

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	This case originated in the Meigs Co.
Plaintiff	:	Common Pleas Court, case no. 10-CR-260,
	:	and was appealed to the Fourth Dist.
Vs.	:	Appeals Court, case no. 11-CA-021.
GARY ARNOLD	:	Supreme Court Case No. _____
Defendant	:	14-0506

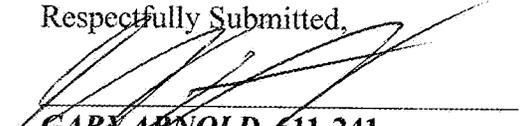
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**MOTION FOR DELAYED APPEAL BY APPELLANT GARY ARNOLD**

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Now comes Appellant, Gary Arnold, and respectfully requests that this Honorable Court accept his late filing of his Notice of Appeal. A Memorandum in Support of this request is attached hereto. Appellant thanks this Honorable Court for its time, consideration and understanding in this matter.

Respectfully Submitted,




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GARY ARNOLD, 611-241  
 BE.C.I., P.O. BOX 540  
 ST. CLAIRSVILLE, OHIO, 43950

**RECEIVED**  
 APR 02 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**FILED**  
 APR 02 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

## MEMORANDUM IN SUPPORT

On the 21<sup>st</sup> day of January, 2014, Appellant's appeal to the Fourth District Court of Appeals was denied. Appellant then received from his appellate lawyer a copy of the denial approximately one and a half weeks later. Until he received a copy of the denial, he had no idea that the denial had ever been issued, and was under the impression that the appeal was still pending.

Appellant then wrote to his Appellate Attorney, inquiring what the next step would be. Appellant's attorney responded with a letter telling Appellant that he could no longer help Appellant in this matter. The letter went on to state that, if Appellant wished to pursue the matter any further, he would either have to hire an Attorney or proceed "Pro Se." Appellant was not even sure what the words "Pro Se" meant, and certainly did not have the funds to hire an attorney.

Appellant then visited the Institutional Law Library and inquired as to how he could proceed in his appellate procedure. The first thing that he learned was that he had approximately twenty-five days left to prepare a Notice of Appeal and a Memorandum in Support of Jurisdiction and file them with the Clerk of the Supreme Court. Having no law experience or legal training of any kind, Appellant was completely lost. Therefore, he enlisted the assistance of the legal aides who were working in the law library.

The legal aides who assisted Appellant were inmates who, like Appellant, had no previous formal legal training whatsoever. The only legal experience these aides had were the experiences associated with working in the institutional law library. Nevertheless, they went to work and perfected a Notice of Appeal and a Memorandum in Support of Jurisdiction, along with a couple of other Motions, for Appellant to file with the Supreme Court.

Due to the fact that there is limited time available to inmates in the institutional law library, and limited resources and legal materials available which must be shared with other inmates during the limited times that the institutional law library is available, preparing the Notice of Appeal, etc., took

approximately two weeks. Appellant then sealed the motions into envelopes and prepared to mail them to the Supreme Court. All this was done as fast as possible.

Be.C.I.'s mailing policy for documents which do not fit in standard embossed envelopes is very unconventional. An inmate is required to obtain a cash slip from his Block Sergeant in order to have money taken from the inmate's books to pay for postage. The Block Sergeant works on Monday through Friday, and if he is not in his office for one reason or another, the inmate cannot obtain a cash slip any other way.

The inmate must then fill out the cash slip, and turn it, along with the documents to be mailed, into a Be.C.I. Employee. At the end of the workday, the Be.C.I. Employee drops the documents and cash slip off at the front office. They must then be sent from there to the Cashier's Office so that the cashier may verify that the inmate has sufficient funds on his books to be able to pay for the postage. If sufficient funds are not present on the inmate's books, the documents and cash slip are then marked "insufficient funds" and sent back to the inmate. If there is enough money on the inmate's books to pay for postage, the documents are then processed and mailed out.

Appellant turned in his documents and cash slip to a Be.C.I. Employee on the 3<sup>rd</sup> day of March, 2014. The documents were then processed on the 4<sup>th</sup> day of March, 2014, which means they should have been mailed out on the 5<sup>th</sup> day of March, 2014, at the latest.. However, the documents were not received by the Ohio Supreme Court Clerk, for some reason, until the 10<sup>th</sup> day of March, 2014, which was three days after the deadline.

