

IN THE SUPREME COURT OF OHIO

MR. DEREK FOLLEY, PRO SE

CASE NO. GEN-2021-1054

APPELLANT

V.

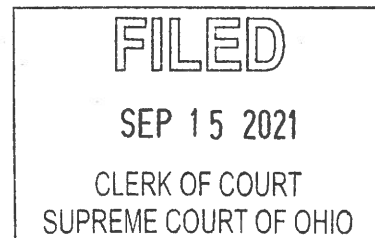
STATE OF OHIO

ON APPEAL FROM THE
COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
COURT OF MONTGOMERY
COUNTY (CASE NO. CA-291420)

APPELLEE

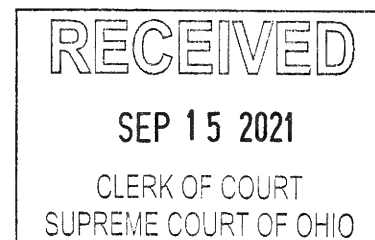
MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE

MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
2500 AVON BELDEN ROAD, B/6/200
GRAFTON, OHIO 44044;
#2-C/O MS. LISA FOLLEY
P.O. BOX 18174
FAIRFIELD, OHIO 45018.



"PRO SE" LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY

MR. ANDREW T. FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR'S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT'S BUILDING
P.O. BOX 972
301 WEST THIRD STREET, 5TH FLOOR
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COUNSEL FOR APPELLEE, STATE OF OHIO

MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE

1/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Now comes, Mr. Derek Folley, Pro Se, hereafter, "The Appellant" hereby moves the Supreme Court of Ohio with this "*Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se*" in pursuant to:

SUPREME COURT OF RULES OF PROCEDURES

S.Ct.Prac.R. 4.01 Motions: Responses:

(A) Motion for order or relief

(1) Unless otherwise addressed by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based.

(B) Response to a motion

(1) If a party files a motion with the Supreme Court, any other party may file a response to the motion within ten days from the date the motion is filed, unless otherwise provided in these rules or by order of the Supreme Court.

"The Appellant" initiated this "*Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se*" in pursuant to requesting that this appellate tribunal do the following:

- (1) DISMISS the indictment of case number "2019 CR 01878" in the Montgomery County Common Pleas Court with "Prejudice";
- (2) ORDER the RELEASE of "The Appellant" from current custody of the Ohio Department of Rehabilitation and Correction of:
GRAFTON CORRECTIONAL INSTITUTION
2500 AVON BELDEN ROAD
GRAFTON, OHIO 44044;
- (3) ORDER the RELEASE of "The Appellant" Property from the:
DAYTON POLICE DEPARTMENT
305 WEST THIRD STREET
DAYTON, OHIO;
- (4) REVERSED the FINAL JUDGMENT of the Court of Appeals of Ohio Second Appellate District of Montgomery County case number CA-29142 of June 11, 2021.

The memorandum of the law shall follow in support of this legal pleading.

RESPECTFULLY,



MR. DEREK FOLLEY, PRO SE

#A-787384

GRAFTON CORRECTIONAL INSTITUTION
2500 AVON BELDEN ROAD

MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE

2/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

GRAFTON, OHIO 44044;
#2-C/O MS. LISA FOLLEY
P.O. BOX 18174
FAIRFIELD, OHIO 45018.

“PRO SE” LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

PROPOSITION OF LAW NO. 1:

DUE PROCESS OF LAW is properly arranged in the Federal Constitution.

[Nor shall any state deprive any person of life, liberty, or property, without due process of law. UNITED STATES CONSTITUTION, AMENDMENT XIV (1868)]

The ratification of this *“Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se”* is a re-argument of the Federal Constitution “Due Process of Law” provision emphasizing on the numerous of errors sadistically employed by “The Second Appellate District.” It has been over two (2) months since “The Second Appellate District” has dismissed “The Appellant” appeal on June 11, 2021.

“The Second Appellate District” on numerous of occurrences pronounced that the *“Appellate Court Case No. 29142, remains closed. SO ORDERED.”* However, these judicial morons conspired to deprived “The Appellant” of Due Process of Law with the Supreme Court of Ohio by stating *“this matter is returned to the trial court to re-enter the termination entry.”*

On page three, “The Second Appellate District” stated *“this matter, appellate Case No. 29142, remains closed. So ORDERED.”* There are no such things called contradictions.

