

ORIGINAL

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO, ex rel.
JEFFERY LYNN COMBS, JR.,

CASE NO. 2010-0618

Relator,

vs.

JUDGE V. LEE SINCLAIR,
STARK COUNTY COURT of
COMMON PLEAS,

ORIGINAL ACTION
WRIT OF PROHIBITION

Respondent.

FILED
MAY 04 2010
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION TO DISMISS
OF RESPONDENT,
JUDGE V. LEE SINCLAIR of
STARK COUNTY COURT OF COMMON PLEAS

JOHN D. FERRERO,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

JEFFREY LYNN COMBS, JR.
Inmate No. A560-538
Richland Correctional Institution
1001 Olivesburg Road
P.O. Box 8107
Mansfield, Ohio 44901-8107

By: RONALD MARK CALDWELL
Ohio Sup. Ct. Reg. No. 0030663
Assistant Prosecuting Attorney
110 Central Plaza, South
Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Relator *pro se*

Counsel of Record for Respondent

RECEIVED
MAY 04 2010
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION TO DISMISS COMPLAINT FOR WRIT OF PROHIBITION

Relator, Jeffery Lynn Combs, Jr., has file an original action with this Court seeking the issuance of a writ of prohibition against Respondent, Judge V. Lee Sinclair of the Stark County Court of Common Pleas. Combs has failed to state a claim upon which relief can be granted, especially given the ambiguous nature of the allegations contained in the complaint for the writ of prohibition. He claims in his complaint that he has filed a motion for resentencing due to an alleged failure to comply with statutory requirements for sentencing on post-release control, yet Combs seeks a writ of prohibition against the sentencing judge to apparently prevent the judge from ruling on the motion. The complaint should therefore be summarily overruled.

Given the nebulous nature of Combs's factual and legal allegations, a summary of the procedural history of the underlying criminal case is necessary.

In this criminal case,¹ Combs was charged by a bill of information, having waived his right to be charged by indictment, with four counts of aggravated robbery, each with an attendant firearm specification. Combs pleaded guilty to these charges and specifications, and the trial court imposed four concurrent six-year prison terms for the underlying charges, and a mandatory consecutive three-year term for the firearm specifications (which the court merged for purposes of sentencing); Combs's aggregate prison sentence was therefore nine years.

Combs later filed a motion for delayed appeal to the Ohio Court of Appeals for Stark County (Fifth Appellate District), which was denied by that court. This Court subsequently did

¹*State v. Combs*, Stark County Court of Common Pleas Case No. 2008-CR-1743. A copy of the docket for that case is attached hereto. Also attached hereto is the Motion for Sentencing that he filed on April 8, 2010.

not accept Combs's appeal of that decision to this Court.² Four months after the denial of that appeal, Combs filed his "Motion for Sentencing" with the trial court (filed on April 8, 2010). Upon the filing of this motion, the trial court scheduled a resentencing hearing for May 19, 2010. Apparently not satisfied with this course of conduct by the trial court, Combs filed the instant original action, seeking a writ of prohibition.

Combs's complaint misunderstands the nature of the writ of prohibition. Prohibition is an extraordinary writ issued by a higher court to a lower court to prevent the usurpation or exercise of judicial powers or functions for which the lower court lacks jurisdiction.³ In other words, the writ restrains a lower court from exercising unauthorized judicial power.⁴ In order for the writ to lie, a relator must satisfy three requirements. First, the lower court must be about to exercise judicial or quasi-judicial power. Second, the exercise of this power is clearly unauthorized by law. And third, the refusal of the writ would result in injury for which there is no adequate remedy in the ordinary course of law.⁵

Combs is quite vague in his complaint as to what he wishes to prohibit Judge Sinclair from doing. He has filed a motion for resentencing, which the trial judge has set for hearing. Does he now want the judge to refrain from proceeding with the resentencing? Combs is less

²*State v. Combs*, 123 Ohio St.3d 1494, 2009-Ohio-6015, 916 N.E.2d 1074.

³*State, ex rel. Daily Reporter v. Court of Common Pleas of Franklin County* (1990), 56 Ohio St.3d 145, 145, 565 N.E.2d 536, 537.

⁴*State, ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231-232, 1999-Ohio-27, 718 N.E.2d 1285, 1287.

