *State v. Newell*, 8th Dist. Nos. 56801 and 30128, 1990 Ohio App. LEXIS 5314 (Dec. 6, 1990). On December 26, 1990, the trial court modified Relator’s sentence to remove the three-year firearm specification for Count Two. *See* Exhibit 1.

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<sup>1</sup> Documents attached to or incorporated into the complaint may be considered on a motion to dismiss pursuant to Civ.R. 12(B)(6). *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249, 673 N.E.2d 1281. Relator’s Exhibit B shows the docket as of February 9, 2012. Since that date, there have been several entries on the docket, so an updated docket is attached as the Respondents’ Exhibit 1.

On May 28, 2013, Relator filed a complaint with this Court seeking a writ of prohibition and a writ of mandamus against the common pleas court judge and the Appellate Judges. Specifically, Relator argues that the December 2, 1988 nunc pro tunc entry unlawfully increased his sentence and is therefore void. Complt., ¶ 13. As a result of this void entry, Relator argues, the Appellate Judges lacked jurisdiction over Relator’s direct appeal of his conviction. *Id.* at ¶ 14. Relator requests that this Court compel the trial court judge to vacate the nunc pro tunc judgment entry and reinstate the language of the October 26, 1988 sentencing entry. *Id.* at ¶ 21. Relator also requests a writ of prohibition and a writ of mandamus to compel the Appellate Judges to “correct the prior unauthorized jurisdictional action” and vacate the December 6, 1990 appellate decision. *Id.*

### **III. ARGUMENT**

#### **A. Standard of Review**

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself, not evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434 at ¶ 11. When considering the factual allegations of the complaint, a court must accept incorporated items as true and “the plaintiff must be afforded all reasonable inferences possibly derived therefrom.” *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Finally, a court must find that the plaintiff’s complaint does not provide relief on any possible theory. Civ.R. 12(B)(6); *State Auto. Mut. Ins. Co. v. Titanium Metals Corp.*, 108 Ohio St.3d 540, 2006-Ohio-1713, 844 N.E.2d 1199 at ¶ 8.

**B. Relator's request for a writ of prohibition must fail.**

Relator's request does not meet the requirements for a writ of prohibition to issue. In order for Relator to be entitled to the requested writ, he must establish that (1) the Appellate Judges are about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) the Court's denial of the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Hamilton County Bd. of Comm. v. Hamilton County Ct. of Common Pleas*, 126 Ohio St.3d 111, 2010-Ohio-2467, 931 N.E.2d 98, ¶ 18. Relator does not demonstrate that the Appellate Judges are exercising a power that is unauthorized by law, and Relator has an adequate remedy in the ordinary course of the law.

The second and third requirements for a writ of prohibition can only be satisfied if the Appellate Judges "patently and unambiguously lack[] jurisdiction to proceed." *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, ¶ 12. "In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal." *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5. Prohibition is a preventive writ rather than a corrective remedy, designed to prevent a tribunal from proceeding in a matter that it is not authorized to hear and determine. *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 248, 594 N.E.2d 616 (1992). Accordingly, prohibition does not apply retroactively but is instead "directed to the prevention of the usurpation of judicial power and does not lie to review an accomplished act." *State ex rel. Flannery v. Sidwell*, 24 Ohio St.2d 74, 75, 263 N.E.2d 568 (1970).

The trial court sentenced Relator on October 26, 1988 and amended the sentencing entry on December 2, 1988. *See* Exhibit 1. At that time, Relator appealed and the Court of Appeals for the Eighth District rendered its decision on December 6, 1990. *See State v. Newell*, 8th Dist. Nos. 56801 and 30128, 1990 Ohio App. LEXIS 5314 (Dec. 6, 1990). Additionally, the Court of Appeals reviewed Relator's sentence of "fifteen to twenty-five years" as referenced in the nunc pro tunc entry. *Id.* at \*1. Here, Relator's request for a writ of prohibition is a request for a retroactive remedy, not a preventative one. Because Relator cannot demonstrate that the Appellate Judges are unlawfully exercising judicial power, the request for a writ of prohibition must be dismissed.

**C. Relator's request for a writ of mandamus must fail.**

A writ of mandamus will issue only where three requirements are met: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) the relator must have no adequate remedy at law. *State ex rel. Van Gundy v. Indus. Comm.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13, citing *State ex rel. Luna v. Huffman*, 74 Ohio St.3d 486, 487, 659 N.E.2d 1279 (1996). Relator, however, meets none of the requirements for a writ of mandamus to issue.

