

IN THE SUPREME COURT OF OHIO

MR. DEREK FOLLEY, PRO SE

CASE NO. GEN-2021-1054

APPELLANT

v.

STATE OF OHIO

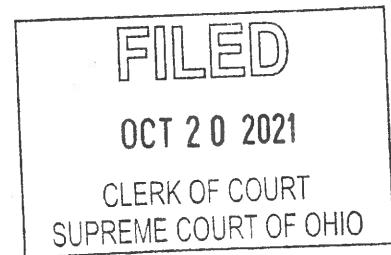
ON APPEAL FROM THE COURT
OF APPEALS OF OHIO SECOND
APPELLATE DISTRICT COURT
OF MONTGOMERY COUNTY
CASE NO. CA-29142

APPELLEE

TRIAL COURT CASE NO. 2019 CR 01878

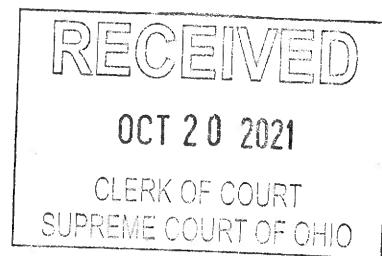
S.Ct.Prac.R. 4.01. (A)(1) MOTION FOR LEAVE TO SEEK
RELIEF BY FEDERAL REVIEW-
OF APPELLANT MR. DEREK FOLLEY, PRO SE

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



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

MR. ANDREW THOMAS FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR’S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT’S BUILDING
P.O. BOX 972
301 WEST THIRD STREET
DAYTON, OHIO 45422
Phone: (937) 225-4117
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COUNSEL FOR APPELLEE, STATE OF OHIO

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Now comes, Mr. Derek Folley, Pro Se, hereafter, "The Appellant" hereby moves this Supreme Court of Ohio with this "**S.Ct.Prac.R. 4.01. (A)(1) Motion For Leave To Seek Relief By Federal Review- Of Appellant Mr. Derek Folley, Pro Se**" in pursuant to:

THE SUPREME COURT OF OHIO RULES OF PRACTICE
SECTION 4. GENERAL MOTIONS AND APPLICATIONS.

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" shall make a presentment of this "**S.Ct.Prac.R. 4.01. (A)(1) Motion For Leave To Seek Relief By Federal Review- Of Appellant Mr. Derek Folley, Pro Se**" that will be support in the memorandum of the law. None of "The Appellant" motion have been rule upon of granted by this tribunal. "The Appellant" will seek federal review within thirty (30) days from the filed stamp of this legal pleading.


RESPECTFULLY,
MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
2500 AVON BELDEN ROAD, LOCATION: B/6/200
GRAFTON, OHIO 44044;
#2- C/O MS. LISA FOLLEY
POST OFFICE BOX 18174
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"PRO SE" LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

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MEMORANDUM OF THE LAW

PROPOSITION OF LAW No. I:

FEDERAL REVIEW by the United States Supreme Court.

[Because the supposed renewal, at the time of jury selection, of a black criminal defendant's pretrial motion in the state trial court alleging the prosecution's use of racially discriminatory peremptory challenges, is not a fact necessary to the United States Supreme Court's decision, on certiorari, that the pretrial motion had properly stated a claim under the equal protection clause of the Federal Constitution's Fourteenth Amendment and that a state court rule regarding the timeliness of such a motion COULD NOT BAR FEDERAL REVIEW OF THE CONSTITUTIONAL ISSUE, the Supreme Court will assume for purposes of discussion that the defendant did not press the motion again. FORD V. GEORGIA, 498 U.S. 411, 111 S.Ct. 850, 112 L.E.d.2d 935 (1991)]

It is quite evident that "The Appellant" is half Black and half Native American criminal defendant whom was before the trial court. It is also substantiated that "The Appellant" presented a "Motion For Summary Judgment" and "Motion For Default Judgment" within this adversarial proceeding that were unopposed motion which has not been rule on by this appellate tribunal. By the rules of exhaustion, "The Appellant" shall implement his "Speedy Trial" claim before this tribunal to utilize its judicious task in determining whether or not "The Appellant" "Speedy Trial" rights had been violated by the trial court. Furthermore, if "The Appellant" "Speedy Trial" right had been violated, than, "The Appellant" request that this Supreme Court of Ohio ORDER the RELEASE of "The Appellant" from present confinement.

