

LAKE COUNTY, OHIO

Defendant.

OPINION AND JUDGMENT ENTRY

On February 4, 2004, a jury found Hamilton guilty of aggravated murder with a firearm specification. He was sentenced on February 10, 2004, to an indefinite term of fifteen years to life imprisonment with an additional three years for the firearm specification to be served prior to and consecutive to the above sentence. He moved for a new trial on February 13, 2004, which was denied on April 7, 2004. On March 3, 2004, Hamilton appealed his conviction and sentence with the Eleventh District Court of Appeals. In his appeal, he raised the issue of fingerprint identification. The trial court's judgment was affirmed on September 16, 2005. *State v. Hamilton*, 11th Dist. Lake No. 2004-L-042, 2005-Ohio-4907. His leave to appeal to the Ohio Supreme Court in Case No. 05-2015 was denied on February 10, 2006. Hamilton filed a petition for postconviction relief on November 27, 2009, which was denied on December 11, 2009, as being untimely. Hamilton failed to show how he was unavoidably prevented from discovery of the facts upon which he claimed relief and had not shown that the United State Supreme Court

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had recognized a new federal or state right that applied retroactively to him. R.C. 2953.23(A)(1)(a). Hamilton filed a pro se appeal of the denial of his petition for postconviction relief on January 6, 2010. The trial court's judgment was affirmed on May 21, 2010. *State v. Hamilton*, 11th Dist. Lake No. 2010-L-001, 2010-Ohio-2292. The Eleventh District Court of Appeals concluded, in part, that this claim was too abstract to satisfy the newly discovered facts prong of R.C. 2953.23(A)(1)(a). *Id.* at ¶ 20.

At issue is Hamilton's current filing. As an initial matter, Hamilton's claim that the indictment lacked a "true bill" stamp on it, that there was no grand jury foreman signature on it, and there was no judge's signature on it is incorrect. The indictment has a "true bill" stamp on it and it was signed by the grand jury foreman. There is no requirement for a judge's signature on it. The indictment was filed on July 9, 1999, and Hamilton was arraigned on July 12, 1999. The court finds the indictment was proper and its filing from the grand jury was sufficient to invoke a court's jurisdiction. *State v. Clark*, 11th Dist. Trumbull No. 2017-T-0081, 2018-Ohio-794, ¶ 14. Original or subject matter jurisdiction over "crimes and offenses" is vested in the court of common pleas. *State v. Cromety*, 11th Dist. Trumbull No. 2014-T-0042, 2014-Ohio-4747, ¶ 28 citing R.C. 2931.03. Subject matter jurisdiction is determined as a matter of law and, once conferred, it remains. *Id.* citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 34.

Hamilton also claims that he was served with the summons and complaint on July 8, 1999, while the indictment was filed on July 9, 1999. This court notes that Hamilton was properly arraigned on July 12, 1999. The Ohio Supreme Court has held that "the manner by which an accused is charged with a crime is procedural rather than jurisdictional, and after a conviction for crimes charged in an indictment, the judgment binds the defendant for the crime for which he was convicted." *State v. Phillips*, 7th Dist. Mahoning No. 14 MA 34, 2014-Ohio-5309, ¶ 9 citing *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, 814 N.E.2d 866, ¶ 6, quoting *Orr v. Mack*, 83 Ohio St.3d 429, 430, 700 N.E.2d 590 (1998). This court concludes that it had subject matter jurisdiction in the complaint against Hamilton.

In addition, Hamilton's claim that his motion was not a petition for postconviction relief is not well taken. The Ohio Rules of Criminal Procedure do not expressly provide for a motion to vacate conviction or sentence. *State v. Cromety*, 11th Dist. Trumbull No. 2014-T-0042, 2014-Ohio-4747, ¶ 22; *State v. Banks*, 11th Dist. Lake No. 2018-L-028, 2018-Ohio-5330, ¶ 14. Courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged. *Id.* citing *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12. When a criminal defendant, subsequent to his direct appeal, files a motion seeking vacation or correction of his sentence on the basis that his constitutional rights have been violated, such a motion is a petition for postconviction relief as

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defined in R.C. 2953.21. *Id.* citing *State v. Reynolds*, 79 Ohio St.3d 158, 697 N.E.2d 1131 (1997), syllabus; *State v. Weber*, 11th Dist. Lake No. 2013-L-080, 2014 Ohio-4133, ¶ 10; *State v. Wolf*, 11th Dist. Lake Nos. 2009-L-081 and 2009-L-082, 2010-Ohio-2152, ¶ 13, 16; *State v. Mitchell*, 11th Dist. Portage No. 2018-P-0047, 2019-Ohio-844, ¶ 10. Thus, although couched as a challenge to subject matter jurisdiction, Hamilton's motion to vacate merely raises a procedural issue and therefore shall be treated as a postconviction petition.

