ORIGINAL

IN THE SUPREME COURT OF OHIO

15-0927

STATE OF OHIO,	:	Case No. ~~[illegible]~~
Plaintiff-Appellee,	:	
	:	On Appeal from the Coshocton County Court of Appeals Fifth Appellate District
vs.	:	
Jonathan Thuener,	:	
	:	C.A. Case No. 08-CA-0010
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT Jonathan Thuener

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Judgment Entry and Opinion, Court of Appeals, Coshocton County,
(DATE) Delayed App. to Reopen - Denied DEC. 11, 2014 ..... A-1
Reconsideration motion to reopen Denied May 4, 2015
(Revd 5-19-15)

Missouri v. Frye
SEE Enclosed
Case where given
Inadiquate advice
Took plea & got 14-Life
Even though Innocent.

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION Q

EVER Since 5-24-07, I, Jonathan Thvener (Defendant) have been trying to get the truth out. from Day one, I have Asked for a Poly Graph, was denied, I have asked Public defender for copies of Everything in file, was told No due to Nature of Case. All I got were Statements, that in its self does Little w/o the other Papers in file.

Public Defender (mr. mullen) has only Seen me 1 time while Locked up - other times was in Court. when Test results for STD's Came back Saying I was clean - (NO WARTS) cause victim has warts, I told my atty. J. mullen (P.D) he Says I could have worn a Seran wrap - if So, how'd She (The victim get warts?)

A letter from P.D. mullen Stated If I took a plea, I'd only get 13 years max, Life if I took it to trial. my P.D. Told me I Could not fire him So Late in the case. So I was basically Stuck. the Victims Statement does in fact help. In her Statements, she tells what She Sees, feels.

The Question is, how many other people who had been in Court in Coshocton County, had the Same fate? Now the Prosecutor of my Case as well as others, is now the judge. J. Mullen P.D was a Prosecutor in Holmes County, So Now you got an Ex-Prosecutor thats a Judge, one a public defender and you got the Current Prosecutor. to Catch a Case in that County is a No win Situation, Even if your 100% Innocent.

The Courts as well as my P.D. to this Day Deny me all Papers in file to do Even a 50% Decient filing. EVEN Detectives Lie on the stand, my files prove that. Basically Since 2008, I have been told I had no appeal options, I could not appeal. Yet Mr. Mullen (P.D.) filed an appeal in my case for the adam walsh act only. Not my Sentence, How many other Defendants Did he do this to? Thus Selling us Defendants out to make a quick Buck So he can drink and drive. How many more have to Suffer at the hands of Crooked officials?

What happened to our Constitutional Rights? In the County of Coshocton they do Not exist. Deputies in the Past get nailed for Supplying underage Kids with Liquor at a Party, Yet they are Still wearing a badge., I Beat his wife, Yet he Still wears a bage. The Contitution was Enacted to help Protect Even the unlawful as well as Lawful, So why do we have to Suffer at the hands of others who only Lie and Say 1 thing and do another? I feel the whole Legal System needs to be re done and New Judges w/o ties to any Place he works Should be the judge.

I feel, after I can prove my Case in Court, other's Should be Looked into.

Printed 1-24-15
THUEVER 576243
2C-225

MISSOURI, PETITIONER v. GALIN E. FRYE

No. 10-444

SUPREME COURT OF THE UNITED STATES

132 S. Ct. 1399; 182 L. Ed. 2d 379; 2012 U.S. LEXIS 2321; 80 U.S.L.W. 4253; 23 Fla. L. Weekly Fed. S 198

October 31, 2011, Argued
March 21, 2012, Decided

Attachment for Explanation in MISJ to the Ohio Supreme Court. Page #1

NOTICE:

The LEXIS pagination of this document is subject to change pending release of t

SUBSEQUENT HISTORY: On remand at, Remanded by Frye v. State, 2013 Mo. App. LEXIS ... p., Jan. 29, 2013)

PRIOR HISTORY: [***1]
ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT.
Frye v. State, 311 S.W.3d 350, 2010 Mo. App. LEXIS 353 (Mo. Ct. App., 2010)

DISPOSITION: Vacated and remanded.

Emerging Issues Analysis
Chaidez v. United States: Does Padilla v. Kentucky Apply Retroactively?
A very important case is coming up in the U.S. Supreme Court for noncitizens in criminal cases, or who have criminal convictions, and for their lawyers. Chaidez v. United States concerns whether the 2010 decision in Padilla v. Kentucky is retroactive. Courts around the country have divided on that issue. Professor Cesar Cuauhtemoc Garcia Hernandez, author of the crImmigration.com blog, here explains what to look out for and why.

Emerging Issues Analysis
Cr-immigration: Constitutionalization of the Plea Bargaining Process After Missouri v. Frye and Lafler v. Cooper
The Supreme Court decisions in Missouri v. Frye and Lafler v. Cooper have important immigration-related implications for noncitizens and even U.S. citizens. (Maurice Hew, Jr.) of Thurgood Marshall School of Law, explains how the new field of "plea-bargaining" law adds considerations for criminal defense attorneys to absorb and apply. He also shows an example of how to do just that.

Emerging Issues Analysis
The Supreme Court Requires Effective Assistance of Counsel in the Plea Bargain Process, by Jay Shapiro
In Missouri v. Frye and in Lafler v. Cooper, Frye's companion case, the Supreme Court provides significant guidance concerning the obligations of defense counsel to communicate effectively with defendants concerning plea offers. This commentary, written by Jay Shapiro, explores the important implications of these decisions.

CASE SUMMARY
PROCEDURAL POSTURE: Respondent, who pleaded guilty to driving with a revoked license, filed a postconviction relief petition alleging that his counsel's failure to inform him of a plea offer denied him Sixth Amendment effective assistance of counsel. A state court denied the postconviction relief petition, but the Missouri Court of Appeals reversed. Petitioner, the State of Missouri, sought review. The U.S. Supreme Court granted certiorari.

OVERVIEW: After being charged with driving with a revoked license, the prosecutor sent respondent's counsel two plea bargains. Respondent's counsel did not advise him of the offers, which expired. Prior to the preliminary hearing, respondent was again arrested for driving with a revoked license. He pleaded guilty without an agreement. On review, the Court reaffirmed that the Sixth Amendment right to effective assistance applied to the entry of a guilty plea. The Court further held that defense counsel had a duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that might be favorable to an accused; when counsel allowed the offer to expire without advising

respondent or allowing him to consider it, counsel did not render constitutionally effective assistance. However, under Strickland, respondent had to show prejudice from the ineffective assistance. The Court concluded that the state appellate court erred by not requiring respondent to show not only a reasonable probability that he would have accepted the lapsed plea, but also a reasonable probability that the prosecution would have adhered to the plea and that the trial court would have accepted it.

OUTCOME: In a 5-4 decision, the Supreme Court vacated the judgment of the Missouri Court of Appeals and remanded the case for further proceedings. 1 dissent.

CORE TERMS: plea offers, plea bargains, guilty plea, defense counsel, prosecutor, sentence, reasonable probability, plea agreement, assistance of counsel, negotiation, favorable, advice, deficient performance, lapsed, pleaded guilty, ineffective assistance, communicate, misdemeanor, driving, license, state law, plea-bargaining, bargaining, adhered, felony, critical' stages, criminal justice system, ineffective, revoked, maximum

Available Briefs and Other Documents Related to this Case:

Go To Supreme Court Brief(s)Go To Related Supreme Court Brief(s)Go To Oral Argument Transcripts

SYLLABUS

[*1401] [**383] Respondent Frye was charged with driving with a revoked license. Because he had been convicted of the same offense three times before, he was charged, under Missouri law, with a felony carrying a maximum 4-year prison term. The prosecutor sent Frye's counsel a letter, offering two possible plea bargains, including an offer to reduce the charge to a misdemeanor and to recommend, with a guilty plea, a 90-day sentence. Counsel did not convey the offers to Frye, and they expired. Less than a week before Frye's preliminary hearing, he was again arrested for driving with a revoked license. He subsequently pleaded guilty with no underlying plea agreement and was sentenced to three years in prison. Seeking postconviction relief in state court, he alleged his counsel's failure to inform him of the earlier plea offers denied him the effective assistance of counsel, and he testified that he would have pleaded guilty to the misdemeanor had he known of the offer. The court denied his motion, but the Missouri appellate court reversed, holding that Frye met both of the requirements for [***2] showing a Sixth Amendment violation under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674. Specifically, the court found that defense counsel had been ineffective in not [**384] communicating the plea offers to Frye and concluded that Frye had shown that counsel's deficient performance caused him prejudice because [*1402] he pleaded guilty to a felony instead of a misdemeanor.