PROPOSITION OF LAW No. II:

SPEEDY TRIAL RIGHT by the United States Constitution.

[In all criminal Prosecutions, the accused shall enjoy the right to a Speedy and Public Trial, UNITED STATES CONSTITUTION, AMENDMENT VI (1791)]

In this appellate causation, this designated introduction segment shall notable be the commencement of "The Appellant" "Speedy Trial" right.

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PROPOSITION OF LAW No. III:

FOURTEENTH AMENDMENT NEXUS TO SPEEDY TRIAL RIGHT by the United States Supreme Court.

[The Fourteenth Amendment (Applying) the Sixth Amendment Right to a Speedy Trial is enforceable against the States as one of the most basic rights preserved by our Constitution. DICKEY V. FLORIDA, 398 U.S. 30, 37, 90 S.Ct. 1564, 26 L.Ed.2d 26 (1970)]

This judicial proceeding was instigated in the State of Ohio. "The Appellant" vigorously relied upon his "Equal Protection of the Laws" right for this State of Ohio judicial forum to thoroughly render its judicial duty for a "Speedy Trial" assessment. Thereby, "The Appellant" will have his Federal "Due Process of Law" and "Equal Protection of the Laws" rights simultaneously.

PROPOSITION OF LAW No. IV:

ONE YEAR PRESUMPTIVELY PREJUDICIAL RULE to initiate the Speedy Trial Balancing Test by the Federal Courts.

[The Court acknowledge that lower courts had concluded that depending on the charges, a delay that approaches one year would be "Presumptively Prejudicial," triggering the Speedy Trial inquiry and appeared to accept that conclusion. UNITED STATES V. WALKER, 92 F.3d 714, 717 (8th Cir.1996)]

*On June 7, 2019, "The Appellant" was placed in confinement at the Montgomery County (Ohio) Jail. On May 17, 2021 is when the trial commenced. There was almost twenty-three (23) months of delay. This almost double the one-year Pre-Requisite to trigger the *Speedy Trial Balancing Test*.*

PROPOSITION OF LAW No. V:

BARKER BALANCING TEST FOR SPEEDY TRIAL RIGHT ASSESSMENT by the United States Supreme Court.

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[IV a Balancing Test necessarily compels court to approach Speedy Trial cases on An Ad Hoc Basis. We can do little more than identify some of the factors which courts should asses in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of Delay, The Reason for Delay, the Defendant's Assertion of his right, and prejudice to the defendant. BARKER V. WINGO 8212 5255, 407 U.S. 517, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101, 116-117 (1972)]

The above Barker Balancing Test has been implemented by the United States Supreme Court since 1972.

PROPOSITION OF LAW No. VI:

OHIO TRIPLE COUNT by way of the *Ohio Revised Code*.

*[A person against whom a charge of felony is pending:
(2) Shall be brought to trial within two hundred seventy days after the person arrest.
For purpose of computing time under division (A), (B), (C) (2) and (D) of this section, each day during which the accused is held in jail in lieu on bail on the pending charge shall be counted as three days. This division does not apply for purpose of computing time under division (C) (1) of this section. OHIO REVISED CODE 2945.71 TIME FOR TRIAL]*

1. LENGTH OF DELAY

“The Appellant” had a three (3) count indictment for unlawful sexual conduct with a minor. These charges are a felony three offense. “The Appellant” was placed in confinement on **June 7, 2019**. The trial was on **May 17, 2021** is when the trial commenced. “The Appellant” was in pretrial confinement for over **689 actual days** which amount to **2,067 days** of the **Ohio Triple Count Provision**. Thus the **Ohio Triple Count Provision** stated that the accused must be brought to trial within **90 actual days** when the accused is in jail in lieu of bail. “The Appellant” was in jail in lieu of bail from June 7, 2019 to and beyond May 17, 2021.

PROPOSITION OF LAW No. VII:

DELAYS COUNT AGAINST THE GOVERNMENT AND NOT THE DEFENSE as stipulated by the “*Tigano*” court.