Pursuant to R.C. 2953.23(A), a trial court is not permitted to consider a second or a successive petition for postconviction relief unless both of the following apply: (1) the petitioner shows he was unavoidably prevented from discovery of the facts upon which he must rely to present his claim for relief; and (2) the petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact finder would have found the petitioner guilty of the offense for which he was convicted. *State v. Mitchell*, 11th Dist. Portage No. 2018-P-0047, 2019-Ohio-844, ¶ 13; *State v. Stoutamire*, 11th Dist. Trumbull No. 2009-T-0073, 2010-Ohio-1166, ¶ 16-20 citing R.C. 2953.23(A)(1)(a) and (b). Hamilton's petition does not meet either of the two of the above criteria. As such, this court lacks subject matter jurisdiction to address his petition.

In addition, the doctrine of res judicata bars Hamilton's claim. Hamilton never raised the issue of subject matter jurisdiction in his direct appeal or earlier postconviction petition. Postconviction relief is a narrow remedy and res judicata bars any claim that was or could have been raised at the time of trial or on direct appeal. *State v. Steffen*, 70 Ohio St.3d 399, 410, 639 N.E.2d 67 (1994). Issues properly raised in a postconviction petition are those which could not have been raised on direct appeal because the evidence supporting the issue is outside the record. *State v. Milanovich*, 42 Ohio St.2d 46, 50, 325 N.E.2d 540 (1975).

Accordingly, the *pro se* motion of defendant Anton Hamilton to "vacate a void judgment pursuant to state and federal law" is denied.

IT IS SO ORDERED.



Patrick J. Condon
Judge Patrick J. Condon

Copies:

Eric J. Foisel, Esq., Assistant Lake County Prosecuting Attorney
Anton D. Hamilton, Jr., pro se, A379712, Allen Correctional Institution, P.O. Box 4501, 2338 N. West Street, Lima, Ohio 45802

FINAL APPEALABLE ORDER
Clerk to serve pursuant to
Civil Rule 58 (B)

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I CERTIFY THIS TO BE A TRUE COPY OF
THE RECORDS ON FILE IN THE LAKE
COUNTY CLERK OF COURTS OFFICE.

Faith Andrews
FAITH ANDREWS, CLERK OF COURTS

INDICTMENT - ONE COUNT
FILED

STATE OF OHIO

JUL 9 12 23 PM '99

SS.

CASE NO. 99-CR-000231

COUNTY OF LAKE

LYNNE L. MAZSIKA
LAKE CO CLERK OF COURT

STATE OF OHIO vs. ANTON D. HAMILTON JR.

Of the July term in the year one thousand nine hundred and ninety-nine:

*THE JURORS OF THE LAKE COUNTY GRAND JURY of the State of Ohio on their
oaths, in the name and by the authority of the State of Ohio, do find and present that:*

On or between the 10th day of May, 1999, and the 11th day of May, 1999, at
the City of Painesville, Lake County, Ohio, one ANTON D. HAMILTON JR.
did, purposely cause the death of Melvin Hamilton.

This act constitutes Murder, contrary to and in violation of the Ohio Revised Code,
Title 29 §2903.02 and against the peace and dignity of the State of Ohio. Upon conviction
of this offense, Anton D. Hamilton Jr. shall be punished as provided in Section 2929.02 of
the Ohio Revised Code.

FIREARM SPECIFICATION §2941.145

The Grand Jurors further find and specify that ANTON D.
HAMILTON JR. had a firearm on or about his person or under
his control while committing the offense and displayed the
firearm, brandished the firearm, indicated that he possessed the
firearm, or used it to facilitate the offense.


PROSECUTING ATTORNEY



App. B

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ANTON D. HAMILTON, JR.,

Defendant-Appellant.

CASE NO. 2022-L-074

Civil Appeal from the
Court of Common Pleas

Trial Court No. 1999 CR 000231

OPINION

Decided: February 13, 2023
Judgment: Affirmed

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor,
Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH
44077 (For Plaintiff-Appellee).

