

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, EX REL.,  
TREVOR TEAGARDEN #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
Phone: (419) 224-8000,

Relator,

vs.

JUDGE W. DAVID BRANSTOOL,  
Court of Common Pleas  
Licking County, Ohio  
Licking County Courthouse  
Newark, Ohio 43055  
Phone: (740) 670-5770,

Respondent.

14-0569

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

COMPLAINT

Original Action in Mandamus

RELATOR TREVOR TEAGARDEN'S PETITION FOR A WRIT OF MANDAMUS

Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
Phone: (419) 224-8000  
RELATOR, PRO SE

Kenneth W. Oswalt #0037208  
Licking County Prosecutor  
20 South Second St.  
Newark, Ohio 43055  
Phone: (740) 670-5241  
COUNSEL FOR RESPONDENT

RECEIVED  
APR 11 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
APR 11 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

1. Relator Trevor Teagarden, pro se, petitions this Honorable Court for a writ of mandamus on four separate claims related to his criminal conviction in case number 07-CR-00739, originating in the Licking County Court of Common Pleas. Each of the four claims that follows are distinct, and the Court may issue a writ of mandamus on any of the four claims, or on any combination of the claims, as the Court deems just and proper. Although Judge Jon R. Spahr presided over the trial court proceedings, he retired from that position on December 31, 2009. The Honorable Judge W. David Branstool presides over the court, and was therefore named as the Respondent, because mandamus cannot issue commanding a retired public official to perform an act that was the duty of the office that he previously held. Judge W. David Branstool, as sitting judge, has a clear legal duty to perform the relief requested herein. Because the Relator has a clear legal right to the requested relief, and because there is no adequate and available remedy in the ordinary course of law, the writ should issue.

I. STATEMENT OF THE CASE AND FACTS

2. The Relator was originally indicted by the Grand Jury for Aggravated Possession of Drugs (Oxycodone) in violation of O.R.C. § 2925.11(A)(C)(1)(a), a felony of the fifth degree. (See Appendix, pg. A-4). Thereafter, counsel for the state filed a motion to amend the indictment, and requested "the court to issue an order amending the charge in the indictment to reflect Trafficking in Drugs in violation of O.R.C. § 2925.03(A)(2)(C)(1)(a)" which is a felony of the fourth degree. (See Appendix, pg. A-5). The Court granted the motion "[u]pon

review of the record and for good cause shown..." (See Appendix, pg. A-8). It is important to note that defense counsel did not sign the Judgment Entry, nor did the judge, and the Assistant Prosecuting Attorney who signed the document wrote "No Position" in place of defense counsel's signature. (See A-8). Nevertheless, defense counsel thereafter advised the Relator to enter into a plea agreement with the state in which he was sentenced to a prison term of six months, which was imposed consecutive to a sentence imposed for case number 07-CR-00365. (See Appendix, pg. A-9).

3. The Relator filed a pro se motion to vacate the judgment of conviction with the trial court on December 26, 2012, which attacked the original indictment, and the amendment to the indictment. The motion ultimately concluded that the resulting judgment was void, a legal nullity, and must be vacated, and the case dismissed with prejudice. The trial court denied the motion in a judgment entered May 9, 2013. (See Appendix, pg. A-1). The Relator timely appealed to the Fifth Judicial District Court of appeals on June 4, 2013, and filed his brief on July 16, 2013. On September 13, 2013, the court reporter filed a document stating that no records of the trial court proceedings existed, thus there would be no transcript on appeal. (See A-19). The Relator filed a motion for leave to supplement his brief in reply (see A-26), however it crossed paths in the mail with the appellate court's decision denying the appeal. Thus, the lack of a trial court record is yet unresolved in the instant case. The Relator next sought discretionary appeal with this Court, however prison officials in the institution's mail room failed to properly process his pleadings and caused it to arrive to the clerk several days late (January 31, 2014).

II. CLAIM FOR RELIEF NUMBER ONE: The trial court erred when allowing amendment of the Relator's indictment because it changed the name or identity of the offense, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, as well as Section 10, Article 1 of the Ohio Constitution. As such, the Relator's conviction is void and must be vacated, and the indictment dismissed with prejudice.

4. On November 15, 2007 the Grand Jury issued an indictment for "Aggravated Possession Of Drugs" finding that the Relator "did knowingly obtain, possess, or use Oxycodone ... in violation of Section 2925.11(A)(C)(1)(a) of the Ohio Revised Code, a felony of the fifth degree." (See Appendix, pg. A-4). It is important to understand what the state fully understood at the time, which is that the Relator "was legally receiving Oxycodone for pain management." (See Appendix, pg. A-5). Nevertheless, the Grand Jury did indict the Relator for the possession of the very drug that was legally being prescribed to him. Prior to trial, the state recognized that the indictment was fatally defective and filed a motion to amend the indictment, stating that: "upon review of the facts and circumstances in this case, the State feels the defendant would be more appropriately charged under the trafficking statute, specifically Section 2925.03(A)(2)(C)(1)(a) of the Ohio Revised Code. This is [an increase of the felony level to] a felony of the fourth degree." (See Appendix, pg. A-6, par. 2).

5. It is important to note that defense counsel did not sign the Judgment Entry. (See Appendix, pg. A-8). The Assistant Prosecuting Attorney wrote "No Position" on the line where defense counsel refused to sign. And the trial court judge did not sign the Judgment Entry

either. These highly significant and compelling factors are more fully addressed within Claim For Relief Number Three later herein. Notwithstanding that argument, which ultimately concludes that the motion to amend the indictment was technically not granted, one must presume that the court believed the amendment had been granted as it was so stated in the subsequent Judgment Entry that was filed on July 21, 2008. (See Appendix, pg. A-9). Regardless, the Relator asserts herein that the indictment was fatally defective when issued, and thus could not be cured by amendment. Further, the amendment was equally fatal.

6. Rule 7(D) of the Ohio Rules of Criminal Procedure governs an amendment to an indictment, and provides that "[t]he court may at any time before, during, or after trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged." When one of the essential, material, or vital elements identifying the crime is omitted from the indictment, it is fatally defective and cannot be cured by amendment as such a procedure would permit the trial court to convict an accused on a charge essentially different from that found by the Grand Jury. *State v. Wozinak*, 172 Ohio St. 517, 520, 178 N.E.2d 800 (1961); *State v. Headley*, 6 Ohio St.3d 475, 479, 453 N.E.2d 716 (1983).

7. Circumstances such as that in the case at bar are held to be a variance between charge and proof. When a variance is material to the merits of the case or prejudicial to the defendant, as in the case at bar, the variance is grounds for acquittal. See R.C. § 2941.26. In such cases, the defect is fatal to the indictment and is not among the

inconsequential defects or minor variances between the indictment and evidence that allow for amendment. This is so because the variance is itself an essential element of the offense. *State v. Lewis*, 21 Ohio St.2d 203, 257 N.E.2d 59 (1970); *State v. Pittman*, 9 Ohio St.2d 186, 224 N.E.2d 913 (1967); and *State v. Neese*, 114 Ohio App.3d 93, 95, 682 N.E.2d 1038 (1996).

8. In the case sub judice, the variance was, without question, material to the case, as even in the state's motion it is conceded that "upon review of the facts [which are the same as those presented to the grand jury] ... the defendant would be more appropriately charged under the trafficking statute." (Appendix, pg. A-6). Furthermore, the variance was most certainly prejudicial to the Relator, as the proposed amendment increased the felony level from a felony of the fifth degree to a felony level of the fourth degree (notwithstanding that a conviction could not have been secured without an amendment).

9. The Relator presented this claim (and all other claims herein) to the trial court that convicted him because it is well established that trial courts retain all jurisdiction not inconsistent with an appellate courts' power to review, affirm, modify, or reverse the final orders, judgments, or decrees from which appeals are perfected. In *re Kurtzhalz*, 141 Ohio St. 432, 48 N.E.2d 657 (1943). In the Relator's motion to the trial court, he asserted that his claims for relief supported the untenable conclusion that his judgment was void, thus he was properly before the court. Black's Law Dictionary defines a "Void Judgment" as:

"A judgment that has no force or effect, the invalidity of which may be asserted by any party who's rights are affected at anytime and anyplace, whether directly or collaterally -

from its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced in any manner, or to any degree."

10. The Relator's motion further alleged that the original indictment was fatally defective upon issue (as the state readily admits in the motion to amend the indictment). Thus, a secondary and underlying issue was that the trial court lacked subject matter jurisdiction over the case due to the fatally defective indictment. It is well settled that subject matter jurisdiction is a "condition precedent to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void." *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, at ¶ 3 of the syllabus. The validity of a defendant's conviction is dependent upon the jurisdiction of the trial court. The jurisdiction of the trial court vests by the return of a valid indictment. *Dowell v. Maxwell* (1963), 174 Ohio St. 289, 290, 189 N.E.2d 95.

11. Because subject matter jurisdiction goes to the power of a court to adjudicate the merits of a case, it can never be waived and may be challenged at any time. *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.E.2d 860; and *State ex rel. Tubbs Jones v. Suster* (1988), 84 Ohio St.3d 70, 75, 701 N.E.2d 1002. In a case where the trial court lacked jurisdiction of the subject matter, the lack of jurisdiction may be successfully raised at any time. *State v. Presler* (1960) 112 Ohio App. 437. There is no point in time beyond which a void judgment becomes valid, and a motion to vacate a void judgment is not subject to a time limitation. *GMS Management Co. v. Axe* (1982) 449 N.E.2d 43.

12. Nevertheless, the trial court held that (1) the Relator's guilty plea waived any defect in the indictment; and (2) the claims

were barred by res judicata. (See Appendix, pg. A-2, par. 2). The Relator appealed the trial court's decision to the Fifth Judicial District Court of Appeals. The appellate court did not affirm that the Relator's guilty plea waived any defect in the indictment. In conflict with this finding, however, the appellate court did affirm that the Relator's claims were "barred" by res judicata. (Appendix, pg. A-25, at ¶ 19-20). The appellate court further found that the Relator's motion was "actually a petition for post-conviction relief under R.C. § 2953.21" and was therefore untimely. (See Appendix, pg. A-24, at ¶ 18-19).

13. The appellate court simply (and erroneously) adopted the state's defenses to the Relator's claims, as set forth in the state's brief. The Relator filed a reply brief which clearly devastated the state's position. (See Appendix, pgs. A-11 through A-18). The Relator was certain to first note that the state's brief "does not contend that the Appellant's claims that the amendment made to his indictment rendered it fatally defective." (See Appendix, pg. A-12, par. 2). Of course, the Relator reasonably believed that the reply brief should not have been necessary, as the Fifth District Court of Appeals has consistently held that "the issue of subject-matter jurisdiction cannot be waived or forfeited and can be raised at any time." *State v. Bess*, 5th Dist. No. C-110700, 2012 Ohio 3333, at ¶ 9.

14. And it was the Fifth District Court of Appeals who correctly instructed that "[t]he applicability of res judicata is a question of law, which an appellate court reviews de novo" and "the doctrine of res judicata is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice." *State v. Tinney*, 5th Dist. No.