2. REASON FOR DELAY

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[It will be an exceptional case where, as here, a delay caused by a defense attorney counts against the government, Under the Barker analysis, and not the defense. Unless the record shows otherwise, we normally presume that a defense attorney is carryout his or her clients chosen trial strategy and that any delays resulting from that strategy count against the defendant. UNITED STATES V. TIGANO, 880 F.3d 602, 616-617 (2nd Cir. 2018)]

“The Appellant” was apprehended by the Dayton (Ohio) Police on June 7, 2019. One June 20, 2019, “The Appellant” instructed former defense counsel Kevin Lennen that he did not want anything to stop his speedy trial right and clock. “The Appellant” asserted his speedy trial right also on June 20, 2019 to the Montgomery (Ohio) County Sheriff, Captain J. Stephens by way of the jail kiosk system.

TO WIT.

[CAPTAIN J. STEPHENS

Case No. 2019 CR 01878 ATTENTION TO: DEAR JUDGE BARBARA P. GORMAN today I was at the hearing in pursuant to my indictment. The Public Defender that was present stated that I had a court appointment attorney that was assigned to my case. She stated that I waived my right to a speedy trial. However, I did not agree to this. I do not waive my right to a speedy trial. I want a Speedy Trial RESPEC TFULLY, MR. FOLLEY]

SEE: EXHIBIT A-1

Captain J. Stephens RESPONDED ON 6/21/19 AT 8:51 AM

[I CUT AND PASTED YOUR MESSAGE IN AN EMAIL TO HER BAILIFF]

SEE: EXHIBIT A-1

On JUNE 24, 2019 AT 8:58 PM, “The Appellant” sent another correspondence by way of the jail kiosk system.

TO WIT:

[CAPTAIN J. STEPHENS

I WANT TO LET YOU KNOW THAT I GAVE MY MOTION FOR A SPEEDY TRIAL TO REC. OFFICER J. HAINES AND HE STATED THAT HE WILL PUT IT INSIDE OF YOUR MAILBOX SO THAT YOU CAN HAVE IT FILED FOR ME. RESPECTFULLY, DEREK FOLLEY]

SEE: EXHIBIT A-2

RESPONSE BY CAPTAIN J. STEPHENS ON 6-25-2019 at 3:03 PM.

[got it and it's going to the court]

SEE: EXHIBIT A-2

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On June 27, 2019 at 12:58 PM, "The Appellant" corresponded a request to Montgomery County Jail Staff.

TO WIT:

[CAPTAIN J. STEPHENS

Have both of my motion been filed with the court of common pleas yet? I am referring to the: Motion for A Speedy Trial 2) Motion to cite "I did not engage" defense. It is imperative that my motion have been file stamp. I understand that leaving Ohio means that I will never see my children again, however that is the price that I have to pay. I maybe a horrible husband but I am a great dad. My civil rights should not be violated in pursuant to this matter

RESPECTFULLY DEREK FJ #4,594,600

SEE: EXHIBIT A-3

Note by JAIL BOOKKEEPER P. SURBER on 6/27/2019 at 1:17 PM

[ASKED FOR YOU SPECIFICALLY]

SEE: EXHIBIT A-3

RESPONSE BY CAPTAIN J. STEPHENS on 06/27/2019 at 1:51 PM

[SGT. ROSENKRANZ FILED IT WITH THE COURT]

SEE: EXHIBIT A-3

On Tuesday, July 2, 2019, "The Appellant" "Motion for a Speedy Trial" was filed stamp at 11:53 AM (DOCKET ID: 33572456);

SEE: EXHIBIT "B"

On July 5, 2019, "The Appellant" found out that former defense counsel, Mr. Kevin L.Lennen, ESQ., deviated from "The Appellant" chosen trial strategy of not to tolled the Speedy Trial Clock by filing:

- (1) "Motion to Suppress and Memorandum in Support", and
- (2) "Motion for Plea of Not Guilty by Reason of Insanity and Suggestion of Incompetency to Stand Trial" on June 27, 2019.

Thereby, "The Appellant" sent the following REQUEST on July 5, 2019 AT 1:02 PM on the Montgomery County Jail Kiosk System.

