

ORIGINAL

IN THE SUPREME COURT OF OHIO

Brian J. Cummings,
P.O. Box 1812
Marion, OH 43302
RELATOR,

Trial Case No. CR2006-04-0692
S. Ct. No. 13-1396

-V-

**PETITION FOR THE ISSUANCE
OF A WRIT OF MANDAMUS**

JUDGE, KIETH SPEATH
315 HIGH St. 3rd Fl.
HAMILTON, OH 45011
RESPONDENT,

FILED
AUG 29 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Comes Now the Relator, Mr. Brian J. Cummins, who while acting in Pro se, does hereby respectfully request that this court issue a "Writ Of Mandamus" and direct it towards the Respondent in the above styled cause. The Relator asserts that the respondent in this case has failed to carry out a clear legal duty and therefore, the Relator has no other legal recourse than to file this action.

The Relator declares that this action is being taken in accordance with O.R.C. §2701.02 and §2731.01 as well as the 14th Amendment of the United States Constitution. The Relator asserts that the reasons for this action are more fully stated in the Memorandum in Support that is attached hereto and a part of this action.

Respectfully Submitted,

Brian J. Cummings
Brian J. Cummins #535-617

RECEIVED
AUG 29 2013
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

Relator was convicted of operating a motor vehicle, a third (3rd) degree felony and sentenced to five (5) years in prison pursuant to O.R.C. § 4511.19(A)(1)(a), and an additional five (5) years in imposed pursuant to O.R.C. § 4511.19(G)(1)(c)(ii), for having five (5) priors within twenty (20) years.

First issue: The trial court erred when it used the same prior convictions to add a specification to enhance Realtors felony degree, it should not be permitted to do both. See O.R.C. § 2941.25 Multiple Counts (A) “ Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar, the indictment or information may contain counts for all such offenses. But the defendant may be convicted of only one.” Also under the “Double Jeopardy Clause” of the 5th amendment to the United States Constitution, prohibits a second punishment or second trial for the same offense.

Second issue: Relator was sentenced under O.R.C. § 4511.19(A)(1)(a) a third (3rd) degree felony, and to the additional charge of O.R.C. § 4511.19(G)(1)(c)(ii). According to the trial courts and the twelfth (12th) District Appeals Court this is correct. Relator has filed documents in both courts to correct what he believed to be an error in violation of a citizen’s Constitutional right. Both courts have ruled against Relator, O.R.C. Crim. R. 32(C) Judgment “ A judgment of conviction shall set forth the plea, the verdict or findings, upon which each conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render the judgment accordingly, the judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.” As seen by the attached judgment entry filed October 4th, 2006 and signed by the trial judge Keith Speath and approved by the prosecuting attorney.

REQUEST FOR RELIEF

First issue Relator requests this court to rule that the trial court erred by using prior convictions to enhance and add specification. Violating the Relators Constitutional protections of Due Process, equal protection of the law, and to be free from Double

Jeopardy. Relator believes this Supreme Court should direct the Trial Court to choose to either enhance the felony degree or add the specification, not allowing both to be arbitrarily applied.

On the second issue Relator requests the court to direct the Trial Court to enter the sentence that they stand firm on in relation to O.R.C. § 4511.19(G)(1)(c)(ii), and entered properly to the Bureau of Sentencing Computation.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this foregoing "MOTION FOR THE ISSUANCE OF A WRIT OF MANDAMUS" was mailed by way of the United States Postal Service to the BUTLER COUNTY PROSECUTORS OFFICE addressed to his/her office at: 315 High Street, 11th Fl., Hamilton, OH 45011 on this 13th day of August, 2013.

AFFIDAVIT OF VERITY

I, Brian J. Cummings, who having been duly sworn and cautioned as to the penalty for perjury, deposes and says that in accordance with O.R.C. §2969.25, I have not filed any other Civil Action in the last five (5) years. I assert that I have read the information submitted in the attached "MOTION FOR THE ISSUANCE OF A WRIT OF MANDAMUS" is to the best of my knowledge and belief true and correct, further Affiant- Relator saith not.

