

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)	CASE NO. 2015-0080
LEWIS LEROY MCINTYRE, JR.)	
)	
Relator)	
)	ORIGINAL ACTION IN
v.)	PROHIBITION, MANDAMUS,
)	AND PROCEDENDO
SUMMIT COUNTY)	
COURT OF COMMON PLEAS, et al)	
)	
Respondents)	

**RELATOR'S MOTION TO SHOW CAUSE AND/OR FOR SUPPLEMENTAL
ISSUANCE OF WRIT OF MANDAMUS**

Stephen P. Hanudel (#0083486)
124 Middle Avenue, Suite 900
Elyria, Ohio 44035
Phone: (440) 328-8973
Fax: (440) 261-4040
sph812@gmail.com

ATTORNEY FOR RELATOR

Sherri Bevan Walsh (#0030038)
Colleen Sims (#0069790)
Summit County Prosecutor's Office
53 University Avenue, 6th Floor
Akron, Ohio 44308
Phone: (330) 643-8138
Fax: (330) 643-8708
simsc@prosecutor.summitoh.net

ATTORNEY FOR RESPONDENTS

Relator Lewis Leroy McIntyre, Jr., by and through undersigned counsel, hereby asks the Court to require Respondents Summit County Court of Common Pleas and Judge Thomas Teodosio to show cause as to why they should not be held in contempt for failing to comply with this Court's writ of mandamus issued on December 23, 2015.

Furthermost, McIntyre asks the Court to compel Respondents to fully comply with the writ. To this end, even if the Court does not cite the Respondents for contempt, McIntyre asks the Court to issue a supplemental order to ensure that the writ of mandamus is fully complied with. In addition, McIntyre asks for attorney fees for prosecution of this action.

Facts

In issuing the writ of mandamus, this Court succinctly summed up the background facts leading to the writ. McIntyre quotes the passage from the decision in *State ex rel. McIntyre v. Summit Cty. Court of Common Pleas*, 144 Ohio St.3d 589, 2015-Ohio-5343 as follows:

{¶ 2} In February and July 1991, McIntyre was indicted on two counts of felonious assault and one count of aggravated burglary, plus specifications. Before trial, the trial court granted an oral motion to amend one of the felonious-assault counts to add a second victim.

{¶ 3} The jury convicted McIntyre of aggravated burglary and one count of felonious assault. The jury was unable to reach a verdict as to the amended felonious-assault count.

{¶ 4} The trial court issued a sentencing entry on September 9, 1991. That entry did not dispose of the amended felonious-assault charge on which the jury failed to reach a verdict. The entry also failed to address two new indictments that had been added to the case and were pending at the time.

{¶ 5} The state later indicted McIntyre on two new charges, again under the same case number. On May 22, 1992, the trial court issued a sentencing entry memorializing a plea deal involving the four posttrial indictments. Once again, however, the entry failed to address the unresolved felonious-assault charge from the trial.

{¶ 6} Finally, on June 28, 2012, Judge Teodosio signed an entry dismissing the felonious-assault charge as well as the related firearm specification. However, the court's order

dismissed the felonious-assault charge *as indicted*, without disposing of the charge as amended before trial.

After conducting analysis, this Court issued a peremptory writ of mandamus ordering Respondents Summit County Court of Common Pleas and Judge Thomas Teodosio “to issue a final appealable order disposing of all charges against McIntyre.” *Id.* at ¶11. In particular, this Court noted that “at least one claim, the felonious-assault charge that was amended to add a second victim, has never been addressed in any court order.” *Id.* at ¶10.

After this Court’s decision, McIntyre, in his January 2016 filings, emphasized to Respondents that the case was still in pretrial mode with the pending amended felonious assault charge, including its specifications. He demanded discovery on the pending charge and asked for bond.

In the renewal of his motion for mistrial, McIntyre pointed out that the firearm specification to aggravated burglary (Specification One to Count One of Supplement Two) and prior aggravated felony specification to felonious assault (Specification Two to Count One of the original indictment) were still pending because those specifications were never charged to the jury.

McIntyre figured that even if his mistrial motion was denied and the pending charges were dismissed, he would have to return to court for a *de novo* sentencing hearing to achieve a final appealable order. However, that never came to pass.

On February 3, 2016, Judge Teodosio crafted and filed an order that purported to comply with the writ of mandamus. However, it was really a glorified regurgitation and combination of the 1991, 1992, and 2012 orders. Further, it did not address of McIntyre’s motions filed in January.

