IN THE SUPREME COURT OF OHIO

ORIGINAL

State of Ohio,	:	S.Ct.No. 13-1040
Appellee,	:	
	:	On Appeal from the Judgement of the
vs.	:	Hamilton County Court of Appeals,
	:	First Appellate District, in Court
Deondre Andrew,	:	of Appeals Case Number C-120399
Appellant,	:	

MEMORANDUM IN SUPPORT OF JURISDICTION

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JUN 27 2013

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SUPREME COURT OF OHIO

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FIRST PROPOSITION OF LAW

When two or more offenses are charged, which are of similar import resulting from the same animus, if the resulting sentences are not ran concurrently, the sentence is viod as a matter of law for failure to comply with the statutory requirements. This violates Double Jeopardy and the right to due process guaranteed by the 5th and 14th amendments of the U.S. Constitution and Article 1, Section 16 of the Ohio Constitution. 3-5

SECOND PROPOSITION OF LAW:

When the Court of Appeals is presented with an Anders brief of which appellate counsel admits the appellant p objected to the lack of inclusion of a potentially meritorious claim, then the Court denies Leave of the appellant to supplement the brief with his claim, compounded by the complete disregard of the claim, the court denies the appellant of his right to a fair trial and the due process of law fg guaranteed by the 5th and 14th amendments of the U.S. Constitution and Article 1, Section 16 of the Ohio Constitution. 5-7

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EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION:

This case raises two serious constitutional questions, which any Ohioan who finds himself involved in a criminal case and subsequent Appeal would want the absolute clarification of this Court. The jurisprudenc in Ohio on these issues seems unclear at best, and unsettled for the most part. Those questions are:

1) Can a Motion to Correct a Void Sentence, even an Oral one, be made at any time?
2) Should an Appellate Court take notice of an Appellant's pro-se supplament to an appointed Appellate Attorney's Anders brief?

The question of when a Motion to Correct a Void Sentence at any time does not receive equal treatment in all Appellate Districts. In the Second District, the Courts claim that the error resulting from failure to merge sentences of similar import creates a sentence which is voidable, and must be raised on Direct Appeal. Other Districts, including the Eighth, recognize the failure as resulting in a void sentence. Such a case surely falls under this Court's jurisprudence in State ex rel Cruzado v Zaleski 2006-Ohio-5795, which can be raised at any time. The entire Allied Offense issue seems to be in flux in our State, and the guidance of this Honorable Court is required.

While the filings of Anders briefs on Direct Appeal is an accepted, regular part of Ohio jurisprudence, when an Attorney can find no issues which he believes are appealable, it is also only too easy for Appellate Attorneys to file such "boilerplate" briefs in an attempt to alleviate their overcrowded caseloads. When the Appellant specifically

notifies Counsel of a particular issue which he believes should be raised on Appeal, but is ignored by Counsel, who then, without informing the Appellant, files an **Anders** brief, and the Appellant then brings the issue to the Court of Appeals' attention in a pro-se Motion to Supplement, which is denied withopszopinion, Justice is not thus being served, as Due process on Direct Appeal of Right is lost.

In Ohio, only the guidance and leadership of this Honorable Court can resolve these issues, and mandate complete compliance by Appellate Attorneys, as well as unifying jurisprudence in all Appellate Districts. To do so, this Honorable Court should sustain this Appellant's Propositions of Law and accept jurisdiction of this case.

STATEMENT OF THE CASE AND FACTS:

This case originates from a remand from the Appellate Court back to the Trial Court to address the improper imposition of fines and restitution. At the Resentencing Hearing, the Appellant, on his own oral motion, raised the issue of merger of the charges against him, due to similar import arising from a single animus. The Trial Court, however would not address the issue. Following the conclusion of resentencing, new Counsel was appointed for Appeal, Attorney Bruce Hust.

After his appointment, Attorney hust sent a letter to the Appellant to inform him of Counsel's intention to file an **Anders** brief, and informed the Appellant that he could file a Supplemental Brief on any issue which he felt was meritorious. The Appellant replied that he specifically wanted to Appeal the Trial Court's refusal to consider Allied Offenses at Resentencing, as can be seen by Appellate Counsel's

reference to the Appellant's request in his Anders brief.