Brian J. Cummings
Affiant

NOTARY

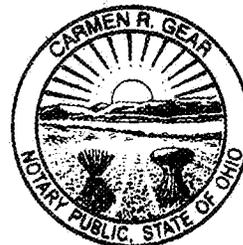
Sworn to and subscribed before me in my presence this 13th day of August, 2013.

Carmen R. Gear

Notary Public

My commission expires September 12, 2017

Seal:



CARMEN R. GEAR
NOTARY PUBLIC

STATE OF OHIO

My Comm. Expires Sept. 12, 2017

IN THE SUPREME COURT OF OHIO

Brian J. Cummings,
P.O. Box 1812
Marion, OH 43302
RELATOR,

Trial Case No. CR2006-04-0692

S. Ct. No. _____

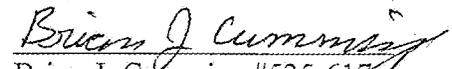
-V-

APPLICATION TO PROCEED
IN FORMA PAUPERIS

JUDGE, KIETH SPEATH
315 HIGH St. 3rd Fl.
HAMILTON, OH 45011
RESPONDENT,

Comes Now the Relator, Mr. Brian J. Cummins, who while acting in Pro se, in the above styled case hereby, moves this court to set aside the docketing fee's and request leave to proceed In Forma Pauperis for the reasons stated in the attached Affidavit of Indigency, also attached is a certified (prison) trust fund account statement.

Respectfully Submitted,

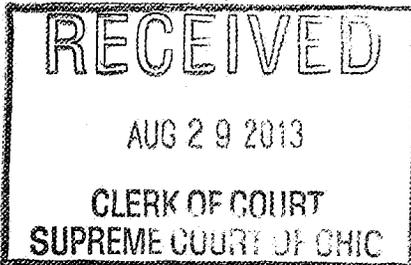

Brian J. Cummins #535-617

AFFIDAVIT OF INDIGENCY

STATE OF OHIO]
] SS:
COUNTY OF MARION]

I, Brian J. Cummins, having been first duly sworn and cautioned as to the penalties for perjury, hereby deposes and says the following:

1. That I am incarcerated at the North Central Correctional Complex, Minimum Camp, 670 Marion-Williamsport Road East, Marion (Marion County), Ohio 43301, pursuant to the conviction and sentence imposed upon me by the Court of Common Pleas of Butler County, Ohio;
2. That I earn \$20.00 monthly in my prison employment;
3. That as a result of this incarceration, I have no money to pay for representation or secure costs in this matter;
4. That I have no bank accounts, bonds, real property or equity therein in which to satisfy the costs of maintaining this action;
5. That I am a true pauper according to the laws of the State of Ohio and the United States of America;
6. And further, Affiant herein, says not.



Brian J. Cummins

Affiant

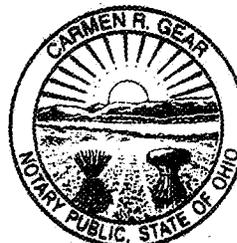
NOTARY

Sworn to and subscribed before me in my presence this 13th day of August, 2013.

Carmen R. Gear

Notary Public
My commission expires September 12, 2017.