On February 17, 2016, McIntyre appealed the February 3rd order to the Ninth District Court of Appeals in Summit County App. No. 28125. Immediately, McIntyre asked the Ninth District to evaluate whether the February 3rd order was final and appealable. On March 17, 2016, without any explanation on the merits, the Ninth District “provisionally” determined that the February 3rd order was final and appealable, but that it could revisit the issue at a later time.

On February 23, 2016, Judge Teodosio issued an order denying McIntyre’s motions filed in January. To be safe, McIntyre appealed this order in Summit County App. No. 28171, but the Ninth District later dismissed the appeal because the order was not final and appealable.

Currently, in the appeal pending in Summit County App. No. 28125, pursuant to App. R. 9(E), McIntyre has filed a motion to correct the record before Judge Teodosio because in July 2010, Judge Teodosio signed an order to destroy the trial exhibits. The order falsely stated that McIntyre was not in prison and did not have an appeal pending when the exact opposite was true. The motion is currently pending.

Specifications Not Charged to the Jury

In McIntyre’s August 1991 trial, several specifications were not charged to the jury for consideration.

First, the firearm specification to aggravated burglary (Specification One to Count One of Supplement Two) was not charged to the jury. On the aggravated burglary verdict form, the specification referred to felonious assault, not aggravated burglary. See Page 3 of Appendix Volume 5. Further, when instructed on the aggravated burglary charge, the jury was instructed to consider a firearm specification for felonious assault, not aggravated burglary. Tr. 249 (Appendix Volume 4). As a result, there has never been a jury finding of guilty or not guilty on

the firearm specification for aggravated burglary as contained in Specification One to Count One of Supplement Two.

Second, the prior aggravated felony specification for each felonious assault count (Specification Two to Count One of the original indictment and Specification One (Two)¹ to Count One of Supplement One) were never charged to the jury. Thus, the jury never made any finding of guilty or not guilty on either one.

When McIntyre was found guilty of the felonious assault in the original indictment, Judge William Victor subjected him to a bench trial on the prior aggravated felony specification without McIntyre's consent. Tr. 360-362. However, Judge Victor found McIntyre guilty of a prior offense of violence, something McIntyre was never charged with. Tr. 256, Tr. 364, Tr. 381.

2012 Purported Dismissal of Felonious Assault Charge

On June 14, 2012, McIntyre, acting pro se, filed a pleading raising attention to the hung amended felonious assault charge (Count One of Supplement One) and firearm specification that had still been pending. The State responded on June 27th saying it had no intention of retrying McIntyre on the charge and sought a dismissal. See Page 35 of Appendix Volume 5.

On the next day, June 28, 2012, Judge Teodosio issued a written entry reclassifying the State's memorandum as a motion to dismiss. The order then purported to dismiss the felonious assault charge and the firearm specification. However, the order did not dismiss the prior aggravated felony specification that also came with the charge. See Page 37 of Appendix Volume 37.

¹ Supplement Two of the indictment labels this as Specification One when it really should have been Specification Two. The February 3, 2016 entry recognizes the error.

In issuing the writ of mandamus, this Court specifically noted that the June 28, 2012 order did not dismiss the felonious assault charge as amended, but rather as just indicted. *Id.* at ¶6. Thus, the amended felonious assault charge was still pending. *Id.* at ¶10.

In addition, when Judge Teodosio reclassified the State's notice of intent to not retry McIntyre as a motion to dismiss, such a motion would fall under Crim. R. 48(A), which requires such motion and dismissal to be done in open court.

Analysis of the February 3, 2016 Order

The February 3, 2016 order started by memorializing the events of the August 1991 trial. The first inaccuracy is on the first page when the order claims that the jury returned a "not guilty" verdict on the prior aggravated felony specification contained in Specification Two to Count One of the original indictment. As previously discussed, this is not true. The prior aggravated felony specification was never sent to the jury.

The second page of the order contains an inaccuracy and legal impossibility. It states that the jury found McIntyre guilty of having a firearm while committing aggravated burglary under Specification One to Count One of Supplement Two. This is not true. As discussed earlier, the jury verdict form for aggravated burglary contained a firearm specification for felonious assault, not aggravated burglary. The jury was orally instructed the same.

The second page then moves on to memorialize the sentencing hearing that took place on August 29, 1991. After memorializing the 8 to 25 year sentence for the aggravated burglary, the order inaccurately states that McIntyre was ordered to serve a three year prison term for having a firearm while committing **felonious assault** under Specification One to Count One of Supplement, which was really the firearm specification for aggravated burglary. In the

sentencing hearing, Judge Victor pronounced sentence for having a firearm while committing aggravated burglary even though the jury made no such finding. Tr. 382.