Relator does not have a clear legal right to the relief he seeks, nor do the Appellate Judges have a legal duty to grant it. Relator argues that the December 2, 1988 entry is void and, as a result, that the Court of Appeals lacked jurisdiction to consider his appeal. However, because the December 2, 1988 entry corrects a clerical error in Relator's sentence, it relates back to the October 26, 1988 conviction and sentencing entry. *See State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, pp. 13-14. (noting that a nunc pro tunc entry issued under Crim.R.36 to correct a clerical mistake in judgment relates back to the original sentencing entry). Pursuant to

Crim.R.32(C), a judgment is a final, appealable order where it sets forth 1) the fact of the conviction, 2) the sentence, 3) the judge's signature, and 4) the time stamp indicating the entry upon the journal by the clerk. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, paragraph one of the syllabus. The October 26, 1988 entry met these requirements for a final appealable order. See Relator's Ex. A. The Court of Appeals had jurisdiction to hear Relator's appeal of this final order. See Ohio Constitution, Article IV, Section 3(B)(2); R.C. 2501.02. Accordingly, Relator does not have a legal right to have the Court of Appeals' decision vacated, nor do the Appellate Judges have a legal duty to vacate it.

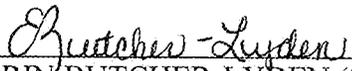
Further, Relator's complaint is barred because he had a plain and adequate legal remedy at law by way of appeal of the Court of Appeals' decision. Relief in mandamus is precluded if relator had an adequate remedy at law, regardless of whether that remedy was sought. *State ex rel. Brown v. Krichbaum*, 11th Dist. App. No. 11 MA 44, 2011-Ohio-2002, ¶ 4, citing *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997). An appeal is an adequate remedy at law and bars relief in mandamus. *State ex rel. Gilligan v. Ohio Bd. of Tax Appeals*, 70 Ohio St.3d 196, 201, 638 N.E.2d 74 (1994). Furthermore, a party contesting jurisdiction has an adequate remedy by appeal. *State ex rel. Pruitt v. Donnelly*, 129 Ohio St.3d 498, 2011-Ohio-4203, p. 2, quoting *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838. Accordingly, as Relator can meet none of the requirements for a writ of mandamus to issue, his complaint should be dismissed.

**IV. CONCLUSION**

For the foregoing reasons, Respondents, Judges of the Court of Appeals for the Eighth District, respectfully request that this Court dismiss Relator's complaint.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

  
ERIN BUTCHER-LYDEN (0087278)

\*Counsel of Record

DARLENE FAWKES PETTIT (0081397)  
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*Counsel for Respondents  
Judges of the Court of Appeals  
of the Eighth District*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Motion to Dismiss of Respondents Judges of the Eighth District Court of Appeals* was served by regular U.S. mail, postage prepaid, on June 25, 2013 upon the following:

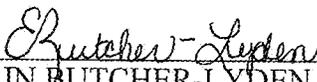
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Cleveland, Ohio 44113  
jmoss@cuyahogacounty.us

