

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARTINE P. GOODEN

;

CASE NO 13-1159

APPELLEE

VS

JULIE KAGEL

MARION COUNTY CLERK OF COURTS

APPELLANT

BRIEF OF APPELLEE'S MARTINE P. GOODEN

APPELLANT

JULIE KAGEL

MARION COUNTY CLERK OF COURTS

100 NORTH MAIN STREET

MARION, OHIO 43302

APPELLEE

MARTINE P. GOODEN

519-106

FRANKLIN MEDICAL CENTER

1800 HARMON AVE ZONE B

COLUMBUS, OHIO 43223

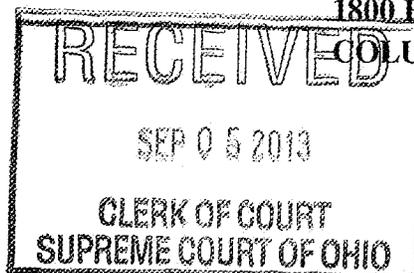
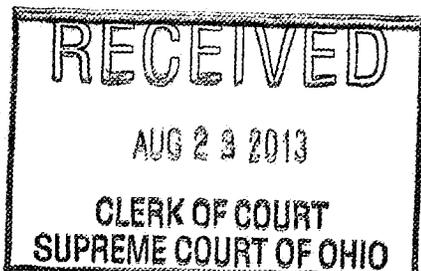
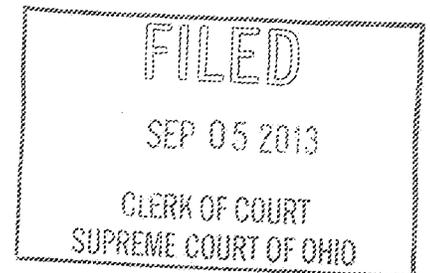


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STATEMENT OF CASE AND FACTS

On or about April 24, 2006 the impositions of judgment and an order of restitution was imposed by the Marion County Court OF Common Pleas , during the sentencing phase of the appellee. The Court imposed judgments and restitution in relation to all victim's of Case No 06-Cr-001 of Marion County. These judgments were granted to Scott and Mary Kay crowder, Pam sands, Karen Blank and Direct TV and Verizon MC and Community Market.

The Appellee in this cause, states that the Appellant Julie Kagel has failed to provide to the Appellee any certified copies of documents of the aforementioned victim loss statements. These statements are very essential elements to show cause why the imposition of judgment should and must be granted. The Ohio Revised Code clearly states that the Court must clearly show the losses of each victim to a certain degree of certainty.

The Appellee in this cause has exhausted each and every remedy and has continually filed with the Appellant documents seeking certified copies of the victim losses statement. The Appellant claims that these statement are a matter of Public records and continue to seeking an judgment or an order of restitution from the Appellee, knowing that each victim has been fully reimbursed and there is no outstanding restitution owed by the Appellee.

ASSIGNMENT FOR REVIEW. FURTHER THE SENTENCE OF THE APPELLEE IS VOID OR VOIDABLE PURSUANT TO OHIO REVISED CODE 2929.18 B-1

The Appellee in this cause, states that the Appellant Julie Kagel failed to provide any certified copies of the victim losses statements in this cause. These statements are essential elements to show cause why the imposition of a judgment or an order of restitution should and must be granted. The Ohio Revised code clearly shows the losses of each victim to a certain degree of certainty.

Further these losses must be proven to a reasonable degree of certainty.

STATE V WEBB 173 3D 547, 2007 Ohio 5670 879 N>E> 2d 254

Notwithstanding these facts, the Appellee and the indictment shows that count 19 Of the indictment reflects that the Appellee re-routed funds from the account of Ina Lee and directed these funds to Direct TV and Verizon MC and prior to sentencing the victim ina Lee was fully reimbursed for the Appelle actions and her lost.

The records will reflect that Count 15 and 18 were the result of count 19 and there the count improperly imposed an order of judgment and restitution to Direct TV and Verizon MC, And the Appellant has failed to provide any creditable evidence or documentation to support the judgment issued by the Marion county Court of Common Pleas.

The Appellee states that the Appellant in this cause, has continue and failed to show essential evidence to support the judgments issued by the Marion County Court of Common Pleas in relation to Case No 06-Cr-001 where Pam Sands, Karen blank , Scott and Mark Kay Crowder Direct TV, and Verizon MC and Community Market were issued judgment and restitution in the aforementioned cause.