TO WIT:

[CAPTAIN J. STEPHENS

PLEASE FORWARD TO: JUDGE BARBARA P. GORMAN

I, DEREK O. FOLLEY hereby FIRED KEVIN L. LENNEN, ESQ. as my attorney in pursuant to the case against me as of July 5, 2019 the time that this message was sent. Keep all motions

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that I filed in pursuant to my case on record and make an order on them as well. And, I wish Kevin L. Lennen, ESQ., the best in his endeavors. RESPECTFULLY,
DEREK O. FOLLEY # 4,635,600

SEE: EXHIBIT A-4

RESPONSE BY CAPTAIN J. STEPHENS on 07/05/2019 at 2:24 PM

[OK DEREK I SENT THIS TO MR LENNEN AS WELL]

SEE: EXHIBIT A-4

There is insurmountable evidence that Mr. Kevin Lennen deviated from “The Appellant” chosen trial strategy and subsequently committed a “*Tigano*” violation. Mr. Lennen could have withdrawal his motions prior to the forensic hearing but chosen not to do so. Mr. Kevin L. Lennen, ESQ., knew that “The Appellant” made an assertion of his Speedy Trial Right. However, Mr. Lennen clearly ignored his client chosen trial strategy.

On July 12, 2019, “The Appellant” filed “*Motion to Waiver of Counsel*.”

On August 23, 2019, “The Appellant” filed a “Pro Se” hybrid “*Motion to Withdrawal Motion To Suppress*.”

PROPOSITION OF LAW No. VIII:

SPEEDY TRIAL BELONGS TO DEFENDANT as outlined by the “*Tigano*” court.

[Accordingly, we conclude that in the context of a Speedy Trial action such as this one, a defendant’s assertion of his own right to a speedy trial- even though ignored or contravened by his counsel-is the relevant fact for purposes of Sixth Amendment Analysis. Quite simply, the right to a Speedy Trial belongs to the Defendant, not to Defendant’s Counsel. UNITED STATES V. TIGANO, 880 F.3d 602, 618 (2nd Cir. 2018)]

The delayed from June 27, 2019, to August 27, 2019 should be weighed against the State of Ohio since Mr. Lennen *clearly ignored his clients chosen trial strategy* of not to stop the Speedy Trial Clock. “The Appellant” never seek to file a “*Motion to Suppress*” in the trial court judicious proceeding or to “*Plead Not Guilty By Reason of Insanity*.” By this evidence, Mr. Lennen committed a “*Tigano*” Violation and the delays cause by Mr. Lennen must be

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charged to the State of Ohio. Thus, the *Speedy Trial Right belongs to* "The Appellant" *and not to* Mr. Lennen.

PROPOSITION OF LAW No. IX:

DELAY TO HAMPER THE DEFENSE as cited by the "Barker" Court.

[A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. BARKER V. WINGO 8212 5255, 407 U.S. 517, 531, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)]

On Thursday, **August 29, 2019** at **4:48 PM** trial court filed **ORDER FINDING DEFENDANT COMPETENT TO STAND TRIAL (DOCKET ID: 33771378)**.

TO WIT:

[This matter came before the court on August 28, 2019, the defendant being present in open court with counsel for a competency hearing. All parties stipulated to the content of the psychiatric report as submitted by the Forensic Psychiatry Center For Western Ohio, and, upon review of the report and evidence, the court finds that defendant is presently competent to stand trial.]

SEE: EXHIBIT

On **September 13, 2019**, Judge Barbara P. Gorman **ORDERED** of appearance setting **FINAL PRE-TRIAL** for **November 4, 2019** and **TRIAL** for **NOVEMBER 18, 2019**.

On Thursday, **September 26, 2019**, trial court filed: **"Decision, Order, and Entry RE: MOTIONS"**, hereafter, **"Docket ID: 33861583"**
TO WIT:

[On September 25, 2019, a hearing on pending motions in the above-captioned matter was held in open court. For the reasons set forth on the record, the following motions filed by defendant Derek O. Folley were OVERRULED: 1. Motion For Polygraph Examination FILED ON September 23, 2019; and, 2. Motion To Charge Any Witness That Commit Perjury With Maximum Sentence filed on September 23, 2019. Defendants Motion To Wear Civilian Clothing is SUSTAINED in part as it relates to his right to wear civilian clothing at trial.]
SEE: EXHIBIT

On Tuesday, **October 8, 2019**, trial court filed: **"ENTRY RE: DEFENDANT'S MOTION TO ACCESS THE COURT,"** hereafter, **"DOCKET ID: 33899778"**.

