

ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NOS. 2015-1341 & 1342

STATE OF OHIO,

Plaintiff-Appellant,

vs.

THOMAS WRIGHT, JR.,

Defendant.

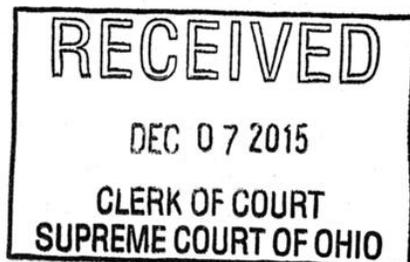
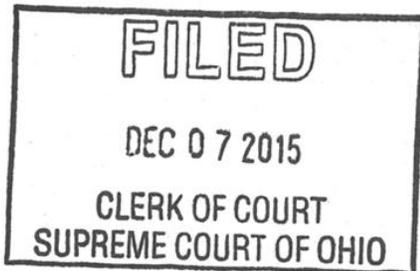
**MOTION FOR LEAVE TO ADD
AN ASSIGNMENT OF ERROR**

Thomas Wright Jr., #643-866
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Appellant, Pro-Se

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IN THE COURT OF APPEALS OF OHIO
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THOMAS WRIGHT, JR.,

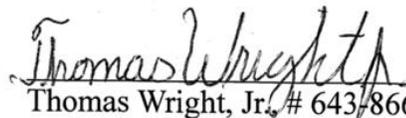
Defendant.

MOTION FOR FOR LEAVE TO ADD
AN ASSIGNMENT OF ERROR

Now comes the Appellant, Thomas Wright, Jr., Pro-Se ("Wright"), and hereby requests an Order from this Honorable Court granting him Leave to add an assignment or error. Wright requested that Assistant Public Defender, Stephen A. Goldmeier, include the requested assignment, but Mr. Wright declined to do so. Thus inasmuch as the requested assignment is jurisdictional in nature, we submit that Mr. Wright will be denied due process of law and equal protection of the law if the relief requested herein is not granted.

A Memorandum In Support of this Motion is annexed hereto.

Respectfully Submitted,

 # 643-866
Thomas Wright, Jr. # 643/866

MEMORANDUM IN SUPPORT

Pre-Amble

Mr. Wright hereby seeks to add an assignment of error, challenging the jurisdiction of the trial court on the basis that one of the misdemeanor OVI convictions utilized below to enhance his crime to a fourth degree felony was actually adjudicated without counsel, therein prohibiting its use to enhance the alleged act. *See, e.g., State v. Brandon (1989), 45 Ohio St. 3d 85, 87.*

Propose Additional Issue Presented For Review

The Court of Appeals erred in failing to overturn the Trial Court's denial of Wright's Motion To Dismiss the enhanced OVI charge when Wright proved, at a minimum, by a preponderance of the evidence that he was uncounseled without a valid waiver of counsel, at his plea and sentencing hearing for his 1995 misdemeanor OVI conviction in the Willoughby Municipal Court that resulted in confinement.

It is undisputed that Mr. Wright filed a Motion to Dismiss in the trial court based upon his assertion that his 1995 misdemeanor OVI conviction in the Willoughby Municipal Court was constitutionally defective as it was adjudicated without counsel and a valid waiver of counsel. As a result of these facts, during an oral hearing, Mr. Wright proved, by a preponderance of the evidence, that he was uncounseled, without a valid waiver of counsel at his plea and sentencing in the Willoughby Municipal Court. Moreover, the trial court determined that "Wright met his burden of presenting a prima facie showing that he was not represented by counsel and had not waived his right to counsel." *Opinion and Journal Entry, May 15, 2013.*

It is well settled in Ohio that "[a]n uncounseled misdemeanor conviction cannot be used to enhance a sentence in a later conviction. **State v. Brandon, supra.** In a subsequent case, the Ohio Supreme Court addressed the specific issue of uncounseled misdemeanor OVI convictions being used to enhance charges to felonies. *See, State v. Brooke (2007), 113 Ohio St. 3d 199.* In deciding **Brooke**, the Ohio Supreme Court ruled that when a prior conviction increases the degree of the crime, the prior conviction is a necessary element of the crime. **Id., at ¶9.**

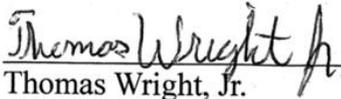
In an unequivocal declaration, **Brooke** court articulated, "when existence of a prior conviction

does not simply enhance the penalty but transforms it by increasing its degree, the prior conviction is an essential element of the crime and must be proved by the state. **Id.**, ¶8, *citing*, **State v. Allen (1987), 29 Ohio St. 3d 53**. The Court ruled that since the prior convictions are elements of a felony OVI charge, the prior convictions "must be proved beyond a reasonable doubt." **Id.** Finally, the **Brooke** Court reaffirmed that a conviction obtained against a defendant who is without counsel or an uncounseled conviction obtained without a valid waiver of the right to counsel is constitutionally impaired. Ergo, where, as here, "for purposes of later convictions under R.C. 4511.19, when a defendant presents a prima facie showing that prior convictions were unconstitutional because they were uncounseled and resulted in confinement, the burden shifts to the state to prove that the right to counsel was properly waived. **State v. Brandon (1989), 45 Ohio St. 3d 85**, *at syllabus*. More importantly to the case, *sub judice*, the Court further confirmed that it is impermissible to presume a waiver of the Sixth Amendment right to counsel from a silent record. **Id. at ¶25**.

In this cause, the Defendant has a bevy of evidence to bolster his prima facie demonstration of his prior uncounseled conviction. Stated another way, Lisa Mastrangelo, Willoughby Municipal Clerk of Courts and David Farren, an Assistant Lake County Public Defender, have offered undisputed testimony establish the fact of Mr. Wight's prior uncounseled conviction in the Willoughby Municipal Court.¹ Accordingly, it would be a gross miscarriage of justice to decide the instant matter without including the relief requested herein.

WHEREFORE, in light of all of the foregoing and in the interests of fairness and justice, we submit that the relief sought herein is warranted.

Respectfully Submitted,


Thomas Wright, Jr.

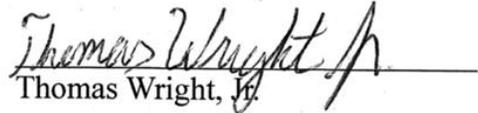
¹ We submit that it is of paramount significance that both of these individuals are officers of the court, whose veracity is unquestioned.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing *Motion* on the following counsel by regular U.S. mail, postage prepaid, this ____ day of December, 2015:

Charles Coulson, Esq.
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Stephen A. Goldmeier, Esq.
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Thomas Wright, Jr.