2011 CA 41, 2012 Ohio 72, at P27-P31. Additionally, in a case that specifically cited the Fifth District's case *State v. Bess* (at P12), the trial court had erroneously construed the defendant's subject matter jurisdiction challenge as an untimely post-conviction under RC 2953.21 because the motion was filed eleven (11) years after the imposition of sentence. However, the appellate court held that the time limits for post-conviction relief were not applicable because the defendant was asserting a challenge to the trial court's basic jurisdiction over the proceeding. *State v. Davies*, 2013 Ohio 436, 2013 Ohio App. Lexis 385.

15. When defects in an indictment are like those in the instant case, they are considered so egregious that the indictment is null and void on its face and may be challenged at any time. Parallel to the case sub judice (and dispositive of this claim) is the case *State v. Lazich*, 117 Ohio App.3d 477, 480, 690 N.E.2d 977 (1977), holding that "[t]he evidence established that the appellant was guilty of negligent homicide in violation of R.C. 2903.05. However, appellant was indicted for murder, and negligent homicide is not a lesser included offense of murder ... Under Crim. R. 7(D) the indictment could not have been amended at the end of trial to change the substance or identity of the charge." Also parallel (and equally dispositive) is the case *State v. Gray*, 117 Ohio App.3d 286, 289, 690 N.E.2d 572 (1996), which held that the "amendment of the indictment ... was improper ... Endangering children is not a lesser included offense or an offense of inferior degree to felonious assault."

16. In the case at bar, *Trafficking in Drugs*, in violation of R.C. 2925.03(A)(2)(C)(1)(a), is clearly not a lesser included offense

or an offense of inferior degree to the indicted charge of Aggravated Possession of Drugs, in violation of R.C. 2925.11(A)(C)(1)(a). In fact, Trafficking in Drugs as amended in the case at bar is actually a higher degree felony than the indicted offense. When, as in the case at bar (and those cited above), the variance goes to an essential element of the offense, or otherwise changes the name or identity of the offense, such variances are fatal and renders the subsequent conviction void. Clearly the change to the indictment in the case at bar was fatal, as it was done in violation of the Ohio Revised Code, the Ohio Rules of Criminal Procedure, the Ohio Constitution, and the Constitution of the United States. As such, the judgment must be vacated, and the indictment must be dismissed with prejudice. No other conclusion can be founded in law, logic, or common sense.

III. CLAIM FOR RELIEF NUMBER TWO: Defense counsel provided ineffective assistance for failing to move the court for arrest of judgment under Crim. R. 34 due to the fatally defective indictment, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

17. It is clear from the face of the original indictment (pg. A-4) that it is fatally defective because, as the state admits in the motion to amend the indictment, "upon review of the facts and circumstances in this case, the State feels the defendant would be more appropriately charged under the trafficking statute." (See Appendix, pg. A-6, par. 2). This should have prompted defense counsel to move for arrest of judgment pursuant to Rule 34 of the Ohio Rules of Criminal Procedure. Thus, counsel's performance fell below an objectively reasonable standard, which violates the Relator's constitutional rights as protected by the

Sixth Amendment. See *Strickland v. Washington*, 466 U.S. 668 (1984). However, counsel's failures do not preclude the issue from review and relief, as it clearly meets the criteria for a finding of plain error. See *United States v. Olano*, 507 U.S. 725 (1993), and Rule 52 (B) of the Ohio Rules of Criminal Procedure.

18. Had counsel provided the type of assistance guaranteed to the Relator under the Sixth and Fourteenth Amendments, there is only one course of action that was appropriate, and that course cannot be said to have been excluded due to trial strategy. Counsel was required to formally object to the proposed amendment to the indictment and then move for arrest of judgment under Rule 34 of the Ohio Rules of Criminal Procedure, which would require that "the defendant shall be discharged and his position with respect to the prosecution is as if the indictment, information, or complaint had not been returned or filed." And grounds for acquittal would, of course, be sought under R.C. § 2941.26, which states that when "there appears to be a variance between the statement in such indictment or information and the evidence offered in proof thereof" the defendant must be acquitted if "such variance is material to the merits of the case or may be prejudicial to the defendant." Although acquittal is mandated if only one factor is present, in the case at bar, both factors are present, as the variance was "material to the merits of the case" and "prejudicial to the defendant." See R.C. § 2941.26.

IV. CLAIM FOR RELIEF NUMBER THREE: The judgment granting the state's motion to amend the indictment is void, in violation of the Due Process Clauses of the Ohio and United States Constitutions, thus the judgment of conviction that followed is void and must be vacated.

19. Pursuant to R.C. § 2953.02, only a final appealable order of an inferior court may be reviewed by the court of appeals. The Judgment Entry filed July 21, 2008 (Appendix, pg. A-9) is not an appealable order because the preceeding judgment granting the state's motion to amend the indictment is void. This is so for basic principles that violate the Relator's Due Process rights under the Ohio and United States Constitutions. Specifically, the judgment granting the state's motion to amend the indictment was not signed by the trial court judge nor was it stamped by the clerk. (See Appendix, pg. A-8). It is clear that defense counsel and the judge did not sign the judgment, and it is not stamped "filed" by the clerk, which is required to also include the time and date within the stamp.

20. These errors render the Judgment Entry void and require that it be vacated. *State v. Lester* (2011), 130 Ohio St.3d 303, 958 N.E.2d 142, at P8; *State v. Tripodo*, 50 Ohio St.2d 124, 363 N.E.2d 719 (1977). Furthermore, the case must be remanded back to the trial court, at which time the Relator will move for arrest of judgment under Crim. R. 34, R.C. § 2941.26, and R.C. § 2947.02. The motion for arrest of judgment should be granted, as even the state admits to the fatal variance in its motion to amend the indictment. Specifically, it is conceded therein that "upon review of the facts and circumstances in this case, the State feels the defendant would be more appropriately charged under the trafficking statute ... [an increase to] a felony of the fourth degree." (See Appendix, pg. A-6, par. 2).

V. CLAIM FOR RELIEF NUMBER FOUR: The Relator was denied a meaningful appeal as the record was transmitted by the clerk without benefit of a transcript because, as it was later discovered, there is no record

of the trial court proceedings, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

21. In response to the Relator's motion to vacate that was filed with the trial court, the state alleged that defense counsel did not object to the proposed amendment to the indictment. In the trial court's resolution, it was stated that "a defendant who fails to assert an indictment is defective prior to pleading guilty waives any error." (See Appendix, pg. A-2, par. 2). It is the recollection of the Relator, however, that defense counsel did object to the proposed amendment of the indictment. As such, when the Relator sought appeal of the trial court's judgment, he sought a transcript of the trial court proceedings so that he could evidence defense counsel's objection. Although defense counsel did not sign the judgment entry regarding the amendment to the indictment, and the assistant prosecuting attorney wrote "No Position" where defense counsel was required to sign, there nevertheless exists some debate as to whether defense counsel did, in fact, formally object in open court.

22. The Relator utilized the Fifth District Court of Appeals Docketing Statement form when initiating the appeal, and clearly ordered (therein) a full transcript of the trial court proceedings. Thus, the Relator fully complied with Rules 9 and 10 of the Ohio Rules of Appellate Procedure. The Relator also filed a "Statement, Praeceptum, And Notice To Court Reporter" in which he instructed the clerk to prepare all documents in accordance with App. R. 9(A), and further instructed that "[b]ecause a complete transcript of trial proceedings will be included by the Appellant as part of the record to evidence the assignment of error, do not transmit these documents until the

complete transcript of proceedings has been delivered to you[.]" The Relator also ordered (therein) that the court reporter "prepare a transcript of all pretrial, plea, trial, post-trial, and sentencing proceedings[.]"

23. The Notice of Appeal, and the related pleadings noted in the previous paragraph, were filed on June 4, 2013. The record was transmitted to the court of appeals and the Relator filed his brief on July 16, 2013. However, even though the Relator was proceeding pro se and was therefore listed as counsel of record, he did not receive a copy of the record being transmitted for his appeal. Further, the Relator, and all other parties, did not receive notice that the record (as transmitted by the clerk) was incomplete - specifically - it was transmitted without the transcript. Nevertheless, on September 13, 2013 (three months after initiation of the appeal - and two months after the Relator filed his brief) the court reporter filed a notice which stated that no record of the trial court proceedings existed, thus there would be no transcript. (See Appendix, pg. A-19).

24. This was news to the Relator as it was his understanding and belief that the complete record had been transmitted to the court of appeals, and the brief he had filed two months prior was relying on evidence that was within the transcript (of which he was now being told there was no record). Obviously this failure to produce a full record was not the Relator's fault, and in fact, the Relator's appeal was substantially prejudiced by this failure, that was clearly the fault of the state. It has been well established by this very Court that when a criminal defendant's misconduct is determined not to be the cause of the nonproduction of the appellate record, absence of the

record requires reversal of the underlying conviction and the grant of a new trial. State v. Jones (1994), 71 Ohio St.3d 293, 643 N.E.2d 547. This is not an isolated incident either.

25. The Relator intends to bring to the attention of this Honorable Court that the very same trial court has stated that there is no record of his proceedings in case number 07-CR-00365. This is significant because in that case the Relator received a ten year prison sentence following a bench trial in which the evidence clearly did not prove guilt beyond a reasonable doubt. In fact, after the Relator testified in his own defense at trial, and after closing arguments, the judge stated to the prosecutor, "[y]ou didn't prove your case counselor." As should be expected, the Relator was anxious to get his hands on a copy of the transcript to take issue with the trial judge's statement on appeal. However, the court reporter for that case has filed a similar notice as in the instant case, which ultimately claims that no record of the trial court proceedings exists.

26. The sum of the circumstances involved in this claim support the inescapable conclusion that the Relator is entitled to a new trial. It is therefore requested that the Court issue a writ of mandamus that compels the trial court to vacate the Relator's judgment of conviction and hold a new trial. An alternative writ could also issue, which would compel the Fifth Judicial District Court of Appeals to reinstate the Relator's appeal, with instruction that the appellate court properly resolve the lack of a trial record (at fault of the state). And additional instruction is requested in the alternative writ advising the appellate court that the Relator's trial court motion was not an untimely petition for post-conviction relief under R.C. § 2953.21,

and that res judicata cannot attach to a subject matter jurisdiction claim. In other words, the case should be remanded for proper resolution of the absent trial record and a proper ruling on the merits of the claims.

## VI. CONCLUSION

27. It is clear that the Relator's indictment was fatally defective upon issue and should have been dismissed with prejudice. Regardless, the amendment to the indictment not only changed the name or identity of the offense, but increased the felony level from a felony of the fifth degree to a felony of the fourth degree. As such, a writ of mandamus must issue to compel the trial court to vacate the Relator's conviction and dismiss the indictment with prejudice. Of course, it is also clear that the trial court judgment is void - further - because it was not signed by the judge nor stamped by the clerk. *State v. Lester* (2011), 130 Ohio St.3d 303, 958 N.E.2d 142, at P8. This, too, is cause for the judgment of conviction to be vacated and the case to be remanded back to the trial court (where the Relator will ultimately seek the same relief - albeit through Crim. R. 34).

