

IN THE OHIO SUPREME COURT

Artie Grissom
3301 W. Stoneway Dr.
Sandusky, OH 44870

Petitioner,

CASE NO.

v.

Ohio Adult Parole Authority
Lorain Office
631 Griswold Road
Elyria, OH 44035

Respondent

WRIT OF HABEAS CORPUS,
MANDAMUS & PROHIBITION
TO TERMINATE POST
RELEASE CONTROL

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1. Now comes Petitioner, Artie Grissom, by and through his undersigned counsel, Geoffrey L. Oglesby, Esq. and moves this Honorable Court to issue a writ of habeas corpus, mandamus, and prohibition terminating Petitioner's post release control in the above captioned case.

Pleading in Support of Writ of Habeas Corpus

2. On March 30, 2010 Petitioner was resentenced in *State of Ohio v. Artie Grissom Case* No. 98-CR-0421. **Ex. A.** Resentencing was after the Erie County Court of Common Pleas granted Petitioner's Motion to Vacate and Correct Void Sentence. Based on the motion, the Court vacated its judgment entry of February 16, 1999. Founded on the vacation of sentence the Court resentenced Petitioner on March 30, 2010.
3. On May 27, 2010 the Court filed a *nunc pro tunc* entry correcting its March 30, 2010 judgment entry. **Ex. B.** The Court never addressed Petitioner personally concerning the sentence as it relates to post release control in the case that Petitioner is presently under post release control. The Court indicated to Mr. Grissom as follows:

“Mr. Grissom, I'm notifying you that upon serving your sentence, you shall be supervised after leaving prison for a mandatory period of three years of post release control on **Count 2**. Those terms will run concurrent

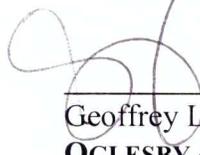
to each other. I'm further notifying you that as to **Count 4**, you may be supervised after leaving prison for a period of up to three years of post release control and the same as to Count 5." P.17 [See copy of transcripts attached **Ex A.**]

4. The Court changed Petitioner's post release control without addressing petitioner in person.
5. The Court never indicated to Petitioner that he was going to be on post release control for Count 3 of his indictment. Count 2 of the indictment is the one that petitioner is presently under post release control.
6. The Petitioner was never sentenced under Count 3 and as such the parole authority has no jurisdiction over petitioner.
7. A writ of habeas corpus should be issued whenever a person's liberty is being unlawfully restrained through imprisonment, restraint, or deprivation. R.C. 2725.01.
8. A writ of prohibition should be granted when (1) respondent is about to exercise judicial or quasi-judicial powers; (2) the exercise of the power is unauthorized by law; and (3) the denial of the writ will cause injury for which no other adequate remedy in the ordinary course of law exists. *State ex rel. Henry v. McMonagle* (2000), 87 Ohio St. 3d 543.
9. Post release control is a type of restraint that denies a person the capability of leaving the boundaries of the state without facing re-incarceration. R.C. 2967.131(A).
10. According to *Hernandez v. Kelly*, a writ of habeas corpus should be granted releasing the Petitioner from prison and post release control when the court misinforms the Petitioner about the terms of post release control during sentencing. *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126.
11. Petitioner's liberty is currently being restrained and deprived by the terms of his post release control by restraining him within the boundaries of Ohio subject to imprisonment.
12. Petitioner was misinformed about the terms of his post release control at his resentencing hearing, similar to *Hernandez*.
13. The filing of the *nunc pro tunc* to amend the terms of post release control was insufficient, and Petitioner should have been informed in person at a new resentencing hearing.

14. The petitioner has no adequate remedy at law.
15. The Adult Parole Authority (APA) is practicing quasi- judicial unauthorized practice of law, to which no adequate remedy in the ordinary course of law exists, and denial of the writ would cause irreparable harm to Petitioner.
16. Since Petitioner is out of prison, and cannot be resentenced, the only available remedy is to terminate his post release control.
17. Clear legal right to being taken off parole.
18. Clear legal duty to not supervise a parolee unless they have been sentenced by the court.
19. The Petitioner is not claiming he was sentenced improperly, he is claiming he was not sentenced.
20. If the Petitioner was not sentenced on a criminal offense than the Ohio Adult Parole Authority has a clear legal duty to refrain from supervision.
21. A direct appeal cannot correct a non-existent sentence.
22. As long as the adult parole authority has the right to send the Petitioner to prison, Petitioner cannot be considered free from prison.

WHEREFORE, Petitioner would demand that he be released from post release control.

Respectfully Submitted,



Geoffrey L. Oglesby, Esq. 0023949

OGLESBY & OGLESBY ATTORNEYS AT LAW

618 West Washington Street

Sandusky, Ohio 44870

419-625-9500 LAWOFFICE@RBOGLESBY.COM

Verification:

I Artie Grissom 3301 West Stoneway Drive Sandusky, Ohio 44870 d.o.b. 2/13/62 social security no. XXX-XX-6924 after having been duly sworn depose and says that the above allegations stated in the WRIT OF HABEAS CORPUS, MANDAMUS & PROHIBITION TO TERMINATE POST RELEASE CONTROL is true as I verily believe.



Artie Grissom

Sworn to and subscribed in my presence, the above person, who is known to me signed this document of his own free will and accord on April 2, 2015.



LARA K. WOOD, ESQ.
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.

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Prob
Purs
R. Garand
Bur. Sent. Comp.