Mail from St. Clairsville to Columbus seldom takes more than a day or two to arrive. Taking five days is definitely no fault of the Appellant's. This is obviously the result of a delay somewhere within the faulty Be.C.I. Mailing policy for documents which do not fit in standard embossed envelopes. Had Appellant been able to mail his motions on the 3<sup>rd</sup> day of March, 2014, and have them go out that same day, they would have arrived at the Supreme Court Clerk's office on the right day.

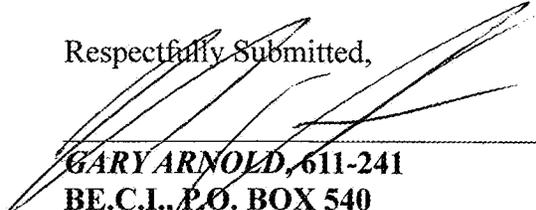
Appellant hopes that this information is enough to show that Appellant is in no way purposely

attempting to delay these proceedings. As soon as Appellant received the notice from the Supreme Court stating that his Motions had arrived late, he immediately re-visited his law library. The same law clerks who helped him before immediately began preparing this Delayed Appeal, and Appellant again is going to turn these documents over to a Be.C.I. Employee with a cash slip at the earliest possible opportunity.

The late filing of these documents in no way prejudices the State in this matter. This incident is due to circumstances beyond Appellant's control, and he is doing the best he possibly can to comply with all rules of the Supreme Court.

Appellant implores this Honorable Court to understand Appellant's situation, and accept the attached Notice of Appeal. Appellant thanks this Court for its time and understanding in this matter.

Respectfully Submitted,



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**GARY ARNOLD, 611-241**  
**BE.C.I., P.O. BOX 540**  
**ST. CLAIRSVILLE, OHIO, 43950**

Ex A is Cash slip filled out by Appellant to pay for postage per BeCI Policy. It shows date slip was filled out and turned in and date slip was processed by BeCI.

IN THE SUPREME COURT OF OHIO

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		and was appealed to the Fourth Dist.
Vs.	:	Appeals Court, case no. 11-CA-021.
GARY ARNOLD	:	Supreme Court Case No. _____
Defendant	:	

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A  
~~AFFIDAVIT OF THE STATE BAR~~

Gary Arnold

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IN THE COUNTY OF BELMONT >  
 CITY OF ST. CLAIRSVILLE > SS:  
 STATE OF OHIO >

I, Gary Arnold, do hereby state and attest that I am over the age of twenty-one, am of sound mind and body, and am competent to testify to the facts stated herein. The facts stated herein are true and correct to the best of my knowledge and belief:

On the 21<sup>st</sup> day of January, 2014, my appeal to the Fourth District Court of Appeals was denied. I then received from my appellate lawyer a copy of the denial approximately one and a half weeks later. Until I received a copy of the denial, I had no idea that the denial had ever been issued, and was under the impression that the appeal was still pending.

I then wrote to my Appellate Attorney, inquiring what the next step would be. My attorney responded with a letter telling me that he could no longer help me in this matter. The letter went on to state that, if I wished to pursue the matter any further, I would either have to hire an Attorney or proceed "Pro Se." I was not even sure what the words "Pro Se" meant, and certainly did not have the funds to hire an attorney.

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appellate procedure. The first thing that I learned was that I had approximately twenty-five days left to prepare a Notice of Appeal and a Memorandum in Support of Jurisdiction and file them with the Clerk of the Supreme Court. Having no law experience or legal training of any kind, I was completely lost. Therefore, I enlisted the assistance of the legal aides who were working in the law library.

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cashier may verify that the inmate has sufficient funds on his books to be able to pay for the postage. If sufficient funds are not present on the inmate's books, the documents and cash slip are then marked "insufficient funds" and sent back to the inmate. If there is enough money on the inmate's books to pay for postage, the documents are then processed and mailed out.

