

IN THE OHIO SUPREME COURT

21-0715

State of Ohio,
Plaintiff-Appellee,

Sup. C. No.-----

Vs

David B. Clinkscale,
Defendant-Appellant.

On Appeal from Franklin County
Court of Appeal, 10th Appellate
District :

Court of Appeals Case No. #20AP-561

Memorandum In Support of Jurisdiction of Appellant David B.
Clinkscale pro se

David B. Clinkscale #370-082
Mansfield Correctional Inst.
1150 North Main Street
Mansfield, Ohio 44901

Defendant-Appellant pro se:

Seth L. Gilbert
Asst. Prosecuting Attorney
373 South High Street
Columbus, Ohio 43215

Counsel for Plaintiff-Appellee:

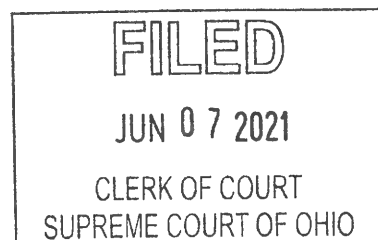
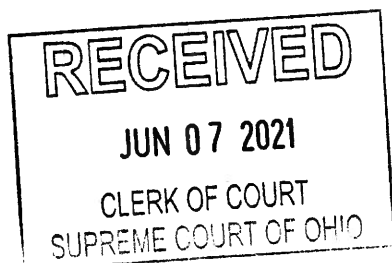


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Explanation of why this is a case of public great general interest and involves a substataial constitution question:-----

This case present 2 critical issues for the future of Ohio Const- itution and United States Constitution, on Due Process and Equal Protection of the law, that involves a substantial constitutional violation.

#1. Court didn't provide a copy of Trial Transcripts to a indigent pro se Defendant at State's expense, violating App. Rule 16(A)(7) and App. Rule 16(D), and section 16 of Article I of the Ohio's Constitution and United States Constitutional Amendment of the Fourteenth and Due Process and Equal Protection of the law.

#2. Court erred by Dismissing Appellant Clinkscale Appeal for lack of jurisdiction pursuant to App. Rule 4, violates Due Process and Equal Protection of the law, and the Fourteenth Amendment.

The decision of the 10th Appellate District Court of Appeals establishes the illegal and unenterable decision was contrary to both ORC Statutory scheme of the Ohio Criminal Rules and Procedure and the United States Constitutions rights and did not give Due Process or Equal Protection of the law.

If allowed to stand the decision of the 10th Appellate District Court of Appeals would rauge the United States Constitution, under the decision. The legal Process would be chaotic and uncertain and would lake finality.

Municipal would be subject to interference and rejection by Municipal agenices whose action would undermine not only individual citizen. But civil rights to get equal protection of the law, and the legal frame work of the United States Constitution intended by the legislative branch.

The entire process under the 1st, 5th, 11th, and the 14th Amendments designed to protect citizen civil rights would be constitution wrong it's decision of the 10th Appellate District Court of Appeals is permitted to stand would thereby affected every citizens Due Process right and Equal Protection laws.

This Honorable Court must ~~Grant~~ Jurisdiction to hear this case!!

Statement of the Case and the Facts:

Procedural Posture

This case arises from the Court of Franklin County, Ohio Common Pleas, under Case No. 97-CR-09-5339.

The indictment charge the Appellant David B. Clinkscale with 2 counts of Agg. Murder, 1 count of Attempted Agg. Murder, 1 count of Agg. Burglary, 2 counts of Agg. Robbery and 1 count of Kidnapping.

In the first trial in October of 1998, Defendant Clinkscale was Acquitted of Agg. Murder with prior calculation and design.

The Tenth Appellate District affirmed sentencing and the Ohio Supreme Court declined to review the case, in STATE VS. CLINKSCALE, 10th Dist. No. 98AP-1586 (1999). STATE V. CLINKSCALE, 88 Ohio St. 3d 1482 (2000).

The defense filed a motion for leave to file a motion for new trial, claiming that trial counsel had been ineffective in not filing a timely Notice of Alibi.