This Appellant filed for leave to supplement, fully laying out his argument concerning Allied Offenses and his resulting void sentence. The Court of Appeals, however, denied leave to supplement without opinion or discussion of the merits, and later, in the consideration of the Anders brief, agreed with the State and Appellate Counsel, that the Trial proceedings were error-free, with no mention of Allied Offenses or the Appellant'ss effort to have this issue included for review. This timely Appeal of that decision follows, in which this Appellant respectfully requests that this Honorable Court sustain his Propositions of Law and accept jurisdiction of this case, to resolve the issues presented and to stop any wrongful sentences from being imposed, which do not comport with the statute.

PROPOSITION OF LAW NUMBER ONE:

When two or more offenses are charged, which are of similar import resulting from the same animus, if the resulting sentences are not ran concurrently, the sentence is void as a matter of Law, for failure to comply with the statutory requirements. This violates Double Jeopardy and the Right to Due Process, guaranteed by the 5th and 14th Amendments of the U.S. COnstitution and Article I, Section 15 of the Ohio Constitution. Such a claim can be raised at any time, and a Court's failure to address the issue once it has been raised is itself a violation of the same constitutional protections.

It is well sellttled in this Court, despite not being adhered to in all Ohio Appellate districts, that a sentence imposed that does not comport with all the MANDATORY sentencing provisions, including the requirement to merge all charges for the same criminal conduct

It is well settled in this Court, despite not being adhered to in all Ohio Appellate Districts, that a sentence imposed that does not comport with all MANDATORY sentencing provisions, including the requirement to merge all charges for the same criminal conduct and committed with the same animus, are void as a matter of law. **State v Brown** 2010-Ohio-324. This court does not need to be again versed on the verbatim reading of 2941.25. It is also well established that a Judge, that does not impose a sentence that is authorized by law, the sentence is unlawful. If an act is unlawful, it is wholly unauthorized and void. See e.g. **State ex rel Kudrick v Meredith** 24 Ohio 120 1922 WL 2015. This is still the law .

In the case at bar, the offenses charged are allied offenses. They are of similar import, they result from a single transaction and are from the same animus. Such a failure to merge the sentences of these charges results in a void sentences which can be challenged at any time and the proper remedy is to resentence the defendant using the required legal application of 2941.25. See e.g. State v Jordan 104 Oh St. 3d. 21, 2004-Ohio-6085, 817 N.E. 2d. 864. This is the requested relief sought in this case.

This appellant, made an oral motion, at resentencing, to request merger of the sentences imposed. The trial court did not cinsider

the motion nor held a hearing on whether or not the charges were allied offenses as required in **State v Underwood** 2010-Ohio-1. No reason for the court's inaction can be considered valid or proper.

The court simply ignored established law and this court must

sustain this proposition of law and accept jurisdiction of this case. The jurisprudence in Ohio concerning allied offenses lacks any structured semblence. There are numerous discrepancied in the application of the law in Ohio Appellate Districts. Resolution of these issues and to consolidate Ohio jurisprudence to ensure that ak all future defendants in Ohio will receive sentences which comport with the law and alll statutory requirements can be done by the intervention of this court.

PROPOSITION OF LAW NUMBER TWO:

> When the Court of Appeals is presented with an Anders brief of which appellate counsel admits the appellant objected to the lack of inclusion of a potentially meritorious claim, then the court denies Leave of the appellant to supplement the brief with his claim, compounded by the complete disreagard of the claim, the Court denies the appellant of his right to a fair trial and the due process of law guaranteed by the 5th and 14th amendment of the U.S. constitution and Article 1, section 16 of the Ohio Constitution.

Procedural due process is just as constitutionally protected as what would be considered the typical common usage of due process. The procedures in filing and accepting a brief on appeal in behalf on a defendant pursuant to **Anders v California** 386 US 738 is that after appellate counsel reviews the record on appeal and determines no error which is potentially meritorious, in his opinion, counsel MUST inform the appellant of his conclusion and offer the appellant the opportunity to respond and offer and raise any issues he feels merit inclusion.

The court of appeals acknowledged this fact of law. What the Court ignored is what transpired after the notification as nothing in the court's decision indicates consideration of those events.

