

IN THE SUPREME COURT OF OHIO

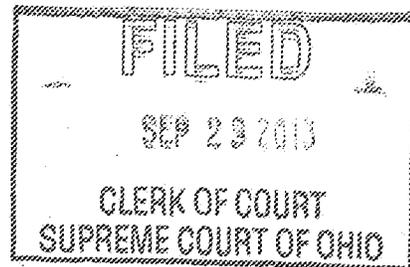
Brian J. Cummings, #535-617
P.O. Box 1812
Marion, OH 43302
RELATOR,

S. Ct. No. 2013-1396

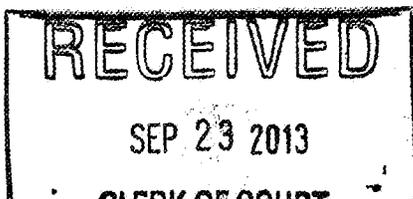
-v-

REPLY TO RESPONDENTS
MOTION TO DISMISS

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



Comes Now the Relator, Mr. Brian Cummings, who while acting in Pro se, does respectfully reply to Respondents Motion to Dismiss. Respondents Motion to Dismiss at the Statement of the Case and Facts at Page 2, paragraph 1, it clearly states Realtor was convicted of Operating a Motor Vehicle Under the Influence (O.V.I.) with specification under R.C. §4511.19(G)(1)(c)(ii). Then was sentenced to five years for the O.V.I. conviction and a consecutive five-year mandatory term pursuant to R.C. §4511.19 (G)(1)(c)(ii) specification. On page 5, paragraph 3, Respondents argued evidence for the Double Jeopardy claim where defendant was convicted of two counts of O.V.I. in violation of R.C. §4511.129(G)(1)(d)(ii) with specification for having five previous O.V.I. offenses under R.C. §2941.1413, state in part, "We found no Double Jeopardy violation because we concluded that when a criminal defendant is sentenced under the specification found in R.C. §2941.1413, the specification represents an additional penalty, separate from the O.V.I. offense." Also Page 6, paragraph 1, in part "We continued, by stating; A careful reading of the sentence of the specification set forth under R.C. §2941.1413 reveals that the mandatory one (1) to five (5) years of incarceration must be imposed in addition to the sentence for the underlying conviction.



The language and interplay of R.C. §4511.19(G)(1)(d)(ii) and R.C. §2941.1413 demonstrate that the legislature specifically authorized a separate penalty.” “Therefore, R.C. §4511.19(G)(1)(d)(ii) and R.C. §2941.1413 clearly reflects the legislatures intent to create a penalty for a person who has been convicted.”

Reviewing Respondents exhibit one, **Judgment of Conviction Entry**; “ 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(A)(1)(a) a third degree felony with respect to this count, the defendant is sentenced to prison for a period of five (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)(ii), which shall be served consecutive and prior to the sentence imposed in count one above. Respondents exhibit 3, paragraph 2 Relator’s O.V.I. conviction was a third degree felony and was sentenced to ten (10) years in prison, including a five (5) year mandatory consecutive term imposed pursuant to R.C. §4511.(G)(1)(c)(ii).

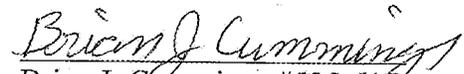
Clearly, the Respondent has not properly sentenced the Relator if they had their reply would have simply been see R.C. §4511.19(G)(1)(c)(ii) instead they argue and attempt to direct the courts attention, to two other Revised Code sections 4511.19(G)(1)(c)(ii) and 2941.1314 and try to still stand firm, stating the Relator was sentenced correctly. This Court should not allow them to keep making this error the Relator has the right to have a correct Judgment Entry. The trial court errors have caused several problems already not limited to Relator’s security level, program eligibility or a proper appeal process. Relator believes the proper method is a Writ of Mandamus, because it is a device to correct this exact kind of situation. The Respondent has been able to divert the attention of the Courts to Revised Code sections the Relator was not sentenced under. The trial court is obligated and bound by law to sentence Relator to the R.C. §4511.19(G)(1)(C)(ii), which Respondent stands so firm on and that is correctly on the Judgment Entry according to them. There should be no argument to direct them to contact the Bureau of Sentencing Computation (BOSC) and impose §4511.19(G)(1)(c)(ii).

Furthermore, the Respondents argument against a Double Jeopardy claim, once again attempts to divert the attention of the court. Relator is not stating they cannot use priors

as a specification, but merely stating they should not be allowed to add the specification and enhance the felony degree. Relator, arrested and charged with a felony of the fourth degree plus three (3) priors in six(6) years, then it was enhanced to five (5) priors in twenty (20) years and a felony of the third degree. If the State used the priors to add the specification then it should not be allowed to enhance the felony degree.

Therefore, Relator respectfully requests this Writ of Mandamus and appropriate relief be granted.

Respectfully Submitted,


Brian J. Cummings, #535-617

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this foregoing "REPLY TO RESPONDENTS MOTION TO DISMISS" 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 18th day of September, 2013.