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

State of Ohio

: Case No. 98-CR-421

-vs-

: Judge Beverly K. McGookey

Artie Grissom

: JUDGMENT ENTRY
RESENTENCING

Defendant

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COMMON PLEAS COURT
ERIE COUNTY, OHIO
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BARBARA J. JOHNSON
CLERK OF COURTS

On the 30th day of March, 2010, this matter came before the Court pursuant to defendant's Motion to Vacate and Correct Void Sentence; upon consideration of the briefs submitted, the Court finds that defendant's Motion to Vacate and Correct Void Sentence is hereby GRANTED; present were the Assistant Prosecutor on behalf of the State of Ohio, the defendant in person and represented by counsel, Richard Garand.

The Court vacated its judgment entry filed February 16, 1999 and this matter proceeded to resentencing; and the defendant was afforded all rights pursuant to Crim.R. 32.

The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code §2929.12.

The Court finds that defendant is not a candidate for community sanctions. Defendant was advised at the time of

Exhibit A

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entering his plea of his right to appeal within thirty (30) days of his sentence

After prison release, if post-release control is imposed, for violating post-release control conditions, the Adult Parole Authority or Parole Board may impose a more restrictive or longer control sanction, return defendant to prison for up to nine months for each violation, up to a maximum of 50% of the stated terms. If the violation is a new felony, defendant may receive a new prison term of the greater of one year or the time remaining on post-release control.

Defendant, as to Count No. 1, heretofore was found "guilty" by a jury of his peers of the offense of Felonious Assault [F-2; O.R.C. §2903.11(A)(1)] subject to a penalty of 2, 3, 4, 5, 6, 7 or 8 years; defendant, as to Count No. 3, heretofore was found "guilty" by a jury of his peers of the offense of Robbery [F-2; O.R.C. §2911.02(A)(2)] subject to a penalty of 2, 3, 4, 5, 6, 7 or 8 years; defendant, as to Count No. 4, heretofore was found "guilty" by a jury of his peers of the offense of Possession of Crack Cocaine [F-5; O.R.C. §2925.11(A) and (C)(4))a)] subject to a penalty of 6, 7, 8, 9, 10, 11 or 12 months; defendant, as to Count No. 5, heretofore was found "guilty" by a jury of his peers of the offense of Assault of a Police Officer [F-4; O.R.C. §2903.13(A)] subject to a penalty of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 18 months; the Court inquired of the defendant if he had anything to say why judgment should not be pronounced against him and the defendant made a statement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the defendant having been found guilty as to Count No. 1, for the offense of **FELONIOUS ASSAULT**, a second degree felony in violation of §2903.11(A)(1) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of seven (7) years; defendant having been found guilty as to Count No. 3, for the offense of **ROBBERY**, a second degree felony in violation of §2911.02(A)(2) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of seven (7) years; defendant having been found guilty as to Count No. 4, for the offense of **POSSESSION OF CRACK COCAINE**, a fifth degree felony in violation of §2925.11(A) and (C)(4)(a) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of eleven (11) months; defendant having been found guilty as to Count No. 5, for the offense of **ASSAULT OF A POLICE OFFICER**, a fourth degree felony in violation of §2903.13(A) of the Ohio Revised Code, be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the

term of seventeen (17) months.

The sentences imposed in Count Nos. 1, 3 and 5 shall be served consecutively; further, the sentence imposed in Count No. 4 shall run concurrent with the sentences imposed in Count Nos. 1, 3, and 5 for a total of fifteen (15) years, five (5) months.

Defendant shall receive 4,237 days credit for time served as of March 30, 2010; as to Count 4, defendant's Ohio drivers license shall be suspended for a period of eleven (11) months from February 11, 1999 - however, this is moot in that the time has passed; and defendant shall pay the costs of this prosecution for which execution is awarded.

IT IS FURTHER ORDERED that upon serving his sentence, defendant *shall* be supervised after leaving prison for a mandatory period of 3 years of post release control on Counts 1 and 2 to run concurrent.

IT IS FURTHER ORDERED that upon serving his sentence, defendant *may* be supervised after leaving prison for a period of up to 3 years of post release control on Counts 4 and 5 to run concurrent.

IT IS FURTHER ORDERED that the transfer of defendant into Transitional Control Program(s): X ^{BK M} will be Denied by this Court/ will not be Denied by this Court.

IT IS FURTHER ORDERED that the defendant shall be/ X ^{BK M} shall not be recommended for placement into the intensive program prison [IPP].

Defendant is hereby notified that, under Federal law,

persons convicted of felonies can never lawfully possess a firearm. Defendant was further notified that if he is ever found with a firearm, even one belonging to someone else, he could be subject to prosecution by federal authorities and subject to imprisonment for several years. This restriction applies even if his Civil Rights have successfully been restored.

IT IS FURTHER ORDERED that the institution shall credit defendant for time served from the date of sentencing until reception at said facility.

IT IS FURTHER ORDERED that the Erie County Sheriff's Office shall transport defendant to the appropriate institution for service of prison sentence.

IT IS FURTHER ORDERED that the Erie County Sheriff's Office shall withdraw any warrants which may have been placed in LEADS and/or NCIC.

IT IS FURTHER ORDERED that the defendant shall submit to the collection of DNA specimen as required by law.

IT IS FURTHER ORDERED that the Erie County Clerk of Courts shall enter, without delay, this Judgment Entry on its journal pursuant to Crim.R. 32(C).

Beverly K. McGookey

JUDGE BEVERLY K. MCGOOKEY

Approved:

I HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE.
BARBARA J. JOHNSON, CLERK OF COURTS
Erie County, Ohio
Sandra Steton

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

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STATE OF OHIO)

Plaintiff,)

vs.)

ARTIE GRISSOM)

Defendant.)

