

Now come the Respondents, Summit County Court of Common Pleas, Judge William Victor¹, Judge Mary Spicer, and Judge Thomas Teodosio, through undersigned counsel, and respectfully move the Court to dismiss Relator's petition for writs of Prohibition, Mandamus, and Procedendo as all issues are barred by the doctrine of *res judicata*. A memorandum in support is attached.

Respectfully submitted,

SHERRI BEVAN WALSH
Prosecuting Attorney

/s/ Colleen Sims
Colleen Sims
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Assistant Prosecuting Attorney
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Attorney for Respondents

¹ Relator stated Judge William Victor is deceased. Attorney for Respondents is unaware of a law authorizing any writ to be granted that would in effect order a dead person to act or not act.

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STATUTES

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MEMORANDUM

I. STATEMENT OF FACTS

The following five paragraphs note a majority of the multiple appeals relating to Summit County Court of Common Pleas Case No. CR1991-01-0135. On May 27, 1992, the Ninth Appellate Court reviewed the five errors noted by Mr. McIntyre's counsel and affirmed the convictions against Mr. McIntyre. *State v. McIntyre*, 9th Dist. No. 15348, 1992 WL 125251 (May. 27, 1992) *cause dismissed*, 66 Ohio St. 3d 1478, 612 N.E.2d 329 (1993) and *aff'd*, 67 Ohio St. 3d 1509, 622 N.E.2d 656 (1993). On May 7, 1993, Case No. 1992-1405, an appeal from Ninth District Case No. 15348, was dismissed for want of prosecution. *State v. McIntyre*, 66 Ohio St. 3d 1478, 612 N.E.2d 329, 329 (1993). As cited above, the Ohio Supreme Court, on November 24, 1993, affirmed the May 27, 1992 judgment of the court of appeals.

On October 25, 1995, the Ninth District affirmed the trial court's denial of Relator's petition for post conviction relief. *State v. McIntyre*, 9th Dist. No. 17095, 1995 WL 622895 (Oct. 25, 1995). On February 2, 1998, Relator filed an appeal of the January 13th decision in Case No. 15348 with the Ohio Supreme Court, Case No. 1998-0229. A certified copy of the January 13th decision is attached hereto as exhibit "A." On April 22, 1998, the appeal to the Ohio Supreme Court was dismissed. See exhibit "B" attached hereto.

In September of 2010, the Ninth District affirmed the trial court's decision to deny Relator's motion to vacate judgment. *State v. McIntyre*, 9th Dist. Summit No. 25292, 2010-Ohio-4658. In the September 30th decision the appellate court stated, "[t]hough final, it appears McIntyre's sentence was written incorrectly in his journal entry based on

the sentence announced at his sentencing hearing. Consequently, the trial court acted properly under Crim.R. 36 to correct a scrivener's error in the sentencing entry which omitted a portion of the sentence imposed upon McIntyre at his sentencing hearing.” *Id.* The Ninth District subsequently affirmed the trial court’s denial of Relator’s motion for leave to file a motion for a new trial. *State v. McIntyre*, 9th Dist. Summit No. 25666, 2011-Ohio-3668. While the appeal on Relator’s motion for leave to file a motion for a new trial was pending, Relator appealed the trial court’s denial to set a date on an outstanding charge on February 3, 2011. See exhibits “C” “D” and “E” attached hereto. While two appeals were pending, Nos. 25666 and 25800, Relator filed a motion to vacate his sentence with the trial court on February 24, 2011. See exhibit “F” attached hereto. The motion to vacate his sentence was denied by the trial court on March 30, 2011. This March 30th order was appealed to the Ninth District on April 19, 2011, No. 25898.² See exhibit “G” attached hereto. From April 19, 2011 to July 21, 2011, the day before the appellate court affirmed the trial court’s denial of a new trial (C.A. 25666), Relator had three (3) appeals pending with the Ninth District on the same criminal matter, C.A. Nos. 25666, 25800 and 25898. In December of 2011, the appellate court issued a decision on Case No. 25898 noting that the trial court correctly issued a journal entry denying the motion to vacate his sentence on the basis that it did not have jurisdiction to consider such a motion in light of McIntyre's pending appeals. *State v. McIntyre*, 9th Dist. Summit No. 25898, 2011-Ohio-6593, ¶ 4.

On December 30, 2011, the Ninth District issued an order on Case No. 25800 noting that the Relator is essentially asking the trial court to set a trial date for an

² On the same date, April 19, 2011, Relator also filed an appeal regarding his prior case CR85-02-0171A, Ninth District Court of Appeals Case No. 25899. See exhibit “H” attached hereto.

outstanding charge. See exhibit “E.” The Court advised the Relator he may want to file a motion to dismiss the outstanding charge. On July 10, 2012, Relator filed a motion to dismiss supplement two aggravated burglary with accompanied specification one to count one of supplement one and specification one to counts one of supplement two. See pages 18 and 19 of Relator’s Appendix Volume 7 of 7, docket entry number 315. However twelve days before, on June 28, 2012, the trial court granted the state’s motion to dismiss the count where no verdict was reached. See exhibit “I” attached hereto. On September 25, 2012, the trial court denied several motions including Relator’s motion to dismiss. See exhibit “J” attached hereto. On October 23, 2012, Relator appealed the trial court’s decision. The trial court’s decision was affirmed by the appellate court. *State v. McIntyre*, 9th Dist. Summit No. 26677, 2013-Ohio-2077, ¶ 16. There was no attempt by Relator to appeal the May 22nd decision to the Ohio Supreme Court.

On October 31, 2013, Relator filed a motion in the criminal case to correct a clerical mistake which was denied by the trial court on November 12, 2013. See exhibits “K” and “L” attached hereto. On July 18, 2014, Relator filed a motion to declare a mistrial. On December 2, 2014, the trial court denied the motion. See exhibit “M” attached hereto. The order dated December 2, 2014, was not appealed to the Ninth District Court of Appeals.

Relator filed a prior writ against Respondent Judge Thomas Teodosio. The Ninth District issued a decision dismissing the writ on February 21, 2013. See exhibit “N” attached hereto.

II. LAW AND ARGUMENT

A. Writs are not Meant to Act as a Substitute for an Appeal

i. Writ of Mandamus

Entitlement to a writ of mandamus requires that the petitioner have: (1) a clear legal right to the relief prayed for; (2) that respondent must have a clear legal duty to perform the requested act; and (3) petitioner must not have a plain and adequate remedy at law. *State ex rel. Weschester Estates, Inc. v. Bacon* 61 Ohio St.2d 42, 399 N.E.2d 81 (1980), ¶ 1 of the syllabus.

ii. Writ of Procedendo

Entitlement to a writ of procedendo requires that petitioner establish that: (1) the ruling is an exercise of judicial or quasi-judicial power; (2) the exercise of that power is unauthorized by law; and, (3) denial of the writ will result in injury for which no other adequate remedy exists. *State ex rel Jones v. Garfield Hts. Mun.* 77 Ohio St. 3d 447, 448 674 N.E.2d 1381 (1997).

iii. Writ of Prohibition

A writ of prohibition will lie when the judge is about to exercise judicial power, the exercise of that power is unauthorized by law, and the denial of the writ will result in injury for which no other adequate remedy exists; or it may be applied to correct the prior unauthorized acts of the lower court. *See Id.*; *See also State ex rel. Mayer v. Henson*, 97 Ohio St. 3d 376, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12.

iv. Multiple Appeals

The Ninth District Appellate Court determined that the contested sentencing entry amended with a later nunc pro tunc entry constitutes a final judgment. *State v. McIntyre*,

9th Dist. Summit No. 25292, 2010-Ohio-4658. There was no attempt to appeal this decision to the Ohio Supreme Court. Relator now petitions this Court to issue a slew of Writs of Procedendo, Mandamus, and Prohibition which in their totality would vacate all of Relator's charges, invalidate Relator's sentence, requiring the court to review Relator's case in its entirety. Relator McIntyre was convicted by a jury of felonious assault, aggravated burglary, and two firearm specifications.

Relator is entitled to none of the writs requested in light of the appellate history. A writ of mandamus will not issue when the Relator had a clear, plain remedy in the ordinary course of law. *State ex rel. Berger v. McMonagle*, (1983) 6 Ohio St. 3d 28, 30, 451 N.E.2d 225, 227 (citations omitted). It has been established that the "discretionary right of appeal constitutes a sufficiently plain and adequate remedy in the ordinary course of the law." *Id. citing State ex rel. Cleveland, v. Clandra*, 62 Ohio St.2d 121, 122, 403 N.E.2d 989 (1980).

The extraordinary relief provided by the issuance of a writ of procedendo is also appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Miley v. Parrot, Judge*, (1996) 77 Ohio St. 3d 64, 65, 671 N.E.2d 24 (1996). However, Relator is not entitled to a writ of procedendo where an appeal is available. *State ex rel. Neguse v. McIntosh*, 115 Ohio St. 3d 216, 2007-Ohio-4788, 874 N.E.2d 772. A writ of prohibition is also not to be used as a substitute for an appeal. *State ex rel. Stefanick v. Mun. Court of Marietta*, 21 Ohio St. 2d 102, 105, 255 N.E.2d 634, 636 (1970).