Anton D. Hamilton, Jr., pro se, PID# A379-712, Allen-Oakwood Correctional Institution,
2338 North West Street, P.O. Box 4501, Lima, OH 45802 (Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Anton D. Hamilton, Jr., appeals the denial of his Motion to Vacate a Void Judgment pursuant to State and Federal Law. For the following reasons, we affirm the decision of the lower court.

{¶2} In 2004, following a jury trial in the Lake County Court of Common Pleas, Hamilton was found guilty of Murder with a firearm specification. He is currently serving an indefinite prison term of fifteen years to life with three additional years for the specification.

{¶3} On June 6, 2022, Hamilton filed a Motion to Vacate Void Judgment pursuant to State and Federal Law.

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{¶4} On July 15, 2022, the trial court denied the motion. The court aptly summarized Hamilton's arguments as follows:

In his motion, [Hamilton] denied that it was a postconviction petition but was instead a direct attack on a void judgment. He claims the trial court lacked subject matter jurisdiction because the indictment was filed the day after it was served on him. He also claims that the indictment lacked a "true bill" stamp on it, that there was no grand jury foreman signature on it, and there was no judge's signature on it. He claims the only signature on it was from an assistant Lake County prosecutor. He further claims, without providing evidence, that the indictment was "more than likely a forged and fraudulent instrument" that was fabricated by the Lake County Prosecutor's office. He also, implausibly, claims that the State of Ohio refused to accept and ratify the Fourteenth Amendment to the U.S. Constitution, thus depriving him of due process of law.

{¶5} The trial court considered Hamilton's jurisdictional claims and concluded that the Lake County Court of Common Pleas "had subject matter jurisdiction in the complaint against Hamilton." The court then construed Hamilton's Motion as one for postconviction relief: "although couched as a challenge to subject matter jurisdiction, Hamilton's motion to vacate merely raises a procedural issue and therefore shall be treated as a postconviction petition." Treated as such, the court found that it lacked jurisdiction to consider the Motion inasmuch as Hamilton failed to satisfy the requirements for filing successive petitions for postconviction relief. R.C. 2953.23(A). The court further found Hamilton's claim barred by res judicata as he "never raised the issue of subject matter jurisdiction in his direct appeal or earlier postconviction petition."

{¶6} On August 11, 2022, Hamilton filed a Notice of Appeal. On appeal, he raises the following assignments of error:

[1.] The trial court exceeded it[s] authority, and Abused it[s] discretion, when it changed Appellant's common law motion into a post-conviction petition, as a means to continue a void judgment, instead of ending it. In violation of state and federal due process.

[2.] The trial court exceeded it[s] authority by assuming personal jurisdiction, not properly obtained, but the trial judge has abused his discretion by claiming it was properly done.

[3.] The trial court exceeded it[s] authority and abused it[s] discretion when it used a void indictment to claim subject matter jurisdiction over the charges against appellant, resulting in a void judgment, but the trial judge has abused his discretion by saying it was properly filed, in violation of state and federal due process.

[4.] The trial court abused it[s] discretion when it refused to acknowledge public record evidence that challenges appellant's standing as a U.S. citizen in Ohio, and the oath of office the trial court members took to support the state and federal constitutions for all Americans who enter these Ohio courthouses.

{¶7} The assignments of error will be considered in a consolidated manner.

{¶8} Hamilton asserts that the trial court erred by treating his common law Motion as a postconviction petition so as to avoid confronting the issue of whether his conviction is void. He maintains a motion to vacate a judgment as being void is distinct from a postconviction petition that challenges the judgment as voidable.

{¶9} The distinction between a void judgment and a voidable judgment "turns on whether the court [rendering judgment] had jurisdiction over the subject matter and the person." *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 17. "A void judgment is rendered by a court without jurisdiction" whereas "[a] voidable judgment is one pronounced by a court with jurisdiction." *Id.*; *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraphs five and six of the syllabus.

{¶10} "Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 23. "[W]hen a specific action is within a court's subject-matter jurisdiction, any error in the exercise of that jurisdiction renders the court's

judgment voidable, not void." *Id.* at ¶ 26. The courts of common pleas are vested with original jurisdiction of "all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas." R.C. 2931.03; Article IV, Section 4(B), Ohio Constitution; *Henderson* at ¶ 35. Accordingly, Hamilton's Motion does not call into question the trial court's subject-matter jurisdiction. *State v. Reed*, 2d Dist. Clark No. 2021-CA-59, 2022-Ohio-3461, ¶ 19 ("Ohio appellate courts have also concluded that the alleged failure to comply with the requirements of Crim.R. 6(F) are unrelated to subject-matter jurisdiction and subject to res judicata") (cases cited); *State v. Feathers*, 11th Dist. Portage No. 2021-P-0004, 2021-Ohio-4137, ¶ 14; *State v. Smith*, 9th Dist. Summit No. 29203, 2019-Ohio-1978, ¶ 5, fn. 1.