Thus, the second page of the order says – for the same specification – that McIntyre was found guilty of having a firearm while committing aggravated burglary, but then says that sentence was pronounced for having a firearm while committing felonious assault. Both statements are not true. The bottom line is that the firearm specification for aggravated burglary under Specification One to Count One of Supplement Two is still pending.

Further, the second page contains another discrepancy. For the felonious assault charge in the original indictment, the order pronounced that McIntyre was sentenced to an indeterminate period of 8 to 15 years, but then says that the 8 year minimum shall be actual incarceration. In the sentencing hearing, Judge Victor based the 8 year actual incarceration on the then ORC 2929.11(B)(2)(b), which mandatorily enhanced the sentence if the defendant had a prior aggravated felony. Tr. 381. However, the order previously stated that McIntyre was acquitted of having a prior aggravated felony.

In truth, the prior aggravated felony specification was never sent to the jury, but Judge Victor used it to enhance McIntyre's sentence, despite calling it a prior offense of violence. While McIntyre may not normally be apt to dispute a court order dismissing the specification (even though the order falsely states the jury acquitted him of it), he is disputing a sentence enhanced by the specification, especially since he was never found guilty of it. Ultimately, the prior aggravated felony specification is still not disposed because the jury never made a finding on it and Judge Victor never pronounced a dismissal or acquittal of the specification in any open court proceeding.

The most egregious error in the February 3, 2016 order is on the fifth page when it addresses the amended felonious assault charge and its firearm specification that the jury hung on. The prior aggravated felony specification with that charge was not sent to the jury.

The order completely misrepresents the truth of the State's June 27, 2012 memorandum and the June 28, 2012 order. As stated earlier, the State's memorandum said the State had no intention of trying McIntyre on the felonious assault and firearm specification, but did not reference the charge as amended. However, the February 3, 2016 order says that the State's memorandum said the State would not retry the amended felonious assault charge, which is absolutely not true.

Even worse, the February 3, 2016 order then says that the June 28, 2012 order dismissed the amended felonious assault charge, which is absolutely not true. This Court specifically stated that it was not true. This Court said that the June 28, 2012 order only addressed the felonious assault charge as indicted. *State ex rel. McIntyre* at ¶6. This Court emphasized the difference of the charge as indicted versus as amended. This Court made the point that the amended felonious charge had never been addressed in any court order, including the June 28, 2012 order. *Id.* at ¶10. However, Judge Teodosio insisted otherwise. Even though this Court rendered the June 28, 2012 order as invalid, Judge Teodosio sought to legitimize the order by claiming it said something it did not say.

In crafting the February 3, 2016 order, instead of doing a fresh disposal of all charges, Judge Teodosio simply took the three old stale invalid orders from September 9, 1991, May 22, 1992, and June 28, 2012 and combined them. By combining old orders, he memorialized the same prior events those orders memorialized, essentially making the February 3, 2016 order a

nunc pro tunc in disguise. This Court's writ decision said nothing about using a nunc pro tunc to comply with its mandate.

Besides, a nunc pro tunc is only used to correct typographical errors so that the order truthfully reflects events that previously occurred. A nunc pro tunc cannot modify a court's judgment or render a decision on a matter when none was previously made. *State v. Jama*, 189 Ohio App.3d 687, 2010-Ohio-4739 (10th Dist.), ¶14. Since the disposal of the amended felonious assault charge never occurred, Judge Teodosio could not modify the June 28, 2012 entry or pretend it was modified and then use that to package into the February 3, 2016 order.

A mere regurgitation and combination does not comply with the writ because this Court plainly said that none of those orders addressed the amended felonious assault charge. Since Judge Teodosio apparently did not want to bring McIntyre back into open court, he misrepresented what the June 28, 2012 order effected by injecting the word "amended."

After combining the three old orders, Judge Teodosio then addressed the prior aggravated felony specification to the amended felonious assault charge that was never sent to the jury nor addressed in any prior order. Judge Teodosio sought to dismiss the specification, but only did so in reliance on, not independently of, the June 28, 2012 order that he misrepresented.

Going back to this Court's statement in the writ decision that "at least one claim, the felonious-assault charge that was amended to add a second victim, has never been addressed in any court order," it seems that Judge Teodosio took that to mean that only the amended felonious assault charge was undisposed. However, this Court appeared to hint that there were more than just one, but simply named the amended felonious assault charge as an example.

