

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE EX REL.
THEODORE JACKSON,
Appellant

*

Case No. 15-1477

*

-VS-

*

On Appeal from the
Ashtabula County Court
of Appeals, Eleventh
Appellate District

BRIGHAM SLOAN, WARDEN
Appellee

*

MERIT BRIEF OF APPELLANT THEODORE JACKSON

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FILED
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SUPREME COURT OF OHIO

McNEIL v. DIR., PATUXENT, INST., 407 U.S. 245, at 246:
[" When his (JACKSON'S) sentence expired the State lost the
power to hold him, and [] his continued detention violates
his rights under the Fourteenth Amendment "]

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STATEMENT OF FACTS

- 1.) The Appellant is a layman of law, who while in the United States Army suffered a mental breakdown, see Theodore Jackson's Social Security Disability records at the Social Security Office, E. 9th street, Cleveland, Ohio 44113.
- 2.) While in the military while suffering from his mental break, Mr. Jackson traveled to Cleveland, believing he'd been re-assigned to the Cleveland Armed Forces Entrance and Induction Center in the year 1977.
- 3.) In December 1977 Appellant was arrested and sentenced in case no. CR-36641 to 1yr. to 5yr. to be served concurrently with case no. CR-36620 see certified journal entry of judgment of conviction ex.(A-1). (Supp.10).
- 4.) In case no. CR-36620 the Court sentenced Appellant to 4yrs. to 25yrs. see certified judgment of conviction (Supp.11) the Appellant was taken to the Ohio State Reformatory at Mansfield, Ohio to serve his sentence, where he was exposed to a very brutal system of prison life.
- 5.) In year 1980 the Appellant was paroled, and arrested for case no. CR-162099, he was never sentenced in this case, nor did the Court hold a sentencing hearing see (Supp.51) certified non-judgment of conviction i.e. ex.(A-3) does not contain any **TIME-STAMP; volume or page numbers where can be found in court record; NO SIGNATURE OF ANY JUDGE.** Ex.(A-3) alleges 7yrs. to 25yrs.
- 6.) Mr. Jackson was returned to prison in 1981 for parole violation.
- 7.) The Appellant (Supp.48) a sworn affidavit in the Ashtabula County Court of Appeals, attesting to the fact he'd never been sentenced in Common Pleas Court case no. CR-162099, which affidavit was not disputed by the Respondent see Motion for Relief After Judgment/or Motion for Common Law Reconsideration filed on August 21,2015. The Warden did not respond to these Motions.
- 8.) Appellant was released for parole in year 1987, and being a layman of law did not understand the significance of not appearing before a judge, nor

the court holding any sentencing hearing.

9.) While on parole he was arrested and sentenced to 2yrs. to 10yrs. in Case No. CR-222201 see certified journal entry Of conviction and judgment ex. (A-5).see (Supp.12).

10.) In year 2009 Jackson was arrested for not reporting to parole offic-er and indicted for escape, he received probation.see (Suup.13).

11.) While on parole and probation the Appellant reported to his parole officer once each two weeks. And he reported to his probation officer each week. He was accused of violating community control for having dirty urin, an having no way to prove his urin was not dirty appellant plead guilty, notwithstanding the probation officer who screened Jackson's urin was subsequently arrested and charged with tampering with urin tests please take judicial notice of these facts as they are public recod.

12.) Jackson's community control was revoked and he was sentenced to prison for one year see certified journal entry of judgment of conviction ex. (A-10). The Ohio Parole Board has continued to give the Appellant time for this alleged dirty urin, in year 2017 he'll have (7) seven years served.

13.) So in order to obtain his freedom the Appellant started reviewing his old court records after a prison case manager gave him a list of case number and after years of study he learned he is imprisoned on expired sentences in case numbers Cr-36641; CR-36620; CR-222201; CR-527856.

14.) Upon learning his maximum sentence of 35 yrs. had expired, he filed a Petition for Writ of Habeas Corpus in the 11th Appellate District Court of Appeals on 5-26-2015, and he attached certified judgment entries ex.(A-1-2-5-10) to the petition. see (Supp.1,2).

15.) On 6-17-2015 the Warden filed a return of writ that did not comply with R.C.§ 2725.et seq., e.g. the return of writ contains no common pleas court

journal entries of judgments of conviction, or court orders showing true cause of commitment as the statute requires. The return of writ does contain a two page document ex.(39) which says:"To Bill Lamb, Assistant Attorney General; From: Valerie Parkins, Quality Assurance Bureau of Sentence Computation; Subject Theodore Jackson A 590 406; ¶1: Pursuant to your request for documentation and information on the above noted offender, I can provide the following:". This document ex.(39) is not signed; nor list a computer address as verification; nor is ex.(39) supported by sworn affidavit of Ms. Parkins or Dept. of Reha. & Corr., records clerk certification. see (Supp.27,28).

16.) And via Ohio Evid.R. 802, ex.(39) constitutes inadmissible evidence to prove Mr. Jackson's maximum sentence expiration date is August 27,2039, as the judgment at ¶9 states see judgment of Court of Appeals dated Aug. 10,2015. Also per R.C. 2725.et seq., ex.(39) is incompetent evidence to show cause of commitment of Appellant, because this evidence is not certified; signed or otherwise verified, or supported by affidavit of the writer. see (Appx.5).

17.) The Appellant has filed other court actions in Habeas Corpus, none of these case were ever ruled on the merits by the Courts see JACKSON V. WARDEN, Case No. 2011-CV-0158(Marion County Common Pleas Court)(Judge dismissed Petition for lack of subject matter jurisdiction); STATE EX REL. JACKSON V. BUNTING, Case No.2013-0082(Ohio Supreme Court's judgment state:"This cause originated in this court on the filing of a complaint for a writ of mandamus***dismissed."); STATE EX REL. JACKSON,Case No. 2013-0497(The Ohio Supreme Court judgment says: "This cause originated in this court***a complaint for writ of mandamus and prohibition***cause is dismissed."); STATE V. JACKSON, Case No. CA-98157(8th District Court of Appeals)("only question raised on appeal, was trial court abused its discretion,""on appeal appellant attempted to raise a question of sentences expired while void, but do to fraud on that court i.e. unknown persons

removed pages from Appellant's Merit Brief filed on 6-25-2012 see (Supp.42,43) brief ex.(11) at ex.(Q-43)(showing the actual removed page cf. computer record); STATE V. JACKSON, Case No. CA-98157; Ohio Supreme Court Case No.2013-0288(unlawful Appeal from judgment entered below on 12-13-2012 filed outside the 45 day limit, and this Appeal was based suppositely on 8th District's denial of EN BANC CONSIDERATION see Loc.R.26(B)(appellant's request was made outside the five day limit); so res judicata, or successive habeas corpus petitions do not apply to his case.

18.) The Ohio Assistant Attorney General **lied to the 11th District** in Return of Writ by saying RES JUDICATA and SUCCESSIVE PETITIONS applied to Appellant's Petition for habeas corpus see suppelental (Supp.34-44) (Motion to Find Respondent Counsel in Contempt for False Statements in Return of Writ, four pages).

ARGUMENT

Proposition of Law No. 1:
Habeas Corpus is the proper remedy
when all journalized sentences expired
Ohio Const.,Art.,ISS1,2,8,16, and the
United States Const.,Amends.,5th,14th.

19.) The Appellants sentences from the Cuyahoga County Common Pleas Court were obtained after Constitutional sentencing hearings where he had the assistance of counsel and the opportunity to speak, the Common Pleas Court entered via Crim.R. 32(B) journal entries of judgment of convictions (Supp.10-13)ex.(A-1-2-5-10).

20.) These sentences are discribed in the statements of fact, and total 35 years, the Appellant was released on parole over the years between 1977 thru 2009, and violated parole by being declared a parole violator at large, or just a parole violator via R.C.§ 2967.15. Each time Appellant was declared a violator his maximum sentence stopped running until he was returned to custody of Parole Board see STATE EX REL. MOON V. OHIO ADULT PAROLE AUTHORITY, 22 Ohio St.2d 29 at HEADNOTES 1,2; the Appellant's lost time total is 808 days which must be added

to - maximum sentences on case no. CR-36641; CR-36620; CR-222201; CR-527856 that were aggregated to 35 years, adding the lost time makes Appellant's maximum expiration of sentence date 2-25-2015 (Supp.1) Habeas Corpus Petition.

21.) Mr. Jackson upon making a prima facie case of expired sentences placed the burden of proof on the Warden to show lawful detention via R.C. § 2725.14 and CHARI V. VORE, 91 Ohio St.3d 323, citing HALLECK V. KOLOSKI, 4 Ohio St.2d 76.

22.) The Warden's return did not meet its burden of proof for many reasons; first the return does not contain any documents from a court of law as the statute mandates see below; see (Supp.15-28)

R.C. § 2725.14 contents of the return

"(B) If the prisoner is in his custody***, he shall set forth, at large, the authority, and the true and whole cause, of such imprisonment and restraint, with a copy of the writ, warrant, or other process upon which the prisoner is detained."

this Supreme Court describes the documents to be attached to the Return of Writ see HAMMOND V. DALLMAN, 63 Ohio St.3d 666-667: ("Respondent filed a motion to dismiss attaching copies of certified court documents***indictment***that he was convicted***, and that he was sentenced to concurrent terms on all convictions***, at p.667: "The return, supported by the proper authenticated documents established jurisdiction***").