*Counsel for Respondent  
Judge William E. Mahon*

  
ERIN BUTCHER-LYDEN (0087278)  
Assistant Attorney General



## CASE INFORMATION

**CR-88-226066-ZA STATE OF OHIO vs. EMANUEL NEWELL**

### Docket Information

Proceeding Date	Filing Date	Side	Type	Description	Image
03/04/2013	03/04/2013	D1	GP	DEFENDANT'S AFFIDAVIT OF INDIGENCY, FILED. PRO-SE 206 ALLEN CORR.INST.	
03/04/2013	03/04/2013	D1	MO	DEFENDANT'S MOTION TO VACATE NUNC PRO TUNC ENTRY FILED 12/02/88, FILED. PRO-SE 206-453 ALL CORR. INST.	
10/10/2012	10/10/2012	D1	NT	MOTION BY APPELLANT, PRO SE, FOR RECONSIDERATION IS DENIED. (98895)	
09/26/2012	09/26/2012	D1	NT	SUA SPONTE, THE APPEAL IS DISMISSED PER ENTRY 458317, DATED SEPTEMBER 24, 2012. (98895)	
09/26/2012	09/26/2012	D1	NT	MOTION BY APPELLANT, PRO SE, FOR DELAYED APPEAL IS DENIED BY THE COURT OF APPEALS. (98895)	
09/05/2012	09/05/2012	D1	NT	NOTICE OF APPEAL, AFFIDAVIT OF INDIGENCY, JOURNAL ENTRY, PRAECIPE, DOCKETING STATEMENT (ACCELERATED), FILED PRO SE AND SENT TO THE COURT OF APPEALS WITH A COPY OF THE DOCKET SHEET. THE COURT OF APPEALS NUMBER ASSIGNED IS 98895.	
07/20/2012	07/20/2012	D1	NT	MOTION BY APPELLANT, PRO SE, FOR RECONSIDERATION IS DENIED BY THE COURT OF APPEALS. (98424)	
06/25/2012	06/26/2012	N/A	JE	DEFT'S 5/21/12 MOTION FOR RECONSIDERATION IS DENIED. CLERK ORDERED TO SEND A COPY OF THIS ORDER TO: DEFENDANT, EMANUEL NEWELL #A206453; ALLEN CORR. INST PO BOX 4501 LIMA, OH 45802 06/25/2012 CP1NF 06/25/2012 18:36:38	
06/21/2012	06/21/2012	D1	NT	SUA SPONTE, THIS APPEAL IS DISMISSED BY THE COURT OF APPEALS, AT APPELANT'S COST, FOR FAILURE TO FILE A TIMELY NOTICE OF APPEAL. (98424)	
06/18/2012	06/18/2012	D1	CL	RECORD ON APPEAL, PAGINATION SHEET AND CRIMINAL FILE SENT TO THE COURT OF APPEALS.	
06/01/2012	06/01/2012	D1	NT	NOTICE OF APPEAL, AFFIDAVIT OF INDIGENCY, JOURNAL ENTRY, PRAECIPE, DOCKETING STATEMENT (ACCELERATED), FILED PRO SE AND SENT TO THE COURT OF APPEALS WITH A COPY OF THE DOCKET SHEET. THE COURT OF APPEALS NUMBER ASSIGNED IS 98424.	
05/31/2012	05/31/2012	D1	MO	STATEMENT, PRAECIPE AND NOTICE TO COURT REPORTER ,FILED. PRO-SE 206-453 NORTH WEST STREET, LIMA, OHIO.	
05/21/2012	05/21/2012	D1	MO	MOTION FOR RECONSIDERATION, FILED. PRO SE ALLEN OAKWOOD CORR. INST. #206-453.	
05/01/2012	05/01/2012	N/A	JE	JOURNAL ENTRY RE: DEFENDANT'S MOTION TO COMPEL AS FOR CONTEMPT IN DISOBEYING JUDGMENT FILED ON 9-13-2011, AND DEFENDANT'S MOTION TO VACATE JOURNAL ENTRY FILED 12-2-88 DENIED. JOURNAL ENTRY SIGNED, ATTACHED AND ORDERED FILED. OSJ. 05/01/2012 CPEDB 05/01/2012 13:43:36	