Held:

1. The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to "all 'critical' stages of the criminal proceedings." Montejo v. Louisiana , 556 U.S. 778, 786, 129 S. Ct. 2079, 173 L. Ed. 2d 955. Hill v.Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203, established that *Strickland*'s two-part test governs ineffective-assistance claims in the plea bargain context. There, the defendant had alleged that his counsel had given him inadequate advice about his plea, but he failed to show that he would have proceeded to trial had he received the proper advice. 474 U.S., at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203. In Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, where a plea offer was set aside because counsel had misinformed the defendant of its immigration consequences, this Court made clear that "the negotiation of a plea bargain is a critical" stage [***3] for ineffective-assistance purposes, id., at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298, and rejected the argument made by the State in this case that a knowing and voluntary plea supersedes defense counsel's errors. The State attempts to distinguish *Hill* and *Padilla* from the instant case. It notes that *Hill* and *Padilla* concerned whether there was ineffective assistance leading to acceptance of a plea offer, a process involving a formal court appearance with the defendant and all counsel present, while no formal court proceedings are involved when a plea offer has lapsed or been rejected; and it insists that there is no right to receive a plea offer in any event. Thus, the State contends, it is unfair to subject it to the consequences of defense counsel's inadequacies when the opportunities for a full and fair trial, or for a later guilty plea albeit on less favorable terms, are preserved. While these contentions are neither illogical nor without some persuasive force, they do not suffice to overcome the simple reality that 97 percent of federal convictions and 94 percent of state convictions are the result of guilty pleas. Plea bargains have become so central to today's criminal justice system that defense counsel must [***4] meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the criminal process. Pp. 3-8.

2. As a general rule, defense counsel has the duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to this rule need not be addressed here, for the offer was a formal one with a fixed expiration date. Standards for prompt communication and consultation recommended by the American Bar Association and adopted by numerous state and federal courts, though not determinative, serve as important guides. The prosecution and trial courts may adopt measures to help ensure against late, frivolous, or fabricated claims. First, a formal offer's terms and processing can be documented. Second, States may require that all offers be in writing. Third, formal offers can be made part of the record at any subsequent [**385] plea proceeding or before trial to ensure that a defendant has been fully advised before the later proceedings commence. Here, as the result of counsel's deficient performance, the offers lapsed. Under *Strickland*, the question [***5] then becomes what, if any, prejudice resulted from the breach of duty. Pp. 8-11.

3. To show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability both that they would have accepted [*1403] the more favorable plea offer had they been afforded effective assistance of counsel and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it, if they had the authority to exercise that discretion under state law. This application of *Strickland* to uncommunicated, lapsed pleas does not alter *Hill*'s standard, which requires a defendant complaining that ineffective assistance led him to accept a plea offer instead of going to trial to show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 474 U.S., at 59, 106 S. Ct. 366, 88 L. Ed. 2d 203. *Hill* correctly applies in the context in which it arose, but it does not provide the sole means for demonstrating prejudice arising from counsel's deficient performance during plea negotiations. Because Frye argues that with effective assistance he would have [***6] accepted an earlier plea offer as opposed to entering an open plea, *Strickland*'s inquiry into whether "the result of the proceeding would have been different," 466 U.S., at 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674, requires looking not at whether the defendant would have proceeded to trial but at whether he would have accepted the earlier plea offer. He must also show that, if the prosecution had the discretion to cancel the plea agreement or the trial court had the discretion to refuse to accept it, there is a reasonable probability neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented. This further showing is particularly important because a defendant has no right to be offered a plea, see Weatherford v. Bursey, 429 U.S. 545, 561, 97 S. Ct. 837, 51 L. Ed. 2d 30, nor a federal right that the judge accept it, Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427. Missouri, among other States, appears to give the prosecution some discretion to cancel a plea agreement; and the Federal Rules of Criminal Procedure, some state rules, including Missouri's, and this Court's precedents give trial courts some leeway to accept or reject plea agreements. Pp. 11-13.

4. Applying these standards here, the Missouri court [***7] correctly concluded that counsel's failure to inform Frye of the written plea offer before it expired fell below an objective reasonableness standard, but it failed to require Frye to show that the plea offer would have been adhered to by the prosecution and accepted by the trial court. These matters should be addressed by the Missouri appellate court in the first instance. Given that Frye's new offense for driving without a license occurred a week before his preliminary hearing, there is reason to doubt that the prosecution would have adhered to the agreement or that the trial court would have [**386] accepted it unless they were required by state law to do so. Pp. 13-15.

COUNSEL: Chris Koster, argued the cause for petitioner.

Anthony A. Yang, argued the cause for the United States, as amicus curiae, by special leave of court.

Emmett D. Queener, argued the cause for respondent.

JUDGES: KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined.

OPINION BY: KENNEDY

OPINION

[*1404] JUSTICE KENNEDY delivered the opinion of the Court.

HN1 The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). [***8] This case arises in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of a plea bargain, a proposal that offered terms more lenient than the terms of the guilty plea entered later. The initial question is whether the constitutional right to counsel extends to the negotiation and consideration of plea offers that lapse or are rejected. If there is a right to effective assistance with respect to those offers, a further question is what a defendant must demonstrate in order to show that prejudice resulted from counsel's deficient performance. Other questions relating to ineffective assistance with respect to plea offers, including the question of proper remedies, are considered in a second case decided today. See *Lafler* v. *Cooper*, *post*, at 3-16.

I

In August 2007, respondent Galin Frye was charged with driving with a revoked license. Frye had been convicted for that offense on three other occasions, so the State of Missouri charged him with a class D felony, which carries a maximum term of imprisonment of four years. See Mo. Rev. Stat. §§302.321.2, 558.011.1(4) (2011).

On November 15, the prosecutor sent a letter to Frye's counsel offering a choice [***9] of two plea bargains. App. 50. The prosecutor first offered to recommend a 3-year sentence if there was a guilty plea to the felony charge, without a recommendation regarding probation but with a recommendation that Frye serve 10 days in jail as so-called "shock" time. The second offer was to reduce the charge to a misdemeanor and, if Frye pleaded guilty to it, to recommend a 90-day sentence. The misdemeanor charge of driving with a revoked license carries a maximum term of imprisonment of one year. 311 S. W. 3d 350, 360 (Mo. App. 2010). The letter stated both offers would expire on December 28. Frye's attorney did not advise Frye that the offers had been made. The offers expired. Id., at 356.

Frye's preliminary hearing was scheduled for January 4, 2008. On December 30, 2007, less than a week before the hearing, Frye was again arrested for driving with a revoked license. App. 47-48, 311 S. W. 3d, at 352-353. At the January 4 hearing, Frye waived his right to a preliminary hearing on the charge arising from the August 2007 arrest. He pleaded not guilty at a subsequent arraignment but then changed his plea to [**387] guilty. There was no underlying plea agreement. App. 5, 13, 16. The state trial [***10] court accepted Frye's guilty plea. *Id.*, at 21. The prosecutor recommended a 3-year sentence, made no recommendation regarding probation, and requested 10 days shock time in jail. *Id.*, at 22. The trial judge sentenced [*1405] Frye to three years in prison. *Id.*, at 21, 23.

Frye filed for postconviction relief in state court. *Id.*, at 8, 25-29. He alleged his counsel's failure to inform him of the prosecution's plea offer denied him the effective assistance of counsel. At an evidentiary hearing, Frye testified he would have entered a guilty plea to the misdemeanor had he known about the offer. *Id.*, at 34.

A state court denied the postconviction motion, *id.*, at 52-57, but the Missouri Court of Appeals reversed, 311 S. W. 3d 350. It determined that Frye met both of the requirements for showing a Sixth Amendment violation under *Strickland*. First, the court determined Frye's counsel's performance was deficient because the "record is void of any evidence of any effort by trial counsel to communicate the Offer to Frye during the Offer window." 311 S. W. 3d, at 355, 356 (emphasis deleted). The court next concluded Frye had shown his counsel's deficient performance caused him prejudice because "Frye pled [***11] guilty to a felony instead of a misdemeanor and was subject to a maximum sentence of four years instead of one year." Id., at 360.

To implement a remedy for the violation, the court deemed Frye's guilty plea withdrawn and remanded to allow Frye either to insist on a trial or to plead guilty to any offense the prosecutor deemed it appropriate to charge. This Court granted certiorari. 562 U.S. ___, 131 S. Ct. 856, 178 L. Ed. 2d 622 (2011).

II

A

HN2 It is well settled that the right to the effective assistance of counsel applies to certain steps before trial. The "Sixth

Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009) (quoting United States v. Wade, 388 U.S. 218, 227-228, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)). Critical stages include arraignments, postindictment interrogations, postindictment lineups, and the entry of a guilty plea. See Hamilton v. Alabama, 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 2d 114 (1961) (arraignment); Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) (postindictment interrogation); Wade, supra (postindictment lineup); Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) (guilty plea).

With respect to the right to effective counsel in plea negotiations, a proper [***12] beginning point is to discuss two cases from this Court considering the role of counsel in advising a client about a plea offer and an ensuing guilty plea: Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); and Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

HN3 *Hill* established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in *Strickland*. See Hill, supra, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, [**388] in Frye's case, the Missouri Court of Appeals, applying the two part test of *Strickland*, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In *Hill*, the decision turned on the second part of the *Strickland* test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had [*1406] been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.