On July 29, 2021, DECISION AND ENTRY (CA-29142) page 2: *“This matter has been dismissed and remains closed. So ORDERED.”*

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

3/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

On July 15, 2021, DECISION AND ENTRY (CA-29142) page 3: *“Appellee has also moved to strike Appellant’s Amended Brief. The motion is OVERRULED as moot. This matter is closed. So ORDERED.”*

On July 8, 2021, DECISION AND ENTRY (CA-29142), page 1: *“There is no action to be taken on App.R. 9 Statement or the Amended Appellant’s brief because this matter has been dismissed and is now closed.”*

These prior decisions and entries is conveniently provided substantial evidence that “The Second Appellate District” seek to sabotage “The Appellant” causation in the Supreme Court of Ohio adversarial proceeding by fraudulently ordering *“This matter is returned to the trial court to re-enter the termination entry.”*

PROPOSITION OF LAW NO. 2:

ORDER AFFECTS A SUBSTANTIAL RIGHT is calculated in “Kissinger.”

[(To prevail in contending that an order affects a substantial right, “Appellants” must demonstrate than in the absence of immediate review of the order they will be denied effective relief in the future.) covered rights include any “right that the United States Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.”
WILHELM-KISSINGER V. KISSINGER, 129 OHIO ST. 3d 90, 2011-Ohio-2317, 950 N.E.2d 516, 517-518 (5-19-2011)]

In pursuant to:

OHIO RULES OF APPELLATE PROCEDURE

RULE 26. APPLICATION FOR RECONSIDERATION; APPLICATION FOR EN BANC CONSIDERATION; APPLICATION FOR REOPENING. (A) (1) RECONSIDERATION;

- (a) Application for Reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or docket of the mailing as required by App.R. 30 (A).*

On June 11, 2021, “The Appellant” was transported to Correctional Reception Center (C.R.C.) in Orient, Ohio from the Montgomery County Jail. This prison keeps records of all

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

4/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

incoming legal mail. "The Appellant" never obtained the notice in pursuant to App.R. 30 (A), because it was sent to his old address of:

Montgomery County Jail
Legal Mail
330 West Second Street
Dayton, Ohio 45402

"The Appellant" was transported to C.R.C. at 7:00 AM in the morning. This was before "The Second Appellate District" had open for business. "The Appellant" had no control on when he is to be transported. However, "The Appellant" defensively placed a "Notice of Change of Address to CRC" as mandated by Federal Law into the Prison Mailing System on June 11, 2021. According to Federal Law, the legal documents placed in the Prison Mailing System on June 11, 2021 should be treated as being filed stamp on June 11, 2021 as required by Federal Law.

On June 11, 2021, "The Second Appellate District" filed ***"DECISION AND FINAL JUDGMENT FILED STATE'S MOTION TO DISMISS WELL TAKEN AND WE SUSTAIN IT. APPEAL NO. 29142 IS DISMISSED. COSTS FOR THIS APPEAL ARE WAIVED."***

On June 11, 2021, ***Notice Pursuant to Appellate Rule 30A Sent To All Parties by Regular Mail COA-Rule 30A Notice Sent on: 06/11/2021 14:05:17:23.***

Considering "The Appellant" did not obtain the App.R. 30 (A) Notice by the Clerk, any Application for Reconsideration will remain timely filed until the Clerk of Court of Montgomery County complete the final element set out by App.R. 26 (A)(1)(a) thereby ***"Made a Note On The Docket of the Mailing"*** as required by App.R. 30(A)."

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

5/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

“The Appellant” filed “*Motion for an Application for Reconsideration of Incompetent Judicial Officials Illegal Judgments*” on August 13, 2021. On August 16, 2021, “The Appellant” filed “*Supplemental to Application for Reconsideration.*” These legal pleadings were a collateral attack upon the July 15, 2021, “DECISION AND ENTRY FILED APPLICATION FOR RECONSIDERATION IS OVERRULED” which was erroneously committed by “The Second Appellate District.”