The trial court denied the motion for leave. The 10th Appellate District affirmed, and review was declined by the Ohio Supreme Court. See STATE V. CLINKSCALE, 93 Ohio St.3d 1497 (2001).

Federal Sixth Circuit Court grant Defendant Clinkscale Federal Habeas relief based upon the purported Alibi evidence on which counsel had ineffective. See CLINKSCALE V. CARTER, 375 F.3d 430 (6th Cir. 2004).

The second trial proceeded to trial jury found Defendant Clinkscale guilty on all counsts. This convictions was also reversed. See STATE V. CLINKSCALE, 122 OHIO ST. 3d 351.

In the third trial defendant was found guilty again of all charges. Counsel also filed for new trial on November 5, 2010.

Trial Court deny motion for new trial and the 10th District affirmed in STATE VS. CLINKSCALE, 10th Dist., 2011-OHIO-6385. New counsel filed post-conviction petition as to third trial, which

CONT STATEMENT OF CASE AND FACTS

was again denied by Court and was affirmed on Appeal in STATE V. CLINKSCALE, 10th Dist. 2012-OHIO-2868.

On September 29, 2020, defendant Clinkscale filed a 33(A) and (B) motion for leave and motion for new trial, showing evidence that Jury verdict form erroneous defective and didn't include the elements of the lesser degree, also raise prosecutor misconduct because of false statement and false charge's in which lead to a wrongfully conviction. In Jury verdict forms it clearly state that Defendant Mr. Clinkscale killed 2 or more peoples, when it was only one person killed and Mr. Clinkscale was also found guilty of Agg. Burglary, that never took place. Also, trial counsel and Appeal Counsel were ineffective Counsel in this matter.

On October 6, 2020, State of Ohio opposed 33(A) and (B) for reopening.

On October 28, 2020, Franklin County, Ohio Common Pleas Court deny reopening Motion for leave to file Motion for New trial of 33(A)(B).

On November 13, 2020, Defendant Clinkscale file a Notice of Appeal along with Praeipce to clerk and Motion for Trial Transcripts to be paid for at state's expense's, Affidavit of Indigency and Tenth District Court of Appeals Docking Statement.

On December 12, 2020, Tenth District Court state's Appellant having no right to Transcripts at state expense in this appeal.

On January 7, 2021, the Franklin Common Pleas Court deny Appellant Clinkscale of Transcripts.

On January 7, 2021, Appellant file's Motion to Objected for denial for Transcript at state's expense.

On February 22, 2021, Appellant Clinkscale file another Motion to object and reconsideration for Trial Transcript's, and

CONT OF STATEMENT AND FACTS OF CASE

the Court in this matter never made Appellant aware of it's ruling via mail.

On February 9, 2021, Appellant Clinkscale file a Complaint for Writ of Mandamus in the Ohio Supreme Court , TO COMPEL THE Trial Court of Franklin County, Ohio Common Pleas and 10th Dist. Appeal Court or Prosecuting office to turn over the Trial Transcripts and Grand Jury Transcripts also, under Case No 21-0177. On February 19, 2021, Appellant Clinkscale file a Motion for an Extension of time, in which the 10th District Court of Appeal Greated.

On March 19, 2021, Appellant file a Motion to stay in case no. 20AP-561 because of not having Transcripts and a pending Writ of Mandamus for the Trial Transcripts.

On April 13,2021, the Tenth Appellate District Dismiss my Appeal, pursuant to App. Rule 4(A) and lack of jurisdiction for being untimely.

On April 20, 2021, the Ohio Supreme Court deny the Writ of Mandamus to get trial transcripts, making a decision without Published opinion.

On April 23, 2021, Appellant Clinkscale send a motion to object and reconsideration to the 10th District Court of Appeal with exhibit attached showing that Appellant was timely in this matter. See Exhibit (A).

On May 7, 2021, the Prosecuting Attorney file's an Memorandum Contra Motion for reconsideration on Appellant Clinkscale Motion to object and reconsideration that Appellant Motion should be over ruled.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW:

Proposition of law no.1:

Did Appeals Court erred by not proving indigent pro se Defendant Mr. Clinkscale a copy of his Trial Transcripts at state's expense?

