

**COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT**

STATE OF OHIO	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. CT2001-0047
ROGER L. ROMINE, AKA	:	
ABDUL AZIZ	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Muskingum County Court of Common Pleas, Case No. CR88-44

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 23, 2001

APPEARANCES:

For Plaintiff-Appellee
D. MICHAEL HADDOX
Prosecuting Attorney
SHAWN E. CRAMWER
Assistant Prosecuting Attorney

For Defendant-Appellant
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Zanesville, OH 43701

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Gwin, J.

Defendant Roger L. Romine, aka, Abdul Aziz, appeals a judgment of the Court of Common Pleas of Muskingum County, Ohio, which overruled his motion to suspend further execution of appellant's sentence. Appellant assigns two errors to the trial court:

ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1:

THE TRIAL [SIC] ABUSED ITS DISCRETION IN DENYING DEFENDANT-APPELLANT A PRE-SENTENCE REPORT PURSUANT TO CRIMINAL RULE 32.2 AS AMENDED FROM CRIMINAL RULE 32.2 (A) AS REMEDIAL PROCEDURE AT LAW.

ASSIGNMENT OF ERROR NO. 2:

THE OHIO GENERAL ASSEMBLY CANNOT INTERFERE [SIC] WITH THE OHIO SUPREME RULEMAKING AUTHORITY OF ALL COURTS INVOLVING REMEDIAL PROCEDURES AS BEING NONRETROACTIVE IN APPLICATION.

The record indicates on July 8, 1988, appellant was convicted for voluntary manslaughter with a gun specification, and was sentenced to an indeterminate term of 10 to 25 years, plus 3 years on the gun specification. The record does not demonstrate a pre-sentence investigation was conducted.

On March 21, 2001, appellant filed his motion to suspend further execution of the sentence, and also moved the court for a pre-sentence report prior to probation

consideration. The court overruled the motion for a pre-sentence investigation on June 28, 2001, and overruled appellant's motion for judicial release on July 5, 2001.

I

In his first assignment of error, appellant argues the trial court denied him a pre-sentence report which appellant urges the court needed to consider his motion for shock probation. Appellant cites us to R.C. Sections 2929.20 and 2947.061.

We find appellant is not eligible for judicial release pursuant to R.C. 2947.061. This statute was repealed by the Ohio Legislature in Senate Bill 2, effective July 1, 1996, and the relief contained in R.C. 2947.061 is no longer available.

As the State points out, the statute provided a defendant shall not file more than one motion pursuant to the statute, and the record demonstrates appellant filed such a motion in 1992.

R.C. 2929.20, effective July 1, 1996, as a portion of Senate Bill 2, applies only to persons sentenced to prison after July 1, 1996, see *State v. Rush* (1998), 83 Ohio St. 3d 53.

Because we find no relief was available to appellant for judicial release, we find no error in the court not directing a pre-sentence report be prepared.

The first assignment of error is overruled.

II

In his second assignment of error, appellant urges Ohio's statutory scheme, under which a defendant may receive early release, or community control, conflicts

with Crim. R. 32.2.

Crim. R. 32.2 requires a court to conduct a pre-sentence investigation prior to granting a defendant probation. We find this is not in conflict with the sentencing guidelines that provide for incarceration or community control.

The second assignment of error is overruled.

For the foregoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.

By Gwin, J.,

Edwards, P.J., and

Boggins, J., concur

JUDGES

WSG:clw 1016

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

**ROGER L. ROMINE, AKA
ABDUL AZIZ**

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. CT2001-0047

**For the reasons stated in the Memorandum-Opinion on file, the
judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.**

Costs to appellant.

JUDGES