App.R. 26 (A)(1)(a) stated “Application for Reconsideration of any cause.”

“The Appellant” has the authority to challenge any decision and entry delegated by “The Second Appellate District.”

On July 8, 2021, “The Appellant” filed “Motion of Appellant for Reconsideration of Final Judgment.” On July 15, 2021, “The Second Appellate District” filed “***DECISION AND ENTRY FILED APPLICATION FOR RECONSIDERATION IS OVERRULED.***”

In pursuant to App.R. 26 (1) (b) “Parties opposing the Application shall answer in writing within ten days of service of the Application.”

“The Second Appellate District” foreclosed on “The Appellant” Application for Reconsideration before the State of Ohio had its complete ten days for opposing the Application. Thus, “The Second Appellate District” denied “The Appellant” “Due Process of Law” by not waiting until the ten days has pass before making its judgment on “The Appellant” “Motion of Appellant for Reconsideration of Final Judgment” (Case No. CA-29142).

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

6/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

“The Second Appellate District” is an appellate version of a “Kangaroo Court.” These judicial officials have a history of breaking rules set out in the Ohio Rules of Appellate Procedure and in clear violation of the United States Constitution. Their decisions affect substantial rights. “The Appellant” will be denied effective relief in the future of the Supreme Court of Ohio overlook these atrocities.

PROPOSITION OF LAW NO. 3:

AN IMMEDIATE APPEAL IS NECESSARY by the “Thomasson” case.

*[An order affects a substantial right only if an immediate appeal is necessary to protect the interests of the appealing party. **THOMASSON V. THOMASSON**, 153 Ohio St. 3d 398, 403, 2018-Ohio-2417, 106 N.E. 3d 1239]*

On August 27, 2021, “The Second Appellate District” stated “***This Matter is RETURNED to the trial court to re-enter the termination entry.***” This ordered by “The Second Appellate District” is a tactically manipulation of the judicial process to leave the case open at the trial court level as a derailment preventing “The Appellant” from seeking appellate review from the Supreme Court of Ohio or the United States District Court by way of the “Exhaustion Doctrine.” The interest that need to be safeguarded by this appellate tribunal is “TIME.” “The Appellant” “TIME” is necessary interest that needs to be protected.

There should be no disruptions by “The Second Appellate District” that will “affect” this adversarial proceeding. The Federal Courts have a one (1) year timeframe for the submission of a Habeas Corpus §2254 Application. Therefore, “TIME” is a necessity that this Supreme Court of Ohio need to take ownership in pursuant to addressing the assignments of errors presented by “The Appellant” for immediate appellate review.

PROPOSITION OF LAW NO. 4:

KANGAROO COURT by the United States Supreme Court.

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

2/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

[The Kangaroo Court proceedings in this case involved a more subtle but no less real deprivation of due process of law. RIDEAU V. STATE OF LOUISIANA, 373 U.S. 723, 726, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963)]

In “Blakely,” the United States Supreme Court undertook the “Blakely” case just soon after the State of Washington Supreme Court passed on the appeal. “The Second Appellate District” provided a real deprivation of due process of law rights of “The Appellant.” “The Second Appellate District” intervening with its July 15, 2021 decision and entry that overruled “The Appellant” “Application for Reconsideration” before the mandatory ten (10) day time-table was a denial of due process of law.

PROPOSITION OF LAW NO. 5:

ENLARGEMENT OR REDUCTION OF TIME is presented in App.R. 14.

[(B) ENLARGEMENT OR REDUCTION OF TIME. For good cause shown, the court upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time.

OHIO RULES OF APPELLATE PROCEDURE

RULE 14. COMPUTATION AND EXTENSION OF TIME

(B) ENLARGEMENT OR REDUCTION OF TIME

The problematic issue that circulated primarily within “The Second Appellate District” flagrantly July 15, 2021, decision and entry overruling “The Appellant” “Application for Reconsideration” is that, no party in this particular judicious proceeding filed a motion to instigate “The Second Appellate District” to reduce the time prescribe time of the Ohio Rules of Appellate Procedure. “The Second Appellate District” violated “App.R. 14 (B)” and “App.R. 26 (A)(1)(a).”