Is Appeal Court in violation of App. Rule 16(A)(7) and

CONT OF PROPOSITION OF LAW NO:1

and App. Rule 16(D) and section 16 or Article I of the Ohio Constitution and United States Constitutional Amendment of the Fourteenth and Due Process and Equal Protection of the law?

Appellant Clinkscale argument in this matter that he never have been given Trial Transcripts. Appellant Clinkscale goes on to say that Franklin County Common Pleas Court and the 10th District Court of Appeals and the Ohio Supreme Court has violated Appellant Clinkscale constitutional rights. The denial of Trial Transcripts not being provided to indigent inmate's pro se is a clear violation of the United States Constitutional Amendment of the 14th Amendment right to proceed in this matter, is a Due Process and Equal Protection of the law.

Pursuant to the Ohio Appellate Rule's, a Defendant-Appellant is required to cite to specific page of the Trial Transcripts record in support of each assignment of error, that i presents for review. See Ohio Appellate Rule 16(A)(7) and See Ohio Appellate Rule 16(D).

For example App. Rule 16(A)(7) provides in part; "The Defendant-Appellant shall include in his merit Brief an argument containing the contentions of the Defendant-Appellant's with respect to each assignment of error presented for review and reasons in support of the contentions with citations to parts of the record on which Appellant Clinkscale relies on, (emphasis added).

Further Ohio App. Rule 16(D) state's in parts; "Refer need in the Briefs to parts of the record shall be to the pages of the parts of the record involved; E.G. Transcripts page 231". If reference is made to evidence the admissibility of which is in controlersy reference shall be made to the pages of the Transcripts at which the evidence was identified affected and received or rejected.

Further Appellant Clinkscale goes on to say considering that the Ohio Appellate Rules require citation to the record in support of each assignment of error access to that record is a necessity. See BRITT, 404 U.S. at228, as long ago in GRIFFIN V ILLINOIS, 351 U.S. 12 (1956).

CONT OF PROPOSITION OF LAW NO:1

Further the United States Supreme Court held that to satisfy the dictates of Equal Protections and Due Process Clause of the Fourteenth Amendment.

"A State may not condition a pro se defendant-appellant to exercise of a right to Appellant review upon his ability to pay for that right Id. at 18-20.

Further accordingly to GRIFFIN and it's progeny command that a state must provide an Indigent Defendant- Appellant with the basic tools of an "ADEQUATE DEFENSE" or Appeal when those tools are available for a price to other prisoners. See RIGGIN V. REES, 74 F.3d 732, 735 (6th Cir. 1996) quoting BRITT V. NORTH CAROLINA, 404 U.S. 226, 227 (1971).

Further indigent Defendant-Appellants in the state of Ohio are constitutionally entitled to adequate and effective Appellate review. See GRIFFIN V. ILLINOIS, 351 U.S. at 19; See MAYER V. CHICAGO, 404 U.S. 189, 194 and also See STATE V. WALTON, 2008 W.L. 2778781 (8th Dist).

Further, Defenant-Appellant Clinkscale goes on to say the review is impossible without a copy of the Trial Transcripts or Adequate substitute. See BOUNDS V. SMITH, 430 U.S. 817, 822 (1977).

Thus, there can be no doubt that the state must provide an indigent defendant with a copy of the Trial Transcript of prior proceeding when that Transcripts is needed for an effective defense or Appeal. See BRITT V. NORTH CAROLINA, 404 U.S. 226, 227. Accord to STATE V. ARRINGTON, 42 Ohio St. 2d 114 at paragraph one of the syllabus. In addition, the Ohio Supreme Court has determined that section 16, Article I of the Ohio Constitution ensures a criminal defendant-appellant the availability of an unabridged Transcript of proceeding. See also STATE EX REL. SPIRKO V. COURT OF APPEALS, 27 Ohio st. 3d 13, 17 (1986). This act denial the right to access to Court and violated Appellant's Due Process and Equal Protection of the law. Statutory meaning are presented by two enactments depriving from different constitutional sources. See the Civil right case, 109 U.S. 3, compare UNITED STATES V. WILLIAMS U.S. supra with STREWS V. UNITED STATE , 325 U.S. 91. This prejudice

CONT OF PROPOSITION OF LAW NO:2

Clinkscale of his rights of Due Process. Objectively the evidence of bias and prejudice show's that the Goverment is bias for not given pro se defendant Clinkscale his Transcripts to show the error's that happened.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO:2

PROPOSITION OF LAW NO:2:

Did Appeal Court erred by dismissing Appellant Clinkscale Appeal for lack of jurisdiction pursuant to App. Rule 4? When Appellant Clinkscale was timely? Is Court in violation of Due Process and Equal Protection of law and Fourteenth Amendment of the United States Constitutional?