This appellant wrote a letter to appointed appeal lawyer, Mr. Bruce Hust after counsel's letter to him indicating he intended top file an Anders brief. This appellant pointed out that he had requested merger of the charges at the time of resentencing to the trial court pointing out that the offenses are allied offenses of similar import with the same animus. It was also pointed out that the court simply ignored the appellant's oral motion and would not so much as hold a hearing on whether the charges were allied offenses requiring merger. Despite appellate counsel's promisde in writing to offer him the opportunity to respond and raise any issues, this promise was merely lip service as no inclusion was made or even any response made to the appellant's requests. Appellate counsel did mention the fact that this Appellant wished the inclusion of these two related allied offenses claims. M The failure to merge and the failure to hold an allied offensee hearing.

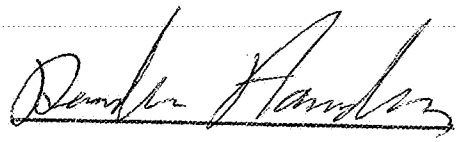
With no response from counsel to this appellant's letter of request, this appellant filed a pro-se motion for leave to supplement the Anders brief with his arguments about the allied offenses. This appellant's motion was denied with no reasoned decision, and no mention of this appellant's issues were made in the court's decision. The appellate court simply granted withdrawal of counsel and accepted the Anders brief.

The first district court of appeals denied the appellant herein of both due process and procedural due process in these ways. The court refused to allow the supplemental brief without opinion and then refused to address the issues requested for inclusion, albeit only mentioned by appellate counsel in his anders brief. To keep these violations of due process from occurring in the future and to keep all filings and resolutions of anders briefs on an acceptable constitutional level on ohio appellate court reviews and to prevent future Ohioians from being denied their constitutional rights, this Honorable court should sustain this propostion of law and accept jurisdiction of this case.

CONCLUSION

To prevent future miscarriages of justice like those which have occurred in this case from occurring to any one else who due to indigence must proceed on appeal with a court appointed appeal lawyer who due in part to heavy caseloads often file anders brief and ignore the clients they represent and to ensure that other appl appellate districts do not follow the lead of the first appellate district when it comes to adjudicating anders briefs, this honorable court should sustain both propositions of law and accept jurisdiction of this case.

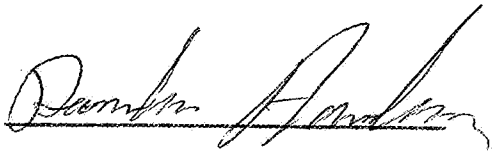
Respectully submitted;



Deondre Andrew

CERTIFICATE OF SERVICE

I, Deondre Andrew, hereby certify that a true and accurate copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION WAS SENT TO THE Hamilton County Prosecutor by US Mail on this 23d day of June, 2013.



Deondre Andrew

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-120399 TRIAL NO. B-1005259A
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
DEONDRE ANDREW,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Deondre Andrew's appointed counsel has advised this court that, after a thorough review of the record, he can find nothing that would arguably support appellant's appeal, and that the appeal is wholly frivolous. *See Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *see also Freels v. Hills*, 843 F.2d 958 (6th Cir.1988). Counsel, as required by Anders, has communicated this conclusion to appellant, and has offered appellant an opportunity to respond and to raise any issues. Counsel has also moved this court for permission to withdraw as counsel. *See Anders* at 744; *see also* 1st Dist. Loc.R. 16.2(C)(1) and 16.2 (D)(2).

Counsel now requests that this court independently examine the record to determine whether the appeal is wholly frivolous. *See Anders* at 744. We have done

so, and we agree with counsel's conclusion that the proceedings below were free of error prejudicial to appellant and that no grounds exist to support a meritorious appeal. Therefore, we overrule counsel's motion to withdraw from his representation of appellant, and affirm the judgment of the trial court.

We hold that this appeal is frivolous under App.R. 23 and without "reasonable cause" under R.C. 2505.35. But we refrain from taxing costs and expenses against appellant because he is indigent.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27.

HENDON, P.J., HILDEBRANDT and **FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on May 17, 2013

per order of the court _____.
Presiding Judge