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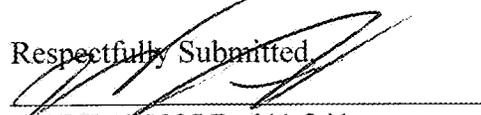
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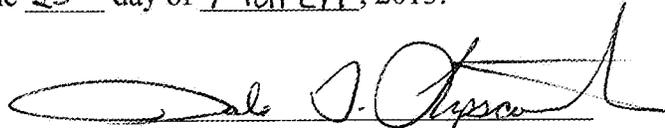
I implore this Honorable Court to understand my situation, and accept the attached Notice of Appeal. I thank this Court for its time and understanding in this matter.

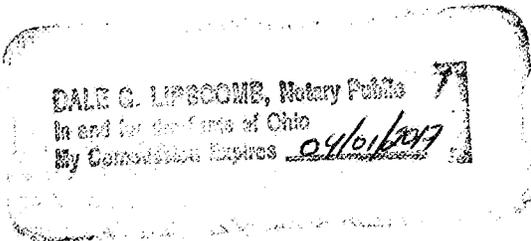
**FURTHER AFFIANT SAITH NAUGHT.**

Respectfully Submitted,

  
GARY ARNOLD, 611-241

Sworn and subscribed in my presence on this the 25<sup>th</sup> day of March, 2013.

  
NOTARY PUBLIC



EX A

# Personal A/C Withdrawal Check Out-Slip

Dollars:	3	Cents:	58
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Institution:	BFCI			Date:	3-3-14
Name:	Ohio Supreme Court Clerk				
Address:	65 S. Front St.				
City:	Columbus,	State:	OH	Zip Code:	43215

- Postage  
  Copies  
  ID  
  Misc. \_\_\_\_\_  
  Check-out CK # \_\_\_\_\_

The inmate's signature on this withdrawal request verifies that the information listed above has been read to or by the inmate and is correct. In the event of an error in the address which results in the return of this package, the inmate shall assume financial responsibility.

Inmate's Signature:	<i>[Signature]</i>	Number:	011241	Block & Cell Number:	7B 116
Approved By:	<i>[Signature]</i>	Witnessed:			

**RECEIVED**

Date Processed: MAR 04 2014

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : This case originated in the Meigs Co.  
Plaintiff : Common Pleas Court, case no. 10-CR-260,  
Vs. : and was appealed to the Fourth Dist.  
Appeals Court, case no. 11-CA-021.  
GARY ARNOLD : Supreme Court Case No. \_\_\_\_\_  
Defendant :

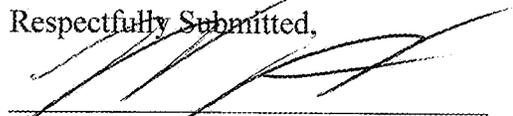
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AFFIDAVIT OF INDIGENCY

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I, Gary Arnold, do hereby solemnly swear that I have presently, this 25<sup>th</sup> day of March, 2013, no assets of any value and no funds of any kind and, therefore, cannot afford to pay for any court costs or legal fees of any kind that may arise from any action I take in regards to the above captioned case numbers.

Respectfully Submitted,

  
\_\_\_\_\_  
GARY ARNOLD, 611-241  
BE.C.I., P.O. BOX 540  
ST. CLAIRSVILLE, OHIO, 43950

Sworn and subscribed in my presence on this the 25<sup>th</sup> day of March, 2013.

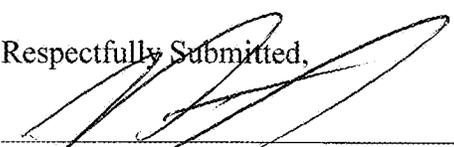
  
\_\_\_\_\_  
NOTARY PUBLIC

DALE G. LIPSCOMB, Notary Public  
in and for the State of Ohio  
My Commission Expires 04/01/2017

**PROOF OF SERVICE**

I, Gary Arnold, do hereby Certify that, per Be.C.I. Policy for mailing documents that do not fit in a standard embossed envelope, I delivered, on this the 26 day of March, 2013, to a Be.C.I. Employee, a true and correct copy of the foregoing, **MOTION FOR DELAYED APPEAL BY APPELLANT GARY ARNOLD** addressed to the Meigs County Prosecutor's Office, to be mailed by regular U.S. Mail.

Respectfully Submitted,



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**GARY ARNOLD, 611-241  
BE.C.I., P.O. BOX 540  
ST. CLAIRSVILLE, OHIO, 43950**

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
MEIGS COUNTY

2014 JAN 21 PM 1:40

STATE OF OHIO,

:

Plaintiff-Appellee,

:

v.