Case No. 98 CR 421

C.A. #E10-0017

Transcript of Sentencing had and taken in the above-captioned matter from the original recording on March 30, 2010, and heard before JUDGE BEVERLY K. MCGOOKEY, taken by me, a Notary Public in and for the State of Ohio.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

Richard Garand, Esquire
158 E. Market St.
Sandusky OH 44870
(419) 609-9615

ON BEHALF OF THE DEFENDANT:

Mary Ann Barylski
Assistant Prosecuting Attorney
247 Columbus Ave., Suite 319
Sandusky OH 44870
(419) 627-7697

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BARBARA J. JOHNSON
CLERK OF COURTS

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ERIE COUNTY, OHIO
2010 MAY -6 AM 9: 11
BARBARA J. JOHNSON
CLERK OF COURTS

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(There were no Witnesses called on behalf of the State of Ohio or the Defendant.)

(There were no Exhibits identified or offered on behalf of the State of Ohio or the Defendant.)

1 Judge McGookey: This is the case of State of Ohio vs. Artie Grissom, Erie County
2 Common Pleas Court Case number 98CR421. Present in the Courtroom are the
3 Defendant, along with his attorney, Mr. Rick Garand; representing the State of Ohio,
4 Assistant Erie County Prosecutor, Mary Ann Barylski. For the record, this matter is
5 before the Court based upon Defendant's motion, I believe, to there's so many motions
6 here, motion to vacate and correct the void sentence. Court is bringing the Defendant
7 back for re-sentencing and is prepared to proceed with re-sentencing at this time. Either
8 side wish to be heard? Well first of all, is there any reason why we should not proceed
9 with re-sentencing at this time?

10 Ms. Barylski: No, Your Honor.

11 Mr. Grissom: Yes, Your Honor.

12 Judge McGookey: Go ahead.

13 Mr. Grissom: First thing I'd like to protect is my right under the Sixth Amendment,
14 effective assistance of counsel. Me and my attorney is not agreeing on several different
15 issues involving the matter and I feel that it is relevant for me to address this situation
16 with the Court.

17 Judge McGookey: What situation?

18 Mr. Grissom: My attorney says that I'm only here for re-opposition, to re-oppose PRC, and
19 that's not what the Ohio Supreme Court has ...

20 Judge McGookey: No, we've said that the sentence is void and we're here for re-
21 sentencing. That's what we're here for.

22 Mr. Grissom: Under the Statute of 2929.19 and Criminal Rule 32?

1 Judge McGookey: uh-huh.

2 Mr. Grissom: That's fine, then. I apologize.

3 Judge McGookey: Okay. So we're prepared to go forward with the re-sentencing. Either
4 side wish to be heard?

5 Ms. Barylski: Yes, Your Honor. We're asking that this Court, I'm actually, this Court can
6 impose a harsher sentence than what was previously imposed in this case based on the
7 facts of the Defendant's prior record. The facts of this case, and this was in jury trial,
8 Your Honor, based on the jury verdict of the evidence that was presented, you know, the
9 Defendant did commit two violent acts. The record shows that around August 23rd, 1998,
10 he started a, basically a drug-crazed crime spree. He ended up going and getting William
11 Ricky Brown and he had a chair. Calvin Brown, he attacked Calvin Brown. He picked up
12 a chair and hit Calvin with a chair. He also broke into Calvin Brown's home. He kicked
13 the door in proceeding into the house and Calvin then ran next door to call the police.
14 Then you go to August 24th, the next day, he continues on his rampage where he hooks up
15 with Joe Hammond, goes to his house. After talking for awhile, Defendant asks
16 Hammond for a ride. While they were in the vehicle, the Defendant and Hammond were
17 stopped at Quinton Fisher. Fisher walked up to the car, a drug deal was supposed to go
18 down. Quinton Fisher gets into the vehicle. Hammond, who was driving the vehicle, gets
19 in the back seat and Defendant then takes over behind the driver's side and begins to
20 drive. When Hammond gets in the back seat, he sees his wallet on the floor in the back
21 with no money in it. All the money had been gone out of it. Then, Defendant and Fisher
22 got in. Defendant and Quinton had a drug deal in the car, Quinton Fisher. Hammond was

1 trying to kind of turn Quinton Fisher on and be careful because Defendant just robbed
2 Fisher of all his money but then the drug deal went on and Defendant not only takes the
3 drugs but he also takes Quinton's money, the money. Then Defendant punches Quinton in
4 the jaw after he stole the money and the drugs and then he kicks him out of the van.
5 Quinton Fisher then was struck in the window with his fist and he sustained injuries.
6 After Quinton got out of the van, Defendant started to take off and, of course, Hammond
7 was able to stop Defendant when he lurched forward and slammed the gear shift into park
8 and Defendant then struck Hammond. When Hammond went to get out of the van to see
9 if Quinton Fisher was okay, Defendant then fled in the vehicle from both Quinton Fisher
10 as well as Hammond. Hammond ran after Appellant to an apartment building. They went
11 inside for about 5 to 10 minutes. Defendant came out. Defendant then drove Hammond
12 and then there was some struggle. Defendant got away again. And then they ended up in
13 some barn somewhere. And there was an incident in the barn and he was hiding in the
14 barn from the police. You know, Hammond ended up in Firelands Hospital with a
15 concussion and they had to go in and physically take him, the Defendant, out of the barn.
16 He fought with the police and there were two police officers who were hurt as a result of
17 this incident. This was all testimony that was presented to a jury and on January 25th,
18 1999 the jury did come back with a verdict of guilty to numerous offenses. He was guilty
19 to felonious assault and not guilty to a burglary. He was guilty to a robbery and then he
20 was guilty of drug abuse and he was guilty of assault and then, in fact, he was guilty of
21 assault on a police officer, who was Officer Hamilton. And then they had not guilty to an
22 assault. And then we proceeded to sentence him in this case. We did, you know, there