{¶11} "Personal jurisdiction refers to the court's power to render a valid judgment against a particular individual." *Henderson* at ¶ 36. "In a criminal matter, the court acquires jurisdiction over a person by lawfully issued process, followed by the arrest and arraignment of the accused and his plea to the charge." *Id.*, citing *Tari v. State*, 117 Ohio St. 481, 490, 159 N.E. 594 (1927). "A defendant also submits to the court's jurisdiction if he does not object to the court's exercise of jurisdiction over him." *Id.*, citing *Tari* at 491. Thus, "a challenge to personal jurisdiction or jurisdiction over the person is waivable by the defendant's voluntary submission at an initial appearance or by entering a plea of not guilty." *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10. Here, irrespective of Hamilton's claims that he was forced "against his will to attend arraignment," he did appear in court on July 12, 1999, and, "represented by counsel, * *

* [was] arraigned upon [the] indictment, waived the reading of the indictment, any defects in the time or manner of the service of same and for his plea thereto [said] he is 'Not

Guilty'." Accordingly, there are no issues with the trial court's exercise of personal jurisdiction over Hamilton. *Orr v. Mack*, 83 Ohio St.3d 429, 430, 700 N.E.2d 590 (1998) ("[t]he manner by which an accused is charged with a crime is procedural rather than jurisdictional, and after a conviction for crimes charged in an indictment, the judgment binds the defendant for the crime for which he was convicted").

{¶12} In other cases, where a movant asserts that the underlying conviction or sentence is void but fails to substantiate the claim, the courts have construed the motion as one for postconviction relief, as the lower court did here. See, e.g., *State v. Godfrey*, 5th Dist. Licking No. 2022-CA-00036, 2023-Ohio-20, ¶ 11; *State v. Taylor*, 2021-Ohio-1670, 170 N.E.3d 1310, ¶ 34 (2d Dist.). Assuming, arguendo, that the trial court did err by construing Hamilton's Motion as a postconviction petition, such error was harmless. Before construing the Motion as a postconviction petition, the court considered and rightfully rejected Hamilton's jurisdictional arguments. That was sufficient to deny the Motion. At most, Hamilton's arguments would have demonstrated that his conviction was voidable and so ought to have been presented in a postconviction petition. That being so, the court's recasting it as such is not reversible error.

{¶13} The assignments of error are without merit.

{¶14} For the foregoing reasons, the denial of Hamilton's Motion to Vacate a Void Judgment pursuant to State and Federal Law is affirmed. Costs to be taxed against the appellant.

JOHN J. EKLUND, P.J.,

MARY JANE TRAPP, J.,

concur.

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STATE OF OHIO
COUNTY OF LAKE

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} SS.
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IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,

JUDGMENT ENTRY

Plaintiff-Appellee,

CASE NO. 2022-L-074

- vs -

ANTON D. HAMILTON, JR.,

Defendant-Appellant.

For the reasons stated in the Opinion of this court, the assignments of error are without merit. The order of this court is that the judgment of the Lake County Court of Common Pleas is affirmed. Costs to be taxed against appellant.


JUDGE MATT LYNCH

JOHN J. EKLUND, P.J.,

MARY JANE TRAPP, J.,

concur.

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The Supreme Court of Ohio

State of Ohio

Case No. 2023-0357

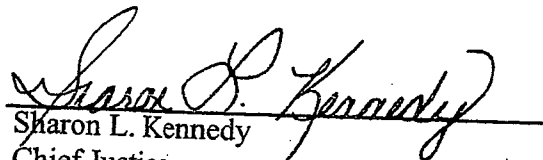
v.

ENTRY

Anton D. Hamilton, Jr.

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Lake County Court of Appeals; No. 2022-L-074)


Sharon L. Kennedy
Chief Justice

App. D

No. 23-3714

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 8, 2024
KELLY L. STEPHENS, Clerk

In re: ANTON D. HAMILTON, JR.,

Movant.

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ORDER

Before: GIBBONS, GRIFFIN, and DAVIS, Circuit Judges.