**Exhibit 1**

04/30/2012	04/30/2012	N/A	JE	PRE TRIAL CONFERENCE SET FOR 05/01/2012 AT 11:30 AM.
04/27/2012	04/27/2012	N/A	JE	CAPTIONED CASE BEING ORIGINALLY ASSIGNED TO JUDGE BRIAN J CORRIGAN (312) AND FOR GOOD CAUSE SHOWN, THIS MATTER IS HEREBY REASSIGNED AND TRANSFERRED TO THE DOCKET OF JUDGE NANCY A FUERST (322) (MANUAL) FOR FURTHER PROCEEDINGS ACCORDING TO LAW.
02/27/2012	02/27/2012	D1	MO	DEFENDANT'S MOTION TO CORRECT ADDRESS AND INQUIRY AS TO PENDING MOTION STATUS, FILED. PRO SE 206-453 ALLEN CORR. INST.
11/10/2011	11/10/2011	D1	MO	DEFENDANT'S AFFIDAVIT IN SUPPORT OF THE MOTION TO VACATE THE JOURNAL ENTRY FILED 12-02-1988, FILED. PRO SE TOLEDO CORR. INST. #206-453.
11/10/2011	11/10/2011	D1	MO	DEFENDANT'S REPLY TO STATE'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE JOURNAL ENTRY FILED 12-02-1988, FILED. PRO SE TOLEDO CORR. INST. #206-453.
10/24/2011	10/24/2011	P	MO	STATE'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE JOURNAL ENTRY FILED 12/02/1988, FILED.
10/21/2011	10/21/2011	D1	GP	DEFENDANT'S AFFIDAVIT OF INDIGENCY, FILED. PRO-SE 206-453 TOLEDO CORR. INST.
10/21/2011	10/21/2011	D1	MO	DEFENDANT'S MOTION TO VACATE JOURNAL ENTRY FILED 12/02/1988, FILED. PRO-SE 206453 TOLEDO CORR. INST.
09/13/2011	09/13/2011	D1	MO	MOTION TO COMPEL AS FOR CONTEMPT IN DISOBEYING JUDGEMENT, FILED. PRO-SE 206-453 TOLEDO CORR. INST.
05/29/2004	05/29/2004	D1	DR	RC 2743.70
05/29/2004	05/29/2004	D1	CS	Jury Fees
05/29/2004	05/29/2004	D1	DR	COURT REPORTER FEE
05/29/2004	05/29/2004	D1	DR	WITNESS FEES
05/29/2004	05/29/2004	D1	DR	Sheriff Fees
05/29/2004	05/29/2004	D1	DR	Clerk Fees
06/19/2000		D		THIS CAUSE CAME TO BE HEARD ON MARCH 31, 2000. DEFENDANT WAS PROVIDED AN OPPORTUNITY TO RESPOND TO THE PLAINTIFF'S MOTION TO REVIVE DORMANT JUDGMENT FOR COURT COSTS IN THE ABOVE CAPTIONED CASE. DEFENDANT HAS NOT SHOWN CAUSE WHY JUDGMENT SHOULD NOT BE REVIVED. IT IS ORDERED, ADJUDGED, AND DECREED THAT SAID JUDGMENT FOR COURT COSTS STAND REVIVED. ..KXL 06/22/00 09:46
05/01/2000		D		DEFENDANT'S OBJECTIONS TO THE REVIVAL OF COURT COSTS, FILED PRO SE. (OSP 206453) ..KXL 05/02/00 09:55
02/23/2000	02/28/2000	D		DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT, IS DENIED. HEARD BY JUDGE RICHARD J. MCMONAGLE. ..RXC 02/25/00 15:09
02/22/2000		D		MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO CIVIL RULE 60(B), IN LIEU OF, CRIMINAL RULE 57, FILED PRO SE; OSP, INMATE #206-453. ..OLE 02/22/00 14:07
02/15/2000		D		THE COURT HEREBY ORDERS THAT A NON-ORAL HEARING WILL BE HELD ON MARCH 31, 2000 ON THE ISSUE OF REVIVAL OF JUDGMENTS FOR COURT COSTS IN THE ABOVE CAPTIONED CASE NUMBERS. DEFENDANT IS HEREBY ORDERED TO FILE ANY AND ALL EVIDENTIARY MATERIALS AND/OR OBJECTIONS TO THE REVIVAL OF COURT COSTS BY MARCH 31, 2000. ..KXL 02/18/00 12:08
01/28/2000	02/02/2000	D		DEFENDANT'S MOTION TO RESOLVE COURTS ORDERED ADJUDGED AND DECREED THAT SAID JUDGMENT FOR

