In the Supreme Court of Ohio

DERRICK MARTIN KING,	:	Case No. 2019-1025
	:	
Appellant	:	*On Appeal from the Summit County*
	:	*Court of Appeals,*
vs.	:	*Ninth Appellate District*
	:	
OHIO DEPARTMENT OF	:	Court of Appeals
JOB AND FAMILY SERVICES,	:	Case No. CA-29198
	:	
Appellee	:	

APPELLANT'S DEMAND FOR RECONSIDERATION

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APPELLANT'S DEMAND FOR RECONSIDERATION

Now comes your Appellant **DERRICK MARTIN KING**, proceeding *pro se,* and he is hereby demanding that this Court do its job and reconsider its decision to decline jurisdiction in a case that substantially affects the constitutional rights of the citizens of Ohio. Appellant's demand for action is pursuant to S.Ct.Pract.R. 18.02(A).

For the reasons more fully set forth in the memorandum of law annexed hereto, Appellant demands that this Court grant the action requested.

Dated this 23rd day of October, 2019

Submitted by:

/s/ Derrick Martin King
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STATEMENT OF RELEVENT FACTS

A. Legislative History of Disability Assistance Programs in Ohio.

1. The general assistance ("GA") program.

Ohio first created a general assistance benefit program with the enactment of 1987 Sub. H.B. No. 231, 142 Ohio Laws Part II 2634. The program provided ongoing financial and medical assistance to all poor individuals that are ineligible for federally funded assistance programs such as Aid to Families with Dependent Children ("AFDC") and Supplemental Security Income (hereinafter "SSI"). The maximum combined cash benefit, comprised of a personal needs allowance and shelter allowance, was $148 per month for a single person. In addition, a medical assistance benefit covered basic physician, hospitalization, pharmacy and other miscellaneous services up to certain maximums. These benefits continued for as long as the person remained eligible. See former R.C. 5113.02(A) (eff. Oct. 5, 1987) and (C) (eff. Oct. 5, 1987).

The Ohio legislature revised the GA program effective October 1, 1991 with the enactment of 1991 Am. Sub. H.B. no. 298, 144 Ohio Laws Part III 3987. See former R.C. 5103.03 (eff. Jul. 26, 1991). Under the revised GA program, the state provides destitute persons monthly cash assistance of $100 and medical coverage for no more than six months out of twelve. At the end of the six-month period, GA cash assistance and primary care medical coverage stop regardless of the person's need, status or ability to find employment. Thus, even if such a person could demonstrate both total destitution and a good faith effort to find a job, he or she would not be entitled to more than six months' general assistance per year.

The GA program was subsequently eliminated by the General Assembly with the passage and enactment of 1995 H.B. No. 249, 146 Ohio Laws Part II 3006.

2. The disability assistance ("DA") program, now known as the disability financial assistance ("DFA") program.

Prior to terminating the GA program, the Ohio General Assembly created a new program to cover medical expenses for disabled persons with the enactment of 1991 Am. Sub. H.B. No. 298, 144 Ohio Laws Part III 3987. Under the new Disability Assistance (hereinafter "DA" program, the state provides monthly cash assistance of $115 and basic medical coverage on a continuous, non-time-limited basis to persons ineligible for AFDC or SSI and who are unemployable due to age (under eighteen or over sixty years), or physical or mental disability, are medication dependent or are pregnant. *See* Former R.C. 5115.01 (eff. Jul. 26, 1991); Former Ohio Admin. Code 5101:1-5-01, 1991-92 OMR 387 (eff. Oct. 1, 1991); and former Ohio Admin. Code 5101:1-5-20, 1991-92 OMR 401 (eff. Oct. 1, 1991). The Ohio Department of Human Services has defined "disability" for DA purposes as "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for not less than nine months." Former Ohio Admin. Code 5101:1-5-022(C), 1991-92 OMR 389 (eff. Oct. 1, 1991). In 2003, the General Assembly renamed the DA program to the Disability Financial Assistance (hereinafter "DFA") with the enactment and passage of Am. Sub. H.B. No. 95, 150 Ohio Laws Part I 396.

B. Proposals to Eliminate the DFA Program (2017 Am. Sub. H.B. 49)

1. Introduction and proceedings before the Ohio House of Representatives.

The Ohio Revised Code requires the Governor to submit to the legislature "a state budget containing a complete financial plan for the ensuing fiscal biennium, excluding items of revenue and expenditure described in section 126.022 of the Revised Code." R.C. 107.03 On January 30, 2017, then-Governor Kasich presented to the General Assembly his executive budget

recommendations for the 2018-2019 fiscal years. Kaisch recommended with respect to the Department of Job and Family Services that "[f]unding for fiscal year 2018 is $3.4 billion (or a 13.1% increase from fiscal year 2017). Funding for fiscal year 2019 is $3.3 billion (or a 1.6% decrease from fiscal year 2018)."

On February 8, 2017, State Representative Ryan Smith (R-Bidwell) introduced House Bill 49 which was the state operating budget for the 2017-2018 fiscal years. Section 105.01 of H.B. No. 49 repealed Chapter 5115 of the Revised Code (the statutory framework for the DFA program). Also, Section 812.40 states that:

> (A) The repeal of sections 5115.01, 5115.02, 5115.03, 5115.04, 5115.05, 5115.06, 5115.07, 5115.20, 5115.22, and 5115.23 and the amendment of sections 126.35, 131.23, 323.01, 323.32, 329.03, 329.051, 2151.43, 2151.49, 3111.04, 3113.06, 3113.07, 3119.05, 5101.16, 5101.17, 5101.18, 5101.181, 5101.184, 5101.26, 5101.27, 5101.28, 5101.33, 5101.35, 5101.36, 5117.10, 5123.01, 5168.02, 5168.09, 5168.14, 5168.26, 5502.13, 5709.64, and 5747.122 of the Revised Code take effect on December 31, 2017.
>
> (B) Notwithstanding the provisions of Chapter 5115. of the Revised Code, on and after the effective date of this section and until December 31, 2017, all of the following apply to the Disability Financial Assistance Program:
>
> (1) Beginning July 1, 2017, the Department of Job and Family Services shall not accept any new application for disability financial assistance.
>
> (2) Before July 31, 2017, the Department shall notify the following individuals that benefits shall terminate on July 31, 2017:
>
> (a) Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the federal Social Security Administration and who have received a denial of reconsideration from the Administration on or before July 1, 2017;
>
> (b) Recipients who do not have applications for Supplemental Security Income or Social

Security Disability Insurance benefits pending before the Social Security Administration and who have received from the Administration on or before July 1, 2017, an initial denial of benefits or denial of reconsideration.

(3) Beginning on July 1, 2017, and ending on October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have not received a denial of reconsideration from the Social Security Administration.

(4) After October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and have not received a denial of reconsideration from the Administration.

(C) Until July 1, 2019, the Department, or the county department of job and family services at the request of the Department, may take any action described in former section 5115.23 of the Revised Code to recover erroneous payments, including instituting a civil action.

(D) Beginning December 31, 2017, the Executive Director of the Governor's Office of Health Transformation, in cooperation with the Directors of the Departments of Job and Family Services and Mental Health and Addiction Services, the Medicaid Director, and the Executive Director of the Opportunities for Ohioans with Disabilities Agency, shall ensure the establishment of a program to do both of the following:

(1) Refer adult Medicaid recipients who have been assessed to have health conditions to employment readiness or vocational rehabilitation services;

(2) Assist adult Medicaid recipients who have been assessed to have disabling health conditions to expedite applications for Supplemental Security Income or Social Security Disability Insurance benefits.

With respect to the proposed elimination of the DFA program, the Legislative Service Commission stated that:

During the next biennium, the DFA program will be phased out. The program was designed to provide benefits to individuals waiting for SSI and Social Security

> Disability Insurance (SSDI) determination, which could take months to process. The Opportunities for Ohioans with Disabilities Agency has reduced processing times significantly, reducing the demand for this program. DFA payments made during the determination period are later refunded to the state by the Social Security Administration.

Nicholas J. Blaine & Justin Pinsker. *Redbook LSC Analysis of Executive Budget: Department of Job and Family Services.* Columbus, OH: Legislative Service Commission (March 2017). Retrieved from https://www.lsc.ohio.gov/documents/budget/132/MainOperating/redbook/JFS.PDF.

H.B. 49 was referred to the House Finance Committee on February 14, 2017. On March 9, 2017, ODJFS Director Cynthia C. Dungey testified before the Ohio House Finance Subcommittee on Health and Human Services regarding H.B. 49. In a written statement to the committee, Dungey stated that:

> We also understand the realities of Ohio's budget situation. It's a reality being faced by states all across our nation. As a whole, we know every state agency is working together to improve efficiencies that allow for lower spending and better service. In our case, other state agencies have greatly enhanced their processing time for applications for the federal SSI/SSDI program, allowing the state to discontinue the Disability Financial Assistance program. This program allows for eligible disabled Ohioans to get the federal support they are requesting far faster than they had previously, all while saving Ohioans' tax dollars.

Testimony of Cynthia C. Dungey before the Ohio House Finance Subcommittee on Health and Human Services (March 9, 2017) Retrieved from http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd_ga/ready_for_publication/committee_docs/cmte_h_hhs_sub_1/testimony/cmte_h_hhs_sub_1_2017-03-09-0900_157/testimony_cynthia_dungey_director_department_of_job_and_family_services-3.09.17.pdf.

On May 2, 2017, a substitute version of H.B. 49 was approved by the House Finance Committee by a 23-9 vote. Later that same day, Sub. H.B. 49 was approved by the Ohio House of Representatives on a 58-37 vote.