Anton D. Hamilton, Jr., a pro se Ohio prisoner, moves this court for an order authorizing the district court to consider a second or successive 28 U.S.C. § 2254 petition for a writ of habeas corpus. *See* 28 U.S.C. § 2244(b)(3)(B). The warden opposes Hamilton's motion. For the reasons set forth below, we deny the motion for authorization.

In 2004, an Ohio jury convicted Hamilton of murder, in violation of Ohio Revised Code § 2903.02, with an accompanying firearm specification. These convictions stemmed from the May 10, 1999, shooting death of Hamilton's grandfather. The trial court sentenced Hamilton to 15 years to life in prison for the murder conviction and a consecutive three-year term for the firearm specification. The Ohio Court of Appeals affirmed Hamilton's convictions on direct appeal. *State v. Hamilton*, No. 2004-L-042, 2005 WL 2269572, at *12 (Ohio Ct. App. Sept. 16, 2005), *perm. app. denied*, 841 N.E.2d 320 (Ohio 2006).

Hamilton subsequently filed a § 2254 petition, claiming that (1) he was prejudiced by the trial court's reading of a *Howard*¹ charge to the jury, (2) he was prejudiced by admission of allegedly perjured testimony, and (3) his convictions were against the manifest weight of the evidence. The district court denied Hamilton's habeas petition and declined to issue a certificate

¹ *See State v. Howard*, 537 N.E.2d 188 (Ohio 1989).

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of appealability, concluding that his claims were procedurally defaulted. *Hamilton v. Gansheimer*, 536 F. Supp. 2d 825, 831–34, 840 (N.D. Ohio 2008). Hamilton did not appeal.

In July 2023, Hamilton filed another § 2254 petition, claiming that defects in the indictment deprived the trial court of subject-matter jurisdiction over his prosecution. He also claimed that the State of Ohio refused to accept and ratify the Fourteenth Amendment to the United States Constitution, thus depriving him of due process of law. The district court transferred Hamilton's habeas petition to this court for consideration as a motion for authorization to file a second or successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(3); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). Hamilton has filed a corrected motion for authorization, in which he reasserts the claims that he raised in his habeas petition below.

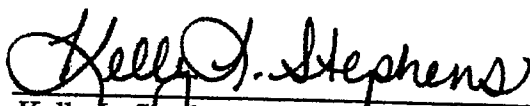
We may authorize the filing of a second or successive habeas petition only if the movant makes a prima facie showing that the proposed petition contains a new claim that relies on either (A) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable” or (B) new facts that “could not have been discovered previously through the exercise of due diligence” and that, “if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2), (b)(3)(C).

Hamilton does not meet the statutory criteria for filing a second or successive § 2254 petition because, as he concedes, his proposed claims do not rely upon a new rule of constitutional law or any newly discovered evidence of his innocence.

We therefore **DENY** the motion for authorization to file a second or successive § 2254 petition.

ENTERED BY ORDER OF THE COURT

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Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 8, 2024
KELLY L. STEPHENS, Clerk

No. 23-3714

In re: ANTON D. HAMILTON, JR.,

Movant.

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Before: GIBBONS, GRIFFIN, and DAVIS, Circuit Judges.

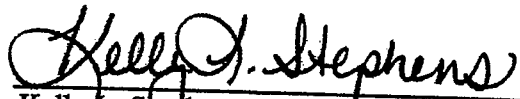
JUDGMENT

THIS MATTER came before the court upon the motion by Anton D. Hamilton, Jr., to authorize the district court to consider a second or successive 28 U.S.C. § 2254 petition for a writ of habeas corpus.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion for authorization is DENIED.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

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Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on June 13, 1866. It was declared, in a proclamation of the Secretary of State dated July 28, 1868 to have been ratified by the legislatures of the following states: Arkansas, April 6, 1868; Connecticut, June 25, 1866; Florida, June 9, 1868; Illinois, January 15, 1867; Indiana, January 23, 1867; Iowa, March 16, 1868; Kansas, January 11, 1867; Louisiana, July 9, 1868 (after having rejected it on February 6, 1867); Maine, January 19, 1867; Massachusetts, March 20, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Missouri, January 25, 1867; Nebraska, June 15, 1867; Nevada, January 22, 1867; New Hampshire, July 6, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 24, 1868, readopted its resolution of rescission over the Governor's veto, and on Nov. 12, 1880, expressed support for the amendment); New York, January 10, 1867; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Ohio, January 4, 1867 (subsequently the legislature rescinded its ratification on January 15, 1868); Oregon, September 19, 1866 (subsequently the legislature rescinded its ratification on October 15, 1868); Pennsylvania, February 12, 1867; Rhode Island, February 7, 1867; South Carolina, July 9, 1868 (after having rejected it on December 20, 1866); Tennessee, July 19, 1866; Vermont, October 30, 1866; Wisconsin, February 7, 1867; and West Virginia, January 16, 1867.