B. Final Appealable Orders Exist

Relator claims he has no final appealable order to appeal. However, the sentencing entry dated September 9, 1991, constitutes a final order. In *State v. McIntyre*, 9th Dist. Summit No. 25292, 2010-Ohio-4658 the Court of Appeals held that the judgment is final and that “the record reveals that the jury found McIntyre not guilty of the prior aggravated felony specification to the felonious assault count contained in his original indictment.” *Id.* ¶6. The entry sentencing entry has been signed by the appropriate justice, the entry contains a time stamp, a sentence, and recites that McIntyre was found guilty after a jury trial of felonious assault and specification to one count one; and aggravated burglary and specification to one count one of the supplement of the indictment. Therefore, a final appealable order exists. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-330, 893 N.E.2d 163, syllabus.

Relator has also claimed that no final appealable order exists on the charge in the indictment he was not convicted of because the justices involved lacked jurisdiction. Any claims that the justices involved in these proceedings lacked the jurisdiction to issue a final appealable order have been settled. “Because we have concluded that Judge Teodosio did not lack jurisdiction when his dismissed that count, there remains no pending count for retrial.” *State v. McIntyre*, Ninth Dist. No. 26619 (Feb 21, 2013), exhibit “N”.

Relator is seeking the issuance of these extraordinary writs in an attempt to re-hash errors previously appealed and raise new errors that could have been previously appealed. The courts have taken multiple steps in order to correct any extant clerical issues and ensure the proper disposal of Relator’s case. Because final appealable orders

exist, Relator possessed the opportunity to remedy any error by way of of appeal. Writs are not meant to replace the appellate process. *State ex rel., Signer v. Russo*, 8th Dist. Cuyahoga No. 85173, 2004-Ohio-4744, ¶ 7, citing *State ex rel. Sparto v. Juvenile Court of Drake County* 153 Ohio St. 64, 90 N.E.2d 598 (1950). Relator has sought to exploit clerical errors, which have been corrected, and the mass of paperwork generated over the past twenty four years in order to obtain the benefits provided by the issuance of such extraordinary writs.

C. Relator's Claims are Barred by the Doctrine of *Res Judicata*

It is well-established under Ohio law that the doctrine of res judicata prevents repeated attacks on a final judgment, applies to all issues that were or might have been previously litigated, and prohibits the consideration of issues that could have been raised on direct appeal. *See State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 16-17, citing *State v. Hutton*, 100 Ohio St.3d 176, 2003-Ohio-5607, 797 N.E.2d 948, ¶ 37; *State v. D'Ambrosio*, 73 Ohio St.3d 141, 143, 652 N.E.2d 710 (1995); *State v. Sanders*, 9th Dist. Summit No. 27189, 2014-Ohio-5115, citing *State v. Lowe*, 9th Dist. Summit No. 27199, 2014-Ohio-1817, ¶ 6. *State v. Lowe*, 9th Dist., Summit No. 25475, 2011-Ohio-3355, at ¶ 7 citing *State v. Brown*, 8th Dist. No. 84322, 2004-Ohio-6421, at ¶ 7, *State v. Perry* 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), ¶ 9 of the syllabus, *State v. Gau*, 11th Dist. Ashtabula No.2010-A-0013, 2010-Ohio-5516, at ¶ 19. The alleged errors, in counts one through sixteen, could have been raised either before trial or during a timely filed appeal.

III. CONCLUSION

Relator's petition is a repackaging of nearly every claim that has been previously raised since Relator's conviction. Because of the existence of a final appealable order relating to the convictions and the availability of appeal, the Court of appeals in *State v. McIntyre*, 2013-Ohio-2077, noted:

McIntyre has been before this Court more than a dozen times in appeals and original actions related to his 1991 conviction. *See, e.g., State v. McIntyre*, 9th Dist. No. 15348, 1992 WL 125251 (May 27, 1992) (direct appeal); *State v. McIntyre*, 9th Dist. No. 17095, 1995 WL 622895 (Oct. 25, 1995) (post-conviction relief appeal); *State ex rel. McIntyre v. Alexander*, 9th Dist. No. 22234, 2005-Ohio-160 (habeas appeal); *State v. McIntyre*, 9th Dist. No. 25292, 2010-Ohio-4658; *State v. McIntyre*, 9th Dist. No. 25666, 2011-Ohio-3668; *State v. McIntyre*, 9th Dist. No. 25898, 2011-Ohio-6593; *State v. McIntyre*, 9th Dist. No. 25800 (Dec. 30, 2011). He has had ample opportunity to raise any alleged error in his sentence, but has failed to do so.

Id. ¶11.

WHEREFORE, it is respectfully requested that the Ohio Supreme Court dismiss the Complaint for Writs of Prohibition, Mandamus, and Procedendo for the reasons stated above.

Respectfully submitted,
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Prosecuting Attorney
/s/ Colleen Sims
Colleen Sims
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Attorney for Respondents

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent via regular U.S. Mail Service to: Stephen Hanudel, Attorney for Relator, 124 Middle Ave., Suite 900, Elyria, Ohio 44035, this Tuesday, February 10, 2015.

/s/ Colleen Sims
COLLEEN SIMS (0069790)
Assistant Prosecuting Attorney
Attorney for Respondents

Case No. 15348 (continued)
page 2.

William R. Baird

Judge

J. Meece

Judge

Leroy L. McIntyre

Judge

cc: Leroy L. McIntyre, #243-005, Trumbull Correctional Inst., P. O. Box 901,
Leavittsburg, Ohio 44430-0901.

Maureen O'Connor, Prosecuting Attorney, Appellate Division, Summit County Safety
Building, 53 University Avenue, Akron, Ohio 44308.

pjm.1.12.98

CASE INFORMATION

GENERAL INFORMATION

Case: GEN-1998-0229 Appeal from App.R. 26(B) Application (Murnahan Appeal)

Filed: 02/02/1998

Case is disposed

State of Ohio
v. Leroy L. McIntyre

PRIOR JURISDICTION

Table with 3 columns: Jurisdiction Information, Prior Decision Date, Case Number(s). Row 1: Summit County, 9th District Court of Appeals, 01/13/1998, 15348

PARTIES and ATTORNEYS

Leroy L. McIntyre; Appellant
Represented by:
State of Ohio; Appellee
Represented by: Maureen O'Connor

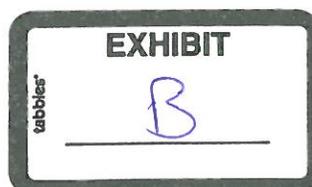
DOCKET ITEMS

- 02/02/98 Notice of appeal by Leroy L. McIntyre
02/02/98 Memorandum in support of jurisdiction
02/02/98 Motion to file reduced number of copies
02/02/98 And affidavit of indigency
02/03/98 Copy of notice of appeal sent to clerk of court of appeals
04/22/98 Upon consideration of jurisdictional question
04/22/98 Appeal dismissed
05/06/98 Copy of entry sent to clerk

I HEREBY CERTIFY this document to be a true and accurate copy of the docket of the Supreme Court of Ohio for case number 1998-0229

CLERK OF COURT
by Jolie Jones Deputy,
on this 5th day of February 20

***** End of case information *****



Transcript of Docket and Journal Entries
Ninth District Court of Appeals

Case No.: CA-25666

ACTION FOR: CRIMINAL COMMON PLEAS

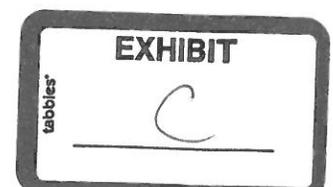
STATE OF OHIO

PLTF/APPELLEE

MCINTYRE, LEWIS
#571-710 RICI
PO BOX 8107
MANSFIELD, OH 44901

DEFT/APPELLANT

1. 11/03/10 NOTICE OF APPEAL. FILED IN COMMON PLEAS ON NOVEMBER 2, 2010
2. 11/03/10 DOCKETING STATEMENT. (FIRST PARAGRAPH)
3. 11/03/10 APPELLANT'S MOTION TO WAIVE THE FILING DEPOSIT
4. 11/03/10 TRIAL COURT DOCKET
5. 11/04/10 NOTICE OF APPEARANCE OF RICHARD KASAY AS COUNSEL FOR THE STATE OF OHIO.
6. 11/18/10 JOURNAL ENTRY. THE APPELLANT HAS MOVED THE COURT TO WAIVE THE PAYMENT OF THE DEPOSIT AGAINST COSTS. THE MOTION IS GRANTED AND THE FILING DEPOSIT IS WAIVED. MAGISTRATE C. MICHAEL WALSH
7. 11/18/10 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
8. 12/13/10 RECORD - TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FROM COMMON PLEAS COURT. ATTORNEYS NOTIFIED.
9. 12/22/10 BRIEF OF APPELLANT. (LEROY MCINTYRE, PRO SE)
10. 12/22/10 JOURNAL ENTRY. THE APPENDIX OF THE BRIEF OF APPELLANT, WHICH WAS FILED ON DECEMBER 22, 2010, DOES NOT COMPLY. THE NON-COMPLYING APPENDIX ATTACHMENTS ARE STRICKEN. MAGISTRATE C. MICHAEL WALSH
11. 12/22/10 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
12. 01/10/11 APPELLEE'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF.
13. 01/19/11 JOURNAL ENTRY. APPELLEE HAS MOVED FOR AN EXTENSION OF TIME TO FILE AN APPELLATE BRIEF. AN EXTENSION OF TIME IS GRANTED UNTIL JANUARY 31, 2011, TO FILE



THE BRIEF. MAGISTRATE C. MICHAEL WALSH.

