

IN THE SUPREME COURT OF OHIO

ORIGINAL

13-1942

State of Ohio,  
Plaintiff-Appellee,

v.

Ronald Rouse,  
Defendant-Appellant.

ON APPEAL FROM THE  
ZANESVILLE MUNICIPAL  
COURT MUSKINGUM  
COUNTY OHIO FIFTH  
DISTRICT APPEALS COURT  
Court of Appeals Case # CT 2008-0035

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT RONALD ROUSE

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

This cause <sup>PRESENTS</sup> three critical issues for the future of the criminal justice system in Ohio: ( 1)

Does subject matter jurisdiction defeat the 90 day application in App. R. 26(B) when a invalid complaint does not charge an offense: (2 ) is counsel ineffective for failure to argue invalid complaint under Crim. R. 3; and (3 ) is counsel ineffective for failure to cite no applicable case authority to Crim. R. 44 & 11 argument.

In this case the court of appeals ruled defendants case is untimely without hearing the merits of defendant's issues. By its ruling, the court undermines legislative intent, ignores the plain language in the Ohio Revised Code Sections and creates its own views. Also, the decision establishes the illogical and untenable rule that it may ignore the subject matter jurisdiction rule that a case cannot be waived or forfeited and must be heard upon the merits.

Finally, this case and hundreds if not thousands of criminal cases, involves a substantial constitutional question. This decision offends Ohio's Constitutional scheme by terminating the elements identifying and characterizing the crime, granted by the Ohio Constitution Section 10, Article I, as well as the Sixth Amendment. Further, the court of appeals ruling is contrary to this Court's holding in **State v . Mbodji, 129 Ohio St. 3d 325; 951 N.E. 2D 1025.** If allowed to stand the decision of the court of appeals would have a substantial impact on the integrity of the judicial system. Ohio law and legislative would be frustrated if the decision of the court of appeals is permitted to stand. In essence, this court should grant jurisdiction to hear the case presented and review the erroneous decision of the court of appeals.

## STATEMENT OF FACTS

On or about February 27, 2006 the herein name Defendant / Appellant Ronald T. Rouse Jr. was apparently arrested upon an allegation of a violation of Zanesville Municipal Code "537.14A, "Domestic Violence. That allegation was set forth upon a document labeled "summons after Arrest without warrant and complaint upon such Summons." See exhibit A. As evidence by that document, it fails to charge an offense in the absence of "knowingly," being omitted. Nevertheless, Defendant was forced to "appear" at the initial appearance, as he had been jailed, and he entered a plea of not guilty. The municipal Court accepted that plea and set the matter for a trial date of April 5, 2006 date. Defendant, failed to appear, however, subsequently appeared on April 13, 2006. On that date, according to filed judgment entry and the transcripts of the April 13, 2006 hearing, the defendant attempted to change his plea from not guilty to guilty. See exhibit F and trans, April 13, 2006, p. 8.1.20 to p. 9.1.7. As evidenced upon that entry and the Trans of that hearing the court refused that plea, Defendant was also released on his own recognizance. As evidenced by the trans of the hearing the judge / court never followed criminal Rule 11 regarding the so – called, "change of plea." Indeed the court never throughout the history of the case, until under signed counsel got on board in July 2007, invoked Defendants Sixth Amendment right to counsel. The trial court erred to the prejudiced of the appellant in accepting a plea from the appellant when the appellant was not fully informed as to all the consequences of said plea pursuant to criminal rule 11, and in failing to inquire and determine whether appellants plea was entered voluntarily, intelligently, and knowingly, and in failing to inquire regarding defendants Sixth Amendment right to counsel.

The court then stayed the case until October 26, 2006 as to allow the defendant to complete an anger management program at response.

At the October 26, 2006 hearing, the court stayed issues until July 6 of 2007 and was to be released in December of 2006. According to this courts entry, the court apparently stayed this case until July 6, 2007 as to allow the defendant to complete anger management program at response. Said entry is attached as exhibit K.

