IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO
Plaintiff

vs.

CHAD D. REIHER
Defendant

Case No. 2011-CR-60

JOURNAL ENTRY --
ORDERS ON FINDING
OF GUILT & SENTENCE
NUNC PRO TUNC

This October 3, 2011, the Defendant came before the Court for the purpose of a Change of Plea hearing. The Defendant appeared in Court represented by Attorney Matt Barbato, the State of Ohio being present represented by Attorney Amy Otley Beckett of the Auglaize County Prosecuting Attorney's Office.

The State of Ohio advised the Court that, in accordance with the provisions of Criminal Rule 11(F) of the Ohio Rules of Criminal Procedure, plea negotiations had taken place, in accordance with the written plea negotiation form filed separately.

The Defendant and his attorney both advised the Court that negotiations had been carried on and that the Defendant's understanding of what had taken place conformed with the State's representation.

The Defendant did then ask leave of Court to withdraw his pleas of Not Guilty to Counts I & IV of the Indictment.

The Court, upon inquiry, finds that the Defendant understands the charges against him and the consequences of his withdrawing said pleas of Not Guilty and the Defendant is granted leave to and did then withdraw said Not Guilty pleas to Counts I & IV of the Indictment.

The State of Ohio did ask for leave to Nolle Prosequi Counts II, III & V of the Indictment. The Court finds that said motion is well taken and the same is SUSTAINED and the Court ORDERS that Counts II, III & V of the Indictment be DISMISSED upon the completion of Sentencing.

The Court did then inquire if the Defendant had been explained the pleas that were available to him. The Defendant advised the Court that the pleas available to him had been explained, that he understood them and was ready to plead.

The Defendant then entered his pleas of Guilty to Count I and Count IV of the Indictment.

Upon inquiry, the Court finds that the Defendant has voluntarily requested leave of Court to withdraw his previous pleas of Not Guilty and has asked the Court to accept the pleas of Guilty with a full understanding of the nature of the charges and of the maximum penalties involved.

The Court further inquired of the Defendant:

1. Whether the Defendant fully understood the effect of his pleas of Guilty and that the Court, upon acceptance of the pleas, might proceed with judgment and sentence;
2. Whether the Defendant understood that by entering his pleas of Guilty, he would be waiving his right to a trial by jury or trial to the Court, his right to confront witnesses against him, to have compulsory process for obtaining witnesses in his favor, and the right to have the State prove him guilty beyond a reasonable doubt in a trial before the Court or before a jury wherein he could not be compelled to testify;
3. Whether the Defendant understood that he might not be eligible for probation; and,
4. Whether the Defendant understood the potential sanctions which may be imposed as a result of this plea.

To all the above inquiries, the Defendant gave an affirmative answer. The Court, being satisfied as to the Defendant's ability and understanding of the charges and of his rights, does accept the pleas of Guilty.

The Court did then inquire of the State as to what conduct caused the charges to be filed against the Defendant.

The Court is fully satisfied that the Defendant did commit each of the elements contained in the offenses as charged, and is convinced that the Defendant fully understands the nature of the charges against him and the consequences of his pleas of Guilty.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT FINDINGS BE RENDERED against the Defendant as follows:

COUNT I – a charge of BREAKING & ENTERING, in violation of Ohio Revised Code §2911.13(A), a FELONY of the 5TH degree WITHOUT specifications – GUILTY.

COUNT IV – a charge of SAFE CRACKING, in violation of Ohio Revised Code §2911.31(A), a FELONY of the 4TH degree WITHOUT specifications – GUILTY.

Whereupon, the Defendant moved for a Pre-Sentence Investigation by the Auglaize County PSI writer, which the Court finds not well taken and the same is DENIED.

Defendant was afforded all rights pursuant to Criminal Rule 32. The Court has considered the record, oral statements, any Victim Impact Statement and Pre-Sentence Report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code §2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code §2929.12.

The Court finds that the Defendant has been convicted pursuant to pleas of GUILTY of:

COUNT I – a charge of BREAKING & ENTERING, a violation of Ohio Revised Code §2911.13(A), a FELONY of the 5TH degree WITHOUT specifications – GUILTY.

COUNT IV – a charge of SAFE CRACKING, a violation of Ohio Revised Code §2911.31(A), a FELONY of the 4TH degree WITHOUT specifications – GUILTY.

The Defendant has pled guilty to and been found guilty of felonies of the fifth degree that are not offenses of violence.