Indeed, there were more undisposed charges, including the firearm specification to aggravated burglary and the prior aggravated felony specifications to both felonious assault

charges. However, the February 3, 2016 order did not dispose of the firearm specification to aggravated burglary, but ordered McIntyre to serve prison time for a second firearm specification to felonious assault. The order also falsely stated that the jury acquitted McIntyre of the first prior aggravated felony specification, and then relied on an invalid order to dismiss the other prior aggravated felony specification.

Improper Procedure (and Constitutional Violation)

By the Respondents issuing an order without conducting open court to dispose of the charges and impose sentence, McIntyre has yet to have a final judgment pronounced against him in open court. In other words, when the trial court pronounced sentence against him in 1991 and 1992, the case was not finished.

The United States and Ohio Constitutions guarantee a defendant's right to be present in court at every stage critical to its outcome in a criminal proceeding. *Kentucky v. Stincer*, 482 U.S. 730 (1987); *State v. Hill*, 73 Ohio St.3d 433 (1995). Crim. R. 43(A) guarantees the right to be present at sentencing. ORC 2929.19 guarantees a defendant the right to allocution before sentence is pronounced against him.

The imposition of sentence is the final act of disposal by the trial court, advising the defendant that his case is over and that if he wants to keep fighting, he will have to do so on appeal. Disposal via conviction and sentence is a critical stage of the criminal proceeding. Thus, a defendant has a right to be present in an open court hearing when his case is being disposed via sentence and conviction.

Before a trial court can impose a final sentence on the charges in which a defendant was found guilty, the trial court must first dispose of all other hanging charges in which there is no pronouncement of guilty. See *State v. Johnson*, 2015-Ohio-3370 (4th Dist.), ¶10; *State v. Pippin*,

2016-Ohio-312 (1st Dist.); *State v. Goodwin*, 2007-Ohio-2343 (9th Dist.). That way, the sentence is indeed the pronouncement of final judgment against the defendant who is then advised of his appellate rights in accordance to Crim. R. 32(B). It is only after that can the written judgment entry memorializing such events constitute a final appealable order.

McIntyre was in court on August 29, 1991 and May 21, 1992 for sentencing. However, at the conclusion of each hearing, McIntyre still had pending charges, meaning his case was not over yet. With McIntyre lacking a final appealable order into 2016, he now has the right under Crim. R. 32(B)(1) to be advised of his right to appeal after imposition of sentence before Respondents can give him a final appealable order.

The current Crim. R. 32(B) was enacted July 1, 1998, pushing the old Crim. R. 32(B) on written judgments as the current Crim. R. 32(C). Thus, Crim. R. 32, in order from (A) to (B) to (C), paves the path to final judgment by starting with the imposition of sentence in open court, then advisement of appellate rights after the imposition of sentence, and then the written entry to effect final judgment. Since McIntyre had not yet had a final judgment going into 2016, Respondents were required to follow Crim. R. 32 in its step by step order. Even if Crim. R. 32(A) is deemed to be satisfied by the hearings in 1991 and 1992, Respondents were required to follow Crim. R. 32(B) to get to Crim. R. 32(C). Crim. R. 32(B) clearly states that the defendant has to be advised of the appellate rights after imposition of sentence. This means it has to be done in open court.

Law and Argument

ORC 2705.02(A) states that a person who disobeys a lawful writ can be punished for contempt. Specific to a peremptory writ of mandamus, ORC 2731.13 states that a public officer who fails to obey such a writ, without just excuse, shall be fined \$500.

In *State ex rel. Mahoning Law Library Ass'n v. Board of Com'rs of Mahoning County*, 53 Ohio St.2d 56 (1978), this Court applied both statutes to hold the respondent government body in contempt for failing to comply with a writ of mandamus issued more than 12 years earlier. This Court imposed a \$500 fine, but provided a purge condition to which respondent could purge the contempt finding and fine by complying with the writ.

McIntyre asks for the same remedy in the instant case. That is, find Respondents Summit County Court of Common Pleas and Judge Teodosio in contempt, impose a \$500 fine, but allow them to purge the contempt and fine by fully complying with the writ. McIntyre's primary goal is to ensure that Respondents actually dispose of all charges, not just pretend to.