⁵See, e.g., *State, ex rel. Furnas v. Monnin*, 120 Ohio St.3d 279, 2008-Ohio-5569, 898 N.E.2d 573, ¶ 10; *McAuley v. Smith*, 82 Ohio St.3d 393, 395, 1998-Ohio-402, 696 N.E.2d 572, 574.

than clear on this point. The nature of Combs's motion with the trial court is a claim that the court did not properly impose post-release control as part of his criminal sentence. As a result, Combs specifically requests a new hearing in order to be resentenced properly.⁶

Combs does assert in his complaint that a writ is necessary to "bind Respondent by the doctrine of equitable estoppel in this action," without elaborating on what role this doctrine plays in a post-release control resentencing hearing, and without explaining how prohibition works to bind a lower court to legal principles or doctrines. To the extent that the trial court violates any legal requirement applicable to post-release control resentencing hearings per R.C. 2929.191, Combs has a remedy for such a violation by way of appeal.

Thus, Combs has failed to satisfy all three requirements for the issuance of a writ of prohibition. While respondent will be exercising judicial power when he proceeds with the resentencing, he is doing so pursuant to statute – R.C. 2929.191, which allows for resentencing for post-release control violations. In other words, respondent's resentencing hearing is clearly authorized by law; thus, Combs has failed to satisfy the second requirement for issuance of a writ of prohibition, i.e., that the exercise of judicial power is clearly unauthorized by law. In addition, Combs has failed to satisfy the third requirement as well since he can appeal directly his resentencing to the court of appeals for any alleged error in the resentencing (such as a failure to follow equitable estoppel principles at this hearing).

For these reasons, therefore, Combs has failed to state a claim upon which relief can be

⁶Combs states the following in his motion before the trial court: "A new sentencing hearing in this cause is therefore warranted, and must be set." *State v. Combs*, Stark County Court of Common Pleas Case No. 2008-CR-1743, Motion for Sentencing (filed Apr. 8, 2010). As a result of this request, respondent has scheduled the requested resentencing hearing for May 19, 2010, via video conference.

granted. He has failed to satisfy all three requirements for the issuance of the prohibition writ.
According, the complaint should be dismissed.

**JOHN D. FERRERO,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO**

By: *Ronald Mark Caldwell*
RONALD MARK CALDWELL
Ohio Sup. Ct. Reg. No. 0030663
Assistant Prosecuting Attorney
110 Central Plaza, South
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Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Counsel of Record for Respondent

PROOF OF SERVICE

A copy of the foregoing MOTION TO DISMISS [ORIGINAL ACTION – WRIT OF PROHIBITION] was sent by ordinary U.S. mail this 3rd day of May, 2010, to JEFFERY L. COMBS, JR., at Inmate No. A560-538, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, Ohio 44901-8107.

Ronald Mark Caldwell

RONALD MARK CALDWELL
Ohio Sup. Ct. Reg. No. 0030663
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110 Central Plaza, South
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(330) 451-7897

FAX: (330) 451-7965

Counsel of Record for Respondent

[Print This Docket](#)[Back](#)**2008CR1743****JEFFREY LYNN COMBS**

Arr Agency: MPD	Charge: 2911.01 (A) (1)
Judge: SINCLAIR, LEE	Description: Aggravated Robbery
Case Status: closed	Degree of Off: F1
Filed On: 10/07/2008	Municipal Case: 2008CRA02297
ITN: 141239IP	

PARTIES

Name	Birth Date	Type
COMBS, JEFFREY LYNN	11-JAN-90	Defendant

DOCKET ENTRIES

10-07-2008 ON OCT 6, 2008 DEFENDANT HELD IN LIEU OF \$500,000.00 CASH SURETY

10-07-2008 DEFENDANT WAS REPRESENTED IN MASSILLON MUNICIPAL COURT BY IBORRA, JOSE

10-07-2008 DEFENDANT JEFFREY COMBS ARRESTED ON October 06, 2008

10-07-2008 NOTICE OF BINDOVER SENT TO STARK COUNTY SHERIFF.

