THE SUPREME COURT OF OHIO

CLIFFORD J. BOWEN	:	22-0570
Appellant/Petitioner,	:	
	:	**On Appeal from the Licking**
	:	**County Court of Appeals,**
v.	:	**Fifth Appellate District**
	:	
STATE OF OHIO	:	**Court of Appeals**
	:	**Case No. 21 CAO 106**
Appellees,	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT CLIFFORD J. BOWEN

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EXPLANTION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTAL CONSTITUTIONAL QUESTION

This cause present to critical issues for the future of Justice in Ohio: (1) whether the incarcerated inmates have a right to justices and the right to either be exonerated by the same DNA evidence and testing that the State of Ohio uses to convict and (2) whether the Due Process of Law should be applied in the use of DNA evidence that the State of Ohio uses to obtain a zealous conviction but allows the fundamental injustice of the State's incarcerated to be exempt from those who are trying to prove their innocents through the judicial process of obtaining DNA testing.

Addressing the statutory requirements for post conviction **testing** of deoxyribonucleic acid (**DNA**), pursuant to R.C. 2953.71, et seq., it has been determined that a trial court should exercise its discretion as to whether it will first determine whether the eligible **inmate** has demonstrated that the **DNA testing** would be outcome determinative or whether it should order the prosecuting attorney to prepare and file a **DNA** evidence report

An abuse of discretion means more than an error of law or judgment. An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable.

Under the amended version of R.C. 2953.71(L), regarding deoxyribonucleic acid (**DNA**) **testing**, "outcome determinative" means that, had the results of **DNA testing** of the subject **inmate** been presented at the trial and been found relevant and admissible with respect to the felony offense for which the **inmate** is requesting the **DNA testing**, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the **inmate**'s case, there is a strong probability that no reasonable factfinder would have found the **inmate** guilty of that offense. R.C. 2953.71(L). The addition of the words "strong probability," among others, in the current version of R.C. 2953.71(L) in essence lowers the definition of

"outcome determinative" from a showing of innocence beyond a reasonable doubt to one of clear and convincing evidence. Given the efficacy of deoxyribonucleic acid (**DNA) testing** as an investigative tool in criminal cases, for purposes of res judicata, **DNA testing** is a "specialized situation" in which the fear of wrongful **conviction** outweighs any judicial economy concerns.

A trial court may "accept" an eligible **inmate**'s application for deoxyribonucleic acid (**DNA) testing** only if the following factors are present: (1) biological material was collected from the crime scene of the victim(s), and the parent sample of that biological material still exists; (2) the parent sample of the biological material is sufficient, demonstrably uncorrupted, and scientifically suitable for **testing**; (3) the identity of the perpetrator of the charged offense was an issue at the **inmate**'s trial; (4) a defense theory at trial was such that it would permit a conclusion that an "exclusion result would be outcome determinative;" and (5) if **DNA testing** is conducted and an exclusion result is obtained, the results of the **testing** would be outcome determinative. R.C. 2953.74(B) and (C).

"Outcome determinative" under the current version of R.C. 2953.71(L) not only establishes a lower standard for determining whether a reasonable fact-finder would have found guilt, but provides also for analyzing deoxyribonucleic acid (**DNA) test** results in the context of and upon consideration of all available admissible evidence related to the **inmate**'s case. This additional language seems to make clear that an exclusion result is not the only factor to consider when deciding whether **DNA testing** will be outcome determinative. In addition to the amendments in R.C. 2953.71(L), other amendments to R.C. 2953.71, et seq. recognize the advances in **DNA testing** and provide **inmates** the avenue to access the Combined **DNA** Index System (CODIS).

Nothing that we have said is meant to suggest that **convicted** defendants are entitled to additional **DNA testing** based on nothing more than the passage of time and the assumption that science

has developed more refined **testing** methods. We have made it clear that the courts must consider such motions on a case-by-case basis and those motions must make a threshold showing that **DNA testing** could be outcome determinative. If that showing is made, res judicata will not bar **testing** even though an earlier application for **DNA testing** was denied. Because Bowen's first application was considered and rejected under the earlier, more restrictive statute, we find that principles of res judicata are inapplicable to preclude consideration of this petition. Accordingly, appellant's first assignment of error is sustained.