Seal:



CARMEN R. GEAR
NOTARY PUBLIC
STATE OF OHIO

My Comm. Expires Sept. 12, 2017

08/15/2013

North Central Correctional Complex

Inmate Demand Statement

Inmate Name: CUMMINGS, BRIAN J

Number: A535617

Lock Location: NCCC,5,C,,2T

Date Range: 02/15/2013 Through 08/16/2013

Beginning Account Balances:

Ending Account Balances:

	Saving	Debt	Payable		Saving	Debt	Payable
Medical Co-Pay	\$0.00	\$0.00	\$0.00	Medical Co-Paymen	\$0.00	\$0.00	\$2.00
Inmate's Person	\$189.67	\$0.00	\$0.00	Inmate's Personal A	\$32.73	\$0.00	\$0.00
Begin Totals	\$189.67	\$0.00	\$0.00	End Totals	\$32.73	\$0.00	\$2.00

Transaction Date / Inst.	Transaction Amount	Description	Comment	Saving Balance	Debt Balance	Payable Balance
02/27/2013	(\$112.35)	Commissary Sale	Ticket Number 11336	\$77.32	\$0.00	\$0.00
		NCCC				
02/28/2013	\$187.50	OffConnect Kiosk Deposit	4383114910593737010/Cu mmings, Delores	\$264.82	\$0.00	\$0.00
		NCCC				
03/01/2013	(\$15.00)	Inmate's Personal Account	POS Exemption Transfer	\$249.82	\$0.00	\$0.00
		NCCC				
03/01/2013	\$15.00	Pos Exemption	POS Exemption Transfer	\$264.82	\$0.00	\$0.00
		NCCC				
03/06/2013	(\$102.90)	Commissary Sale	Ticket Number 11510	\$161.92	\$0.00	\$0.00
		NCCC				
03/08/2013	\$20.00	State Pay	State Pay	\$181.92	\$0.00	\$0.00
		NCCC				
03/08/2013	(\$5.00)	Payment to CHILD SUPPORT PAYMENT CENTRAL	February 2013 Child Support	\$176.92	\$0.00	\$0.00
		NCCC				
03/12/2013	\$92.00	OffConnect Kiosk Deposit	4413918803711779123/Cu mmings, Delores	\$268.92	\$0.00	\$0.00
		NCCC				
03/20/2013	(\$98.35)	Commissary Sale	Ticket Number 12031	\$170.57	\$0.00	\$0.00
		NCCC				
03/27/2013	(\$105.21)	Commissary Sale	Ticket Number 12367	\$65.36	\$0.00	\$0.00
		NCCC				
04/01/2013	(\$15.00)	Inmate's Personal Account	POS Exemption Transfer	\$50.36	\$0.00	\$0.00
		NCCC				
04/01/2013	\$15.00	Pos Exemption	POS Exemption Transfer	\$65.36	\$0.00	\$0.00
		NCCC				

04/02/2013	\$92.00 OffConnect Kiosk Deposit	4445378827373797682/Cu mmings, Delores	\$157.36	\$0.00	\$0.00
NCCC					
04/03/2013	(\$99.87) Commissary Sale	Ticket Number 12454	\$57.49	\$0.00	\$0.00
NCCC					
04/04/2013	\$187.50 OffConnect Kiosk Deposit	4445379127685964082/Cu mmings, Delores	\$244.99	\$0.00	\$0.00
NCCC					
04/05/2013	\$20.00 State Pay	State Pay	\$264.99	\$0.00	\$0.00
NCCC					
04/05/2013	(\$5.00) Payment to CHILD SUPPORT PAYMENT CENTRAL	March, 2013 child support	\$259.99	\$0.00	\$0.00
NCCC					
04/09/2013	(\$12.00) Fundraisers - No Specific Club	American Red Cross Fundraiser, Camp - 4/2013	\$247.99	\$0.00	\$0.00
NCCC					
04/10/2013	(\$97.26) Commissary Sale	Ticket Number 12691	\$150.73	\$0.00	\$0.00
NCCC					
04/10/2013	(\$2.00) Medical Co-Payment	dos 04 01 2013	\$148.73	\$0.00	\$2.00
NCCC					
04/24/2013	(\$99.75) Commissary Sale	Ticket Number 13252	\$48.98	\$0.00	\$2.00
NCCC					
05/01/2013	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$33.98	\$0.00	\$2.00
NCCC					
05/01/2013	\$15.00 Pos Exemption	POS Exemption Transfer	\$48.98	\$0.00	\$2.00
NCCC					
05/01/2013	(\$2.00) Payment to Medical Co-Pay Fund	April 2013 Medical Co-Pay	\$48.98	\$0.00	\$0.00
NCCC					
05/02/2013	(\$46.82) Commissary Sale	Ticket Number 13667	\$2.16	\$0.00	\$0.00
NCCC					
05/03/2013	\$187.50 OffConnect Kiosk Deposit	4493549127453925683/Cu mmings, Delores	\$189.66	\$0.00	\$0.00
NCCC					
05/03/2013	\$20.00 State Pay	State Pay	\$209.66	\$0.00	\$0.00
NCCC					
05/03/2013	(\$5.00) Payment to CHILD SUPPORT PAYMENT CENTRAL	May, 2013 Child Support	\$204.66	\$0.00	\$0.00
NCCC					
05/14/2013	(\$2.00) Medical Co-Payment	dos 05 02 2013	\$202.66	\$0.00	\$2.00
NCCC					