23.) The Warden's return here contained one document marked ex.(39), which consists of two pages. This exhibit is not signed, or notarized, or supported by sworn affidavit, or certification from the records clerk at the Ohio Department of Rehabilitation and Correction (ODR&C). see (Supp.27,28).

24.) Ex.(39) alleges it is written by Valerie Parkins, to Bill Lamb, about Theodore Jackson A 590 406, however there is no way to verify any of the facts alleged therein e.g. allegation that Appellant's Maximum Sentence Date is 8-27-2039. This expiration of sentence date is refuted by ex.(39) itself p.2

¶6: "His new sentence was a 25 year maximum sentence so that totaled 50 years maximum sentence."~~alleged~~—sentences referred to here are from Case no.s CR-36620, and CR-162099, the attempted court record shows Appellant was not sentenced in Case No. CR-162099 (Supp.51) (ex.A-3)(contains no time-stamped filed date, contains no signature of a Judge, contains no volume or page number where this document may be found in the record), in fact the Appellant was never sentenced by the Common Pleas Court in case no. CR-162099 (Supp.48) Affidavit of Theodore Jackson attached to Motion for relief from Judgment, which complies with the law see LILLIBRIDGE V. STATE EX REL. STEWART, 7 Ohio C.C.(n.s.) 452; and EX PARTE WYANT, 8 Ohio N.P. (n.s.) 207 at HEADNOTE ONE: "***on habeas corpus***evidence dehors the record may be heard to show want of jurisdiction***to make such order". Please note the Warden did not dispute the facts contained in Appellant's affidavit i.e. that he'd never appeared before the Common Pleas Court for sentencing in case no. CR-162099.

25.) The evidence submitted by the Warden's return must be considered on habeas corpus as **incompetent, unauthenticate hearsay** and violative of Ohio Evid.R. 802, and Evid.R.901, 902, and R.C.§ 2725.14, as this ex.(39) is being used to prove the truth of a matter that ~~allegedly~~—expiration date is 8-27-2039. Which denies the Appellant fundamental fairness, and due process of law and his right to redress in the courts of law where as here the Court of Appeals denies Appellant the fundamental right to be heard, in that after he'd proved to Court of Appeals his sentences ex.(A-1-2-5-10) had expired, that Court refused to issue the writ of habeas corpus which violates the Ohio Constitution Artical I§§,1,2, 10, and 16, and the United States Constitution Amendments 1st,5th,6th,14th.

26.) The Common Pleas Courts are Courts of Record and their records when properly recorded import absolute verity (citations omitted). This Supreme Court in HERNANDEZ V. KELLY, 108 Ohio St.3d 301, at ¶30 held:

"It is axiomatic that "[a] court of record speaks only through its **journal entries**." State ex rel. Geauga Cty. Bd. of Commrs. v. Milligan, 100 Ohio St.3d 366,***¶20; Kaine v. Marion Prison Warden, (2000), 88 Ohio St.3d 454,455,***(noting this axiom in a habeas corpus case). Here, the trial court's sentencing entry specified only Hernandez's seven year sentence, which he completed in February 2005. **Because his journalized sentence has now expired, habeas corpus is an appropriate remedy.** See Morgan v. Ohio Adult Parole Auth. (1994), 68 Ohio St.3d 344,346***("habeas corpus is available where an individual's maximum sentence has expired and he is being held unlawfully"); Heddleston v. Mack, 84 Ohio St.3d 213,214,***".

The Appellant's case is on allfours with **HERNADEZ; MORGAN; HEDDLESTON**, and he is entitled to release on habeas corpus because his maximum sentence has expired as shown by the certified journal entries of sentence ex.(A-1-2-5-10), Mr. Jackson has served the maximum journalized sentence,an aggregated sentence of 35 years see **FRAIZER V. STICKRATH**, 536 N.E.2d 1193, below:

HEADNOTE THREE

"Petitioner had no adequate remedy at law to rectify illegal incarceration after he fully served his maximum aggregated sentence, therefore, trial court properly granted petition for writ of habeas corpus. R.C.§ 2725.01."

27.) Fundamental Judges of the Ohio Supreme Court the enquiry of this should not end here, since the Warden's Return shows the (ODR&C) has on its own and without jurisdiction to do so, ineffect has sentenced the Appellant to a 25 year maximum sentence in case no. CR-162099 see ex.(39)(Supp.27,28) inspite of the fact Jackson has never been sentenced in that case by the Common Pleas court see ex.(A-3)(proving no sentencing hearing took place) and Affidavit of Theodore Jackson attached to Motion for Relief from Judgment (Supp.48) evidence aliunde to prove the Appellant was in fact never sentenced by the Court see **LILLIBRIDGE V. STATE EX REL. STEWART**, 7 Ohio C.C.,(n.s.) 452(evidence aliunde

the record may be heard in habeas corpus proceedings where as here there is no record from the court in case no. CR-162099 that Appellant has been sentenced.

28.) On these facts the Ohio Courts have held the Warden's records clerk has no authority to sentence, or correct Jackson ~~non~~—sentence see below;

STATE ex rel. DAILEY v. MORGAN, 761 N.E.2d 140

Syllabus by the Court

1. The Department of Rehabilitation and Correction has no authority to interpret or alter the clear and unambiguous language contained in a court judgment.
2. The Department of Rehabilitation and correction may not "correct" sentencing errors, real or perceived, by imposing the department's interpretation of a proper term of sentence."

this is part of the case here, the Appellant's only sentences that he was sentenced to in the Courts of law have expired, yet the (ODR&C) in ex.(39) entered a sentence with a 25 year maximum sentence in case no. CR-162099, ergo was held by the Dailey v. Morgan Court below, so should this Supreme Court hold here;

Dailey v. Morgan at p.144:

"The Court, therefore, finds that petitioner ***is entitled to immediate release from the custody of the respondent***."

The ruling of this court necessarily turns on the facts of this case, and the inadequacy of the evidentiary materials submitted by respondent. However, the underlying issue addressed here **is much bigger than the calculation of the release date of one prisoner.** The question arises as to how many prisoners may have been detained contrary to the clear intentions of sentencing entries. The Ohio Department of Rehabilitation and Correction **must be advised of its limitations in interpreting court judgments."**

the Appellant's case facts are also on all fours with Dailey v. Morgan, as the Warden submitted an alleged statement from the records clerk not court records,

as the statute R.C. § 2725.14 mandates the Return of writ contain, that statute requires the Warden's return to show the complete cause of commitment on the facts of Appellant's case that means sentences. Which the return did not do.

29.) Therefore per R.C. § 2725.14 if there existed a sentence in case no. CR-162099 the Return of Writ was required to show such sentence, or there would be no sentence to be served in that case.

30.) The facts show that Theodore Jackson was not sentenced in case no. CR-162099, see Affidavit in support of ex.(A-3) (Supp.48)—since ex.(A-3) by law cannot be considered a journal entry of sentence or judgment of conviction via CRIM.R. 32(B), because ex.(A-3) is not signed by the Judge; filed stamped by the clerk of court of the date of filing; nor does ex.(A-3) contain volume or page numbers of where its listed in the Common Pleas Court records, on these facts this Supreme Court has ruled that no sentence has been entered in case no. CR-162099, as the Appellant explained to the Court of Appeals below (Supp.30) (Petitioner's Objection to Warden's Return of Writ R.C. 2725.) quoted;

at ¶6. "Ex.(A-3) attached hereto is void on its face by not being sign by a Judge no sentence has ever been journalized."

31.) The Laws of the Ohio Supreme Court are clear where as here the facts show the Appellant has never been sentenced by the Common Pleas Court in fact or Law no sentence exists see stare decisis below;

STATE ex rel. WHITE v. JUNKIN, Judge, 80 Ohio St.3d 335, at 337

"Crim.R. 32(B) provides:

*****A judgment is effective only when entered on the journal by the clerk."(Emphasis added.)"**

Further, the Eighth District Court of Appeals calls a Cuyahoga County Court judgment not signed by a Judge a **non-judicial order** see STATE V. WARD, 2004-Ohio-7010, at HEADNOTE 8: "Any entry unaccompanied by the signature of a judge will not be acknowledged by a reviewing court as a judicial order or official

entry."

32.) The violation of fundamental due process of law is more egregious because ex.(A-3) upon facial review contains no indicia of who created this paper or where its been kept for the last 30 or so years, also there undisputed testimony that Appellant has never been sentenced which violates the U.S. Supreme Court case law MEMPA V. RHAY, 389 U.S. 128(Jackson's imprisonment without sentencing hearing in case no. CR-162099 violates his due process rights). Likewise, this Ohio Supreme Court has said Jackson is entitled to be sentenced in a reasonable amount of time or habeas corpus will issue via NEAL V. MAXWELL, 175 Ohio St. 201(an unreasonable delay in pronouncing sentence violates due process of law, and divests the court of jurisdiction to sentence Mr. JACKSON).