10-07-2008 BINDOVER RECEIVED FROM MASSILLON MUNICIPAL COURT, 2008CRA02297; 2008CRA02298; 2008CRA02299 2911.01A1 AGGRAVATED ROBBERY F1 2911.01A1 AGGRAVATED ROBBERY F1 2911.01A1 AGGRAVATED ROBBERY F1

10-07-2008 DEFENDANT BOUND OVER FROM MASSILLON MUNICIPAL COURT, ON Oct 06, 2008

10-07-2008 ON SEP 29, 2008 DEFENDANT HELD IN LIEU OF \$100,000.00 TEN PERCENT

10-07-2008 DEFENDANT WAS REPRESENTED IN MASSILLON MUNICIPAL COURT BY IBORRA, JOSE

10-07-2008 DEFENDANT JEFFREY COMBS ARRESTED ON September 27, 2008

10-07-2008 NOTICE OF BINDOVER SENT TO STARK COUNTY SHERIFF.

10-07-2008	BINDOVER RECEIVED FROM MASSILLON MUNICIPAL COURT, 2008CRA02260 2911.01A1 AGGRAVATED ROBBERY F1	
10-07-2008	DEFENDANT BOUND OVER FROM MASSILLON MUNICIPAL COURT, ON Oct 06, 2008	
10-23-2008	SUBPOENA GRAND JURY - FILED FOR : JAY JONES BY SHERIFF; CHARLES DEBOS BY SHERIFF; VICKIE GUIFFRE BY SHERIFF; DET KENNETH HENDRICKS BY SHERIFF	\$8.00
10-29-2008	SUBPOENA GRAND JURY - RETURNED SERVED FOR : 10/27/2008 CHARLES DEBOS; VICKIE KASUNICK; LYNNETT GUIFFRE; DET KENNETH HENDRICKS;	\$66.00
10-29-2008	SUBPOENA GRAND JURY - RETURNED NOT SERVED FOR: JAY JONES;	\$16.50
10-30-2008	SUBPOENA GRAND JURY - FILED FOR : CHARLES DEBOS BY SHERIFF; JAY JONES BY SHERIFF	\$4.00
11-05-2008	SUBPOENA GRAND JURY - RETURNED SERVED FOR : 10/31/2008 CHARLES DEBOS; JAY JONES;	\$38.00
11-19-2008	HEARING DISPOSITION SHEET FILED. NEXT APPEARANCE SET.	\$2.00
11-19-2008	COPY OF HEARING NOTICE SENT TO JOSE IBORRA BY ORDINARY MAIL	\$2.42
11-19-2008	BILL OF INFORMATION HEARING ON 11/20/2008 11:00 AM. NOTICES SENT.	
11-20-2008	COURT REPORTER CERTIFICATE FILED	\$25.00
11-21-2008	HEARING DISPOSITION SHEET FILED. DEFENDANT ENTERS PLEA OF GUILTY TO BILL OF INFORMATION. 9 YEARS ENTRY TO FOLLOW. DEFENDANT SENTENCED BY COURT ENTRY TO FOLLOW	\$2.00
11-24-2008	JUDGMENT ENTRY GRANTING WAIVER OF INDICTMENT AND REQUEST FOR PROSECUTION BY INFORMATION	
11-24-2008	WAIVER OF INDICTMENT AND REQUEST FOR PROSECUTION BY INFORMATION	
11-24-2008	BILL OF INFORMATION FILED - 2911.01 (A) (1) AGGRAVATED ROBBERY F1; 2941.145 WITH FIREARM SPECIFICATION ; 2911.01 (A) (1) AGGRAVATED ROBBERY F1; 2941.145	