On April 13, 2021, the 10th District Court of Appeal made an journal entry dismissing Appellant Clinkscale Appeal, pursuant to App. Rule 4, for lack of jurisdiction because the notice was not filed in time frame. See Exhibit (^B~~B~~) of journal entry.

Further, Appellant Clinkscale made a motion to object and reconsideration to show and put on the record that Appellant Clinkscale was timely. See Exhibit (~~A~~) of Motion of Object and Reconsideration.

~~Further, for the record Appellant Clinkscale mailed his "Notice of Appeal out on November 18, 2021. See Exhibit (~~A~~), which is a copy of the cash slip where Notice of Appeal was mail to the Clerk of Courts Franklin County. Also See Exhibit (~~A~~), where Franklin County clerk of courts file the Notice of Appeal on December 1, 2020. Also See Exhibit (~~A~~), where Franklin County Clerk office file this "Notice of Appeal in the 10th District Court of Appeals.~~

Further See Exhibit (~~C~~) of journal entry of dismissal of 33(A)(B) of Motion for leave to file delayed for New Trial by Franklin County Common Pleas Court on October 28, 2020.

CONT OF PROPOSITION OF LAW NO:2

Further, Appellant Clinkscale mailed his Notice of Appeal 2 week before his 30 days had expired in this matter satisfying App. Rule's 3, 4.

Further the conceal bias prejudice has raises to a level violation of Due Process and Equal Protection oflaw and right of access to the Courts.

Further, Appellant Clinkscale goes on to say Prosecutor office nor Franklin County Common Pleas court never raise this issues.

If a state has created Appellate Court as an integral part of the system for finally adjudicating the guilt or innocence of a defendant. See GRIFFIN VS. ILLINOIS, 351 U.S. at 18. The procedurres used in deciding Appeal must comport with the demands of Due Process and Equal Protection clauses of the Constitution. Of coure once a state grants a procedural right in general. It cannot then go on to deny the invocation of that right in particular case on an arbitrary and capricious basis, to do so would once again violated the Due Process Clause. See FORNEY V. BRUNSMAN, 2008 U.S. Dist. lexis 116475.

Further, Appellant Clinkscale was deny his right to Appeal in this case and was arbitrary and capricious because Clinkscale had in fact showed 10th District Court of Appeal that he was timely. This act violate's the right to Access to Court, right to Access to the court is a fundamental one. See JOHNSON V. AVERY, 393 U.S. 483, 485 (1969), Also See BOUNDS V. SMITH, 430 U.S. 817, 821 (1977).

It is now well established beyond doubt that a prisoner have a constitutional right to Access to the Court. See THADDEUS-X V. BLATTER, 175 F. 3d 378, 391 (6th Cir. 1999). Noting that it is established that prisoner have a constitutional of Access to the court which extends to direct Appeal.

Further when a party is properly notified of Judgment Rule 4(A)(1)(A) provides the party with 30 days to Appeal, pursuant to Rule 4(A)(1)(A).

CONT OF PROPOSITION OF LAW NO:2

This is a violation of constitutional right of Access to Court. Regardless of whether it motion is filed before or during the 30 days after the time prescribed by this Rule 4(A) expires. It that party shows excusable neglect or good cause, pursuant to App. Rule 4(A) or Federal App. Rule 4(A)(5)(A). Good cause will be found where forces beyound the control of the movant prevented the filing of a timely "Notice of Appeal". See NICHOLSON V. CITY OF WARREN, 467 F.3d 525, 526 (6th cir. 2006), citing MICPURI V. ACTMFG INC, 212 F.3d 624, 530 (1st cir. 2000).