:

GARY ARNOLD,

:

Defendant-Appellant.

:

Case No. 11CA21

DECISION AND  
JUDGMENT ENTRY

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APPEARANCES:

Timothy Young, Ohio Public Defender, and Melissa M. Prendergast, Assistant Ohio Public Defender, Columbus, Ohio, for Defendant-Appellant.

Colleen S. Williams, Meigs County Prosecuting Attorney, and Amanda Hall, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio, for Plaintiff-Appellee.

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Hoover, J.

{¶ 1} Appellant Gary Arnold (“Arnold”) appeals a portion of his sentence after he was found guilty by a jury in the Meigs County Common Pleas Court of two counts of unlawful sexual conduct with a minor, and one count of pandering sexually oriented material involving a minor. The trial court sentenced Arnold to a thirteen-year term of incarceration and also ordered Arnold to pay court costs and fines. On appeal, Arnold contends that the trial court erred when it ordered him to pay fines without first determining his present and future ability to pay. Arnold further contends that he received ineffective assistance of counsel, because his trial counsel failed to submit evidence of his indigency at the time of sentencing and failed to object to the imposition of fines and court costs.

[\*P2] [\*\*2] Because there is evidence in the record indicating that the trial court considered Arnold's ability to pay fines, as required by R.C. 2929.19(B)(5), we find that the trial court did not err in imposing fines. Moreover, because the trial court properly considered Arnold's ability to pay, Arnold was not prejudiced by his trial counsel's failure to object to the imposition of fines or costs, or his counsel's failure to put forth evidence of his indigence. Accordingly, we affirm the trial court's judgment.

[\*P3] Following a jury trial, Arnold was convicted of two counts of unlawful sexual conduct with a minor, a third degree felony in violation of R.C. 2907.041; and one count of pandering sexually oriented material involving a minor, a second degree felony in violation of R.C. 2907.322. A fourth count, identified in the indictment as count three, was dismissed prior to trial.

#### FOOTNOTES

1 HN1 Unlawful sexual conduct with a minor is a third degree felony when the offender is ten or more years older than the victim. R.C. 2907.04(B)(3). Here, the jury determined that Arnold was ten or more years older than the victim.

[\*P4] After the jury verdict was announced, the trial court ordered the preparation of a presentence [\*\*3] investigation report ("PSI")<sup>2</sup> and continued the matter for sentencing.

#### FOOTNOTES

2 The PSI was supplemented into this Court's record on August 5, 2013, at the request of Arnold.

[\*P5] A sentencing hearing was held and Arnold was sentenced to four years incarceration on each count of unlawful sexual conduct with a minor, and to five years incarceration on the one count of pandering sexually oriented material involving a minor. The prison terms were ordered to run consecutively to each other, for an aggregate prison sentence of thirteen years. The trial court also ordered Arnold to pay court costs, and imposed a \$1,000.00 fine for each of the three offenses, for an aggregate fine of \$3,000.00. Arnold's trial attorney did not object to the imposition of the \$3,000.00 fine, or to the imposition of court costs. Finally, Arnold was ruled a Tier II sex offender.

[\*P6] The trial court subsequently entered a sentencing entry and Arnold filed a notice of appeal from the entry. This Court sua sponte raised the issue of whether we had jurisdiction over the case since the appealed from entry did not comply with State v. Baker, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, since the entry did not contain the basis [\*\*4] for Arnold's conviction, i.e., a finding of guilty following a jury trial. However, the trial court issued an amended sentencing entry in compliance with Baker, and thus we concluded that we had jurisdiction to hear the appeal because a final appealable order had been issued.<sup>3</sup>

#### FOOTNOTES

3 This appeal was also previously dismissed for a failure to prosecute the appeal. However, after dismissal of the appeal, the trial court granted Arnold's previously filed motion for appointment of appellate counsel. Upon notification of these events, we reinstated this appeal.

[\*P7] Arnold assigns two errors for our review:

#### First Assignment of Error:

The trial court erred when it imposed \$3,000 in fines without considering Mr. Arnold's present and future ability to pay that financial sanction. Crim.R. 52(B); R.C. 2929.18(B)(1); R.C. 2929.19(B)(5); (June 27, 2011 Sentencing Tr., p. 8-11; October 14, 2011 Sentencing Entry, p. 1-3).