3. Proceedings before the Ohio Senate.

On May 3, 2017, Sub. H.B. 49 was introduced in the Ohio Senate. The legislation was immediately referred to the Senate Finance Committee. On May 4, 2017, Director Dungey provided the same testimony to the Ohio Senate Finance Subcommittee on Health and Medicaid as her prior testimony before the Ohio House Finance Subcommittee on Health and Human Services. On May 11, 2017, the committee heard from Kathleen McGarvey, the Director of the Legal Aid Society of Columbus. McGarvey noted that:

> In the past five years, LASC and our sister program Southeastern Ohio Legal Services have opened over 115 Disability Financial Assistance cases, around 23 a year. Each of these cases were for individuals who had a pending application for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) but had no income or assets in their household while they waited for Social Security to process their disability applications. Our assistance included everything from advising individuals on the availability of the DFA program and how to apply to representing individuals when their application was improperly delayed or denied.
>
> We have had the pleasure of working with individuals like Nichelle Clark whose case we just closed last month. Nichelle is 45 years old, lives alone and had no household income or assets when she contacted LASC. She had a pending SSDI application, but while she waited, she was struggling without any income in the house. We were able to assist her with getting DFA benefits. This $115 a month benefit provided her with a lifeline while she waits for her SSDI application to be approved which has been pending for over two years so far.
>
> "John" is another example of an individual for whom DFA was an indispensable benefit. After an accident at work, John began to suffer from uncontrolled seizures. Because of those seizures, he lost his truck driving job and after being unable to find other employment, applied for SSDI and DFA. The small $115 monthly award that he received from DFA helped sustain him for the three years that it took for him to be awarded SSDI benefits after an Administrative Law Judge hearing.

"Steve" applied for SSDI after working as a medical device operator and managing fast food restaurants for over 15 years. He developed Crohn's disease and was unable to keep up with the demands at work. While waiting for his SSDI benefits, DFA provided him with a small, but much needed, supplement to meet some of his daily needs. He was approved for SSDI four years after he applied. Just like with "John", a portion of the back award was used to reimburse Ohio for the DFA benefits it provided to him during his time of need.

It has been stated that DFA is no longer needed to support disabled individuals while they are waiting for SSI or SSDI benefits because SSI/SSDI cases are now being processed more quickly with averages around 67 days from date of application to decision. That statement, however, only reflects determinations at the initial level of processing.

According to the Social Security Disability SSI Resource Center, national approval rates for an initial application is 36%. Sixty-seven days for processing applications is the average timeframe for processing applications at this initial level. And, it is this figure that has been given to suggest that determinations are made quickly and therefore DFA is not needed. However, at this point in the application process, it is not uncommon for Social Security to not have received all the applicable records or to have not conducted needed medical evaluations. As a result, many individuals who are eventually found eligible back to their original date of application are improperly denied.

The next level of application level, reconsideration, has the lowest level of approval nationally at around 13%. According to the National Organization of Social Security Claimants' Representatives, the reconsideration determination is usually made within 4 months or 120 days.

After a reconsideration decision is made, an applicant can appeal to an Administrative Law Judge (ALJ). This stage has the highest level of approval with national rates around 62% and 45% in Ohio as of March 2017. The ALJ level provides the most complete review of an individual's case. The agency has had time to collect all the medical evidence, a claimant is able to testify, and hearings often include medical and vocational experts. Data from the Office of Disability Adjudication and Review shows that in Ohio, the average wait time for an ALJ hearing and decision was 535 days as of March 2017. Columbus has a slightly higher average at 625 days.

There are two other levels of appeal – to the Appeals Council and to Federal District Court. But, even without those two other levels of appeal, most individuals in Ohio would wait an average of 67 days at initial application, 120 days at reconsideration and 535 days for an ALJ hearing. This means that most people who are approved for SSI or SSDI benefits wait an average of 1,310 days or over 3.6 years for benefits.

> During that time of waiting, those individuals are definitionally unable to perform substantial gainful employment. For the individuals who we see, they have zero income and have exhausted any assets that they had. They are eligible for SNAP or food stamp benefits, but for no more than $194 a month. Medicaid benefits are available to help with their medical needs. But they have no cash to pay for housing, for transportation, for personal care items like soap and toothpaste, or for additional food needed beyond what the SNAP benefits will cover. While small, the $115 per month DFA payment really is a lifeline during those 3.6 years.
>
> The amount of money that DFA costs the State of Ohio is minimal at $861,000 a month. And, while the program is small, covering only 6,439 people at this point, it provides literally lifesaving assistance to individuals who have been found eligible. For those individuals with income below $115 a month, zero assets and who have been found disabled for 9 months or more by their physician, DFA is often the one thing that keeps individuals safe, secured and housed while they wait the 3.6 years for an SSI/SSDI decision. As a result, we are asking that the Senate take out the Governor's proposal to eliminate the program.

Testimony of Kathleen McGarvey before the Ohio Senate Finance Subcommittee on Health and Medicaid (May 11, 2017). Retrieved from http://searchprod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd_ga/ready_for_publication/committee_docs/cmte_s_fin_health_sub_1/testimony/cmte_s_fin_health_sub_1_2017-05-11-1000_445/senatesubcommitteehb49kathleenmcgarvey.pdf.

On June 21, 2017, amendments to Sub. H.B 49 was approved by the Ohio Senate Finance Committee on a 10-2 vote. On June 21, 2017, Am. Sub. H.B. 49 was approved by the Ohio Senate on a 24-8 vote.

4. Final passage and enactment.

On June 21, 2017, the Senate amendments to Am. Sub. H.B. 49 was rejected on a 93-1 vote. On June 21, 2017, the Ohio Senate requested that Am. Sub. H.B. 49 be referred to a conference committee. On June 28, 2017, Am. Sub. H.B. 49 (as presented by the conference committee) was approved by the Ohio House by a 59-40 vote and by the Ohio Senate by a 24-8 vote. Ohio Governor John Kasich signed Am. Sub. H.B. 49 on June 29, 2017. It should be noted that Governor Kasich issued several line-item vetoes (however, the text of Section 812.40 was

not vetoed). Am. Sub. H.B. 49 became effective on June 29, 2017 (with certain provisions effective on other dates).

PRIOR ACTION IN LOWER COURTS

A. Appellant's Medical History.

1. King's December 24, 2011 hospitalization and medical diagnosis.

a. Akron City Hospital (Summa Health System).

On the morning of December 24, 2011 King began to feel dizzy and was suffering from an elevated blood pressure. King drove himself to the emergency room at Summa Akron City Hospital. Dr. Joseph L. Kearny conducted the initial physical examination (Exhibit 2F, pp. 41-42) . King's blood pressure was measured at 234/157, and his blood glucose was at 327 (Id). After consultation with the neurosurgeon on call, a CT scan without contrast was performed by Dr. William Taylor. The test showed the presence of an acute left superior periventricular white matter which was interpreted as an intracerebral hemorrhage (Exhibit 2F, p. 98; Exhibit 12F, p. 184). King was admitted and transferred to the intensive care unit for further evaluation.

Later that same day, a CT without contrast of the head and brain conducted by Dr. Salman Mirza showed no definite evidence of an aneurysm or ateriovenous malformation. A MRI with contrast of the brain was performed by Dr. Russell Whitmoreand revealed the following: (1) no evidence of change in appearence of hemorrhage after administration of godolinium; (2) no definite evidence of abnormal vessel formation around hemorrhage; (3) no draining venous structure identified; and (4) no additional areas of parenchymal enhancement.

An echocardiogram was performed by Dr. Roger B. Chaffee and revealed the following: (1) a 2.5cm diameter mass in the liver; (2) concentric left ventricular function; (3) mild mitral stenosis; (4) a bicuspic aortic valve; and (5) mild aortic stenosis.

On December 25, 2011 a CT without contrast of the head and brain performed by Dr. Salman Mirza indicated no significant change in the left parietal intracerebral hemorrhage.

King was discharged from the hospital on December 29, 2011. Dr. Edward M. Schmitt wrote King prescriptions for the following medications: (1) one 40mg lisinopril tablet taken once daily; (2) one 40mg pravachol tablet taken once daily; (3) one 1mg folic acid tablet taken once daily; (4) one 200mg labetalol tablet taken once every 12 hours; (5) one 25mg hydrochlorothiazide tablet taken once daily; (6) one 100mg tablet dilantin taken three times per day; and (7) 12 units of humulin injected twice per day. In addition, King was instructed to not drive a car or bathe until the follow-up examination by the neurosurgeon.

b. Dr. Krishana Satayn (Center for Neuro and Spine, Inc.)

On January 9, 2012, King followed up with Dr. Krishina B. Satayan of the Center for Neuro and Spine, Inc. Dr. Satyan conducted a physical examination which did not reveal any problems. Dr. Satayn recommended that King be examined by a neurologist.

c. Dr. Charles J. Dhyanchand (Akron Community Health Resources/Axess Pointe Community Health Center, Inc.)

King selected Dr. Charles Dhyanchand of Akron Community Health Resources, Inc (now AxessPointe Community Health Center) as his primary care physician.[1] On January 13, 2012, Dr. Dhyanchand gave King a complete physical and reviewed his prescriptions. In addition to the prescriptions previously ordered by Dr. Schmitt, Dr. Dhyanchand added the following medications: (1) one 200mg labetalol HCI tablet twice per day; and (2) one 40mg lisinopril tablet once per day.

[1] Prior to his hospitalization, King did not have a primary care physician.