Laws that should be applied:

33.) The Warden's return sought adjudication via Motion to Dismiss and Motion for Summary Judgment, the Court below refused to apply these legal principles to the facts of Appellant's case; a.) **Summary Judgment:** in construing the evidence ex.(A-1-2-3-5-10); ex.(39), all reasonable inferences in favor of the non-moving party Mr. Jackson; b.) **Motion to Dismiss:** the facts and reasonable inferences are construed in favor of the non-moving party Mr. Jackson, and all incorporated evidence is presumed true. So Petition made prima facie case.

34.) Also since this case deals with sentencing and non-sentencing per R.C.§ 2901.04(A):"***sections of the revised code defining***penalties shall be **strickley constured against the State, and liberally construed in favor of the accused.**"

35.) Because the Appellant's only journalized sentences have expired, his continued imprisonment by the Warden denies him fundamental fairness and his right to Liberty via **HERNADEZ; HEDDLESON; MORGAN; STICKRATH; DAILEY V. MORGAN;** and **MCNEIL V. DIR., PATUXENT, INST., 407 U.S. 245,246:**("when his sentence expired

the State lost the power to hold him, and [] his continued detention violates his rights under the Fourteenth Amendment"). Redress Requested.

Proposition of Law No.2.:

Where no order of commitment exists denial of Petition for not attaching order of commitment violates Appellant's fundamental right to liberty without remedy or redress in the courts of Law via the Ohio Const., Art., I §§1,2,10,16, in conjunction with the United States Const., Amends., 5th, 14th.

36.) The Appellant's Petition for writ of habeas corpus was dismissed by the Court of Appeals for allegedly not submitting order of commitment see the quote from the judgment below; see (Appx.8)

State ex rel. Jackson v. Sloan, 2015-A-0028, at ¶14:

"Jackson's Petition is subject to dismissal for his failure to attach all commitment papers required by R.C. 2725.04(D)***Al' Shahid v. Cook, 2015-Ohio-2079, ¶8***. Pence v. Bunting, 2015-Ohio-2026, ¶6***." For this reason, we dismiss the Petition.

the cases cited above are not on point with the facts of the Appellant's Habeas Corpus Petition, in both Cook and Bunting and the cases cited therein as authorities all are holding the Petitioner's did not submit or attach their certified journal entries of judgments of conviction, this is not the case here, as shall be explained below e.g. in **COOK and BUNTING** the petitioner's were in fact sentenced by the Common Pleas Courts. The facts here on appeal show Mr. Jackson was not sentenced by the Court of Common Pleas for Cuyahoga County, Ohio in case no. CR-162099 see statement of facts supra at ¶¶5,7 showing by law and fact the Appellant was never sentenced by the Judge. So the Bunting and Cook cases should not have been considered as authority by the Court of Appeals.

37.) The court below calls ex.(A-3) a journal entry see Jackson v. Sloan, Id., at ¶¶5,11,15, ex.(A-3) should not be considered a journal entry via Laws infra;

STATE V. HENDERSON, 58 Ohio St.2d 171, Syllabus 2:

"To constitute a prior conviction***, there must be a judgment of conviction, as defined in Crim. R. 32(B), for the prior offense."

at p. 177:

Crim.R.32(B)"A judgment of conviction shall set forth the plea, the verdict or findings and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk."

as shown by ex.(A-3) cannot be considered a Crim.R.32(B) order of commitment because its not signed by the judge; not time stamped filed by the clerk; and does not have page or volume numbers where filed in clerk's record journal.

38.) Further on the facts here ex.(A-3) should not be considered an order of commitment because the Appellant has never been sentenced in case no.CR-162099 see statement of facts supra at ¶¶5,7, likewise, the Courts have held on the facts of Jackson's Appeal i.e. never having been sentenced by the Common pleas court, there is no order of commitment see;

STATE V. COLLINS, 631 N.E.2d 666("Prior to sentencing, no order of commitment exists, and the defendant is still, in effect being held for the pending charge."). See also STATE V. THOMPSON 2004-Ohio-1320(no order of commitment without sentencing).

STATE V. BREWER, 2013-Ohio-5118:

(Because there was no journal entry disposing of charge it was technically still pending).

"JUDGMENT IS THE SENTENCE"

BURTON V. STEWART, 549 U.S. 147, at 156("Final judgment in a criminal

case means sentence. The sentence is the judgment.")
see BERMAN V. UNITED STATES, 302 U.S. 211,212***".

And:

STATE V. CARTER, 64 Ohio St.3d 218;
HEADNOTE ONE:

"Under criminal procedure rule, judgment does not exist
until sentence is imposed,***".

Also;

Ohio App. 1984."A conviction of a criminal offense
only exists upon sentencing",see STATE V.WAITE,469
N.E.2d 965.

Moreover;

CLEVELAND V. PEARSON,1988 Ohio App.LEXIS 1857:
("There is no journal entry signed by the Judge and
filed with the clerk of courts***." "The case appearent-
ly remained pending for several years."

On Point;

STATE V. TURNER, 2007-Ohio-3264,at ¶8:"The
"Pagination" from the Clerk, numbering original
documents comprising the record, also verifies
that there is no journal entry in the file that
is dated July 17,2006.").

the Appellant's case is on point with each case law above, ergo, by Law ex.
(A-3) should not be considered a Journal Entry, order of commitment, or judgment
of conviction via HENDERSON; COLLINS; THOMPSON; BREWER; BURTON; BERMAN; CARTER;
WAITE; PEARSON; TURNER, since ex.(A-3) contains the same elements each of these
case laws contain, therefore the Court of Appeals denied Mr. JACKSON fundamental
fairness by not applying these case laws to the facts of his habeas Petition.

Ex.(A-3) void on its face:

39.) This Supreme Court has ruled in Law when something is void, it does
not exist see STATE V. BILLITER,2012-Ohio-5144, quoted infra;

¶10:"***" 'The effect of determining that a judgment
is void is well established. It is as though such
proceedings had never occurred; the judgment is a mere
nullity and the parties are in the same position as
if there had been no judgment. Bezak,114 Ohio St.3d 94
¶12, quoting Romitio v. Maxwell, 10 Ohio St.2d 266,
267-268."

the Appellant being a layman of law and self taught, based on case laws he's

read, plead in his objection to Warden's Return that ex.(A-3) is void on its face, and that no sentence has been entered in that case. (Supp.30) (Petitioners Objection to Warden's Return of Writ).

40.) The Court of Appeals ruled contrary to Law, that ex.(A-3) was not void on its face, Ohio Laws are clear on this doctrine of Law see below; many Courts and this Ohio Supreme Court's stare decisis hold, where a legal document that is mandated to be **signed by a Judge is not signed, such document is void on its face**, see the case laws for authority:

15 Ohio 372:: HYATT V. ROBINSON::December 1846;
and 17 Ohio St. 39:: CARNEY V. HOPPLE'S HEIRS::
December, 1866 "The Court held that the deed was
void on its face as against the Widow because it
was not executed in accordance with Ohio STAT.
485 (Chase)." Diehl v. Friester, 37 Ohio St. 473, 475

the statutes at issue here in connection with ex.(A-3) were not executed id.
see the Ohio Revised Code statutes not excuted in or on ex.(A-3) infra;

R.C.§ 2303.08:"The clerk of the court of common pleas
shall indorse on each pleading or paper in a cause
filed in the clerk's office the time of filing,***."

Further;

R.C.§ 2303.10 Indorsement of papers:"The clerk of the
common pleas court shall indorse upon every paper filed
with him the date of the filing thereof,***."

cae law;

In re Hopple, (Wood 1983), 468 N.E.2d 129("The endorsement
by the clerk of the court of common pleas of the fact and
date of filing on a judgment entry constitutes evidence
that it was filed on that date.").

Lastly;

CRIM.R. 32(B) mandates a judgment is only effective after
being filed by the Clerk of Courts. via STATE ex rel.
WHITE v. JUNKIN, 80 Ohio St.3d 335 at HEADNOTES 5,6.

STATE V. WARD, 2004-Ohio-7010 HEADNOTE 8:"Any entry
unaccompanied by the signature of a judge will not
be acknowledged by a reviewing court as a judicial
order or official entry." see also STATE V. BATTLE,
1989 Ohio App. LEXIS 2536(no signature of the Judge
no judicial act revoking probation).

41.) Constitutional Judges of the Ohio Supreme Court based on the non-executions of the statutes and case laws in ¶40, ex.(A-3) may be considered void on its face for the failure to be executed according to Law.

42.) To circumvent the laws above the Court of Appeals contrary to law held the courts computer docket i.e. **since no docket sheet was submitted to the court of Appeals, it must be referring to the court's computer docket see judgment at ¶15:*****Contrary to Jackson's contention, the sentencing Entry is duly journalized in the trial court's docket." This statement is contrary to law infra

The STATE ex rel. WHITE v. JUNKIN, Id.:

HEADNOTE 5:

***Regardless of trial court's intention, docket form is insufficient to make judgment effective. Rules Crim. Proc., Rule 32(B)."

