

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JOSEPH L. BERRY, PETITIONER

v.

THE STATE OF OHIO, RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO THE OHIO COURT OF APPEALS,  
TENTH APPELLATE DISTRICT

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**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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**OFFICE OF THE OHIO PUBLIC DEFENDER**

Carly M. Edelstein, Esq.  
Assistant State Public Defender  
*Counsel of Record*

250 East Broad Street, Suite 1400  
Columbus, Ohio 43085  
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*Counsel for Joseph L. Berry*

## MOTION

Petitioner Joseph L. Berry requests leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. This relief is warranted because during all phases of the proceedings below Mr. Berry sought similar relief and counsel was appointed to him. Counsel was appointed by the Franklin County Court of Common Pleas on December 12, 2017, to represent Mr. Berry in his direct appeal before the Court of Appeals of Ohio for the Tenth Appellate District in *State of Ohio v. Joseph L. Berry*, No. 18 AP 01187. *Entry attached at App. 1a*. Counsel for trial was also appointed by the Franklin County Court of Common Pleas on January 25, 2016 in *State of Ohio v. Joseph L. Berry*, No. 15 CR 005882. *Entry attached at App. 3a*.

As further grounds for relief, Mr. Berry has been incarcerated in the Ohio Department of Rehabilitation and Correction since December 10, 2010. He therefore remains indigent and unable to hire counsel.

## CONCLUSION

For the foregoing reasons, Mr. Berry should be granted leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Respectfully Submitted,

**OFFICE OF THE OHIO PUBLIC DEFENDER**

/s/ Carly M. Edelstein

Carly M. Edelstein  
Assistant State Public Defender  
*Counsel of Record*

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
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carly.edelstein@opd.ohio.gov

*Counsel for Joseph L. Berry*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** has been sent by UPS Next Day Air, to the office of Ronald J. O'Brien, Franklin County Prosecutor and Michael P. Walton, Assistant Franklin County Prosecutor, Hall of Justice, 373 South High Street, 14th Floor, Columbus, Ohio 43215, on this 9th day of September, 2020.

/s/ Carly M. Edelstein  
Carly M. Edelstein  
Assistant State Public Defender

*Counsel for Joseph L. Berry*

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**APPENDIX TO**

**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

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*State of Ohio v. Joseph Berry*, Case No. 15CR-5882, Appointment Entry ..... 1a

*State of Ohio v. Joseph Berry*, Case No. 15CR-5882, Affidavit of Indigency ..... 3a

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

State of Ohio,

Plaintiff,

-vs-

Case No. 15CR-5882

Judge Holbrook  
Joseph Berry,

Defendant.

**ENTRY**

After having apprised the Defendant of his appellate rights, and the Defendant having expressed his desire to appeal the verdict and other issues in this case, the Court hereby appoints the State of Ohio Public Defender to represent the Defendant for purposes of appeal inasmuch as the Defendant is indigent. SO ORDERED.

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Judge Holbrook

Franklin County Court of Common Pleas

**Date:** 12-12-2017

**Case Title:** STATE OF OHIO -VS- JOSEPH L BERRY

**Case Number:** 15CR005882

**Type:** PUBLIC DEFENDER WITHDRAWN

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Michael J. Holbrook", is overlaid on a circular official seal. The seal contains text that is partially legible, including "Franklin County" and "Ohio".

/s/ Judge Michael J. Holbrook

Electronically signed on 2017-Dec-12 page 2 of 2

## CRIMINAL DIVISION

THE STATE OF OHIO,

PLAINTIFF,

VS

15 CR 5882  
CASE NUMBER

JOSEPH L BERRY,

DEFENDANT.

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
JAN 25 PM 3:25

## \*\*\*\*\* AFFIDAVIT OF INDIGENCY \*\*\*\*\*

I, JOSEPH L BERRY, BEING DULY CAUTIONED AND SWORN, SAY THAT,

- 1- I AM ACCUSED OF THE CRIME(S) AS STATED IN INDICTMENT IN THIS MATTER;
- 2- I AM FINANCIALLY UNABLE TO RETAIN PRIVATE COUNSEL WITHOUT SUBSTANTIAL HARDSHIP TO ME OR TO MY FAMILY;
- 3- I UNDERSTAND THAT I MUST INFORM THE ASSIGNED COUNSEL IF MY FINANCIAL SITUATION SHOULD CHANGE BEFORE THE DISPOSITION OF MY CASE;
- 4- I UNDERSTAND THAT I AM SUBJECT TO CRIMINAL CHARGES FOR PROVIDING FALSE INFORMATION; AND
- 5- I UNDERSTAND THAT IF IT IS DETERMINED BY THE COUNTY, OR BY THE COURT, THAT THE LEGAL REPRESENTATION THAT WAS PROVIDED FOR ME, WAS NOT ENTITLED, I MAY BE REQUIRED TO REIMBURSE THE COUNTY FOR THE COST OF REPRESENTATION PROVIDED. ANY ACTION FILED BY THE COUNTY TO COLLECT LEGAL FEES HEREUNDER, MUST BE BROUGHT WITHIN TWO YEARS FROM THE LAST DATE LEGAL REPRESENTATION WAS PROVIDED



Notary Public, State of Ohio  
My Commission Expires  
December 22, 2020  
Recorder in Franklin County  
STATE OF OHIO, 55.

Christopher Brigdon  
Notary Public, State of Ohio  
My Commission Expires  
December 22, 2020

DEFENDANT  
X Joseph Murtle A.R. Col., OH 43211  
ADDRESS  
X 1614-2102-5448 JAIL (        )  
TELEPHONE BOND (        )

SWORN TO AND SUBSCRIBED IN MY PRESENCE THIS 25 DAY OF  
January, 2016.

CLERK, DEPUTY CLERK, NOTARY PUBLIC

## \*\*\*\*\* JOURNAL ENTRY \*\*\*\*\*

THE DEFENDANT, BEING BROUGHT INTO COURT IN THE CHARGE OF THE SHERIFF, AND IT APPEARING THAT THE DEFENDANT IS IN INDIGENT CIRCUMSTANCES, AND UNABLE TO EMPLOY COUNSEL, THE COURT, AT DEFENDANT'S REQUEST, APPOINTS

P.D.

AS COUNSEL FOR DEFENSE

Blanch

3a

ARRAIGNMENT JUDGE/MAGISTRATE