28. Instead, this Court may be inclined to remand the case back to the appellate court to resolve the absent trial court record, which substantially prejudiced the Relator's appeal. Such remand should include the instruction that the Relator's trial court motion was not untimely and that res judicata does not bar the Relator from relief. Of course, the State's failure to maintain and produce a record of the trial court proceedings is cause for a new trial. In light of the sum of the unusual circumstances in the case sub judice, the Relator resp-

ectfully requests that this Honorable Court provide whatever relief is deemed just and proper. However, judicial economy dictates that the judgment of conviction should simply be vacated and the case be dismissed with prejudice.

Respectfully submitted,



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Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
Phone: (419) 224-8000  
RELATOR, PRO SE



IN THE LICKING COUNTY COMMON PLEAS COURT

State of Ohio,

Plaintiff,

-vs-

Trevor J. Teagarden,

Defendant.

2013 JUL -9 P 3:19

WALTERS  
CLERK

: Case No. 07 CR 00739

: Judge W. David Branstool

JUDGMENT ENTRY

This matter is before the Court on defendant's motion to vacate or set aside judgment of conviction or sentence. Defendant also filed a motion for appointment of counsel.

Initially, the Court notes "an indigent petitioner has neither a state nor a federal constitutional right to be represented by an attorney in a postconviction proceeding." *State v. Crowder*, 60 Ohio St.3d 151, 152 (1991). Defendant's motion for appointment of counsel is DENIED.

Defendant asserts that the judgment of conviction should be vacated because the Court erroneously allowed the State to amend the indictment. Defendant was indicted for aggravated possession of drugs, a fifth degree felony. The Court allowed the indictment to be amended to a charge of trafficking in controlled substances, a felony of the fourth degree. Defendant entered a guilty plea to the amended charge, and he was sentenced to six months in prison to run consecutive to his sentence in Case No. 07 CR 365.

A-1

Defendant objects that the identity and level of the offense was improperly amended in violation of Crim.R. 7(D) and the Sixth Amendment to the United States Constitution. Defendant argues that the judgment is void as a result of the violation.

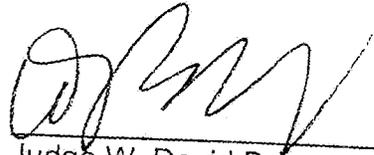
In a similar case, the Ninth District Court of Appeals held that a guilty plea to an alleged improperly amended indictment did not result in a void judgment and that the defendant's claims were barred by *res judicata* as they should have been raised on direct appeal. *State v. Ford*, 9th Dist. No. 26480, 2012-Ohio-4384. Further, a defendant who fails to assert an indictment is defective prior to pleading guilty waives any error in the indictment. *State v. Miller*, 4th Dist. No. 95CA10, 1996 WL 571488 (Oct. 2, 1996). Finally, Crim.R. 7(D) and Sixth Amendment indictment rights may be waived and are waived by a guilty plea. *State v. Williams*, 8th Dist. No. 88737, 2007-Ohio-5073, citing *Stacy v. Van Coren*, 18 Ohio St.2d 188 (1969).

Defendant also asserts a claim for ineffective assistance of counsel. However, this claim is untimely pursuant to R.C. 2953.21(A)(2). Further, defendant could have raised this claim on appeal and did not. Constitutional issues cannot be considered in post-conviction proceedings under post-conviction relief statute where they have already been or could have been fully litigated by the prisoner while represented by counsel, either before judgment of conviction or on direct appeal from that judgment. *State v. Perry*, 10 Ohio St.2d 175 (1967).

For the reasons set forth above, the motion to vacate or set aside judgment of conviction is DENIED.

It is so ordered.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



Judge W. David Branstool

Copies to:

Tracy Van Winkle, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Paul Burke, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Trevor J. Teagarden, Defendant  
#A575630, Allen Oakwood Correctional Facility, 2338 North West Street, Lima, OH 45801

INDICTMENT FOR:

AGGRAVATED POSSESSION OF DRUGS  
(Oxycodone)  
O.R.C. 2925.11 (A)(C)(1)(a) [F5]

LISSING COUNTY  
COURT OF COMMON PLEAS

Case No. 07CR739

The State of Ohio, Licking County, ss: COURT OF COMMON PLEAS

NOV 15 2007 9:09

Of the Term of November 15<sup>th</sup> Session in the Year of our Lord two thousand seven.

FILED  
CITY OF COLUMBUS

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that Trevor Teagarden, on or about the 21<sup>st</sup> day of September, 2007, in the County of Licking aforesaid or otherwise venued in Licking County, pursuant to Ohio Revised Code Section 2901.12, did knowingly obtain, possess, or use Oxycodone, a Schedule II Controlled Substance, in an amount less than the bulk amount of Oxycodone, in violation of Section 2925.11 (A)(C)(1)(a) of the Ohio Revised Code, a felony of the fifth degree,

contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

*Henry W. Orwalt*  
Prosecuting Attorney

\*\*\*\*\*

Endorsed: A true bill.

*James D. Kennedy*  
Foreperson of the Grand Jury

IN THE COMMON PLEAS COURT OF LICKING COUNTY, OHIO

State of Ohio,  
Plaintiff,

vs.

Case No. 07 CR 739

Trevor Teagarden,  
Defendant.

MOTION TO AMEND THE INDICTMENT

\*\*\*\*\*

Now comes the State of Ohio by and through the undersigned Assistant Prosecuting Attorney, and hereby motions the court to issue an order amending the Indictment herein. A Memorandum in Support of such motion is attached hereto and incorporated herein.

Respectfully submitted,

Tracy VanWinkle by BTV

Tracy F. Van Winkle, Reg. No. 0075572  
Assistant Prosecutor  
20 South Second Street, Fourth Floor  
Newark, Ohio 43055  
(740) 670-5255

MEMORANDUM

The defendant herein is charged with Possession of Drugs in violation of Section 2925.11 for his inappropriate use of legally prescribed Oxycodone. Specifically, the State will illicit at trial facts that indicate the defendant was incarcerated at the Licking County Justice Center on other charges. At that time, he was legally receiving Oxycodone for pain management. On the

PROSECUTING ATTORNEY  
KENNETH W. OSWALT  
20 SOUTH SECOND ST.  
NEWARK, OH 43055  
  
FELONY AND CIVIL  
DIVISIONS  
670-5255  
  
JUVENILE COURT  
DIVISION  
670-5264  
  
TAX FORECLOSURES  
670-5021  
  
FAX 670-5941

date specified in the Indictment, the defendant summoned deputies to send mail for him. The deputies felt a hard small object inside of the letter that appeared to be a pill. The letter was opened and the substance found inside determined to be Oxycodone. Upon questioning, the defendant admitted to these facts. He further admitted that he was mailing the Oxycodone to a friend for her personal use.

Accordingly, upon review of the facts and circumstances in this case, the State feels the defendant would be more appropriately charged under the trafficking statute, specifically Section 2925.03(A)(2)(C)(1)(a) of the Ohio Revised Code. This is a felony of the fourth degree. The defendant's attorney has been contacted and has no position in the matter with the understanding that the new charge is a felony of the fourth degree.

Accordingly, the State hereby moves the court to issue an order amending the charge in the Indictment to reflect Trafficking in Drugs in violation of Section 2925.03(A)(2)(C)(1)(a) of the Ohio Revised Code.

*Tracy Van Winkle by BTW*  
Tracy VanWinkle, Reg. No 0075572  
Assistant Prosecuting Attorney  
20 S. Second St.  
Newark, OH 43055

PROSECUTING ATTORNEY  
KENNETH W. OSWALT  
20 SOUTH SECOND ST.  
NEWARK, OH 43055

FELONY AND CIVIL  
DIVISIONS  
670-5255

JUVENILE COURT  
DIVISION  
670-5264

TAX FORECLOSURES  
670-5021

FAX 670-5241

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been sent by regular U.S. Mail the 18<sup>th</sup> day of July 2008, to attorney for defendant, Andrew Sanderson, 21 W. Church Street, Suite 201, Newark, Ohio 43055.

Tracy Van Winkle by BTW  
Tracy Van Winkle, Reg. No. 0075572  
Assistant Prosecutor

PROSECUTING ATTORNEY  
KENNETH W. OSWALT  
100 SOUTH SECOND ST.  
NEWARK, OH 43055

CRIMINAL AND CIVIL  
DIVISIONS  
670-5255

JUVENILE COURT  
DIVISION  
670-5264

PROPERTY FORECLOSURES  
670-5021

FAX 670-5241

A-7

IN THE COMMON PLEAS COURT OF LICKING COUNTY, OHIO

State of Ohio,  
Plaintiff,

vs.

Trevor Teagarden,  
Defendant.

Case No. 07 CR 739

JUDGMENT ENTRY

\*\*\*\*\*

Upon review of the record and for good cause shown, the State's Motion to Amend the Indictment is hereby found well taken and the same granted.

It is therefore ordered the Indictment shall be amended to reflect the charge of Trafficking in Drugs in violation of Section 2925.03(A)(2)(C)(1)(a) of the Ohio Revised Code. It is so ordered.

\_\_\_\_\_  
Judge Thomas M. Marcelain

Tracy Van Winkle by BTW

Approved:  
Tracy F. Van Winkle  
Assistant Prosecuting Attorney  
20 S. Second St.  
Newark, OH 43055

No Position

\_\_\_\_\_  
Andrew Sanderson  
Attorney at Law  
21 W. Church St.  
Newark, OH 43055

EXECUTING ATTORNEY  
VETH W. OSWALT  
FOURTH SECOND ST.  
NEWARK, OH 43055

CRIMINAL AND CIVIL  
DIVISIONS  
670-5255

CRIMINAL COURT  
DIVISION  
670-5264

RECLOSURES  
670-5021

670-5241

A-8

In the Court of Common Pleas, Licking County, Ohio

State of Ohio,

LICKING COUNTY  
COMMON PLEAS

Plaintiff, 2008 JUL 21 AM 10:43

vs.

Trevor J. Teagarden,

FILED Case No. 07 CR 739  
GARY R. WALTERS  
CLERK

Defendant.

JUDGMENT ENTRY

\*\*\*\*\*

On the 21st day of July, 2008, came the State of Ohio through Assistant Prosecutor Tracy Van Winkle, and also came the defendant, personally, and with legal counsel Andrew Sanderson, and this cause came on for hearing upon the indictment herein charging the defendant with one count of Aggravated Possession of Drugs (Oxycodone), in violation of O.R.C. Section 2925.11(A)(C)(1)(a), felony of the fifth degree.

Counsel for the State moved the Court to amend the indictment to a charge of Trafficking in Controlled Substances, in violation of O.R.C. Section 2925.03(A)(2)(C)(1)(a), felony of the fourth degree.

Hearing no objection, the Court grants the motion to amend as indicated.

Thereupon, the defendant asked leave of the Court to waive the right to a jury trial and to enter a plea of guilty to the charge as amended herein.

The Court advised the defendant of all Constitutional Rights, and being satisfied that the defendant understood the Constitutional Rights, and being further satisfied with the factual basis for the plea accepted the plea of guilty and finds the defendant guilty as charged herein.