In *Padilla*, the Court again discussed the duties of counsel [***13] in advising a client with respect to a plea offer that leads to a guilty plea. **HN4** *Padilla* held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298. It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in *Padilla* v. *Kentucky*, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

In the case now before the Court the State, as petitioner, points out that the legal question presented is different from that in *Hill* and *Padilla*. In those cases the claim was that the prisoner's plea of guilty was invalid because counsel had provided incorrect [***14] advice pertinent to the plea. In the instant case, by contrast, the guilty plea that was accepted, and the plea proceedings concerning it in court, were all based on accurate advice and information from counsel. The challenge is not to the advice pertaining to the plea that was accepted but rather to the course of legal representation that preceded it with respect to other potential pleas and plea offers.

To give further support to its contention that the instant case is in a category different from what the Court considered in *Hill* and *Padilla*, the State urges that there is no right to a plea offer or a plea bargain in any event. See Weatherford v. Bursey, 429 U.S. 545, 561, 97 S. Ct. 837, 51 L. Ed. 2d 30 (1977) . It claims Frye therefore was not deprived of any legal benefit to which he was entitled. Under this view, any wrongful or mistaken action of counsel with respect to earlier plea offers is beside the point.

The State is correct to point out that *Hill* and *Padilla* concerned whether there was ineffective assistance leading to acceptance of a plea offer, a process involving a formal court appearance with the defendant and all counsel present. Before a guilty plea is entered the defendant's understanding of the [***15] plea and its consequences can be established on the record. This affords the State substantial [**389] protection against later claims that the plea was the result of inadequate advice. **HN5** At the plea entry proceedings the trial court and all counsel have the opportunity to establish on the record that the defendant understands the process that led to any offer, the advantages and disadvantages of accepting it, and the sentencing consequences or possibilities that will ensue once a conviction is entered based upon the plea. See, *e.g.*, Fed. Rule Crim. Proc. 11; Mo. Sup. Ct. Rule 24.02 (2004). Hill and Padilla both illustrate that, nevertheless, there

may be instances when claims of ineffective assistance can arise after the conviction is entered. Still, the State, and the trial court itself, have had a substantial opportunity to guard against this contingency by establishing at the plea entry proceeding that the defendant has been given proper advice or, if the advice received [*1407] appears to have been inadequate, to remedy that deficiency before the plea is accepted and the conviction entered.

HN6 When a plea offer has lapsed or been rejected, however, no formal court proceedings are involved. This underscores [***16] that the plea-bargaining process is often in flux, with no clear standards or timelines and with no judicial supervision of the discussions between prosecution and defense. Indeed, discussions between client and defense counsel are privileged. So the prosecution has little or no notice if something may be amiss and perhaps no capacity to intervene in any event. And, as noted, the State insists there is no right to receive a plea offer. For all these reasons, the State contends, it is unfair to subject it to the consequences of defense counsel's inadequacies, especially when the opportunities for a full and fair trial, or, as here, for a later guilty plea albeit on less favorable terms, are preserved.

The State's contentions are neither illogical nor without some persuasive force, yet they do not suffice to overcome a simple reality. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. See Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2009, http://www.albany.edu/ sourcebook/pdf/t5222009.pdf (all Internet materials as visited Mar. 1, 2012, and available in [***17] Clerk of Court's case file); Dept. of Justice, Bureau of Justice Statistics, S. Rosenmerkel, M. Durose, & D. Farole, Felony Sentences in State Courts, 2006-Statistical Tables, p. 1 (NCJ226846, rev. Nov. 2010), http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf; Padilla, supra, at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298 (recognizing pleas account for nearly 95% of all criminal convictions). The reality is that **HN7** plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours "is for the most part a system of pleas, not a system of trials," *Lafler*, *post*, at 11, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. "To a large extent . . . horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some [**390] adjunct to the criminal justice system; it *is* the criminal justice system." [***18] Scott & Stuntz, Plea Bargaining as Contract, 101 Yale L. J. 1909, 1912 (1992). See also Barkow, Separation of Powers and the Criminal Law, 58 Stan. L. Rev. 989, 1034 (2006) ("[Defendants] who do take their case to trial and lose receive longer sentences than even Congress or the prosecutor might think appropriate, because the longer sentences exist on the books largely for bargaining purposes. This often results in individuals who accept a plea bargain receiving shorter sentences than other individuals who are less morally culpable but take a chance and go to trial" (footnote omitted)). In today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.

To note the prevalence of plea bargaining is not to criticize it. The potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing means that a plea agreement can benefit both parties. In order that these benefits can be realized, however, **HN8** criminal defendants require effective counsel [*1408] during plea negotiations. "Anything less . . . might deny a defendant [***19] 'effective representation by counsel at the only stage when legal aid and advice would help him.'" Massiah, 377 U.S., at 204, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (quoting Spano v. New York, 360 U.S. 315, 326, 79 S. Ct. 1202, 3 L. Ed. 2d 1265 (1959) (Douglas, J., concurring)).

B

The inquiry then becomes how to define the duty and responsibilities of defense counsel in the plea bargain process. This is a difficult question. "The art of negotiation is at least as nuanced as the art of trial advocacy and it presents questions farther removed from immediate judicial supervision." Premo v. Moore, 562 U.S. ___, ___, 131 S. Ct. 733, 178 L. Ed. 2d 649, 661 (2011). Bargaining is, by its nature, defined to a substantial degree by personal style. The alternative courses and tactics in negotiation are so individual that it may be neither prudent nor practicable to try to elaborate or define detailed standards for the proper discharge of defense counsel's participation in the process. Cf. *ibid.*

This case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects, however. Here the question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser [***20] sentence, a conviction on lesser charges, or both.

HN9 This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to that rule need not be explored here, for the offer was a formal one with a fixed expiration date. **HN10** When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires.

Though the standard for counsel's performance is not determined solely by reference to codified standards of professional practice, these standards can be important guides. The American [**391] Bar Association recommends defense counsel "promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney," ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(a) (3d ed. 1999), and this standard has been adopted by numerous state and federal courts over the last 30 years. See, *e.g.,* Davie v. State, 381 S. C. 601, 608-609, 675 S. E. 2d 416, 420 (2009); Cottle v. State, 733 So. 2d 963, 965-966 (Fla. 1999); [***21] Becton v. Hun, 205 W. Va. 139, 144, 516 S. E. 2d 762, 767 (1999); Harris v. State, 875 S.W.2d 662, 665 (Tenn. 1994); Lloyd v. State, 258 Ga. 645, 648, 373 S. E. 2d 1, 3 (1988); United States v. Rodriguez Rodriguez, 929 F.2d 747, 752 (CA1 1991) *(per curiam);* Pham v. United States, 317 F.3d 178, 182 (CA2 2003); United States ex rel. Caruso v. Zelinsky, 689 F.2d 435, 438 (CA3 1982); Griffin v. United States, 330 F.3d 733, 737 (CA6 2003); Johnson v. Duckworth, 793 F.2d 898, 902 (CA7 1986); United States v. Blaylock, 20 F.3d 1458, 1466 (CA9 1994); cf. Diaz v. United States, 930 F.2d 832, 834 (CA11 1991). The standard for prompt communication and consultation is also set out in state bar professional standards for attorneys. See, *e.g.*, Fla. Rule Regulating Bar 4-1.4 (2008); Ill. Rule Prof. Conduct 1.4 (2011); Kan. Rule Prof. Conduct 1.4 (2010); Ky. Sup. Ct. Rule 3.130, Rule Prof. Conduct 1.4 (2011); Mass. Rule Prof. Conduct 1.4 (2011-2012); Mich. Rule Prof. Conduct 1.4 (2011).

The prosecution and the trial courts may adopt some measures to help ensure against late, frivolous, or fabricated claims [*1409] after a later, less advantageous plea offer has been accepted or after a trial leading to conviction [***22] with resulting harsh consequences. First, the fact of a formal offer means that its terms and its processing can be documented so that what took place in the negotiation process becomes more clear if some later inquiry turns on the conduct of earlier pretrial negotiations. Second, States may elect to follow rules that all offers must be in writing, again to ensure against later misunderstandings or fabricated charges. See N. J. Ct. Rule 3:9-1(b) (2012) ("Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney"). Third, formal offers can be made part of the record at any subsequent plea proceeding or before a trial on the merits, all to ensure that a defendant has been fully advised before those further proceedings commence. At least one State often follows a similar procedure before trial. See Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 20 (discussing hearings in Arizona conducted pursuant to State v. Donald, 198 Ariz. 406, 10 P. 3d 1193 (App. 2000)); see also N. J. Ct. Rules 3:9-1(b), (c) (requiring the prosecutor and defense counsel to discuss the case prior to the arraignment/status conference [***23] including any plea offers and to report on these discussions in open court with the defendant present); In re Alvernaz, 2 Cal. 4th 924, 938, n. 7, 8 Cal. Rptr. 2d 713, 830 P.2d 747, 756, n. 7 (1992) (encouraging parties to "memorialize in some fashion prior to trial (1) the fact that a plea bargain offer was made, and (2) that the defendant was advised of the offer [and] its precise terms, . . . and (3) the defendant's response to the plea bargain offer"); Brief for Center on the Administration of Criminal Law, New York University School of Law as *Amicus Curiae* 25-27.

