

IN THE SUPREME COURT OF OHIO

ORIGINAL

On Appeal from the Sixth Appellate District Court
for Lucas County, Ohio
No. L 12 1244

13-1639

STATE OF OHIO,
Plaintiff/Appellee,

Supreme Court No. _____

- vs -

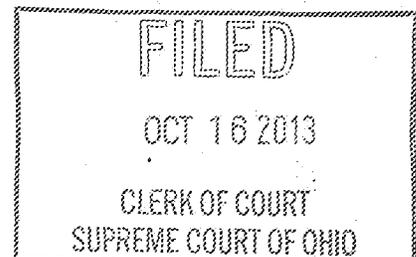
MOTION FOR LEAVE TO FILE 'DELAYED APPEAL'

LAMONTE B. HOPINGS,
Defendant/Appellant.

[C]omes now, 'LAMONTE B. HOPINGS,' [d]efendant/appellant ('pro se') in the above entitled cause, and does hereby respectfully move this Honorable Court for 'LEAVE TO FILE DELAYED APPEAL,' from the 'April 26, 2013-Judgment' of the Ohio Sixth Appellate District Court for Lucas County, Ohio, Case No. L-12-1244.

As a threshold matter, appellant certifies that the instant application for leave to file delayed appeal is taken in good faith, on substantive grounds for the requested relief, Crim. R. 32(C), involves a felony, raises a substantial constitutional question [set upon a patent absence of a final appealable order, O.R.C. § 2505.02] and is of great public interest.

This action respectfully follows.



Procedural History:

[T]his case originated in the Lucas County Common Pleas Court, Case No. CR 0200402116, and as the criminal matter entitled: State of Ohio v. Lamonte B. Hopings, therein charging the offense(s) of: 'murder,' in violation of: O.R.C. § 2903.02(A), an unclassified felony.

The trial court sentenced defendant as does follow:

"It is ORDERED that defendant serve a term of 15 years to Life in prison as to the charge of Murder. An additional term is imposed as a mandatory and consecutive term pursuant to R.C. 2941.14(D) of 3 years as to the firearm specification." id., at: 'JUDGMENT ENTRY,' dated: 'March 31, 2005,' at: page 1, lines 10-12.

The trial court then relied upon the *unconstitutional provisions of: O.R.C. § 2929.14(B) therein making *unauthorized and prohibited fact findings in support of its rational for the maximum consecutive sentences. *compare: Blakely v. Washington, ___ U.S. ___ (citation omitted).

For some unknown and *unexplained reason, the JUDGMENT ENTRY also included a highly prejudicial fact-finding predicated on facts outside the evidence and related to ['someone other than the defendant'] to wit:

"It is ORDERED that defendant serve a term of 17 in prison as to count 1 and 1 year in prison as to count 3. Count 1 and count 3 ordered concurrently to each other. The sentence in this case is ordered to be served consecutively to the sentence imposed in Lucas County, Ohio, case no. CR2005-1440 and to Texas parole violation CTK94-467. Being necessary to protect the public from future crime and being necessary to fulfill the purposes of R.C. 2929.11, and not disproportionate to the seriousness of the offender's conduct or the danger the offender poses to the public and the Court FURTHER FINDS: defendant was on post-release control." id., at: page 3.

The fact of the matter was/is that: (1) appellant has never been in Texas in his life; (2) appellant was never on postrelease control; and, (3) those facts and fact-findings (as incorporated in appellant's sentencing entry, have absolutely nothing to do with defendant. see: State v. Myers, 119 Ohio App. 3d 642; Crim. R. 32(B); Crim. R. 32(C); Short v. Short, 2002 WL 537990 (Ohio App. 6 Dist.), 2002 Ohio 2290; Licht v. Woertz (1929), 32 Ohio App. 111, 167 N.E. 614; and, U.S.C.A. Const. Amends 5 and 14.

Simply stated, *** there is no final appealable order to which appellant sought ('pro se') *resentencing ['by written motion'] in the Lucas County Common Pleas Court and that motion was denied without hearing.

A timely appeal followed to the Sixth App. Dist. Ct., and that court *affirmed the judgment of the trial court denying appellant's request for issuance of a final appealable order on: 'April 26, 2013.'

Appellant is now before this Honorable Court seeking 'leave to file delayed appeal,' and for each of those substantive reasons stated below.

Discussion:

[F]rom the outset, *** if granted leave to file 'delayed appeal' (under the rule governing such proceedings) appellant would raise each of the following claims as *propositions of law:

PROPOSITION OF LAW NO. 1

Whether due process and fundamental fairness guarantees to all criminal defendants the right to have the proceedings to which they are involved properly journalized; and,

PROPOSITION OF LAW NO. 2

Whether the due process provisions of both: Crim. R. 32(B) and Crim. R. 32(C) [along with: O.R.C. § 2505.02] require 'strict compliance' and in the absence of which, there exists no final appealable order as a matter of law and fact. see: U.S.C.A. Const. Amend. 14.

Clearly, *** the trial court's reliance on facts outside the evidence and it's journalization of those fact into the body of appellant's judgment entry of conviction and sentence offends due process, implicates fundamental faireness, and renders the attempted judgment a mere nullity and void.