Ohio Revised Code §2929.13(B) reads, in pertinent part:

(B)(1) (a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence, the court shall sentence the offender to a community control sanction of at least one year's duration if all of the following apply:

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense or to an offense of violence that is a misdemeanor and that the offender committed within two years prior to the offense for which sentence is being imposed.

(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(iii) If the court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, the department, within the forty-five-day period specified in that division, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence if any of the following apply:

(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(ii) The offender caused physical harm to another person while committing the offense.

(iii) The offender violated a term of the conditions of bond as set by the court.

(iv) The court made a request of the department of rehabilitation and correction pursuant to division (B)(1)(c) of this section, and the department, within the forty-five-day period specified in that division, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that is available for persons sentenced by the court.

Ohio Revised Code §2929.13(B) poses several problems for the sentencing court. First, it requires the court to make findings of fact in changing the potential sentence from a mandatory community control sanction to a potential prison sentence, in violation of the Defendant's Sixth Amendment right to trial by jury, in violation of *Apprendi*, *Blakely*, *Foster*, and as later explained in *Oregon v. Ice (citations omitted)*. Unlike *Oregon v. Ice*, and the Court's approval of legislative requirements of findings by the court upon consideration of consecutive versus concurrent sentences, in the revised law from H.B. 86 recently enacted, the fact finding required by R.C. 2929.13(B) requires that the sentencing court make determinations of the defendant's prior record within two years prior to the offense and whether it includes a conviction or a guilty plea to a felony or a misdemeanor that is an offense of violence (pursuant to R.C. 2929.13(B)(1)(a)(i)), whether the offender committed the offense while having a firearm on or about the defendant's person or under her control (pursuant to R.C. 2929.13(B)(1)(b)(i)), whether the offender caused physical harm to another person while committing the offense (pursuant to R.C. 2929.13(B)(1)(b)(ii)), and whether the offender violated a term of the conditions of bond as set by the court (pursuant to R.C. 2929.13(B)(1)(b)(iii)), in determining whether the defendant will get any prison sentence at all.

In *Cunningham v. California*, (2007) 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856, the syllabus of the Court reads as follows:

> The DSL, by placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments. Pp. 281-294.
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> (a) In *Apprendi* v. *New Jersey*, this Court held that, under the Sixth Amendment, any fact (other than a prior conviction) that exposes a defendant to a sentence in excess of the relevant statutory maximum must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence. See 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435. The Court has applied the rule of *Apprendi* to facts subjecting a defendant to the death penalty, *Ring* v. *Arizona*, 536 U.S., at 602, 609, 122 S.Ct. 2428, 153 L.Ed.2d 556, facts permitting a sentence in excess of the "standard range" under Washington's Sentencing Reform Act (Reform Act), *Blakely* v. *Washington*, 542 U.S. 296, 304-305, 124 S.Ct. 2531, 159 L.Ed.2d 403, and facts triggering a sentence range elevation under the then-mandatory Federal Sentencing Guidelines, *Booker*, 543 U.S. 220, 243-244, 125 S.Ct. 738, 160 L.Ed.2d 621. *Blakely* and *Booker* bear most closely on the question presented here.
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> The maximum penalty for Blakely's offense, under Washington's Reform Act, was ten years' imprisonment, but if no facts beyond those reflected in the jury's verdict were found by the trial judge, Blakely could not receive a sentence above a standard range of 49 to 53 months. Blakely was sentenced to 90 months, more than three years above the standard range, based on the judge's finding of deliberate cruelty. Applying *Apprendi*, this Court held the sentence unconstitutional. The State in *Blakely* endeavored to distinguish *Apprendi*, contending that Blakely's sentence was within the judge's discretion based solely on the guilty verdict. The Court dismissed that argument. Blakely could not have been sentenced above the standard range absent an additional fact. Consequently, that fact was subject to the Sixth Amendment's jury-trial guarantee. It did not matter that Blakely's sentence, though outside the standard range, was within the 10-year maximum. Because the judge could not have imposed a sentence outside the standard range without finding an additional fact, the top of that range--53 months, not 10 years--was the relevant statutory maximum. The Court also rejected the State's arguments that

Apprendi was satisfied because the Reform Act did not specify an exclusive catalog of facts on which a judge might base a departure from the standard range, and because it ultimately left the decision whether or not to depart to the judge's discretion.