> **Due Process Clause**[1] (1890) *Constitutional law*. The constitutional provision that provides the government from unfairly or arbitrarily depriving a person of life liberty, or property. • There two Due Process Clause in the U.S. States Constitution one is the 5th Amendment applying to the federal government, one is the 14th Amendment applying to states (although the 5th Amendment's Due Process also applies to the states under the incorporated doctrine) Cf. Equal Protection Clause.

> **Equal Protection Clause**[2] (1899) *Constitutional law*. The14th Amendment provision Requiring the states to give similarly situated persons or classes similar treatment under the law. Cf. DUE PROCESS CLAUSE.

The Appellant is only seeking the fair rights under the equal protection of (1866) The 14th Amendment guarantee that the government must treat a person the same as it treats other persons or classes in like circumstances *in today's constitutional jurisprudence equal protection mean that legislation that discriminates must have a rational basis for doing so, and if the legislator affects the fundamental right (such as the right to vote) or involves suspect classification (such as race), it is unconstitutional unless it can withstand strict scrutiny

The Appellant is only requesting that DNA testing be done to afford the Appellant the same opportunity the State uses for the new technology for DNA testing which the State keeps in CODIS for convictions in unsolved or dated case in which the State uses CODIS at a minimum cost to the tax paying public and opposed to the housing of people at a greater tax payer expense.

1. **Black's Law Dictionary DELUXE TENTH EDITION Bryan A. GARNER EDITOR IN CHIEF pg. 610**
2. **Black's Law Dictionary DELUXE TENTH EDITION Bryan A. GARNER EDITOR IN CHIEF pg. 654**

STATEMENT OF THE CASE AND FACTS

This case arises from the attempt of appellant Clifford J. Bowen (herein after Appellant/Defendant) to obtain DNA (deoxyribonucleic acid) testing under the R.C.§ 2953.71, et seq. as established by the Ohio Revised Codes in which the Appellant was denied from Appellant case in 1981 conviction in Licking County Court of Common Pleas in order to exonerate or include the Appellant for a crime rape in which the Appellant may or may not have committed.

The State has an obligation with the use of new DNA testing to correct a "**manifest injustice**[3]" that may have denied an "**actual innocenence**[4]" Appellant Clifford J. Bowen who entered guilty pleas to four counts of rape and one count of kidnaping in August of 1981. Appellant was sentenced to an indefinite term of not less than five nor more than twenty-five years on each count. The sentences imposed in counts two and three are to be served consecutive with the sentence to be served in count one. Counts four and five are to be served concurrently with counts one, two, and three had the Appellant had effective assistance of counsel as the United States VI Amendment provides for the Assistance of Counsel.

> **"3. manifest injustice. A direct, obvious, and observable error in the trial court, such as a defendant's guilty plea that is involuntary or is broad on a plea agreement that prosecution has resided."**

> **"4. actual innocence. (1839) *Criminal law*. The absence of facts that are a prerequisite for the sentence given to a defendant.**

Appellant counsel was so ineffective under the *Strickland v. Washington* doctrine by failing to provide competent representation to the Appellant in violation of ABA Code of Conduct Rule in providing effective assistance.

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3. **Black's Law Dictionary DELUXE TENTH EDITION Bryan A. GARNER EDITOR IN CHIEF pg. 1107**
4. **Black's Law Dictionary DELUXE TENTH EDITION Bryan A. GARNER EDITOR IN CHIEF pg. 909**

Appellant asserts that had counsel done his due diligence in the representation of Appellant and knowingly and intelligently and voluntarily explained the totality of the guilty plea as to the effect of pleading guilty the counsel was advising the Appellant to enter without any DNA evidence that the prosecutor present to defense counsel or to the Appellant to warrant or sustain a conviction.

The DNA (deoxyribonucleic acid) testing for the material is a critical factor in outcome determinative in R.C.§ 2953.71, et seq. as established by the Ohio Revised Codes to either exonerate or uphold a conviction of an already incarcerated person.

The Trial Court and the Appellate Court and the Prosecutor have denied the Appellant the Due Process of Law in violation of the DNA testing of in R.C.§ 2953.71, et seq. by not giving the Appellant an appropriate response as required by the Ohio Revised Code Statue and thus denying Appellant justice.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: The Ohio Revised Code §2953.84 a request for DNA testing for inmates who plead guilty or no contest.