King met with Dr. Dhyanchand on February 10, 2012. At the request of the SSA and ODJFS, Dr. Dhyanchand completed required forms (Exhibit 4F). In addition, Dr. Dhyanchand made the following changes to King's prescriptions: (1) discontinued labatalol, humulin, and dilantin prescriptions ; (3) prescribed one 1000mg metFORMIN HCI tablet to be taken twice per day; (4) prescribed one 25mg hydrochlorthiazide tablet once per day; (5) prescribed one 25mg metroprolol tartrate tablet twice per day; and (6) prescribed one 10 unit injection of novolin twice per day.

On June 25, 2013 King was examined by Dr. Dhyanchand. At King's request, Dr. Dhyanchand wrote King a referral for a physical thearpist to conduct a physical RFC evaluation. In addition, Dr. Dhyanchand increased King's prescription for metoprolol tartrate from 25mg to 50mg and increased his novolin injection to 25 units. King returned for a followup examination on July 23, 2013.

On October 22, 2013 King was examined by Dr. Dhyanchand. Following the physical, Dr. Dhyanchand wrote a referral for a cardiologist to perform another echocardiogram on King and for a physical therapist for intermittent claudification exercises. Dr. Dhyanchand followed up with King on December 27, 2013.

On May 20, 2014, King followed up with Dr. Dhyanchand, who adjusted King's prescriptions as follows: (1) increased the novolin injection to 30 units; (2) prescribed one 600mg gemfibrozil tablet twice per day; and (3) discontinued the aspirin (Exhibit 19F, pp. 1-4). On September 23, 2014 Dr. Dhyanchand prescribed one 100mg cilostazol tablet twice per day.

On December 23, 2014 Dr. Dhyanchand met with King and made the following adjustments: (1) increased the novolin to a 35 unit injection; and (2) discontinued the hydrochlorothiazide and cilostazol.

On April 14, 2015 Dr. Dhyanchand examined King, who complained of occasional chest pains. Dr. Dhyanchand diagnosed King as suffering from diastolic dysfunction with angina and referred King to a cardiologist. In addition, Dr. Dhyanchand made the following changes to King's prescriptions: (1) discontinued pravastatin; (2) prescribed one 80mg atorvastatin calcium tablet once per day; and (3) increased the novolin injection to 50 units.

d. PT David Skrajner (Cleveland Clinic Return to Work Services).

On August 13, 2013, King was evaluated by physical therapist David J. Skrajner of the Cleveland Clinic Return to Work Services Program. Skrajner assessed that King was unlikely to perform work at his previous demand level, and that he had maximum physical performance of 30 minutes sitting, 18 minutes standing, and 6 minutes walking.

e. Dr. Brian Donelan (Summa Cardiovascular Institute, Inc).

On November 19, 2013 King was examined by Dr. Brian J. Donelan of Summa Cardiovascular Associates. Dr. Donelan conducted an echocardiogram and wrote a detailed report indicating that King was found to be suffering from concentric left ventricular hypertrophy and bicuspid aortic valve with mild stenosis and no insufficiency.

f. PT Scott Kline (Matrix Rehab Solutions, Inc.)

At King's request, Dr. Dhyanchand referred King to a physical therapist for a treatment for the claudification of the lower extremities. Over the course of 13 treatments in a period of six weeks, King met with physical therapist Scott J. Kline and participated in several physical exercises designed to treat the claudification. King was discharged from treatment on December 19, 2013.

g. Dr. David Cutler (Northeast Ohio Cardiovascular Specialists, Inc.)

On May 19, 2015 King was examined by cardiologist David Cutler of Northeast Ohio Cardiovascular Specialists, Inc. Dr. Cutler noted that King's EKG is definitely abnormal with sinus rhythm and inferior Q waves which would suggest an inferior infarction. King was referred to Summa Barberton Hospital for a lower extremity PVR evaluation and a pharmacological nuclear stress test. King was told to return for a follow-up examination in one year.

h. Dr. Roger B. Chaffee (Summa Cardiovascular Institute).

On May 27, 2015, Dr. Roger B. Chaffee performed a pharmacological stress test with myocardial perfusion imaging on King. Results of the test indicate that the resting electrocardiogram was abnormal suggesting an old interior and anterior infarction (apical infarct). In addition, there is a clear Q wave in V1 and V2 and a tiny R wave in lead V3. Also, there are nondiagnostic inferior Q waves, but suggestive of an old or age indeterminate inferior infarction. It should be noted that during the procedure, there were no significant changes in electrocardiogram.

i. Dr. Vincent L. Sudimak (Summa Barberton Hospital Noninvasive Vascular Services).

On May 27, 2015 Dr. Vincent L. Sudimak of Summa Barberton Hospital Noninvasive Vascular Services performed a lower extremity PVR evaluation. King's ankle brachial index (ABI) in his right ankle was 1.15 and the ABI in his left ankle was 1.19.

j. Dr. Roberto Lebron (Summa Physicians New Seasons Family Medicine).

On August 26, 2015 King changed primary care providers to Dr. Roberto Lebron of Summa Physicians Inc. New Seasons Family Medicine. King met with certified nurse

practitioner Kristina L. Robinson for the initial physical examination. After reviewing King's prior prescriptions, Robinson made the following changes: (1) discontinued novolin and metFORMIN HCI; (2) prescribed one 20 unit injection of insulin glargine taken nightly; (3) prescribed one 1000mg metFORMIN ER tablet to be taken twice per day (later revised to two 500mg tablets taken three times per day due to insurance requirements; and (4) prescribed one 5 unit injection of insulin aspart to be taken with the largest meal. King was told to monitor his blood sugars daily and follow-up in two weeks.

On September 11, 2015 King was examined by Dr. Roberto Lebron. After reviewing King's blood sugars, Dr. Lebron adjusted King's insulin dosages. For the nightly long acting insulin, King's initial dosage was at 25 units, with an increase of one unit for each day where the morning blood sugar was above 120. For the mealtime insulin, King was placed on a sliding scale dosage based upon the morning blood sugar reading. The dosage began at 6 units for any reading below 150, and increased by 2 units for each number increase of 25. In addition, Dr. Lebron prescribed one 100mg gabapentin capsule to be taken three times per day.

B. Procedural Process Before the SSA.

1. Initial application.

On December 30, 2011 King filed an application for DIB and SSI benefits with the Social Security Administration. King claimed in the application that he became disabled on December 24, 2011 as a result of diabetes mellitus, hypertension, and bleeding into his brain. The claim was filed at the recommendation of social workers at Summa Akron City Hospital.

At the request of SSA, King's application was referred to Opportunities for Ohioans with Disabilities, Division of Disability Determination (hereinafter "OOD"). On May 1, 2012 and claims adjudicator Kathryn Bradley and medical consultant Dr. Maureen Gallagher determined that while King experiences some limitations due to the late effects of cerebralvascular disease,

diabetes mellitus, and essential hypertension he is able to complete some work activities. Thus, the claim for DIB/SSI benefits was denied.

2. Reconsideration.

On June 18, 2012 King submitted a request for reconsideration of the denial of his application for DIB/SSI benefits. King stated that he is unable to perform the duties of his previous employment as he is unable to stand on his feet for longer than 30 minutes at a time.

Once again, the case was referred to OOD for review. On August 23, 2012, claims adjudicator Karen Dureki and medical consultant Dr. Eli Perencevich upheld the denial of King's request for DIB/SSI benefits.

3. ALJ hearing and decision.

King's disability claim was set for an administrative hearing on January 22, 2014 during which King and vocational expert Lynn Smith testified. ALJ Charles J. Shinn, Jr. issued an unfavorable decision on February 4, 2014. On March 13, 2014 King filed a timely appeal of ALJ Shinn's decision.

4. Initial Appeals Counsel/U.S. District Court proceedings.

The Appeals Council denied King's appeal on November 19, 2015, thereby making ALJ Shinn's decision the final determination of the SSA. King filed suit in the U.S. District Court for the Northern District of Ohio.

Following the filing of the administrative record and King's merit brief, the parties jointly moved to remand the case back to the ALJ for further administrative proceedings. The Court granted the motion and the Appeals Council followed suit.

5. Second ALJ hearing and decision.

King appeared at a subsequent hearing before ALJ Shinn on February 21, 2017. Also testifying was vocational expert Daniel L. Simone. At the hearing, King presented several written documents into evidence.

Several weeks after the hearing, King submitted a written concluding argument and medical evidence from substitute physician.

On April 10, 2017, ALJ Shinn made the following findings of facts and conclusions of law:

1. The claimant meets the insured status requirements of the Social Security Act through June 30, 2014.

2. The claimant has not engaged in substantial gainful activity since December24, 2011, the alleged onset date (20 CFR 404.1571 et seq., and 416.971 et seq.).

3. The claimant has the following severe impairments: status post intracerebral hemorrhage suffered on December 24, 2011 requiring hospitalization, diabetes mellitus, hypertension status post hypertensive emergency on December 24,2011, and peripheral vascular disease of the right lower extremity (20 CFR 404.1520(c) and 416.920(c)).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except, specifically, he can lift, carry, push and pull 20 pounds occasionally and ten pounds frequently. He can sit for six hours and stand and/or walk for six hours in a normal workday. He cannot climb ladders, ropes, or scaffolds. He can occasionally kneel, crouch, and crawl. This individual cannot drive commercially and must avoid workplace hazards such as unprotected heights or exposure to dangerous moving machinery. Finally, this individual must avoid concentrated exposure to temperature extremes of hot and cold.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

7. The claimant was born on January 23, 1970 and was 41 years old, which is defined as a younger individual age 18-49, on the alleged disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569, 404.1569(a), 416.969, and 416.969(a)).