#### Second Assignment of Error:

Mr. Arnold's attorney was ineffective because he failed to submit evidence of Mr. Arnold's indigence to the court at the time of sentencing and failed to object to the imposition of fines, court costs, and jury fees. Sixth and Fourteenth Amendments to the United States Constitution; [\*\*5] Section 10, Article I of the Ohio Constitution. (June 27, 2011 Sentencing Tr., p. 8-11; October 14, 2011 Sentencing Entry, p. 1-3).

[\*P8] In his first assignment of error, Arnold contends that the trial court erred in imposing fines without making a determination of his present and future ability to pay.

[\*P9] HN2 Trial courts may impose fines for second degree felonies up to \$15,000.00, and for third degree felonies up to \$10,000.00. R.C. 2929.18(A)(3)(b)-(c). However, "[b]efore imposing a financial sanction under section 2929.18 of the Revised Code \* \* \* the court shall consider the offender's present and future ability to pay the amount of the sanction \* \* \* ." R.C. 2929.19(B)(5). "[W]hen a trial court has imposed a financial sanction without even a cursory inquiry into the offender's present and future means to pay the amount imposed, the failure to make the requisite inquiry is an abuse of discretion." State v. Rizer, 4th Dist. Meigs No. 10CA3, 2011-Ohio-5702, ¶ 49, quoting State v. Rickett, 4th Dist. Adams No. 07CA846, 2008-Ohio-1637, ¶ 4.

[\*P10] HN3 While it is preferable, it is not necessary that the trial court explicitly state in its judgment entry that it considered the defendant's ability to pay [\*6] a financial sanction. State v. Bulstrom, 4th Dist. Athens No. 12CA19, 2013-Ohio-3582, ¶ 15, 997 N.E.2d 162, citing Rizer at ¶ 49. Instead, we must review the "totality of the record" to determine whether the requirement has been satisfied. Id. "If the record shows that the court considered a presentence investigation report that provides pertinent information about the offender's financial situation and his ability to pay the financial sanction, it has met its obligation under R.C. 2929.19(B)(5)." Id., quoting State v. Petrie, 4th Dist. Meigs No. 12CA4, 2013-Ohio-887, ¶ 5.

[\*P11] In the case sub judice, the trial court never explicitly stated that it considered Arnold's present and future ability to pay the imposed fines. However, the trial court did explicitly state at the sentencing hearing and in the amended sentencing entry that it considered the record and the PSI in imposing the sentence.

[\*P12] The PSI contains information about Arnold's age, education, physical and mental health, and employment history. Specifically, the PSI indicates that Arnold was 38 years old at sentencing. It further reveals that Arnold dropped out of high school after the tenth grade, but he has obtained a GED. Arnold is physically [\*7] and mentally healthy. Arnold was employed full-time prior to his arrest, and he has left two previous full-time jobs to seek better employment opportunities.

[\*P13] In addition to the contents of the PSI, the trial transcript reveals that Arnold was employed and that he met the victim by offering her a job with his employer. HN4,"The trial court may rely on trial testimony in considering the defendant's ability to pay fines." State v. Burns, 8th Dist. Cuyahoga No. 95465, 2011-Ohio-4230, ¶ 43. Finally, Arnold filed a motion to reduce bond with the trial court, in which he asserted that up until the time of his arrest, he was employed at a local business.

[\*P14] Because the PSI contains pertinent information about Arnold's financial situation, and because other record evidence indicates that Arnold was employed up until the time of his arrest, the totality of the record supports the conclusion that the trial court sufficiently considered Arnold's present and future ability to pay the imposed fines. Furthermore, the fact that the trial court found Arnold indigent and appointed counsel for purposes of appeal does not necessarily mean that the trial court failed to consider his present and future ability [\*8] to pay. Rickett, 2008-Ohio-1637 at ¶ 7; see also State v. Waddell, 4th Dist. Lawrence No. 10CA27, 2011-Ohio-4629, ¶ 8, fn. 2 ("Indigency for purposes of affording counsel, and for purposes of paying fines, are separate and distinct issues."). Accordingly, we overrule Arnold's first assignment of error.