PROPOSITION OF LAW NO. 6:

EXTRAORDINARY CIRCUMSTANCES as delegated by App.R. 14.

8/14
**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

[Enlargement of time to file an application for Reconsideration or for En Banc Consideration pursuant to App.R. 26 (A) shall not be granted except on a showing of extraordinary circumstances.

App.R. 14. COMPUTATION AND EXTENSION OF TIME.

(B) ENLARGEMENT OR REDUCTION OF TIME

On August 13, 2021, "The Appellant" filed "*Motion for an Application for Reconsideration of Incompetent Judicial Officials Illegal Judgments*" On August 16, 2021, "The Appellant" filed "*Supplemental to Application for Reconsideration.*" These legal pleadings were a collateral attack upon the July 15, 2021, "***DECISION AND ENTRY FILED APPLICATION FOR RECONSIDERATION IS OVERRULED***" which was filed by "The Second Appellate District." In fact, these legal pleadings were presented in extraordinary circumstances to give "The Second Appellate District" an opportunity to review its own mistakes before they were brought to the Supreme Court of Ohio or a federal court.

PROPOSITION OF LAW NO. 7:

EQUAL PROTECTION OF THE LAWS as dictated by the United States Constitution.

[Nor deny to any person within its jurisdiction the Equal Protection of the Laws. UNITED STATES CONSTITUTION, AMENDMENT XIV (1868)]

"The Appellant" is within the jurisdiction of the State of Ohio. On July 8, 2021, "*The Appellant*" filed "*Motion of Application for Reconsideration of final judgment.*"

In pursuant to "**App.R. 26 (1) RECONSIDERATION (b) Parties opposing the Application shall answer in writing within ten days of service of the Application.**"

"The Second Appellate District Court" made an oxymoronic decision by making a judgment without the State of Ohio opposing the Application for Reconsideration by answering in writing within the ten days after the service of the Application for Reconsideration by the that

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

9/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

was prescribed by “The Second Appellate District Court” July 15, 2021 (**DOCKET ID:**

35602853) “ENTRY FILED APPLICATION FOR RECONSIDERATION IS OVERRULED; MOTIONS TO STRIKE APPELLANT’S AMENDED BRIEF IS OVERRULED AS MOOT”

is a denial of “The Appellant” “Equal Protection of the Laws” rights. This judgment is undoubtedly tainted. “The Appellant” was not given an equal opportunity for the government to manifest a response to his motion.

PROPOSITION OF LAW NO. 8:

EQUALITY OF OPERATION cited in “State V. M.E.”

[The prohibition against the denial of equal protection of the laws requires that the law shall have an equality of operation on persons according to their relation. So long as the laws are applicable to all persons under like circumstances and do not subject individuals to an arbitrary exercise of power and operate alike upon all persons similarly situated, it suffices the Constitutional prohibition against the denial of Equal Protection of the Laws. STATE V. M.E., 2018 OHIO 4715 (OHIO APP. 2018)]

The imbeciles that make up “The Second Appellate District Court” are tactically a group of judicial officials whom had manipulated the appellate review by assisting the Montgomery County Prosecutor’s Office as their judicial agents. Tucker, Welbaum, and Epley are a group of idiots whom could not act impartial in any judicious proceeding. “The Appellant” was deprived of an “*Equality of Operation*” of like individuals whom filed an “Application for Reconsideration” that are given the opportunity to wait ten days for the other party to make a response.

PROPOSITION OF LAW NO. 9:

SUMMARY JUDGMENT by the Supreme Court of Ohio.

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

10/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

[When a motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, Summary Judgment, if appropriate, shall be entered against him.” DRESHER V. BURT, 75 Ohio St. 3d 280, 293, 662 N.E.2d 264, 274, 1996-Ohio-107]

In the sequence of events, “The Appellant” skillfully deposit this “*Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se*” before this appellate tribunal. The facts therein cannot possibly be challenge by the State of Ohio successfully. “The Appellant” was disenfranchise by “The Second Appellate District Court” unconstitutional actions. The atrocities manifested by “The Second Appellate District Court” was a violation of a substantial Federal Constitution right. By applying the federal “Plain-Error Review” in this adversarial proceeding, judgment should be reversed or vacated and “The Appellant” should be release from present confinement. The evidence in this pleading does not need a transcript to prove the facts as a matter of law. The docket sheet can provide the passage to the truth seeking process. The Appellee cannot undoubtedly provide a proper argument for “The Second Appellate District Court” unethical actions.