11. The claimant has not been under a disability, as defined in the Social Security Act, from December 24,2011, through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

6. Second Appeals Counsel/U.S. District Court proceedings.

King filed a timely appeal of ALJ Shinn's unlawful decision with the Appeals Council on May 1, 2017. The Appeals Council affirmed the ALJ decision. On June 6, 2018, King sought judicial review in the U.S. District Court for the Northern District of Ohio. *King v. Berryhill,* N.D. Ohio No. 5:18cv01283PAB. The case remains pending.[2]

C. ODJFS Agency Proceedings.

1. Notice of benefit termination and request for state hearing.

On July 10, 2017, ODJFS notified Appellant Derrick Martin King (hereinafter "King") on that his DFA benefits would terminate on July 30 due to the enactment of 2017 Am. Sub. H.B. 49. On July 13, 2017, King filed a request for a state hearing. On July 28, 2017, King sent notice to ODJFS that he was requesting a copy of the appeal summary and supporting

[2] The case was delayed due to the Trump Government Shutdown of 2018-2019 (which halted all civil cases in the district courts involving the U.S. government as a party). In addition, the case was reassigned to the docket of District Judge Pamela A. Brown after initially being assigned to the docket of District Judge Dan Aaron Polster.

documents. King also requested a subpoena duces tecum directed to the Ohio Legislative Service Commission for all documents that ODJFS submitted to the Ohio General Assembly in relation to 2017 Am. Sub. H.B. No. 49. King was sent a copy of the appeal summary and supporting documents prior to the hearing.

On August 8, 2017, King appeared at the state hearing. King was told by hearing officer Ann Shane that she did not have any authority to review or hear any arguments regarding the constitutionality of the ODJFS action and that his requested subpoena duces tecum was being denied. King nevertheless presented his written arguments that the ODJFS action was unconstitutional.

2. Request for administrative review by the ODJFS Bureau of State Hearings.

On August 16, 2017, the ODJFS Bureau of State Hearings affirmed the termination of King's DFA benefits. CAR, Initial Hearing Record, pp. 1-8. King submitted a timely administrative appeal request on August 21, 2017.

B. Judicial Review Proceedings in Lower Court.

1. Filing of request for judicial review/request for written transcript of state hearing.

On September 8, 2017, King sought judicial review of the final ODJFS decision by filing a complaint in the Summit County Court of Common Pleas. Concurrently with the filing of the notice of appeal, King filed a request for issuance of a temporary restraining order and preliminary injunction and a request for a copy of the written transcript of the August 8, 2017 state hearing.

King was seeking a restraining order which enjoined ODJFS from terminating King's DFA benefits pending judicial determination of the constitutionality of the portions of 2017 Am.

Sub. H.B. No. 49 that relates to the elimination of the DFA program. (*Id.*, at pp. 6-12). King submitted a sworn affidavit in support of his motion.

On September 25, 2017, ODJFS filed a memorandum in opposition to the request for temporary restraining order and preliminary injunction. Counsel for ODJFS argued that King had not demonstrated a strong likelihood of success on the merits; that King had failed to demonstrate irreparable injury; and that King had failed to demonstrate that the public interest would be served by granting a stay.

On September 25, 2017, ODJFS concurrently filed a memorandum in opposition to the request for transcript. ODJFS argued that there was no attempt to stipulate to the facts and that the transcript is not essential to the determination of the appeal.

On September 26, 2017, King filed an omnibus reply memorandum to the two ODJFS response memorandums. In the reply memorandum, King stated in his sworn affidavit that ODJFS hearing officer Ann Shane stated the following at the August 8, 2017 state hearing:

> Yes. OK. Please I want you to understand that I do not have jurisdiction to challenge any type of constitutionality of the decision by the state legislator to end the disability financial assistance program in Ohio. It is a state only run program. I'm limited to determining whether the notice that was sent to you was correct or not. As it pertains to your eligibility. OK. Just so that you understand that. OK.

On October 10, 2017, King filed a motion to suspend the ODJFS decision terminating his DFA benefits. King reiterated that his DFA benefits were his ONLY source of income and that he will suffer an unusual hardship should those benefits be terminated.

2. Filing of certified administrative record/request for admission of additional evidence.

On October 12, 2017, a certified copy of the administrative record was filed with the trial court. On October 14, 2017, King filed a motion to supplement the record. King indicated that he wished to submit documents obtained either through a public request from ODJFS or via the

discovery process in a separate matter On October 17, 2017, ODJFS filed a memorandum in opposition to the motion to supplement the record. ODJFS argued that "[t]he documents with which Mr. King seeks to supplement the record are not part of the certified record because Mr. King failed to introduce them at his state hearing or during his administrative appeal, despite the fact that they were capable of discovery by due diligence" and that "[t]hese documents could have been ascertained prior to the hearing before the agency."

On October 19, 2017, the trial court denied the motion for a written transcript of the state hearing. *10/19/2017 Journal Entry.* The trial court stated that:

> [It] does not find that production of the transcript is essential to the determination of this appeal. Appellant's appeal involves the termination of the Disability Financial Assistance program in Ohio. Appellant contends he was denied a fair hearing before the hearing officer because he was not permitted to present his arguments regarding the constitutionality of the legislation terminating the Disability Financial Assistance program. This is simply not essential to the Court's determination of Appellant's appeal. Appellant's Motion for Production of Transcript is denied.

On October 19, 2017, the trial court denied the motion to supplement the record. The trial court stated that "After consideration, the Court concludes the documents Appellant's wishes to supplement the record with do not constitute 'newly discovered evidence' under R.C. 119.12(K).". (*Id.*)

3. Interlocutory appellate proceedings.

On October 20, 2017, King filed a timely appeal of the following interlocutory orders: (1) the October 19, 2017 denial of the motion to supplement the record; (2) the October 19, 2017 denial of the motion for a written transcript of the state hearing; and (3) the October 19, 2017 denial of the motion to suspend the ODJFS decision terminating King's DFA benefits. *King v. Ohio Dept. of Job and Family Srvcs.*, 9th Dist. Summit No. 28816 (filed Oct. 20, 2017).

The interlocutory appeal was dismissed on December 28, 2017. On January 5, 2018 King filed an appeal to this Court. *King v. Ohio Dept. of Job and Family Srvcs.*, case no 2018-0021 (filed Jan. 5, 2018). On April 25, 2018 this Court declined to hear the appeal. *King v. Ohio Dept. of Job and Family Srvcs.*, 152 Ohio St.3d 1448, 2018-Ohio-1600, 96 N.E.3d 301 (Apr. 25, 2018).

4. Attempt to disqualify trial court judge.

On June 19, 2018, King filed a petition for writs of procedendo and mandamus with the Supreme Court of Ohio seeking to prohibit the trial court judge from proceeding with the appeal pending the resolution of a declaratory judgment action that was filed prior to the judicial review proceedings. *State ex rel. King v. Wells*, case no. 2018-0865 (filed June 19, 2018).[3] On September 26, 2018, the Supreme Court of Ohio granted Judge Wells' motion to dismiss. *State ex rel. King v. Wells*, 153 Ohio St.3d 1480, 2018-Ohio-3867, 108 N.E.3d 79.[4]

5. Filing of merit briefs with trial court.

On August 3, 2018, King filed his merit brief with the trial court. In his merit brief, King argued that (1) R.C. 119.12(K), R.C. 5101.35(E)(4), and Summit Co. Loc.R. 19.04 are

[3] The declaratory judgment action was initiated on August 8, 2017 while the judicial review proceeding was initiated on September 8, 2017. *King v. Divoky, et al.*, Summit C.P. No. CV2017083304. In that case, the trial court dismissed the case but the dismissal was reversed by this Court. *King v. Divoky, et al.*, 9th Dist. Summit no. 28841, 2018-Ohio-2280, 2018 Ohio App. LEXIS 2473, 2018 WL 2986672 (June 13, 2018). King subsequently filed a petition for writs of prohibition and mandamus with the Ninth District Court of Appeals seeking to prevent the trial court in that case from proceeding on the case until the final resolution of this appeal. *State ex rel. King v. Rowlands*, et al., 9th Dist. Summit No. 29248 (filed November 23, 2018). Immediately following the filing of the petition with this Court, the trial court in that case stayed the proceedings pending the resolution of the judicial review proceeding.

[4] A motion for reconsideration was filed. On November 7, 2018, the Supreme Court of Ohio denied King's motion to disqualify Chief Justice Maureen O'Connor and Associate Justice Richard P. DeWine from serving on the case. *State ex rel. King v. Wells*, 154 Ohio St.3d 1421, 2018-Ohio-4495, 111 N.E.3d 19. On December 12, 2018, the Supreme Court of Ohio denied King's motion for reconsideration. *State ex rel. King v. Wells*, 154 Ohio St.3d 1447, 2018-Ohio-4962, 113 N.E.3d 554 .

unconstitutional as applied; and (2) the elimination of the DFA program violates his right to equal protection, due process, and the right to safety under the federal and state constitutions *Id.,* pp. 44-247.[5]

On September 4, 2018, ODJFS filed its merit brief. ODJFS first argued that the additional documents attached should be stricken from the record. ODJFS also argued that the agency's decision was supported by reliable, probative, and substantial evidence.

On September 9, 2018, King filed a reply brief. In his reply brief. King first stated that this court lacks jurisdiction to proceed with the administrative appeal due to the writ of prohibition action that was pending in the Supreme Court of Ohio and involved the trial court judge. King also argued that this Court had a legal and fundamental duty to either decide the constitutional issues raised in his merit brief or the court must disqualify itself and refer the matter to another judge.