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TO WIT:

[On October 3, 2019, a hearing on “*Motion To Access The Court and Memorandum in Support Of Motion To Access The Court*,” hereafter, “DOCKET ID: 33899778.”

TO WIT:

[On October 3, 2019, a hearing on Motion To Access The Court and Memorandum In Support Of Motion To Access The Court filed by Defendant Derek O. Folley (“DEFENDANT”) was held in open court. DEFENDANT FOLLEY’S made several requests. Captain Brad Daugherty from the Montgomery County Jail and Defendant’s Stand-By Counsel John Pinard were present. Set forth below at the court’s ruling at the hearing on those requests: (i) Use A Professional Visiting Room At The Montgomery County Jail: DEFENDANT will be permitted to Use the Professional Visiting Rooms In Accordance With Jail Policy...]

STATE’S SUBPOENAS

**On October 29, 2019, STATE SUBPOENA FILED AND ISSUED, OUT OF COUNTY
SHERIFF TO SERVE M.R.W. (a minor) APPEARING MONDAY, NOVEMBER 18, 2019
FILED BY ASHLEY ADKINSON.
SEE: EXHIBIT**

**On October 29, 2019, STATE SUBPOENA FILED AND ISSUED, OUT OF COUNTY
SHERIFF TO SERVE CHERYL MAYES APPEARING MONDAY, NOVEMBER 18, 2019
FILED BY ASHLEY ADKINSON.
SEE: EXHIBIT**

The relatively evidence of the two (2) above subpoenas, is, that, “M.R.W.” is the State’s Star-Witness and Cheryl Mayes is the grandmother and at the time the legal guardian of the State’s Star-Witness.

CANCELLATION OF FINAL PRE-TRIAL

On November 4, 2019, is the date in which “The Appellant” was initially schedule for “Final Pre-Trial.” However, “The Accuser” and her legal guardian at the time subpoenas had seasonably abandoned the adversarial proceeding. Their subpoenas never returned to the

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Montgomery County Common Pleas Court by the time of the November 4, 2019, Final Pre-Trial with the **STATUS** of **HAVING BEEN SERVED**.

SUSTAINED FOR A BENCH TRIAL

On Tuesday, **November 5, 2019**, the trial court filed "**DECISION, ORDER, AND ENTRY SUSTAINING DEFENDANT'S MOTION TO WAIVE TRIAL BY JURY: OVERRULING VARIOUS MOTIONS FILED BY DEFENDANT**," hereafter, "**DOCKET ID: 33898735.**"

TO WIT:

[Defendant Derek O. Folley ("DEFENDANT") filed his Motion To Waive Trial By Jury" on October 18, 2019. Upon review of said motion, the court finds it is well-taken and hereby SUSTAINS the SAME. Accordingly, DEFENDANT will be tried by the bench.]
SEE: EXHIBIT

On **November 6, 2019**, the trial court ORDERED "The Appellant" to a second competency evaluation.

The trial court only issued the ORDER for the Competency Evaluation in **ORDER TO HAMPERED THE DEFENSE** since the State's Star-Witness and her grandmother subpoenas did not return to the Montgomery County Common Pleas Court with the **STATUS** of having been **SERVED**. Furthermore, Dayton Police Detective Zachary Fehrman needed more time for his investigation.

On Friday, **November 8, 2019**, "The Appellant" filed "**NOTICE DOES NOT WAIVE SPEEDY TRIAL**" as a "Pro Se" hybrid motion.

SMOKING GUN EVIDENCE

On **November 19, 2019**, Dayton (Ohio) Police Detective Zachary Fehrman made a REQUEST to the **MIAMI VALLEY REGIONAL CRIME LABORATORY** for the following:

- (1) One Sexual Assault Evidence Collection Kit from "M.R.W.;" and,**
- (2) One Sexual Assault Evidence Collection Kit from Derek Folley.**

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The Laboratory Report was not **COMPLETED** until April 22, 2020.