PROPOSITION OF LAW NO. 10:

SUMMARY JUDGMENT by the Ohio Supreme Court.

[Our review of Summary Judgment ruling is de nova. Doe v. Shaffer (2000), 90 Ohio St. 3d 388, 390, 738 N.E.2d 1243. Accordingly, we apply the same standard as the trial court and

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

11/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

court of appeals in this case. Civ.R. 56 (c) provides that Summary Judgment shall be granted when the filings in the action, including depositions and affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law. BONACORSI V. WHEELING & LAKE ERIE Ry. Co., 95 Ohio St. 3d 314, 319, 2002-Ohio-2220, 767 N.E.2d 707, 713]

“The Second Appellate District Court” consistently committed erroneous decision during the judicious proceeding of case number CA-29142. The movant has proven that “The Second Appellate District” violated “App.R. 14 (B)” and “App.R. 26 (A)(1)(a).” As a result, these violation had deprived “The Appellant” “Due Process of Law” and “Equal Protection of the Laws” of the Fourteenth Amendment of the United States Constitution. “The Appellant” challenge Mr. Andrew T. French or anybody of the Montgomery County Prosecutor’s Office to make a response to this argument.

In conclusion of “The Appellant” ***“Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se”***, below is the following relief sought:

- (1) DISMISS the indictment of case number “2019 CR 01878” in the Montgomery County Common Pleas Court with “Prejudice”;
- (2) ORDER the RELEASE of “The Appellant” from current custody of the Ohio Department of Rehabilitation and Correction of:
GRAFTON CORRECTIONAL INSTITUTION
2500 AVON BELDEN ROAD
GRAFTON, OHIO 44044;
- (3) ORDER the RELEASE of “The Appellant” Property from the:
DAYTON POLICE DEPARTMENT
305 WEST THIRD STREET
DAYTON, OHIO;
- (4) REVERSED the FINAL JUDGMENT of the Court of Appeals of Ohio Second Appellate District of Montgomery County case number CA-29142 of June 11, 2021.

**MOTION FOR SUMMARY JUDGMENT
OF APPELLANT MR. DEREK FOLLEY, PRO SE**

12/14

ARGUMENT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

RESPECTFULLY,

Mr. Derek Folley Pro Se

MR. DEREK FOLLEY, PRO SE

#A-787384

GRAFTON CORRECTIONAL INSTITUTION

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GRAFTON, OHIO 44044;

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“PRO SE” LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

**MOTION FOR SUMMARY JUDGMENT
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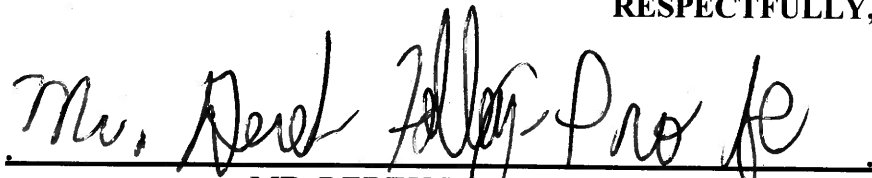
13/14

CERTIFICATE OF SERVICE

A true and accurate copy of this "Motion for Summary Judgment of Appellant Mr. Derek Folley, Pro Se" was sent to Mr. Andrew T. French, ESQ., of the Montgomery County Prosecutor's Office on the date that it was filed stamp by either United States Postal Mail at:

MR. ANDREW T. FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR'S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT'S BUILDING
P.O. BOX 972
301 WEST THIRD STREET, 5TH FLOOR
DAYTON, OHIO 45422;
by e-filing, or emailing at FRENCHA@MCOHIO.ORG.

RESPECTFULLY,



MR. DEREK FOLLEY, PRO SE # A-787-384
GRAFTON CORRECTIONAL INSTITUTION
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"PRO SE" LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY

14/14