Booker was sentenced under the Federal Sentencing Guidelines. The facts found by the jury yielded a base Guidelines range of 210 to 262 months' imprisonment, a range the judge could not exceed without undertaking additional factfinding. The judge did so, making a finding that boosted Booker into a higher Guidelines range. This Court held Booker's sentence impermissible under the Sixth Amendment. There was "no distinction of constitutional significance between the Federal Sentencing Guidelines and the Washington procedures at issue in *[Blakely]*." 543 U.S., at 233, 125 S.Ct. 738. [127 S.Ct. 858] Both were "mandatory and impose[d] binding requirements on all sentencing judges." *Ibid.* All Members of the Court agreed, however, that the Guidelines would not implicate the Sixth Amendment if they were advisory. *Ibid.* Facing the remedial question, the Court concluded that rendering the Guidelines advisory came closest to what Congress would have intended had it known that the Guidelines were vulnerable to a Sixth Amendment challenge. Under the advisory Guidelines system described in *Booker,* judges would no longer be confined to the sentencing range dictated by the Guidelines, but would be obliged to "take account" of that range along with the sentencing goals enumerated in the Sentencing Reform Act (SRA). *Id.,* at 259, 264, 125 S.Ct. 738. In place of the SRA provision governing appellate review of sentences under the mandatory Guidelines scheme, the Court installed a "reasonableness" standard of review. *Id.,* at 261, 125 S.Ct. 738. Pp. 281-288.

(b) In all material respects, California's DSL resembles the sentencing systems invalidated in *Blakely* and *Booker.* Following the reasoning in those cases, the middle term prescribed under California law, not the upper term, is the relevant statutory maximum. Because aggravating facts that authorize the upper term are found by the judge, and need only be established by a preponderance of the evidence, the DSL violates the rule of *Apprendi.*

While "that should be the end of the matter," *Blakely,* 542 U.S., at 313, 124 S.Ct. 2531, in *People* v. *Black,* the California Supreme Court insisted that the DSL survives inspection under our precedents. The *Black* court reasoned that, given the ample discretion afforded trial judges to identify aggravating facts warranting an upper term sentence, the DSL did "not represent a legislative effort to shift the proof of particular facts from elements of a crime (to be proved to a jury) to sentencing factors (to be decided by a judge)," 35 Cal. 4th, at 1255-1256, 29 Cal.Rptr.3d 740, 113 P.3d, at 543-544. This Court cautioned in *Blakely,* however, that broad discretion to decide what facts may support an enhanced sentence, or to determine whether an enhanced sentence is warranted in a particular case, does not shield a sentencing system from the force of this Court's decisions. The *Black* court also urged that the DSL is not cause for concern because it reduced the penalties for most crimes over the prior indeterminate sentencing scheme; because the system is fair to defendants; and because the DSL requires statutory sentence enhancements (as distinguished from aggravators) to be charged in the indictment and proved to a jury beyond a reasonable doubt. The *Black* court's examination, in short, satisfied it that California's sentencing system does not implicate significantly the concerns underlying the Sixth Amendment's jury-trial guarantee. This Court's decisions, however, leave no room for such an examination. Asking whether a defendant's basic jury-trial right is preserved, though some facts essential to punishment are reserved for determination by the judge, is the very inquiry *Apprendi's* bright-line rule was designed to exclude.

Ultimately, the *Black* court relied on an equation of California's DSL to the post-*Booker* federal system. That attempted comparison is unavailing. The *Booker* Court held the Federal Guidelines incompatible with the Sixth Amendment because they were

"mandatory and impose[d] binding requirements on all sentencing judges," 543 U.S., at 233, 125 S.Ct. 738. To remedy the constitutional infirmity, the Court excised provisions that rendered the system mandatory, leaving the Guidelines in place as advisory only. The [127 S.Ct. 859] DSL, however, does not resemble the advisory system the Court in *Booker* had in view. Under California's system, judges are not free to exercise their "discretion to select a specific sentence within a defined range." *Ibid.* California's Legislature has adopted sentencing triads, three fixed sentences with no ranges between them. Cunningham's sentencing judge had no discretion to select a sentence within a range of 6 to 16 years, but had to impose 12 years, nothing less and nothing more, unless the judge found facts allowing a sentence of 6 or 16 years. Factfinding to elevate a sentence from 12 to 16 years, this Court's decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies.