AN ACT To amend sections

f2901.07, 2953.21, 2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.78, 2953.80, and 2953.82 and to enact section 2953.84 of the Revised Code to eliminate the former two-year window for applications under a program for post-conviction DNA testing and instead allow an eligible inmate to request post-conviction DNA testing at any time if specified criteria are met, to provide for a court's consideration of all available admissible evidence in determining whether the program's applicable "outcome determinative" criterion is satisfied, and to make other changes related to post-conviction DNA testing; to specify that the DNA specimen collection

procedures for felons and specified misdemeanors apply regardless of when the offender's conviction occurred or guilty plea was entered; and to declare an emergency.

Post-conviction DNA testing are not the exclusive means by which an offender may obtain post-conviction DNA testing, and the provisions of those sections do not limit or The provisions of sections 2953.71 to 2953.84 of the Revised Code by which an offender may obtain affect any other means by which an offender may obtain post-conviction DNA testing.

The Ohio General Assembly did not include the availability of newer testing methods as a factor that a court must consider in the determining whether an eligible inmate has had a prior definitive DNA test, R.C. §2953.74(A). Nor did the General Assembly further define the term "inconclusive" to include DNA testing result obtained via an older testing method R.C. §2953.71(J). Where the language of a statue is clear an unambiguous, it is the moral and ethical duty of the court to enforce the statue as written, making neither additions nor subtractions.

Thu the only question is if the Appellant was afforded Equal Protection of the Law under the Ohio Revised Code Statue which would allow for those inmate who pled guilty or no contest to receive justice in DNA (deoxyribonucleic acid) testing to either exonerate or sustain a conviction and to relieve a burden of incarceration from the taxpaying public by a nominal expense of the State or a long term burden.

COLUSION

The State of Ohio has a duty and obligation to its incarcerated population for outcome determinative for justice at any cost when it comes to DNA (deoxyribonucleic acid) testing.

It is upon the Courts and the Prosecutor to ensure that a just conviction was attain and that its citizen are not persecuted unjustly because first of incompetents in the ineffective assistance of trial counsel who don't advocate on their client's behalf in seeking relief in a simple DNA (deoxyribonucleic acid) test.

When the State of Ohio can use the funds available to either exonerate a wrongly convicted citizen instead of poring taxpayer dollars into mass incarceration of its own citizens to ensure the proper functioning of the Judicial System.

The functioning of the Judiciary is to ensure the conviction of the guilty and to protect the innocent and if there is new technology that comes in as a new tool in the dispensing of justice it should be applied across the board as zealous prosecutor use in CODIS to use track cold cases and with that same zealousness scrutiny of establishing guilty or innocent then every precaution should taken to ensure the conformity and that no one goes unjustly convicted of a crime when a simple test could exonerate or convict.

The Appellant is only seeking to use the new technology of DNA (deoxyribonucleic acid) testing either to include the Appellant or exclude the Appellant through new technology and that this Honorable Court render a judgement for the Appellant's just cause of action.

Respectfully submitted,
Clifford J. Bowen Appellant pro se

Clifford J. Bowen

APPELLANT PRO SE
CLIFFORD J. BOWEN

Certificate of Service

I certify that a copy of a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail and placed in the Noble Correctional Institution eternal mailing system in a timely manner for the appellee counsel, David Youst The State of Ohio Attorney General at his/her office at James A. Rhodes Office Tower 30 East Broad Street 14th Floor Columbus Ohio 43215-3428 on May 7, 2022

Clifford J. Bowen
APPELLANT PRO SE
CLIFFORD J. BOWEN

IN THE COURT OF APPEALS OF OHIO
FIFTH APPELLATE DISTRICT
LICKING COUNTY

STATE OF OHIO

PLAINTIFF-APPELLEE

VS

CLIFFORD J. BOWEN

DEFENDANT-APPELLANT

APPEALS NO. {45}21CA0106

This matter came before the Court upon Appellant's Motion for Reconsideration of this Court's denial of Appellant's Motion for Delayed Appeal.

This Court denied Appellant's Motion for Delayed Appeal on February 15, 2022. The instant motion was not filed until March 9, 2022, therefore, the motion is denied as untimely. Motions for reconsideration must be filed within 10 days of the order sought to be reconsidered. App.R. 26(A).

MOTION DENIED.

IT IS SO ORDERED.

JUDGE CRAIG R. BALDWIN

JUDGE PATRICIA A. DELANEY

JUDGE EARLE E. WISE, JR.

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