6. Trial court's judgment entry affirming the agency decision to terminate benefits.

On October 12, 2018, the trial court issued a journal entry which affirmed the ODJFS decision to terminate King's DFA benefits. The trial court began by addressing the additional material attached to King's briefs and stating that "these materials do not constitute 'newly discovered evidence' under R.C. 119.12(K)." *Id.,* pp. 3-4. The trial court also stated that it did not consider the written transcript essential to the determination of the appeal. *Id.* In addition, the trial court does not find R.C. 5101.35(E)(4) or Summit Co. Loc.R. 19.04 to be unconstitutional.

Turning to King's equal protection constitutional challenge, the trial court stated that:

[5] For the purposes of this brief, the page numbers referenced are the page numbers designated by the Clerk of Courts, which are different from the page numbers King used in the document (which includes a cover page, a table of contents, a table of contents for the appendix, and a table of authorities).

> [T]here is no basis to impose "strict scrutiny" regarding the enactment of Am. Sub. H. B. No. 49. Under either "rational basis" or "intermediate scrutiny" the elimination of the DFA program was related to the legitimate government interest of repealing a statutory benefit system that the legislature chose to eliminate. Plaintiff-Appellant's argument that his right to equal protection of law under the Fourteenth Amendment was violated is not well-taken and overruled as a result.

Regarding King's constitutional right of safety, the trial court stated that "Ohio courts have specifically found that there is no fundamental right to receive welfare benefits in Ohio and that the state is not obligated by Section 1, Article I to provide a minimal amount of safety to its citizens." *Id.*, p. 5 (citing *Daughtery v. Wallace*, 87 Ohio App.3d 228, 239, 621 N.E.2d 1374 (2nd Dist. 1993)).

7. Ninth District affirms decision of trial court.

King filed a timely appeal in the Ninth District Court of Appeals. King asserted five assignments of error: (1) the trial court lacked jurisdiction to enter a judgment as there was a related case pending in the Supreme Court of Ohio at the time the judgment entry was entered; (2) R.C. 119.12(K), 5101.35(E)(4), and Summit Co. Loc. R. 19.04 are unconstitutional as applied to this administrative appeal;[6] (3) the trial court erred in relying on the *Daughtery* decision; (4) the elimination of the DFA program is unconstitutional as a violation of King's constitutional right of safety; and (5) the elimination of the DFA program violated King's constitutional right of equal protection and due process under the U.S. and Ohio Constitutions.

The court of appeals held that King has not demonstrated that the trial court lacked subject matter jurisdiction. *King v. Ohio Dept. of Job & Fam. Servcs.,* 9th Dist. Summit no. 29198, 2019-Ohio-2989, 2019 Ohio App. LEXIS 3072 (Jul. 24, 2019), ¶ ¶ 9-12. The Court of Appeals also held that King failed to bring his as-applied constitutional challenges before the

[6] R.C. 119.12(K), R.C. 5101.35(E)(4), and Summit Co. Loc. R. 19.04 restricted King's ability to obtain the written transcript of the state hearing or to present evidence in his constitutional challenges to the elimination of the DFA program.

administrative agency. *King, supra,* ¶ ¶ 13-16. The court of appeals also held that King had not demonstrated how the elimination of the DFA violated his constitutional right of safety. *King, supra,* ¶ ¶ 17-25. Finally, the court of appeals held that King has developed no argument that the enactment at issue would not pass a rational basis review. *King, supra,* ¶ ¶ 26-32.

8. This Court denies jurisdiction.

On October 15, 2019, this Court ignored its constitutional duty and denied jurisdiction over the case. *King v. Ohio Dept. of Jobs & Fam. Servcs.*, ___ Ohio St.3d ___, 2019-Ohio-4211, ___ N.E.3d ____, 2010 Ohio LEXIS 2087, 2019 WL 3330997. This demand for reconsideration is being timely filed.

LEGAL AUTHORITY GOVERNING DEMAND FOR RECONSIDERATION

S.Ct.Pract.R. 18.02(A) and 18.02(B)(1) authorizes this Court to reconsider a decision to decline jurisdiction over a discretionary appeal. This Court has held that "[u]nder S.Ct.Prac.R. 18.02, we use our reconsideration authority to 'correct decisions which, upon reflection, are deemed to have been made in error.' *State ex rel. Huebner v. W. Jefferson Village Council,* 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1995). This Court will not, however, grant reconsideration when a movant seeks merely to reargue the case at hand. S.Ct.Prac.R. 18.02(B)." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 212, 214, 2014-Ohio-1940, 11 N.E.3d 222, 224, ¶ 9.

Courts have found that in order to meet the requirement of a substantial constitutional question, the court must find that "[t]he question must be real and substantial rather than superficial and frivolous. It must be a constitutional question which has not already been the subject of conclusive judicial determination." *State v. Colson,* 163 S.E.2d 376, 383 (N.C. 1968). In addition, the North Carolina Supreme Court found that:

> [m]ere mouthing of constitutional phrases like 'due process of law' and 'equal protection of the law' will not avoid dismissal. Once involvement of a substantial constitutional question is established, the Court will retain the case and may, in its discretion, pass upon any or all assignments of error, constitutional or otherwise, allegedly committed by the Court of Appeals and properly presented . . . for review.

Id.

King presents three reasons why this Court must do its sworn duty and grant the motion for reconsideration: (1) the decision was tainted by the participation of Chief Justice Maureen O'Connor and Associate Justice Richard Patrick DeWine; (2) the *Daughtery v. Wallace* decision is inapplicable to a determination of whether or not the elimination of the Disability Financial Assistance program; and (3) the elimination of the Disability Financial Assistance program is unconstitutional and violates the Equal Protection and Due Process clauses of the United States and State of Ohio constitutions.

REASONS SUPPORTING APPELLANT'S DEMAND THAT THIS COURT RECONSIDER ITS DENIAL OF JURISDICTION

I. THE DECISION TO DENY JURISDICTION OVER THE CASE WAS TAINTED BY THE PARTICIPATION OF CHIEF JUSTICE MAUREEN O'CONNOR AND ASSOCIATE JUSTICE RICHARD PATRICK DEWINE, AS THEY HAD AN ETHICAL DUTY TO DISQUALIFY THEMSELVES FROM PARTICIPATION IN THIS CASE.

A. Introduction.

King argues that this Court has simply ignored its duty to give a proper consideration of the constitutionality arguments presented to the lower courts. Courts have a duty to construe constitutional provisions to avoid unreasonable or absurd results. *State ex rel. LetOhioVote.org v. Brunner,* 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 50., *citing State ex rel. Colvin v. Brunner,* 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979. Specifically, King argues that it was improper for Chief Justice Maureen O'Connor and Associate Justice Richard Patrick DeWine to participate in this case.

B. Judicial Bias.

This Court has held that "[t]he proper test for determining whether a judge's participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis,* 105 Ohio St.3d 1239, 2004-Ohio-7359, 826 N.E.2d 299, ¶ 8, citing Canon3(E)(1) of the Code of Judicial Conduct. This Court has also held that "[t]he law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." *In re Disqualification of Corrigan,* 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720, ¶11. In addition, "[t]rial before an 'unbiased judge' is essential to due process." *Johnson v. Mississippi,* 403 U.S. 212, 216, 91 S.Ct. 1778, 29 L.Ed.2d 423 (1971); *accord Concrete Pipe & Prods. v. Constr. Laborers Pension Trust,* 508 U.S. 602, 617, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993) ("due process requires a 'neutral and detached judge in the first instance'") (citation omitted). In *Tumey v. Ohio,* 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), the U.S. Supreme Court reversed a conviction in a case adjudicated by a town mayor who was paid for his service as a judge from fines he assessed when acting in a judicial capacity, although no showing of actual bias was made.

C. Arguments Supporting Disqualification of Chief Justice Maureen O'Connor.

Chief Justice Maureen O'Connor has a conflict in that she served Summit County Prosecutor from 1995 to 1998 and King had legal actions involving the Summit County Prosecutor's Office related to a criminal case which occurred in Summit County. The case docket in King's criminal case (annexed hereto and marked as EXHIBIT A) indicates that he filed a motion for post-conviction relief on September 7, 1994. *State v. King,* Summit C.P. No. CR1991030484 (filed March 7, 1991). Chief Justice O'Connor was elected Summit County

Prosecutor in the November1994 general election (and took office in January 1995. The criminal case docket indicates that the Summit County Prosecutor filed pleadings on January 4, 1995, February 22, 1995, and September 14, 1995.

Accordingly, Chief Justice O'Connor must recuse herself from consideration in this matter. Any decision in this matter which Chief Justice O'Connor participates in will be a tainted and unjust decision which will be challenged.

D. Arguments Supporting Disqualification of Associate Justice Richard Patrick DeWine.

Associate Justice Richard Patrick DeWine has a pending disciplinary matter before a special disciplinary counsel concerning his participation in cases where his father (former Ohio Attorney General and current Governor Richard Michael DeWine) or the Office of the Ohio Attorney General is representing a party in the case. *In re Complaint against DeWine,* Bd. of Prof. Con. no. SCC2018-001 (filed January 30, 2018). It should be noted that in this case, Assistant Attorney General Theresa R. Dirisamer is representing the state parties on behalf of then Attorney General and current Governor DeWine. Therefore, Associate Justice DeWine should have automatically disqualified himself from participation in this case, and this Court's decision which denied jurisdiction over the case was tainted and must be reversed as a matter of law.

