

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

:

14-0151

Plaintiff-Appellee,

Case No. \_\_\_\_\_

v.

:

On Appeal from the Hamilton  
County Court of Appeals,  
First Appellate District

JOHN W. LONG,

Defendant-Appellant.

:

C.A. Case No. C-130566 & C130605

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT JOHN W. LONG

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John W. Long #478-899  
Chillicothe Corr. Inst.  
P.O. Box 5500  
Chillicothe, Ohio 45601-5500

(Pro Se)

at 8 and 23  
Hamilton County Prosecutor's Office  
ATTN: APPELLATE DIVISION  
230 East Ninth Street Ste. 4000  
Cincinnati, Ohio 45202

(Attorney for Appellee)

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JAN 28 2014  
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SUPREME COURT OF OHIO

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

This case involves a felony of public or great general interest because the court of appeals have effectually procedurally obstructed John W. Long ( hereinafter “Appellant”) from having a full and fair opportunity to have his case reviewed in an appellate forum, under the guise of local practice.

After Appellant filed a petition for post-conviction relief in a Hamilton County Court of Common Pleas, and that petition was subsequently denied, Appellant filed a timely notice of appeal and because of the inadvertent failure to order the complete transcript of th proceedings, the court of appeals dismissed the appeal.

Appellant is a pro se litigant and should not be held to the stringent standards of a licensed attorney and their pleadings should be liberally construed. Erickson v. Pardus, U.S. 89, 94 (2007). Therefore, in light of those reasons this Court should accept jurisdiction of Appellant's case.

**STATEMENT OF THE CASE AND FACTS**

In 2004, following a jury trial in a Hamilton Co. Court of Common Pleas (Case #B-0402803), John W. Long (hereinafter “Appellant”) was found guilty of murder in violation of ORC 2903.02(A) and subsequently sentenced to 15 years to life.

After an unsuccessful direct appeal in the First District Court of Appeals, as well as the Ohio supreme court, Appellant has also filed in 2010 and 2012 unsuccessful applications for DNA testing pursuant to ORC 2953.71 et seq.

On January 14, 2013 Appellant filed a petition for post conviction relief, pursuant to ORC 2953.21/23 and on February 11, 2013 that petition was denied but because the clerk failed to provide Appellant with timely notice of the courts decision, Appellant filed a timely notice of appeal after he

received the judgment entry from the court of common pleas.

On December 13, 2013 the First District Court of Appeals journalized an entry to Strike Appellant's Brief for failure to append a copy of the common pleas court's final order as required by Loc.R. 16(A)(6)(a). The court order appellant to file an amended brief in conformance with the rules of that court.

On December 23, 2013 the court of appeals sua sponte dismissed Appellant's appeal for failure to comply with Ohio App.R. 9(B) to wit: the transcript of the proceeding was not filed.

It is from these proceedings that Appellant appeals to this Honorable Court.

### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

Proposition of Law No. I: Did the Court of Appeals err and/or abuse their discretion, in violation of Appellant's Due Process Guarantees under the 14<sup>th</sup> Amendment, by dismissing Appellant's appeal for failing to comply with Ohio Appellate Rules to wit: the transcript of proceeding was not filed pursuant to App.R.9(B)?

In the case at bar, after Appellant filed a timely notice of appeal in which a praecipe was filed ordering a transcript, because the docketing statement did not order a complete transcript of the proceedings, the First District Court of Appeals sua sponte dismissed Appellant's appeal from the court of common pleas denial of his petition for post conviction relief. On January 3, 2014 Appellant filed an application for reconsideration, pursuant to App.R.26(A) in which Appellant resubmitted a docketing statement in which a complete transcript of the proceeding was ordered. The court of appeals have yet to rule on the reconsideration.

The Ohio Supreme Court has emphasized and reemphasized that “[i]t is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits. See, *e.g.*, *Cobb v. Cobb* (1980), 62 Ohio St. 2d 124. Judicial discretion must be carefully -- and cautiously -- exercised before this court will uphold an outright dismissal of a case on purely procedural grounds.

"Judicial discretion" was defined by this court as: "\* \* \* the option which a judge may exercise between the doing and not doing of a thing which cannot be demanded as an absolute legal right, guided by the a just result in the light of the particular circumstances of the case." Krupp v. Poor (1970), 24 Ohio St. 2d 123, paragraph two of the syllabus. (quoted in De Hart v. Aetna Life Ins. Co., 69 Ohio St. 2d 189 (1982)).

The particular circumstances of the case *sub judice* include: (1) Appellant's mistake was inadvertent, correctable and made in good faith, not as part of a continuing course of conduct for the purpose of delay, (2) Appellee suffered no prejudice from this error, (3) the Court of Appeals suffered no prejudice from this error

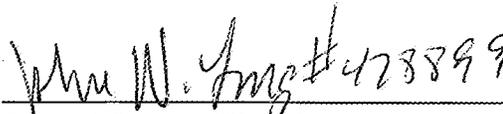
(4) the sanction of dismissal for a hyper-technical, clerical error is disproportionately harsh in view of the nature of the mistake, and (5) appellant should not be punished for a highly technical error of his counsel.

Therefore, applying the foregoing principles to these facts, this Honorable Court should find that: (1) the Court of Appeals abused its discretion by (1) dismissing Appellant's appeals without addressing his reconsideration and also by not permitting Appellant to remedy his error by granting leave to file an amended praecipe (with the check mark in the appropriate box); and (2) Appellant demonstrated "good cause," pursuant to Local Rule 13, for reinstatement of the case. See De Hart v. Aetna Life Ins. Co., supra.

### CONCLUSION

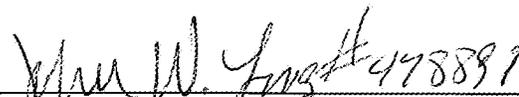
*WHEREFORE*, for the foregoing reasons, this Honorable Court should accept jurisdiction of Appellant's and and remand to the court of appeals with orders consistent with the law.

Respectfully Submitted,

  
\_\_\_\_\_  
Joan W. Long #478-899  
Chillicothe Corr. Inst.  
P.O. Box 5500  
Chillicothe, OH 45601-5500

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *MEMORANDUM* was sent by ordinary U.S. Mail to the Office of the Hamilton County Prosecutor's Office at 230 E. Ninth St., Ste. 4000 Cincinnati, Ohio 45202 on this 27<sup>th</sup> day of January 2014.

  
\_\_\_\_\_  
Joan W. Long #478-899

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO

APPEAL NO. C-130566 & C-130605  
TRIAL NO. B0402803

Appellee,

vs.

ENTRY OF DISMISSAL

JOHN W. LONG

Appellant,

This cause came on to be considered upon the appeal from the trial court.

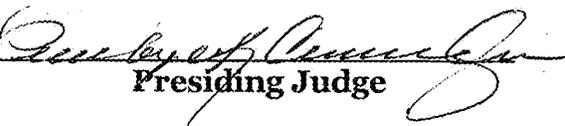
The Court *sua sponte* dismisses the appeal for failure of the appellant to comply with the Ohio Rules of Appellate Procedure to wit: the transcript of proceedings was not filed. See Appellate Rule 9(B).

It is further ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

**To The Clerk:**

**Enter upon the Journal of the Court on** DEC 23 2013 **per order of the Court.**

By:

  
Presiding Judge

(Copy sent to counsel)

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