After a review of the transcript of April 13, 2006 hearing, and the many documents contained in the courts file, there is the disquieting absence of any proof that defendant voluntarily signed way any rights, including his right to counsel. See certified docket / journal attached as exhibit C. On July 6, 2007, Defendant again appeared, this time with counsel and orally moved the court to dismiss the case. Defendant through counsel on July 20, 2007, filed a motion to dismiss case with prejudice or in the alternative dismiss complaint for violation of speedy trial right and find the TPO filed in this case is void for causes shown herein. Defendant expressly stated that he did not voluntarily submit to the jurisdiction of the court and that his appearance was limited to the purposes stated in the motion. He moved the court pursuant to Crim R. 48 (B) and the inherent power of the court to dismiss the case and declare all entries and orders void ab initio. After a response filed by the state, Defendant on August 31, 2007 filed alleged Defendants response to States August 24, 207, filed response.

After continuances, so that the original judge on the case, Judge Joseph, could recuse himself and another Judge, visiting Judge Fais, could be appointed, and the case was set for final hearing on June 9, 2008.

Judge Fais overruled all of the Defendants motions, found him guilty, sentenced him to 10 days suspended, so dollar fine suspended. See Amended Judgment Entry 6-13-08, Exhibit G.

Judge Fais filed an entry on June 9, 2008, from which Defendant appealed, and then an amended entry on June 13, 2008, from which Defendant appealed-- those two documents were consolidated as one case.

Defendant appeal was decided June 3, 2009 City of Zanesville v. Rouse case no. CT 08-0035. The Fifth District found trial court lacked subject matter jurisdiction and the judgment of conviction is void, including the TPO, under assignment of error II. Several other assignments of error were held moot. Conviction was vacated. See Zanesville v. Rouse supra.

The City of Zanesville appealed to the supreme court of Ohio, which reversed the Fifth Districts decision and reinstated the trial courts conviction. See Supreme Court of Ohio case no. 2009 – 1282. Attorney for defendant filed for reconsideration in same case filed June 2010. Supreme Court remanded case granting reconsideration to hear assignments of error that were held moot by the Fifth District. The Fifth District overruled all errors that were moot case decided July 1, 2011 Zanesville v. Rouse case no. CT 08-0035. SEE EXHIBIT L.

Defendant made several attempts in contacting Elizabeth Gaba via by mail but counsel never responds. Finally attorney responds Jan 24, 2012 by mail expiring defendants' timely application under APP R 26 B 1. See letter attached as exhibit I. Had attorney responded within the 90 days grace period from the Fifths July 1, 2011 decision defendants timely claim could been presented under APP R 26 B (1). Also, defendant's attorney is incompetent in her representation for failure to cite legal authority and to argue the complaint failed to charge an offense.

DEFENDANT APPEALED SEPTEMBER 5, 2013 RAISING THESE ERRORS. FIFTH DISTRICT APPEAL COURT OVERRULED 26 B AS UNTIMEY OCT 31 2013. SEE EXHIBIT O

**Proposition of Law One:**

**DOES SUBJECT MATTER JURISDICTION DEFEAT THE 90 DAY APPLICATION<sup>w</sup> APP R 26(B)**

The Fifth District denied defendant's App R 26(B) as untimely, although defendant expressly showed good cause for filing beyond 90 day time limit on pages iv, and 1 and attached documentation an evidence showing it was counsels fault he was untimely.

However, defendant also raised a subject matter jurisdictional issue under Crim. R. 3 and this specific case presented, jurisdictional claim defeated time restriction and required court to hear merits to defendants issues. See **States v. Davies, 2013 Ohio 436; 2013 Ohio App. LEXIS 385.**

In addition, a Post-conviction and App. R. 26(B) are both collateral attacks upon a conviction and are considered equivalent. See **Morgan v. Eads, 104 Ohio St. 3d 142; 2004 Ohio 6160; 818 N.E. 2d 1157; 2004 Ohio LEXIS 2719.** Wherefore, defendant prays pursuant to **Davies** supra, this Court finds untimeliness is not a reason to deny his App. R. 26(B).