14. 01/19/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
15. 01/20/11 BRIEF OF APPELLEE. (RICHARD KASAY)
16. 04/13/11 JOURNAL ENTRY. PURSUANT TO LOCAL RULE 8(A)(4), THIS CASE IS SUBMITTED FOR A DECISION ON TUESDAY, MAY 31, 2011 MAGISTRATE C MICHAEL WALSH
17. 04/13/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
18. 07/27/11 DECISION AND JOURNAL ENTRY. JUDGMENT AFFIRMED. COSTS TAXED TO APPELLANT. JUDGE CLAIR DICKINSON FOR THE COURT. JUDGE BETH WHITMORE AND JUDGE CARLA MOORE CONCUR.□
19. 07/27/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
20. 08/03/11 APPELLANT'S APPLICATION FOR REOPENING APPEAL.
21. 08/24/11 JOURNAL ENTRY. APPELLANT LEROY MACINTYRE HAS APPLIED "FOR REOPENING" OF HIS APPEAL UNDER RULE 26 OF THE OHIO RULES OF APPELLATE PROCEDURE. UPON REVIEW OF MR. MCINTYRE'S MOTION, WE CONCLUDE THAT IT DOES NOT IDENTIFY AN OBVIOUS ERROR IN THIS COURT'S DECISION OR RAISE AN ISSUE NOT CONSIDERED PROPERLY BY THE COURT. MR. MCINTYRE'S APPLICATION FOR RECONSIDERATION UNDER RULE 26 (A) OF THE OHIO RULES OF APPELLATE PROCEDURE IS DENIED. JUDGE CLAIR DICKINSON. JUDGE BETH WHITMORE AND JUDGE CARLA MOORE CONCUR.
22. 08/24/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
23. 09/11/11 CASE COSTED
24. 02/08/12 COLLECTIONS

Issued	Number	Status	Served	\$Amount	Party
08/24/2011				0.00	MCINTYRE, LEWIS
08/24/2011				0.00	KASAY, RICHARD S.
07/27/2011				0.00	MCINTYRE, LEWIS
07/27/2011				0.00	KASAY, RICHARD S.
04/13/2011				0.00	MCINTYRE, LEWIS
04/13/2011				0.00	KASAY, RICHARD S.
01/19/2011				0.00	MCINTYRE, LEWIS
01/19/2011				0.00	KASAY, RICHARD S.
12/22/2010				0.00	MCINTYRE, LEWIS
12/22/2010				0.00	KASAY, RICHARD S.
12/13/2010				0.00	MCINTYRE, LEWIS
12/13/2010				0.00	KASAY, RICHARD S.
11/18/2010				0.00	MCINTYRE, LEWIS
11/18/2010				0.00	KASAY, RICHARD S.

The State of Ohio, Summit County

I, the undersigned, Clerk of Court Of Common Pleas, in and for said

County, do hereby certify that the foregoing is a true transcript of the Docket and Journal Entries and all the Proceedings of said Court in the above entitled case.

IN THE TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at the Court House in

Wagon Ohio, this 5 day of February A.D. 2015

AMIEL M. HERRIGAN

Clerk

By [Signature]

Deputy

Transcript of Docket and Journal Entries
Ninth District Court of Appeals

Case No.: CA-25800

ACTION FOR: CRIMINAL COMMON PLEAS

STATE OF OHIO

PLTF/APPELLEE

MCINTYRE, LEROY
571-710, GRAFTON CORR. INST.
2500 SOUTH AVON BELDEN
GRAFTON, OH 44044

DEFT/APPELLANT

1. 02/03/11 NOTICE OF APPEAL.
2. 02/03/11 APPELLANT'S MOTION TO WAIVE THE FILING DEPOSIT.
3. 02/03/11 TRIAL COURT DOCKET
4. 02/03/11 DOCKETING STATEMENT. (FIRST PARAGRAPH)
5. 02/11/11 NOTICE OF APPEARANCE. RICHARD KASAY AS COUNSEL FOR APPELLEE
6. 02/15/11 RECORD - TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FROM COMMON PLEAS COURT. ATTORNEYS NOTIFIED.
7. 02/25/11 BRIEF OF APPELLANT. (LEROY MCINTYRE, PRO SE)
8. 03/15/11 APPELLEE'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF.
9. 03/17/11 JOURNAL ENTRY. APPELLEE HAS MOVED FOR AN EXTENSION OF TIME TO FILE AN APPELLATE BRIEF. IT IS THIS COURT'S POLICY TO GRANT ONLY ONE EXTENSION OF TIME FOR NOT MORE THAN TWENTY DAYS. AN EXTENSION OF TIME IS GRANTED UNTIL APRIL 6, 2011, TO FILE BRIEF. NO FURTHER EXTENSION OF TIME WILL BE GRANTED UNLESS APPELLEE CAN DEMONSTRATE THAT THERE ARE EXTRAORDINARY CIRCUMSTANCES NECESSITATING THE EXTENSION. MAGISTRATE C MICHAEL WALSH.
10. 03/17/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
11. 03/28/11 BRIEF OF APPELLEE. (RICHARD KASAY)
12. 04/27/11 JOURNAL ENTRY. THE APPELLANT HAS FILED A MOTION TO PROCEED IN FORMA PAUPERIS. THE CASHIER'S STATEMENT INDICATES APPELLANT HAS SUFFICIENT FUNDS TO PAY THE DEPOSIT. THE MOTION IS DENIED. APPELLANT SHALL PAY THE DEPOSIT ON OR BEFORE MAY



13, 2011. IF THE DEPOSIT IS NOT PAID, THE APPEAL WILL BE DISMISSED. MAGISTRATE C. MICHAEL WALSH

13. 04/27/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
14. 05/12/11 APPLICATION FOR RECONSIDERATION.
15. 05/17/11 JOURNAL ENTRY. IN RESPONSE TO THIS COURT'S APRIL 27, ORDER, APPELLANT HAS FILED A NEW CERTIFICATE OF INDIGENCY IN SUPPORT OF HIS REQUEST TO PROCEED IN FORMA PAUPERIS. UPON REVIEW, THE MOTION TO PROCEED IN FORMA PAUPERIS IS GRANTED. MAGISTRATE C. MICHAEL WALSH
16. 05/17/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
17. 07/13/11 JOURNAL ENTRY. PURSUANT TO LOCAL RULE 8 (A) (4), THIS CASE WILL BE SUBMITTED FOR CONSIDERATION ON TUESDAY, AUGUST 23, 2011. THE DECISION WILL BE POSTED ON THE OHIO SUPREME COURT'S WEBSITE, AND A COPY OF THE DECISION WILL BE SENT TO THE PARTIES ON THE DAY IT IS RELEASED. MAGISTRATE C. MICHAEL WALSH
18. 07/13/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
19. 12/30/11 JOURNAL ENTRY. APPELLANT LEROY L MCINTYRE HAS APPEALED FROM THE TRIAL COURTS DENIAL OF HIS MOTION FOR DE NOVO RE-TRIAL UPON CHARGES THAT THE TRIAL COURT DISCHARGED THE JURY WITHOUT PREJUDICE IN REFERENCE TO THE PROSECUTION OF THOSE CHARGES. UPON REVIEW THE ATTEMPTED APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. JUDGE EVE BELFANCE FOR JUDGE CARLA MOORE. JUDGE EVE BELFANCE AND JUDGE BETH WHITMORE CONCUR.
20. 12/30/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

Issued	Number	Status	Served	\$Amount	Party
12/30/2011				0.00	MCINTYRE, LEROY
12/30/2011				0.00	KASAY, RICHARD S.
07/13/2011				0.00	MCINTYRE, LEROY
07/13/2011				0.00	KASAY, RICHARD S.
05/17/2011				0.00	MCINTYRE, LEROY
05/17/2011				0.00	KASAY, RICHARD S.
04/27/2011				0.00	MCINTYRE, LEROY
04/27/2011				0.00	KASAY, RICHARD S.
03/17/2011				0.00	MCINTYRE, LEROY
03/17/2011				0.00	KASAY, RICHARD S.
02/15/2011				0.00	MCINTYRE, LEROY
02/15/2011				0.00	KASAY, RICHARD S.

The State of Ohio, Summit County

I, the undersigned, Clerk of Court Of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Docket and Journal Entries and all the Proceedings of said Court in the

above entitled case.

IN THE TESTIMONY WHEREOF, I have hereunto set my hand and
affixed the seal of said Court, at the Court House in

Columbus Ohio, this 5
day of February A.D. 2015

DANIEL M. HERRIGAN

Clerk

By [Signature] Deputy

COPY

STATE OF OHIO

COUNTY OF SUMMIT)

COURT OF APPEALS
DANIEL M. HERRIGAN
2011 DEC 30 PM 1:45

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 25800

Appellee

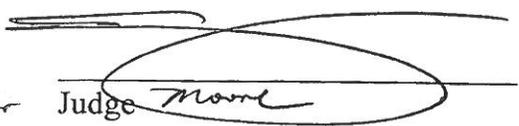
v.