1 was a pre-sentence investigation that was provided but when the State looks at the
2 Defendant's prior record, it shows he was sentenced to Erie County Jail or Toledo House
3 of Correction and \$1000 fine back in '81, and I believe those were the results of theft
4 offenses. He had some misdemeanor assault convictions. It was a, he was sent to the Ohio
5 State Reformatory in '88. He, looking at his CCH, Your Honor, we're showing that he
6 had a confinement of 2-5 years for gross sexual imposition, and that was in, date of arrest,
7 it would have been, I think, in '81, somewhere in that area, he was convicted of gross
8 sexual imposition and he was sent to a prison for that. And he had a, he was convicted a
9 attempted robbery and he received 2 year, 2-10 years on that. And that was in '88. Then
10 you have these instant offenses which basically are all offenses of violence. So the
11 imposition of sentence that was imposed by this Court was appropriate and basically at
12 this point the State of Ohio is asking that Defendant receive the maximum sentence. I
13 mean, it's warranted in this case based on the facts and the testimony that was presented
14 at trial and based on Defendant's prior record. And in my understanding, the offenses that
15 he was found guilty of, felonious assault, I believe that was a felony of the second degree.
16 Defendant does receive post-release control after he gets out of prison for a mandatory
17 three years. As far as the robbery, I believe that was a felony of the second degree. I
18 believe Defendant receives again mandatory post-release control of three years.
19 Defendant was convicted of drug abuse having been a felony of the fifth degree;
20 therefore, he could have up to three years post-release control on that particular offense.
21 As far as the assault on a police officer, I believe that was probably a felony of the fourth
22 degree and in that situation he could have up to three years post-release control on that

1 particular count. I believe I may have covered all the offenses in which he was found
2 guilty. Therefore, at this time, I believe it's within the Court's discretion with regards to
3 the imposition of sentence in this particular case.

4 Judge McGookey: Thank you, Mr. Garand?

5 Mr. Garand: Your Honor, I guess at the outset I would just indicate that this, because this
6 is a essentially a pre-Foster sentence regarding maximum consecutive time there's
7 obviously very different specific findings that had to be made on all of those and I would
8 just, I guess, remind everyone that that would have to be done in order to justify, I mean,
9 findings would have to be made specifically. The Court knows that, I know. But I just, I
10 guess just to remind everyone this is a pre-Foster matter and post-Foster, I think anything
11 goes but prior to that. So if the Court is going to consider adding additional time or
12 maximum time or maximum consecutive time, I think those findings would have to be
13 made properly. That having been said, we believe that there are a couple of issues in play,
14 and I think it's clear under case law that ~~the failure to notify about post-release control at~~
15 ~~the original hearing renders this, renders the sentence void.~~ And I think the actual
16 language is the effect of determining judgement as void is well established. The
17 judgement is a mere annulity. The party is in the same position as if there had been no
18 judgement. I think we all agree on that.

19 Ms. Barylski: Excuse me. No judgement? Or no sentence?

20 Mr. Garand: ~~As if there had been no judgement. That's the language from Bezak.~~ It refers
21 to sentence but the actual word is judgement. Now, if you read that in conjunction with
22 Criminal Rule 32C, which defines judgement of conviction as including the sentence, and

1 you follow the case law that says failure to notify about PRC voids the sentence, if the
2 sentence is necessarily part of the judgement of conviction, we would argue that that
3 allows us at a de novo re-sentencing hearing to also address issues that would arise under
4 the entire judgement of conviction and so, based on, I guess if you read those, the case
5 along with the conjunction of rule, we would argue that Mr. Grissom ought to be able to
6 address the defective indictment, and I'm going to address that briefly before the Court
7 right now. Essentially, the argument would be that because the indictment was defective
8 with regard to the Count of robbery based on failure to include the proper language of
9 culpability, that that count should have been dismissed from the indictment which would
10 leave then, for purposes of sentencing, a seven year sentence on felonious assault that ran
11 consecutive to the assault on a police officer in the drug case. ~~The seven year sentence,~~
12 ~~having already been served as it was consecutive, then there would be no ability for the~~
13 ~~Court to impose PRC because he's already under, I believe, the Simpkins case, he's~~
14 ~~already served that sentence, and therefore, can't be subject to PRC.~~ That term has
15 already been served. That would be the argument that we'd be making here today. In
16 terms of mitigation based on the facts that were outlined by the Prosecutor, Mr. Grissom
17 did indicate to me that there was a statement about a chair hitting, with a chair, he's
18 indicated to me that that didn't happen. I would point that out to the Court as well. I have
19 not reviewed the trial transcripts so I don't know if that was part of the findings of the
20 jury or not. ~~But essentially, the argument that we're making today is that we ought to be~~
21 ~~at this de novo hearing able to raise the issue of the defective indictment for purposes of~~
22 ~~sentencing in that had that count been dismissed and the new count been served out, we~~

1 would not be able to impose PRC at this time. And essentially, I guess the argument
2 would be that this whole hearing would be, there would be no purpose for it because the
3 sentences, the terms are uncertain. He's subject to PRC on the other Counts, we
4 understand that. But the seven year sentence on felonious assault, we would argue, would
5 not be subject to PRC because it's already been served.

6 Judge McGookey: The State wish to be...

7 Ms. Barylski: Your Honor, according to Ohio Revised Code 2967.28(D), before a
8 prisoner is released from imprisonment, the Court shall impose upon prisoner described
9 one or more post-release control sanctions applied in prison period of post-release
10 control. When a post-release control is not imposed it can be imposed prior to the parolee
11 being released from prison. Post-release control does not begin until Defendant is
12 released from prison, even if he's served that seven years, he's still in the institution. He's
13 still subject to post-release control based upon the statute, or based on the, he's still, the
14 Court still has the discretion and jurisdiction to impose post-release control, because his
15 sentence is not completed. His sentence is not completed until he is released from the
16 institution. That's when post-release control begins; not when a term of imprison is done
17 in the institution. It is done when Defendant leaves the institution. Therefore, according to
18 the Ohio Revised Code, you as the Judge have the jurisdiction to impose post-release
19 control on each count in which he pled and was convicted and mandatory post-release
20 control under two of the offenses here. They are to be run concurrent until independent,
21 it's not going to be post-release control that's going to be imposed to be consecutive post-
22 release control must run concurrent but it must be imposed on each count to run

1 concurrent.