Here defense counsel did not communicate the formal offers to the defendant. [**392] As a result of that deficient performance, the offers lapsed. Under Strickland, the question then becomes what, if any, prejudice resulted from the breach of duty.

C

HN11 To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the [***24] prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time. Cf. Glover v. United States, 531 U.S. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001) ("[A]ny amount of [additional] jail time has Sixth Amendment significance").

This application of *Strickland* to the instances of an uncommunicated, lapsed plea does nothing to alter the standard laid out in *Hill*. **HN12** In cases where a defendant complains that ineffective assistance led him to accept a plea offer as opposed to proceeding to trial, the defendant will have to show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S., at 59, 106 S. Ct. 366, 88 L. Ed. 2d 203. *Hill* was correctly decided and applies in the context in which it arose. **HN13** *Hill* does not, however, provide the sole means for demonstrating [*1410] prejudice arising from the deficient performance of counsel during plea negotiations. Unlike the [***25] defendant in Hill, Frye argues that with effective assistance he would have accepted an earlier plea offer (limiting his sentence to one year in prison) as opposed to entering an open plea (exposing him to a maximum sentence of four years' imprisonment). **HN14** In a case, such as this, where a defendant pleads guilty to less favorable terms and claims that ineffective assistance of counsel caused him to miss out on a more favorable earlier plea offer, *Strickland*'s inquiry into whether "the result of the proceeding would have been different," 466 U.S., at 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674, requires looking not at whether the defendant would have proceeded to trial absent ineffective assistance but whether he would have accepted the offer to plead pursuant to the terms earlier proposed.

HN15 In order to complete a showing of *Strickland* prejudice, defendants who have shown a reasonable probability they would have accepted the earlier plea offer must also show that, if the prosecution had the discretion to cancel it or if the trial court had the discretion to refuse to accept it, there is a reasonable probability neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented. This [***26] further showing is of particular importance because a defendant has no right to be offered a plea, see Weatherford, 429 U.S., at 561, 97 S. Ct. 837, 51 L. Ed. 2d 30, nor a federal right that the judge accept it, Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). In at least some States, including Missouri, [**393] it appears the prosecution has some discretion to cancel a plea agreement to which the defendant has agreed, see, *e.g.*, 311 S. W. 3d, at 359 (case below); Ariz. Rule Crim. Proc. 17.4(b) (Supp. 2011). The Federal Rules, some state rules including in Missouri, and this Court's precedents give trial courts some leeway to accept or reject plea agreements, see Fed. Rule Crim. Proc. 11(c)(3); see Mo. Sup. Ct. Rule 24.02(d)(4); Boykin v. Alabama, 395 U.S. 238, 243-244, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). It can be assumed that in most jurisdictions prosecutors and judges are familiar with the boundaries of acceptable plea bargains and sentences. So in most instances it should not be difficult to make an objective assessment as to whether or not a particular fact or intervening circumstance would suffice, in the normal course, to cause prosecutorial withdrawal or judicial nonapproval of a plea bargain. The determination that there is or is not a [***27] reasonable probability that the outcome of the proceeding would have been different absent counsel's errors can be conducted within that framework.

III

These standards must be applied to the instant case. As regards the deficient performance prong of *Strickland*, the Court of Appeals found the "record is void of *any* evidence of *any* effort by trial counsel to communicate the [formal] Offer to Frye during the Offer window, let alone any evidence that Frye's conduct interfered with trial counsel's ability to do so." 311 S. W. 3d, at 356. On this record, it is evident that Frye's attorney did not make a meaningful attempt to inform the defendant of a written plea offer before the offer expired. See *supra*, at 2. The Missouri Court of Appeals was correct that "counsel's representation fell below an objective standard of reasonableness." Strickland, supra, at 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674.

The Court of Appeals erred, however, in articulating the precise standard for prejudice in this context. As noted, a defendant in Frye's position must show not only a reasonable probability that he would have [*1411] accepted the lapsed plea but also a reasonable probability that the prosecution would have adhered to the agreement and that it [***28] would have been accepted by the trial court. Frye can show he would have accepted the offer, but there is strong reason to doubt the prosecution and the trial court would have permitted the plea bargain to become final.

There appears to be a reasonable probability Frye would have accepted the prosecutor's original offer of a plea bargain if the offer had been communicated to him, because he pleaded guilty to a more serious charge, with no promise of a sentencing recommendation from the prosecutor. It may be that in some cases defendants must show more than just a guilty plea to a charge or sentence harsher than the original offer. For example, revelations between plea offers about the strength of the prosecution's case may make a late decision to plead guilty insufficient to demonstrate, without further evidence, that the defendant would have pleaded guilty to an earlier, more generous plea offer if his counsel had reported it to him. Here, however, that is not the case. The Court of Appeals did not err in finding Frye's acceptance of the less favorable plea offer indicated that he would have accepted the earlier (and more favorable) offer had he been apprised of it; and there is no [***29] need to address [**394] here the showings that might be required in other cases.

The Court of Appeals failed, however, to require Frye to show that the first plea offer, if accepted by Frye, would have been adhered to by the prosecution and accepted by the trial court. Whether the prosecution and trial court are required to do so is a matter of state law, and it is not the place of this Court to settle those matters. The Court has established the minimum requirements of the Sixth Amendment as interpreted in *Strickland*, and States have the discretion to add procedural protections under state law if they choose. A State may choose to preclude the prosecution from withdrawing a plea offer once it has been accepted or perhaps to preclude a trial court from rejecting a plea bargain. In Missouri, it appears "a plea offer once accepted by the defendant can be withdrawn without recourse" by the prosecution. 311 S. W. 3d, at 359. The extent of the trial court's discretion in Missouri to reject a plea agreement appears to be in some doubt. Compare id., at 360, with Mo. Sup. Ct. Rule 24.02(d)(4).

We remand for the Missouri Court of Appeals to consider these state-law questions, because they bear on the [***30] federal question of *Strickland* prejudice. If, as the Missouri court stated here, the prosecutor could have canceled the plea agreement, and if Frye fails to show a reasonable probability the prosecutor would have adhered to the agreement, there is no *Strickland* prejudice. Likewise, if the trial court could have refused to accept the plea agreement, and if Frye fails to show a reasonable probability the trial court would have accepted the plea, there is no *Strickland* prejudice. In this case, given Frye's new offense for driving without a license on December 30, 2007, there is reason to doubt that the prosecution would have adhered to the agreement or that the trial court would have accepted it at the January 4, 2008, hearing, unless they were required by state law to do so.

It is appropriate to allow the Missouri Court of Appeals to address this question in the first instance. The judgment of the Missouri Court of Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

DISSENT BY: SCALIA

DISSENT

[*1412] JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

This is a companion case to *Lafler* v. *Cooper*, *post*, [***31] p. ___. The principal difference between the cases is that the fairness of the defendant's conviction in *Lafler* was established by a full trial and jury verdict, whereas Frye's conviction here was established by his own admission of guilt, received by the court after the usual colloquy that assured it was voluntary and truthful. In *Lafler* all that could be said (and as I discuss there it was quite enough) is that the *fairness* of the conviction was clear, though a unanimous jury finding beyond a reasonable doubt can sometimes be wrong. Here it can be said not only that the process was fair, but that the defendant acknowledged the correctness of his conviction. Thus, as far as the reasons for my dissent are concerned, this is an *a fortiori* case. I will not repeat here the constitutional points that I discuss at length in *Lafler*, but [**395] I will briefly apply those points to the facts here and comment upon a few statements in the Court's analysis.

Galin Frye's attorney failed to inform him about a plea offer, and Frye ultimately pleaded guilty without the benefit of a deal. Counsel's mistake did not deprive Frye of any substantive or procedural right; only of the opportunity to accept a plea [***32] bargain to which he had no entitlement in the first place. So little entitlement that, had he known of and accepted the bargain, the prosecution would have been able to withdraw it right up to the point that his guilty plea pursuant to the bargain was accepted. See 311 S. W. 3d 350, 359, and n. 4 (Mo. App. 2010).

The Court acknowledges, moreover, that Frye's conviction was untainted by attorney error: "[T]he guilty plea that was accepted, and the plea proceedings concerning it in court, were all based on accurate advice and information from counsel." *Ante*, at 5. Given the "ultimate focus" of our ineffective-assistance cases on "the fundamental fairness of the proceeding whose result is being challenged," Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), that should be the end of the matter. Instead, here, as in *Lafler*, the Court mechanically applies an outcome-based test for prejudice, and mistakes the possibility of a different result for constitutional injustice. As I explain in *Lafler*, *post*, p. ___ (dissenting opinion), that approach is contrary to our precedents on the right to effective counsel, and for good reason.