Ratification was completed on July 9, 1868.

The amendment was subsequently ratified by Alabama, July 13, 1868; California, May 6, 1959; Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Kentucky, March 18, 1876 (after having rejected it on January 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); and Virginia, October 8, 1869 (after having rejected it on January 9, 1867).

Act June 6, 1898, ch 389, 30 Stat. 432, removed the disability imposed by Amendment 14, § 3, and incurred prior to the Act.

App. F

FILED

2004 FEB 10 IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO
LYNNE L. MAZEIKA
LAKE CO CLERK OF COURT

STATE OF OHIO

Plaintiff

vs.

ANTON D. HAMILTON, JR.

Defendant

CASE NO. 99-CR-000231

JUDGMENT ENTRY OF SENTENCE

JUDGE RICHARD L. COLLINS, JR.

This day, to-wit: February 4, 2004, this matter came before the Court for a new trial upon remand from the Eleventh District Court of Appeals. Present were the Lake County Prosecuting Attorney, Charles E. Coulson, by and through Vincent A. Culotta, Chief Assistant Prosecuting Attorney, and Mark J. Bartolotta, Assistant Prosecuting Attorney, on behalf of the State of Ohio, and the defendant, Anton D. Hamilton, Jr., being present in court, and represented by counsel, Jason Davidoff, Esquire and Michael K. Astrab, Esquire. The defendant having heretofore entered a plea of "Not Guilty" to the charge in the indictment, and further having been tried by a jury, the jury now returns its verdict and finds the defendant "Guilty" as charged of Murder, in violation of Section 2903.02 of the Ohio Revised Code, with a firearm specification pursuant to R.C. §2941.145.

The Court then proceeded to the sentencing hearing pursuant to R.C. 2929.19.

The Court finds that this offense is subject to a mandatory prison term under Section 2929.13(F)(1) of the Ohio Revised Code.

The Court has also considered the record, oral statements, any victim impact statement, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

In considering the foregoing, and for the reasons stated in the record, this Court finds that a prison sentence is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11 and that Defendant is not amenable to an available community control sanction.

The Court finds that Defendant was afforded all rights pursuant to Crim.R. 32 and was given the opportunity to speak before judgment and sentence was pronounced against him.

IT IS HEREBY ORDERED:

That the Defendant serve an indefinite term of fifteen (15) years to life in prison on Count 1, which is a mandatory term of imprisonment. Said prison term shall be served at the Lorain Correctional Institution, Grafton, Ohio.

That Defendant is to serve an additional term of three (3) years as a mandatory prison term for the firearm specification, said sentence to be served prior to and consecutive to the above prison term pursuant to R.C. §2929.14(D)(1).

Defendant is to be given credit for six hundred seventy-four (674) days spent in the Lake County Jail awaiting both the first trial and the second trial. Specifically, this includes two hundred three (203) days defendant spent in the Lake County Jail prior to sentencing of the first trial and four hundred seventy-one (471) days defendant spent in the Lake County Jail after being returned from prison through the date of sentencing after the second trial. Defendant is further entitled to credit for the time served in prison under this case after the first conviction.

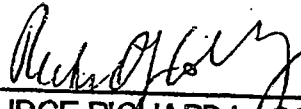
That the Clerk of Courts issue a warrant directed to Daniel A. Dunlap, Sheriff of Lake County, Ohio, to convey the said Defendant to the custody of the Lorain Correctional Institution, Grafton, Ohio forthwith.

Defendant is ordered to pay all court costs and all costs of prosecution in an amount certified by the Lake County Clerk of Courts. Defendant is further ordered to pay any supervision fees as permitted pursuant to R.C. 2929.18(A)(4).

This order is imposed under and by virtue of Sections 2929.14, 2929.02, and 2903.02 of the Ohio Revised Code.

Bond is hereby released.


IT IS SO ORDERED.




JUDGE RICHARD L. COLLINS, JR.

APPROVED:

CHARLES E. COULSON (0008667)
PROSECUTING ATTORNEY



Vincent A. Culotta (0047175)
CHIEF ASSISTANT PROSECUTING ATTORNEY



Mark J. Bartolotta (0059430)
ASSISTANT PROSECUTING ATTORNEY

VAC/MJB/san

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