It follows that appellant's incarceration on the basis of a judgment that is facially void, can only constitute deprivation of liberty without due process of law, U.S.C.A. Const. Amend. 14, to which the trial court's refusal to accord appellant a new sentencing, State v. Griffin, 2010 Ohio 3517; 2010 Ohio LEXIS 2994, at: HN8, was/is constitutional error of the first magnitude.

So says basic fairness and due process of law.

Related to the above, the Ohio Department of Rehabilitation and Correction is left to 'guess or speculate' as to appellant's actual sentence and the actual offenses to which he was convicted and sentence to which again, the prejudice has systemically attached.

We recognize that all judgments must be unambiguous and clear within its self or such judgment is void for uncertainty. ("It is a fundamental rule that a judgment must be complete and certain in itself, 62 Ohio Jur. 3d (1985), Judgments, Section 27, citing: 46 Am. Jur. 2d, Judgments, Section 67 ... ").

"A judgment that does not do so, is void for uncertainty." see: Licht v. Woertz (1929), 32 Ohio App. 111, 167 N.E. 614.

"We find that no appeal can be taken from a void judgment." see: Short

v. Short, 2002 Ohio 2290, at: [4].

Under the above analysis, *** the intermediate state appellate court was inherently 'divest of jurisdiction' in and over the underlying appeal for want of a final appealable order. see: O.R.C. § 2505.02.

AFFIDAVIT CERTIFYING REASONS FOR THE DELAY
IN FILING THE INSTANT APPEAL

STATE OF OHIO)
) ss:
MARION COUNTY, OHIO)

[I], 'LAMONTE B. HOPINGS,' being first duly sworn according to the laws of the State of Ohio, deposes and says that I am the defendant/appellant in the above entitled cause, and an inmate at the Marion Correctional Institution, P.O. Bx 57, Marion, Ohio, 43301.

I hereby certify, swear and attest 'under penalty of perjury,' that the reason for the excusable delay in filing the instant appeal within the prescribed (45) days period is as does follow:

1. appellant was incarcerated in the institution's segregation unit and had no access to his legal materials at the time in which he received the judgment from the court of appeal;

2. Since appellant's release from the segregation unit, the inmate assistance upon which he relied has been placed in segregation pending administrative transfer to another facility, of which, that inmate [Dudley] was in possession of the sum of appellant's lower court pleadings and it wasn't until 'September 14, 2013' that appellant was able to retrieve those needed and necessary papers for completion of the underlying appeal; and,

3. Appellant only just was able to obtain a different inmate (with a typewriter) to assist him in drafting this instant application for leave

to file 'delayed appeal.'

I hereby certify that each of the foregoing statements are true and correct to the best of my knowledge and belief and that I am competent to so testify.

[R]elief is accordingly sought.

[E]xecuted this 2 day of ^{October 1st} ~~September~~, 2013.

Lamonte B. Hopings

Lamonte B. Hopings, #489-977
M.C.I.
P.O. Box 57
Marion, Ohio

43301

Subscribed and sworn before me
this 2 day of ~~September~~, 2013.

Carol S. Miley
Notary Public



CAROL S. MILEY
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION EXPIRES
7-5-16

CERTIFICATE OF SERVICE:

This is to certify that the foregoing was duly served by United States Mail on the Office of the Lucas County Prosecutor, at: 700 Adams Street, Toledo, Ohio, 43602, on this 2 day of ^{OCTOBER} ~~September~~, 2013.

Lamonte B. Hopings

Lamonte B. Hopings, #489-977

[]

FILED
COURT OF APPEALS
2012 SEP 19 P 1:00

COMMON PLEAS COURT
BUREAU OF CLERK
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1244

Appellee

Trial Court No. CR0200402116

v.

DECISION AND JUDGMENT

Lamonte B. Hopings

Decided: **SEP 19 2012**

Appellant

ACCELERATED CALENDAR

SCHEDULING ORDER

It is the order of this court that this appeal be placed on the accelerated calendar, pursuant to 6th Dist.Loc.App.R. 12. The record is to be filed instanter, briefs shall be filed in accordance with App.R. 11.1 (C). No reply briefs shall be filed without leave of court. See 6th Dist.Loc.App.R. 12(B). No extensions of time for filing briefs will be given except in extraordinary circumstances. See 6th Dist.Loc.App.R. 5(A). No oral argument will be scheduled unless the court orders it sua sponte or if any party to the appeal

1.

FAXED

E-JOURNALIZED

SEP 19 2012

files a written notice requesting oral argument, in the form of the words "ORAL ARGUMENT REQUESTED" displayed prominently on the cover page of any appellant's or cross-appellant's opening brief or any appellee's or cross-appellee's brief. See 6th Dist.Loc.App.R. 9(A).

Any party may file a motion requesting that this appeal be removed from the accelerated calendar and placed on the regular calendar. See 6th Dist.Loc.App.R. 12(A).

It is so ordered.

Arlene Singer, P.J.

JUDGE

To the Court of Appeals Clerk

Serve a copy of this Decision and Judgment Entry on all parties, or if represented by counsel, on said counsel. Also, provide a copy of this Decision and Judgment Entry to the trial court clerk, the trial court judge who signed the judgment entry appealed from and, if necessary, to the court reporter responsible for preparing the transcript of proceedings.