HEADNOTE 6:

***even though ruling was written on case file jacket and posted on computerized court docket; entry was never journalized. Rules Crim.Proc., Rule 32(B); R.C. § 2303.12."

ergo, via the Laws supra ex.(A-3) should be void on its face, a nullity.

43.) The Court of Appeals wrongly held that if that Court would have considered and ruled on the merits of Mr. Jackson's Habeas Corpus Petition, the Warden was entitled to judgment as a matter of law see (Appx.8) Judgment of Court of Appeals at ¶15. That Court based that decision on two premises; First that ex.(A-3) was a "sentencing Entry duly journalized", id., this mis-statement of Law has been dispelled by the statutes and case laws in ¶¶37-42 above. Second, premise is based on DEAN V. MAXWELL case law, however that case **distinguishing facts** with the Appellant's case facts for several reasons cited infra;

a.) Jackson has never been sentenced by the common pleas court, see DEAN V. MAXWELL HEADNOTE 7: "where habeas corpus petitioner had been*****sentenced therefore,***.**"

b.) Dean v. Maxwell, has been ineffect **overuled by THE MODERN COURTS AMENDMENT'S CRIM.R. 32(B)** which

**requires elements of Judge's signature;
and Filing by the clerk to be valid, see
Sec. 5(B) of Art., IV§5 Ohio Constitution"**

so DEAN V. MAXWELL, 174 Ohio St. 193, 198 see judgment from below at ¶15, since there **is no question** Petitioner in DEAN V. MAXWELL had been sentenced by that court, the facts of Jackson's case passim show he has in fact and in law not been sentenced by the common pleas court in case no. CR-162099, ergo, the Court below in applying Dean v. Maxwell to the Appellant's Petition denies him Due Process of Law via Ohio Const. Art., I§§1, 2, 10, 16, and United States Const., Amends., 5th, 6th, 14th. Dean v. Maxwell id., decided in (1963), is contrary to Crim.R. 1 serves as the preamble to these rules became effective on July 1, 1973, and these rules delineating their purpose, applicability, and exceptions. The rules were enacted to insure a just determination in every criminal proceeding. Their object **is to secure...the fair, impartial, speedy, and sure administration of justice** together with simplicity in procedure," and the elimination of unjustifiable expense and delay. see STATE V. SANDLIN, 463 N.E.2d 85(1983). Should the Ohio Supreme Court apply Dean v. Maxwell, to Jackson v. Sloan, it would be a **manifest unjust** constituting a **miscarriage of justice** because Jackson remains imprisoned on the only sentences he was sentenced to ex.(A-1-2-5-10) though those sentences have expired, the Warden proposes Jackson stay imprisoned based Case No. CR-162099 where no sentencing hearing has been held, nor order of commitment filed, or approved by the Common Pleas Court ex.(A-3), further there's **unchallenged evidence** Mr. Jackson has not been sentenced in that case see the statements of fact supra at ¶¶5, 7-8. Ergo, the Appellant must be considered as **actually innocent of NON-sentence 7yrs. to 25yrs.** via DRETKE v. HALEY, 541 U.S. 386, at 394(a miscarriage of justice occurs to Jackson based on **NO SENTENCING.**).
Adjudication Requested.

44.) Because, the Appellant has not been sentenced in case no. CR-162099 NO ORDER OF COMMITMENT EXISTS via COLLINS: THOMPSON supra, and the Court of Appeal denies Jackson Due Process of Law by ordering his continued imprisonment, and he's held in violation of the Due Course of Law where no sentencing hearing was ever held in case no. CR-162099 via MEMPHA V. RHAY, and since the Court has not ordered a sentence in case no. CR-162099 Mr. Jackson should not be considered **convicted** via WHITE V. JUNKIN; BURTON V. STEWART and therefore imprisoned in violation of his fundamental rights to Due Process and Due Course of Law via the Ohio Constitution Article I §§1,2,16; inconjunction with U.S. Const., Amends.5th, and 14th, as the Appellant Jackson is denied right to Liberty without redress in the Courts of Law.

Proposition of Law No.3:

The Warden's defenses of Res Judicata; Successive Petitions; and adequate Remedy Have No Merit in Law or Fact BERGER v. UNITED STATES, 295 U.S. 78

45.) As the record on Appeal here proves the Assistant Attorney General William H. Lamb (0051808) lied and submitted FALSE STATEMENTS in the Return of Writ, see the MOTION TO FIND RESPONDENT COUNSEL IN CONTEMPT FOR FALSE STATEMENTS IN RETURN OF WRIT R.C.2725. And the statement of facts above at ¶17.

46.) The state's assistant attorney presenting false defenses below to impede the efficiency of justice, is contrary to the dictates of BERGER v. UNITED STATES, 295 U.S. 78 quoted infra;

HEADNOTE 7:

"Prosecutor's misstatements of fact***,*** so prejudicial as to require a new trial."

HEADNOTE 8:

Obiter Dictum:"***But, while he may strike hard blows, he is not at liberty to strike foul ones.

asst. Att. Gen., Mr. Lamb represented in the Return of Writ these **false state-**
of facts below; see (Supp.19)

Return at p.5

¶2:"Jackson filed not one, but two, prior habeas petitions in the **Eighth** and Third Appellate Districts that he appealed to the Supreme Court of Ohio that reflect the undisclosed proposition of his present habeas petition in this court. Jackson did not prevail in his other **two habeas petitions**, and his attempt at a third tilt at the windmill in this court **is barred because it is successive petition.**"

(Emphasis added)

the Appellant has never filed a Petition for Habeas Corpus in the Eighth District Court of Appeals please review computer records from 2010 thru 2015 (**First lie**). In the Third District Appeal from the Court of Common Pleas dismissal of habeas petition for lack of subject matter jurisdiction, see the Appellee Brief filed in the Third District Court of Appeals quoting the Judgment of the Common Pleas Court dismissing Habeas Petition for want of jurisdiction,(Supp.35,40) Motion to find Respondent Counsel in Contempt for false statements in Return of Writ at p.4 quoting the Statement of Case **written by Mr. Lamb** and quoted below;

STATEMENT OF THE CASE

"In its ruling on Jackson's petition the court of Common Pleas held in relevant part as follows: "

"When the allegation of a complaint***establish that the true objectives are a declaratory judgment, the complaint does not state a cause of action and **must be dismissed for want of jurisdiction.**"

(Ruling on Petition for Writ of Habeas Corpus, Case no. 11 CV 0158, Common Pleas Court for Marion County, Ohio, July 28,2011)

The same Mr. Lamb plead to the Eleventh Appellate District Court **Res judicata** applies in the Appellant/Petitioner's Habeas Corpus proceedings there because the habeas corpus filed in Marion, Ohio case above, Mr. Lamb being a licensed Attorney understands that **res judicata** does not apply to Mr. Jackson's case

(Second lie); as held by this Supreme Court see The STATE ex rel. SCHNEIDER v. BOARD OF EDUCATION OF the NORTH OLMSTEAD CITY SCHOOL DISTRICT, 39 Ohio St.3d 281;

Syllabus of Court

"The Supreme Court held that a different Court of Appeals denial of employe's petition for writ of mandamus was mere **ruling that it lacked jurisdiction, rather than ruling on merits, and thus was not res judicata barring worker's subsequent mandamus action in second court.**"

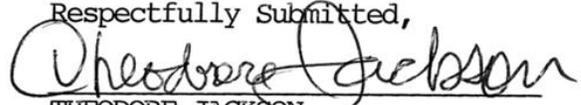
47.) The Facts above clearly show Asst. Att. Gen. Mr. Lamb lied and made false statements in the 11th District Court of Appeals below, therefore, the only evidence contained in the Warden's return of writ should be closely scrutinized i.e. ex.(39) for **truth or falsehood**. Either way res judicata or successive petition should not apply to the facts of this case. See the Statement of Fact supra at ¶¶17-18. see (Supp.35,39-41) proof Mr. Lamb knowingly lied.

CONCLUSION

48.) Prayer for relief: The Appellant moves this the Ohio Supreme Court to issue the Writ of Habeas Corpus via OHIO CONSTITUTION ARTICLE IV§§1,2 order the Appellant's immediate release from the custody as his maximum sentence has expired via **HERNADEZ V. KELLY ; MORGAN; HEDDLESTON; FRAIZER V. STICKRATH; DAILEY MORGAN ; and MCNEIL V. DIR., PATUXENT, INST., 407 U.S. 245,246:**["when his **sentence expired the state lost the power to hold him**, and [] his continued detention violates his rights under the Fourteenth Amendment"]. See ex.(A-1-2-5-10). Writ should also issue here since Mr. Jackson has **not been sentenced** in case no. CR-162099in over 30 years, the Court of Appeals ordering his continued imprisonment without sentence see ex.(A-3), or sentencing hearing denies Appellant's Due Course and Due Process of Law guarantees without remedy or redress inviolation of **NEAL V. MAXWELL; MEMPHA V. RHAY; BURTON V. STEWART; BERMAN V. U.S.;**

and the Ohio Constitution Articles ISS1,2,10,16, and UNITED STATES CONSTITUTION Amendments 5th,6th,14th. the Court of Appeals denies the Appellant these fundamental rights by dismissing habeas corpus petition for failure to file order of commitment that does not exist via COLLINS; THOMPSON; JUNKIN supra. Redress is appropriate, and for his Liberty he prays.