**Proposition of law Two:**

**IS COUNSEL INEFFECTIVE FOR FAILURE TO ARGUE INVALID COMPLAINT UNDER CRIM. R. 3**

Defendant has discovered appellate counsel argued the weaker file stamping issue on appeal (an at trial court) after trial court overruled attorney's motion to dismiss. Elizabeth Gaba on appeal was also attorney for defendant at trial court level. Due to defendants inability to identify such errors within the time allotted for reconsideration and inadequacy of appellate counsel to inform defendant within the allotted 90 day grace period (due to counsels slow response to inform defendant of status of case) defendant brings this claim under App. R. 26(B) requesting a de novo review of complaint. See **Murnahan, (1992) 63 Ohio St. 3d 60.** In this application to reopen appeal appellant is claiming ineffective assistance of trial/appellate counsel and in order to prevail

UPON SUCH A CLAIM THE TWO PRONG STANDARD UNDER STRICKLAND V WASHINGTON (1984) 466 U.S. 688 MUST BE MET.

DEFENDANT FIRST MUST DEMONSTRATE THAT COUNSEL'S PERFORMANCE WAS DEFICIENT.

SECOND DEFENDANT MUST ALSO SHOW THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT.

ADDITIONALLY THE UNITED STATES SUPREME COURT SET FORTH ITS WELL KNOWN DECISION IN UNITED STATES V CRONIC 1984 U.S. LEXIS 783466 U.S. 648; 104 S. CT. 2039; 80 L. ED 2D 657. IF COUNSEL ENTIRELY FAILED TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING THEN THERE HAD BEEN A DENIAL OF SIXTH AMENDMENT RIGHT THAT MAKES THE ADVERSARIAL PROCESS ITSELF PRESUMPTIVELY UNRELIABLE. NO SPECIFIC SHOWING OF PREJUDICE IS REQUIRED. CRONIC AT 1984 U.S. LEXIS 78 22-24. DEFENDANT WAS UNREPRESENTED THROUGHOUT THE ENTIRE HISTORY OF CASE. ON JULY 6, 2007 BEFORE SENTENCING DEFENDANT APPEARED WITH COUNSEL AND A SERIES OF MOTIONS WERE FILED BY BOTH PARTIES CASE WAS FINALLY HEARD JUNE 9, 2008.

COUNSEL'S DEFICIENT PERFORMANCE SHOWS ATTORNEY NEVER INVESTIGATED FURTHER THEN FILE-STAMPING ISSUE. HAD COUNSEL ARGUED COMPLAINT FAILED TO CHARGE AN OFFENSE UNDER CRIM R 12(C)(2) DUE TO KNOWINGLY BEING OMITTED WHEN MOTION WAS TIMELY THERE'S PROBABILITY OUTCOME MAY HAVE BEEN DIFFERENT. THE STATE RELIED ON A VALID COMPLAINT UNDER CRIM R 3 WHEN NONE EXISTED. ALSO, TIMELINESS OF OBJECTIONS UPON SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME. SEE UNITED STATES V COTTON (2002) 535 U.S. 625; 122 S. CT. 1781; 152 L. ED 2D 860.

A VALID COMPLAINT IS A NECESSARY CONDITION PRECEDENT FOR A TRIAL COURT TO OBTAIN JURISDICTION IN A CRIMINAL MATTER. SEE STATE V GHASTER 2009 OHIO 2117; 2009 OHIO APP LEXIS 1784, SEE EXHIBIT A ACCORDINGLY DEFENDANT'S CASE WAS STILL PENDING AN JUDGMENT BECAME FINAL JUNE 9, 2008. SEE EXHIBIT G

EVERY LICENSED COMPETENT ATTORNEY KNOWS TO CHECK AND SEE IF A VALID CHARGING INSTRUMENT EXIST WHEN INVESTIGATING A CASE. IN STATE V CRAIG (MAR 12, 1986) HAMILTON APP NO C-850444 UNREPORTED 1986 WL 3096 "THE COMPLAINT IS THE JURISDICTIONAL INSTRUMENT BEFORE THE COURT."

Also, Municipal Courts have limited jurisdiction and are strictly set by statute, and CRIM R 3 is the statute that governs a complaint to invoke jurisdiction. See STATE V. MBODJI 129 Ohio St. 3d 325, 951 N.E 2d 1025; "Paragraph 11"

The term jurisdiction refers to the courts statutory or constitutional authority to hear a case. See PRATTS V. HURLEY 102 Ohio St. 3d 81 2004-Ohio-1980. 806 N.E 2d 992.