The defendant having been found guilty as charged, the Court ordered and received a Presentence Investigation. The Court then afforded counsel an opportunity to speak on behalf of the defendant and addressed the defendant personally, affording the defendant an opportunity to make a statement in the form of mitigation and to present information regarding the existence or nonexistence of the factors the Court has considered and weighed.

The Court has considered the record, oral statements, and the Presentence Investigation prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism

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factors under Ohio Revised Code Section 2929.12.

The Court finds that the defendant has been convicted of one count of Trafficking in Controlled Substances, in violation of O.R.C. Section 2925.03(A)(2)(C)(1)(a), felony of the fourth degree

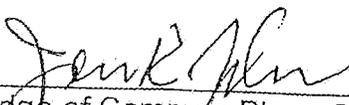
For reasons stated on the record, and after consideration of the factors under Ohio Revised Code Section 2929.12, the Court also finds that prison is consistent with the purposes of Ohio Revised Code Section 2929.11, and the defendant is not amenable to an available community control sanction.

It is, therefore, ordered that the defendant serve a stated prison term of six months at the Chillicothe Correctional Institution. This sentence shall run consecutive to the sentence imposed in Licking County Common Pleas Court Case No. 07 CR 365. The Court suspends the defendant's driver's license for a period of six months from today's date.

The Court informed the defendant that upon release from prison he would be subject to postrelease control for three years unless sooner terminated by the Adult Parole Authority. The Court further notified the defendant that if he violates the conditions of postrelease control imposed by the Parole Board under Ohio Revised Code Section 2967.28, he could be returned to prison for up to nine months for those violations, and if the violation is a new felony, he could be returned to prison on the new felony as well.

Defendant is, therefore, ordered conveyed to the custody of the Ohio Department of Rehabilitation and Correction. No credit is given for time served as the defendant has been incarcerated on other charges.

Defendant is ordered to pay all costs of prosecution and court costs in this action. The defendant shall pay court-appointed counsel costs and any fees permitted pursuant to R.C. Section costs, and any fees permitted pursuant to R.C. Section 2929.18(A)(4) according to the defendant's ability to pay. No fine is imposed.

  
\_\_\_\_\_  
Judge of Common Pleas Court  
Jon R. Spahr

cc: Licking County Prosecutor  
Adult Court Services Department  
Andrew Sanderson, Esq.

IN THE COURT OF APPEALS OF OHIO  
FIFTH JUDICIAL DISTRICT  
LICKING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

vs.

TREVOR TEAGARDEN,

Defendant-Appellant.

Case No. 13CA-0047

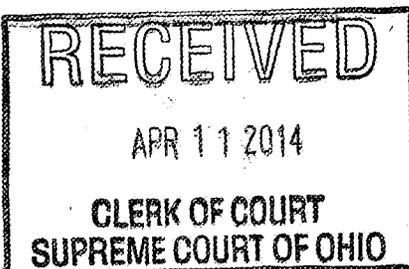
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REPLY BRIEF OF DEFENDANT-APPELLANT TREVOR TEAGARDEN

---

Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
DEFENDANT-APPELLANT, PRO SE

Tracy F. Van Winkle #0075572  
Assistant Prosecuting Attorney  
Licking County Prosecutor  
20 S. Second St., Fourth Floor  
Newark, Ohio 43055  
COUNSEL FOR PLAINTIFF-APPELLEE



A-11

MEMORANDUM IN SUPPORT

Now comes the Defendant-Appellant, Trevor Teagarden, pro se, who hereby replies to the Brief of the Plaintiff-Appellee pursuant to Rule 16(C) of the Ohio Rules of Appellate Procedure. The Brief of the Plaintiff-Appellee was filed on October 1, 2013. Thereafter, the Appellant moved for an enlargement of time to file a reply brief. Said motion was granted on October 8, 2013, which allowed the reply brief to be filed on or before October 31, 2013. Because the Brief of the Plaintiff-Appellee fails to overcome the Appellant's challenges regarding the fatally defective indictment (as substantiated below) the Court should order the relief sought in the Brief of the Defendant-Appellant.

First, it is highly significant to note that the State does not contend that the Appellant's claims that the amendment made to his indictment rendered it fatally defective. In fact, the State makes no argument whatsoever against the Appellant's claims that the amendment was fatally defective because it (1) changed the name or identity of the offense; and (2) increased the degree of the offense from a felony of the fifth degree to a felony of the fourth degree. For this reason alone, the Court should be compelled to provide the relief requested in the Appellant's brief.

Nevertheless, the State does present two challenges in their brief, however, neither applies to the particular circumstances in the case sub judice. The State asserts that (1) Appellant's Motion to Vacate was an untimely petition for post-conviction relief under R.C. 2953.21; and (2) the doctrine of res judicata bars the relief

sought in the Appellant's Motion to Vacate. For the reasons argued below, these two challenges are insufficient to overcome the Appellant's claims for relief.

#### I. STATE'S UNTIMELY POST-CONVICTION RELIEF CHALLENGE

In the Brief of the Plaintiff-Appellee, the State asserts that the Appellant's Motion to Vacate filed with the trial court "did not cite a specific Criminal Rule under which it was made" and that "such a motion is a petition for post-conviction relief under R.C. 2953.21." (Appellee Brief, pg. 3, par. 3). The State then asserts that "[t]he trial court properly denied the Appellant's Motion to Vacate" because it was filed beyond the 180 days limitation period provided for in R.C. 2953.21(A)(2). (Appellee Brief, pg. 3, par. 4). However, the State's argument to qualify the Appellant's Motion to Vacate as an untimely petition for post-conviction relief is unfounded.

First, it is well-settled that post-conviction petitions under R.C. 2953.21 are only available for errors based upon facts and evidence outside the record. *State v. Rodriguez*, 65 Ohio App.3d 151, 583 N.E.2d 347 (1989). Since the Appellant's Motion to Vacate was supported solely on evidence found in the record, said motion cannot be reasonably said to be properly analyzed under R.C. 2953.21. In fact, all evidence necessary to rule on the merits of said motion (and subsequent appeal) were attached to the relevant pleadings. (See Appendices to each). The evidence attached to the relevant pleadings are obviously portions of the record, thus the Appellant's Motion to Vacate was fully supported by the record. As such, it cannot be qualified as a petition for post-conviction relief under R.C. 2953.21.

If it was relevant to qualify the Appellant's Motion to Vacate, it would more properly be analyzed under Rule 60 of the Ohio Rules of Civil Procedure, specifically Civ. R. 60(B)(4) or (5). Further, Civ. R. 60(B)(4) and (5) have no limitations period for filing and may be filed at any time. Only motions filed pursuant to Civ. R. 60(B)(1), (2), and (3) have limitations, as they must be filed "not more than one year after the judgment, order or proceeding was entered or taken." (Civ. R. 60(B)(5)). Regardless, the authority on which the Appellant has consistently relied was the Ohio and United States Supreme Court instructions regarding void judgments. This is proper because, as the Appellant has sufficiently substantiated in his pleadings thus far, a void judgment based on a fatally defective indictment can be raised at any time, and the Appellant's Motion to Vacate filed with the trial court is the type of collateral attack recommended in such cases as *State v. Fischer*, 128 Ohio St.3d 92, 942 N.E.2d 332 (2010).

The *Fischer* Court clearly buttressed long settled law that, when a judgment or sentence is void, principles of *res judicata*, including the doctrine of the law of the case, do not preclude appellate review. The claim may be raised at any time, on direct appeal or by collateral attack. A motion filed with the trial court is an appropriate vehicle for raising the claim at any time. *State v. Fischer*, 128 Ohio St.3d at 94-97 and 99-101. Such cases, and Ohio's Civ. R. 60(B) are based on United States Supreme Court precedent and Fed. R. Civ. P. 60(b). Rule 60(b)(4) states that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding ... [if] the judgment is void." Furthermore,

there is no limitations period for filing such a motion. (See Fed. R. Civ. P. 60(c)(1)). As Justice Lanzinger aptly explains in the Ohio Supreme Court case *State v. Fischer*:

"Within the past year, a unanimous United States Supreme Court also had no trouble in defining the term 'void': 'A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed. 1933); see also *id.* at 1709 (9th ed. 2009). Although the term void describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See Restatement (Second) of Judgments 22 (1980); see generally *id.*, § 12." *United Student Aid Funds, Inc. v. Espinosa* (2010), U.S. , 130 S.Ct. 1367, 1377, 176 L.Ed.2d 158."  
*State v. Fischer*, *supra*, at P46.

The Appellant relies on an overwhelming measure of precedent in maintaining that the amendment of his indictment rendered the subsequent conviction and sentence void. Such cases include *State v. Lazich*, 117 Ohio App.3d 477, 690 N.E.2d 977 (1997), holding that "[t]he evidence established that appellant was guilty of negligent homicide in violation of R.C. 2903.05. However, appellant was indicted for murder, and negligent homicide is not a lesser included offense of murder... Under Crim. R. 7(D) the indictment could not have been amended ... to change the substance or identity of the charge." (*Id.* at 480). And see *State v. Gary*, 117 Ohio App.3d 286, 690 N.E.2d 572 (1996), holding that "[t]he trial court's sua sponte amendment of the indictment ... was improper ... Endangering children is not a lesser included offense or an offense of inferior degree to felonious assault[.]" (*Id.* at 289). See also *State v. Lewis*, 21 Ohio St.2d 203, 257 N.E.2d 59 (1970); *State v. Neese*, 114 Ohio App.3d 93, 95, 682 N.E.2d 1038 (1996); *State v. Hamley*, 142 Ohio App.3d 615, 618, 756 N.E.2d 702 (2001); *State v. Moore*, 145 Ohio App.3d 213, 762 N.E.2d

430 (2001); State v. Hairston, 121 Ohio App.3d 750, 757, 700 N.E.2d 930 (1997); and State v. Peek, 110 Ohio App.3d 165, 167, 673 N.E.2d 938 (1996).

In the case sub judice, the indictment was amended from the charge Aggravated Possession of Drugs in violation of R.C. 2925.11 (A)(C)(1)(a) to Trafficking in Drugs in violation of R.C. 2925.03 (A)(2)(C)(1)(a). This amendment (1) changed the name and identity of the offense charged; (2) was not a lesser included or inferior degree offense; and (3) actually increased the degree of the offense from a felony of the fifth degree to a felony of the fourth degree. These facts are untenable and the State does not contest these facts in the Brief of the Plaintiff-Appellee. Prevailing precedent dictates that the subsequent judgment and sentence is void, and as such, the claim to vacate may be raised at any time. Who can deny this? Thus, the decision before this Court is an easy one.

## II. STATE'S RES JUDICATA CHALLENGE

The State's second and final challenge is that "issues which ... Could have been raised previously in an appeal but were not are barred by the doctrine of res judicata." (Appellee Brief, pg.4, par. 2). While res judicata does bar the litigation of claims previously litigated (and exhausted) in prior proceedings, the doctrine of res judicata is not applicable to the particular circumstances in the instant case. Certainly res judicata does not bar a claim that a judgment is void. The recent Ohio Supreme Court case State v. Fischer (cited above) provides clear instruction on this assertion, and it specifically addresses the res judicata exception relied upon by the Appellant.