SEE: **EXHIBIT SMOKING-GUN**

PROPOSITION OF LAW No. X:

CORRUPTED JUDGES by the United States Supreme Court.

CORRUPTED JUDGES BY

MR. JUSTICE BREYER

[The trial judge- particularly one such as the judge in this case, who presided over one of Edwards' Competency Hearings and his two trials-will often prove best able to make more fine-tuned mental capacity decisions, tailored to particular defendant's individualized circumstances... (C) Indiana's proposed standard, which would deny a criminal defendant the right to represent himself at trial if he cannot communicate coherently with the court or a jury, is REJECTED because this COURT is uncertain as to how that standard would work in practice. The COURT also DECLINES INDIANA'S REQUEST TO OVERRULE FARETTA because today's opinion may well remedy the unfair trial concerns previously leveled against the case. INDIANA V. EDWARDS, 128 S.Ct. 2379, 171 L.Ed.2d 345, 554 U.S. 164, 165-166 (2008)]

<u>EVALUATOR</u>	SCOTT T. KIDD, PSY	MASSIMO DE MARCHIS CLINICAL PSYCHOLOGIST
<u>DATE</u>	7/23/2019	11/11/2019
<u>JUDGE</u>	<i>He knew the defendant would be sentenced by the judge if he pleads guilty, and the case would be closed</i>	<i>Her added, The judge is supposed to be impartial, interpret the rule of law, and at the end of the trial, determine guilt or innocence.</i>
<u>PLEADINGS</u>	<i>Mr. Folley stated that GUILTY, NOT GUILTY, NO CONTEST and NOT GUILTY</i>	<i>-The Defendant accurately described the available pleas (Guilty, Not Guilty, No Contest,</i>

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	<p>BY REASON OF INSANITY are <i>pleas available to the defendant.</i></p> <p><i>-Mr. Folley said the defendant pleads not guilty when he is innocent of the charges.</i></p> <p><i>He knew the case goes to trial if the defendant pleads NOT GUILTY. He said the defendant is free to leave and return to his life if he is found NOT GUILTY.</i></p> <p>Mr. Folley said NOT GUILTY BY REASON OF INSANITY refers to a defendant who is mentally ill, such as schizophrenia, when he committed the crime. He said the defendant would be evaluated by a psychiatrist. He said the insanity acquitter would be sent to a state mental institution if he is found NOT GUILTY BY REASON OF INSANITY.</p>	<p><i>and Not Guilty By Reason Of Insanity).</i></p> <p><i>-He understand that by pleading guilty, he would give up his right to a trial and would be totally</i></p>
<u>PROSECUTOR</u>	<p><i>Regarding the function of the Prosecutor, Mr. Folley stated, "They try to make sure the defendant is found guilty at the trial and they represent the person that filed the complaint against the accused."</i></p>	<p><i>He described the role of the prosecutor as "provide justice."</i></p> <p><i>The prosecutor has been trying to keep me in jail.</i></p>

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<u>JURY</u>	<i>Mr. Folley said the jury listens to both sides and determines whether or not the defendant is guilty based on the evidence.</i>	<i>The role of the jury as “find you guilty or not guilty, all 12 of them need to agree, they have to be 100%.</i>
<u>WITNESSES</u>	<i>Mr. Folley said witnesses testify about the alleged offense or about anything related to the case.</i>	<i>The role of the witnesses as “give testimony to the events, honest fashion.”</i>
<u>DEFENSE COUNSEL</u>	<i>When asked about defense attorney's responsibilities, Mr. Folley stated, “They represent the defendant make sure the defendant receives a “Not Guilty Verdict,” files motions for the defendant, and “give effective counsel.</i>	<i>His role as his own legal counsel as “prepare an excellent defense in regard to my case.”</i>
<u>THE ACCUSED TESTIMONY</u>		<i>Mr. Folley stated that no one could ask him to testify, as he could not be a witness against himself. He also understood that should he testify, then the prosecutor could ask him questions and that if he did not wish to answer them, he could take the fifth.</i>

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<u>RESULTS</u>	COMPETENT TO STAND TRIAL	NOT COMPETENT TO STAND TRIAL
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SEE: EXHIBIT &

EXHIBIT

“The Appellant” answered more question in the second Competency Evaluation and was correct in both. Thus, Mr. Justice Breyer was absolutely correct on the fraudulent competency evaluation by unethical trial judges.