LEROY L. MCINTYRE

Appellant

JOURNAL ENTRY

Appellant, Leroy L. McIntyre, has appealed from the trial court's denial of his "Motion For De Novo Re-Trial Upon Charges That the Trial Court Discharged the Jury Without Prejudice in Reference to the Prosecution of Those Charges." Essentially, his motion asked the trial court to set a trial date for an outstanding charge, and the trial court denied the motion. This is not a final order from which an appeal may be taken. See *State v. Rattray*, 8th Dist. No. 85708, 2005-Ohio-5152, citing *State v. Scott* (1984), 20 Ohio App.3d 215 (generally, the denial of pretrial motions in criminal proceedings does not constitute a final appealable order). In his brief on appeal, Mr. McIntyre argued both that the trial court should have set a trial date and that the charges should be dismissed, a claim he did not make in the trial court. If dismissal is the remedy he seeks, he may be able to file a motion to dismiss in the trial court alleging a violation of his speedy-trial rights. Upon review, the attempted appeal is dismissed for lack of a final, appealable order.


for Judge Morre

Concur:
Belfance, P.J.
Whitmore, J.

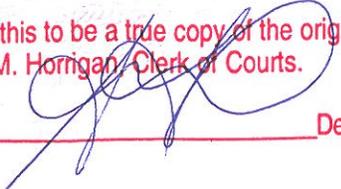
I certify this to be a true copy of the original
Daniel M. Herrigan, Clerk of Courts.

Deputy

EXHIBIT
tabbles
E

DANIEL M. HERRIGAN

2011 FEB 24 PM 3:39

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
FOR SUMMIT COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO
Plaintiff,

v.

LEROY L. MCINTYRE,
Defendant.

*
*
*
*
*

CASE NO: CR-91-01-0135

JUDGE TEODOSIO

LETTER TO JUDGE TEODOSIO

Leroy L. McIntyre, #571-710
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

Judge Teodosio
Summit County Courthouse
205 South High Street
Akron, Ohio 44308

Re: State of Ohio v. Leroy L. McIntyre
Re: Void Sentence due to Acquittal of R.C.2941.142 Specification

Your Honor.

I have enclosed to you a courtesy copy of my current motion to Vacate and Void Judgment of Sentence with request for an De Novo Resentencing Hearing, and I ask of you to carefully review the facts that I have presented in my motion and including and not limited to this official letter.

I am before your court based upon a recent ruling by the Ninth District Court of Appeals in C.A. NO: 25292, from my appeal from your decision denying my previously filed motion to Correct/Revise Judgment entry for non compliance with the dictates thus found in Crim.R.32(C). In the attached Decision

this to be a true copy of the original
M. Herrigan, Clerk of Courts
Deputy



And journal Entry by the Appellate Court. The Court has acknowledged that I was Acquitted of the R.C. 2941.142 Prior Aggravated Sentencing Enhancement Specification by the jury in its syllabus and supported by the attached [Verdict Entry]. The State's Assistant Prosecutor Mr. Richard S. Kasay, also affirmed the fact that I was Acquitted of the above stated specification within his [Brief of Appellee-State of Ohio Page (5) Par.4].

However, Prosecutor Kasay, had also indicated in his brief at [Page (5) Par.4] as follows:

"There is no indication that McIntyre was convicted of more than two offenses and two specifications."

In support of proof that I was convicted of the third specification R.C. 2941.142 Prior Aggravated Sentencing Enhancement Specification after my acquittal of same, I have attached the pertinent portions of the sentencing transcripts to my enclosed motion as evidence that I was convicted and sentenced as to said sentencing enhancement specification after I was acquitted to which renders my eight (8) Year minimum imposed sentence of actual incarceration void for the enhancement specification. The Nunc Pro Tunc Entry reflects the actual period of incarceration that is attached to my motion based solely upon the sentenced to which is stated in the sentencing transcripts entered by the Trial Court Judge the Honorable Judge William H. Victor sitting in for the Honorable Mary F. Spicer.

The issue of my sentencing being void must be resolved at the Trial Court level due to the fact that the Ninth District Court of Appeals has affirmed that I was acquitted of the above

sentencing enhancement specification, so litigating that issue upon appeal is now barred by COLLATERAL ESTOPPEL, and being that the appellate Court has affirmed my acquittal, I have to motion this court to vacate and void its judgment of sentence as to Felonious Assault contained in type: open indictment based on my acquittal, and the prohibition against double jeopardy in violation of my Fifth Amendment rights to the United States Constitution and Section 10 Article I of the Ohio Constitution.

Your Honor, I have shown through official court documents (i.e. Sentencing Transcripts/Nunc Pro Tunc Entry), that I was convicted and sentence of the R.C. sentencing enhancement specification after I was acquitted of same by the Jury and these facts cannot be disputed pursuant to Rules of evidence 201 of Adjudicative Facts not Subject to Dispute. All I am requesting of this Court is to provide me with due process of law and vacate and void my sentence as to said felonious Assault as a matter of law.

In closing I thank you for your time, concern and most of all your consideration to this important matter respectfully before you.

Respectfully Submitted


Leroy L. McIntyre

CERTIFICATE OF SERVICE

I hereby certify that a true copy of letter to Judge Teodosio has been forwarded to Mrs. Sherri Bevan Walsh, Summit County Prosecutor, at 53 University Avenue 6th Floor, Akron, Ohio 44308. By regular U.S. postal service on this 22nd day of Feb Year 2011.

Respectfully Submitted


Leroy L. McIntyre

CC.FILE
LLMCI(WRIT WRITER)
Mrs. Sherri Bevan Walsh, Prosecutor

STATE OF OHIO

COURT OF APPEALS
DANIEL M. HARRIGAN

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT

SEP 30 AM 7:48

STATE OF OHIO

SUMMIT COUNTY
CLERK OF COURTS

C. A. No. 25292

Appellee

v.

LEROY L. MCINTYRE

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 91 01 0135

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Leroy L. McIntyre, appeals from the judgment of the Summit County Court of Common Pleas, denying his motion to vacate his sentence. This Court affirms.

I

{¶2} Following a jury trial in August 1991, McIntyre was convicted of felonious assault and aggravated burglary, both of which carried firearm specifications.¹ In September 1991, the trial court journalized McIntyre's sentence for the foregoing convictions. Two days after issuing its initial sentencing entry, the trial court issued a nunc pro tunc entry correcting the

¹ In this Court's decision on his direct appeal, when explaining the procedural history of the case, this Court's review of the offenses of conviction mistakenly refers to a finding of guilt on a specification for which the jury returned a not guilty verdict. This introductory comment is not relied upon or repeated in the remainder of the decision.

COPY

ORIGINAL

COURT OF APPEALS
DANIEL M. HERRIGAN

STATE OF OHIO

RECEIVED 18 APR 10:30

IN THE COURT OF APPEALS

COUNTY OF SUMMIT

SS:
SUMMIT COUNTY
CLERK OF COURTS

NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

On Appeal from the
Summit County
Court of Common Pleas
No. CR 91 01 0135

v.

C.A. No. 25292

LEROY L. MCINTYRE

Appellant

BRIEF OF APPELLEE – STATE OF OHIO

SHERRI BEVAN WALSH
Prosecuting Attorney

RICHARD S. KASAY
Assistant Prosecuting Attorney
Appellate Division
Summit County Safety Building
53 University Avenue, 6th Floor
Akron, Ohio 44308
(330) 643-2800
Reg. No. 0013952

Counsel for Appellee
State of Ohio

LEROY L. MCINTYRE
#571-710
Richland Correctional Institution
P. O. Box 8107
Mansfield, Ohio 44901

Appellant Pro Se

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

DIANA ZALEWSKI

MAY

Term 19 91

THE STATE OF OHIO

vs.

LeROY L. McINTYRE
aka LeROY TYSON

SEP 11 2 37 PM '91

No. CR 91 01 0135

Clerk of Courts

JOURNAL ENTRY

THIS DAY, to-wit: The 9th day of September, A.D., 1991, upon due consideration of this Court, IT IS HEREBY ORDERED that this Journal Entry be filed NUNC PRO TUNC to correct the third (3rd)) paragraph of the Journal Entry dated August 29, 1991 and filed September 9, 1991 to read in part as follows . . .

" . . . for an indeterminate period of not less than Eight (8) Years and not more than the maximum of Fifteen (15) Years, and the eight (8) year minimum shall be a period of actual incarceration, for punishment of the crime of . . . "

APPROVED:
September 11, 1991
jm

MARY F. SPICER, Judge
Court of Common Pleas
Summit County, Ohio

NOTE

cc: Prosecutor Maureen Hardy
Attorney Vincent Modugno
Criminal Assignment
Court Convey
Booking
SIU
Attorney Barry Ward
Psycho-Diagnostic Clinic
Ms. Maureen Mancuso

THIS NUNC PRO TUNC ENTRY REFLECTS PERIOD OF ACTUAL INCARCERATION THAT WAS IMPOSED BY THE TRIAL COURT AT [TRP'S.363-364] BASED ON THE COURT FINDING THE DEFENDANT MCINTYRE [GUILTY] OF THE R.C.2941.142 SENTENCING ENHANCEMENT SPECIFICATION AFTER THE JURY HAD PREVIOUSLY [ACQUITTED] THE DEFENDANT OF THE [R.C. 2941.142] PRIOR AGGRAVATED SENTENCING ENHANCEMENT SPECIFICATION AN DOUBLE JEOPARDY VIOLATION].