As the Fischer Court instructed, "[i]n general, a void judgment is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act. Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court's judgment is invalid, irregular, or erroneous." (Id. at P6, citing *State v. Payne*, 114 Ohio St.3d 502, 873 N.E.2d 306, at P27). To be sure, had the Appellant presented a claim that would render his judgment voidable instead of void, the State's defense of res judicata would be applicable.

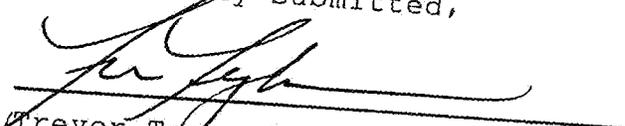
However, since the Appellant's claim is that of a void judgment, as the Fischer Court instructed, principles of res judicata, including the doctrine of the law of the case, do not preclude appellate review. The claim may be reviewed at any time, on direct appeal or by collateral attack. (Id. at P25-P30). Additionally, as Justice Lanzinger reminded the majority in *State v. Fischer*, "[a] void judgment is a legal nullity... Although the term 'void' describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." (Id. at P46, citing *United Student Aid Funds, Inc. v. Espinosa*, supra, at 1377).

It is axiomatic that res judicata does not apply to a legal nullity. Thus, it is clear that, because the fatally defective indictment rendered the subsequent judgment and sentence void, the judgment is a legal nullity and res judicata (nor any limitations period) can bar a defendant/appellant from raising such claim. In

fact, as the United States Supreme Court mandates (cited above), the infirmity may be raised even after the judgment becomes final.

Resting therefore on the foregoing, the Appellant respectfully requests that the Court disregard the two defenses raised by the State in the Brief of the Plaintiff-Appellee as neither applies, and proceed to the merits of the assignments of error raised in his brief.

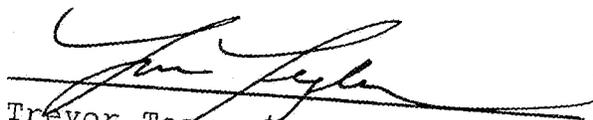
Respectfully submitted,



Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing reply brief was sent by first-class U.S. mail to Tracy F. Van Winkle, Assistant Licking County Prosecuting Attorney, 20 S. Second St., Fourth Floor, Newark, Ohio 43055, on the 14th day of October, 2013.



Trevor Teagarden #A575630  
DEFENDANT-APPELLANT, PRO SE

Jacqueline E. Gainer, RMR, CRR  
P.O. Box 692  
Garden Valley, ID 83622

FILED

07 CR 00739 &  
Case No. 13 CA 00047

September 9, 2013

The Honorable Judge David Branstool  
Licking County Common Pleas Court  
Courthouse  
Newark, OH 43055

Re: 7/21/08 Plea & Sentencing Hearing

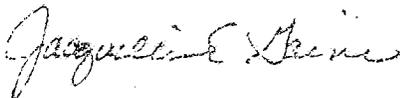
Dear Judge Branstool,

I was an official court reporter in the Licking County Common Pleas Court from April 1997 to June 2009. Some of my duties during this time included reporting a verbatim record of court proceedings, saving records of said proceedings and transcribing the same when requested to do so. Roughly once every month, my electronic steno note files were transferred from the flash memory card in my steno machine to three separate CDs for each period of time.

Since severing my employment with the Court in June of 2009, I have received several transcript requests. In attempting to retrieve any files stored on disks from July 2006 through June 2009, I have found that I was unable to retrieve and transcribe those electronic notes. When trying to access the files, the message simply says "The directory is corrupt or the disk is unreadable." I consulted several computer technicians about this issue, and none were able to retrieve any files. Though no one gave a specific reason, the general opinion was that there was a problem with the old laptop computer I used to produce those storage disks and they are unable to be read by or downloaded to any other computers. My old laptop hard drive crashed sometime in 2010 and was scrapped, so I was unable to attempt to retrieve files on that system.

I deeply regret the inconvenience this causes to all parties involved.

Sincerely,



Jacqueline E. Gainer

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

**FILED**

2013 DEC 13 P 3:27

CLERK OF COURTS  
OF APPEALS  
LICKING COUNTY OH  
GARY R. WALTERS

STATE OF OHIO

Plaintiff-Appellee

-vs-

TREVOR TEAGARDEN

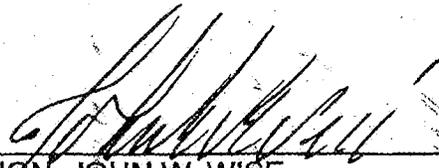
Defendant-Appellant

JUDGMENT ENTRY

Case No. 13 CA 47

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

Costs assessed to Appellant.

  
HON. JOHN W. WISE

  
HON. W. SCOTT GWIN

  
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

**FILED**

2013 DEC 13 P 3:27

CLERK OF COURTS  
OF APPEALS  
LICKING COUNTY OH  
GARY R. WALTERS

STATE OF OHIO

Plaintiff-Appellee

-vs-

TREVOR TEAGARDEN

Defendant-Appellant

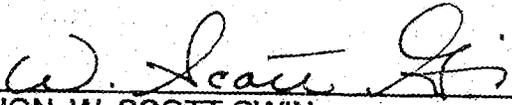
JUDGMENT ENTRY

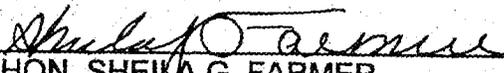
Case No. 13 CA 47

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

Costs assessed to Appellant.

  
\_\_\_\_\_  
HON. JOHN W. WISE

  
\_\_\_\_\_  
HON. W. SCOTT GWIN

  
\_\_\_\_\_  
HON. SHEILA G. FARMER

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A-20

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FILED

2013 DEC 13 P 3:27

CLERK OF COURTS  
OF APPEALS  
LICKING COUNTY OH  
GARY R. WALTERS

STATE OF OHIO

Plaintiff-Appellee

-vs-

TREVOR TEAGARDEN

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.  
Hon. Sheila G. Farmer, J.  
Hon. John W. Wise, J.

Case No. 13 CA 47

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 07 CR 00739

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

KENNETH W. OSWALT  
PROSECUTING ATTORNEY  
TRACY F. VAN WINKLE  
ASSISTANT PROSECUTOR  
20 South Second Street, Fourth Floor  
Newark, Ohio 43055

For Defendant-Appellant

TREVOR TEAGARDEN  
PRO SE  
2338 North West Street  
Lima, Ohio 45801

SCANNED

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A-21

Wise, J.

{¶1} Appellant Trevor J. Teagarden appeals the May 9, 2013, Judgment Entry of the Licking County Common Pleas Court denying his motion to set aside his 2008 conviction for Trafficking in Controlled Substances following a plea of guilty.

{¶2} Appellee is State of Ohio.

{¶3} This case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶4} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form."

{¶5} This appeal shall be considered in accordance with the aforementioned rule.

#### STATEMENT OF THE FACTS AND CASE

{¶6} On September 21, 2007, Appellant was incarcerated at the Licking County Justice Center on charges in an unrelated Case.1 On that date, Appellant gave an envelope to a deputy to mail out of the jail. The deputy, feeling a hard object inside the envelope, inspected the outside of the envelope and noticed the recipient's address was identical to the return address. Because Appellant had previously been disciplined for hoarding medications, the deputy believed that the Appellant was trying to mail a pill out of the facility. The envelope was opened and a pill was found inside. Appellant was

interviewed and admitted to trying to mail prescription medication to a friend outside the jail.

{¶17} On November 6, 2007, Appellant was indicted on one count of Aggravated Possession of Drugs, in violation of R.C. §2925.11(A)(C)(1)(a), a felony of the fifth degree.

{¶18} Appellant was appointed counsel and on November 27, 2007, he entered a not guilty plea.

{¶19} On January 1, 2008, Appellant's court appointed counsel withdrew from the case as Appellant had retained private counsel. The court appointed a second attorney on January 28, 2008.

{¶10} On July 21, 2008, Appellant appeared in court for a Change of Plea and Sentencing Hearing. At that time, a motion to amend the indictment was filed, amending the charge without objection, from Aggravated Possession of Drugs to Trafficking in Controlled Substances, a felony of the fourth degree. On that same date, Appellant entered a guilty plea to the amended charge and the trial court sentenced Appellant to a term of six months in prison to be served consecutively with the sentence imposed in a separate case.

{¶11} On December 26, 2012, Appellant filed a motion to set aside his conviction. Said motion was denied on May 9, 2013.

{¶12} It is from that judgment that Appellant now appeals, assigning the following errors for review:

**ASSIGNMENTS OF ERROR**

{¶13} "I. THE TRIAL COURT ERRED, AND DUE PROCESS WAS DENIED, WHEN THE COURT DENIED THE APPELLANT'S PETITION TO VACATE OR SET ASIDE JUDGMENT OF CONVICTION OR SENTENCE.

{¶14} "II. THE TRIAL COURT ERRED WHEN IT ALLOWED AMENDMENT OF THE FATALLY DEFECTIVE INDICTMENT, THUS CHANGING THE NAME OR IDENTITY OF THE OFFENSE CHARGED THEREFROM, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AS WELL AS SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION.

{¶15} "III. COUNSEL PROVIDED INEFFECTIVE ASSISTANCE, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, FOR FAILING TO OBJECT TO THE STATE'S MOTION TO AMEND THE INDICTMENT.

{¶16} "IV. THE JUDGMENT GRANTING THE STATE'S MOTION TO AMEND THE INDICTMENT IS VOID, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, THUS THE SUBSEQUENT JUDGMENT OF CONVICTION IS VOID AND MUST BE VACATED."

**I. II., III. and IV.**

{¶17} In his Assignments of Error, Appellant argues that the trial court erred in denying his petition to vacate or set aside his conviction or sentence. We disagree.

{¶18} Upon review, we find that Appellant's motion to vacate or set aside his conviction or sentence is actually a petition for post-conviction relief under R.C.

§2953.21. Where a criminal defendant, subsequent to direct appeal, files a motion seeking to vacate or correct his sentence on the basis that his constitutional rights were violated, such a motion is a petition for post-conviction relief under R.C. §2953.21. *State v. Reynolds*, 79 Ohio St.3d 158, 160, 679 N.E.2d 1131, 1997-Ohio-304.

{¶19} Issues which were raised previously or could have been raised previously in an appeal but were not are barred by the doctrine of res judicata. *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus.

{¶20} In the case sub judice, we find that Appellant could have raised the claimed errors on direct appeal of his sentencing entry but failed to do so. The issues raised by Appellant in his petition to vacate or set aside his judgment of conviction or sentence are therefore res judicata.

{¶21} Accordingly, Appellant's Assignments of Error are overruled.