Respectfully Submitted,



THEODORE JACKSON
P.O. BOX 8000 # 590-406
501 THOMPSON ROAD
CONNEAUT, OHIO 44030

CERTIFICATE OF SERVICE

A copy of this Merit Brief was sent to the Ohio Attorney General's Office State Office Tower, 30 East Broad street, 25th floor, Columbus, Ohio 43215, this 12th day of October 2015, via reg. U.S. mail.



THEODORE JACKSON, IN PRO SE

PASSIM

" WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN INALIENABLE RIGHTS, THAT AMONG THESE ARE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS."

APPENDIX

IN THE SUPREME COURT OF OHIO

STATE EX REL.
THEODORE JACKSON
APPELLANT

V.

BRIGHAM SLOAN, WARDEN
APPELLEE

CASE NO.

15-1477

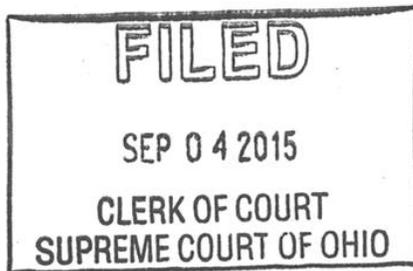
ON APPEAL FROM THE ASHTABULA
COUNTY COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT

COURT OF APPEALS
CASE NO. 2015-A-0028

NOTICE OF APPEAL OF THEODORE JACKSON

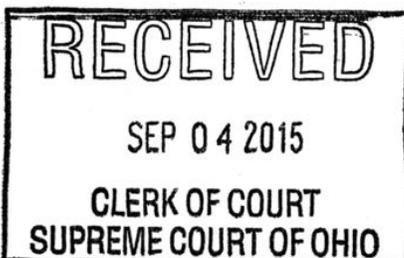
STATE EX REL. THEODORE JACKSON
P.O. BOX 8000 # 590-406
CONNEAUT, OHIO 44030

IN PRO SE



MIKE DeWINE, OHIO ATTORNEY GENERAL
STATE OFFICE TOWER, 30 EAST BROAD ST., 25th fl.
COLUMBUS, OHIO 43215

COUNSEL FOR APPELLEE



NOTICE OF APPEAL OF THEODORE JACKSON

Appellant Theodore Jackson hereby gives notice to the Supreme Court of Ohio from the judgment of the Ashtabula County Court of Appeals, Eleventh Appellate District, entered in Court of Appeals case no. 2015-A-0028 on August 10, 2015.

This case originated in the Court of Appeals, and raises substantial Constitutional questions.

Respectfully submitted,
IN PRO SE


THEODORE JACKSON
IN PRO SE

CERTIFICATE OF SERVICE

I certify that a copy of this notice of appeal was sent by ordinary U.S. mail to counsel for the appellee, Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, 25th floor, Columbus, Ohio 43215.


THEODORE JACKSON
IN PRO SE

STATE OF OHIO)
)SS.
COUNTY OF ASHTABULA)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO ex rel.
THEODORE JACKSON,

JUDGMENT ENTRY



Petitioner,

CASE NO. 2015-A-0028
FILED
COURT OF APPEALS

- vs -

AUG 10 2015

BRIGHAM SLOAN, WARDEN,

TAMI PENTEK, CLERK OF COURTS
ASHTABULA COUNTY, OHIO

Respondent.

For the reasons stated in the Per Curiam Opinion of this court, Petitioner's Petition for Writ of Habeas Corpus is hereby dismissed.

It is further ordered that Petitioner's motion for the court of appeals to inspect the record, filed on July 27, 2015, is granted. The number of pages and attachments for all the documents cited therein has been verified.

Any other pending motions are hereby overruled as moot.

PRESIDING JUDGE TIMOTHY P. CANNON

JUDGE DIANE V. GREDEL

JUDGE THOMAS R. WRIGHT

{¶2} Jackson filed his Petition on May 26, 2015. Jackson seeks release from imprisonment on the grounds that his "maximum sentences have expired." In support, Jackson attached the following Journal Entries:

February 17, 1978. *State v. Jackson*, Cuyahoga C.P. No. CR-78-036641-ZA: finding Jackson guilty of Receiving Stolen Property and sentencing him "for a minimum of one (1) year and maximum of five (5) years * * * to run concurrently with Case CR-36620."

February 17, 1978. *State v. Jackson*, Cuyahoga C.P. No. CR-77-036620-B: finding Jackson guilty of Aggravated Robbery and sentencing him "for a term of a minimum of four (4) years and maximum of twenty-five (25) years."

January 7, 1988. *State v. Jackson*, Cuyahoga C.P. No. CR-87-222201-ZA: finding Jackson guilty of Receiving Stolen Property (Motor Vehicle) with Specification and sentencing him "for a term of two (2) to ten (10) years."

July 9, 2010. *State v. Jackson*, Cuyahoga C.P. No. CR-09-527856-A: finding Jackson in violation of community control sanctions (Escape) and sentencing him "for a term of 1 year(s)."

{¶3} On June 19, 2015, Sloan filed a Motion to Dismiss or in the Alternative Motion for Summary Judgment. Sloan contends that Jackson's expiration of sentence date is August 27, 2039. In support, Sloan attached a memorandum from the Ohio Department of Rehabilitation and Correction, calculating Jackson's maximum expiration of sentence as August 27, 2039.

{¶4} In relevant part, Jackson began serving his four to twenty-five year sentence in Case No. CR-77-036620-B on February 27, 1978, with 71 days of jail credit. He was furloughed on May 27, 1980, and paroled on July 1, 1980. On February 25, 1981, Jackson was returned to prison as a parole violator.

{¶5} Jackson's return to prison in 1981 involved new charges, not identified in the Petition for Habeas Corpus. In *State v. Jackson*, Cuyahoga C.P. No. CR-81-

162099-ZA, Jackson was found guilty of Aggravated Robbery following a jury trial. In a Journal Entry dated June 18, 1981, Jackson was sentenced "for a term of seven (7) years to twenty-five (25) years, to run consecutive to Parole Violation." At this point, Jackson was serving a maximum fifty-year prison sentence based on the sentences in Case Nos. CR-77-036620-B and CR-81-162099-ZA.

{¶6} Jackson was again paroled on September 10, 1986.

{¶7} Jackson was again returned to prison on January 14, 1988, as a parole violator and based on new charges arising out of Case No. CR-87-222201-ZA. Jackson's conviction for Receiving Stolen Property added ten years to his maximum prison sentence, for an aggregate term of sixty years.

{¶8} Jackson was subsequently paroled and returned to prison as a parole violator and for new charges on several occasions. These subsequent charges, however, did not have the effect of extending his maximum sentence. See *State v. Jackson*, Cuyahoga C.P. No. CR-92-276081-ZA, sentencing Jackson for Robbery to a "term of eight (8) years to fifteen (15) years with eight (8) years actual time," on March 12, 1992.

{¶9} Based on Jackson's sixty-year maximum sentence plus additional "lost time" for the times he "was at large on parole," his expiration of maximum sentence is calculated as August 27, 2039.

{¶10} Sloan raised additional arguments in his Motion to Dismiss based on res judicata/successive habeas petitions and the availability of an adequate remedy in the ordinary course of law.

{¶11} On June 25, 2015, Jackson filed a Petitioner's Objection to Warden's Return of Writ. Jackson contends that his expiration of maximum sentence is February 25, 2015, based on a thirty-five year maximum sentence plus lost time. Jackson further contends that the seven to twenty-five year sentence he received in Case No. CR-81-162099-ZA "is void on its face by not being signed by a judge[;] no sentence has ever been journalized." In support, Jackson attached an unsigned, but journalized entry of sentence in Case No. CR-81-162099-ZA.

{¶12} "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." R.C. 2725.01. "If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed." R.C. 2725.05.

{¶13} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "the moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence * * * that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor."

{¶14} Jackson's Petition is subject to dismissal for his failure to attach all commitment papers, as required by R.C. 2725.04(D) ("[a] copy of the commitment or cause of detention of such person shall be exhibited * * *; or, if the imprisonment or detention is without legal authority, such fact must appear"). *Al'Shahid v. Cook*, __ Ohio St.3d __, 2015-Ohio-2079, __ N.E.2d __, ¶ 8 (cases cited). For this reason, we dismiss the Petition. *Pence v. Bunting*, __ Ohio St.3d __, 2015-Ohio-2026, __ N.E.2d __, ¶ 6 (cases cited).

{¶15} Were this court inclined to consider the merits of Jackson's Petition, Sloan has demonstrated that he is entitled to judgment as a matter of law. The sole disputed issue with respect to Jackson's incarceration is the validity of the June 18, 1981 Journal Entry in Case No. CR-81-162099-ZA. Contrary to Jackson's contention, the sentencing Entry is duly journalized in the trial court's docket. Jackson cites no authority, nor is this court aware of any, for the proposition that a judgment is "void on its face" for not being signed by a judge. On the contrary, the Ohio Supreme Court has held that "such errors are not of the nature which are cognizable in a habeas corpus proceeding." *Dean v. Maxwell*, 174 Ohio St. 193, 198, 187 N.E.2d 884 (1963).