**Exhibit 1**

		COURT COSTS STAND REVIEWED IN THE AMOUNT OF \$2,964.90 IS DENIED. HEARD BY JUDGE JOSE VILLANUEVA. ..CAL 01/31/00 13:10
01/24/2000	D	MOTION TO REVOKE COURTS ORDERED ADJUDGED AND DECREED THAT SAID JUDGMENT FOR COURT COSTS STAND REVIVED IN THE AMOUNT OF \$2,964.90, FILED PRO SE; OSP, INMATE #206-453. ..OLE 01/25/00 11:06
01/20/2000	D	MOTION TO REVOKE COURTS ORDERED ADJUDGED AND DECREED THAT SAID JUDGMENT FOR COURT COSTS STAND REVIVED IN THE AMOUNT OF \$2,964.90, WITH AFFIDAVIT OF EMANUEL NEWELL, FILED PRO SE; OSP, INMATE #206-453. ..OLE 01/24/00 12:12
12/27/1999	D	T JUDGMENT FOR COURT COSTS IN AMOUNT OF \$1640.50 REVIVED, OSJ. ..KXL 12/29/99 15:49
10/28/1998	D	LETTER SENT TO ADULT PAROLE AUTHORITY IN RESPONSE TO NOTICE OF HEARING ..DXE 10/28/98 10:48
08/06/1991	D	CAPTIONED CASE BEING AFFIRMED IN PART AND REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE COURT OF APPEALS, THIS CASE IS HEREBY RETURNED TO JUDGE WILLIAM E. MAHON FOR RESENTENCING SOLELY ON THE FIREARM SPECIFICATION OF THE SECOND COUNT (HAVING A WEAPON WHILE UNDER A DISABILITY). HEARD BY JUDGE FRANK GORMAN ..PK 08/06/91 14:50
12/26/1990	D	BY ORDER OF THE JOURNAL ENTRY AND MANDATE OF THE EIGHTH DISTRICT COURT OF APPEALS, IT IS HEREBY ORDERED THAT THE ORIGINAL SENTENCE IS MODIFIED AS TO COUNT TWO; THE THREE (3) YEAR ACTUAL INCARCERATION IS DELETED. IT IS FURTHER ORDERED THAT THE CLERK OF COURT'S FORWARD CERTIFIED COPIES OF THIS ENTRY ALONG WITH A COPY OF THE COURT OF APPEALS JOURNAL ENTRY TO THE INSTITUTION. ..CB 12/27/90 11:25
01/08/1990	D	MOTION FOR NEW TRIAL; BRADY NO FILE ..JC4401/08/90 11:08
01/05/1990	D	MOTION FOR A NEW TRIAL IS DENIED. DEFENDANT INDIGENT, DAVID L. DOUGHTON APPOINTED FOR APPEAL PURPOSES. CORRECTED ENTRY NOTES 1/5/90 PK: CHANGE SPELL ATTY NAME. ..CF 01/09/90 10:37
05/09/1989	D	MOTION FOR EXTENSION OF TIME TO DISPUTE DEFENDANT'S STATEMENT OF THE PROCEEDINGS IS GRANTED. ..PS 05/10/89 08:29
12/23/1988	D	NUNC PRO TUNC TO DECEMBER 2, 1988; DEFENDANT'S MOTION FOR TRANSCRIPT AND REPORTER TO BE PROVIDED AT STATE'S EXPENSE FOR THE APPEAL IN THIS CASE, IS GRANTED. ..PS 12/27/88 15:06
12/02/1988	D	NUNC PRO TUNC AS OF AND FOR OCTOBER 26, 1988: THE DEFENDANT EMANUEL NEWELL IS SENTENCED TO THE CORRECTIONAL RECEPTION CENTER, ORIENT, OHIO, FOR A TERM OF FIFTEEN (15) YEARS ACTUAL INCARCERATION TO TWENTY-FIVE (25) YEARS, DUE TO PRIOR AGGRAVATED SPECIFICATIONS. (SENTENCE CORRECTED FROM FIFTEEN (15) YEARS ACTUAL TIME, TO ADD TWENTY- FIVE (25) YEARS TO SENTENCE. ) ..VA 12/02/88 09:11
11/15/1988	D	IT IS HEREBY ORDERED THAT BRIAN J. CORRIGAN, ESQ., HERETOFORE ASSIGNED AS COUNSEL FOR THE DEFENDANT IN THIS CAUSE, BE ALLOWED SEVEN

**Exhibit 1**

HUNDRED AND FIFTY DOLLARS (\$750.00) FOR SERVICES SO RENDERED. IT IS ORDERED THAT THE COURT CERTIFY SAID AMOUNT TO THE COUNTY AUDITOR AND THE COMMISSIONERS FOR ALLOWANCE AND PAYMENT. V 83208 F 1580845 112388 .. 02/03/89 09:45