05/15/2013	(\$100.44) Commissary Sale	Ticket Number 14070	\$102.22	\$0.00	\$2.00
NCCC					
05/15/2013	(\$20.00) Commissary Sale	Ticket Number 14071	\$82.22	\$0.00	\$2.00
NCCC					
05/15/2013	(\$5.48) Commissary Sale	Ticket Number 14072	\$76.74	\$0.00	\$2.00
NCCC					
05/22/2013	(\$71.22) Commissary Sale	Ticket Number 14343	\$5.52	\$0.00	\$2.00
NCCC					
05/30/2013	\$92.00 OffConnect Kiosk Deposit	4528363520205021490/Cu	\$97.52	\$0.00	\$2.00
mmings, Delores					
NCCC					
05/30/2013	(\$91.38) Commissary Sale	Ticket Number 14744	\$6.14	\$0.00	\$2.00
NCCC					
06/01/2013	\$0.00 \$15.00 Reservation to Pos	OdrC Pos Exemption	\$6.14	\$0.00	\$2.00
Exemption					
NCCC					
06/03/2013	\$187.50 OffConnect Kiosk Deposit	4493553751841857843/Cu	\$193.64	\$0.00	\$2.00
mmings, Delores					
NCCC					
06/03/2013	(\$2.00) Payment to Medical Co-Pay	May Medical Co-Pay	\$193.64	\$0.00	\$0.00
Fund					
NCCC					
06/04/2013	(\$2.00) Medical Co-Payment	dos 05/24/2013	\$191.64	\$0.00	\$2.00
NCCC					
06/05/2013	(\$71.82) Commissary Sale	Ticket Number 14838	\$119.82	\$0.00	\$2.00
NCCC					
06/05/2013	(\$20.00) Commissary Sale	Ticket Number 14839	\$99.82	\$0.00	\$2.00
NCCC					
06/07/2013	\$20.00 State Pay	State Pay	\$119.82	\$0.00	\$2.00
NCCC					
06/07/2013	(\$5.00) Payment to CHILD	May 2013 Child Support	\$114.82	\$0.00	\$2.00
SUPPORT PAYMENT					
CENTRAL					
NCCC					
06/12/2013	(\$61.18) Commissary Sale	Ticket Number 15137	\$53.64	\$0.00	\$2.00
NCCC					
06/17/2013	(\$0.45) Copy Charges	copies per weidner	\$53.19	\$0.00	\$2.00
NCCC					
06/19/2013	(\$50.41) Commissary Sale	Ticket Number 15508	\$2.78	\$0.00	\$2.00
NCCC					
06/21/2013	(\$1.40) Copy Charges	copies per thompson	\$1.38	\$0.00	\$2.00
NCCC					