The offense charged is Domestic Violence and the essential facts are the essential elements required to obtain a conviction. Knowingly is described in statute as an essential element. See STATE V. ROBINETTE 188 Ohio app. 3d 450; 693 N.E 2d 305; 1997 Ohio app. Lewis 734. See also ordinance statute attached as exhibit B.

Furthermore a complaint that does not contain very element does not charge an offense is void for subject matter jurisdiction. See STATE V. GARDNER 61 Ohio Misc. 2d 552; 580 N.E 2d 545, 1991 Ohio Misc. Lewis 15.

Additionally Domestic Violence is a strict criminal liability offense which requires the actus retus and MEN'S REA defined by Ohio offenses. See STATE V. SAMPSON 2008-Ohio 1775 Paragraph 16: and defendant has right to know nature of accusations against him. See Paragraph 9 SAMPSON SUPRA. See O.R.C 2901.21 A (1) AN (2) for mental culpability an O.R.C 2901. 22(B) for definition of knowingly.

The same issue occurred in defendant's case as in SAMPSON SUPRA MENS REA was omitted from complaint. Therefore jurisdiction was lost.

Defendant also never waived reading of complaint of initial appearance and pled not guilty. See STATE V. NEWTON 2009-Ohio-1816. Therefore applying Newton Supra no constitutional rights to be informed of nature of charges are waived see journal entry attached as exhibit C no rights have been waived.

Had counsel brought forth this issue regarding the failure to charge an offense in absence of knowingly being omitted from complaint, therefore court lacked subject matter jurisdiction, instead of weaker file stamping issue. Defend maintains a different outcome would have occurred a state would have suffered a dismissal. Elizabeth GABA's ineffectiveness in the investigation of this case by failing to make sure a valid charge existed as demonstrated by appellant *PREJUDICED DEFENDANT.*

Furthermore, what falls from the record is counsel entirely failed to subject the state's case to meaningful adversarial testing clearly making a denial of appellants Sixth Amendment rights that makes the adversary process itself presumptively unreliable. No specific showing of prejudice is required. See CRONIC SUPRA.

Defendant demonstrates point by showing the state concedes in trial court transcript pg 12 line 8-9 "It's axiomatic that a case commences with the filing of a complaint." It is clear the court is relying on a valid complaint under CRIM R 3. Defendant furthers point with evidence from appellants reply brief filed Jan 26, 2010. In the Supreme Court of Ohio by the city of Zanesville case No. 2009-1282. The city argued in argument 2 pg. 5 "What constitutes a valid complaint." At the bottom of pg. 5 the city states "Those cases are distinguishable from the instant case in that the complaint that was filed with the clerk met the requirements for a complaint as set forth in CRIM R 3." See appellants <sup>Exhibit N</sup> ~~reply brief~~. Also, in trial court transcripts pg. 12 line 20-22 the city states: "None of cases cited by the defendant are on point, none of these addresses specifically the filing of a complaint."

When this court reviews the original brief and cases cited by attorney it's very noticeable they all address the statute governing a complaint which is CRIM R 3.

Finally as the state correctly states regarding the weaker file-stamping issue in transcripts pf. 11 line 23-24 "There is no requirement that in law that I was able to find that a complaint be file stamped." See exhibit E.

As the state pointed out there is no statute that requires a complaint to be file-stamped, but as the state concedes there is a statute that requires a valid complaint be filed. That statute is CRIM R 3 and the state was relying upon a valid complaint under CRIM R 3 when none existed. Attorney never subject the state's case to meaningful adversarial testing by letting an invalid complaint walk through this case unchallenged by arguing the weaker file stamping issue when no legal authority existed to a complaint needing to be file stamped in order to show jurisdiction. Instead of arguing legal authority that existed a statute which govern a complaint appellant has shown exist in law. Defendant urges this court find no prejudice is required. See CRONIC SUPRA.