1 THE COURT: Ms. Hardy.

2 MS. HARDY: At this time, Your Honor,
3 if the Court would find the defendant guilty of the
4 prior aggravated felony specification, the State
5 would just make its recommendation with respect to
6 sentencing in this case.

7 Your Honor, you have heard the facts and
8 circumstances of this case. I believe the Court is
9 well aware of the circumstances. As the Court
10 knows, on the second day of trial the defendant,
11 Leroy McIntyre, absconded, and while absconding and
12 fleeing from justice the defendant was subsequently
13 arrested and charged with a felonious assault
14 involving an individual by the name of Tyrone
15 Howard. The defendant allegedly slashed his throat
16 while fleeing from this trial.

17 I think these crimes were very serious, the
18 circumstances surrounding them were very serious.
19 The State would seek that this Court impose the
20 maximum sentences allowable under law and that the
21 sentences be served consecutively with each other.

22 THE COURT: Well, I find, of course,
23 that is the defendant in the case which we are now
24 present in court, that that individual is the same
25 individual shown in the journal entry which was

1 admitted into evidence as an exhibit in this case.

2 Now, I would like to have you for purposes
3 of the record inform the defendant of the statutory
4 requirements pertaining to the penalties to be
5 imposed in the case of felonious assault where it's
6 committed with a firearm and where there has been a
7 prior offense of violence and also what has been
8 provided with reference to the penalties for
9 aggravated burglary when that offense is committed
10 with a firearm.

11 MS. HARDY:

Yes, Your Honor.

12 With respect to the felonious assault
13 conviction, there was a firearm specification which
14 the defendant was found guilty of. The defendant
15 can be sentenced to a mandatory three years on
16 that.

17 With respect to the underlying charge of
18 felonious assault, it's an aggravated felony of the
19 second degree. With the Court having found the
20 defendant guilty of the prior aggravated felony
21 specification, the potential penalties for that is
22 a sentence of 8, 9, 10, 11, 12 to 15 years in the
23 Ohio State Penal System, with the 8 years being a
24 period of actual incarceration.

25 With respect to the conviction for

Transcript of Docket and Journal Entries
Ninth District Court of Appeals

Case No.: CA-25898

ACTION FOR: CRIMINAL COMMON PLEAS

STATE OF OHIO

PLTF/APPELLEE

MCINTYRE, JR., LEROY LEWIS
571-710, GRAFTON CORR. INST.
2500 S. AVON BELDEN ROAD
GRAFTON, OH 44044

DEFT/APPELLANT

1. 04/19/11 NOTICE OF APPEAL. (FILED IN COMMON PLEAS 4-18-11)
2. 04/19/11 APPELLANT'S MOTION FOR TRANSCRIPTS.
3. 04/19/11 PRAECIPE TO COURT REPORTER.
4. 04/19/11 APPELLANT'S MOTION TO WAIVE THE FILING DEPOSIT.
5. 04/19/11 AFFIDAVIT OF INDIGENCY.
6. 04/19/11 TRIAL COURT DOCKET
7. 04/19/11 DOCKETING STATEMENT. (SECOMD PARAGRAPH)
8. 04/21/11 JOURNAL ENTRY. THE APPELLANT HAS MOVED TO WAIVE THE PAYMENT OF THE DEPOSIT. APPELLANT SHALL PAY THE DEPOSIT OR FILE THE CERTIFICATE FROM THE INSTITUTION ON OR BEFORE MAY 13, 2011. MAGISTRATE C.MICHAEL WALSH
9. 04/21/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
10. 04/21/11 JOURNAL ENTRY. APPELLANT HAS MOVED THE COURT FOR A TRANSCRIPT AT STATE'S EXPENSE. THE MOTION IS DENIED. MAGISTRATE C. MICHAEL WALSH
11. 04/21/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
12. 04/22/11 NOTICE OF APPEARANCE OF RICHARD KASAY.
13. 05/02/11 MOTION TO SUPPLEMENT THE RECORD WITH THE TRIAL TRANSCRIPTS
14. 05/02/11 AFFIDAVIT OF INDIGENCY.
15. 05/03/11 STATES RESPONSE TO DEFENDENTS MOTION TO SUPPLEMENT RECORD



16. 05/06/11 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT TO SUPPLEMENT THE RECORD WITH THE TRIAL TRANSCRIPTS FROM HIS PRIOR APPEALS. THE STATE HAS RESPONDED IN OPPOSITION, ARGUING THAT THE TRANSCRIPT ARE UNNECESSARY FOR THIS COURT TO DECIDE THE APPEAL FROM THE DENIAL OF HIS "MOTION TO VACATE AND VOID JUDGMENT." UPON REVIEW, THE MOTION TO SUPPLEMENT THE RECORD IS DENIED. MAGISTRATE C. MICHAEL WALSH
17. 05/06/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
18. 05/09/11 APPELLANT'S OPPOSITION TO APPELLEE'S RESPONSE TO APPELLANT'S MOTION TO SUPPLEMENT THE RECORD.
19. 05/12/11 MOTION FOR APPELLATE COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS NOT SUBJECT TO DISPUTE PURSUANT TO RULES OF EVIDENCE 201(B) AND (E)
20. 05/12/11 BRIEF OF APPELLANT.
21. 05/13/11 JOURNAL ENTRY. THE APPENDIX OF THE BRIEF OF APPELLANT, WHICH WAS FILED ON MAY 12, 2011, DOES NOT COMPLY. THE NON-COMPLYING APPENDIX ATTACHMENTS ARE STRICKEN. MAGISTRATE C. MICHAEL WALSH
22. 05/13/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
23. 05/16/11 JOURNAL ENTRY. THE APPELLANT HAS MOVED THE COURT TO WAIVE THE PAYMENT OF THE DEPOSIT AGAINST COSTS. THE MOTION IS GRANTED AND THE FILING DEPOSIT IS WAIVED. MAGISTRATE C MCIAHEL WALSH.
24. 05/16/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
25. 05/18/11 STATE'S RESPONSE TO DEFENDANT'S MOTION FOR APPELLATE COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS NOT SUBJECT TO DISPUTE.
26. 05/18/11 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT TO TAKE JUDICIAL NOTICE OF CERTAIN DOCUMENTS FROM HIS TRIAL COURT RECORD, A PART OF A TRANSCRIPT OF PROCEEDINGS, AND PART OF THIS COURT'S DECISION IN C.A. 25292. THE MOTION IS DENIED. MAGISTRATE C. MICHAEL WALSH
27. 05/18/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
28. 05/26/11 APPELLEE'S CERTIFICATION OF EXTENSION OF TIME TO FILE BRIEF.
29. 06/08/11 RECORD - TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FROM COMMON PLEAS COURT. ATTORNEYS NOTIFIED.
30. 06/17/11 BRIEF OF APPELLEE. (RICHARD KASAY)
31. 06/28/11 REPLY BRIEF OF APPELLANT.

32. 07/08/11 MOTION TO STRIKE APPELLEES BRIEF.

33. 07/12/11 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT TO STRIKE APPELLEE'S BRIEF "FOR FAILURE TO RESPOND IN ANY MANNER THEREIN TO APPELLANT'S ASSIGNMENT OF ERROR TWO..." UPON REVIEW, THE MOTION IS DENIED. MAGISTRATE C. MICHAEL WALSH

34. 07/12/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

35. 08/15/11 APPELLANT'S MOTION FILING LEGIBLE EXHIBITS.

36. 08/17/11 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT FOR LEAVE TO FILE LEGIBLE COPIES OF EXHIBITS THAT WERE PREVIOUSLY STRICKEN FROM HIS APPELLATE BRIEF. THE EXHIBITS WERE NOT STRICKEN, HOWEVER, BECAUSE THEY WERE ILLEGIBLE, BUT BECAUSE THEY WERE NOT DOCUMENTS THAT MAY BE INCLUDED IN THE APPENDIX UNDER THIS COURT'S LOCAL RULES. THE MOTION IS DENIED. MAGISTRATE C. MICHAEL WALSH

37. 08/17/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

38. 08/18/11 APPELLEE'S MEMORANDUM IN OPPOSITION.

39. 11/28/11 JOURNAL ENTRY. PURSUANT TO LOCAL RULE 8(A)(4), THIS CASE WILL BE SUBMITTED FOR CONSIDERATION ON THURSDAY, DECEMBER 8, 2011. THE DECISION WILL BE POSTED ON THE OHIO SUPREME COURT'S WEBSITE, AND A COPY OF THE DECISION WILL BE SENT TO THE PARTIES ON THE DAY IT IS RELEASED. MAGISTRATE C. MICHAEL WALSH

40. 11/28/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

41. 12/21/11 DECISION AND JOURNAL ENTRY. JUDGMENT AFFIRMED. COSTS TAXED TO APPELLANT. JUDGE DONNA CARR FOR THE COURT. JUDGE CARLA MOORE AND JUDGE CLAIR DICKINSON CONCUR.

42. 12/21/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

43. 01/04/12 APPELLANT'S APPLICATION FOR RECONSIDERATION.