The *Black* court attempted to rescue the DSL's judicial factfinding authority by typing it a reasonableness constraint, equivalent to the constraint operative in the post-*Booker* federal system. Reasonableness, however, is not the touchstone of Sixth Amendment analysis. The reasonableness requirement *Booker* anticipated for the federal system operates *within* the constitutional constraints delineated in this Court's precedent, not as a substitute for those constraints. Because the DSL allocates to judges sole authority to find facts permitting the imposition of an upper term sentence, the system violates the Sixth Amendment. *Booker*'s remedy for the Federal Guidelines, in short, is not a recipe for rendering this Court's Sixth Amendment case law toothless. Further elaboration here on the federal reasonableness standard is neither necessary nor proper. The Court has granted review in two cases--to be argued and decided later this Term--raising questions trained on that matter. *Claiborne* v. *United States*, __U.S. __, 127 S.Ct. 551, 166 L.Ed.2d 406; *Rita* v. *United States*, __U.S. __, 127 S.Ct. 551, 855, 166 L.Ed.2d 406. Pp. 288-293.

(c) As to the adjustment of California's sentencing system in light of the Court's ruling, "[t]he ball . . . lies in [California's] court." *Booker*, 543 U.S., at 265, 125 S.Ct. 738. Several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing, by calling upon the jury to find any fact necessary to the imposition of an elevated sentence. Other States have chosen to permit judges genuinely "to exercise broad discretion . . . within a statutory range," which, "everyone agrees," encounters no Sixth Amendment shoal. *Id.*, at 233, 125 S.Ct. 738. California may follow the paths taken by its sister States or otherwise alter its system, so long as it observes Sixth Amendment limitations declared in this Court's decisions. Pp. 293-294.

The new Ohio statute presents the same situation as the California statute, as the statute does not allow discretion but mandates that absent certain findings of fact, the trial court must not sentence the defendant to a prison sentence (under the (B)(1)(a) provisions), except in instances where the court makes certain findings of fact upon which findings (under the (B)(1)(b) provisions) the trial court may sentence the defendant to prison.

These provisions are not within the *Oregon v. Ice* exceptions to the *Apprendi/Booker* rule. The Court, in *Ice*, wrote in its syllabus:

In light of historical practice and the States' authority over administration of their criminal justice systems, the Sixth Amendment does not inhibit States from assigning to judges, rather than to juries, the finding of facts necessary to the imposition of consecutive, rather than concurrent, sentences for multiple offenses. Pp. 716-720.

(a) The Court declines to extend the *Apprendi* and *Blakely* line of decisions beyond the offense-specific context that supplied the historic grounding for the decisions. The

Court's application of *Apprendi's* rule must honor the "longstanding common-law practice" in which the rule is rooted. *Cunningham v. California*, 549 U.S. 270, 281, 127 S.Ct. 856, 166 L.Ed.2d 856. The rule's animating principle is the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense. See *Apprendi*, 530 U.S., at 477, 120 S.Ct. 2348. Because the Sixth Amendment does [129 S.Ct. 713] not countenance legislative encroachment on the jury's traditional domain, see *id.*, at 497, 120 S.Ct. 2348, the Court considers whether the finding of a particular fact was understood as within the jury's domain by the Bill of Rights' framers, *Harris v. United States*, 536 U.S. 545, 557, 122 S.Ct. 2406, 153 L.Ed.2d 524. In so doing, the Court is also cognizant that administration of a discrete criminal justice system is among the basic sovereign prerogatives States retain. See, *e.g.*, *Patterson v. New York*, 432 U.S. 197, 201, 97 S.Ct. 2319, 53 L.Ed.2d 281. These twin considerations—historical practice and respect for state sovereignty—counsel against extending *Apprendi* to the imposition of sentences for discrete crimes. P. 717.

(b) The historical record demonstrates that both in England before this Nation's founding and in the early American States, the common law generally entrusted the decision whether sentences for discrete offenses should be served consecutively or concurrently to judges' unfettered discretion, assigning no role in the determination to the jury. Thus, legislative reforms regarding the imposition of multiple sentences do not implicate the core concerns that prompted the Court's decision in *Apprendi*. There is no encroachment here by the judge upon facts historically found by the jury, nor any threat to the jury's domain as a bulwark at trial between the State and the accused. Instead, the defendant—who historically may have faced consecutive sentences by default—has been granted by some modern legislatures statutory protections meant to temper the harshness of the historical practice. Ice's argument that he is "entitled" to concurrent sentences absent the factfindings Oregon law requires is rejected. Because the scope of the federal constitutional jury right must be informed by the jury's historical common-law role, that right does not attach to every contemporary state-law "entitlement" to predicate findings. For similar reasons, *Cunningham*, upon which Ice heavily relies, does not control here. In holding that the facts permitting imposition of an elevated "upper term" sentence for a particular crime fell within the jury's province rather than the sentencing judge's, 549 U.S., at 274, 127 S.Ct. 856, *Cunningham* had no occasion to consider the appropriate inquiry when no erosion of the jury's traditional role was at stake. Pp. 717-718.