Succinctly put. Absent a valid complaint. The court lacked subject matter jurisdiction to go forward with the domestic violence allegation. In that regard the "Order of Protection" is void ab initio. See STATE V. WHITNER (6-26-98) 6<sup>th</sup> district no L-97-1253; citing PATTON V. DIEMER (1988) 35 Ohio st 3d 68, 518 N.E. 2d 941 ("If a court acts without jurisdiction then any proclamation by that court is void ab initio").

Moreover, under revised code 2919.26(A) (1) a protection order cannot be issued until a valid criminal complaint has been filed.

The force an effect of the judgment entry is clear due to the fact it is void for lack of subject matter jurisdiction "It is as though such proceedings never occurred." TARI V. STATE (1927) 117 Ohio St. 481, 159 N.E. 594.

It is obvious defendant was deprived of his Sixth Amendment right of the United States Constitution as applied to the states through the fourteenth amendment as well as section 10

ARTICLE I OF THE OHIO CONSTITUTION DUALY AFFORDS A DEFENDANT THE RIGHT TO BE INFORMED OF THE NATURE OF THE ACCUSATION. COUNSEL'S INEFFECTIVENESS HAS ALSO VIOLATED DEFENDANT'S SIXTH AMENDMENT RIGHT TO COMPETENT REPRESENTATION AND DUE TO COUNSEL'S INCOMPETENT REPRESENTATION A SUBSTANTIAL RIGHT HAS BEEN VIOLATED AND PREJUDICE OCCURRED. DEFENDANT REQUEST THIS COURT GRANT JURISDICTION THEN VACATE THE JUNE 9 2008 JUDGMENT OF CONVICTION AND SENTENCE AND FIND COMPLAINT VOID.

### PROPOSITION OF LAW THREE:

IS COUNSEL INEFFECTIVE FOR FAILURE TO CITE NO APPLICABLE CASE AUTHORITY TO CRIM R. 44 AND 11 ARGUMENT

IN THIS APPLICATION TO REOPEN APPEAL UNDER APP R 26 B DEFENDANT IS CLAIMING INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL AND IN ORDER TO PREVAIL UPON SUCH A CLAIM THE TWO PRONG STANDARD UNDER STRICKLAND V. WASHINGTON (1984) 466 U.S. 668 MUST BE MET.

DEFENDANT, FIRST MUST DEMONSTRATE THAT COUNSEL'S PERFORMANCE WAS DEFICIENT.

SECOND, DEFENDANT MUST SHOW THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT.

ALSO, IF DEFENSE COUNSEL ENTIRELY FAILED TO SUBJECT THE STATE'S CASE TO MEANINGFUL ADVERSARIAL TESTING THERE HAD BEEN A SIXTH AMENDMENT DENIAL NO SPECIFIC SHOWING OF PREJUDICE IS REQUIRED UNITED STATES V. CRONIC 1984 U.S. LEXIS 78; 466 U.S. 648; 104 S. CT 2039; 80 L. ED 2065.

DEFENDANT ADVANCES COUNSEL'S DEFICIENT PERFORMANCE BY SHOWING SPECIFIC ACTS OR OMISSIONS NOT WITHIN REALM OF REASONABLE PROFESSIONAL JUDGMENT. WHEN THIS COURT REVIEWS ASSIGNMENT OF ERROR IV IN ZANESVILLE V ROUSE CASE NO. CT 08-0035 COUNSEL ENTIRELY FAILED TO CITE ANY APPLICABLE CASE AUTHORITY TO ACTUAL ARGUMENT. EVERY LICENSED ATTORNEY FILING AN APPEAL UNDERSTANDS THE IMPORTANCE OF APPLYING LEGAL AUTHORITY AS GUIDANCE

directing an appellate court. In fact App. R 16 (A)(7) states appellant's brief shall include an argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to authorities, statutes, and parts of the record on which appellant relies. See STATE V. HERRON 2010 Ohio 2050; 2010 Ohio App. Lexis 1689 "paragraph 16."