06/21/2013	(\$2.00) Medical Co-Payment	dos 06 14 2013	\$0.00	(\$0.62)	\$3.38
NCCC					
06/24/2013	\$92.00 OffConnect Kiosk Deposit	4565748108996665650/Cu mmings, Delores	\$91.38	\$0.00	\$4.00
NCCC					
06/26/2013	(\$81.56) Commissary Sale	Ticket Number 15776	\$9.82	\$0.00	\$4.00
NCCC					
07/01/2013	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$9.82	\$0.00	\$4.00
NCCC					
07/01/2013	(\$4.00) Payment to Medical Co-Pay Fund	June 2013 Medical Co- Pays	\$9.82	\$0.00	\$0.00
NCCC					
07/03/2013	\$187.50 OffConnect Kiosk Deposit	4576137013742821683/Cu mmings, Delores	\$197.32	\$0.00	\$0.00
NCCC					
07/03/2013	(\$64.97) Commissary Sale	Ticket Number 15914	\$132.35	\$0.00	\$0.00
NCCC					
07/05/2013	\$20.00 State Pay	State Pay	\$152.35	\$0.00	\$0.00
NCCC					
07/05/2013	(\$0.05) Copy Charges	copies per thompson	\$152.30	\$0.00	\$0.00
NCCC					
07/05/2013	(\$5.00) Payment to CHILD SUPPORT PAYMENT CENTRAL	June 2013 Child Support	\$147.30	\$0.00	\$0.00
NCCC					
07/10/2013	(\$8.24) Commissary Sale	Ticket Number 16031	\$139.06	\$0.00	\$0.00
NCCC					
07/11/2013	(\$2.00) Medical Co-Payment	dos 07 08 2013	\$137.06	\$0.00	\$2.00
NCCC					
07/17/2013	(\$110.40) Commissary Sale	Ticket Number 16382	\$26.66	\$0.00	\$2.00
NCCC					
07/19/2013	(\$0.25) Copy Charges	COPIES PER THOMPSON	\$26.41	\$0.00	\$2.00
NCCC					
07/24/2013	(\$25.54) Commissary Sale	Ticket Number 16723	\$0.87	\$0.00	\$2.00
NCCC					
07/30/2013	(\$0.30) Copy Charges	copies @ camp library 7.25.2013	\$0.57	\$0.00	\$2.00
NCCC					
07/30/2013	(\$0.20) Copy Charges	copies @ camp library 7.28.2013	\$0.37	\$0.00	\$2.00
NCCC					
07/31/2013	\$187.50 OffConnect Kiosk Deposit	4623977324221063474/Cu mmings, Delores	\$187.87	\$0.00	\$2.00

NCCC	07/31/2013	(\$96.01) Commissary Sale	Ticket Number 16885	\$91.86	\$0.00	\$2.00
NCCC	08/01/2013	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$76.86	\$0.00	\$2.00
NCCC	08/01/2013	\$15.00 Pos Exemption	POS Exemption Transfer	\$91.86	\$0.00	\$2.00
NCCC	08/01/2013	(\$2.00) Payment to Medical Co-Pay Fund	July 2013 Med Co-Pay chk 7338	\$91.86	\$0.00	\$0.00
NCCC	08/08/2013	(\$66.13) Commissary Sale	Ticket Number 17198	\$25.73	\$0.00	\$0.00
NCCC	08/09/2013	\$20.00 State Pay	State Pay	\$45.73	\$0.00	\$0.00
NCCC	08/09/2013	(\$5.00) Payment to CHILD SUPPORT PAYMENT CENTRAL	July, 2013 child support	\$40.73	\$0.00	\$0.00
NCCC	08/12/2013	(\$2.00) Medical Co-Payment	DOS 8/7/2013	\$38.73	\$0.00	\$2.00
NCCC	08/13/2013	(\$5.00) Fundraisers - No Specific Club	CAMP CORE Dinner Fundraiser	\$33.73	\$0.00	\$2.00
NCCC	08/13/2013	(\$0.20) Copy Charges	copies per thompson	\$33.53	\$0.00	\$2.00
NCCC	08/14/2013	(\$0.80) Copy Charges	copies per thompson	\$32.73	\$0.00	\$2.00