- WITH FIREARM SPECIFICATION ; 2911.01 (A)
(1) AGGRAVATED ROBBERY F1; 2941.145
WITH FIREARM SPECIFICATION ; 2911.01 (A)
(1) AGGRAVATED ROBBERY F1; 2941.145
WITH FIREARM SPECIFICATION ;
- 11-24-2008 2008CR1746 WAS TRANSFERRED INTO
2008CR1743
- 11-24-2008 ON SEP 29, 2008 BOND SET \$600,000.00.
\$100,000.00 TEN PERCENT 500,000.00 CASH
500,000.00 SURETY
- 11-25-2008 SENTENCING FORM FILED ADDRESSING
INCARCERATION AND CONVEY. FINAL
SENTENCING ENTRY TO FOLLOW..
- 11-25-2008 WARRANT TO CONVEY
- 12-02-2008 NOTICE OF FELONY CONVICTION(S) SENT
TO BOARD OF ELECTIONS
- 12-02-2008 DNA TEST REQUIRED PURSUANT TO O.R.C.
2901.07
- 12-02-2008 DEFENDANT CHANGED PLEA TO GUILTY -
SENTENCE TO. LORAIN REGIONAL ; ON CT
1 (AGGRAVATED ROBBERY) FOR 6 YEAR
(S) ; ON CT # 2 (WITH FIREARM
SPECIFICATION) FOR 3 YEAR(S)
MANDATORY CONS. WITH CT. 1, ; ON CT # 3
(AGGRAVATED ROBBERY) FOR 6 YEAR(S)
CONC. WITH CT# : 1, ; ON CT # 4 (WITH
FIREARM SPECIFICATION) FOR 3 YEAR(S)
MANDATORY MERGED WITH CT # 2 FOR
SENTENCING ONLY ; ON CT # 5
(AGGRAVATED ROBBERY) FOR 6 YEAR(S)
CONC. WITH CT# : 1, ; ON CT # 6 (WITH
FIREARM SPECIFICATION) FOR 3 YEAR(S)
MANDATORY MERGED WITH CT # 2 FOR
SENTENCING ONLY ; ON CT # 7
(AGGRAVATED ROBBERY) FOR 6 YEAR(S)
CONC. WITH CT# : 1, ; ON CT # 8 (WITH
FIREARM SPECIFICATION) FOR 3 YEAR(S)
MANDATORY MERGED WITH CT # 2 FOR
SENTENCING ONLY FOR A TOTAL OF 9.0
YEARS INCARCERATION ANY POST
RELEASE CONTROL IMPOSED. ENTITLED
JAIL TIME CREDIT. PAY COSTS PURSUANT
TO ORC 120.36, IF THE DEFENDANT

REQUESTED OR WAS PROVIDED
REPRESENTATION BY THE STARK COUNTY
PUBLIC DEFENDER, A \$25.00 NON-
REFUNDABLE APPLICATION FEE IS
ASSESSED. OHIO REVISED CODE SECTION
2981.12 AFTER THE APPROPRIATE TIME
PERIOD EVIDENCE TO BE DESTROYED

12-05-2008 WARRANT TO CONVEY RETURNED -
SERVED 12/02/2008 DELIVERED
DEFENDANT TO LORAIN CORRECTIONAL.
STARK COUNTY SHERIFF. \$83.00

12-26-2008 JAIL TIME CREDIT (66) DAYS \$2.00

03-27-2009 DEFENDANT'S - MOTION FOR
APPOINTMENT OF COUNSEL - WITH PROOF
OF SERVICE FILED.

03-27-2009 DEFENDANT'S DOCKETING STATEMENT
FILED

03-27-2009 DEFENDANT'S NOTICE OF APPEAL FILED -
COURT OF APPEALS 2009CA00080 WITH
PROOF OF SERVICE FILED.

03-30-2009 JUDGMENT ENTRY - DENYING - MOTION \$2.00
FOR APPOINTMENT OF COUNSEL

05-07-2009 APPEAL DISMISSED - COURT OF APPEALS -
2009CA00080

06-16-2009 NOTICE OF APPEAL FILED - OHIO SUPREME
COURT 09-1054

12-21-2009 LEAVE TO APPEAL DENIED: APPEAL
DISMISSED - OHIO SUPREME COURT 2009-
1054

04-08-2010 DEFENDANT'S - MOTION FOR SENTENCING
- WITH PROOF OF SERVICE FILED.

04-20-2010 VIDEO RESENTENCING SET ON 05/19/2010
02:00 PM NOTICE SENT.

04-20-2010 HEARING DISPOSITION SHEET FILED. \$2.00

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ORIGINAL

NANCY S. REINBOLD
CLERK OF COURTS
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

2010 APR -8 PM 1:02

STATE OF OHIO

Respondent,

v.

JEFFERY COMBS, JR.

Movant.

: CASE NO. 2008 CR 1743

: JUDGE: LEE SINCLAIR

: MOTION FOR SENTENCING

:

:

JEFFERY COMBS, JR.

P.O. BOX 8107

MANSFIELD, OHIO 44901

Movant.

STARK COUNTY PROSECUTOR

115 CENTRAL PLAZA, NORTH

CANTON, OHIO 44702

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to the Stark County Prosecutor at 115 Central Plaza North, Canton, Ohio 44702 this 5th day of ~~August~~ April, 2010 by ordinary U.S. mail.