(c) States' interest in the development of their penal systems, and their historic dominion in this area, also counsel against the extension of *Apprendi* that Ice requests. This Court should not diminish the States' sovereign authority over the administration of their criminal justice systems absent impelling reason to do so. Limiting judicial discretion to impose consecutive sentences serves the "salutary objectives" of promoting sentences proportionate to "the gravity of the offense," *Blakely*, 542 U.S., at 308, 124 S.Ct. 2531, and of reducing disparities in sentence length. All agree that a scheme making consecutive sentences the rule, and concurrent sentences the exception, encounters no Sixth Amendment shoal. To hem in States by holding that they may not choose to make concurrent sentences the rule, and consecutive sentences the exception, would make scant sense. Neither *Apprendi* nor the Court's Sixth Amendment traditions compel strait-jacketing the States in that manner. Further, the potential intrusion of *Apprendi's* rule into other state initiatives on sentencing choices or accoutrements—for example, permitting trial judges to find facts about the offense's nature or the defendant's character in determining the length of supervised release, required attendance at drug rehabilitation programs or terms of community service, and the imposition of [129 S.Ct. 714] fines and restitution—would cut the rule loose from its moorings. Moreover, the expansion Ice seeks would be difficult for States to administer, as the predicate facts for consecutive

sentences could substantially prejudice the defense at the trial's guilt phase, potentially necessitating bifurcated or trifurcated trials. Pp. 718-719.

In the instant case, the question presented is whether the statute which makes the penalty for a violation of a non-violent Felony 4 or 5 not subject to *any* prison term being subject to the finding of fact by the trial court violates the Sixth Amendment right to trial by jury. This Court concludes that it does, following the decision in *Cunningham*, and applying the exception to the rule in *Ice*.

Applying the remedy guidance in *Foster* and *Booker*, the court then having found those portions making the *findings* mandatory as an unconstitutional violation of the Defendant's rights to a trial by jury, the court must, nevertheless, use its discretion without making findings, but must do so in accordance with the public policy evidenced by the General Assembly in H.B. 86, and specifically ascertain the public policy in order to properly decide the sentence in the instant case.

In addition to consideration of the new R.C. 2929.11, the court also must read the language of R.C. 2929.13(B)(1)(a) and (b) as evidence of the public policy declared by the General Assembly. Those two subdivisions appear to have some inconsistency, but when read together make it clear that the court should consider as relevant factors all of those matters listed therein in determining whether to sentence a non-violent 4th or 5th degree felon to prison, and the Court has done so.

In the instant case, Defendant has stipulated that he was previously convicted of prior felony offenses for which he did prison time, and that he was on post release control at the time of commission of his offense, with 722 days left on PRC as of the date of the offenses for which he has pled guilty. This Court's findings as to those factors to be taken into consideration of whether to sentence the Defendant to consecutive sentences or concurrent sentences are limited to that decision, but the factors to be considered within the discretion of the court in determination of whether to send a non-violent Felony 4 or 5 defendant to prison are still applicable, and the court has considered those relevant factors enumerated in R.C. 2929.13(B) in its determination. Defendant's stipulation of the PRC facts waives his rights to determination of such facts by the jury in any event.

This Court has not made a request of the Ohio Department of Rehabilitation and Corrections pursuant to division (B)(1)(c), as such provision violates the separation of powers doctrine and is not constitutional under the Ohio Constitution. The attempt by the General Assembly to give authority to the ODRC to control the trial court's discretion and to veto that discretion by making the trial court seek permission in advance of sentencing based upon the discretion of the ODRC (even with no guidelines for that discretion, while that would make no difference) is an invasion into the province of the judiciary that is beyond the pale of the executive or legislative branches.