Outstanding Debts:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
	Medical Co-Payment						\$0.00
Total Outstanding Case Balances					\$0.00		

Outstanding Holds:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
02/28/2007	Child and Spousal Support	7009305751	CHILD SUPPORT PAYMENT CENTRAL	Butler		\$214.10	
06/16/2010	Child and Spousal Support	7051607427	CHILD SUPPORT PAYMENT CENTRAL	Butler		\$28.10	
05/13/2008	Child and Spousal Support	7053325689	CHILD SUPPORT PAYMENT CENTRAL	Butler		\$34.50	

05/13/2008	Child and Spousal Support	7053391715	CHILD SUPPORT PAYMENT CENTRAL	Butler	\$34.50
05/13/2008	Child and Spousal Support	7053392093	CHILD SUPPORT PAYMENT CENTRAL	Butler	\$34.44

Total Outstanding Case Holds	\$0.00
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Outstanding Investments / EPC:

Investment Type	Investment Type Description	Invest Company	Company Description	Balance
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IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO

Plaintiff

vs.

BRIAN J. CUMMINGS
a.k.a. BRIAN J. CUMMINS

Defendant

CASE NO. CR2006-04-0692

INDICTMENT

PAGE 1 OF 2

STATE OF OHIO,
COUNTY OF BUTLER, SS:

In the Year 2006

THE JURORS OF THE GRAND JURY OF THE STATE OF OHIO, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

COUNT ONE

OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE

On or about April 04, 2006, at Butler County, Ohio, Brian J. Cummings a.k.a. Brian J. Cummins did operate any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them, when the offender has previously been convicted of or pleaded guilty to a violation of division (A) of O.R.C. section 4511.19, that was a felony, which constitutes the offense of OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE, a Third Degree Felony, in violation of R.C. §4511.19(A)(1)(a), and against the peace and dignity of the State Of Ohio. SPECIFICATION. The Grand Jurors further find and specify that within twenty years of committing the offense, the offender previously has been convicted of or pleaded guilty to five or more equivalent offenses

COUNT TWO

DRIVING UNDER SUSPENSION

On or about April 04, 2006, at Butler County, Ohio, Brian J. Cummings a.k.a. Brian J. Cummins did operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this state while the driver's or commercial driver's license or permit or nonresident operating privilege has been suspended, which constitutes the offense of DRIVING UNDER SUSPENSION, a First Degree Misdemeanor, in violation of R.C. §4510.11(A), and against the peace and dignity of the State Of Ohio.

COUNT THREE
CARRYING CONCEALED WEAPONS

On or about April 04, 2006, at Butler County, Ohio, Brian J. Cummings a.k.a. Brian J. Cummins did knowingly carry or have, concealed on the person's person or concealed ready at hand a deadly weapon other than a handgun, which constitutes the offense of CARRYING CONCEALED WEAPONS, a First Degree Misdemeanor, in violation of R.C. §2923.12(A)(1), and against the peace and dignity of the State Of Ohio.

Filed _____

Defendant arraigned, and pleads:

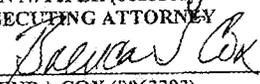
_____ Guilty to this indictment

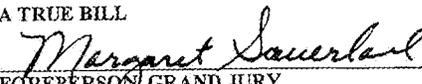
By _____
CINDY CARPENTER
CLERK OF COURTS

By _____
Deputy



ROBIN N. PIPER (0023205)
PROSECUTING ATTORNEY

BY 
BRENDA COX (0063393)
ASSISTANT PROSECUTING ATTORNEY

A TRUE BILL

FOREPERSON, GRAND JURY

RS

□

FILED

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

PRIORITY

STATE OF OHIO
Plaintiff
vs.
BRIAN J. CUMMINGS
Defendant

CASE NO. CR2006-04-0692
SPAETH, J.
PRIORITY
JUDGMENT OF CONVICTION ENTRY

On August 29, 2006 defendant's sentencing hearing was held pursuant to Ohio Revised Code Section 2929.19. Defense attorney, Bradley Fox and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Jury, and findings as set forth on the record and herein, oral statements, any victim impact statement and the pre-sentence report prepared for Butler County case no. CR05-10-1844, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE as to Count One, a violation of Revised Code Section 4511.19(A)(1)(a) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 5 years.