Jeffery Combs Jr.
JEFFERY COMBS, JR. #
P.O. BOX 8107
MANSFIELD, OHIO 44901

MEMORANDUM

On November 20, 2008, Jeffery Combs appeared before this Court for change of plea, and sentencing. Following his guilty pleas to 4 counts of aggravated robbery with firearm specifications, this Court proceeded with sentencing. At the sentencing hearing however, Mr. Combs was not at all advised as to the consequences for violations of post-release control. Mr. Combs was only informed that he would be subject to a mandatory maximum period of 5 years post release control following release. Under the recent authority of Singleton, supra, the Ohio Supreme Court iterated the legislative enactment of O.R.C. 2929.19(B)(3)(e), that was incorporated in Senate Bill 2 on July 1, 1996. In that legislative enactment, the statutory requirement that a trial court when imposing sentence, inform a defendant of the potential consequences if he were to violate post-release control was not, and continues to not be discretionary upon the trial court. This provision is a mandatory requirement of the trial court, and failure to so advise at the sentencing hearing renders the attempted sentence a nullity and thus, void under Ohio law. State v. Beasley (1984), 14 Ohio St.3d 1. In the instant matter, a simple correction to the judgment would constitute an unlawful exercise of jurisdiction. Because Mr. Combs was not personally informed of these statutory requirements when he appeared before this Court, he was not at all informed of the maximum penalty involved in his case. Therefore, the provisions of O.R.C. 2929.191 do not apply

to Mr. Combs, as partial sentencing and correction cannot suffice to supply an omitted action. A new sentencing hearing in this cause is therefore warranted, and must be set.

[R]elief is accordingly sought.

WHEREFORE, Jeffery Combs moves this Honorable Court for an immediate sentencing hearing pursuant to Crim.R. 32(A). His current confinement constitutes unlawful imprisonment, leaving his sentencing order thus, interlocutory, and not valid under Ohio law. O.R.C. 2929.19(B)(3)(e).

[E]xecuted this 5th day of ~~March~~
April, 2010.

Jeffery Combs Jr.
JEFFERY COMBS

Movant.

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 2008CR1743

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STATE OF OHIO,)	<u>TRANSCRIPT OF</u>
)	
Plaintiff,)	<u>PLEA & SENTENCE</u>
)	
versus)	
)	
JEFFERY COMBS, JR.,)	<u>NOVEMBER 20, 2008</u>
)	
Defendant.)	

BE IT REMEMBERED, That upon the hearing of the above-entitled matter in the Court of Common Pleas, Stark County, Ohio, before the Honorable Lee Sinclair, Judge, and commencing on November 20, 2008, the following proceedings were had:

- - - - -

ALANNA HILL, CSR-RPR-CRR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

1 APPEARANCES:

2

3

On Behalf of the State of Ohio:

4

5

LEW GUARNIERI, ASSISTANT PROSECUTOR

6

Stark County Prosecutor's Office

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Stark County Office Building

8

Canton, Ohio 44702

9

10

On Behalf of the Defendant:

11

12

JOSE IBORRA, ATTORNEY AT LAW

13

132 Fair Avenue, N.W.

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New Philadelphia, Ohio 44663

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1 State have anything further?

2 MR. GUARNIERI: No, Your Honor.

3 Other than there was a journal entry
4 brought in for consolidation of the cases
5 that needs to be signed, also.

6 THE COURT: Thank you.

7 MR. GUARNIERI: Thank you, Your
8 Honor.

9 THE COURT: Thank you.

10 Mr. Iborra, anything you would like to say?

11 MR. IBORRA: Your Honor, if it
12 pleases the Court, I can indicate to the
13 Court at this time that this has been a
14 really difficult matter to get through for
15 the family. We have had multiple
16 conferences.

17 It is an understatement for me to
18 say once I began consultation with Jeff
19 that I was shocked with this young man was
20 facing these type of charges and even more
21 so after, you know, meeting and being with
22 the family.

23 I have had ample time to discuss
24 these matters with him. I know that it was
25 a difficult decision for him to arrive at.

1 Recently there had been
2 conversations with the Court concerning
3 aggregate sentencing to the tune of 8
4 years, 5 on the underlying robs and 3 to
5 the spec.

6 I'm going to be forthright which
7 is my custom in front of any Court and say
8 that I have had conversations with Chryssa
9 Hartnett and I know that this Court said
10 that they would be willing to accept such
11 an arrangement if the victims were on
12 board.

13 It is my understanding that the
14 victims were not on board to the tune of
15 the 8. So that's why the 9 is here.

16 I have already prepared Jeff for
17 the expectation, but I think that I would
18 not be doing my job if I would at least not
19 ask the Court to consider the 8.