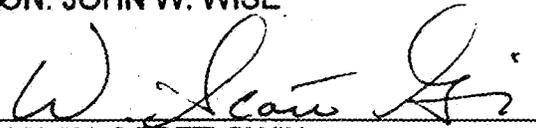
{¶22} For the foregoing reasons, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

  
\_\_\_\_\_  
HON. JOHN W. WISE

  
\_\_\_\_\_  
HON. W. SCOTT GWIN

  
\_\_\_\_\_  
HON. SHEILA G. FARMER

JWWW/d 0503

FILED

IN THE COURT OF APPEALS OF OHIO  
FIFTH JUDICIAL DISTRICT  
LICKING COUNTY

2014 JAN -2 P 1:27

CLERK OF COURTS  
OF APPEALS  
LICKING COUNTY OH  
GARY R. WALTERS

STATE OF OHIO,

Plaintiff-Appellee,

vs.

Case No. 13-CA-0047

TREVOR TEAGARDEN,

Defendant-Appellant.

---

APPELLANT'S MOTION FOR LEAVE OF COURT TO SUPPLEMENT BRIEF

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Now comes the Defendant-Appellant, Trevor Teagarden, pro se, who hereby moves this Honorable Court for leave to supplement his brief in the appeal captioned above. A memorandum in support is attached showing good cause as to why the Court should grant leave, and is to be incorporated as if fully contained herein.

Respectfully submitted,

  
Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
Phone: (419) 224-8000  
DEFENDANT-APPELLANT, PRO SE

A-26

MEMORANDUM IN SUPPORT

Defendant-Appellant Trevor Teagarden (hereinafter "Appellant"), pro se, respectfully requests that the Court grant him leave to supplement his brief on appeal. Cause for the motion to be granted is simply that the information upon which the supplement is based was not provided to the Appellant (or this Court) until nearly two months after the Appellant filed his brief. Said information was provided in a document filed by the Official Court Reporter on September 13, 2013, which advised all parties that there is no record available of the trial court proceedings in this case. Because this new information did not emerge until after the appellant had filed his brief, he was precluded from addressing its impact in his brief.

Additionally, the information was unexpected and is atypical in an appeal. Thus, the appellant was unprepared to respond to the information immediately, as this Court might otherwise be inclined to expect. This is so because the appellant is proceeding pro se and has no legal training whatsoever, and requires countless hours to research matters of law that may otherwise be common knowledge to a licensed, seasoned attorney. Whereas, the appellant was fully prepared to present his assignments of error (and a reply brief) in a manner in which this Court is entitled to expect - as to this new information - it would be unreasonable to expect the Appellant to be prepared to address its impact any more timely than he has. As such, there does exist sufficient cause for the Court to grant leave for the Appellant to enter argument in response to the new information. Had the Court Reporter filed the document in accordance with the deadlines set in

App. R. 9, the information could have been properly addressed as is provided for in App. R. 9.

I. TRANSCRIPT OF PROCEEDINGS PURSUANT TO APP. R. 9(A) AND 9(B)

In essence, the document filed on September 13, 2013, advised this Court and all parties that there were no transcripts available of the trial court proceedings. The reason, were were told, was because the only record of the trial court proceedings was stored on computer disks, and that all files stored on disks "from July 2006 through June 2009" were "corrupt" and unreadable. (See paragraph 2). The information is attested to by the Official Court Reporter, Jacqueline E. Gainer, RMR, CRR. The time period being attested to as being "corrupt" encompasses all of the trial court proceedings in the Appellants case. As a result, we were advised that there can be no "transcript of proceedings" as defined in App. R. 9.

App. R. 9(A) states that "[t]he original papers and exhibits thereto filed in the trial court, the transcript of the proceedings, ... including exhibits, and a certified copy of the docket and journal entries prepared by the trial court shall constitute the record on appeal in all cases." And App. R. 9(B) states that "[a]t the time of filing the notice of appeal the appellant, in writing, shall order from the reporter a complete transcript ... for inclusion in the record and file a copy of the order with the clerk." In the instant case, the Appellant fully complied with Rule 9(B) and filed the proper documents seeking a transcript on June 4, 2013. However, over three months later, the Appellant was told (through a document filed with the Court) that the State has failed in its duty to main-

tain a record of his criminal trial proceedings, and thus he would be denied this basic right to have a transcript of proceedings on appeal.

II. STATEMENT OF PROCEEDINGS PURSUANT TO APP. R. 9(C) AND 9(D)

App. R. 9(C) provides that "if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection." And, "[t]he Ohio Supreme Court has described App. R. 9(C) narrative statement as 'an available, reliable alternative[.]'" Columbus v. Link, 127 Ohio App.3d 122, 125, 711 N.E.2d 1046 (10th Dist. 1998). The procedure in such circumstances is that an appellant is to serve the statement upon the appellee, who may serve objections (or propose amendments) to the appellant. Thereafter, "[t]he statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval." App. R. 9(C). Of course, the time for resolution of such issues by the trial court has been exceeded in the instant case. However, the Appellant cannot be faulted and should therefore not be prejudiced by this predicament. Clearly fault rests solely on the State, as it is the party charged with maintaining records of criminal cases. Further, notice that a problem existed was not even provided by State officials until three months after the appeal was initiated by filing the notice of appeal, which is well beyond the time for the various corrections and remedies provided for by the appellate rules.

Nevertheless, the predicament is before this Court (and the parties) and must be resolved. Should this Court entertain resolution

pursuant to Rule 9 of the Ohio Rules of Appellate Procedure, the Court should also entertain a motion to appoint counsel for the Appellant, at least for the sole purpose of resolving the matter properly and fairly. However, it is of the utmost importance for the Court to understand that the very first (and most significant) issue is clearly in conflict and likely will never be resolved. In the Brief of the Appellee, counsel opposite stated that, at the hearing on July 21, 2008 (of which no record exists) the indictment was amended "without objection." (Pg. 1, par. 1). To the best of the Appellant's recollection, defense counsel did object to the amendment. In fact, the appellant retains evidence from the record supporting this recollection (and it negates counsel opposites contention). In the appendix to Appellant's Brief, he provided the Judgment Entry regarding the amendment, which clearly substantiates that defense counsel refused to sign the document. (Appendix, pg. A-5).

### III. EXISTING RECORD ON APPEAL SUFFICIENT FOR RESOLUTION OF APPEAL

The Appellant hereby asserts that the existing record on appeal is sufficient to allow the Court to provide a meaningful review of the merits of the Appellant's claims for relief. *Farmers Production Credit Assn. of Ashland v. Stoll*, 37 Ohio App.3d 76, 523 N.E.2d 899 (1987). In fact, it is appellant's understanding and belief that the documents included in the appendix to his brief are sufficient to warrant the relief sought in the brief. This is so because the claims lead to the inescapable conclusion that the judgment is void due to a fatal amendment to the indictment, and an indictment that was fatally defective upon issue.

Because this is so, any further developments in the trial court proceedings could not cure or otherwise correct the fatalities. Regardless, a claim such as that made by counsel opposite that the indictment was amended "without objection" cannot be considered by this Court in the instant appeal because it is unsupported by the record (whereas the appellant's contra claim is supported by the record). See *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), holding that a reviewing court cannot add matter to the record before it, which was not part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.

#### IV. ONLY ALTERNATIVE TO RELIEF WOULD BE NEW TRIAL

If this Court is not inclined to grant the relief sought by the Appellant in his brief, the only proper alternative would be to vacate his conviction and order a new trial. This is so because, if the Court is not convinced through the record available that the Appellant is entitled to relief, then the appellant would need to look to the missing transcript for further support of his claims. However, through no fault of his own, he is being denied access to the support because the State has failed to maintain a record of the trial court proceedings. See *State v. Jones*, 71 Ohio St.3d 293, 643 N.E.2d 547 (1994), holding that in the event that a criminal defendant's misconduct is not determined to be the cause of the nonproduction of the appellate record, absence of the record may require reversal of the underlying conviction and the grant of a new trial. In the instant case, the circumstances certainly support a reversal and a new trial.

V. CONCLUSION

It is clear from the record that does exist, and moreso because of the claims involved in the instant appeal, that the appellant is entitled to the relief sought. However, it is equally clear that the Appellant is being denied rights protected by the Ohio and United States Constitutions in that the State has failed to maintain and produce records of the trial court proceedings. This failure to produce a record for this Court's review cannot be attributed to any misconduct by the Appellant. In fact, if the Court concludes that the Appellant is not entitled to relief, it can only be because he was unable to fully support his claims due to the lack of a transcript of the proceedings - the fault of the State. Certainly it has been substantiated in the foregoing that an agreed statement of the record pursuant to App. R. 9(C) or App. R. 9(D) is not likely to be achieved. Regardless, as clearly and convincingly substantiated, the Appellant is entitled to either (1) receive the relief sought in the instant appeal; or (2) be remanded back to the trial court for a new trial.

Respectfully submitted,

  
Trevor Teagarden #A575630  
Allen Correctional Institution  
Attention C-Unit  
2338 North West St.  
Lima, Ohio 45801  
Phone: (419) 224-8000  
DEFENDANT-APPELLANT, PRO SE

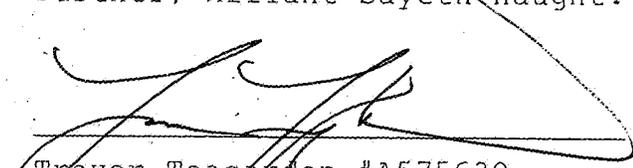
IN THE SUPREME COURT OF OHIO

STATE Ex Rel., TREVOR TEAGARDEN, )  
 Relator, ) Case No. \_\_\_\_\_  
 vs. )  
 JUDGE W. DAVID BRANSTOOL, ) Original Action in Mandamus  
 Respondent. )

RELATOR'S AFFIDAVIT IN SUPPORT OF THE PETITION

I, Trevor Teagarden, being competent to make this declaration and having personal knowledge of the matters herein, after first being duly sworn and cautioned on my oath under penalty of perjury, do hereby attest to the following:

- 1) All facts stated in my petition are true and correct.
  - 2) All exhibits in support of my petition are true documents and have not been altered in any way (other than adding page numbers).
- Further, Affiant sayeth naught.



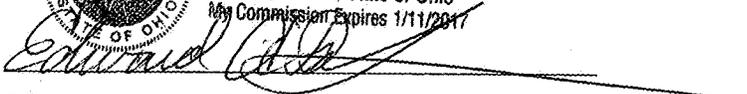
Trevor Teagarden #A575630  
 ACI, Attn: C-Unit  
 2338 N. West St.  
 Lima, Ohio 45801  
 RELATOR, PRO SE

NOTARY PUBLIC

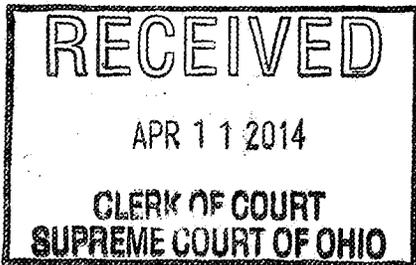
Sworn to and subscribed in my presence, a Notary Public for the State of Ohio on this 8<sup>th</sup> day of MARCH, 2014.