The Court announces its holding that "as a general rule, defense [***33] counsel has the duty to communicate formal offers from the prosecution" as though that resolves a disputed point; in reality, however, neither the State nor the Solicitor General argued that counsel's performance here was adequate. *Ante*, at 9. The only issue was whether the inadequacy deprived Frye of his constitutional right to a fair trial. In other cases, however, it will not be so clear that counsel's plea-bargaining skills, which must now meet a constitutional minimum, are adequate. "[H]ow to define the duty and responsibilities of defense counsel in the plea bargain process," the Court acknowledges, "is a difficult question," since "[b]argaining is, by its nature, defined to a substantial degree by personal style." *Ante*, at 8. Indeed. What if an attorney's "personal style" is to establish a reputation as a hard bargainer by, for example, advising clients to proceed to trial rather than accept anything but the most favorable plea offers? It seems inconceivable that a lawyer could compromise [*1413] his client's *constitutional rights* so that he can secure better deals for other clients in the future; does a hard-bargaining "personal style" now violate the Sixth Amendment? The Court ignores [***34] such difficulties, however, since "[t]his case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects." *Ante*, at 8. Perhaps not. But it does present the necessity of confronting the serious difficulties that will be created by constitutionalization of the plea-bargaining process. It will not do simply to announce that they will be solved in the sweet by-and-by.

While the inadequacy of counsel's performance in this case is clear [**396] enough, whether it was prejudicial (in the sense that the Court's new version of *Strickland* requires) is not. The Court's description of how that question is to be answered on remand is alone enough to show how unwise it is to constitutionalize the plea-bargaining process. Prejudice is to be determined, the Court tells us, by a process of retrospective crystal-ball gazing posing as legal analysis. First of all, of course, we must estimate whether the defendant *would have accepted* the earlier plea bargain. Here that seems an easy question, but as the Court acknowledges, *ante*, at 14, it will not always be. Next, since Missouri, like other States, permits accepted plea offers to be withdrawn by the prosecution (a [***35] reality which alone should suffice, one would think, to demonstrate that Frye had no entitlement to the plea bargain), we must estimate whether the prosecution *would have withdrawn* the plea offer. And finally, we must estimate whether the trial court *would have approved* the plea agreement. These last two estimations may seem easy in the present case, since Frye committed a new infraction before the hearing at which the agreement would have been presented; but they assuredly will not be easy in the mine run of cases.

The Court says "[i]t can be assumed that in most jurisdictions prosecutors and judges are familiar with the boundaries of acceptable plea bargains and sentences." *Ante*, at 13. Assuredly it can, just as it can be assumed that the sun rises in the west; but I know of no basis for the assumption. Virtually no cases deal with the standards for a prosecutor's withdrawal from a plea agreement beyond stating the general rule that a prosecutor may withdraw any time prior to, but not after, the entry of a guilty plea or other action constituting detrimental reliance on the defendant's part. See, *e.g.,* United States v. Kuchinski, 469 F.3d 853, 857-858 (CA9 2006). And cases addressing [***36] trial courts' authority to accept or reject plea agreements almost universally observe that a trial court enjoys broad discretion in this regard. See, *e.g.,* Missouri v. Banks, 135 S. W. 3d 497, 500 (Mo. App. 2004) (trial court abuses its discretion in rejecting a plea only if the decision "is so arbitrary and unreasonable that it shocks the sense of justice and indicates a lack of careful consideration" (internal quotation marks omitted)). Of course after today's opinions there will be cases galore, so the Court's *assumption* would better be cast as an optimistic *prediction* of the certainty that will emerge, many years hence, from our newly created constitutional field of plea-bargaining law. Whatever the "boundaries" ultimately devised (if that were possible), a vast amount of discretion will still remain, and it is extraordinary to make a defendant's constitutional rights depend upon a series of retrospective mind-readings as to how that discretion, in prosecutors and trial judges, *would have been* exercised.

The plea-bargaining process is a subject worthy of regulation, since it is the means [*1414] by which most criminal convictions are obtained. It happens not to be, however, a subject covered [***37] by the Sixth Amendment, which is concerned not with the fairness of bargaining but with the fairness of conviction. "The Constitution . . . is not an all-purpose tool for judicial construction of a perfect world; and when we ignore its text in order to make it that, we often find ourselves swinging a sledge where a tack hammer [**397] is needed." Padilla v. Kentucky, 559 U.S. ___, ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 307-308 (2010) (SCALIA , J., dissenting). In this case and its companion, the Court's sledge may require the reversal of perfectly valid, eminently just, convictions. A legislature could solve the problems presented by these cases in a much more precise and efficient manner. It might begin, for example, by penalizing the attorneys who made such grievous errors. That type of sub-constitutional remedy is not available to the Court, which is limited to penalizing (almost) everyone else by reversing valid convictions or sentences. Because that result is inconsistent with the Sixth Amendment and decades of our precedent, I respectfully dissent.

STATEMENT OF THE CASE AND THE FACTS

1.) I DO NOT HAVE ANY Appeal brief, My Trial Counsel file an appeal on 4-14-08 for the Adam walsh act - but did not file a brief with that motion to Appeal. So I dont have anything to Say as far as the history of that. I have been denied Papers I need to file a accurate appeal, but Nothing.

I just found out that when I was told that a Nolo Contendre Was put in Place when I Signed a Guilty waiver it ment nothing, well I was Lied to by Trial Counsel. The Nolo Contendere is whats Stopping me from getting an accurate appeal or to prove my innocence.

In Court Documents, and Statements, It can help prove I am innocent. I Cant Say much to Trial Court Cause they may get It changed and I Cant afford that. medical reports in Trial court Says Victim has warts, but no penitration was Evident. STD Tests on me (Defendant) Came back clean. It is Also in Documents Victim Stated Semen Ran out of her and into Carpet - But Detectives Refused to get Such Evidance. Documents Also Show where Witness was more or less threatened by Detectives. I have tried to get Everything to build a Case, but have been Stopped at Every turn. When Blankett assignment Judge ordered Copies of Case Sent to me - I got warrent to arrest, motions, Continuences, Sopenas, but not the who Case from Public Defenders office or Prosecutor, they are what I need. Also I Cant get Law books while in Segregation So Im doing my best. I feel Im messing This up. I need a Lawyer to help + Cant afford 1.

PROPOSITION OF LAW

No Appeal brief filed by Trial/Appellet Counsel, So I'm doing my best to do this right.

"Ineffective assistance of appellate Counsel."

1.) Appellate/Trial Counsel Jeffery Mullen (Pub. Def.) failed to file a merit Brief when he filed an appeal on 4-4-08 - and that was for the Adam walsh act.

2.) Appellate Counsel failed to file appeal for Sentencing, when I had asked him to do this, he Said there was nothing to appeal. I found out Later he filed Appeal on 4-4-08 and ~~fin~~ failing to file a brief not only is ineffective assistance of Counsel, but Appellate Counsel prejudiced against me (Defendant) by failing to do Such.

3.) I have filed papers mentioning alot of things that resulted Ineffective assistance of Appellate / Trial Counsel. Example - I was deemed a Indigent person, Yet was ordered to pay Cost of prosecution, See motion to withdraw Guilty Plea file Stamped Feb. 19, 2014 (pages 3 & 4)

4.) Trial/Appellate Counsel was notified of Victims Discription of male Genitals in her statement and warts, That It was not me She described, Nor do I have warts, Counsel Said I could have Worn a Soran wrap - (Now why ~~who~~ would he Say that?) I've be Lied to from Start and Prejudiced from day one of Case 07-CR-0070. I'm doing what I CAN W/o Law Books. No Law books are allowed. Law Library Says They do not Send Law books to Segregation. See Enclosed Kite.

CONCLUSION

SIGNATURE

Jonathan Thuener # A576243
NAME AND NUMBER

Warren Correctional
INSTITUTION

5787 State Route 63
ADDRESS

Lebanon, Ohio 45063-9634
CITY, STATE & ZIP

DEFENDANT-APPELLANT, **PRO SE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to Steven Givens, Prosecuting Attorney, Coshocton County, 318 Main Street, Coshocton, Ohio 43812, this 27th day of May, 2015.

I Dont Have funds to copy this Document. I'm in seg. and dont get State pay. :(

SIGNATURE

Jonathan Thurener #A576243
NAME AND NUMBER

DEFENDANT-APPELLANT, **PRO SE**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. _____
Plaintiff-Appellee,	:	
	:	On Appeal from the ~~Fifth~~ Coshocton
vs.	:	County Court of Appeals
	:	fifth Appellate District
Jonathan Thuener,	:	
	:	C.A. Case No.
Defendant-Appellant.	:	

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT Jonathan Thuener

Thuener

IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JONATHAN THUENER Defendant-Appellant	:	CASE NO. 2008 CA 0010

This matter came on for consideration upon Appellant Jonathan Thuener's motion for reconsideration of this Court's December 15, 2014 Judgment Entry denying his motion for delayed application for reopening.

Appellate Rule 26(A) permits the application for reconsideration of any cause or motion submitted on appeal no later than ten days after a decision has been issued. Appellate Rule 14(B) allows the enlargement of time for good cause shown.

The test generally applied upon the filing of a motion for reconsideration in the court of appeals is "whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515, (1987) paragraph one of the syllabus. "An application for reconsideration may not be filed simply on the basis that a party disagrees with the prior appellate court decision." *Hampton v. Ahmed,* 7th Dist. No. 02 BE 66, 2005–Ohio–1766, ¶ 16, citing *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (1996).