2 Judge McGookey: Okay. Thank you. Mr. Grissom, is there anything you want to say on
3 your own behalf before I proceed?

4 Mr. Grissom: Yes, Your Honor. First of all, I'd like to apologize for my attorney because
5 I did think that we were on the same page from the time we was down there and I don't
6 mean no disrespect to the Court or to my attorney. All I want to do is protect my
7 constitutional rights.

8 Judge McGookey: Fine.

9 Mr. Grissom: Okay. Secondly, Your Honor, I 'd like to agree with my attorney. Criminal
10 Rule 12(C)2 do give us the authority to object to a desective indictment during any
11 pendency of the proceedings and based on my understanding, pendency is still pending as
12 long as there's no final order or final judgement or judgement of conviction under
13 Criminal Rule 32©. Your Honor, I put in a motion for the new trial, which you denied.
14 All along, I have always opposed and challenged and objected to the robbery conviction
15 because, according to law, it was not a robbery, even if you consider the defect of the
16 indictment, it would also have to bring up the fact that when the State got this conviction,
17 they got this conviction through undiscovered evidence, undisclosed evidence, I should
18 say, rather. I was indicted from, which I'd like to bring, give you to take a look at as my
19 support of information. I was indicted according to a police report that Quinton Fisher
20 said "Artie Grissom robbed me; stabbed me and robbed me." When we filed, when my
21 defense attorney filed for discovery, that's what we prepared our defense against—"Artie
22 Grissom stabbed me and robbed me." When we went to trial, Your Honor, the State

1 changed the material evidence of the allegation to “Mr. Grissom injured Mr. Fisher’s
2 mouth” and that brought about the robbery. There was no material evidence disclosed
3 inside the State discovery indicating that Mr. Fisher’s mouth had been injured which
4 violates my right to look over and view all the material evidence that the State had against
5 me. And furthermore, Your Honor, the medical report that was evidenced inside the
6 transcript at my trial that a medical report did happen, or Mr. Fisher had went to the
7 hospital and he said on record, that either his mother or he said on record, that the doctor
8 looked at this alleged mouth injury but yet and still, Your Honor, I didn’t receive no
9 medical report to review to prepare for against that allegation. So I guess what I’m saying
10 here is all along I’ve been challenging this alleged robbery even though the jury convicted
11 me of it but they convicted me of it unconstitutionally; and according to Revised Code
12 Section 2901.21, except as provided in Division B of this Section, a person is not guilty
13 of an offense unless the person has requisite degree of culpability for each element as to
14 which the culpable mental state is specified by the section defining the offense. And as
15 you can see, Your Honor, in my indictment the State did not properly charge me of
16 recklessness. It omits the word “recklessness” and therefore, that indictment is defective
17 and the robbery should be, by law, vacated or discharged, Your Honor.

18 Judge McGookey: Let me see your book.

19 Ms. Barylski: May I respond to...

20 Judge McGookey: Yes.

21 Ms. Barylski: Number one, this is a jury verdict. The case law with regard to post-release
22 control does say they can vacate the sentence. It isn’t vacating the guilty verdicts in this

1 particular case. A final judgement is the verdict, the sentencing entry, and it being
2 journalized but in, under Simpkins, what we're looking at is a re-sentencing procedure
3 and not vacating the jury verdict. Defendant's case was appealed to 6th District Court of
4 Appeals, Your Honor. The 6th District Court of Appeals affirmed the judgement.
5 Petitioner's conviction in State vs. Grissom, Case No. E-99-029, 2000 WL 1595699 on
6 October 27, 2000. We have Defendant did file a motion for a new trial. State of Ohio
7 responded to it. The Defendant in that particular case is saying that he was unavoidably
8 prevented from filing the motion for a new trial. This was not established based on the
9 evidence that he did present. What Defendant is wanting to do is say that he wants to
10 basically repeat or contradict other evidence but it's not material to issues as to what he
11 had been indicted to. There is the due diligence during the trial in this matter. Some of the
12 things he was asking for he could have gotten on his own behalf. State of Ohio will
13 submit that discovery as well as supplementary discovery was provided to Defendant and
14 because he doesn't like the testimony of the witnesses, that is not sufficient to vacate any
15 jury verdict. It's up to the jury to judge the credibility of all the witnesses. And as I stated,
16 we did provide full discovery. The objections he's making should have been made awhile
17 ago. We're here now just for re-sentencing and that's all the law provides for in this case
18 is the sentencing based under Simpkins and Simpkins allows this Court jurisdiction to re-
19 sentence and impose post-release control time.

20 Judge McGookey: All right. Go ahead.

21 Mr. Grissom: Your Honor, I'd like to disagree with what Ms. Barylski is saying. She's
22 going along with State vs. Simpkins while I was going along with State vs. Singleton.