EDWARD A. FISHER  
 Notary Public, State of Ohio  
 My Commission Expires 1/11/2017



Signature of Notary Public



IN THE SUPREME COURT OF OHIO

STATE Ex Rel., TREVOR TEAGARDEN, )  
 Relator, ) Case No. \_\_\_\_\_  
 vs. )  
 JUDGE W. DAVID BRANSTOOL, ) Original Action in Mandamus  
 Respondent. )

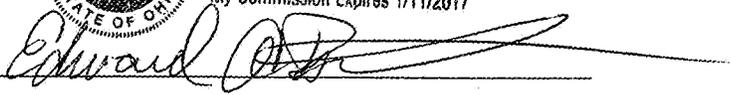
RELATOR'S AFFIDAVIT OF INDIGENCY

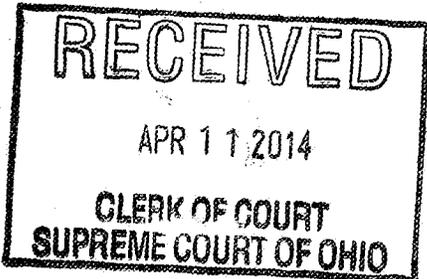
I, Trevor Teagarden, being competent to make this declaration and having personal knowledge of the matters herein, after first being duly sworn and cautioned on my oath under penalty of perjury, do hereby attest that I cannot afford the costs involved in this action, or legal representation, as I am indigent. I have enclosed a prison account statement as required by R.C. § 2969.25(C)(1). I understand that I am to notify the Court if my indigent status changes. Further, Affiant sayeth naught.

  
 Trevor Teagarden #A575630  
 ACI, Attn: C-Unit  
 2338 N. West St.  
 Lima, Ohio 45801  
 RELATOR, PRO SE

NOTARY PUBLIC

Sworn to and subscribed in my presence, a Notary Public for the State of Ohio, this 9<sup>th</sup> day of MARCH, 2014.

  
 EDWARD A. FISHER  
 Notary Public, State of Ohio  
 My Commission Expires 1/11/2017  
  
 Signature of Notary Public



IN THE SUPREME COURT OF OHIO

STATE Ex Rel., TREVOR TEAGARDEN, )

Relator, )

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

vs. )

JUDGE W. DAVID BRANSTOOL, )

Original Action in Mandamus

Respondent. )

RELATOR'S AFFIDAVIT FOR WAIVER OF PREPAYMENT OF FILING FEES

I, Trevor Teagarden, being competent to make this declaration and having personal knowledge of the matters herein, after first being duly sworn and cautioned on my oath under penalty of perjury, do hereby attest that (1) I am without the means to pay for the costs involved in this action; (2) I have no assets with which to offer as security to pay said costs; and (3) I have attached a statement that sets forth the balance in my inmate account for each of the preceeding six months, which has been certified by the institutional cashier as required by R.C. § 2969.25(C)(1).

Further, Affiant sayeth naught.

*[Handwritten Signature]*

Trevor Teagarden #A575630  
ACI, Attn: C-Unit  
2338 N. West St.  
Lima, Ohio 45801  
RELATOR, PRO SE

NOTARY PUBLIC

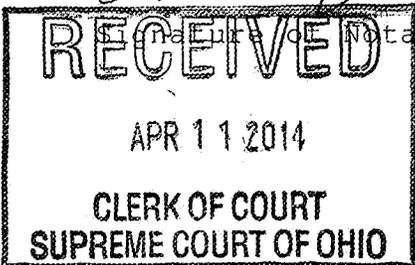
Sworn to and subscribed in my presence, a Notary Public for the State of Ohio, this 8<sup>TH</sup> day of MARCH, 2014.



EDWARD A. FISHER  
Notary Public, State of Ohio  
My Commission Expires 1/11/2017

*[Handwritten Signature]*

Signature of Notary Public



IN THE SUPREME COURT OF OHIO

STATE Ex Rel., TREVOR TEAGARDEN, )  
Relator, ) Case No. \_\_\_\_\_  
vs. )  
JUDGE W. DAVID BRANSTOOL, ) Original Action in Mandamus  
Respondent. )

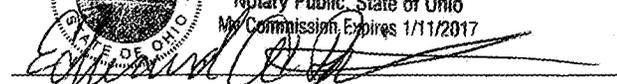
RELATOR'S AFFIDAVIT PURSUANT TO O.R.C. § 2969.25(A)

I, Trevor Teagarden, being competent to make this declaration and having personal knowledge of the matters herein, after first being duly sworn and cautioned on my oath under penalty of perjury, do hereby attest that I have not commenced any civil actions against government entities or employees in the previous five years in any state or federal court. The only possible exceptions would be the actions related to a criminal appeal, however I do not believe that such actions comport with the intent of RC 2969.25. Nevertheless, I sought habeas corpus relief in the U.S. District Court (Southern - Ohio), case # 2:10-cv-495; which was appealed to the 6th Circuit in case # 11-3705; and then certiorari with the U.S. Supreme Court in case # 12-10658; and ended with mandamus with the Ohio Supreme Court in case # 2013-1424. All relief sought above was denied. Further, Affiant sayeth naught.

  
Trevor Teagarden #A575630  
ACI, Attn: C-Unit  
2338 N. West St.  
Lima, Ohio 45801  
RELATOR, PRO SE

NOTARY PUBLIC

Sworn to and subscribed in my presence, a Notary Public for the State of Ohio this 8<sup>th</sup> day of MARCH, 2014.

  
  
Signature of Notary Public

**RECEIVED**  
APR 11 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

CERTIFICATE

(To be completed by the institution of incarceration)

Teagarden  
A 575630  
(2/27/14)

I certify that the applicant named herein has the sum of \$ 3465 on account to his/her credit at (name of institution) Allen Oakwood Correctional Inst.. I further certify that during the past six months the applicant's average monthly balance was \$ 39.25 and the applicant's average monthly deposits were \$ 129.20. I have attached a certified copy of the applicant's prison trust fund account statement showing at least the past six months' transactions.

I further certify that the applicant does/does not have a secondary savings account(s), such as a certificate of deposit or a savings bond. The secondary account(s) balance is \$ N/A.

3/6/14  
DATE

Jackie Bechtel, AOC Cashier  
SIGNATURE OF AUTHORIZED OFFICER

02/28/2014

Allen Correctional Institution

Inmate Demand Statement

Inmate Name: TEAGARDEN, TREVOR J

Number: A575630

Lock Location: ACI,E2,EH2,T,,218

Date Range: 08/28/2013 Through 02/28/2014

Beginning Account Balances:

Ending Account Balances:

	Saving	Debt	Payable		Saving	Debt	Payable
Electronics Usage	\$0.00	\$0.00	\$1.00	Electronics Usage Charge	\$0.00	\$0.00	\$1.00
Inmate's Personal	\$1.37	\$0.00	\$0.00	Inmate's Personal Account	\$34.65	\$0.00	\$0.00
<b>Begin Totals</b>	<b>\$1.37</b>	<b>\$0.00</b>	<b>\$1.00</b>	<b>End Totals</b>	<b>\$34.65</b>	<b>\$0.00</b>	<b>\$1.00</b>

Transaction Date / Inst.	Transaction Amount	Description	Comment	Saving Balance	Debt Balance	Payable Balance
08/29/2013	\$70.00	OffConnect Kiosk Deposit	4667303200614277427/TEAGARDEN, DONALD	\$71.37	\$0.00	\$1.00
ACI						
08/30/2013	(\$1.00)	Payment to Treasurer, State of Ohio	August 2013 ECP	\$71.37	\$0.00	\$0.00
ACI						
09/01/2013	(\$15.00)	Inmate's Personal Account	POS Exemption Transfer	\$56.37	\$0.00	\$0.00
ACI						
09/01/2013	\$15.00	Pos Exemption	POS Exemption Transfer	\$71.37	\$0.00	\$0.00
ACI						
09/04/2013	(\$31.48)	Commissary Sale	Ticket Number 36464	\$39.89	\$0.00	\$0.00
ACI						
09/04/2013	(\$11.35)	Commissary Sale	Ticket Number 36482	\$28.54	\$0.00	\$0.00
ACI						
09/06/2013	\$18.00	State Pay	State Pay	\$46.54	\$0.00	\$0.00
ACI						
09/06/2013	(\$1.00)	Electronics Usage Charge	Electronic Usage Charge	\$45.54	\$0.00	\$1.00
ACI						
09/11/2013	(\$1.10)	Copy Charges		\$44.44	\$0.00	\$1.00
ACI						
09/12/2013	(\$33.00)	Commissary Sale	Ticket Number 36741	\$11.44	\$0.00	\$1.00
ACI						
09/18/2013	\$50.00	OffConnect Kiosk Deposit	4689323717135196466/Teagarden, Donald	\$61.44	\$0.00	\$1.00
ACI						
09/19/2013	(\$59.56)	Commissary Sale	Ticket Number 36999	\$1.88	\$0.00	\$1.00
ACI						

09/25/2013	\$10.00 OffConnect Kiosk Deposit	4706658157796548914/Mu rgatroyd, Patricia	\$11.88	\$0.00	\$1.00
ACI					
09/25/2013	(\$10.93) Commissary Sale	Ticket Number 37192	\$0.95	\$0.00	\$1.00
ACI					
09/26/2013	\$79.72 Release of Claim	Ohio DRC	\$80.67	\$0.00	\$1.00
ACI					
09/27/2013	(\$0.60) Copy Charges		\$80.07	\$0.00	\$1.00
ACI					
10/01/2013	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$65.07	\$0.00	\$1.00
ACI					
10/01/2013	\$15.00 Pos Exemption	POS Exemption Transfer	\$80.07	\$0.00	\$1.00
ACI					
10/02/2013	(\$33.46) Commissary Sale	Ticket Number 37338	\$46.61	\$0.00	\$1.00
ACI					
10/03/2013	(\$1.00) Payment to Treasurer, State of Ohio	Sept. 2013 Electronics	\$46.61	\$0.00	\$0.00
ACI					
10/04/2013	\$18.00 State Pay	State Pay	\$64.61	\$0.00	\$0.00
ACI					
10/04/2013	(\$1.00) Electronics Usage Charge	Electronic Usage Charge	\$63.61	\$0.00	\$1.00
ACI					
10/10/2013	(\$0.40) Copy Charges		\$63.21	\$0.00	\$1.00
ACI					
10/10/2013	(\$45.64) Commissary Sale	Ticket Number 37632	\$17.57	\$0.00	\$1.00
ACI					
10/11/2013	(\$1.00) Copy Charges		\$16.57	\$0.00	\$1.00
ACI					
10/14/2013	\$60.00 OffConnect Kiosk Deposit	4734166756097548594/Te agarden, Donald	\$76.57	\$0.00	\$1.00
ACI					
10/16/2013	(\$27.93) Commissary Sale	Ticket Number 37902	\$48.64	\$0.00	\$1.00
ACI					
10/21/2013	\$30.00 OffConnect Kiosk Deposit	4737071232227762482/M URGATROYD, PATRICIA	\$78.64	\$0.00	\$1.00
ACI					
10/24/2013	(\$23.76) Commissary Sale	Ticket Number 38028	\$54.88	\$0.00	\$1.00
ACI					
10/25/2013	(\$2.00) Medical Co-Payment	AOCI 10/24/13	\$52.88	\$0.00	\$3.00
ACI					
10/30/2013	(\$28.32) Commissary Sale	Ticket Number 38239	\$24.56	\$0.00	\$3.00