Canon 1 of the Ohio Code of Judicial Conduct states that "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." (Emphasis in original.) The purpose of this Canon is to promote confidence in the Judiciary, and it requires that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." (Jud. Cond. R. 1.2).

Independence, integrity, impartiality and the "appearance of impropriety" are at issue. The test for appearance of impropriety is an objective test: it focuses on whether the judge's conduct would create, "in reasonable minds," a perception that the judge engaged in conduct that is prejudicial to public confidence in the judiciary, or engaged in conduct that reflects on the judge's "Impartiality." (Gov. Jud. R. 1.2, comment [5]].

Reasonable minds could conclude that there is at least the appearance of impropriety when Associate Justice DeWine hears and decides in which his father served as counsel for one of the parties, especially in this sensitive time period when his father is also serving as governor. To conclude that the father-son relationship has no impact on Associate Justice would be to ignore basic human nature. Public confidence in the judiciary has been negatively impacted by Associate Justice DeWine hearing and deciding his father/AG/gubernatorial candidate's cases, even if Richard Michael DeWine did not personally appear before Respondent in any of those cases.

By failing to recuse himself from all cases in which his father, or his father's office, has appeared as either a named party or as counsel to a party, Associate Justice DeWine has violated the following Canons of the Ohio Code of Judicial Conduct:

- Canon 1. For failing to uphold and promote the independence, integrity, and impartiality of the judiciary.
- Canon 2. For failing to perform the duties of the office impartially, specifically:
    i. Rule 2.2: Impartiality and Fairness. "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." (Emphasis in original.) "A judge must be objective and open-minded." Jud. Cond. R. 2.2, comment [1];
    ii. Rule 2.4: External Influences on Judicial Conduct. (A) "A judge shall not be swayed by public clamor or fear of criticism;" (B) "A judge shall not permit family . . . political . . . . or other interests or relationships to influence the judge's judicial conduct or judgment;"

and, (C) "A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge;

iii. Rule 2.11: Disqualification. (A) "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:"

1. "The judge has a personal bias or prejudice concerning a party . . . "

2. "The judge knows that (he) . . . or a person within the third degree of relationship . . . is . . . A party to the proceeding, or an officer (or) director . . . of a party; acting as a lawyer in the proceeding; or . . . has more than a de minimis interest that could be substantially affected by the proceeding;"

iv. Comment [4] to Rule 2.11 states that: The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's Impartiality might reasonably be questioned under division (A), or the relative is known by the judge to have an Interest In the law firm that could be substantially affected by the proceeding under division (A) (2) (c), the judge's disqualification is required.

II. THE ELIMINATION OF THE DISABILITY FINANCIAL ASSISTANCE PROGRAM IS UNCONSTITUTIONAL, AND THE SECOND DISTRICT'S HOLDING IN *DAUGHTERY V. WALLACE* IS INAPPLICABLE IN THE DETERMINATION OF WHETHER OR NOT THE ELIMINATION OF A DISABILITY BENEFIT VIOLATES THE CONSTITUTIONAL RIGHT OF SAFETY.

A. Introduction

The differences between the programs in Daughtery and the DFA program in this case renders any reliance upon Daughtery to be inapplicable. Accordingly, the Second District's decision upholding the elimination of the General Assistance cannot be applied to the General Assembly's elimination of the Disability Financial Assistance program.

B. The *Daughtery* case.

In *Daughtery*, the Second District considered a challenge to Ohio's general assistance program. Prior to the 1991 revisions, the GA program provided ongoing financial and medical

assistance to all poor persons who were ineligible for federally funded assistance programs such as Aid to Families with Dependent Children ("AFDC") and Supplemental Security Income ("SSI"). The Ohio legislature revised the GA program effective October 1, 1991. Former R.C. 5103.03, and created a separate Disability Assistance ("DA") program. The appellants filed their class action complaint seeking declaratory and injunctive relief challenging the revisions in the GA program under both the federal and state Constitutions.

C. The Constitutional Right to Safety in Ohio and Other States.

Ohio Const. art. I § 1 states that "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety." King argues that the termination of the DFA program is unconstitutional under the safety clause of the Ohio Constitution. As one legal scholar noted:

> A state's traditions can also serve as the basis for independent interpretation of state constitutional provisions.
>
> Because a state constitution represents the most basic values, an interpretation of that document may properly rely on the traditions that shaped those values. These state traditions may differ from the federal tradition and justify departure from the federal constitutional standard. In this regard, Judge Judith Kaye of the New York Court of Appeals quite accurately observed, "where the state's history indicates some special concern, clearly there might well be a different result from analogous federal precedent."

Daan Braveman. *Poverty Law in the 1980's: Children, Poverty, and State Constitutions.* 38 Emory L.J. 577 (Summer 1989)

The *Daughtery* case in inapplicable to whether or not the Safety Clause of the Ohio Constitution is implicated. First, the DFA program was specifically intended for persons found to be disabled. *See* former R.C. 5115.02 (eff. Jun. 26, 2003) (statutory eligibility requirements for DFA program); former Ohio Admin. Code 5101:1-5-01, 2016-17 OMR pam. # 3 (A) (eff. Oct. 1,

2016) (DFA definitions and payment standards); former Ohio Admin. Code 5101:1-5-10, 2016-17 OMR pam. # 3 (A) (eff. Oct. 1, 2016) (nonfinancial eligibility requirements); and former Ohio Admin. Code 5101:1-5-20, 2016-17 OMR pam. # 3 (eff. Oct. 1, 2016) (determination of a disability). It should be noted that the eligibility requirements under Ohio's DFA program are consistent with those of the federal programs for Disability Insurance Benefits and Supplemental Security Income. See 42 U.S.C. § 423(d) (DIB eligibility requirements) and 42 U.S.C. § 1381a (SSI eligibility requirements).

It should be noted that in the United States, there are nearly two dozen state constitutions that recognize that someone or something in the individual states will provide for those in need. Although the DFA program specifically provided for assistance for persons that were considered to be "disabled" under Ohio law, the state constitutions provide guidance on the recognized right of safety in the United States. Some of the state constitutional provisions include the following:

- Ala. Const. art. IV § 88 ("It shall be the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor");
- Alaska Const. art. VII § 5 Public Welfare ("The legislature shall provide for public welfare");
- Ariz. Const. art. XXII, § 15 ("Reformatory and penal institutions, and institutions for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law"
- Ark. Const. art. 19 § 19 ("It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb and the blind, and also for the treatment of the insane")
- Cal. Const. art. XVI § 3(2) ("The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans…)"
- Cal. Const. art. XVI § 3(3) ("The Legislature shall have the power to grant aid to needy blind persons not inmates…)"
- Cal. Const. art. XVI § 3(4) ("The Legislature shall have power to grant aid to needy physically handicapped persons not inmates…");

- Colo. Const. art. VIII § 1 ("Educational, reformatory and penal institutions, and those for the benefit of insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law");
- Haw. Const. art. IX § 3 ("The State shall have the power to provide financial assistance, medical assistance and social services for person who are found to be in need of and are eligible for such assistance and services as provided by law");
- Ind. Const. art. IX § 1 ("It shall be the duty of the General Assembly to provide, by law, for the support of institutions for the education of the deaf, the mute, and the blind; and, for the treatment of the insane");
- Kan. Const. art. VII § 4 ("The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof");
- Ky. Const. § 244A ("The General Assembly shall prescribe such laws as may be necessary for the granting and paying of old persons an annuity or pension");
- La. Const. art. XII § 8 ("The legislature may establish a system of economic and social welfare, unemployment compensation, and public health");
- Ma. Const. art. XVIII § 3 ("Nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished…");
- Mich. Const. art. 4 § 51 ("The public health and general welfare of the people of the state are hereby declared to be matters of primary concern. The legislature shall pass suitable laws for the protection and promotion of the public health");
- Mont. Const. art. 12 § 3(1) ("The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans");
- Mont. Const. art. 12 § 3 (2) Persons committed to such institutions shall retain all rights except those necessarily suspended as a condition of commitment…");
- Mont. Const. art. 12 § 3 (3) The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need");

- Mont. Const. art. 12 § 3 (4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services");
- N.M. Const. art. IX § 14 ("Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad; provided: A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons");
- N.C. Const. art. XI § 4 ("Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore, the General Assembly shall provide for and define the duties of a board of public welfare");
- Okla. Const. art. XVII § 3 ("The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reasons of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county");
- Okla. Const. art. XXI § 1 ("Educational, reformatory, and penal institutions and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law");
- Pa. Const. art. III § 29 ("No appropriations shall be made for charitable, educational or benevolent purposes to any person of community nor to any denominational and sectarian institution, corporation or association: Provided, That appropriations may be made for pensions or gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support…");
- Tex. Const. art. III § 51-a ("The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disable because of a mental or physical handicap, needy aged persons and needy blind persons. The Legislature may provide by General Laws for medical care, rehabilitation and other similar services for needy persons. The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate…");
- Wash. Const. art. XIII § 1 ("Educational, reformatory, and penal institutions; those for the benefit of youth who are blind or deaf or otherwise disabled; for persons who are mentally ill or developmentally disabled; and such other

institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law"); and

- Wyo. Const. art 7 § 18 ("Such charitable, reformatory and penal institutions as the claims of humanity and the public good may require, shall be established and supported by the state in in such manner as the legislature may prescribe. They shall be supervised as prescribed by law").