To that end, if this Court does not feel that a contempt citation is warranted, McIntyre still seeks a supplemental issuance to the writ of mandamus so the Respondents can still be compelled to comply with the writ. *State ex rel. Waller v. Industrial Commission*, 66 N.E.2d 148 (Ohio App. 2 Dist. 1944). Again, contempt or no contempt, what McIntyre wants most is full compliance with the writ of mandamus.

Respondents have not complied with the writ's mandate to dispose of all charges. When this Court mentioned the amended felonious charge, it did so as an example, not as the only undisposed charge. See *State ex rel. McIntyre* at ¶10. In other words, there were other undisposed charges, but this Court trusted Respondents to know what to do and how to do it. This Court should not have to hold Respondents' hands and tell them, step by step, what to do.

First, there has never been a jury finding on the firearm specification to the aggravated burglary because the form said felonious assault and the jury was so instructed. The specification has not otherwise been dismissed. Therefore, it is still undisposed.

Second, there has never been a jury finding on the prior aggravated felony specification to the felonious assault charge that McIntyre was found guilty of. Even in the subsequent bench trial, which was illegal because McIntyre never consented to it, the Summit County Court of Common Pleas still did not find him guilty of the specification, but of a prior offense of violence. McIntyre's sentence was then enhanced by the specification even though the subsequent entries of September 9, 1991 and February 3, 2016 said he was acquitted of it.

In truth, McIntyre was not acquitted of the prior aggravated felony specification. Normally, he would not challenge an entry stating he was acquitted of the specification, but since his sentence was enhanced by it, he has to challenge it.

Third, the amended felonious assault and its specifications (firearm and prior aggravated felony) remain undisposed. This Court specifically stated that the June 28, 2012 order did not dispose of the amended felonious assault, but Judge Teodosio insisted the complete opposite in the February 3, 2016 order.

The February 3, 2016 order did not independently dismiss the amended felonious assault charge. It merely restated the prior June 28, 2012 order, albeit falsely, which this Court deemed as insufficient.

Further, Judge Teodosio had reclassified the State's June 27, 2012 notice as a motion to dismiss. In that circumstance, when the State moves to dismiss or does not object to a dismissal, such a dismissal must be done in open court under Crim. R. 48(A). A court can only sua sponte dismiss a charge under Crim. R. 48(B), which only applies when the defendant or the court move to dismiss over the objection of the State. See *State v. Busch*, 76 Ohio St.3d 613 (1996).

Thus, even if the June 28, 2012 order sought to dismiss the amended felonious assault charge, it still would have been improper because the dismissal was not done in open court.

When the State moves to dismiss or does not object to a dismissal, it must be done in open court under Crim. R. 48(A). The likely reason why the rule requires open court is to ensure on the record that the State is in agreement with the dismissal. Further, under Crim. R. 48(A), the State must first obtain leave from the court to dismiss. At that point, in open court, the defendant would have the opportunity to contest the dismissal, especially if the State seeks to do so without prejudice.

The State clearly understood the rule because it did not file a motion to dismiss, but rather a notice not to retry McIntyre. The State knew if it wanted to dismiss a charge, it had to do so in open court.

The Respondents will likely claim that the face of the February 3, 2016 order suffices to dispose of all charges. This argument fails for multiple reasons. First, the order, on its face, does not dispose of all charges because it does not pronounce sentence for the firearm specification for felonious assault. Second, the order merely regurgitates and combines the prior orders, none of which disposed of the amended felonious assault charge.

Third, the entry cannot act as a veneer and pretend to dispose charges that were not actually disposed. This Court has emphasized the truth of the proceedings as done in open court over the face of an entry. In the instant case, this Court was not fazed by the June 28, 2012 entry purporting to dismiss the felonious assault charge. Instead, this Court delved into the trial transcript and emphasized that the charge was amended in open court, thus all subsequent entries had to address the amended charge.

Likewise, in habeas corpus proceedings involving faulty juvenile bindovers, this Court has held that the entries purporting a proper bindover carried a presumption of regularity and validity. However, that presumption can be overcome when the transcript of the open court

proceedings show that a proper bindover was not actually done. See *Gaskins v. Shiplevy*, 76 Ohio St.3d 380 (1996) and *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614 (2001).

Applying the same concept, the February 3, 2016 order, notwithstanding its failure to pronounce sentence of the firearm specification to aggravated burglary, carries a presumption of regularity and validity. However, McIntyre overcomes that by showing that the jury never made a finding on the firearm specification to aggravated burglary nor on the prior aggravated felony specification to the original felonious assault charge. The firearm specification has never been dismissed. The prior aggravated felony specification has never been dismissed in open court nor done out of court over the State's objection. Further, the amended felonious assault charge has never been dismissed in open court nor done out of court over the State's objection. The February 3, 2016 falsely states that the June 28, 2012 order dismissed the amended felonious assault charge when this Court plainly said that did not happen.