The trial court **SUSTAINED** three motions prior to instigating a Competency Evaluation on **November 6, 2019**. The trial court stated in its actions that “The Appellant” is competent to stand trial when it **SUSTAINED** his “*Motion to Waive Trial By Jury*” on **November 5, 2019**.

Thereby, the trial court, the prosecutor’s office, and the Dayton Police Detective conspired to fraudulently have “The Appellant” sent to Summit Behavior Healthcare in Cincinnati, Ohio. The State of Ohio was not prepared to go to trial on **November 18, 2019**.

“The Appellant” graduated from Central State University of Wilberforce, Ohio with a Bachelor Degree in Political Science (English/Pre-Law). He worked for Thompson, Hine, & Flory, P.L.L. fulltime under the supervisory of his mentor Mr. Lawrence T. Burick, ESQ., while attending Central State University full-time as a student. “The Appellant” attended law school in Los Angeles, California for two fall semesters. Thereby, “The Appellant” was very

COMPETENT TO STAND TRIAL. The competency Evaluations were undoubtedly fraudulent. The trial court wanted a “*Fine-Tuned*” Competency Evaluation that would tailor to “The Appellant” individualized personality. This was a “Due Process of Law” violation in the trial court adversarial proceeding.

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<u>DATE</u>	<u>NUMBER OF DAYS</u>	<u>WEIGH AGAINST</u>	<u>REASON FOR ACTION</u>
6/27/2019 THRU 8/29/2019	SIXTY (60) DAYS	THE STATE OF OHIO	“TIGANO” VIOLATION BY MR. LENNEN
9/11/2019 THRU 9/23/2019	TWELVE (12) DAYS	THE STATE OF OHIO	PENDING MOTIONS
11/6/2019 THRU 8/25/2020	AT A MINIMUM- TWO HUNDRED SEVENTY (270) DAYS	THE STATE OF OHIO	TRIAL COURT CONSPIRED TO HAMPER THE DEFENSE BY WAY OF FRAUDULENT COMPETENCY EVALUATIONS
9/4/2020 THRU 10/13/2020	THIRTY-NINE (39) DAYS	THE STATE OF OHIO	NO MOTIONS PENDING BY THE APPELLANT
	381 DAYS	90 DAYS BY OHIO TRIPLE COUNT PROVISION	TWO HUNDRED NINETY-ONE (291) LEFT OVER AFTER SUBTRACTING THE OHIO TRIPLE COUNT

PROPOSITION OF LAW No. XI:

ASSERTION OF SPEEDY TRIAL by the “*Black*” court.

**3. ASSERTION OF DEFENDANT
SPEEDY TRIAL RIGHT**

[The third Barker Factor weighs against a defendant who weakly asserts his Speedy-Trial right long after he could have, but the factor weighs in favor of a defendant who early, frequently, and forcefully asserts his right. UNITED STATES V. BLACK, 930 F.3rd 1099, 1120 (10th Cir. 2016)]

“The Appellant” was arrested on June 7, 2019. He asserted his Speedy Trial Right on June 20, 2019 and July 2, 2019 (by motion)

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SEE: EXHIBIT A-1 & EXHIBIT "B"

“The Appellant” reached and passed the element for asserting the Speedy Trial right **early**. “The Appellant” asserted his Speedy Trial right in over forty (40) occurrences in the trial court adversarial proceeding. Thus, “The Appellant” met and exceeded the element for asserting his Speedy Trial right **frequently**. “The Appellant” made over forty (40) Speedy Trial assertions by motion. Thereby, “The Appellant” again exceeded the element for **forcefully** asserting his Speedy Trial right.

SEE: EXHIBITS A-1 through EXHIBIT BO-2

By these evidence it is revealed that “The Appellant” asserted his Speedy Trial right early, frequently, and forcefully. This factor weighs strongly in “The Appellant” favor.

PROPOSITION OF LAW No. XI:

PREJUDICE TO THE DEFENDANT by the United States Supreme Court in “Barker.”