ACI						
11/01/2013	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$9.56	\$0.00	\$3.00	
ACI						
11/01/2013	\$15.00 Pos Exemption	POS Exemption Transfer	\$24.56	\$0.00	\$3.00	
ACI						
11/01/2013	(\$2.00) Payment to Medical Co-Pay Fund	October 2013 Medical Co-Pays	\$24.56	\$0.00	\$1.00	
ACI						
11/01/2013	(\$1.00) Payment to Treasurer, State of Ohio	October 2013 Electronic Co-Pays	\$24.56	\$0.00	\$0.00	
ACI						
11/06/2013	(\$19.45) Commissary Sale	Ticket Number 38360	\$5.11	\$0.00	\$0.00	
ACI						
11/08/2013	\$18.00 State Pay	State Pay	\$23.11	\$0.00	\$0.00	
ACI						
11/08/2013	(\$1.00) Electronics Usage Charge	Electronic Usage Charge	\$22.11	\$0.00	\$1.00	
ACI						
11/14/2013	(\$2.00) Medical Co-Payment	AOCI 11/12/13	\$20.11	\$0.00	\$3.00	
ACI						
11/14/2013	(\$19.42) Commissary Sale	Ticket Number 38693	\$0.69	\$0.00	\$3.00	
ACI						
12/01/2013	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$0.69	\$0.00	\$3.00	
ACI						
12/02/2013	\$50.00 OffConnect Kiosk Deposit	4788337594396598579/Teagarden, Donald	\$50.69	\$0.00	\$3.00	
ACI						
12/02/2013	(\$2.00) Payment to Medical Co-Pay Fund	November 2013 Medical Co-Pays	\$50.69	\$0.00	\$1.00	
ACI						
12/02/2013	(\$1.00) Payment to Treasurer, State of Ohio	November 2013 Electronic Co-Pays	\$50.69	\$0.00	\$0.00	
ACI						
12/03/2013	\$0.00 \$0.20 Reservation to EPC Release Funds	Hold #635 copies	\$50.69	\$0.00	\$0.00	
ACI						
12/03/2013	\$0.00 Reversed \$-0.20 Reservation to EPC Release Funds	Reversed Task No. 37844429	\$50.69	\$0.00	\$0.00	
ACI						
12/03/2013	\$0.00 \$0.20 Reservation to Miscellaneous Holds	Hold #635 copies	\$50.69	\$0.00	\$0.00	
ACI						
12/04/2013	(\$20.00) JPay Media Credits	Automated JPay Media Credits	\$30.69	\$0.00	\$0.00	

ACI					
12/04/2013	(\$0.20) Postage Charges (USPS)	Hold #635 copies	\$30.49	\$0.00	\$0.00
ACI					
12/04/2013	\$0.20 Reversed Postage Charges (USPS)	Reversed Task No. 37859743	\$30.69	\$0.00	\$0.00
ACI					
12/04/2013	(\$0.20) Copy Charges	Hold #635 copies	\$30.49	\$0.00	\$0.00
ACI					
12/04/2013	(\$28.59) Commissary Sale	Ticket Number 39083	\$1.90	\$0.00	\$0.00
ACI					
12/06/2013	\$13.50 State Pay	State Pay	\$15.40	\$0.00	\$0.00
ACI					
12/06/2013	(\$1.00) Electronics Usage Charge	Electronic Usage Charge	\$14.40	\$0.00	\$1.00
ACI					
12/10/2013	\$35.00 OffConnect Kiosk Deposit	4815765041421246771/Mu rgatroyd, Patricia	\$49.40	\$0.00	\$1.00
ACI					
12/12/2013	(\$37.06) Commissary Sale	Ticket Number 39503	\$12.34	\$0.00	\$1.00
ACI					
12/12/2013	(\$2.56) Commissary Sale	Ticket Number 39504	\$9.78	\$0.00	\$1.00
ACI					
12/14/2013	(\$1.00) JPay Media Credits	Automated JPay Media Credits	\$8.78	\$0.00	\$1.00
ACI					
12/17/2013	\$20.00 OffConnect Kiosk Deposit	4818155261169000754/Mu rgatroyd, Patricia	\$28.78	\$0.00	\$1.00
ACI					
12/19/2013	(\$8.57) Postage Charges (USPS)		\$20.21	\$0.00	\$1.00
ACI					
12/19/2013	(\$1.52) Postage Charges (USPS)		\$18.69	\$0.00	\$1.00
ACI					
12/19/2013	(\$18.19) Commissary Sale	Ticket Number 39655	\$0.50	\$0.00	\$1.00
ACI					
12/20/2013	(\$0.05) Copy Charges		\$0.45	\$0.00	\$1.00
ACI					
12/23/2013	\$60.00 OffConnect Kiosk Deposit	4836063998047183154/Te agarden, Donald	\$60.45	\$0.00	\$1.00
ACI					
12/23/2013	(\$28.94) Commissary Sale	Ticket Number 39828	\$31.51	\$0.00	\$1.00
ACI					
12/24/2013	\$0.00 \$4.90 Reservation to Miscellaneous Holds	Hold #727 copies	\$31.51	\$0.00	\$1.00

ACI						
12/30/2013	(\$1.32) Postage Charges (USPS)	POSTAGE	\$30.19	\$0.00	\$1.00	
ACI						
12/30/2013	(\$1.92) Postage Charges (USPS)	POSTAGE	\$28.27	\$0.00	\$1.00	
ACI						
12/31/2013	\$17.00 OffConnect Kiosk Deposit	4845623975648715058/M URGATROYD, PATRICIA	\$45.27	\$0.00	\$1.00	
ACI						
01/01/2014	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$30.27	\$0.00	\$1.00	
ACI						
01/01/2014	\$15.00 Pos Exemption	POS Exemption Transfer	\$45.27	\$0.00	\$1.00	
ACI						
01/01/2014	(\$2.00) JPay Media Credits	Automated JPay Media Credits	\$43.27	\$0.00	\$1.00	
ACI						
01/02/2014	\$80.00 OffConnect Kiosk Deposit	4845624705994481970/Mu rgatroyd, Patricia	\$123.27	\$0.00	\$1.00	
ACI						
01/02/2014	(\$32.39) Commissary Sale	Ticket Number 39957	\$90.88	\$0.00	\$1.00	
ACI						
01/02/2014	(\$3.58) Commissary Sale	Ticket Number 39970	\$87.30	\$0.00	\$1.00	
ACI						
01/03/2014	(\$1.00) Payment to Treasurer, State of Ohio	ELECTRICAL PAYMENT JAN 2014	\$87.30	\$0.00	\$0.00	
ACI						
01/03/2014	\$18.00 State Pay	State Pay	\$105.30	\$0.00	\$0.00	
ACI						
01/03/2014	(\$1.00) Electronics Usage Charge	Electronic Usage Charge	\$104.30	\$0.00	\$1.00	
ACI						
01/05/2014	(\$10.00) JPay Media Credits	Automated JPay Media Credits	\$94.30	\$0.00	\$1.00	
ACI						
01/06/2014	(\$2.50) JPay Media Credits	Automated JPay Media Credits	\$91.80	\$0.00	\$1.00	
ACI						
01/07/2014	(\$4.90) Copy Charges	Hold #727 copies	\$86.90	\$0.00	\$1.00	
ACI						
01/09/2014	(\$0.80) Copy Charges		\$86.10	\$0.00	\$1.00	
ACI						
01/09/2014	(\$37.18) Commissary Sale	Ticket Number 40351	\$48.92	\$0.00	\$1.00	
ACI						
01/09/2014	\$0.00 \$1.80 Reservation to Miscellaneous Holds	Hold #752 copies	\$48.92	\$0.00	\$1.00	

ACI					
01/15/2014	(\$32.66) Commissary Sale	Ticket Number 40541	\$16.26	\$0.00	\$1.00
ACI					
01/17/2014	(\$1.80) Copy Charges	Hold #752 copies	\$14.46	\$0.00	\$1.00
ACI					
01/22/2014	(\$4.00) Copy Charges		\$10.46	\$0.00	\$1.00
ACI					
01/22/2014	(\$8.69) Commissary Sale	Ticket Number 40752	\$1.77	\$0.00	\$1.00
ACI					
01/27/2014	\$60.00 OffConnect Kiosk Deposit	4881659801163555122/Te agarden, Donald	\$61.77	\$0.00	\$1.00
ACI					
01/27/2014	\$0.00 \$5.00 Reservation to Miscellaneous Holds	Hold #814 copies	\$61.77	\$0.00	\$1.00
ACI					
01/27/2014	(\$2.72) Postage Charges (USPS)		\$59.05	\$0.00	\$1.00
ACI					
01/27/2014	(\$2.72) Postage Charges (USPS)		\$56.33	\$0.00	\$1.00
ACI					
01/28/2014	(\$41.96) Commissary Sale	Ticket Number 40878	\$14.37	\$0.00	\$1.00
ACI					
01/29/2014	(\$5.00) Copy Charges	Hold #814 copies	\$9.37	\$0.00	\$1.00
ACI					
02/01/2014	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$9.37	\$0.00	\$1.00
ACI					
02/03/2014	(\$1.00) Payment to Treasurer, State of Ohio	JANUARY 2014 ELECTRONICS	\$9.37	\$0.00	\$0.00
ACI					
02/04/2014	\$0.00 \$2.15 Reservation to Miscellaneous Holds	Hold #846 copies	\$9.37	\$0.00	\$0.00
ACI					
02/07/2014	(\$2.15) Copy Charges	Hold #846 copies	\$7.22	\$0.00	\$0.00
ACI					
02/07/2014	\$18.00 State Pay	State Pay	\$25.22	\$0.00	\$0.00
ACI					
02/07/2014	(\$1.00) Electronics Usage Charge	Electronic Usage Charge	\$24.22	\$0.00	\$1.00
ACI					
02/12/2014	(\$23.67) Commissary Sale	Ticket Number 41342	\$0.55	\$0.00	\$1.00
ACI					
02/26/2014	\$50.00 OffConnect Kiosk Deposit	4928423208721867058/Mu rgatroyd, Patricia	\$50.55	\$0.00	\$1.00

ACI  
 02/26/2014 (\$15.90) Commissary Sale Ticket Number 41857 \$34.65 \$0.00 \$1.00  
 ACI

Outstanding Debts:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
	Electronics Usage Charge						\$0.00

<b>Total Outstanding Case Balances</b>	<b>\$0.00</b>
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Outstanding Holds:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
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<b>Total Outstanding Case Holds</b>	<b>\$0.00</b>
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Outstanding Investments / EPC:

Investment Type	Investment Type Description	Invest Company	Company Description	Balance
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I certify this document is a true and accurate account of the inmate's financial record on file in my office.

*Jackie Bechtel, ACI Cashier*

Jackie Bechtel, ACI Cashier