FILED
DATE: MAY 7 2015
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

J-6 Pg 548

Upon review, Appellant's motion for reconsideration of the denial of his delayed application for reopening does not call our attention to an obvious error in the decision or raise an issue for our consideration not previously considered, and is denied as untimely.

IT IS SO ORDERED.

HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

WBH/ag 5/4/15

IN THE Court of Common Pleas
Coshocton County, Ohio

State of Ohio
Plaintiff
v.
Jonathan Thuener
Defendant

ATTACHment to Proposition of LAW Pg 14. # 3

Criminal Case #: 07-CR-0070
Appellate Case #: 08-CA-0010
~~Supreme Court Case #: 13-AP-100~~

FILED
2014 FEB 19 AM 10:48
JANET S. MOSIER
CLERK OF COURTS
COSHOCTON COUNTY, OHIO

Motion to Withdraw Guilty Plea

Now Comes the Defendant in the above-Captioned Case moving the Court for an order to permit the Defendant to withdraw his guilty plea pusuant to Ohio Criminal Rule 32.1, Premised upon the basis that he was unquestionably provided ineffective assistance of Counsel prior to entering a guilty plea in Case # 07-CR-0070, and Subsequently there again upon Mr. Mullen's ineffective assistance of Counsel during the Critical Stages of mr. Thuener's (Defendant) 6th and 14th Amendment Constitutional right to effective assistance of Counsel during his appeal as of right.

Thus for the reasons more fully Set forth in detail this Honorable Court Should GRANT this motion as a matter of Law. Moreover, Defendant attaches his memorandum and Affidavit in Support of the recitals Contained in this motion and asks for a hearing at which he may more fully establish his Cause.

memorandum

Historically throughout the Years the Sixth amendment has always guaranteed a defendant the right to effective assistance of Counsel in Criminal prosecutions. See YARBOROUGH V. Gentry, 540 U.S. 1, 5 (2003) (per curiam); see also McMANN v. Richardson, 397 U.S. 759. 771 N. 14 (1979).; ~~See also~~ This right also extends to appeals. See. Evitts v. Lucey. 469 U.S. 38, 396 (1985) The Due Process Clause of the fourteenth amendment guarantees the right to effective assistance of Counsel in a first appeal as of right in State Court Id at 396-99

The United States Supreme Court recently re-established this historical, well rooted Holding of a defendants right to effective assistance of Counsel during the appeal process in Maples v. Thomas 132 S. ct 912 (2012) See also Harrington v. Gillis 456 F.3d 118, 129 (3rd Cir. 2006) ~~Ineffective~~ In-effective assistance because Counsel failed to discuss appeal options or file timely appeal documents when defendant reasonably demonstrated intrest in appeal.

Respectfully Submitted,

Jonathan Thvener Defendant (prose)

Jonathan Thvener 576243
Ross Corr. Inst.
16149 State Route 104
Chillicothe, Ohio
45601-9701

Affidavit

Jonathan Thvener, being first duly Sworn, Says that he is the defendant (movant) in above-Captioned matter and that the following is true to the best of his Knowledge:

Ever Since arrest on may 24th 2007, I have been denied Every chance to prove my innocense. for example, I ~~was~~ ABKed for a polygraph on 2 occassions. was given a public defender on May 25th 2007. Since that time I have asked and asked for info on my Case, (case# 07-CR-0070) only to get only Statements and nothing else to help me prepair for a trial, so i did what any one (on mind altering drugs wood do!) plea. Any way, I Seen all date of Continuence and knew nothing of Such.

Atty/Public Defender Mr. Mullen requested Several things as to which I never Laid eyes on or knew Such was recieved to help me prove my Case: ① on 8-7-07 a Request to prosecutor Botchelor ② A motion to review records of Job + family Services on 8-7-07 ③ A motion by Prosecutor requested Testing for STO's was dated 6-8-2007 "(~~It~~ returned Neg.) ④ Request for Discovery was dated 7-23-07. it was provided by Prosecutor on 7-24-07, ⑤ Request for Specific Discovery was Sent out by mullen on 8-7-07

The List is to Long and Im Low on INK, Paper, Carbon paper but ill continue. basically my atty denied me a Choice, per his wording; Im in Jail and due to nature of Case I Cant have anything other then Statements. (I ASK why) Here's my Saying to how I was denied Effective assistance of Counsel.

i). Defendant was found to be an indigent person, as defined by Ohio Law, and a Public defender was appointed

FILED
2008 FEB 19 AM 10:
JANET S. MOSIER
CLERK OF COURTS
COSHOCTON COUNTY, OHIO

JFS files

~~Page Three~~

to represent him for alleged felony offences. During Sentencing, the appointed Counselor (Here in after mr mullen.) failed to object to imposition of Court Cost payment. (Paying Cost of Prosecution is court cost.) It is well Settled in Ohio Law that where an indigent defendant appears for Sentencing and payment of Costs is made part of the Sentence, the trial Court Will Set aside payment of Said costs upon objection of the defence, and failure of trial Counsel (mr. mullen) to request Such waiver is ineffective assistance of Counsel. State v. Masterson 2008 WL 4263442; State v. Blade, 2007 WL 5323

This Court is respectfully urged to vacate payment of the assessed Costs and Order reimbursement of already garnished funds.

2.) Ineffective Assistance during plea arrangement/Hearing:
During the march 17th, 2008 Plea hearing, defense counsel failed to notify the defendant of the Real nature of the Sentence (he brought to my attention in Letter from him (mr mullen) That no Life ~~with~~ Sentences was mentioned if Plea was taken. only if I went to trial) Appointed defense Counsel Stated the Sentence ~~to~~ that was being offered and will not go Lower is 10yrs mandatory for 1st degree felony and 3 years for 3rd degree felony. At no time did Counsel inform the defendant the Sentence was, in reality a min. of 10 years to max. of Life; When PRC violations Penalties would be factored in, an additional amount of time would

Page four

be more than what was even mentioned by defense Counsel.

3) By failing to advise his Client properly, the Counselor was not an effective advocate. Counselor's actions were unreasonable and mr. Thuener (Defendant) was Prejudiced by this (mr. mullen's) deficient Performance. Had Counsel been an effective advocate (showing All Documents and giving advise right way) and had his performance been reasonable, mr. Thuener would not have Entered Pleas of Guilty and thus would have went and Proceeded with trial. Menna v. New York, 423 US At 62-63 n.2 (1975); Hill v. Lockhart 474 US 52 (1985) Also See Missouri v. Frye 132 S. Ct. 1399 (2012) and Lafler v. Cooper 132 S. Ct. 1376 (2012)

Additionally, as actions of the defense Counselor fell below a reasonable Standard of professional assistance, this Court is respectfully urged to set aside Conviction and remand for trial.

3.) In determining a Claim of ineffective assistance of Counsel, it must be shown that Counsel's performance was deficient and that deficiecies in performance prejudiced the defense. Strickland v. Washington, 466 US 688, 104 S. Ct. 2052 (1984); Woodford v. Visciotti, 537 US 19, 123 S. Ct 357 (2002) It is Submitted, that the defendant mr. Thuener, has met this Standard. If the Court reaches a different Conclusion, the Court is requested to asses the

Cumulative impact of all deficient performance claims. Williams v Taylor 529 US 362 (2000); also, Washington v. Smith, 219 F.3d 620, 634-35 (7th cir. 2000)

This Court is respectfully urged to vacate the Conviction and remand for trial.

Conclusion

As ~~first~~ constitutional and reversible error has occurred, defendant Mr. Thuener respectfully requests that the Court reverse ~~his~~ defendants Conviction and reman for trial

Respectfully Submitted,
Jonathan Thuener

Jonathan Thuener Defendant (Pro se)
Ross Corr. INST,
16149 State Route 104
Chillicothe, Ohio
45601-9701

Sworn and Subscribed in my Presence this 31 DAY of December, 2013.

Gary Stanley
NOTARY Public

GARY E. STANLEY
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
FEBRUARY 01, 2018

F Certificate of Service

The undersigned hereby Certifies that a Copy of the aformentioned motion to withdraw Plea, memorandum, and Affidavit of Defendant has been Sent to the Clerk of Common pleas Court to be Served upon Prosecutor for Coshocton County via Req us mail to 318 main St. Coshocton, Ohio 43812, ~~to the Supreme Court of Ohio 65 South front Street Columbus, Ohio 43215-3431 to be Placed in file bearing bearing Case # 13-AP-100~~. / this 2nd day of January, 2014 AD

Jonathan Thuener
Defendant - Prose

CC: Clerk of Courts - Coshocton County
~~The Supreme Court of Ohio - Kent Shimeal (Clerk Pro Tempore)~~
Coshocton County Prosecutor
Jonathan Thuener - Defendant

Page Seven

IN THE COURT OF Common Pleas
Coshocton County, Ohio

THE STATE OF Ohio, Plaintiff,	:	Case NO: 07-CR-0070
vs.	:	
Jonathan W. Thuener Defendant,	:	Memo Opposing Prosecutor's memo opposing motion to withdraw Guilty Plea.

Now Comes defendant Jonathan W. Thuener and respectfully Requests that this honorable Court to allow Defendant to proceed with motion to withdraw Guilty Plea, and also requests a ~~hear~~ hearing.