1 What the Ohio Supreme Court did rule that every decision made and dealing with the
2 void sentence issue, every decision made shall be considered or shall be standard
3 procedures in dealing with re-sentencing procedures and point blank, State vs. Bezak, as
4 we already know, says we are in this as position as there has never been a sentence. Now
5 I'm bringing that back up to say this, Your Honor. In State vs. Harmon, just to read a little
6 bit here, the fact that determines that a judgement is void is well established. It is as
7 though such proceedings had never occurred, a judgement is a mere annulity and the
8 parties are in the same position as if there had been no judgement. Taking the Supreme
9 Court at it's word, the Court must act as if the journal entry containing Mr. Bedford's
10 void sentence had never occurred and if there had never been no judgement. If there had
11 been no judgement, then there is no final order. The journal entry that purported to
12 impose sentence upon Harmon in 2004 must be considered as no judgement had been
13 entered. If there has been no judgement then there is no final order. Harmon was entitled
14 to be re-sentenced to correct the error and notification of post-release control and to a
15 final order that once issued could be appealed notwithstanding his direct appeal in 2005,
16 meaning, Your Honor, if I'm incorrect, someone please help me out. What I got from that
17 is the direct appeal prior to this hearing is void as well and we got a State vs. Bedford
18 where the Court says that it cannot under RC 2505.02 that they didn't have no jurisdiction
19 to review, affirm my...

20 Judge McGookey: Are you talking about your prior appeals?

21 Mr. Grisson: Yes, ma'am.

22 Judge McGookey: I understand what you're saying. I don't know the answer to that but

1 I'm going to proceed with the re-sentencing here and then you'll decide if you're going to
2 file an appeal and then the Court of Appeals will decide if you're right on that point or
3 not, so that's where we're at. So..

4 Mr. Garand: Your Honor, I'm sorry, if I could make a very, very brief...one more
5 comment.

6 Judge McGookey: Sure.

7 Mr. Garand: Regarding State vs. Simpkins, which is 117 Ohio St.3d 420, it does say that
8 in these cases where post-release control was not notified prior, the State is entitled to
9 new sentencing hearing to have post-release control imposed on the Defendant, and
10 here's what I think the most important language is: unless the Defendant has completed
11 his sentence. I know the State argued that sentence means the entire sentence. I would
12 argue that it means one of the consecutive counts, which he has already completed. So we
13 would make that argument as well based on imposition of post-release control.

14 Judge McGookey: That's on the record for you for whatever purpose that will gain you.

15 Mr. Garand: Thank you, Your Honor.

16 Ms. Barylski: Just one more thing so I can (inaudible) a pre-Foster. Pre-Foster must
17 bound any sentences imposed prior to the decision of Foster are unconstitutional so, you
18 know, this Court does not have to make any findings at all.

19 Judge McGookey: And I'm not planning on it.

20 Mr. Grisson: Your Honor?

21 Judge McGookey: Yes?

22 Mr. Grisson: Then I need to put something else on the record right quick fast please for in

1 case of appeal purposes.

2 Judge McGookey: Go ahead.

3 Mr. Grissom: I'd like to put on the record that Mr. Dempsey did, in fact, file to dismiss
4 this case prior to trial on the grounds that it was violating my fast and speedy rights. And
5 according to the 6th District's decision back in the year 2000 when it had remanded the
6 case back to the trial court for the purpose of rendering findings of facts and conclusion
7 of law and when the Court did state the findings of facts and send it's findings of facts to
8 the 6th District, it had three reasons in there why they denied my motion to dismiss for
9 violating my rights for a fast and speedy trial. And , I'd just like to put on for the record
10 that the Court was incorrect when it allowed the State to use a civil proceeding against me
11 to toll my time. The State used a civil...I was given 30 days in jail for child support
12 situation under a civil sanction and they tolled my time for that and they used that as
13 justification for denying that. And also the State used the reason that the denial should be
14 given is because that, somehow, a trial date was vacated and there's no record in the
15 journal entry showing that a trial date was vacated. But perhaps on December the 9th of
16 1998, it was an attempt to nunc pro tunc and I just want to put on the record that, you
17 know, it's violating my rights when it's trying to nunc pro tunc something after the
18 expiration date of my fast and speedy trial. And that would be it, Your Honor.

19 Judge McGookey: I don't have the complete file here, the Clerk of Courts file, but I have
20 some notations here and if you're referring to the time period of December 9th, '98, I
21 believe there was a judgement entry put on on that date that Attorney Brusnahan's motion
22 to withdraw was granted and Attorney Tim Dempsey was substituted as counsel of

1 record. On the same day, the judgement entry nunc pro tunc stated "this Court's prior
2 judgement entry filed 11/8/98 is hereby corrected to read as follows: upon agreement of
3 counsel and due to the pendency of Defendant's motion for bond reduction, the trial date
4 of this date 11/18/98 is vacated and final pre-trial re-assigned for 11/30/98 at 10:30 and
5 trial on 12/9/98". I'm not sure what particulars of that...the record will speak for itself on
6 that issue. So, it will be the judgement of this Court, first of all, this matter came on to be
7 heard on Defendant's motion to vacate and correct void sentence. Upon consideration of
8 the briefs submitted, the Court has already found but does so by this judgement entry that
9 ~~Defendant's motion to vacate and correct void sentence is granted.~~ Court vacated that
10 judgement filed February 16, or is vacating the judgement filed February 16, 1999
11 proceeding to re-sentencing; find that the Defendant was afforded all his rights under
12 Criminal Rule 32. Court's considered the record, the oral statements, pre-sentence reports
13 as well as the principles and purposes of sentencing and has balanced the seriousness and
14 recidivism factors under the Ohio Revised Code finds that the Defendant is not a
15 candidate for community sanctions. Defendant was advised at the time of his plea of his
16 right to appeal within thirty days of the filing of the journal entry reflecting his sentence.
17 I'll reiterate that at this point. After prison release I'm going to...well, first of all, let me
18 impose the sentences. Defendant was found guilty of Count 1, felonious assault by a jury
19 of his peers; found guilty of ~~Count 3, robbery, felony of the 2nd degree~~ by a jury of his
20 peers; found guilty of Count 4, possession of crack cocaine, by a jury of his peers; and
21 was found guilty of Count 5, assault of a police officer, a felony of the 4th degree by a jury
22 of his peers. It's the judgement of this Court that as to Count 1, felonious assault, that the