The records will reflect that these individual received payments from FDIC Federal deposit Insurance Corporation to recover their losses. Again the Appellant in this cause has failed to provide the Appellee with any creditable evidence to support the actual losses of each victim in relation to Case No 06-CR-001 Of Marion county. The Appellant claims that these losses are matter of Public Records be continue to fail to show any evidence to support her claims.

The amount of judgment or restitution, the specific amount must be based on the facts and established to a certain degree of certainty. State V. Summer 154 Ohio App 3d 421 State v Church 161 Ohio App 3d 589

Since the Appellant is the keeper of the records and these records must be provided to the Court of Common Pleas and to the defendant of a criminal case in which the Court seeks to imposed a judgment or an order of restitution. While these documents remain solely in the possession and custody and control of the herein Appellee that must be presented as evidence to support any and all judgments render against the defendant in relation to restitution or a judgment

The Filing in the County courts is required by R.C. 2303.08 the Clerk of court is required to endorse on each pleading or paper in a cause filed in the clerk's Office the time of filing*****

SEE State v OROSZ 2088 WL 2939471 Ohio App 6 dist 2008 Ohio 222222223871 at
_paragraph 9.

IT IS EQUALLY ESTABLISHED THAT.

There is no requirement that a judgment be filed and journalized on the same date only that both acts occur within 30 days of the decision Sup R, 7 (A) Id at Orosz at paragraph 10. The Official duties and responsibilities are made obligatory under O.R.C 2303 and O.R.C 2505.02 to which the Clerk of courts has no discretion to wantonly or maliciously fail to perform these prescribed statutory ministerial duties regardless of whether these official duties are effectuated by an attorney, the court, or a Pro_SE Litigant Compare Civ R.54

Judgment and Restitution can no longer be awarded to an third parties including insurers
State v Haney 180 Ohio App 3d 554, 2009 Ohio 149 906 N.E.2d 472. the amount of judgment
or restitution ordered must be reduced by any insurance payment received. State v. Colon 185 Ohio
App 3d 671 2010 492

Since the Appelle states that these documents does not exist and the order of judgment and restitution is part of the sentence in which these victim's losses statement are very essentials element to support the conviction of the Appellant

An order requiring defendant to pay restitution was improper, under R.C. 2929.18(A)(1), as to certain victims and was plain error because the source the trial court used to determine the restitution amounts could not be found, since victim impact statements and a pre-sentence report did not correspond to the restitution order, as to these victims. 2007 Ohio 6673; 2007 Ohio App. LEXIS 5847, State v. Bowman, 2009 Ohio 1281, 2009 Ohio App. LEXIS 1082

An order of restitution under R.C. 2929.18(A)(1) required a remand where the trial court had failed to hold a hearing, despite the fact that defendant objected thereto; further, the trial court had failed to adjust the amount of restitution after the State had filed the notice of total value of recovered property belonging to the victim. State v. Jones, CASE NO. 2012-L-072, COURT OF APPEALS OF OHIO, ELEVENTH APPELLATE DISTRICT, LAKE COUNTY, 2013 Ohio 2616; 2013 Ohio App. LEXIS 2597, June 24, 2013, Decided

The record failed to provide enough evidence to support the \$ 13,655 restitution order. Therefore, it could not be determined whether the ordered amount of restitution bore a reasonable relationship to the actual loss suffered as a result of defendant's illegal conduct, as required by R.C. § 2929.21(E). State v. Labghaly, No. 87759 , COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, 2007 Ohio 73; 2007 Ohio App. LEXIS 70, January 11, 2007, Released

The restitution order under R.C. 2929.18 was not supported by competent, credible evidence because neither the victims nor defendant recommended any amount for restitution and the presentence investigation report did not show any information with regard to the economic loss suffered by the victims. State v. Tucker, Court of Appeals No. S-11-003, COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, SANDUSKY COUNTY, 2012 Ohio 622; 2012 Ohio App. LEXIS 534, February 17, 2012, Decided