Further, Appellant Clinkscale goes to say; See Exhibit (A) (B)(C)(D)(E), that he clearly file his "Notice of Appeal timely".

Further, Appellant Clinkscale goes on to say that State Prosecutor is wrong by putting a Motion Memorandum Contra Motion for reconsideration is contray to law, by stating there is no prison mailbox rule. See Exhibit (F).

The day legal mail is place in the prison mail box is recognized in HOUSTON V. LAKE, 487 U.S. 266; also See SIMEON V. KY DEPT. CORR, 2015 U.S. DIST LEXIS 132505 receipt of Notice of Appeal by the clerk of the District Court suffices to meet the filing requirement under App. Rule 3 and 4 even though the notice has yet been formally filed by the clerk of court's. See PARISSI V. TELECHRON INC, 349 U.S. 46, 47 (1955); also See e.g. DELONEY V. ESTELLE, 661 F.2d 1089, 1091 (CA 9 1980); also See UNITED STATES V. SOLLY, 545 F.2d 874, 876 (CA 3 1976).

Further filing in civil and criminal case is that the Appellant Clinkscale has no control over delays between the Court of Clerk receipt and formal filing of notice of Appeal. See Exhibit (A) of cash slip and funds taken off inmate's account; also See Exhibit (A) date when this Notice was mailed out from Mansfield Corr. Inc., also See e.g. DELONEY supra at 1063; ALDABE supra at 1091; and See SOLLY supra at 876. This rationale suggest a far different conclusion here, since court's has discussed the lack of control of pro se prisoner filings. See HOUSTON V. LACK, 487 U.S. 266.

CONCLUSION

Denial of rights secured by the Due Process clause of the Fourteenth Amendment and access to court and Equal Protection of the law is clearly showed here because Appellant is a pro se and is standing up for his right's under the UNITED STATES CONSTITUTION, his right have been violated in this matter because the court's had no problem give counsel's trial transcripts, no where on the record doesn't show Appellant Clinkscale every got a copy of his trial transcripts.

Further, the record is clear Appellant Clinkscale was timely in this matter.

Respectfully Submitted,

David Clinkscale

David B. Clinkscale #370-082
Mansfield Corr. Inst.
1150 North Main Street
Mansfield, Ohio 44901

PROOF OF SERVICE

I hereby certify that a copy of foregoing memorandum in support of jurisdiction was forward by U.S. regular mail to Asst. Prosecuting Attorney Seth L. Gilbert, at 373 South High street, Columbus, Ohio 43215, this 24----- day of May-----, 2021.

Respectfully Submitted,

David Clinkscale

David B. Clinkscale #370-082
Appellant in Pro Se

IN THE OHIO SUPREME COURT

State Of Ohio,
Appellee,

VS.

David B. Clinkscale,
Appellant.

SUP. CASE NO. -----

On Appeal from Franklin
County Court of Appeal
10th Dist. Appellate Court
of Appeals.

CASE NO: 20AP-561

APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT
DAVID B. CLINKSCALE Pro Se:

Original

Exhibit
A

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,
Plaintiff-Appellee,

Case No: 20AP-561

VS

David B. Clinkscale,
Defendant-Appellant.

Motion to Object and Reconsideration

Now come's Appellant David B. Clinkscale to object and to ask this Court for Reconsideration of Dismissing Appellant David B. Clinkscale Appeal in this matter of case no. 20AP-561.

Further, for the recond Appellant Clinkscale was timely in this matter. See Exhibit (A), where Appellant Clinkscale mailed out his "Notice of Appeals" to the Clerk of Common Pleas, Franklin County, Ohio, and money was taken from my inmate's Personal account on November 18, 2021. Also see Exhibit (B) of "NOTICE OF Appeal that was sent to Clerk of Courts of Franklin County, and see that the Clerk Office file's my "Notice of Appeal in Franklin County Common Pleas on December 1, 2020, also see Exhibit(B), where on December 2, 2020, this "Notice of Appeal was filed in this Court also by Clerk office.