Apparently, Judge Teodosio did not want to bring McIntyre back to court. There can be no reasonable explanation for not doing so. In all seriousness, what would have been the inconvenience of bringing McIntyre back to court?

In many cases, it is quite common for an appellate court to remand a case for resentencing to correct an error. Often times, the defendant had long been shipped to a prison far away. However, pursuant to the appellate remand, the trial court sends the county sheriff to retrieve the defendant and bring him back to the county so he can attend open court proceedings to finish the case. Why could that not have been done here? McIntyre did everything he could to highlight the straggling issues that needed to be resolved and the necessity and helpfulness that an open court proceeding would do to resolve those issues. However, as McIntyre sat in a state prison without a final order of conviction, he and his counsel were greeted with a deafening wall

of silence from Judge Teodosio. When counsel made contact with Judge Teodosio's staff to inquire on the case's status, the response was not very kind.

Respondents may also argue that McIntyre could pursue these issues on appeal with the Ninth District Court of Appeals, especially since the Ninth District has provisionally accepted jurisdiction. While that is a possible avenue, the bottom line is that McIntyre is still without a final appealable order that disposes of all charges. This Court specifically ordered Respondents to provide him one and they did not do so. In that sense, McIntyre really cannot go forward on the appeal because he still waiting a final appealable order. Therefore, this show cause action is his only legal remedy to compel Respondents to comply.

Based on the foregoing, there can be no just excuse for Respondents' failure to comply with this Court's writ of mandamus. This Court hinted that multiple charges were not disposed. Subsequently, McIntyre very clearly highlighted to Respondents the multiple charges and specifications that needed to be disposed and the effect those disposals would have on his sentence. Therefore, he was entitled to a de novo sentencing hearing regardless of how the charges and specifications were disposed.

There was no just reason for Respondents not to bring McIntyre back to court and conduct open court proceedings to dispose the remaining charges, whether they would be retried or not. Once the charges are disposed, then Respondents would conduct a de novo sentencing hearing, and then craft and file a new written entry reflecting the full actual disposal of all charges. Doing so would have certainly made this matter much less complicated. The nature of doing so is no different than when courts bring back a defendant from prison for a resentencing pursuant to an appellate remand.

Even if this Court finds Respondents to have a just excuse for their noncompliance, McIntyre will still need an order to compel them to comply with the writ. To this end, he also seeks a supplemental issuance of the writ of mandamus to ensure full compliance. See *Waller*, supra.

What Needs to be Done to Comply with Writ

For Respondents to comply with this Court's mandate, McIntyre needs to be brought back to court for further proceedings. At that point, the State needs to decide whether to try McIntyre for the firearm specification for aggravated burglary, prior aggravated felony specification for felonious assault, and the amended felonious assault charge and its specifications. If the State moves to dismiss these pending charges and Respondents grant the dismissal, then the next step is to conduct a de novo sentencing hearing. McIntyre would be entitled to one because his sentence would be reduced. After the sentencing hearing, Respondents would then craft and file an entry that truly reflects a full disposal of all charges.

Conclusion

Based on the foregoing, Respondents did not comply with this Court's writ of mandamus to give McIntyre a final appealable order. There is no just excuse for the noncompliance. Therefore, Respondents are in contempt of this Court's order.

Pursuant to the statutory remedy, McIntyre asks the Court hold Respondents in contempt and impose a \$500 fine, but allow Respondents to purge the contempt and fine by fully complying with the writ. If this Court does not see fit to hold Respondents in contempt, McIntyre still asks the Court for a supplemental issuance of the writ of mandamus to ensure full compliance. Lastly, he asks for attorney fees as well.

Respectfully submitted,

/s Stephen P. Hanudel
Stephen P. Hanudel (#0083486)
Attorney for Relator
124 Middle Avenue, Suite 900
Elyria, Ohio 44035
Phone: (440) 328-8973
Fax: (440) 261-4040
sph812@gmail.com

CERTIFICATE OF SERVICE

A true copy of the foregoing Motion was delivered by e-mail to Colleen Sims, Assistant Summit County Prosecutor and Attorney for Respondents at simsc@prosecutor.summitoh.net on May 6, 2016.

/s Stephen P. Hanudel
Stephen P. Hanudel
Attorney for Relator