An additional term of five (5) years is imposed as a mandatory and consecutive term pursuant to Revised Code Section 4511.19(G)(1)(c)(iii), which shall be served consecutive and prior to the sentence imposed in Count one above.

DRIVING UNDER SUSPENSION as to Count Two, a violation of Revised Code Section 4510.11(A) a first degree misdemeanor. With respect to this Count, the defendant is hereby sentenced to:

Jail for a period of 6 months.

This sentence will be served concurrent with Count One.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. Box 515, HAMILTON, OH 45012-0515

CARRYING CONCEALED WEAPONS as to Count Three, a violation of Revised Code Section 2923.12(A)(1) a first degree misdemeanor. With respect to this Count, the defendant is hereby sentenced to:

Jail for a period of 6 months.

This sentence will be served **consecutive** to Count Two and concurrent to Count One.

Credit for 147 days served is granted as of this date.

Intensive Programs Prison

Defendant is denied eligibility for any Intensive Programs Prison

As to Count(s) One:

The Court has notified the defendant that post release control is optional in this case up to a maximum of three (3) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. ~~The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.~~ The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

It is **FURTHER ORDERED** that said defendant is fined the sum of \$5,000.00 as to Count One, which is a **mandatory fine** imposed pursuant to the provisions of Ohio Revised Code 2929.18(B)(3) and 4511.19(G)(1)(d)(iii), and that the court orders said fine to be distributed pursuant to Revised Code 4511.19(G)(5).

It is **FURTHER ORDERED**, pursuant to Revised Code 4507.16, that the defendant's pleasure driving, operator's license or any other driving permits or privileges shall be suspended for the rest of defendant's lifetime.

It is **FURTHER ORDERED** that the Clerk shall notify the Ohio Bureau of Motor Vehicles through form 2724.

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

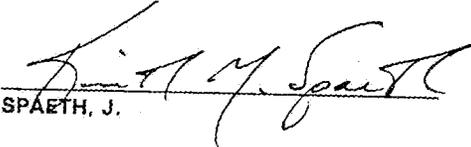
PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. Box 515, HAMILTON, OH 45012-0515

APPROVED AS TO FORM:

ENTER

ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

BC/pj 0908


SPAETH, J.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. BOX 515, HAMILTON, OH 45012-0515

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO

Plaintiff

vs.

BRIAN J. CUMMINGS

Defendant

FILED BUTLER CO.
COURT OF COMMON PLEAS

AUG 11 2010

CINDY CARPENTER
CLERK OF COURTS

Case No. CR 2006 04 0692

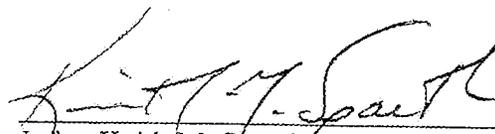
(Judge Keith M. Spaeth)

**ORDER DENYING MOTION
TO IMPOSE VALID
SENTENCE**

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This matter came on before the Court on the defendant's Motion To Impose Valid Sentence filed on August 2, 2010. Following careful consideration, the Court hereby denies defendant's motion. So ordered.

"ENTER"



Judge Keith M. Spaeth

Copies:

Butler County Prosecutor's Office

Brian J. Cummings (#535617)
Ross Correctional Institution
16149 State Route 104
P.O. Box 7010
Chillicothe, Ohio 45601

Judge Keith M. Spaeth
Common Pleas Court
Butler County, Ohio