Ohio's constitutional right of safety is clearly consistent with the rights enumerated by other state constitutions. In addition, Ohio's constitutional right of safety is consistent with prior versions of the Ohio Constitution. For example, the Ohio Constitution of 1802 made explicit that even a pauper's children could attend the public schools. Ohio Const. of 1802, art. VIII §§ 15, 25. In addition, the state amended its constitution in 1990 to authorize the legislature to provide subsidized housing for low-income individuals. Ohio Const. art. VIII § 16 being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state . . . to provide . . . housing . . . ."). ("To enhance the availability of adequate housing in the state and to improve the economic and general well- being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state . . . to provide . . . housing . . . .").

Accordingly, this Court must grant reconsideration and review the Daughtery decision when specifically applied to disability programs. Under Ohio's constitutional right of safety. This Court must reverse the decision of the Ninth District Court and remand the matter back to the trial court with instructions to reverse the ODJFS decision terminating benefits.

III. THE ELIMINATION OF THE DISABILITY FINANCIAL ASSISTANCE PROGRAM VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE U.S. AND OHIO CONSTITUTIONS.

A. The Constitutional Provisions.

Section 1 of the Fourteenth Amendment states that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

> of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1. Ohio also has an Equal Protection clause within its constitution. Ohio Const. art. I § 2 states:

> All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

B. Determination of Proper Level of Scrutiny for Equal Protection Challenges to Statute Unconstitutionality.

Under Section 812.40 of Am. Sub H.B. 49, the following classifications were made:

- Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the federal Social Security Administration and who have received a denial of reconsideration from the Administration on or before July 1, 2017 and recipients who do not have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and who have received from the Administration on or before July 1, 2017, an initial denial of benefits or denial of reconsideration will lose DFA benefits on July 31, 2017;

- Recipients who have not received a denial of reconsideration from the Social Security Administration will lose their DFA benefits on October 1, 2017;

- Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and have not received a denial of reconsideration from the Administration will continue to receive their DFA benefits.

If a statute regulates a "semi-suspect" class or substantially affects a fundamental right in an indirect manner, it will be examined under an "intermediate scrutiny." To withstand intermediate scrutiny the classification must serve an important governmental objective and must be substantially related to the achievement of those objectives. *Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed.2d 397 (1976)..

C. Analysis of the Challenged Legislation

There can be little doubt that classifications on disabled persons are at a bare minimum a semi-suspect class which requires intermediate scrutiny. An attorney for the Legal Aid Society is quoted as saying "These are the very same people that the governor wanted to protect with the Medicaid expansion, and I'm baffled he does not want to protect these people." Jackie Borchardt (August 7, 2017). Ohio budget bill ended cash assistance program for people with disabilities. Retrieved from the Cleveland Plain Dealer website (http://www.cleveland.com/metro/index.ssf/2017/08/ohio_budget_bill_ended_cash_as.html). In addition, the article states that:

> Denine Pierce was surprised to get a notice in the mail a few weeks ago that she would be dropped from the program at the end of July. Pierce said it wasn't right that the program was eliminated in a bill without notifying or talking with the people the change would affect.
>
> Pierce said she's been trying to get federal disability benefits for five years and receiving the state benefit for about three years. Without it, the 51-year-old Cleveland woman relied on friends and others who paid her phone bill, helped with rent or gave her toilet paper and other necessities. Pierce's concerns weren't alleviated by the promise of job training.
>
> "I'm young but when you've been out of work for some years, it's hard to get back in," Pierce said. "Especially with a disability -- who wants to take their chance on you?"

Id.

In *People v. Green,* 148 Misc.2d 666, 561 N.Y.S.2d 130 (N.Y. 1990), the Westchester County Court held that peremptory challenge of deaf juror based solely on disability and not on any doubt of juror's ability to communicate violated juror's right to equal protection. The court wrote that "[d]isabled persons in general and hearing impaired persons in particular may constitute a 'suspect classification.'" *Green, supra,* 148 Misc.2d at 669.

In addition, Title II of the Americans With Disabilities Act ("ADA"), Pub.L. No. 101–336, 104 Stat. 327 (1990), barred discrimination against individuals with disabilities in the provision of public services. In enacting the ADA, Congress explicitly found that: individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

CONCLUSION

This case involves matters of public and great general interest and a substantial constitutional question. This Court summarily blew off the arguments presented in an illegal attempt to protect the

For the reasons presented herein, King demands that this Court do its job and reverse its prior decision to deny jurisdiction over the case. If this Court chooses to ignore its duty, then each justice sitting on the Court must resign from office.

Dated this 23rd day of October, 2019

Submitted by:

/s/ Derrick Martin King

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Pro se Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Appellant's Demand for Reconsideration was served by electronic mail service on the 23rd day of October, 2019 to:

THERESA ROSE DIRISAMER (0093374) Counsel of Record
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/s/ Derrick Martin King
DERRICK MARTIN KING

Sandra Kurt - Summit County Clerk of Courts

-- Dockets --	-- 10/16/2019 --

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Criminal Case No	File Date	Type	Judge
CR-1991-03-0484	03/07/1991	ADULT CRIMINAL	JANE BOND

Searching.....

Filing Date	By Atty	Pleading Text	Document
02/05/2008		RESPONSE TO OHIO ATTORNEY GENERAL MARC DANN'S MOTION TO DISMISS.	Document 1
01/30/2008		MOTION TO DISMISS DEFENDANT OHIO ATTORNEY GENERAL MARC DANN	Document 2
12/21/2007	DERRICK KING	DEFENDANT'S PETITION TO FORMALLY DISCHARGE DUTY TO REGISTER AS A TIER SEX OFFENDER.	Document 3
12/28/1995		PRECIPE TO THE COURT REPORTER (DEFENDANT)	No Image
12/28/1995		MOTION FOR PRODUCTION OF DOCUMENTS AND TRANSCRIPTS AT NO COST TO DEFENDANT (DEFENDANT)	No Image
10/12/1995		COPY OF ENTIRE FILE MAILED TO DEFENDANT	No Image
09/29/1995		FINDING OF FACT JL 1891-428 JB	No Image
09/29/1995		MOTION FOR POST CONVICTION RELIEF DENIED.'JL 1891-432 JL 1891-432 JB	No Image
09/22/1995		CERTIFIED COPY OF ENTRY ALONG WITH MOTIONS MAILED TO DEFENDANT AT PICKAWAY	No Image
09/22/1995		ON 9/20/95, ORDERED DEFENDANT'S MOTION TO AMEND POST-CONVICTION PROCEEDING, MOTION FOR ORAL HEARING, AND MOTIONS OF SUBPOENAS ARE DENIED. JL 1889-717 JB	No Image
09/20/1995		MOTION TO AMEND PRIOR POST-CONVICTION RELIEF; A MOTION FOR SUBPOENAS TO PRODUCE DOCUMENTS; AND A MOTION FOR IMMEDIATE SCHEDULING OF AN ORAL EVIDENTIARY HEARING (DEFENDANT)	No Image
09/20/1995		MOTION FOR SUBPOENA (DEFENDANT)	No Image
09/20/1995		MOTION TO AMEND POST-CONVICTION PROCEEDINGS (DEFENDANT)	No Image
09/20/1995		MOTION FOR ORAL HEARING TO DETERMINE POST CONVICTION RELIEF PROCEEDING (DEFENDANT)	No Image
09/14/1995		RESPONSE TO PETITION FOR POST-CONVICTION RELIEF (WELLEMEYER)	No Image
06/27/1995		STENO TRANSCRIPT FEE 102.60	No Image
06/22/1995		CERTIFICATE OF SHORTHAND REPORTER ($102.60) (GARY A. MAHARIDGE, REPORTER)	No Image
06/08/1995		# ON 6/2, ORDERED THIS JOURNAL ENTRY BE FILED NUNC PRO TUNC AS IT WAS NOT FILED PREVIOUSLY DUE TO OVERSIGHT. ON 1/14/92, COURT FINDS DEFENDANT VIOLATED PROBA- TION. ORDERED DEFENDANT SERVE 30 DAYS IN THE SUMMIT CO. JAIL OR SUMMIT CO. MINIMUM SECURITY MISDEMEANANT FACILITY, AS DETERMINED BY SCSO, FOR PROBATION VIOLATION, AND PAY COSTS. HEARING WILL BE HELD IN 30 DAYS AS TO WHETHER AN APPROPRIATE TREATMENT PROGRAM IS AVAILABLE FOR DEFENDANT. DEFENDANT RELEASED ON SAME BOND, CONTINUED UNTIL JANUARY 15, 1992, AT 9 A.M., AT WHICH TIME HE IS TO REPORT TO THE SUMMIT CO. JAIL TO COMMENCE SERVING SENTENCE. JE 1856-788/789 JB TION. ORDERED DEFENDANT SERVE 30 DAYS IN THE SUMMIT CO. JAIL OR SUMMIT CO. MINIMUM SECURITY MISDEMEANANT FACILITY, AS DETERMINED BY SCSO, FOR PROBATION VIOLATION, AND PAY COSTS. HEARING WILL BE HELD IN 30	No Image