As in HERRONS case SUPRA attorney for Mr. Rouse failed to cite any applicable legal authority in brief pertaining to assignment of Error IV CRIM R 44 Waiver of Counsel, CRIM R 22 Shall be recorded, an CRIM R 11 Plea argument. See <sup>EXHIBIT, M</sup> 21-22 ZANESVILLE V ROUSE SUPRA which caused fifth district to make an erroneous decision regarding assignment of Error IV because there is a plethora of applicable case authority that would have required an automatic reversal upon the "silent record" exception.

The fifth district based their decision off of the appellant's motion for leave to supplement record and to file brief instant. Counsel for appellant filed an instant under APP. R 9 (B) to add honorable Judge William Joseph's testimony about the arraignment in this case from a subsequent felony. See brief instant filed Sep 23, 2008. Also, Judge William Joseph states no record exist of arraignment in his statement letter sent to Elizabeth GABA Sep 18, 2008 via by mail. See second paragraph attached as exhibit J.

Furthermore in rendering their decision after a remand from the Supreme Court Case No. 2009-1282 to hear moot errors by the fifth district. The fifth district Case No. 08-0035 stated in their July 1, 2011 decision: no record of the Feb 28, 2006 arraignment exists a nothing in the documents affirmatively demonstrates appellant was not properly advised of his rights to counsel and did not waive the same. See ZANESVILLE V. ROUSE Case No. 08-0035 decided July 1, 2011 "paragraph 24."

Also in fifth district decision "paragraph 25" court stated appellant had responsibility of providing this court with a record. Finally in paragraph 26 in the absence of transcript appellate court must presume the validity of lower courts proceeding and affirm citing KNAPP V. EDWARDS LABORATORIES, (1980) 61 Ohio St. 2d 197. *SEE EXHIBIT L*

However KNAPP V. EDWARDS LABORATORIES is inapplicable for several reasons, where a defendant files for a full transcript but is provided a partial one by trial court he has met his burden to demonstrate such errors occurred a burden shifts to trial court to show defendant waived explanation of rights. See STATE V. BOERST 45 Ohio APP. 2d 240; 343 N.E 2d 141; 1973 Ohio APP. Lexis 782; 74 Ohio Op. 2d 350. See also Ohio Fifth District Docketing filed June 9, 2008 Case No. CT 08-0035 attached as exhibit H showing defendant filed for a full transcript.

Also, had counsel filed for reconsideration under APP. R. 26 (A) timely and added case authority showing Judge William Joseph's signed recollection affirmatively demonstrates no record exists. Again appellant would have warranted a reversal. See CITY OF LYNDHURST V. ELIVINA THORTON 2002 Ohio 650; 2002 Ohio APP. Lexis 719. Due to these omissions by attorney, this deficient performance prejudiced defendant because cases shows that silent record exception requires automatic reversal if state cannot met its burden of proof.

Defendant entered a plea at April 13, 2006 hearing which was stayed. See transcript pg. 9 line 18-20 Exhibit D. CRIM R 44 applies to CRIM R 5 (A)(2) as well as CRIM R 10 (C) (2) which mandates at initial appearance an explanation of rights and he or she must make a knowing intelligent an voluntarily waiver of counsel in open court. See STATE V. BOERST SUPRA; MIDDLETOWN V. McINTOSH Butler APP. No CA 2006-07-174 2007 Ohio 3348. There is no record of Feb 28, 2006 arraignment an a document captioned "Your constitutional rights" dated Feb 28, 2006 was never signed or presented to defendant ever. See exhibit A.

Therefore CRIM R 11(E) cannot be had because CRIM R 44 (B) and (C) applies to CRIM. R. 11(E) and must take place first and affirmatively appear in the record before finding of guilt can take place transcript<sup>SEE</sup> exhibit D. See STATE V. McCARTHY 197 Ohio APP. Lexis 5585 "HN5." The judgment of conviction and sentence must be vacated as in McCarthy SUPRA.

Domestic violence is a petty offense; CRIM R 2(D) whether this case is a felony or misdemeanor. The record shows no waiver of counsel either in the manner prescribed by CRIM R. 44 for petty offenses or any other manner. Counsel applies to misdemeanors too. See ARGERSINGER V. HAMLIN (1971), 407 U.S. 25.

Also, because a guilty plea is an admission of all elements of a formal criminal charge, it cannot be truly voluntary unless defendant possesses an understanding of the law in relation to the facts. See BOYKIN V. ALABAMA 395 U.S. 238; 89 S. CT. 1709 "HN5."