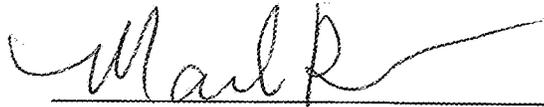
There was no competent, credible evidence in the record from which the court could ascertain the actual economic damages suffered by the victim; thus, the trial court erred in ordering defendant to pay restitution to the victim. State v. DiJohn, Court of Appeals No. L-98-1295, COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY, 1999 Ohio App. LEXIS 2126, May 14, 1999, Decided

Where a trial court imposed an order of restitution on defendant, but it failed to indicate a specific amount to be paid, such constituted plain error, requiring a remand for a specific determination..State v. Howard, C.A. Case No. 20326 , COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, MONTGOMERY COUNTY, 2004 Ohio 6227; 2004 Ohio App. LEXIS 5698, November 19, 2004, Rendered

CONCLUSION

Appellee states that his sentence issued by the Marion County Court of Common Pleas is void and voidable pursuant to the Ohio Revised Code and the Marion County court of common Pleas has issued an orders of judgment and restitution that is void and voidable pursuant to the Ohio Revised Code and should be reversed and remand by this Court

Respectfully Submitted



Martine P. Gooden PRO_SE

CERTIFICATE OF SERVICES

A true copy of the foregoing Brief was sent by regular U.S Mail to the Office of Julie Kagel at 100 North Main Street, Marion Ohio 43302 and to the Office of the Clerk of the Ohio Supreme Court on this 23rd day of August 2013



EXHIBIT

0611
4-26-06

COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO,

2006 APR 25 AM 11:40

Case No. 06-CR-001

Plaintiff,

JULIE H. KAGEL
CLERK OF COURTS

Judge William R. Finnegan

-vs-

MARTINE P. GOODEN,

*
*
*

JUDGMENT ENTRY
OF SENTENCING

Defendant.

On March 20, 2006, the Defendant, MARTINE P. GOODEN, appeared in Court with his retained attorney, Javier Armengau. The State of Ohio moved to dismiss Counts III and IV, Robbery [R.C. 2911.02(A)(2)], F2, Counts VIII and IX, Forgery [R.C. 2913.31(A)(3)], F5, Counts XI, XII, XIII, and XIV, Forgery [R.C. 2913.31(A)(3)], F5, and Counts XVI and XVII, Forgery [R.C. 2913.31(A)(3)], F5. The Court, finding said motion to be well taken, hereby ORDERS Counts III, IV, VIII, IX, XI, XII, XIII, XIV, XVI and XVII dismissed. The defendant withdrew his previously entered plea of Not Guilty, and entered a plea of Guilty to Count I, Aggravated Robbery [R.C. 2911.01(A)(1)], F1, Count II, Aggravated Robbery [R.C. 2911.01(A)(1)], F1, Count V, Theft [R.C. 2913.02(A)(4)], F4, Count VI, Theft [R.C. 2913.02(A)(1)], F5, Count VII, Forgery [R.C. 2913.31(A)(3)], F5, Count X, Theft [R.C. 2913.02(A)(1)], F5, Count XV, Theft [R.C. 2913.02(A)(1)], F5, Count XVIII, Forgery [R.C. 2913.31(A)(3)], F5 and Count XIX, Theft [R.C. 2913.02(A)(1)], F4, the remaining charges contained in the amended Indictment. Before accepting the plea, the Court personally addressed the defendant and determined, pursuant to Criminal Rule 11, that the defendant understood his rights, the maximum penalty involved, and the consequences of entering a plea.

The Court found the plea of Guilty to have been knowingly, intelligently, and voluntarily entered into by the defendant, and accepted the plea of guilty.

Thereafter, on April 24, 2006, the defendant appeared in court with his attorney for a sentencing hearing. The Court has considered the record, oral statements, any victim impact statement and pre-sentence report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and the appropriate factors under R.C. 2929.12.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant, MARTINE P. GOODEN, is sentenced as follows:

- Count I: Aggravated Robbery [R.C. 2911.01(A)(1)], F1, to a term of nine (9) years in prison.
- Count II: Aggravated Robbery [R.C. 2911.01(A)(1)], F1, to a term of nine (9) years in prison.
- Count V: Theft [R.C. 2913.02(A)(4)], F4, to a term of seventeen (17) months in prison.