Further, by Appellate rule's 3(A) "Filing", the "Notice of Appeal was done on time. See Exhibit's (A) and (B) attached. Pursuant to Appellate rule's 3(E) "Service of the Notice of Appeal". The Clerk Office shall mail or otherwise forward a copy of Appellant Clinkscale Notice of Appeal and of the docket sheet, together with a copy of all filing by Appellant Clinkscale, pursuant to App. R. 9(B).

Franklin County Ohio Court of Appeals Clerk of Courts- 2021 Apr 27 11:44 AM-20AP000561

Exhibit
A

CONTINUE

The Clerk of Court of Appeals named in this notice, the clerk shall note on each copy served the date on which the notice of Appeal was file. See Exhibit (B), where clerk has done this action.

Further, pursuant to App. Rule 4(A)(1) and 4(A)(2). Rules in App. Rule 4(3) clearly state's the following; "Delay of Clerk's service in civil case, if the clerk has not completed service of the order within the Three-day- period prescribed in Civil Rule 58(B). The 30-day period referenced in App. Rule 4(A)(1) and 4(A)(2). Being to run on the date when the Clerk actually completes service. The clerk complete service on December 2, 2020.

Appellant, David B. Clinkscale filed a timely "Notice of Appeal, that were mailed from Mansfield Corr. Institution on November 18, 2020. Two week's before Appellant Clinkscale time was up, pursuant to App. Rule 3. This clearly shows this court Appellant Clinkscale "Notice of Appeal was mailed in time to satisfy App. Rule (3), and this court and the 10th District Court of Appeals has jurisdiction to hear Appellant Clinkscale can't control how mail is deliver once he put it in the Inmate's lock mail box, Here at Mansfield Corr, Institution nor can he control franklin County Clerk's office on when and how to file his legal Notice's, and once again Appellant Clinkscale was timely on his Notice of Appeal. Also, Appellant Clinkscale has ask for a Stay in this matter, because of pending "Writ of Mandamus of ordering Appeals Court and Trial Court and Prosecutor to give Appellant Clinkscale Transcripts to do said Appellate Brief in this matter.

Respectfully Submitted,



David B.Clinkscale #370-082

P.O. BOX 788

Mansfield, Ohio 44901

Exhibit
A

PROOF OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. mail on April 23rd, 2021 to Seth L. Gilbert/ Asst Prosecuting Attorney, at 373 South High Street, Columbus, Ohio 43215.

Respectfully Submitted,



David B. Clinkscale #370-082

P.O. BOX 788

Mansfield, Ohio 44901

Personal A/C Withdrawal Check Out-Slip

5.802

Dollars 2 Cents 80

Name MANCI		Date
Address Franklin Common Pleas Clerk of Court		
City 395 South High Street		State Ohio
City Columbus		Zip Code 43215

Postage
 Copies
 ID
 Misc.
 Check-out CK #

The undersigned's signature on this withdrawal request verifies that the information listed above has been read to or correct. In the event of an error in the address which results in the return of this package, financial responsibility.

Number 390-082	Block & Case Number 1-13-Cell 236
Signature <i>[Signature]</i>	
Date Processed: NOV 18 2020	

WHITE - CARBON CLASSIFY - JUDGE **NOV 18 2020** AOA 4245

IN THE COURT OF *Common Pleas*

*Original
to Clerk of Court
Trustee/Adm*

Exhibit (A)

FRANKLIN COUNTY, OHIO

State of Ohio,
Plaintiff, -Appellee,

Court of Appeal No.

VS.

Trial NO: 97-CR-09-5339

David B. Clinkscale,
Defendant-Appellant.

On Appeal from Franklin
County Court of Common
Pleas:

Defendant, s David B. Clinkscale "NOTICE OF APPEAL:

Notice is hereby given that Appellant David B. Clinkscale, will like to give notice that he would like to Appeal the Judgment Entry that was made on 26 day of October 2020, This NOTICE OF APPEAL is further given pursuant to Ohio 10th Dist. Local App. R. (D)(1). Appellant, Clinkscale also order an complete Trial Transcript from OCTOBER, 2010, and sentencing hearing in the above case. Also, Appellant, Clinkscale needs Grand Jury Transcripts, which respectfully give this Honorable Court "Notice that pursuant to App. R. 3(A) and 4(A) is Appealing Judgment rendered.