1 Defendant be sentenced to a term of incarceration of seven years in the custody of the
2 Ohio Department of Corrections; as to Count 3, robbery, seven years in the custody of the
3 Ohio Department of Corrections; as to Count 4, possession of crack cocaine, eleven
4 months in the custody of the Ohio Department of Corrections. There was also an eleven
5 month driver's license suspension imposed which is already served, I believe. As to
6 Count 5, assault on a police officer, felony of the 4th degree, it would be the judgement of
7 this Court that the Defendant be sentenced to a term of incarceration of seventeen
8 months. Counts 1, 3, and 5 will run consecutive to each other for a total of fifteen years,
9 five months. Count 4 shall run concurrent to the time on Counts 1, 3, and 5. Defendant
10 shall receive 4,237 days credit for time served as of today's date. Again, as to Count 4,
11 the driver's license was suspended for a period of eleven months from February 11, 1999.
12 Mr. Grissom, I'm notifying you that upon serving your sentence, you shall be supervised
13 after leaving prison for a mandatory period of three years of post-release control on Count
14 1. You shall be supervised after leaving prison for a mandatory period of three years of
15 post-release control on Count 2. Those terms will be run concurrent to each other. I'm
16 further notifying you that as to Count 4, you may be supervised after leaving prison for a
17 period of up to three years of post-release control and the same as to Count 5, and those
18 would be run concurrent to each other. I'm notifying you that under federal law persons
19 convicted of felonies can never lawfully possess a firearm. If you are ever found with a
20 firearm in your possession, even one that does not belong to you, you could be subject to
21 prosecution by federal authorities and subject to imprisonment or fines or both. This
22 restriction applies even if your civil right have been successfully restored. I'm notifying

1 you that when post-release control is imposed, if you violate the terms of post-release
2 control, potentially the parole board can return you back to prison for up to nine months
3 for each violation or up to half of your term. If you violate by committing a new felony
4 you may receive a new prison term of the greater of one year or the time remaining on
5 post-release control. There will be no fines, however Court costs will be assessed.

6 Anything further from either party?

7 Ms. Barylski: No, Your Honor.

8 Mr. Garand: No, Your Honor.

9 Judge McGookey: Alright. I guess that's it then. Good luck.

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CERTIFICATE

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State of Ohio
County of Erie

I, Barbara A. Leal, Notary Public, within and for the State of Ohio, do hereby
certify that this transcript is a true and accurate copy of the sentencing hearing taken on
March 30, 2010.

I further Certify that this transcript was made from the original recording taken
during such proceeding.

I do further certify that I am neither interested in the outcome of this matter nor
related to any person herein.

IN WITNESS WHEREOF, I have hereunto subscribed my name and seal at
Sandusky, Ohio, this 29th day of April, 2010.

Barbara A. Leal
Barbara A. Leal
Notary Public
My Commission Expires:
December 22, 2012

✓
R. D. Pab
Sheriff
Richard Garand
Def. Sent. Corp.

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

State of Ohio : Case No. 98-CR-421
-vs- : Judge Beverly K. McGookey
Artie Grissom : JUDGMENT ENTRY
 : RESENTENCING
Defendant : NUNC PRO TUNC



FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
JANUARY 21 AM 11:50
BARBARA J. JOHNSON
CLERK OF COURTS

---oOo---

This case shall be amended NUNC PRO TUNC to correct a typographical error in the Judgment Entry filed on March 30, 2010, in that "defendant shall be supervised after leaving prison for a mandatory period of 3 years of post release control on Counts 1 and 3 to run concurrent" and the Judgment Entry shall read as follows:

On the 30th day of March, 2010, this matter came before the Court pursuant to defendant's Motion to Vacate and Correct Void Sentence; upon consideration of the briefs submitted, the Court finds that defendant's Motion to Vacate and Correct Void Sentence is hereby GRANTED; present were the Assistant Prosecutor on behalf of the State of Ohio, the defendant in person and represented by counsel, Richard Garand.

The Court vacated its judgment entry filed February 16, 1999

JLG/12/13
05-27-10

and this matter proceeded to resentencing; and the defendant was afforded all rights pursuant to Crim.R. 32.

The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code §2929.12.

The Court finds that defendant is not a candidate for community sanctions. Defendant was advised at the time of entering his plea of his right to appeal within thirty (30) days of his sentence

After prison release, if post-release control is imposed, for violating post-release control conditions, the Adult Parole Authority or Parole Board may impose a more restrictive or longer control sanction, return defendant to prison for up to nine months for each violation, up to a maximum of 50% of the stated terms. If the violation is a new felony, defendant may receive a new prison term of the greater of one year or the time remaining on post-release control.