- Count VI: Theft [R.C. 2913.02(A)(1)], F5, to a term of nine (9) months in prison.
- Count VII: Forgery [R.C. 2913.31(A)(3)], F5, to a term of nine (9) months in prison.
- Count X: Theft [R.C. 2913.02(A)(1)], F5, to a term of ten (10) months in prison.
- Count XV: Theft [R.C. 2913.02(A)(1)], F5, to a term of eleven (11) months in prison.
- Count XVIII: Forgery [R.C. 2913.31(A)(3)], F5, to a term of eleven (11) months in prison.
- Count XIX: Theft [R.C. 2913.02(A)(1)], F5, to a term of eleven (11) months in prison.

IT IS FURTHER ORDERED that Counts I and II shall be served concurrently to each other; Counts VI and VII shall be served concurrently to each other; and Counts XV, XVIII, and XIX shall be served concurrently to each other. It is further ordered that the sentence for Counts I and II (9 years) shall be served consecutively to the sentence in Count V (17 months), and shall be served consecutively to the sentence in Counts VI and VII (9 months), and shall be served consecutively to the sentence in Count X (10 months), and shall be served consecutively to the sentence in Counts XV, XVIII and XIX (11 months), for a total sentence of 12 years and 11 months.

The defendant shall be subject to a mandatory period of five (5) years of post release control by the parole board.

During any period of post release control, the defendant will be under the supervision of the Adult Parole Authority which will require the defendant to comply with one or more post release control sanction, the parole board may then impose a more restrictive post release control sanction, and may increase the duration, or period, of the post release control subject to a statutory maximum. The more restrictive sanction that the parole board may impose may consist of a prison term, provided that the prison term cannot exceed nine months and the maximum cumulative prison term imposed for all violations during the period of post release control cannot exceed one-half of the stated prison term originally imposed. If the violation of the post release control sanction is a felony, the defendant may be prosecuted for the new felony and, in addition to any sentence the court imposes for the new felony, the court may also impose a prison term for the violation, subject to a statutory maximum.

IT IS FURTHER ORDERED that the following financial sanctions shall be imposed pursuant to R.C. 2929.18:

1. The defendant shall pay restitution of \$40,230.00 to Community Market, 725 Richmond Ave., Marion, OH 43302, and Community Market is granted judgment against the defendant in the sum of \$40,230.00.

711650 MAR 17 3

2. The defendant shall pay restitution of \$1,250.00 to Scott and Mary Kay Crowder, 363 Durfee Drive Marion, OH 43302, and Scott and Mary Kay Crowder are granted judgment against the defendant in the sum of \$1,250.00.
3. The defendant shall pay restitution of \$1,775.00 to Karen Blank, 4474 County Road 134, Cardington, OH 43315 and Karen Blank is granted judgment against the defendant in the sum of \$1,775.00.
4. The defendant shall pay restitution of \$1,350.00 to Pam Sands, 499 S. Prospect St., Marion, OH 43302, and Pam Sands is granted judgment against the defendant in the sum of \$1,350.00.
5. The defendant shall pay restitution of \$257.00 to Verizon, MC: FLTC0021, P.O. Box 110, Tampa, FL 33601, and Verizon is granted judgment against the defendant in the sum of \$257.00.
6. The defendant shall pay restitution of \$311.94 to Direct TV, 2230 East Imperial Highway, El Segundo, CA 90245, and Direct TV is granted judgment against the defendant in the sum of \$311.94.

IT IS FURTHER ORDERED that the defendant be transported to the Correctional Reception Center, Orient, Ohio, for assignment to an appropriate penal institution. It is further ordered that the defendant be given credit for 115 days of local jail time that he was confined through the date of sentencing for any reason arising out of this offense, plus any additional days the defendant is confined between the date of sentencing and the date committed to the Reception Center. The above-mentioned days cover the period from 12/31/05-04/24/06.

IT IS FURTHER ORDERED that any property being held in evidence be returned to rightful owner.

Costs assessed.

William R. Finnegan

Judge William R. Finnegan

cc: Jim Slagle, Prosecuting Attorney
Javier Armengau

FIREARM NOTICE

Pursuant to R.C. 2923.13, you are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. If prohibited, you will remain so even after you have been released from prison, community control sanctions, and/or post release control. You can only restore your right to possess a firearm by applying to the court to relieve you from disability pursuant to R.C. 2923.14. Violation of this section is a felony and is punishable by a prison sentence and/or a fine.