Respectfully Submitted,

David Clinkscale

David B. Clinkscale #370-082
1150 NORTH MAIN STREET
Mansfield, Ohio 44901

Franklin County Ohio Court of Appeals Clerk of Courts- 2021 Apr 27 11:44 AM-20AP000561
Franklin County Ohio Court of Appeals Clerk of Courts- 2020 Dec 02 8:42 AM-20AP000561

Handwritten notes and stamps in the top right corner.

Exhibit (A)

CERTIFICATION OF SERVICE

I David B. Clinkscale #370-082 hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served via regular U.S. Mail this 17 day of Nov 2020 to Ron O'Brien Prosecuting Attorney, Franklin County, at 373 S. High street, 13th floor, Columbus, Ohio 43215.

Respectfully Submitted,

David B. Clinkscale

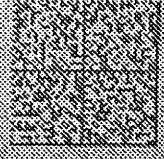
David B. Clinkscale #370-082
1150 North Main Street
Mansfield, Ohio 44901

Franklin County Ohio Court of Appeals Clerk of Courts- 2021 Apr 27 11:44 AM-20AP000561
Franklin County Ohio Court of Appeals Clerk of Courts- 2020 Dec 02 8:42 AM-20AP000561

B, Clinkscale # Franklin County Ohio Court of Appeals Clerk of Courts- 2021 Apr 27 11:44 AM-20AP000561

100 Ohio Correction Inst
North Main St
Ward, Ohio, 44901

INMATE OF
MANSFIELD CORRECTIONAL
INSTITUTION



0A446 - 1 9
000377885486 23 2021

Exhibit
(A)

Attn: Franklin County Clerk of Courts
The 10th District Court of Appeals
373 South High Street 23rd Floor
Columbus, Ohio, 43215

Exhibit
(B)

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
Plaintiff-Appellee, :
v. : No. 20AP-561
David B. Clinksdale, : (REGULAR CALENDAR)
Defendant-Appellant. :

JOURNAL ENTRY OF DISMISSAL

A preliminary review of the record has revealed that this appeal is untimely and must be dismissed. App.R. 4(A) provides that "a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry." The present appeal is taken from an order journalized in the trial court on October 28, 2020. Pursuant to App.R. 4(A), a notice of appeal from this order was required to be filed not later than November 30, 2020. As such, appellant's December 1, 2020 notice of appeal is untimely, and we lack jurisdiction to consider it. Accordingly, this appeal is *sua sponte* dismissed. Any outstanding appellate court costs are assessed to appellant and any pending motions are rendered moot. The dismissal of this appeal has been considered and agreed to by Judge Susan Brown, Judge William A. Klatt, and Judge Michael C. Mentel.

/S/JUDGE
Judge Susan Brown

cc: Clerk, Court of Appeals
Deputy Court Administrator
Court Assignment Commissioner

Exhibit
(B)

Franklin County Ohio Court of Appeals Clerk of Courts- 2021 Apr 13 1:41 PM-20AP000561

Tenth District Court of Appeals

Date: 04-13-2021
Case Title: STATE OF OHIO -VS- DAVID B CLINKSCALE
Case Number: 20AP000561
Type: COURT ENTRY

So Ordered



/s/ Judge Susan Brown

Exhibit
(13)

Court Disposition

Case Number: 20AP000561

Case Style: STATE OF OHIO -VS- DAVID B CLINKSCALE

Motion Tie Off Information:

1. Motion CMS Document Id: 20AP0005612021-03-2699980000
Document Title: 03-26-2021-MOTION TO STAY - DAVID B.
CLINKSCALE
Disposition: 3204

Exhibit
(13)

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 20AP-561
	:	
David B. Clinksdale,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY

On April 13, 2021, this court dismissed appellant's appeal for lack of jurisdiction because the notice of appeal was not filed within the required timeframe set forth in App.R. 4. On April 27, 2021, appellant filed an application for reconsideration of the dismissal of this appeal. Because appellant has pointed to no obvious error or issue that was not considered in our entry dismissing this appeal, we deny appellant's application for reconsideration. *Mathews v. Mathews* (1981), 5 Ohio App.3d 140 (10th Dist. 1982).