10/26/1988 D FEE BILL SUBMITTED BY BRIAN J. CORRIGAN, ESQ. .. 10/26/88 13:43

10/26/1988 D DEFENDANT IN OPEN COURT, REPRESENTED BY COUNSEL. NOW COMES THE JURY CONDUCTED INTO COURT BY THE BAILIFF AND RETURNED THE FOLLOWING VERDICT, TO-WIT: " WE, THE JURY BEING DULY IMPANELED AND SWORN, DO FIND DEFENDANT, EMANUEL NEWELL, GUILTY OF FELONIOUS ASSAULT WITH SPEC., RC.2903.11 AS CHARGED IN COUNT ONE." FURTHER THE COURT HAVING HEARD ALL THE EVIDENCE PRESENTED FINDS DEFENDANT GUILTY OF HAVING WEAPON U/DISABILITY, RC.2923.13, WITH SPEC., AS CHARGED IN COUNT TWO OF THE INDICTMENT. DEFENDANT WAS INFORMED OF THE VERDICT OF THE JURY AND FINDINGS OF THE COURT AND INQUIRED OF IF HE HAD ANYTHING TO SAY WHY JUDGMENT SHOULD NOT BE PRONOUNCED AND HAVING NOTHING BUT WHAT HE HAD ALREADY SAID. DEFENDANT, EMANUEL NEWELL IS SENTENCED TO THE CORRECTIONAL RECEPTION CENTER, ORIENT, OHIO, UNDER BOTH COUNTS; THREE (3) YEARS ACTUAL TIME ON SPECIFICATIONS OF EACH COUNT ONE AND TWO, CONSECUTIVE; SENTENCE ON COUNT ONE FOR TERM OF FIFTEEN (15) YEARS ACTUAL TIME DUE TO PRIOR AGGRAVATED SPEC., ALL THESE SENTENCES TO BE SERVED CONSECUTIVE TO EACH OTHER; SENTENCE ON COUNT TWO FOR TERM OF ONE (1) YEAR, TO RUN CONCURRENT WITH COUNT ONE. PAY COURT COSTS. DEFENDANT FOUND TO BE INDIGENT, ATTORNEY DAVE DOUGHTON APPOINTED TO HANDLE DEFENDANT'S APPEAL. DEFENDANT IS REMANDED TO CUSTODY. ..VA 10/27/88 11:24

10/25/1988 D THIS DAY AGAIN COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE AND DEFENDANT, EMANUEL NEWELL, IN OPEN COURT, REPRESENTED BY COUNSEL WITH THE JURY PRESENT. WHEREUPON, THE SAID JURY HAVING HEARD ALL THE TESTIMONY ADDUCED, THE ARGUMENTS OF COUNSEL, AND THE CHARGE OF THE COURT, RETIRED TO THEIR ROOM IN CHARGE OF THE BAILIFF FOR DELIBERATION. JURY DELIBERATING. RECESSED UNTIL 9:30 A. M., WEDNESDAY, OCTOBER 26, 1988. ..VA 10/27/88 10:29

10/24/1988 D ON TRIAL PROGRESS. ..CF 10/24/88 14:56

10/24/1988 D CARMEN D. LORENZI FAILED TO APPEAR AS A JUROR ON THIS CASE. BENCH WARRANT TO ISSUE FOR JUROR. ADDRESS 2901 YORK AVE, CLEVELAND, OHIO ..VA 10/25/88 08:39

10/21/1988 D ON TRIAL. ..CF 10/24/88 14:54

10/20/1988 D ON TRIAL. ..CF 10/24/88 14:54

10/19/1988 D ON TRIAL. ..CF 10/24/88 14:53

10/18/1988 D THIS DAY AGAIN COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE AND DEFENDANT, EMANUEL NEWELL, IN OPEN COURT, REPRESENTED BY COUNSEL WITH THE JURY PRESENT. ON TRIAL, PROGRESS. ..VA 10/20/88 09:35