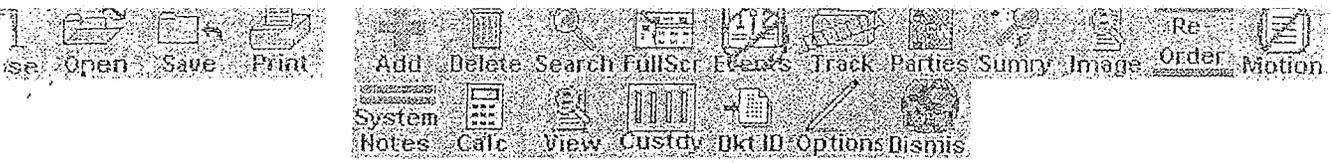
I hereby certify this to be a true copy
of the original on file in this office
on:

SEP 1 6 2009

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Julie M. Kagan, Clerk
Marion County, Ohio
BY *[Signature]* Deputy

1650 08174



06 CR 0001

State of Ohio vs. Gooden, Martine P. WRF

Search Criteria

Docket Entry	Restitution Owed	Begin Date	SortDescending
Images	All Dockets	End Date	
Participant			
Display Option	Exclude Non Display Dockets		

Search Results

Docket Date	Reference	Description	Amt Owed/ Amt Dism/Credit	Amount Due
4/26/2006		Restitution Owed to Direct TV,	311.94	311.94
4/26/2006		Restitution Owed to Verizon, MC: FLTC0021,	257.00	257.00
4/26/2006		Restitution Owed to Pam Sands,	1,350.00	1,350.00
4/26/2006		Restitution Owed to Karen Blank,	1,775.00	1,775.00
4/26/2006		Restitution Owed to Scott and Mary Kay Crowder,	1,250.00	1,250.00
4/26/2006		Restitution Owed to Community Market,	40,230.00	40,000.00
			230.00	

THIRSDISTRICT

IN THE SUPREME COURT OF OHIO

MARTINE P. GOODEN

CASE NO 13-1159

Appellee

VS

THIRD DISTRICT COURT OF APPEALS
CASE NO 9-13-0021

JULIE KAGEL
MARION COUNTY CLERK OF COURTS

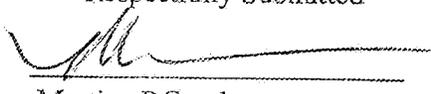
Appellant

NOTICE OF APPEAL

Now comes the Defendant Appellant Martine P. Gooden hereby give Notice of Appeal to the Ohio Supreme Court from the decision render from the Third Appellant District. Of Appeals on July 10th 2013 from the decision of the Appelee- Respondent Julie Kagel. Appellant humbly and respectfully request Appointment of Counsel from the Ohio Public Defender Office to assist the Appellant with his appeal in this cause.

FILED
JUL 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Respectfully Submitted



Martine P. Gooden
519-106
1800 Harmon Ave Zone B
Columbus, Ohio 43223

RECEIVED
JUL 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

CERTIFICATE OF SERVICES

A true copy of the Notice of Appeal, Appointment of Counsel was sent to the Appellee
Julie Kagel at the Office of the Marion county Clerk of Courts on this 20th day of July 2013.



HCA
CF ✓

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

STATE OF OHIO EX REL.,
MARTINE P. GOODEN,

FILED
COURT OF APPEALS

JUL 10 2018 ps

RELATOR,

MARION COUNTY CLERK OF COURTS

CASE NO. 9-13-21

v.

JULIE KAGEL,
MARION COUNTY CLERK OF COURTS,

JUDGMENT
ENTRY

RESPONDENT.

This cause comes before the Court upon Relator's petition for writ of mandamus, Respondent's response to the Court's order for alternative writ, and Relator's brief in support of his petition.

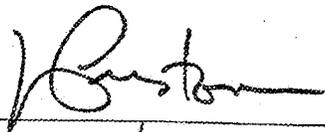
Although pled as a petition for writ of mandamus for the purpose of compelling Respondent to provide a copy of an alleged public record, the "victim loss statements" purportedly filed in Relator's criminal case, Relator's brief in support makes clear that he actually seeks an order dismissing the restitution order issued as part of the sentence in his criminal case. Respondent's response to the petition states that she is not in possession of the documents requested and then defends the restitution order on grounds of res judicata.