		DAYS AS TO WHETHER AN APPROPRIATE TREATMENT PROGRAM IS AVAILABLE FOR DEFENDANT.	
05/31/1995		DEFENDANT REQUESTED COPIES OF FILE. INFORMED HIM THAT THE FILE IS CURRENTLY OUT OF THIS OFFICE AND WILL BE FORWARDED TO HIM UPON IT BEING RETURNED	No Image
05/02/1995		STENO FEE 4-12-95 $10.80	No Image
05/01/1995		STENO FEE 4-14-95 $21.60	No Image
04/14/1995		CERTIFICATE OF SHORTHAND REPORTER ($21.60) (MAXINE A. HOSCH)	No Image
04/13/1995		CERTIFICATE OF SHORTHAND REPORTER ($10.80) (SANDRA E. MAXSON)	No Image
02/22/1995		MOTION TO DISMISS PLAINTIFF'S RESPONSE, & MOTION FOR AN IMMEDIATE EVIDENTARY HEARING (DEFENDANT)	No Image
01/04/1995		RESPONSE TO PETITION FOR POST-CONVICTION RELIEF (WELLEMEYER)	No Image
11/14/1994		MOTION FOR DEFAULT JUDGMENT (DEFENDANT)	No Image
09/07/1994		MOTION TO STAY EXECUTION OF SENTENCE PENDING POST CONVICTION RELIEF (DEFENDANT)	No Image
09/07/1994		MOTION FOR POST-CONVICTION RELIEF (DEFENDANT)	No Image
08/05/1994		CERTIFIED COPY OF DEFENDANT'S MOTION TO SUSPEND SENTENCE DENIED MAILED TO DEFENDANT.	No Image
08/05/1994		8/2, ORDER DEFENDANT'S PRO SE MOTION TO SUSPEND SENTENCE IS DENIED JL 1760-992 JB	No Image
07/29/1994		MOTION TO SUSPEND FURTHER EXECUTION OF SENTENCE (DEFENDANT)	No Image
06/16/1994		PETITION FOR WRIT OF MANDAMUS (DEFENDANT)	No Image
06/16/1994		AFFIDAVIT OF INDIGENCY (FEES/COSTS) (DEFENDANT)	No Image
02/16/1994		ON 2/11/94, ORDERED DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE BE DENIED. JL 1710-452 JB	No Image
11/15/1993		MOTION TO REDUCE SENTENCE (DEFENDANT)	No Image
04/06/1993		SUBPOENA DUCES TECUM	No Image
04/06/1993		REQUEST FOR TRANSCRIPTS IN COURT CASE (DEFENDANT)	No Image
04/06/1993		MOTION FOR POST CONVICTION RELIEF: MOTION TO VACATE/SET ASIDE SENTENCE (DEFENDANT)	No Image
04/06/1993		AFFIDAVIT OF INDIGENCY (DEFENDANT)	No Image
02/10/1993		ON 2/8/93, ORDERED DEFENDANT'S MOTION TO SUSPEND FURTHER EXECUTION OF SENTENCE BE DENIED. JL 1611-880 JB	No Image
01/29/1993		MOTION AND MEMORANDUM TO SUSPEND SENTENCE (DEFENDANT)	No Image
12/24/1992		WARRANT TO CONVEY ISSUED	No Image
12/24/1992		ON 12/14, DEFENDANT PLEADED NOT GUILTY TO PROBA- TION VIOLATION. RELEASED ON BOND, CONTINUED UNTIL PROBATION VIOLATION HEARING ON 12/24/92 AT 10:30 A.M. JE 1598-958 JB	No Image
12/24/1992		# ON 12/23, COURT FINDS DEFENDANT VIOLATED PROBATION. ORDERED THAT HE BE COMMITTED TO DEPT. OF REHABILITATION FOR 1 1/2-5 YEARS FOR GROSS SEXUAL IMPOSITION, A FELONY OF THE 4TH DEGREE, AND PAY COSTS. DEFENDANT TO BE CONVEYED TO LORAIN CORRECTIONAL AND GIVEN CREDIT FOR TIME SERVED. JE 1598-996/997 JB	No Image
12/11/1992		ON 12/7, ORDERED THAT PROBATION VIOLATION ARRAIGNMENT BE CONTINUED UNTIL 12/14/92 AT 1 P.M. JE 1595-300 JB	No Image
09/22/1992		APPLICATION FOR ATTORNEY FEES (CAHOON)(220.00) JL 1574-745/749 JB	No Image
07/24/1992		+ ON 7/20/92, ORDERED DEFENDANT'S MOTION TO SUSPEND FURTHER EXECUTION OF PRISON SENTENCE BE GRANTED. SENTENCE SUSPENDED AND DEFENDANT PLACED ON PROBATION FOR 2 YEARS UPON FOLLOWING TERMS: HE COOPERATE FULLY WITH HIS PROBATION OFFICER; PAY COSTS. JL	No Image

		1559-456/457 JB	
07/16/1992		WARRANT TO REMOVE RETURNED. $ 73.30	No Image
07/09/1992		ON 06/29/92 WARRANT ISSUED TO REMOVE DEFENDANT FROM SOUTHEASTERN CORRECTIONAL INSTITUTION TO BE BROUGHT BACK FOR FURTHER HEARING SET FOR JULY 20, 1992, AT 2:00 PM. JL 1555-175 JB	No Image
07/09/1992		WARRANT TO REMOVE ISSUED	No Image
06/24/1992		MOTION FOR SHOCK PROBATION (CAHOON)	No Image
05/21/1992		WARRANT TO CONVEY RETURNED. $ 23.30	No Image
05/08/1992		# ON 5/5/92, COURT FINDS DEFENDANT VIOLATED PROBATION. ORDERED TO LORAIN CORRECTIONAL INSTITUTION FOR 1 1/2 TO 5 YEARS FOR GROSS SEXUAL IMPOSITION, A FELONY OF THE 4TH DEGREE, AND PAY COSTS. CREDIT FOR ALL TIME SERVED. JL 1539-745/746 JB	No Image
05/08/1992		WARRANT TO CONVEY ISSUED	No Image
01/04/1992		WARRANT TO CONVEY RETURNED. $ 23.30	No Image
12/31/1991		12/23, DEFENDANT IN COURT AND PLEAD NOT GUILTY TO PROBATION VIOLATION. IT IS ORDERED THAT THE DEFENDANT SHALL BE PERMITTED TO REPRESENT HIMSELF IN THIS CASE AND ATTORNEY PETER CAHOON SHALL CONTINUE TO ASSIST IN HIS DEFENSE. DEFENDANT RELEASED ON BOND TO AWAIT PROBATION VIOLATION HEARING SET FOR JANUARY 14, 1992 AT 9:00AM. JL 1503-363 JB	No Image
09/06/1991		APPLICATION FOR PAYMENT OF ATTORNEY FEES (CAHOON)(170.00) JL 1474-252/255 JB	No Image
07/23/1991		SUBPOENA RETURNED: R.D.FOSTER (MAIL)	No Image
07/17/1991		* ON 7/15/91, HAVING PLEAD GUILTY TO GROSS SEXUAL IMPOSITION COUNT 1, ORDERED TO OHIO DEPARTMENT OF REHABILITATION AND CORRECTION FOR 1 1/2 TO 5 YEARS. SENTENCE SUSPENDED AND DEFENDANT PLACED ON PROBATION FOR 2 YEARS UPON FOLLOWING TERMS: HE ENTER INTO, AND SUCCESSFULLY COMPLETE A 6 MONTH PERIOD OF INTENSIVE PROBATION SUPERVISION AS DIRECTED; HE OBTAIN AN EVALUATION BY THE CRIMINAL COURTS PSYCHO-DIAGNOSTIC CLINIC AND COMPLY WITH ALL TREATMENT RECOMMENDATIONS; HE NOT ASSOCIATE WITH ANY JUVENILES AT ANY TIME; HE NOT BE WITHIN 500 FEET OF ANY SCHOOL OR PLAYGROUND OF THIS COMMUNITY; PAY COSTS. JL 1461-510/511 JB	No Image
07/10/1991		ON 7/8/91, ORDERED BOND BE REVOKED. DEFENDANT REMANDED TO SUMMIT COUNTY JAIL TO AWAIT SENTENCING UNTIL JULY 15, 1991 AT 3:00. JL 1459-713 JB	No Image
07/10/1991		MOTION AND ORDER FOR ATTORNEY FEES (ROSEN) ($265.00) JL 1459-952/956	No Image
06/11/1991		ON 6/10/91, DEFENDANT RETRACTS PLEA OF NOT GUILTY TO PLEA OF GUILTY OF GROSS SEXUAL IMPOSITION COUNT 1, WITH PHYSICAL HARM SPEC. CHARGE OF KIDNAPPING COUNT 2 DISMISSED. CASE REFERRED TO PROBATION DEPARTMENT FOR PRE-SENTENCE INVESTIGATION AND RELEASED ON SAME BOND TO AWAIT SENTENCING SET FOR JULY 8, 1991 AT 3:00. JL 1453-359 JB	No Image
05/15/1991		5/13, ORDER TRIAL CONTINUED TO JULY 3, 1991 AT 9:00AM. JL 1447-95 JB	No Image
05/09/1991		ON 5/6/91, ORDERED ATTORNEY GARY ROSEN SHALL BE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD, AND FURTHER APPOINTS ATTORNEY PETER CAHOON TO DEFEND HIM. RELEASED ON SAME BOND TO AWAIT TRIAL SET FOR JUNE 10, 1991 AT 9:00, AND SETS STATUS CALL FOR MAY 13, 1991 AT 1:00. JL 1445-953 JB	No Image
04/17/1991		ON 4/15/91, DEFENDANT PLEAD NOT GUILTY TO GROSS SEXUAL IMPOSITION (1); KIDNAPPING (1). RELEASED ON SAME BOND TO AWAIT PRE-TRIAL SET FOR MAY 6, 1991 AT 1:00. JL 1440-361 JB	No Image
04/11/1991		SUMMONS RETURNED $3.00	No Image
04/03/1991		INDICTMENT FILED JL 1437-435/437	No Image

04/03/1991		SUMMONS ISSUED	No Image
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