Appellant's application for reconsideration and the entry denying that application have been considered and agreed to by Judge Susan Brown, Judge William A. Klatt, and Judge Michael C. Mentel.

/S/JUDGE

Judge Susan Brown

cc: Clerk, Court of Appeals
Deputy Court Administrator
Court Assignment Commissioner

Exhibit
(B)

Franklin County Ohio Court of Appeals Clerk of Courts- 2021 May 10 9:17 AM-20AP000561

Tenth District Court of Appeals

Date: 05-10-2021
Case Title: STATE OF OHIO -VS- DAVID B CLINKSCALE
Case Number: 20AP000561
Type: JOURNAL ENTRY

So Ordered

The image shows a rectangular box containing a handwritten signature in cursive that reads "Susan Brown". To the right of the signature is the official seal of the Tenth District Court of Appeals, State of Ohio. The seal is circular with a sunburst design in the center and the text "TENTH DISTRICT COURT OF APPEALS" and "STATE OF OHIO" around the perimeter.

/s/ Judge Susan Brown

Exhibit
(B)

Court Disposition

Case Number: 20AP000561

Case Style: STATE OF OHIO -VS- DAVID B CLINKSCALE

Motion Tie Off Information:

1. Motion CMS Document Id: 20AP0005612021-04-2799970000
Document Title: 04-27-2021-MOTION TO RECONSIDER - DAVID
B. CLINKSCALE
Disposition: 3200

Exhibit
(C)

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 97CR-09-5339
	:	
DAVID B. CLINKSCALE,	:	JUDGE HELD PHIPPS
	:	
Defendant.	:	

DECISION AND ENTRY DENYING DEFENDANT'S
MOTION FOR LEAVE TO FILE
DELAYED MOTION FOR NEW TRIAL
Filed September 29, 2020

This matter is before the Court upon Defendant's Motion for Leave to File Delayed Motion for New Trial, filed September 29, 2020. The State of Ohio filed a response opposing the motion on October 6, 2020.

Upon review, the Court finds Defendant's motion not well taken, and accordingly, **DENIES** the request for leave to file delayed motion for new trial.

IT IS SO ORDERED.

Copies electronically to:

Steven Taylor
Assistant Prosecuting Attorney

Copies mailed to:

David B. Clinkscale #A370082
Mansfield Correctional Institution
1150 North Main Street
Mansfield, Ohio 44901
Defendant

Exhibit
(C)

Franklin County Court of Common Pleas

Date: 10-28-2020
Case Title: STATE OF OHIO -VS- DAVID B CLINKSCALE
Case Number: 97CR005339
Type: ENTRY/ORDER

It Is So Ordered.

A handwritten signature in black ink, appearing to read "K. Held Phipps", is written over a circular, textured stamp.

/s/ Judge Karen Held Phipps

Exhibit
(D)

**IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO
TENTH APPELLATE DISTRICT**

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

Case No. 20AP-561
Regular Calendar

DAVID CLINKSCALE,

Defendant-Appellant.

**MEMORANDUM CONTRA MOTION FOR
RECONSIDERATION**

Defendant David Clinkscale seeks reconsideration of this Court's April 13, 2021, dismissal for lack of a timely notice of appeal. As Clinkscale fails to identify any obvious error in this Court's decision, the motion for reconsideration should be overruled. There is no prison mailbox rule in Ohio. *State ex rel. Tyler v. Alexander*, 52 Ohio St.3d 84 (1990).

Respectfully submitted,

JANET A. GRUBB 0017522
Prosecuting Attorney

Exhibit
(1)

/s/ Seth L. Gilbert
Seth L. Gilbert 0072929
Chief Counsel, Appeals Division
373 South High Street-13th Fl.
Columbus, Ohio 43215
614/525-3555

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed via regular U.S. Mail, postage pre-paid, this day, May 7, 2021, to DAVID CLINKSCALE, # 370-082, P.O. Box 788, Mansfield, Ohio 44901.

/s/ Seth L. Gilbert
Seth L. Gilbert 0072929
Assistant Prosecuting Attorney