[\*P15] In his second assignment of error, Arnold contends that he received ineffective assistance from counsel because his trial counsel failed to provide the trial court, at the time of sentencing, with an affidavit demonstrating his indigence, and failed to object to the imposition of the fines and costs<sup>4</sup>. Essentially, Arnold argues that he is indigent, cannot pay the costs or fines, and the outcome of the proceedings would have been different if trial counsel had objected.

#### FOOTNOTES

<sup>4</sup> We note that HN5 court costs are governed by R.C. 2947.23 and are not considered financial sanctions. State v. Stone, 4th Dist. Scioto No. 11CA3462, 2013-Ohio-209, ¶ 27; see also R.C. 2929.18(A). R.C. 2947.23(A)(1) requires "[i]n all criminal cases \* \* \* the judge or magistrate shall include in the sentence the costs of prosecution \* \* \* and render a judgment against the defendant for

such costs." "Despite the fact that R.C. 2947.23(A) [\*\*9] requires a judge to assess court costs against all criminal defendants, the Supreme Court of Ohio has held that 'waiver of costs is permitted — but not required — if the defendant is indigent.'" Stone at ¶ 28, quoting State v. Joseph, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, ¶ 11. The proper time for a criminal defendant to move for waiver of court costs is at the time of sentencing. Stone at ¶ 29.

[\*P16] HN6 Criminal defendants have a right to counsel, including a right to the effective assistance from counsel. See McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970), fn. 14; State v. Stout, 4th Dist. Gallia No. 07CA5, 2008-Ohio-1366, ¶ 21. To establish constitutionally ineffective assistance of counsel, a defendant must show (1) that his counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense and deprived him of a fair trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); see also State v. Issa, 93 Ohio St.3d 49, 67, 2001 Ohio 1290, 752 N.E.2d 904 (2001); State v. Goff, 82 Ohio St.3d 123, 139, 1998 Ohio 369, 694 N.E.2d 916 (1998). "In order to show deficient performance, the defendant must prove that counsel's [\*\*10] performance fell below an objective level of reasonable representation. To show prejudice, the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." (Citations omitted.) State v. Conway, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 95. "Failure to establish either element is fatal to the claim." State v. Jones, 4th Dist. Scioto No. 06CA3116, 2008-Ohio-968, ¶ 14. Therefore, if one element is dispositive, a court need not analyze both. See State v. Madrigal, 87 Ohio St.3d 378, 389, 2000 Ohio 448, 721 N.E.2d 52 (2000) (stating that a defendant's failure to satisfy one of the elements "negates a court's need to consider the other."). In Ohio, there is a presumption that a properly licensed attorney is competent. State v. Calhoun, 86 Ohio St.3d 279, 289, 1999 Ohio 102, 714 N.E.2d 905 (1999).

[\*P17] HN7 "When considering a claim that trial counsel was ineffective for not filing an indigency affidavit [to seek avoidance of a fine] \* \* \* the test applied by Ohio courts is whether a reasonable probability exists that the trial court would have found appellant indigent had such affidavit been filed." State v. Doss, 4th Dist. Gallia No. 09CA20, 2012-Ohio-883, ¶ 19.5 [\*\*11] "The same test applies to an ineffective assistance claim based on a failure of counsel to seek waiver of court costs." Id. "A determination that appellant was indigent requires that the court consider both present and future ability to pay the fine and costs." Id. at ¶ 21.

#### FOOTNOTES

5 While the Doss court dealt with an indigency affidavit filed under R.C. 2929.18(B)(1) to seek the avoidance of a mandatory fine, we find the Doss analysis equally applicable to the case at hand even though the fines imposed in the case sub judice were not statutorily mandated.

[\*P18] As discussed above, we find that the trial court did consider Arnold's present and future ability to pay the fines and court costs. Therefore, we cannot conclude that a reasonable probability exists that Arnold would have been found indigent had his counsel raised the issue by affidavit or objection. Consequently, we cannot find that trial counsel's performance was constitutionally ineffective for failing to raise the issue. Arnold's second assignment of error is overruled.

[\*P19] Having considered and overruled both of Arnold's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the [\*\*12] JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed. The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN

PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued

for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earliest of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate [\*\*13] pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha , J. & McFarland , J.: Concur in Judgment and Opinion.

For the Court

By:

Marie Hoover , Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.