**4. PREJUDICE TO
THE DEFENDANT**

[A fourth factor is Prejudice To The Defendant. Prejudice of course, should be assessed in light of the interests of defendants which the Speedy Trial Right was designed to protect. This Court has identified three such interests: (i) To Prevent Oppressive Pretrial Incarceration; (ii) To Minimize Anxiety and Concern of The Accused; and, (iii) To Limit the Possibility that the Defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. BARKER V. WINGO 8212 5255, 407 U.S. 514, 532, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)]

(i) To Prevent Oppressive Pretrial Incarceration

While being detained at the Montgomery County Jail, Ms. Jessika Folley had taken \$3,600 from the Checking Account of “The Appellant” checking account with Bank of America and closed the account soon after. In August 2019, “The Appellant” was attacked while sleeping as he was housed at the Montgomery County Jail. He was transported to Grandview Hospital

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Emergency Room to have his injuries addressed. While at Summit Behavior Healthcare of Cincinnati, Ohio, “The Appellant” was attacked from behind while he was playing chess. He suffered neck and back pains as a result contributed to the incident.

SEE: EXHIBIT

**(ii) To Minimize Anxiety And
Concern of the Accused**

Ms. Jessika Folley obtained an order from child Support against “The Appellant.” “The Appellant” feared and have anxieties of being sent back to prison for failure to keep up with the Child Support payments. He also has anxieties about losing his license for failure to pay child support.

PROPOSITION OF LAW No. XII:

IMPAIRED THE DEFENSE by “Blanas.”

**(iii) To Limit the Possibility That
The Defense Will Be Impaired**

PREJUDICE BY MCNEELY

[In this case, the defense has been hindered by the passage of time, particularly given the nature of the charges which are most likely proved or rebutted through testimonial evidence. In addition, Petitioner indicates that he has been forced to undergo treatment with medication that impairs his memory, thus aggravating the impact of the delay on his ability to defend himself. MCNEELY V. BLANAS, 336 F.3d 822, 832 (9th Cir. 2003)]

On Tuesday, **February 11, 2020**, the trial court ORDERED “The Appellant” with **“ORDER COMMITTING DEFENDANT TO SUMMIT BEHAVIORAL HEALTHCARE ON INCOMPETENT RESTORABLE FINDING O.R.C. Section 2945.38 (B).”** SEE: EXHIBIT DDD-1; DDD-2; DDD-3; and, DDD-4.

While at Summit Behavioral Healthcare (“SBC”), “The Appellant” was **FORCE TO**

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UNDERGO TREATMENT by a Court **ORDERED** and prescribed "*Risperdal*." This "*Risperdal*" impaired the thinking ability and delayed the reaction of "The Appellant." As a "Pro Se" litigant, these side effects immediately subjected the defense to suffered a great deal of prejudice at trial do to his **delay of "objections."**"

SEE: EXHIBIT SBH-1; SBH-2; SBH-3; SBH-4; SBH-5; and, SBH-6.

CONCLUSION

"The Appellant" hereby states that thirty (30) days from this legal pleading that he will seek federal review based upon the uncontested "Notice of Appeal", "Motion For Summary Judgment", the "Speedy Trial" claim, and "Motion For Default Judgment" in this judicial proceedings.

RESPECTFULLY,



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

**JURISDICTION STATEMENT FOR THE
MERIT BRIEF OF APPELLANT MR. DEREK FOLLEY, PRO SE**

CERTIFICATE OF SERVICE

A true and accurate copy of this "**S.Ct.Prac.R. 4.01. (A)(1) Motion For Leave To Seek Relief By Federal Review- Of Appellant Mr. Derek Folley, Pro Se**" was sent to **MR. ANDREW T. FRENCH, ESQ. (0069384)** of the Montgomery County Prosecutor's Office-Appellate Division by the Clerk of the Court of the Supreme Court on the date that this legal pleading was filed stamp by either e-filing, United States Postal Mail at the address of:

**MR. ANDREW THOMAS FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR'S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT'S BUILDING
P.O. BOX 972
301 WEST THIRD STREET
DAYTON, OHIO 45422**
Or by **emailing** at: FrenchA@MCOhio.org.

RESPECTFULLY,



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

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