{¶16} As Jackson's Petition is fatally defective due to his failure to attach all relevant commitment papers, it is, accordingly, dismissed.

{¶17} Any other pending Motions, including Jackson's Motion to Amend Certificate of Service filed on June 22, 2015, Motion for Judicial Notice filed on July 6, 2015, and Motion to Find Respondent Counsel in Contempt for False Statements in Return of Writ filed on July 10, 2015, are hereby overruled as moot.

{¶18} With respect to Jackson's Motion for Court of Appeals to Inspect the Record, filed on July 27, 2015, the number of pages and attachments for all the documents cited therein has been verified.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., THOMAS R. WRIGHT, J.,
concur.

CONSTITUTION OF THE STATE OF OHIO

ADOPTED MARCH 10, 1851
WITH AMENDMENTS CURRENT TO JANUARY 1, 2011

ARTICLE I: BILL OF RIGHTS

Section

- 1 Right to freedom and protection of property.
- 2 Right to alter, reform, or abolish government, and repeal special privileges.
- 3 Right to assemble together.
- 4 Bearing arms; standing armies; subordination of military power.
- 5 Trial by jury; reform in civil jury system.
- 6 Slavery and involuntary servitude.
- 7 Rights of conscience; education; necessity of religion and knowledge.
- 8 Writ of habeas corpus.
- 9 Bail; cruel and unusual punishments.
- 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.
- 10a Rights of victims of crime.
- 11 Freedom of speech and of the press; libel.
- 12 Transportation, etc., for crime.
- 13 Quartering of troops.
- 14 Search warrants and general warrants.
- 15 No imprisonment for debt.
- 16 Redress in courts.
- 17 Hereditary privileges, etc.
- 18 Suspension of laws.
- 19 Inviolability of private property.
- 19a Damage for wrongful death.
- 19b Private property rights in ground water, lakes and other watercourses.
- 20 Powers reserved to the people.

§ 1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

§ 3 Right to assemble together.

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

§ 4 Bearing arms; standing armies; subordination of military power.

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

§ 5 Trial by jury; reform in civil jury system.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: (As amended September 3, 1912.)

§ 6 Slavery and involuntary servitude.

There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

§ 7 Rights of conscience; education; necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

§ 8 Writ of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

§ 9 Bail; cruel and unusual punishments.

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great; and except for a person who is charged with a felony where the

10

proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

HISTORY: (As amended January 1, 1998.)

§ 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

HISTORY: (As amended September 3, 1912.)

§ 10a Rights of victims of crime.

Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any

political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

HISTORY: (Adopted November 8, 1994).

§ 11 Freedom of speech and of the press; libel.

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

§ 12 Transportation, etc., for crime.

No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

§ 13 Quartering of troops.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

§ 14 Search warrants and general warrants.

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

§ 15 No imprisonment for debt.

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

§ 16 Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

HISTORY: (As amended September 3, 1912.)

§ 17 Hereditary privileges, etc.

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state.

§ 18 Suspension of laws.

No power of suspending laws shall ever be exercised, except by the general assembly.

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§ 11 May grant reprieves, commutations, and pardons

The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper, subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Upon conviction for treason, the Governor may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. The Governor shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with the Governor's reasons therefor.

HISTORY: (As amended January 1, 1996)

ARTICLE IV: JUDICIAL

Section

- 1. In whom judicial power vested.
- 2. The supreme court.
- 3. Court of appeals.
- 4. Common pleas court.
- 5. Additional powers of supreme court; supervision; rule making.
- 20. Style of process, prosecution, and indictment.

§ 1 In whom judicial power vested.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

HISTORY: (Amended May 7, 1968; Nov. 6, 1973; SJR No. 30.)

§ 2 The supreme court.

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The supreme court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law;

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

- (i) Cases originating in the courts of appeals;
- (ii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained.

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article;

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.

HISTORY: (Amended November 8, 1994)

§ 3 Court of appeals.

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts

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the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

HISTORY: (Amended November 8, 1994).

§ 4 Common pleas court.

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

HISTORY: (Amended, effective Nov. 6, 1973; SJR No.30. Adopted May 7, 1968. Former § 4 repealed.)

§ 5 Additional powers of supreme court; supervision; rule making.

(A)(1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division

thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

HISTORY: (Amended, effective Nov. 6, 1973; SJR No.30. Adopted May 7, 1968.)

§ 20 Style of process, prosecution, and indictment.

The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio."

ARTICLE V: ELECTIVE FRANCHISE

- Section
3 Repealed, June 8, 1976.
4 Forfeiture of elective franchise.

§ 3 Repealed, June 8, 1976.

This section referred to the privilege from arrest of voters during elections.

§ 4 Forfeiture of elective franchise.

The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.

HISTORY: (Amended, effective June 8, 1976; SJR No.16.)

ARTICLE XVIII: MUNICIPAL CORPORATIONS

- Section
3 Powers.
7 Home rule.

Constitutions

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AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Articles in addition to, and amendments of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(Effective 1791)

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(Effective 1791)

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(Effective 1791)

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(Effective 1791)

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Effective 1791)

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

(Effective 1791)

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

(Effective 1791)

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(Effective 1791)

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(Effective 1791)

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(Effective 1791)

AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(Effective 1798)

AMENDMENT XII

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom; at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the

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President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

(Effective 1804)

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

(Effective 1865)

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution

Due process, OConst art I, § 16

Equal protection, OConst art I, § 2

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Ohio Constitution

Apportionment, OConst art XI, §§ 1, 2, 3

SECTION 3. No person shall be a Senator or Represent-

tative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Ohio Constitution

Qualification for office, OConst art II, § 5

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Ohio Constitution

Public debt, OConst art VIII, §§ 1, 3

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(Effective 1868)

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

(Effective 1870)

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(Effective 1913)

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(Effective 1913)

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2303.08 General duties.

The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk.

The clerk may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under section 2323.52 of the Revised Code and who has failed to obtain leave to proceed under that section.

Effective Date: 03-18-1997

2303.10 Indorsement of papers.

The clerk of the court of common pleas shall indorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy and upon every undertaking given thereunder, the date of its return to his office.

Effective Date: 10-01-1953

2303.12 Books to be kept by clerk.

The clerk of the court of common pleas shall keep at least four books. They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket. He shall also keep a record in book form or he may prepare a record by using any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process, electrostatic process, perforated tape, magnetic tape, or other electromagnetic means, electronic data processing, machine readable media, graphic or video display, or any combination thereof, which correctly and accurately copies or reproduces the original document, paper, or instrument in writing. He shall use materials that comply with the minimum standards of quality for permanent photographic records prescribed by the National Bureau of Standards. He shall keep an index to the trial docket and to the printed duplicates of the trial docket and of the journal direct, and to the appearance docket, record, and execution docket, direct and reverse. All clerks keeping records and information by the methods described in this section shall keep and make readily available to the public the machine and equipment necessary to reproduce the records and information in a readable form.

Effective Date: 08-19-1975

2725.01 Persons entitled to writ of habeas corpus.

Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.

Effective Date: 10-01-1953

2725.04 Application for writ.

Application for the writ of habeas corpus shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify:

- (A) That the person in whose behalf the application is made is imprisoned, or restrained of his liberty;
- (B) The officer, or name of the person by whom the prisoner is so confined or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation and the person who is served with the writ is deemed the person intended;
- (C) The place where the prisoner is so imprisoned or restrained, if known;
- (D) A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.

Effective Date: 10-01-1953

2725.14 Contents of the return.

When the person to be produced under a writ of habeas corpus is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases the person in whose custody the prisoner is found shall state, in writing, to the court or judge before whom the writ is returnable, plainly and unequivocally:

- (A) Whether or not he has the prisoner in his custody or power or under restraint.
- (B) If the prisoner is in his custody or power or under restraint, he shall set forth, at large, the authority, and the true and whole cause, of such imprisonment and restraint, with a copy of the writ, warrant, or other process upon which the prisoner is detained.
- (C) If such prisoner was in his custody or power or under restraint, and such custody or restraint was transferred to another, he shall state particularly to whom, at what time, for what cause, and by what authority such transfer was made.

Effective Date: 10-01-1953

2901.04 Rules of construction for statutes and rules of procedure.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

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adopt rules in accordance with Chapter 119. of the Revised Code for determining includable and excludable costs and income to be used in computing the agency's average daily per capita costs with its facility at full occupancy.

The department of rehabilitation and correction may use a portion of the amount appropriated to the department each fiscal year for the halfway house and community residential center program to pay for contracts for nonresidential services for offenders under the supervision of the adult parole authority. The nonresidential services may include, but are not limited to, treatment for substance abuse, mental health counseling, and counseling for sex offenders.