The Court finds that the consecutive service is necessary to protect the public from future crime and to punish the offender ant that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and the court also finds the offender committed one or more

of the multiple offenses while the offender was under post-release control for a prior offense, and that the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

It is the sentence of the Court that the Defendant be incarcerated with the Department of Rehabilitation and Corrections, Orient, Ohio,

COUNT I – for a term of TWELVE (12) MONTHS, in addition to POST RELEASE CONTROL TIME AND POST RELEASE CONTROL VIOLATION TIME as may be imposed according to law.

COUNT IV – for a term of EIGHTEEN (18) MONTHS, in addition to POST RELEASE CONTROL TIME AND POST RELEASE CONTROL VIOLATION TIME as may be imposed according to law.

Counts I & IV shall run CONSECUTIVE to each other for a total prison term of THIRTY (30) MONTHS.

The Court also finds that pursuant to O.R.C. §2929.41 and 2929.14(B)(4), that the Defendant was on Post Release Control at the time these felonies were committed and, therefore, the Court ORDERS that the Defendant serve an additional SIX HUNDRED FIFTY-FOUR (654) DAYS for a total stated prison term of THIRTY (30) MONTHS PLUS 654 DAYS, in addition to Three Years Mandatory POST RELEASE CONTROL TIME, plus any POST RELEASE CONTROL VIOLATION TIME as may be imposed according to law.

Post Release Control Time shall run CONSECUTIVE to Count I and Count IV.

As to Count I, the Defendant is ORDERED to pay Restitution in the amount of $12,496.00 for New Knoxville School, 345 S. Main St., P.O. Box 476, New Knoxville, Ohio 45871. The Court Orders that the offender pay a surcharge of five percent (5%) of the amount of the restitution otherwise Ordered to the entity responsible for collecting and processing restitution payments through the Office of the Clerk of Courts.

Pursuant to House Bill 525, the Court ORDERS the Defendant to provide a DNA sample, to be collected by the Ohio Department of Rehabilitation & Corrections upon his being conveyed to the institution.

The Court advised the Defendant that Defendant is sentenced to Post Release Control for THREE (3) YEARS, which is OPTIONAL and that if the Defendant violates Post Release Control, the Ohio Parole Board may send the Defendant back to prison for an additional sentence (in increments of up to 9 months) up to one-half (1/2) of the stated prison term (being the total of the prison terms on all of the counts sentenced herein); and that if the Defendant commits a felony while on Post Release Control, that the sentencing Court on that new felony may sentence the Defendant to an additional prison term of either (a) the amount of time Defendant has remaining to serve on Post Release Control as of the time of commission of the new offense, or (b) one year, whichever is greater.

The Defendant is ORDERED to serve as part of this sentence the above term of Post Release Control imposed by the Parole Board, and any prison term for violation of that Post Release Control.

The Court notified the Defendant pursuant to R.C. 2929.13(D)(3) that he *may* be eligible to earn days of credit under the circumstances specified in R.C. 2967.193, and that such days of credit are not automatically awarded under that section, but that they must be earned in the manner specified in that section.

Pursuant to Criminal Rule 32, the Court advised the Defendant of his appellate rights.

The Defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction. Credit for -104- days local jail time credit is granted as of this date along with future custody days while the Defendant awaits transportation to the appropriate State institution.

The Court ORDERS a Post Sentence Investigation Report to be conducted by the Auglaize County PSI Writer and the Auglaize County Sheriff shall hold the Defendant at the Auglaize County Correctional Center until an interview has been conducted by the Auglaize County PSI Writer.

The Court ORDERS the Bond posted in this matter shall not be applied towards Restitution and court costs, if any. The same shall be REFUNDED, less appropriate fees, by the Clerk of Courts to Harold Knatz, 07282 Washington Pike, St. Marys, Ohio 45885, according to law. The bond that was posted was posted by Harold Knatz (see bond).

Costs assessed to the Defendant. Judgment for Restitution and Court costs.

The Clerk of Courts shall cause a copy of this Journal Entry to be served on Attorney Matt Barbato, 130 W. Second Street, Suite 2150, P.O. Box 10126, Dayton, Ohio 45402, the Warden of the Corrections Reception Center, Orient, Ohio and to the Defendant at that institution by Regular U.S. Mail, and a copy on the Auglaize County Sheriff, the Ohio Adult Parole Authority and the Prosecuting Attorney by hand delivering the same.

IT IS SO ORDERED.

JUDGE FREDERICK D. PEPPLE

[Note—This Nunc pro tunc entry is filed due to clerical error that inadvertently cut off a portion of the language originally drafted, done during the printing process and not previously caught in the proofreading.]