44. 04/26/12 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT TO RECONSIDER OUR DECISION AND JOURNAL ENTRY JOURNALIZED ON 12-21-11. THE MOTION IS DENIED. JUDGE DONNA CARR. JUDGE CLAIR DICKINSON AND JUDGE CARLA MOORE CONCUR.

45. 04/26/12 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.

46. 05/24/12 CASE COSTED

47. 12/06/12 TO COLLECTIONS \$130.50

Issued	Number	Status	Served	\$Amount	Party
04/26/2012				0.00	MCINTYRE, JR., LEROY LEWIS
04/26/2012				0.00	KASAY, RICHARD S.
12/21/2011				0.00	MCINTYRE, JR., LEROY LEWIS
12/21/2011				0.00	KASAY, RICHARD S.
11/28/2011				0.00	MCINTYRE, JR., LEROY LEWIS
11/28/2011				0.00	KASAY, RICHARD S.
08/17/2011				0.00	MCINTYRE, JR., LEROY LEWIS
08/17/2011				0.00	KASAY, RICHARD S.
07/12/2011				0.00	MCINTYRE, JR., LEROY LEWIS
07/12/2011				0.00	KASAY, RICHARD S.
06/08/2011				0.00	MCINTYRE, JR., LEROY LEWIS
06/08/2011				0.00	KASAY, RICHARD S.
06/08/2011				0.00	WALSH, SHERRI BEVAN
05/18/2011				0.00	MCINTYRE, JR., LEROY LEWIS
05/18/2011				0.00	KASAY, RICHARD S.
05/16/2011				0.00	MCINTYRE, JR., LEROY LEWIS
05/16/2011				0.00	KASAY, RICHARD S.
05/13/2011				0.00	MCINTYRE, JR., LEROY LEWIS
05/13/2011				0.00	KASAY, RICHARD S.
05/09/2011				0.00	MCINTYRE, JR., LEROY LEWIS
05/06/2011				0.00	MCINTYRE, JR., LEROY LEWIS
05/06/2011				0.00	KASAY, RICHARD S.
04/21/2011				0.00	MCINTYRE, JR., LEROY LEWIS
04/21/2011				0.00	WALSH, SHERRI BEVAN
04/21/2011				0.00	MCINTYRE, JR., LEROY LEWIS
04/21/2011				0.00	WALSH, SHERRI BEVAN

The State of Ohio, Summit County

I, the undersigned, Clerk of Court Of Common Pleas, in and for said County, do hereby certify that the foregoing is a true transcript of the Docket and Journal Entries and all the Proceedings of said Court in the above entitled case.

IN THE TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at the Court House in

Wesley Ohio, this 5 day of February A.D. 2015

DANIEL M. HARRIGAN

Clerk

By [Signature] Deputy

Transcript of Docket and Journal Entries
Ninth District Court of Appeals

Case No.: CA-25899

ACTION FOR: CRIMINAL COMMON PLEAS

STATE OF OHIO

PLTF/APPELLEE

MCINTYRE, LEROY LEWIS
571-710 GRAFTON CORR. INST.
2500 S. AVON BELDEN RD
GRAFTON, OH 44044

DEFT/APPELLANT

1. 04/19/11 NOTICE OF APPEAL. (FILED IN COMMON PLEAS COURT 4-18-11)
2. 04/19/11 DOCKETING STATEMENT. (SECOND PARAGRAPH)
3. 04/19/11 PRAECIPE TO COURT REPORTER.
4. 04/19/11 APPELLANT'S MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE.
5. 04/19/11 APPELLANT'S MOTION TO WAIVE THE FILING DEPOSIT
6. 04/19/11 AFFIDAVIT OF INDIGENCY.
7. 04/19/11 TRIAL COURT DOCKET
8. 04/21/11 JOURNAL ENTRY. THE APPELLANT HAS MOVED TO WAIVE THE PAYMENT OF THE DEPOSIT. APPELLANT SHALL PAY THE DEPOSIT OR FILE THE CERTIFICATE FROM THE INSTITUTION ON OR BEFORE MAY 13, 2011. MAGISTRATE C. MICHAEL WALSH
9. 04/21/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
10. 04/21/11 JOURNAL ENTRY. APPELLANT HAS MOVED THE COURT FOR A TRANSCRIPT AT STATE'S EXPENSE. THE MOTION IS DENIED. MAGISTRATE C. MICHAEL WALSH
11. 04/21/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
12. 04/22/11 NOTICE OF APPEARANCE OF RICHARD KASAY.
13. 04/28/11 APPELLANT'S AFFIDAVIT OF INDIGENCY.
14. 05/12/11 BRIEF OF APPELLANT.
15. 05/13/11 JOURNAL ENTRY. THE APPENDIX OF THE BRIEF OF APPELLANT, WHICH WAS FILED ON MAY 12, 2011, DOES



NOT COMPLY. THE NON-COMPLYING APPENDIX
ATTACHMENTS ARE STRICKEN. MAGISTRATE C. MICHAEL
WALSH

16. 05/13/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
17. 05/16/11 APPLICATION FOR RECONSIDERATION AND CORRECTIONS
18. 05/16/11 JOURNAL ENTRY. THE APPELLANT HAS MOVED THE COURT
TO WAIVE THE PAYMENT OF THE DEPOSIT AGAINST COSTS.
THE MOTION IS GRANTED AND THE FILING DEPOSIT IS
WAIVED. MAGISTRATE C MCIACHEL WALSH.
19. 05/16/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
20. 05/18/11 JOURNAL ENTRY. APPELLANT'S MAY 16, 2011, FILING
IS ADDRESSED TO THE COURT OF COMMON PLEAS AND IS,
THEREFORE, STRICKEN FROM THE APPELLATE RECORD.
MAGISTRATE C. MICHAEL WALSH
21. 05/18/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
22. 05/26/11 APPELLEE'S CERTIFICATION OF EXTENSION OF TIME TO
FILE BRIEF.
23. 06/08/11 RECORD - TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES
FROM COMMON PLEAS COURT. ATTORNEYS NOTIFIED.
24. 06/20/11 BRIEF OF APPELLEE. (RICHARD KASAY)
25. 06/28/11 REPLY BRIEF OF APPELLANT.
26. 11/30/11 JOURNAL ENTRY. PURSUANT TO LOCAL RULE 8(A)(4),
THIS CASE WILL BE SUBMITTED FOR CONSIDERATION ON
TUESDAY, JANUARY 3, 2012. THE DECISION WILL BE
POSTED ON THE OHIO SUPREME COURT'S WEBSITE, AND A
COPY OF THE DECISION WILL BE SENT TO THE PARTIES
ON THE DAY IT IS RELEASED. MAGISTRATE C. MICHAEL
WALSH
27. 11/30/11 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
28. 03/14/12 DECISION AND JOURNAL ENTRY. JUDGMENT AFFIRMED.
COSTS TAXED TO APPELLANT. JUDGE CARLA MOORE FOR
THE COURT. JUDGE CLAIR DICKINSON AND JUDGE EVE
BELFANCE CONCUR.
29. 03/14/12 ORDERS ISSUED TO ATTORNEYS BY REGULAR MAIL.
30. 03/20/12 APPLICATION FOR RECONSIDERATION.
31. 03/23/12 AMENDMENT OF TIMELY APPLICATION FOR
RECONSIDERATION PURSUANT TO APPELLATE RULE 26(B)
WITH GOOD AND SUFFICIENT CAUSE SHOWN DUE TO
EXTRAORDINARY CIRCUMSTANCES.
32. 05/14/12 JOURNAL ENTRY. APPELLANT HAS MOVED THIS COURT TO
RECONSIDER ITS DECISION, WHICH WAS JOURNALIZED ON

COPY

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DANIEL M. HORRIGAN

STATE OF OHIO,
Plaintiff,

vs.

LEROY L. McINTYRE,
Defendant.

) CASE NO. CR 1991-0140135 PM 2:21
)
) JUDGE THOMAS A. TEODOSIO
) SUMMIT COUNTY
) CLERK OF COURTS

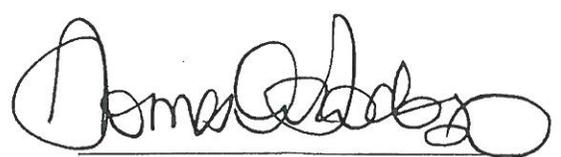
ORDER

This matter came before the Court upon the Defendant's "Notice to Proceed to Trial Upon Retrial" filed on June 14, 2012. The State of Ohio filed a Memorandum in opposition on June 27, 2012.

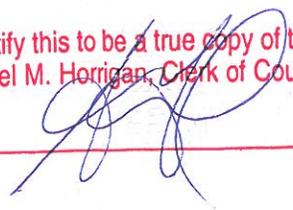
In the State's Memorandum, Assistant Prosecutor Richard Kasay states, "The State gives notice that it will not retry this count. The count of felonious assault with specification one, count one of supplement one should be dismissed with prejudice." Therefore, the Court hereby reclassifies the State's Memorandum as a "Motion to Dismiss" the aforementioned count and specification.