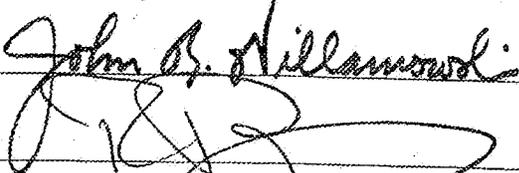
Upon consideration of same, the Court finds that the action is not filed with the proper, accompanying documentation required by R.C. 2969.25. See *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

The Court further finds that, by failing to attach any proof of his request and Respondent's denial, Relator makes only an unsubstantiated averment of the existence of the noted documents. Furthermore, Respondent states that the documents are not filed as part of any record in any case in her custody and control, and Relator fails to show by notation in the docket or any other means that the documents were filed. Therefore, Respondent does not have a clear legal duty to provide a copy of a document not under her custody and control, and the instant petition must be dismissed for failure to state a claim for relief in mandamus. Finally, we note that the validity of any restitution order entered in a criminal proceeding is not properly raised in an action for writ of mandamus concerning a request for public records.

Accordingly, for the reasons set forth herein, Respondent's motion is well taken and the petition should be dismissed.

It is therefore **ORDERED** that the petition for writ of mandamus be, and hereby is, dismissed at the costs of the Relator for which judgment is hereby rendered.





JUDGES

DATED: JULY 10, 2013
/hlo

IN THE SUPREME COURT OF OHIO

MARTINE P. GOODEN
Appellee

: CASE NO 13-1159

vs

JULIE KAGEL
MARION COUNTY CLERK OF COURTS

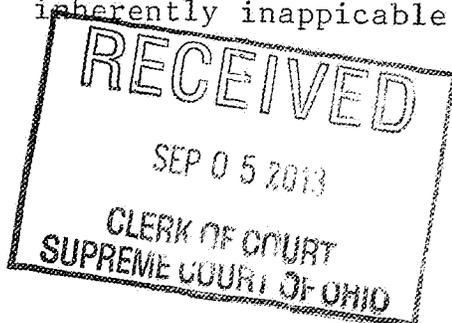
Appellant

APPELLE MOTION TO ADD SUPPLEMENTAL AUTHORITY

Comes now, the Appellee, Martine P. Gooden humbly and respectfully moves this Honorable Court pursuant to the Rules of this Court to allow the Appelle to Add Supplemental Authority to his Merit Brief. in the above entitled cause.

* * *

It follows, that where, as here, the underlying judgement itself is declared void' by operation of law for want of any compliance with the mandatory provision of; ¶ R.C. 2929.18 (A) (1) And because of which, had never been employed prior to the conclusion of the 'guilt phase of the proceeding, the doctrine of res judicate is inherently inapplicable, in recognition that;



***** A VOID SENTENCE

Although the doctrine of res judicate does not preclude review of a Void sentence and is not precluded from appellate review by principle of res judicate , and may reviewed at any time * on direct appeal or by collateral attack.

State V. Fischer 128 Ohio St 3d 92 2010-Ohio 6238

" AS We have consistently stated, if a trial court imposes a sentence that is unauthorized by law, the sentence is void.....
See; State v Billiter 2012 Ohio 5144 (ohio) 2012 Ohio LEXIS 2725, at [*P10 [

It is equally manifest , that
regardless of whether a defendant has already appealed his conviction, if the order from which the first appeal was taken is not final and appealable, he is entitled to a new sentencing entry which itself be appealed. see; State V.Griffin 2010 Ohio 3517 (OHIO) 2010 Ohio [App [LEXIS 2994, at; HN8

See; State V. Rogers 2013 Ohio 3235 (Ohio App 8th Dist.

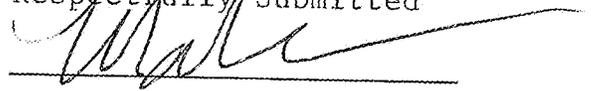
* 2013 Ohio App Lexis 3326.

[R.C. 2929.18 (A) (1) when imposing a sentence renders the attempted sentence a nullity and void. See State V.Beasely (1984) 14 Ohio St 74, * 75

CERTIFICATE OF SERVICES

A true copy of the foregoing Motion to ADD Supplemental Authority was sent by regular U.S. Mail on this 3d day of September 2013 to the Office of the Clerk of the Ohio Supreme Court

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "W. A. ...", is written over a horizontal line.