(C) The division of parole and community services may license a halfway house or community residential center as a suitable facility for the care and treatment of adult offenders only if the halfway house or community residential center complies with the standards that the division adopts in accordance with Chapter 119. of the Revised Code for the licensure of halfway houses and community residential centers. The division shall annually inspect each licensed halfway house and licensed community residential center to determine if it is in compliance with the licensure standards.

(1994 H 571, eff. 10-6-94; 1992 S 331, eff. 11-13-92; 1981 H 694; 1976 H 637)

2967.15 Violation of pardon or parole

Note: See also following version of this section and Publisher's Note printed below.

(A) Any adult parole authority field officer who has reasonable cause to believe that any parolee, furlougee, or other releasee under the supervision of the adult parole authority has violated or is violating any term or condition of his pardon, parole, furlough, or release may arrest the person without a warrant or order any peace officer to arrest the person without a warrant. A person so arrested shall be confined in the jail of the county in which he is arrested or in another facility designated by the chief of the adult parole authority until a determination is made regarding his release status. Upon making an arrest under this section, the arresting or supervising adult parole authority field officer promptly shall notify the superintendent of parole supervision or his designee, in writing, that the person has been arrested and is in custody and submit in detail an appropriate report of the reason for the arrest.

(B) Prior to the revocation of a person's pardon, parole, furlough, or other release by the adult parole authority, the adult parole authority shall grant the person a hearing pursuant to rules adopted by the department of rehabilitation and correction in accordance with Chapter 119. of the Revised Code, except that the adult parole authority is not required to grant the person a hearing if the person is convicted of or pleads guilty to an offense that the person committed while the person was released on a pardon or was on parole, fur-

lough, or other release and upon which the revocation of the person's pardon, parole, furlough, or release is based.

If a person is found to be a violator of the conditions of his pardon or commutation, the authority forthwith shall transmit to the governor its recommendation concerning the violation, and the violator shall be retained in custody until the governor issues an order concerning the violation.

If the authority fails to make a determination of the case of the parolee alleged to be a violator of the conditions of his pardon or parole within a reasonable time, the parolee shall be released from custody under the same terms and conditions of his original pardon or parole.

(C)(1) If a parolee, furlougee, or other releasee absconds from supervision, that fact shall be reported by the superintendent to the authority, in writing, and the authority shall enter an order upon its official minutes declaring that person to be a violator at large. The superintendent, upon being advised of the apprehension and availability for return of a violator at large, shall recommend to the authority that he be returned to the institution or restored to parole, furlough, or other release. If the violator is not restored to parole, furlough, or other release, he shall be returned to a state correctional institution.

The time between the date on which a parolee, furlougee, or other releasee is declared to be a violator or violator at large and the date on which that person is returned to custody in this state under the immediate control of the adult parole authority shall not be counted as time served under the sentence imposed on that person.

(2) A furlougee or any releasee other than a person who is released on parole or pardon is considered to be in custody while on furlough or other release, and, if he absconds from supervision, he may be prosecuted for the offense of escape.

(D) A parolee, furlougee, or other releasee who has violated any term or condition of pardon, parole, furlough, or other release shall be declared to be a violator if he is committed to a correctional institution outside the state to serve a sentence imposed upon him by a federal court or a court of another state or if he otherwise leaves the state.

(E) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(1995 H 117, eff. 6-30-95; 1994 H 571, eff. 10-6-94; 1992 S 49, eff. 7-21-92; 130 v Pt 2, H 28)

Note: See also following version of this section and Publisher's Note printed below.

2967.15 Violation of pardon or parole

Note: See also preceding version of this section and Publisher's Note printed below.

(A) An adult parole authority field officer who has reasonable cause to believe that a parolee, furlougee, or other releasee under the supervision

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

(A) **Applicability.** These rules prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction, with the exceptions stated in division (C) of this rule.

(B) **Purpose and construction.** These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.

(C) **Exceptions.** These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) upon extradition and rendition of fugitives, (3) in cases covered by the Uniform Traffic Rules, (4) upon the application and enforcement of peace bonds, (5) in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure, (6) upon forfeiture of property for violation of a statute of this state, or (7) upon the collection of fines and penalties. Where any statute or rule provides for procedure by a general or specific reference to the statutes governing procedure in criminal actions, the procedure shall be in accordance with these rules.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1996.]

Crim.R. 32(B) provides:

"A judgment of conviction shall set forth the plea, the verdict or findings, and the {686 N.E.2d 269} sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." (Emphasis added.)

RULE 802. Hearsay Rule

Hearsay is not admissible except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio.

[Effective: July 1, 1980.]

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. Requirement of Authentication or Identification

(A) **General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(B) **Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) **Testimony of witness with knowledge.** Testimony that a matter is what it is claimed to be.

(2) **Nonexpert opinion on handwriting.** Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) **Comparison by trier or expert witness.** Comparison by the trier of fact or by expert witness with specimens which have been authenticated.

(4) **Distinctive characteristics and the like.** Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) **Voice identification.** Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) **Telephone conversations.** Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (a) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (b) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) **Public records or reports.** Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept.

(8) **Ancient documents or data compilation.** Evidence that a document or data compilation, in any form, (a) is in such condition as to create no suspicion concerning its authenticity, (b) was in a place where it, if authentic, would likely be, and (c) has been in existence twenty years or more at the time it is offered.

(9) **Process or system.** Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) **Methods provided by statute or rule.** Any method of authentication or identification provided by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio or by other rules prescribed by the Supreme Court.

[Effective: July 1, 1980.]

RULE 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) **Domestic public documents under seal.** A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) **Domestic public documents not under seal.** A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) **Foreign public documents.** A document purporting to be executed or attested in the official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) **Certified copies of public records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of a jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.

(5) **Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

(6) **Newspapers and periodicals.** Printed materials purporting to be newspapers or periodicals, including notices and advertisements contained therein.

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(7) **Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) **Acknowledged documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) **Commercial paper and related documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) **Presumptions created by law.** Any signature, document, or other matter declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie genuine or authentic.

[Effective: July 1, 1980; amended effectively July 1, 2007.]

RULE 12. Defenses and Objections--When and How Presented--by Pleading or Motion--Motion for Judgment on the Pleadings

(A) When answer presented.

(1) Generally. The defendant shall serve his answer within twenty-eight days after service of the summons and complaint upon him; if service of notice has been made by publication, he shall serve his answer within twenty-eight days after the completion of service by publication.

(2) Other responses and motions. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty-eight days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty-eight days after service of the answer or, if a reply is ordered by the court, within twenty-eight days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (a) if the court denies the motion, a responsive pleading, delayed because of service of the motion, shall be served within fourteen days after notice of the court's action; (b) if the court grants a motion, a responsive pleading, delayed because of service of the motion, shall be served within fourteen days after service of the pleading which complies with the court's order.

(B) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

(C) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

(D) Preliminary hearings. The defenses specifically enumerated (1) to (7) in subdivision (B) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (C) of this rule shall be heard and determined before trial on application of any party.

(E) Motion for definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within fourteen days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(F) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.

(G) Consolidation of defenses and objections. A party who makes a motion under this rule must join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter assert by motion or responsive pleading, any of the defenses or objections so omitted, except as provided in subdivision (H) of this rule.

(H) Waiver of defenses and objections.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (a) if omitted from a motion in the circumstances described in subdivision (G), or (b) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(A) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(A), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action.

[Effective: July 1, 1970; amended effective July 1, 1983.]

RULE 56. Summary Judgment

(A) For party seeking affirmative relief. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part of the claim, counterclaim, cross-claim, or declaratory judgment action. A party may move for summary judgment at any time after the expiration of the time permitted under these rules for a responsive motion or pleading by the adverse party, or after service of a motion for summary judgment by the adverse party. If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court.

(B) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part of the claim, counterclaim, cross-claim, or declaratory judgment action. If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court.

(C) Motion and proceedings. The motion shall be served in accordance with Civ.R. 5. Unless otherwise provided by local rule or by order of the court, the adverse party may serve responsive arguments and opposing affidavits within twenty-eight days after service of the motion, and the movant may serve reply arguments within fourteen days after service of the adverse party's response. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(D) Case not fully adjudicated upon motion. If on motion under this rule summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court in deciding the motion, shall examine the evidence or stipulation properly before it, and shall if practicable, ascertain what material facts exist without controversy and what material facts are actually and in good faith controverted. The court shall thereupon make an order on its journal specifying the facts that are without controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(E) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the

matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(F) When affidavits unavailable. Should it appear from the affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(G) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

[Effective: July 1, 1970; amended effective July 1, 1976; July 1, 1997; July 1, 1999; July 1, 2015.]

Staff Note (July 1, 2015 Amendment)

Consistent with a similar amendment to Civ.R. 6(C), the amendment to Civ.R. 56(C) deletes the reference in the prior rule to "the time fixed for hearing." The amendment also specifies, in the absence of a local rule or court order specifying a time for responding to a motion for summary judgment, a fallback time of twenty-eight days after service of the motion within which to serve responsive arguments and opposing affidavits. In the absence of a local rule or court order addressing replies, the amendment also permits the movant to serve reply arguments within fourteen days after service of the adverse party's response. The time for filing the motion, responses, and replies is governed by Civ.R. 5(D), again in the absence of a local rule or court order specifying a different time for filing. The rule applies only in the absence of a local rule or court order providing times for briefing motions, whether or not the rule or order specifically addresses summary judgment motions, and does not supersede or affect the application of local rules or orders addressing briefing on motions.