Upon due consideration, the Defendant's "Notice to Proceed to Trial Upon Retrial" is DENIED. Furthermore, the State's "Motion to Dismiss" is GRANTED. The Court dismisses the charge of Felonious Assault, as contained in Count One of Supplement One to the Indictment, as well as the Specification One to Count One of Supplement One to the Indictment.

IT IS SO ORDERED.


JUDGE THOMAS A. TEODOSIO

cc: Richard S. Kasay, Assistant Prosecutor
Leroy L. McIntyre, Defendant *pro se*

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Daniel M. Horrigan, Clerk of Courts.

Deputy



COPY

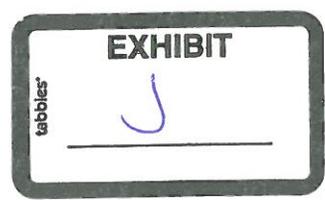
DANIEL M. HERRIGAN
2012 SEP 25 PM 2:16
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO)	CASE NO. CR 1991-01-0135
)	
Plaintiff,)	JUDGE THOMAS A. TEODOSIO
)	
vs.)	
)	
LEROY L. McINTYRE,)	<u>ORDER</u>
)	
Defendant.)	

This matter came before the Court upon numerous motions filed by the Defendant. The Defendant filed the following motions:

- (1.) "Motion for a Status Hearing on Untried Felony and Specifications," filed on July 9, 2012
- (2.) "Combined Motion for Bill [for] Bill of Particulars and Discovery," filed on July 9, 2012
- (3.) "Motion for De Novo Retrial in Order to Dispose of R.C. 2941.142 Prior Aggravated Felony Specification," filed on July 10, 2012
- (4.) "Motion Invoking Trial Court's Inherent Power to Vacate and Void Its Void Sentence Rendered with Demand for Immediate Discharge from Further Confinement," filed on July 10, 2012
- (5.) "Motion to Correct Clerical Error in Judgment Pursuant to Crim.R. 36(A) with Relief Sought," filed on July 10, 2012
- (6.) "Motion Requesting Trial Court to Dismiss with Prejudice Indictment Type: Supplement Two Aggravated Burglary with Accompanied Specification One to Count One of Supplement One and Specification One to Count One of Supplement Two," filed on July 10, 2012
- (7.) "Motion to Convey the Defendant Before the Trial Court Due to Trial Court Granting State's Reclassed Memorandum as a 'Motion to Dismiss with Prejudice' Indictment Type: Supplement One Felonious Assault?," filed on July 10, 2012
- (8.) "Motion for Leave to File Motion for New Trial Pursuant to Crim.R. 33 (B)," filed on August 1, 2012



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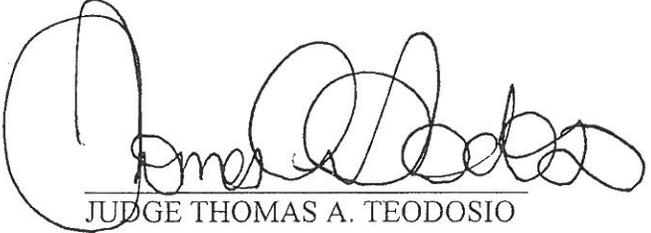
[Signature]
Deputy

(9.) "Motion to Strike State's Plaintiff Untimely Filed Memorandum," filed on August 13, 2012

The State of Ohio filed a Memorandum on August 6, 2012.

Upon due consideration, the Court finds all of the Defendant's motions not well taken and DENIES the same.

IT IS SO ORDERED.



JUDGE THOMAS A. TEODOSIO

cc: Rick Kasay, Assistant Prosecutor
Leroy McIntyre, Defendant *pro se*

COPY

DANIEL M. HERRIGAN
2013 OCT 31 PM 2:08
STATE COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
FOR SUMMIT COUNTY, OHIO
CRIMINAL DIVISION

SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO
Plaintiff,

VS.

LEROY L. MCINTYRE
Defendant.

CASE NO. CR-91-01-0135

JUDGE: TEODOSZO

MOTION TO CORRECT
CLERICAL MISTAKE
PURSUANT TO CRIM.
R. 36 FOR PURPOSE TO
SEEK FINAL APPEALABLE
ORDER

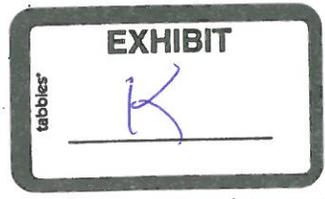
Now comes Leroy L. McIntyre, hereinafter
(Defendant) in propria persona, and hereby moves
this court to entertain and grant the above styled
motion as a matter of law and due process right
to the defendant.

The facts in support are fully developed in the
attached Memorandum in support.

MEMORANDUM IN SUPPORT

LAW AND ARGUMENT:

1. On March 28, 2012, this court had appointed attorney
at law Mr. Adam Vanho for purpose of retrial as to
indictment type supplement one with gun specification
to which was pending retrial for over 22 years.
2. While retrial was pending, McIntyre have moved the
state's prosecuting attorney in this case for motions
for Bill of particulars, and motion for discovery. The
sole purpose for the retrial was due to the jury on
August 13, 1991, was hung on the supplement one to indict-
ment, and the trial court had ~~discharged~~ discharged the
jury as to the reference to the prosecution as to those
offenses by verdict entry filed on September 9, 1991.



PS 1 ORS.

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[Signature]
Deputy

3. That as a response to the defendant's Motion's, the state's plaintiff had filed a memorandum thus moving the trial court to dismiss the pending indictment "with prejudice".
4. The trial court had erroneously reclassified the state's memorandum as a "MOTION TO DISMISS" the pending indictment pursuant to Crim. R. 48(A) dismissal by the state, and the trial court had dismissed the pending indictment.
5. However, the trial court had "mistakenly" dismissed the indictment contrary to the dictates thus found in Crim. R. 48(A) to which required the state to (1) first seek leave of the court to file dismissal of the pending indictment, and (2) in "open court" meaning the judge in person on the bench and both the defense and plaintiff's counsel present before the court and upon the official record.
6. Crim. R. 48(A) provides: the state may by leave of the court and in "open" court file an entry of dismissal of the indictment, information, or complaint and the prosecution "shall" thereupon terminate.

ANALYSIS OF MR. MCINTYRE'S CASE:

7. McIntyre argues that the trial court's dismissal was a clerical mistake, in that once the trial court had reclassified the state's memorandum as a "motion to dismiss" the court was to comply with the dictates thus found in Crim. R. 48(A) by first requiring the state's prosecution to file leave for dismissal and in open court, then the court likewise granting leave and in open court. And in the absence of these mandatory requirements renders the court's dismissal a nullity or void. *State v. Brown*, (1988), 38 Ohio St. 3d 305, 308, 528 N.E.2d 523, 531.

8. The trial courts reclassified states memorandum to "motion to dismiss" had to also require the state's prosecution to set forth "Good cause" is defined as a substantial reason and one that affords a legal excuse. CITING STATE V. BROWN (1988), 38 Ohio St. 3d 305, 308, 528 N.E.2d 523, 531.
9. In the instant case, the state's plaintiff prosecuting attorney had moved for the indictment to be dismissed with prejudice for cause that the state simply stated that it did not want to proceed to trial on the supplement one indictment and not showing any cause at all under CRIM. R. 48(A) and on R.C. 2941.33
10. Moreover, requiring more than a cursory recitation that good cause exists reflects the fact that while the conscious exercise of selectivity in law enforcement by a prosecutor will not be a bridge absent a constitutional violation, once the prosecution has been initiated, the prosecutor does not have the same unbridled authority to terminate the proceedings. AKRON V. RAGSDALE (1978), 61 Ohio App.2d 107, 109, 15 O.O. 3d 107, 108, 399 N.E.2d 119, 120.
11. In the instant case, the prosecution was initiated in this case on August 8, 1991, whereas, McIntyre had already proceeded to trial on the supplement one indictment, however, the jury was hung on this offense, and retrial followed. Therefore the state could not move for any dismissal on the court in the absence of showing a "constitutional violation, AKRON V. RAGSDALE. No constitutional violation was committed against McIntyre in this case and evident upon the record to have warranted any dismissal of the supplement one indictment. Thus, pending retrial.
12. McIntyre further argues that the erroneous mistake by this court in dismissing the supplemental indictment without (1) good cause shown, (2) without leave of the court, and (3) in open court and was a clerical error and this court should grant the instant motion for CRIM. R. 36 and correct this matter by

requiring the state's prosecution to (1) seek leave for dismissal and in open court with good cause shown

13. Crim. R. 36 provides: "Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." The term "clerical mistake" refers to "a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment." State ex rel. Cruzado v. Zaleski, 111 Ohio St. 3d 353, 2006-Ohio-5795, 856 N.E.2d 263, (par. 19.). That dismissing an indictment under Crim. R. 48(A) requires the court to "grant leave of the prosecutor to dismiss and in open court" these requirements are mandatory. Therefore, it involves a legal decision or judgment and is not a clerical error.
14. Furthermore, the mere dismissal is not a final appealable order. There was any dismissal in this case with or without prejudice.
15. In the instant case, there has been any record made and in OPEN COURT, thus meeting the open court requirements of Crim. R. 48(A) to which an appeal can be pursued by the defendant McIntyre before the Ninth Appellate District Court. The purported dismissal in this case requires a record to be made of the dismissal in open court. The dismissal by this court is not a final appealable order in absence of a record of the dismissal in open court as required.