Defendant, as to Count No. 1, heretofore was found "guilty" by a jury of his peers of the offense of Felonious Assault [F-2; O.R.C. §2903.11(A)(1)] subject to a penalty of 2, 3, 4, 5, 6, 7 or 8 years; defendant, as to Count No. 3, heretofore was found

"guilty" by a jury of his peers of the offense of Robbery [F-2; O.R.C. §2911.02(A)(2)] subject to a penalty of 2, 3, 4, 5, 6, 7 or 8 years; defendant, as to Count No. 4, heretofore was found "guilty" by a jury of his peers of the offense of Possession of Crack Cocaine [F-5; O.R.C. §2925.11(A) and (C)(4)a)] subject to a penalty of 6, 7, 8, 9, 10, 11 or 12 months; defendant, as to Count No. 5, heretofore was found "guilty" by a jury of his peers of the offense of Assault of a Police Officer [F-4; O.R.C. §2903.13(A)] subject to a penalty of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 18 months; the Court inquired of the defendant if he had anything to say why judgment should not be pronounced against him and the defendant made a statement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the defendant having been found guilty as to Count No. 1, for the offense of FELONIOUS ASSAULT, a second degree felony in violation of §2903.11(A)(1) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of seven (7) years; defendant having been found guilty as to Count No. 3, for the offense of ROBBERY, a second degree felony in violation of §2911.02(A)(2) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the

Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of seven (7) years; defendant having been found guilty as to Count No. 4, for the offense of POSSESSION OF CRACK COCAINE, a fifth degree felony in violation of §2925.11(A) and (C)(4)(a) of the Ohio Revised Code, shall be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of eleven (11) months; defendant having been found guilty as to Count No. 5, for the offense of ASSAULT OF A POLICE OFFICER, a fourth degree felony in violation of §2903.13(A) of the Ohio Revised Code, be sentenced to the Department of Rehabilitation and Correction and conveyed to the Lorain Correctional Institution at Grafton, Ohio to be imprisoned and confined for a definite sentence for the term of seventeen (17) months.

The sentences imposed in Count Nos. 1, 3 and 5 shall be served consecutively; further, the sentence imposed in Count No. 4 shall run concurrent with the sentences imposed in Count Nos. 1, 3, and 5 for a total of fifteen (15) years, five (5) months.

Defendant shall receive 4,237 days credit for time served as of March 30, 2010; as to Count 4, defendant's Ohio drivers license shall be suspended for a period of eleven (11) months from February 11, 1999 - however, this is moot in that the time has passed; and

defendant shall pay the costs of this prosecution for which execution is awarded.

IT IS FURTHER ORDERED that upon serving his sentence, defendant shall be supervised after leaving prison for a mandatory period of 3 years of post release control on Counts 1 and 3 to run concurrent.

IT IS FURTHER ORDERED that upon serving his sentence, defendant may be supervised after leaving prison for a period of up to 3 years of post release control on Counts 4 and 5 to run concurrent.

IT IS FURTHER ORDERED that the transfer of defendant into Transitional Control Program(s): X^{BKA} will be Denied by this Court/ will not be Denied by this Court.

IT IS FURTHER ORDERED that the defendant shall be/ X^{BKA} shall not be recommended for placement into the intensive program prison [IPP].

Defendant is hereby notified that, under Federal law, persons convicted of felonies can never lawfully possess a firearm. Defendant was further notified that if he is ever found with a firearm, even one belonging to someone else, he could be subject to prosecution by federal authorities and subject to imprisonment for several years. This restriction applies even if his Civil Rights have successfully been restored.

IT IS FURTHER ORDERED that the institution shall credit defendant for time served from the date of sentencing until reception at said facility.

IT IS FURTHER ORDERED that the Erie County Sheriff's Office shall transport defendant to the appropriate institution for service of prison sentence.

IT IS FURTHER ORDERED that the Erie County Sheriff's Office shall withdraw any warrants which may have been placed in LEADS and/or NCIC.

IT IS FURTHER ORDERED that the defendant shall submit to the collection of DNA specimen as required by law.

IT IS FURTHER ORDERED that the Erie County Clerk of Courts shall enter, without delay, this Judgment Entry on its journal pursuant to Crim.R. 32(C).

Beverly K. McGookey
JUDGE BEVERLY K. MCGOOKEY

1002

IN THE COURT OF COMMON PLEAS, ERIE COUNTY, OHIO

State of Ohio,

CASE NO: 98-CR-421

vs

Judge Beverly K. McGookey

Artie Grissom

VERDICT
COUNT TWO

Defendant.

Burglary



50 JAN 29 PM 4:19

We, the jury, find the defendant, Artie Grissom * NOT GUILTY of Burglary

as charged in the indictment.

*Insert in Ink "GUILTY" or "NOT GUILTY"

1. Shandra Nelbig

7. Christy A. Pigeon

2. Narissa Emerson

8. Terrell Smith

3. Lisa Kaye Ball

9. Ruth Dell

4. Bustine M. Hardwin

10. Sue W. Cloak

5. Amelia A. Davlin

11. Charles E. Barnard

6. Amayha's Brownell

12. Robert Craig

Dated: January 28, 1999

Robert Craig
Foreperson

plus

IN THE COURT OF COMMON PLEAS, ERIE COUNTY, OHIO

State of Ohio,

CASE NO: 98-CR-421

vs

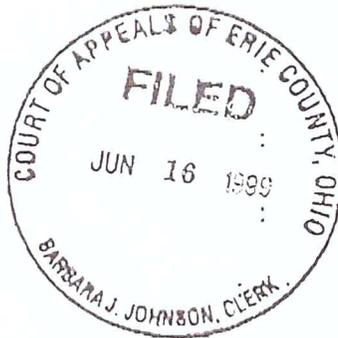
Judge Beverly K. McGookey

Artie Grissom

VERDICT
COUNT THREE

Defendant.

Robbery



99 JAN 23 FILED 19

We, the jury, find the defendant, Artie Grissom * GUILTY of Robbery

as charged in the indictment.

*Insert in Ink "GUILTY" or "NOT GUILTY"

1. Wanda Nellie

7. Christy A. Sizoo

2. Doreen Greenman

8. [Signature]

3. Lisa Kaye Ball

9. Ruth Bell

4. Christine M. Heidine

10. Sue W. Cloak

5. Amelia A. Davlin

11. Charles E. Barnard

6. Oranah's Brownell

12. Robert Craig

Dated: January 28, 1999

Robert Craig
Foreperson