A knowing and intelligent waiver will not be presumed from a silent record. See CARNIEY V. COCHRAN (1962) 369 U.S. 506.

The right of an accused for assistance of counsel is guaranteed by the sixth and fourteenth amendments to constitution of the United States as well as Section 10 Article I Ohio Constitution and as interpreted by many decisions of the supreme court of the United States. Therefore defendant's due process rights were violated and prejudice occurred regarding CRIM R 5, 10, 22, 44 and 11(E) the judgment of conviction and sentence is void including T.P.O. This court should vacate sentence, and conviction.

#### CONCLUSION

In this case defendant's trial / appellate counsel failed to give defendant a plausible defense in the investigation of this case by arguing weaker file-stamping issue, instead of failure to charge an offense, never citing applicable case law to CRIM R 11 argument. These failures

are basic fundamentals when arguing a case and defendant prays that he be awarded opportunity to fix counsels errors.

Wherefore, defendant prays this court find the court lacked subject matter jurisdiction for failure to charge an offense in the absence of omitting “ knowingly” from complaint, and its void. That this court find the judgment of conviction is void and sentence is void due to lack of subject matter jurisdiction June 9 2008. That the temporary protection order is void due to invalid complaint. That counsel provided ineffective assistance of counsel. That defendant was never informed of nature of accusations and Sixth an Fourteenth Amendment, also Section 10 Article I of the Ohio Constitution were violated an Due Process occurred.

That the defendant never signed away any rights therefore Crim.R. 11 was never complied with and that counsel will not be presumed from a “silent record” since defendant has showed applicable case law that requires an automatic reversal and that this court vacate the conviction or grant other appropriate relief.

For the reasons discussed above, and the erroneous opinion of the Court of Appeals, Appellant request that this Court accepts jurisdiction in this case so that the important issues presented will be reviewed on the merits for this case does involve matters of public and great general interest and a substantial constitutional question.

RESPECTFULLY SUBMITTED

*Ronald T Rouse JR*

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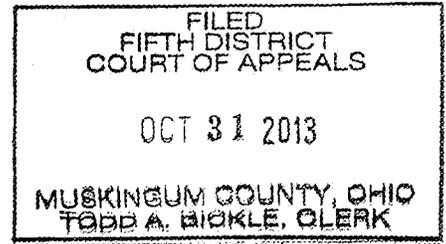
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum In Support Of Jurisdiction was sent by regular U.S. Mail to the Zanesville Municipal Court City Law Director Scott Hills at 2806 Bell Street P.O. Box 2489, Zanesville Ohio 43701 by ordinary U.S. Mail on this 9<sup>th</sup> day of DECEMBER

RESPECTFULLY SUBMITTED  
RONALD ROUSE JR  
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IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT



STATE OF OHIO  
CITY OF ZANESVILLE

Plaintiff-Appellee

-vs-

RONALD T. ROUSE, JR.

Defendant-Appellant

JUDGMENT ENTRY

CASE NO. CT2008-0035

This matter came on for consideration upon Appellant Ronal T. Rouse's application for App. R. 26(B) reopening, which motion was filed on September 5, 2013. Appellee State of Ohio filed a motion to dismiss the application on October 7, 2013. This Court affirmed Appellant's conviction and sentence on July 1, 2011.

Ohio Rule of Appellate Procedure 26(B) states, in pertinent part,

"(B) Application for reopening

"(1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

"(2) An application for reopening shall contain all of the following:

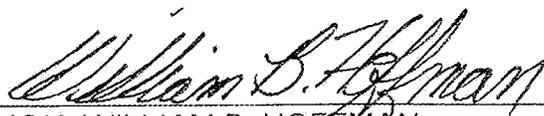
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EXHIBIT 0

"(b) A showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment."

Upon review, Appellant has not demonstrated good cause for the untimely filing of the application for reopening herein. Accordingly, Appellant's application for reopening is denied as untimely.

IT IS SO ORDERED.

  
HON. WILLIAM B. HOFFMAN

  
HON. JOHN W. WISE