Staff Note (July 1, 1999 Amendment)

Rule 56(C) Motion and proceedings thereon

The prior rule provided that "transcripts of evidence in the pending case" was one of the items that could be considered in deciding a motion for summary judgment. The 1999 amendment deleted "in the pending case" so that transcripts of evidence from another case can be filed and considered in deciding the motion.

Staff Note (July 1, 1997 Amendment)

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Rule 56(A) For party seeking affirmative relief.

The 1997 amendment to division (A) divided the previous first sentence into two separate sentences for clarity and ease of reading, and replaced a masculine reference with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

Rule 56(B) For defending party.

The 1997 amendment to division (B) added a comma after the "may" in the first sentence and replaced a masculine reference with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

Rule 56(C) Motion and proceedings thereon.

The 1997 amendment to division (C) changed the word "pleading" to "pleadings" and replaced a masculine reference with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

Rule 56(E) Form of affidavits; further testimony; defense required.

The 1997 amendment to division (E) replaced several masculine references with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

Rule 56(F) When affidavits unavailable.

The 1997 amendment to division (F) replaced several masculine references with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

Rule 56(G) Affidavits made in bad faith.

The 1997 amendment to division (G) replaced a masculine reference with gender-neutral language. The amendment is grammatical only and no substantive change is intended.

RULE 60. Relief From Judgment or Order

(A) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(B) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

[Effective: July 1, 1970.]

RULES 24 THROUGH 25.1.

RESERVED

RULE 26. EN BANC CONSIDERATION

(A) **Scope of Review.** This court shall consider an appeal en banc in accordance with App.R. 26(A)(2) and the procedures set forth in this rule. En banc consideration is not favored.

(B) **Judicial Request for En Banc Consideration.** Any judge may submit a request to the Administrative Judge for en banc consideration before or within five days after a decision is journalized.

(C) **Party Application For En Banc Consideration.** App.R. 26(A)(2) governs parties' applications for en banc consideration. The parties must strictly comply with the time limits of the appellate rule for filing an application, an opposing brief, or a reply brief. The application and opposing brief shall not exceed ten pages. The reply brief shall not exceed five pages. The parties shall file an original and three copies of the application, opposing brief, or reply brief, and shall email the application, opposing brief, or reply to: enbanc@8thappeals.com at the time of filing. The subject line of the email shall identify the appeal number and the type of document being submitted, whether application, opposing brief, or reply brief. The application or brief shall be attached to the email in Microsoft Word, WordPerfect, or PDF format.

- (1) **Contents of the Application for En Banc Consideration.** An application for en banc consideration shall (a) disclose the dispositive point of law upon which the panel's decision conflicts with the decision of another panel of this court, (b) specifically cite the conflicting authority and the point of law stated therein that conflicts with the present case, and (c) explain why en banc consideration is necessary to secure and maintain uniformity of this court's decisions. Any application that fails to comply with this provision may be summarily dismissed. In addition, the party or counsel who fails to comply with this provision is subject to sanctions.

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PUBLISHER'S NOTE

On the Relationship Between Statutes and Court Rules

In 1968, with the adoption of the modern courts amendments to the Ohio Constitution, a whole new dimension was added to the "law" of Ohio. Article IV, § 5(B) of the Ohio Constitution now provides that, "The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any *substantive* right ... All laws *in conflict with* such rules shall be of no further force or effect after such rules have taken effect." (Emphasis added.) The Supreme Court of Ohio has exercised this authority by promulgating Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, Rules of Juvenile Procedure and Rules of Evidence.

Thus the state "law" applicable to a particular situation must often be determined by consulting the Ohio Constitution, the Ohio Revised Code, the Ohio Administrative Code and court-prescribed Rules. The principle that, in instances of conflict, a jurisdiction's constitution prevails over its legislatively-enacted statutory law has been well settled since *Marbury v. Madison* (1803), 5 U.S. 137. The relationship between statutes and court Rules is less familiar because such Rules, on both the state and federal levels, are of more recent vintage.

At first glance Article IV, § 5(B), as quoted above, appears to dispose of any question as to the relationship between statutes and Rules. The italicized words, however, create two definite and recurrent issues.

"Substantive"

The first problem is to determine what is a substantive right and what is merely a matter of procedure. The complexity of this issue is well known. In *Erie Railroad Co. v. Tompkins* (1938), 304 U.S. 65, the United States Supreme Court declared that in diversity cases the federal courts must apply state substantive law and federal procedural law. Since then, federal courts have often grappled with this distinction. Thus it cannot be predicted with certainty whether a court will find that a particular provision is "substantive" or "procedural."

The Supreme Court of Ohio, per Justice William B. Brown, commented at some length on the elusive nature of this distinction in *State v. Slatter* (1981), 66 Ohio St. 2d 452, 20 Ohio Op. 3d 383. The Court stated, at pp. 454, 455 [p. 385 of 20 Ohio Op. 3d] that, "The application of the substantive-procedural distinction to a statute or rule is not without difficulty, as the substantive and procedural laws are not always mutually exclusive."

The Court also quoted, at pp. 455, 456 [p. 386 of 20 Ohio Op. 3d] one of its earlier opinions to the effect that, "[M]any courts have erred in proceeding upon an assumption that the supposed dividing line between the two categories has some kind of objective existence upon one side or the other of which a set of facts must always fall. Decisions, expressed in terms of locating a pre-existing line instead of where the line ought to be drawn, have lent themselves immeasurably to the confusion which reigns in this whole area of law "The precise meaning to be given to "substance" and to "procedure" ought, therefore, to be determined in the light of this underlying purpose to be fair to the individuals concerned"

Three other decisions of the Supreme Court are also instructive on this issue. In *State v. Smorgala* (1990), 50 Ohio St. 3d 222, the Court stated, in the second syllabus paragraph, that "Because the law of privilege is substantive in nature, the Supreme Court is not free to promulgate an amendment to the Rules of Evidence which would deny a statutory privilege in drunk driving cases. Evid. R. 501."

In *State ex rel. Silcott v. Spahr* (1990), 50 Ohio St. 3d 110, the Court held that a valid procedural rule can be invalidated only by a resolution of disapproval under Section 5(B), Article IV and once in effect, rules governing practice and procedure cannot be later invalidated by a purported withholding of "jurisdiction" to follow them.

In *Rockey v. 84 Lumber Co.* (1993), 66 Ohio St. 3d 221, the Court held that "The Ohio Rules of Civil Procedure, which were promulgated by the Supreme Court pursuant to Section 5(B), Article IV of the Ohio Constitution, must control over subsequently enacted inconsistent statutes purporting to govern procedural matters."

In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St. 3d 451, the Court asserted that by amending or enacting a statute, the legislature cannot resurrect a statutory provision that has been held to be invalid under Section 5(B), Article IV.

Other cases on point are: *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.* (1996), 76 Ohio St. 3d 374; *State ex rel. Botkins v. Laws* (1994), 69 Ohio St. 3d 383; *Hiatt v. S. Health Facilities, Inc.* (1994), 68 Ohio St. 3d 236; *State ex rel. Beacon Journal Publishing Co. v. Waters* (1993), 67 Ohio St. 3d 221; and *In re Coy* (1993), 67 Ohio St. 3d 215. Additional, and subsequent, cases may be found in *Anderson's Ohio Case Locator* under "COURTS" or in the Appendix Volume to *Page's Ohio Revised Code Annotated*.

"In conflict with"

Even though a previously enacted statute and a Rule may cover essentially the same territory, they may not be completely overlapping. In that instance, some portions of the statute may survive since the Rule is silent on the particular point and the statute and the Rule are not, to that extent, "in conflict."

In *State v. Tate* (1979), 59 Ohio St. 2d 50, 13 Ohio Op. 3d 36, 391 N.E.2d 738, for example, the Court was confronted with a situation in which the defendant in a petty offense case had filed a jury demand but then proceeded to be tried, without objection, by the court without a jury. The Court noted that Crim. R. 23(A), as then in effect, did not directly address this situation. To resolve the issue of how such a jury demand could be withdrawn, the Court then turned to R.C. § 2945.05 and held that, in that specific situation, the statute remained effective as prescribing the procedure for the waiver.

Finally, it should be noted that not all rules promulgated by the Supreme Court of Ohio are issued under the authority of Article IV, § 5(B). Rules not issued pursuant to that article are not subject to the limitations imposed by the article.

The Code of Professional Responsibility is an example of the Ohio Supreme Court's other rule-making powers. This code of attorney conduct and discipline was issued pursuant to the Court's power, under Article IV, § 2 and R.C. Chapter 4705, to regulate the practice of law in this state.

Michael C. Oechsler, J.D.
of the Publisher's Staff
July 2003

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2965	PARDON;
2967	PARDON;
2969	RECOVER
	CRIME
2971	SENTENC