20 At the end of the day, we have an
21 18 year old young man here that is charged
22 with very serious offenses. Thank God that
23 not only he but no one else was harmed with
24 respect to these.

25 But this young man has so much

1 promise in his future, and to an 18 year
2 old 1 year sounds like a whole lot of time.
3 I appreciate again, once again on behalf of
4 he and his family, this Court's
5 consideration of this case, this Court
6 giving the time that it did today to review
7 several matters.

8 I have already prepared my client
9 for the expectation of what that sentence
10 will be from this Court. But I would ask
11 the Court to at least give us some thought
12 and consideration today what would be the
13 appropriate sentence in this matter, and
14 with that I have nothing further.

15 I am not sure that there is
16 anything specific that Jeff wants to say on
17 his own behalf.

18 THE COURT: Thank you. And before
19 we proceed any further, I mean the
20 discussions in chambers were always, what
21 was presented to me was that this would be
22 9 years, that that's what had been agreed
23 upon and I had said I would agree to that.

24 I'm not going to change what the
25 victims have been told in this matter. I

1 don't want there to be any doubts about
2 that.

3 So I mean that was -- there was
4 never any indication by me of anything
5 different.

6 In fact, what I indicated was that
7 if that was the situation that he might be
8 better to let the Grand Jury decide the
9 case and then take a chance as to who it
10 gets assigned to to see if somebody would
11 go against what had been presented by the
12 Prosecutor and the victims in this matter.

13 MR. IBORRA: I do not dispute any
14 of that. The Court is absolutely correct.
15 In no way am I suggesting that I
16 represented anything but that to my client.

17 I am just simply stating on my
18 client's behalf that I would ask the
19 Court's consideration for something
20 different. But I explained to him, that is
21 not the discussion we had and that is not
22 what this agreement is based upon, and he
23 knows that.

24 THE COURT: Thank you. Jeffery,
25 is there anything you would like to say?

1 DEFENDANT COMBS: No.

2 THE COURT: No? Thank you. You
3 may remain seated. Everybody remain
4 seated, yes.

5 The Court based upon the
6 information that was provided to the Court
7 and the Court is going to issue the
8 following sentence in this matter:

9 On each count of the underlying
10 aggravated robbery charge, the Defendant
11 will be sentenced to a term of 6 years on
12 each count.

13 In addition, there is a firearm's
14 specification. He would be ordered to
15 serve a term of 3 years consecutive to the
16 6 year term on each firearm count which is
17 required by law.

18 It is also required by law that
19 the 3 year term for the firearm's
20 specification be served first and, of
21 course, be consecutive then to the
22 underlying 6 year term. That would make
23 for a total term of 9 years upon each
24 count.

25 It is also my understanding that

1 the State had indicated that the State
2 would agree to permit the firearm's
3 specifications will be considered as a
4 single firearm's specification so that he
5 would have one 3 year term for the
6 firearm's specification on each count but
7 that they would run concurrent to each
8 other and the 6 year underlying terms would
9 run concurrent to each other.

10 Therefore the total term would be
11 for a 9 year prison term on each count, the
12 counts then running concurrent to each
13 other.

14 The Defendant would also be
15 entitled to any jail time that he has
16 accumulated up through today on each
17 respective charge pursuant to statute. He
18 is entitled to that credit.

19 The Court would also indicate that
20 he would be ordered to be DNA tested
21 pursuant to law, and also the Court would
22 order that he will be subject to mandatory
23 post release control on each count for a
24 maximum time period of 5 years under the
25 current law and he has been advised

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concerning all post release control.

Anything further from the State?

MR. GUARNIERI: No, Your Honor.

THE COURT: Anything further,
Mr. Iborra?

MR. IBORRA: Nothing, Your Honor.

Thank you.

THE COURT: Thank you. That will
be all.

(Court adjourned on Thursday,
November 20, 2008, at 1:30 p.m.)

C-E-R-T-I-F-I-C-A-T-E

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I, Alanna Hill, a Certified Shorthand Reporter, Registered Professional Reporter, and Certified Realtime Reporter, do hereby certify that I reported in Stenotypy the proceedings had; and I do further certify that the foregoing is a true and accurate transcription of said proceedings.

Alanna Hill

ALANNA HILL, CSR-RPR-CRR