**Exhibit 1**

10/17/1988	D	NOW COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE AND THE DEFENDANT, EMANUEL NEWELL, IN OPEN COURT, REPRESENTED BY COUNSEL. WHEREUPON, JURY PANEL HAVING BEEN EXAMINED, ACCEPTED AND SWORN, THIS CASE PROCEEDED TO TRIAL. ON TRIAL, PROGRESS. .VA 10/20/88 09:35
10/17/1988	D	IT IS ORDERED BY THE COURT THAT ALL PERSONS ENTERING COURT ROOM 22 (B), DURING THE TRIAL OF THIS CASE, STATE OF OHIO -VS- EMANUEL NEWELL, MUST VOLUNTARILY SUBMIT TO A SEARCH OF THEIR PERSON AND PROPERTY BY THE SHERIFF'S DEPUTIES OF THIS COUNTY. .VA 10/20/88 09:34
10/14/1988	D	THIS DAY AGAIN COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE AND DEFENDANT, EMANUEL NEWELL, IN OPEN COURT, REPRESENTED BY COUNSEL AND FULLY ADVISED OF HIS CONSTITUTIONAL RIGHTS. DEFENDANT WISHES TO HAVE A JURY TRIAL AS TO THE FIRST COUNT OF THE INDICTMENT, AND WAIVES JURY TRIAL AS TO THE SECOND COUNT OF THE INDICTMENT, AND TO BE TRIED BY THE COURT AS TO THE SECOND COUNT. .VA 10/27/88 11:10
10/14/1988	D	DEFENDANT IN COURT WITH COUNSEL, ADVISED OF HIS RIGHT TO APPEAR FOR TRIAL IN CIVILIAN CLOTHES. TRIAL IS SET FOR OCTOBER 17, 1988. .CF 10/17/88 09:39
10/13/1988	D	MOTION FOR DISCOVERY; MOTION IN LIMINE; MADDEN HAS FILE. .JC4410/17/88 10:22
10/07/1988	D	MOTION TO REAFFIRM AND ADOPT ALL MOTIONS FILED BY PREVIOUS DEFENSE COUNSEL; FILE. .JC4410/07/88 10:17
10/04/1988	D	MOTION OT DISMISS THE INDICTMENTS; THE BRADY RULE, DEFENDANT'S PROPOSED JURY INSTRUCTIONS; ANSWER TO DISCOVERY; GRAYS NO FILE .JC4410/06/88 08:25
09/30/1988	D	MOTION IN LIMINE; GRAYS NO FILE .JC4410/03/88 13:40
09/21/1988	D	MOTION TO SUPPRESS ALL EVIDENCE PRESENTED BY THE PROSECUTION, MOTION TO COMPEL COURT TO PERMIT THE DEFENDANT TO EXERCISE HIS RIGHT TO SUBPOENA POWER TO DEFEND HISSELF AGAINST THE PENDING CHARGES, MOTION TO DISMISS FOR DENIAL OF DUE PROCESS AND DENIAL OF RIGHT TO COUNSEL. MADDEN HAS FILE .JC4409/22/88 20:10
09/16/1988	D	MOTION TO SUPPRESS EYEWITNESS TESTIMONY. MADDEN HAS FILE .JC4409/19/88 23:22
08/26/1988	D	MOTION FOR DISCOVERY, MOTION TO DISMISS THE CHARGED AGAINST THE ACCUSED ;MADDEN WITH FILE .JC4408/29/88 14:34
08/23/1988	D	MOTION TO WITHDRAW (BRIAN CORRIGAN); FILE .JC4008/23/88 15:16
08/22/1988	D	DUE TO IRRECONCILABLE DIFFERENCES WITH HIS CLIENT, ATTORNEY BRIAN CORRIGAN'S MOTION TO WITHDRAW AS COUNSEL IS GRANTED. COURT APPOINTS PUBLIC DEFENDER AS ATTORNEY IN THIS CASE. .RC 08/26/88 09:10
08/16/1988	D	MOTION FOR SEPERATION OF COUNTS; BUTLER HAS FILE .JC4008/17/88 10:31
08/11/1988	D	NUNC PRO TUNC TO JULY 25, 1988. AT THE REQUEST OF DEFENDANT'S ATTORNEY, TRIAL CONTINUED TO AUGUST 12, 1988 TO PERMIT DEFENDANT'S ATTORNEY MORE TIME TO PREPARE FOR TRIAL. .LM 08/12/88 09:23
08/08/1988	D	