CONCLUSION

Based upon the above stated facts, McIntyre moves this court to grant the above-styled motion, and in doing so this court should require the state to file leave for dismissal with good cause shown, and in open court whereas a record can be made for purpose of appellate review. And any further relief this court deems just and proper and in the interest of justice. Appellate review of this matter is reserved.

Respectfully submitted
Henry L. McIntyre
Henry L. McIntyre
Defendant in propria persona

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was forwarded to Sherril Bevan Walsh, prosecuting attorney for Summit County, Ohio 53 University Ave 6th FL Criminal Division Akron, Ohio 44308. By regular U.S. postal service on this 28th day of OCTOBER year 2013.

Respectfully submitted
Henry L. McIntyre
Henry L. McIntyre
#571-710
T.C.C.
P.O. Box 640
Leavittsburg, Ohio 44430
Defendant in propria persona

COPY

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

2013 NOV 12 PM 11:59

THE STATE OF OHIO)

Case No. CR 91 01 0135

vs.

SUMMIT COUNTY
CLERK OF COURTS

JOURNAL ENTRY

LEROY L. MCINTYRE

On November 8, 2013, upon due consideration of this Court, IT IS HEREBY ORDERED that the pro se motion to correct a clerical mistake is denied.

APPROVED:
November 8, 2013
pmw



THOMAS A. TEODOSIO, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Nik Buckmeier/Mike Rickett
LEROY L. MCINTYRE #571-710, Trumbull Correctional Institution – **CERTIFIED**



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Deputy

COPY

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Daniel M. Horrigan

STATE OF OHIO, 2014 DEC -2 PM 3:12)

Plaintiff, SUMMIT COUNTY)
CLERK OF COURTS)

vs.)

LEROY L. McINTYRE,)

Defendant.)

CASE NO. CR 1991-01-0135

JUDGE THOMAS A. TEODOSIO

ORDER

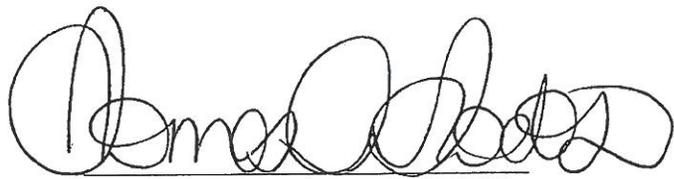
This matter came before the Court upon the Defendant's "Motion to Declare Mistrial on All Counts" on July 18, 2014. The State filed a Memorandum on August 15, 2014, and the Defendant filed a Response on August 21, 2014.

The Defendant claims that there is no final appealable order in this case. The Court disagrees. The Ninth District Court of Appeals has held that there is a final appealable order in this case. *State v. McIntyre*, 9th Dist. No. 25899, 2012-Ohio-1026, at ¶4-8.

The Defendant further claims that Judge Victor was never assigned to the case or had any authority to preside over the case. The Court disagrees. The Supreme Court of Ohio has held that res judicata bars any claim that could have been raised at trial or on direct appeal. *State v. Steffen* (1994), 70 Ohio St.3d 399, 410, 1994-Ohio-111, 639 N.E.2d 67. The Court finds the Defendant's claims are barred by the doctrine of res judicata. The Defendant "has had ample opportunity to raise any alleged error in his sentence." *State v. McIntyre*, 9th Dist. No. 26677, 2013-Ohio-2077, at ¶11.

Upon due consideration, the Court finds all of the Defendant's motion not well taken and **DENIES** the same.

IT IS SO ORDERED.



JUDGE THOMAS A. TEODOSIO

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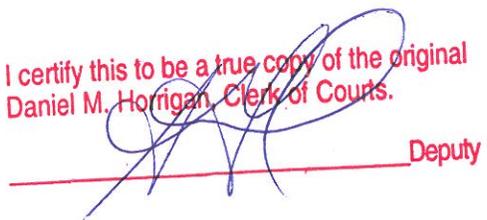

Deputy

EXHIBIT
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cc: Rick Kasay, Assistant Prosecutor
Stephen Hanudel, Attorney for Defendant

COPY

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

2013 FEB 21 PM 2:03
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO ex rel. LEROY L.
MCINTYRE

C.A. No. 26619

CLERK OF COURTS

Relator

v.

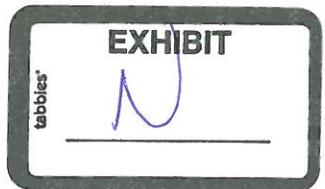
THOMAS A. TEODOSIO, JUDGE

JOURNAL ENTRY

Respondent

Leroy L. McIntyre is incarcerated in an Ohio prison. He has filed a complaint in this Court against Judge Thomas A. Teodosio seeking a writ of mandamus to order Judge Teodosio to set a date for retrial on a count from his 1991 criminal case and to order Judge Teodosio to vacate a dismissal order he entered in June 2012 related to that count. Judge Teodosio has moved to dismiss the complaint. Because Mr. McIntyre cannot meet the requirements for this Court to grant the writ, this Court grants the motion to dismiss.

Mr. McIntyre has been before this Court more than a dozen times in appeals and original actions related to his 1991 conviction. *See, e.g., State v. McIntyre*, Ninth Dist. No. 15348, 1992 WL 125251 (May 27, 1992) (direct appeal); *State v. McIntyre*, Ninth Dist. No. 17095, 1995 WL 622895 (Oct. 25, 1995) (postconviction relief appeal); *State ex rel. McIntyre v. Alexander*, Ninth Dist. No. 22234, 2005-Ohio-160 (habeas appeal); *State v. McIntyre*, Ninth Dist. No. 25292, 2010-Ohio-4658; *State v. McIntyre*, Ninth Dist. No. 25666, 2011-Ohio-3668; *State v. McIntyre*, Ninth Dist. No. 25898, 2011-Ohio-6593; *State v. McIntyre*, Ninth Dist. No. 25800 (Dec. 30, 2011). In 2012, this Court dismissed an appeal from an order that corrected a clerical mistake in the sentencing entry because it was not a final, appealable order. *State v. McIntyre*, Ninth Dist. No. 26151 (June 21,



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Deputy

2012). Mr. McIntyre filed another appeal in October 2012 that is currently pending before this Court. *State v. McIntyre*, Ninth Dist. No. 26677.

“For a writ of mandamus to issue, a relator must demonstrate that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy.” *State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd.*, 81 Ohio St.3d 173, 176 (1998). Mr. McIntyre has asserted that he is entitled to the writ of mandamus because Judge Teodosio lacked jurisdiction to grant the State’s motion to dismiss a pending count from his 1991 criminal case. Mr. McIntyre’s argument rests on his assertion that a pending appeal in court of appeals case number 26151 deprived the trial court of jurisdiction to act. Mr. McIntyre’s assertion is wrong.

As relevant to this action, Mr. McIntyre filed several motions in his underlying criminal case. According to the complaint, Judge Teodosio denied those motions on June 19, 2012, because Mr. McIntyre’s pending appeal deprived him of jurisdiction to rule on them. *State v. McIntyre*, Summit County Common Pleas Case No. CR 1991-01-0135 (June 19, 2012). At the time Judge Teodosio denied the motions, Mr. McIntyre’s appeal was pending in this Court. *State v. McIntyre*, Ninth Dist. No. 26151. As Judge Teodosio noted in his journal entry, and Mr. McIntyre reiterated in his complaint, a trial court loses jurisdiction to act when an appeal is pending except to take action in aid of the appeal. *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, ¶ 9.

The State then filed a motion to dismiss the pending charge. Mr. McIntyre has argued that Judge Teodosio also lacked jurisdiction to grant the State’s motion because of the pending appeal. His argument ignores one important point – this Court dismissed Mr.

McIntyre's appeal before Judge Teodosio granted the State's motion to dismiss. The appeal that deprived Judge Teodosio of jurisdiction to rule on pending motions on June 19 was dismissed on June 21. *McIntyre*, Ninth Dist. No. 26151 (June 21, 2012). The State filed its motion to dismiss, and Judge Teodosio granted it, after this Court dismissed the appeal.

Mr. McIntyre has argued only that the pending appeal deprived Judge Teodosio of jurisdiction to act. Because no appeal was pending on June 28 when Judge Teodosio granted the motion, he had jurisdiction to rule on the pending motion, and Mr. McIntyre is not entitled to the writ of mandamus.

Mr. McIntyre has also asked this Court to order Judge Teodosio to set a date for a retrial on the pending count. Because we have concluded that Judge Teodosio did not lack jurisdiction when he dismissed that count, there remains no pending count for retrial. Accordingly, Mr. McIntyre is not entitled to the writ of mandamus on this basis.

For the foregoing reasons, this Court grants Judge Teodosio's motion to dismiss and Mr. McIntyre's petition for a writ of mandamus is dismissed.

Mr. McIntyre moved to waive the payment of the cost deposit and complied with R.C. 2969.25. The motion to waive the cost deposit is granted. This permits consideration of the case without payment of the cost deposit but does not serve as a waiver of the court costs. *See* Loc.R. 2(C). All other pending motions are denied.

Costs taxed to Mr. McIntyre. The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal.

See Civ.R. 58(B).



Judge

Concur:

Carr, J.

Belfance, J.