ARGument / Memorandum ATTATCHED.

App

Respectfully Submitted

Jonathan W. Thuener

Jonathan W. Thuener (576243)
Mansfield Correctional
1150 North main Street
mansfield, Ohio
44901

FILED
2014 MAR 17 PM 4:24
JAMES S. MOORE
CLERK OF COURTS
COSHOCTON COUNTY, OHIO

Memorandum

The Prosecutor's memo one opposing is a Cheap Shot, No where in my Court papers does it Say final - if that was part of a deal, I Can Say I would not have Taken it, insted have proceeded to trial. The reason this Res Judicata is being mentioned is because I have a Case. If You actually Looked at medical Records, Statements and threats made against my family by Prosecutor Turned Judge Robert Batchelor and detectives You'd See I was railroaded.

If Case No: 07-CR-0070 was reopened and remanded for Trial, You will See that the Evidence actually Proves me innocent. my Court appointed atty Jeffery Mullen had purposfully kept Everything out of my Sight. I have been ignored by my Court appointed atty Since Court Sentencing. Judge Evans asked me if I was on mind altering drugs - I was, and he knew I Could not have given a true answer while onc medication. The McNaughten Rule States I Should be off medication for 30 days Prior to Answer. Everyone knew this.

Why does Prosecution have a problem with my motion? or appeal (as to which - I never got an answer on.)? Because what wasn't brought to record Can very well Prove my innocents, The following is a few examples.

Memorandum (Cont.) #2

1.) Victim has STD's (warts) on her buttocks
All my Tests Came back Clean - Im Clean!

2.) Prosecution has it that Victim was Penetrated vaginaly - Dr. Reports Says She Never was -

3.) Victim has accused others in PAST - I was never allowed to know All details by ATTY mullen.

4.) Also Physical discription of Genitals by the victim Clearly Proves Im not Guilty.

The Prosecution knows this to be true, but the real reason behind his opposing, I feel is a Law Suit. I want my Life back - I dont have intentions to Sue! What Does the prosecution Got to hide?

Defendant hereby requests this honorable Court and honorable Judge Robert. D. Rinfret to allow my motion to withdraw Plea filed with this Court on Feb. 19th, 2014 and to Grant a hearing and/or Remand for trial.

My Course in this, is, Im Innocent and I want my Life back - I got no Claims to Sue or bring Charges. mistakes happen, I Just want to be heard and have all Evidence brought to Light to prove Im Innocent.

Memorandum (Cont.) #3

For reasons Set forth above, Defendant's motion to withdraw plea Should be Granted with a hearing.

Respectfully Submitted

Jonathan Thuener (#576243)

Jonathan Thuener
Mansfield Correctional
1150 North Main Street
Mansfield, Ohio
44901

Certificat of Service

I hereby Certify that a true and accurate Copy of the foregoing memo opposing Prosecutor's memo opposing Motion To withdraw Guilty Plea was Served upon: Coshoton County Clerk of Courts 318 main St Coshocton, Ohio 43812, To Be filed and placed in file marked 07-CR-0070, and to Prosecutor Jason Given 318 Main St. Coshocton, Ohio 43812, upon Jonathan Thuener #576243, Mansfield Correctional 1150 North Main Street Mansfield, Ohio 44901 By Regular U.S. Mail this March 6th, 2014

Jonathan Thuener

Jonathan Thuener
Defendant

Time Stamp + Return

IN THE COURT OF Appeals
Fifth District Appellate Court
Coshocton County, Ohio

FILED
DATE: DEC. 1 2014
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

State of Ohio
Plaintiff-Appellee,
v
Jonathan Thuener
Defendant-Appellant,

C.A Case NO. 08 CA 0010

CP Case NO. 07 CR 0070

Appellant's "Delayed" Application for Reopening

Appellant respectfully moves this Court to reopen his direct appeal. App.R. 26(B); State v. Murnahan (1992), 63 Ohio St. 3d 60. --- more than 90 days have passed Since the Courts decision and Judgement Entry were Journalized. However, as described in this application, appellate Counsel's inadequate performance Compromised the appeal.

And Caused the untimely filing of this application. Mr. Thuener Has Suffered Sever prejudice as a direct result of his appellate Counsel's inadequate representation and this Court Should reopen his direct appeal.

- During Case # 07 CR 0070, Defendant was never allowed to See any documents/out side of Statements, Counsel's failure to file a timely Merit Brief, Counsel filed direct appeal for the AWA - (Adam walsh Act) but not anything else, Counsel's refusal to notify Defendant of the true Leangth of time on Plea, Counsel Stated 13 max on plea, Life if I took it

to trial, Stated 25 yrs Per Count, also Stated Sentence under plea would be less Serious when in fact I Still got Life. If I wanted Life for Crimes I did not DO, I would have taken my Chance with the Jury. But Im innocent and ~~my~~ Counsel for Defendant Knew Defendant was in fact innocent, thats why Counsel refused to Show any Documents. Enclude medical reports that he recieved, alot of which Could help..

- On review of an application for reopening filed by a Convicted Criminal Defendant, the appellate Court must determine "whether the applicant was deprived of the effective assistance of Counsel on appeal", and Shall grant the requested relief when a genuine issue is presented. App. R. 26(B); State v. Murnahan (1992), 63 Ohio St. 3d 60, 66.

- The united States Supreme Court determined that "nominal Representation on an appeal as of right - Like nominal representation at trial - does not Suffice to render the proceeding Constitutionally adequate". Evitts v. Lucey (1985), 469 U.S. 387, 396. Proper appellate review must be had to ensure that a Criminal Conviction has been obtained through a reliable process. id. at 399-400.

App. R. 26(B) provides a remedy to defendants who have been deprived of the effective assistance of appellate Counsel. To Succeed on a Claim of ineffective assistance

of appellate Counsel, a criminal defendant must prove that Counsel's Performance was deficient and Counsel's deficient performance prejudiced him. Strickland v. Washington (1984), 466 U.S. 668, 687.

- In direct appeal, appellant Counsel failed to raise winning issues. But for appellant Counsel's unreasonable and unjustifiable errors, the appeal would have resulted in a different outcome. Moreover, there was no reasonable justification for Counsel's ineffective performance and because there is a reasonable probability that but for these errors, the outcome of his appeal would have been different, Mr. Thuener was prejudiced. Strickland, 466 U.S. at 687.

Assignment of ERRORS

1.) Counsel's Refusal to object to assigned Costs.

A) ~~[illegible]~~ Defendant-Appellant was found to be an indigent person, as defined by ohio Law, and a public defender was appointed to represent the defendant for alleged felony offenses in State v. Thuener. During Sentencing, the appointed Counselor failed to object to imposition of Court Cost Payment, IE (Cost of Prosecution) It is well Settled in ohio law that where an indigent ~~defendant~~ defendant appears for Sentencing and payment of Costs is made part of the Sentence, the trial Court WILL

Set aside payment of Said Costs ~~op~~ upon objection of the defense, and failure of ~~trial~~ trial Counsel to request Such waiver is ineffective assistance of Counsel.
State v. Masterson, 2008 WL 4263442; State v. Blade, 2007 WL 5323,

#2.) Counsel's failure to inform Defendant adiquitly of the true and Correct Sentence pleading to.

B1) – During the 3/17/08 plea hearing, defense Counsel failed to notify the defendant of the real nature of the Sentence, he advised entering a plea to. Appointed Counsel Stated the ~~#~~ Sentence, if plead to would be 10 yrs for F1 and 3 yrs for F3 for 13 max. at no time did Appointed Counsel State that if agreed to plea, that Defendant would get 10 yrs min to Life max on plea. thus by failing to properly advise his client, the Counselor was not an effective advocate. Missouri v. Frye 132 S.Ct. 1399 (2012) & Lafler v. Cooper 132 S.Ct. 1376 (2012)

Counselors actions were unreasonable and the defendant Mr. Thuener was prejudiced by this deficient performance. Had Counsel been an effective advocate and had his performance been reasonable, Mr. Thuener would not have entered a plea of guilty and would have proceeded with trial. Menna v. New York, 423 US at 62-63 n.2 (1975), Hill v. Lockheart, 474 US 52 (1985).

B2) Additionally, as actions of the defense Counselor fell

below a reasonable Standard of professional assistance, this Court is respectfully urged to Set aside previous judgement and reopen appellate Case. Case no 08-CA-0010

c) In determining a claim of ineffective assistance of Counsel, it must be Shown that Counsels performance was ~~defiere~~ deficient and that the deficiencies in performance prejudiced the defense. Strickland v. Washington, 466 US 688, 104 S.Ct. 2052 (1984); Woodford v. Viscotti, 537 US 19, 123 S.Ct. 357 (2002). It is Submitted the appellant, Mr. Thuener has met this Standard. If the Court reaches a different Conclusion, the Court is requested to assess the Cumulative impact of all deficient performance claims. Williams v. Taylor, 529 US 362 (2000); also, Washington v. Smith, 219 F.3d 620, 634-35 (7th Cir. 2000).