**Exhibit 1**

		MOTION TO SUPPRESS EYE WITNESS IDENTIFICATION TESTIMONY; BUTLER WITH FILE ..JC4408/09/88 14:18
07/25/1988	D	AT THE REQUEST OF DEFENDANT'S ATTORNEY, TRIAL IS CONTINUED TO AUGUST 12, 1988 TO PERMIT DEFENDANT'S ATTORNEY MORE TIME TO PREPARE FOR TRIAL. ..VA 08/11/88 08:54
07/22/1988	D	MOTION FOR AN ORDER TO OBTAIN THE SERVICES OF AN EXPERIMENTAL PSYCHOLOGIST; BUTLER NO FILE ..JC4407/26/88 08:51
07/08/1988	D	MOTION FOR DISCOVERY, REQUEST FOR BILL OF PARTICULARS, REQUEST FOR NOTICE, REQUEST THAT THE JUDGE DETERMINE THE EXISTENCE OF AN AGGRAVATED FELONY SPECIFICATION AT THE SENTENCING HEARING, MOTION FOR JURY VIEW OF PREMISES, MOTION FOR AN ORDER TO OBTAIN THE SERVICES OF AN INVESTIGATOR; BUTLER NO FILE MFD AND BOP MAILED AND FILED - FILE RETURNED TO BUTLER ..JC4407/21/88 15:51
06/30/1988	D	PRE-TRIAL HELD, CASE SET FOR TRIAL JULY 27, 1988. ..DN 07/25/88 08:17
06/28/1988	D	IT IS HEREBY ORDERED THAT MARK A. STANTON, ESQ., HERETOFORE ASSIGNED AS COUNSEL FOR THE DEFENDANT IN THIS CAUSE, BE ALLOWED SIX HUNDRED AND FORTY FIVE DOLLARS (\$645.00) FOR SERVICES SO RENDERED. IT IS ORDERED THAT THE COURT CERTIFY SAID AMOUNT TO THE COUNTY AUDITOR AND THE COMMISSIONERS FOR ALLOWANCE AND PAYMENT. V 77974 F 1531285 071188 .. 08/16/88 12:31
06/23/1988	D	FEE BILL SUBMITTED BY MARK A. STANTON, ESQ. ... 06/23/88 10:12
06/20/1988	D	MOTION FOR APPOINTMENT OF NEW COUNSEL; FELLEBAUM WITH FILE ..JC4006/22/88 12:33
06/20/1988	D	DEFENDANT'S MOTION FOR APPOINTMENT OF NEW COUNSEL IS GRANTED. ATTORNEY BRIAN CORRIGAN IS APPOINTED AS NEW COUNSEL. AT REQUEST OF DEFENSE ATTORNEY, PRE-TRIAL CONTINUED TO JUNE 30, 1988. ..CF 06/21/88 09:44
06/08/1988	D	AT REQUEST OF DEFENDANT'S ATTORNEY, PRE-TRIAL CONTINUED TO JUNE 20, 1988. ..CM 06/14/88 14:20
05/31/1988	D	AT REQUEST OF DEFENSE ATTORNEY, PRE-TRIAL CONTINUED TO JUNE 8, 1988. ..CF 05/31/88 16:21
05/24/1988	D	CASE SET FOR PRE-TRIAL JUNE 1, 1988. ..CM 05/25/88 09:29
05/18/1988	D	MOTION FOR DISCOVERY, MOTION FOR BILL OF PARTICULARS; FELLEBAUM NO FILE MFD AND BOP MAILED AND FILED ..JC4306/07/88 15:42
05/13/1988	D	AND NOW THE DEFENDANT, IN OPEN COURT HAVING STATED THAT HE/SHE IS INDIGENT, AND IT APPEARING THAT HE/SHE IS IN INDIGENT CIRCUMSTANCES, AND UNABLE TO EMPLOY COUNSEL, THE COURT APPOINTS MARK STANTON, ESQ., AS COUNSEL FOR HIS/HER DEFENSE. ..FM 05/17/88 16:24
05/13/1988	D	NOW COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE OF OHIO AND THE DEFENDANT IN OPEN COURT WAS FULLY ADVISED OF HIS/HER CONSTITUTIONAL RIGHTS, INCLUDING HIS/HER RIGHT TO COUNSEL. THE DEFENDANT, EMANUEL NEWELL, ACKNOWLEDGES THAT HE/SHE RECEIVED A COPY OF THE INDICTMENT FROM THE SHERIFF OF CUYAHOGA COUNTY. TWENTY-FOUR HOURS

**Exhibit 1**

HAVING ELAPSED SINCE SERVICE OF THE INDICTMENT, DEFENDANT IN OPEN COURT WAIVED READING OF THE INDICTMENT. THEREUPON, THE SAID DEFENDANT IN OPEN COURT ENTERS A PLEA OF NOT GUILTY. JUDGE WILLIAM E. MAHON ASSIGNED. BOND SET AT \$25,000.00. IT IS FURTHER ORDERED THAT IF SAID DEFENDANT POSTS BAIL IN THIS CAUSE, AN ADDITIONAL AMOUNT SHALL BE ADDED TO THE AMOUNT OF BAIL AS SET FORTH IN O. R. C. 2743.70 AND O. R. C. 2949.091. DEFENDNT DECLARED INDIGENT, COUNSEL TO BE ASSIGNED. ..FM 05/13/88 12:49

04/13/1988

D

CAPIAS TO ISSUE FOR DEFENDANT, EMANUEL NEWELL.  
..FM 04/13/88 15:53

Only the official court records available from the Cuyahoga County Clerk of Courts, available in person, should be relied upon as accurate and current.

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**Exhibit 1**