Conclusion

For all foregoing reasons and Because there is good Cause for the untimely filing of this Application, Mr. Thuener respectfully requests this Court to grant the [Delayed] application for Reopening.

Respectfully Submitted,

Jonathan Thuener
Defendant-Appellant (pro se)

Jonathan Thuener #A576243
Mansfield Correctional
Po Box 788
Mansfield, Ohio 44901-0788

Affidavit

FILED
DATE: DEC 1 2014
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

State of Ohio)
County of Coshocton) } ss:

I, Jonathan Thuener Swear that the following is true.

1.) I have reviewed the record. For the reasons explained in my motion to reopen, my ~~appellant~~ appellate Counsel's deficient performance ~~and~~ prejudiced me.

A.) Counsel's refusel to object to assigned Costs.
~~B.) Counsel's~~ State v. Masterson, (2008) WL 4263442; State v. Blade, 2007 WL 5323

B.) Counsel's failure to adiquitly Notify defendant true nature of Sentence.
Menna v. New York, 423 US at 62-63 n.2 (1975);
Hill v. Lockhart, 474 US 52 (1985);
Missouri v. Frye 132 S. Ct. 1399 (2012)
Lafler v. Cooper 132 S. Ct 1376 (2012)

Appellate Counsel was inetfective because he failed to raise a winning issue - I.E, Counsel only ~~did~~ raised issue on A.W.A. (Adam walsh Act) - Not of anything else, and not confiding in me on such, thus makeing it harder on defendant to get a fair appeal /trial /ECT. I was prejudiced because my Conviction would have

been reversed either by this Court or a higher Court if appellate Counsel had raised the issue.

Jonathan Shuen
Defendant-Appellant, Prose

Sworn to and Subscribed in my presence this ____ Day of NOVEMBER, 2014.

NOTARY Public

Certificate of Service

I hereby Certify that a true copy of the foregoing Appellant's Delayed Application for Reopening was forwarded by regular us mail to Coshocton County Common Pleas Court to be Served on Coshocton County Prosecutor at 318 Main Street Coshocton, Ohio 43812 and 1 to be timestamped and Sent back to Appellant-Defendant Jonathan Thuener #576243 Mansfield Correctional P.O. Box 788 Mansfield, Ohio 44901-0788 on this 10th day of November, 2014.

Jonathan Thuener

Jonathan Thuener #576243
Defendant-Petitioner, Prose

cc:
(Coshocton County)
Clerks office
Prosecutor
Defendant Jonathan Thuener

Time Stamp + Return

D

In the Court of Appeals
Fifth District Appellate Court
Coshocton County, Ohio

FILED
DATE: DEC 1 2014
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

State of Ohio
Plaintiff

v.

Jonathan Thuener
Defendant-Appellant

C.A Case no. 08 CA 0010
CP Case no. 07 CR 0070

Affidavit of Indigency

AFFIDAVIT OF INDIGENCY

I Jonathan Thuener being duly Sworn, Says:

1.) I am a party in the foregoing action;
2.) I am w/o the funds or assets to give Security or a cash Deposit to Secure Costs at this time.
3.) I understand that I must inform the Court if my financial Situation Should Change before the disposition of my Case;
4.) I understand that I am Subject to Criminal Charges for providing false information toward my indigency Claim;
5.) I understand that if it is determined by the Court, that I was not entitled to the Suspended Deposit + Costs that were provided ~~me~~ to me, I may be required to reimburse the County for the Costs.

Jonathan Thuener

Jonathan Thuener MANCI
Box 788, Mansfield, Ohio 44901

Sworn before me and Subscribed in my presence this _____ day of November, 2014

x
NOTARY PUBLIC

IN THE COURT OF APPEALS FIFTH APPELLATE DISTRICT
COSHOCTON COUNTY, OHIO

FILED
2014 DEC -2 PM 3: 17
JANET S. MOSIER
CLERK OF COURTS
COSHOCTON COUNTY, OHIO

STATE OF OHIO	*	
Plaintiff/Appellee	*	C.A. Case No. 2008 CA 0010
vs.	*	C.P. Case No. 2007 CR 0070
JONATHAN THUENER,	*	STATE OF OHIO'S RESPONSE TO APPELANT'S "DELAYED"
Defendant/Appellant	*	APPLICATION FOR REOPENING

Now comes the State of Ohio, by and through the Prosecuting Attorney, and hereby requests that this Court deny Appellant's "Delayed" Application for Reopening.

Appellant is before this Court requesting that he be permitted to reopen his appeal some six (6) years after his first appeal of right. The State of Ohio's first argument is that too much time has passed and Appellant's request should be denied on that basis.

The State of Ohio's second argument as to why Appellant's application should be denied is based upon Ohio R. App. Pro. 26(B). Appellant in his application must raise a genuine issue as to whether representation by appellant counsel in 2008 was deficient. Appellant fails to do so in his motion.

Instead of arguing that his appellant counsel's representation was deficient; Appellant argues that his trial counsel was ineffective. This is an issue that could have been raised inside Appellant's first appeal of right and therefore the issue of his trial counsel's effectiveness is now res judicata.

Ohio R. App. Pro. 26(B) is clear in that the reopening of an appeal must be based upon an argument of ineffective appellant counsel. As stated above, Appellant has failed to raise a genuine issue as to appellant counsel's effectiveness.

FILED
DATE: DEC 2 2014
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

Based upon the foregoing analysis the Appellant's "Delayed" Application for Reopening should be denied.

Respectfully Submitted,

Jason W. Given (0074647)
Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116
Phone: (740) 622-3566
Fax: (740) 623-6520
Email: jasongiven@coshoctoncounty.net

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon Defendant/Appellant Jonathan Thuener at Mansfield Correctional Institution, PO Box 788, Mansfield, OH 44901 by Regular U.S. Mail this 2nd day of December, 2014.

Jason W. Given (0074647)

Thuener

IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JONATHAN THUENER	:	CASE NO. 2008 CA 0010
Defendant-Appellant	:	

Appellant's "Delayed" Application for Reopening is denied as being untimely.

IT IS SO ORDERED.

HON. WILLIAM B. HOFFMAN

HON. W. SCOTT GWIN

App

FILED
DATE: DEC 15 2014
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

WBH/ag 12/11/14

Timestamp & Return

In The Court of Common Please
5th District Court of appeals
Coshocton County, Ohio

State of ohio,
Plaintiff

vs.

Jonathan Thuener
Defendant (pro se)

Case # 07-CR-0070
AC Case # 08-AC-0010

FILED
DATE: JAN 12 2015
FIFTH DISTRICT COURT OF APPEALS
STATE OF OHIO
COUNTY OF COSHOCTON, OHIO

Motion for Reconsideration of Delayed Application to reopen

Now Comes Defendant Jonathan Thuener and hereby Requests this honorable Court to grant this motion for Reconsideration on Grounds that Defendants Delayed application to reopen is not untimely. During Case # 07-CR-0070 Judge Evans, Prosecutor Batchelor (now Judge), Defense Attourney Jeffery Mullen had never mentioned anything of the ability to reopen Case. Defense Atty Mullen was Also Appellet Counsel when he filed motion for reconsideration on an appeal that was not in regards to Sentence or reopening of Case.

Defendant Jonathan Thuener was prejudiced by Judge, Prosecutor, Public Defender by failing to inform defendant of Such motion/application, thus Causing the application to be 5yrs to late. I only found out of Such application when I recieved Court papers Last year (2014).

See State v. Guess 2014 Ohio App. Lexis 752. Defendant Bo Guess was never told by Judge, Prosecutor, or ATTY of Such Regarding Rule 26(B). Defendant Jonathan Thuener is in fact Innocent of Rape, The only reason Im being Denied a fair Chance is because The People involved Know Im not Guilty of Rape. I was even refused a Poly Graph. Medical Reports/tests Prove Im Not Guilty of rape. Defendant Concludes this motion for Reconsideration by Requesting that my Case be fully investigated before deciding. Even Statements are helpful to prove Defendant was Lied on and Witnesses were threatened! and/or Coherst.

Time Stamp
Return

Also, why is Coshocton County So adiment in keeping Defendant Jonathan Thuener from proving the ~~H~~ himself innocent? What do Coshocton County Officials plan to gain by lying and keeping the truth from coming out? I, Jonathan Thuener beg this honorable Court to Grant Said motion for Reconsideration and allow Defendant the Chance to have a fair Chance with the Court System without the lies of the Sheriffs Deputies and County prosecutor.

Respectfully Smitted

Jonathan Thuener

Jonathan Thuener #576243
Warren Correctional
5787 State Route 63 ← Address Change.
Lebanon, Ohio 45036

Certificate of Service

I hereby certify that a true Copy of the foregoing motion for Reconsideration was Served upon Prosecutor Givens of Coshocton County, Clerk of Courts of Coshocton. Both at address 318 Main St. Coshocton, Ohio 43812 and a Copy to be time Stamped and Sent back to Defendant @ Jonathan Thuener #576243 Warren Correctional, 5787 State Route 63, Lebanon, Ohio 45036, all Sent by Reg. U.S. Mail this 6th Day of January, 2015

Jonathan Thuener

Jonathan Thuener, Defendant (pro se)