

**IN THE COURT OF COMMON PLEAS**  
**PORTAGE COUNTY, OHIO**

**FILED**  
**COURT OF COMMON PLEAS**

**MAR 28 2011**

**LINDA K. FANKHAUSER, CLERK**  
**PORTAGE COUNTY, OHIO**

**STATE OF OHIO**

**Plaintiff**

**CASE NO. 95 CR 220**

**-v-**

**JUDGE ENLOW**

**TYRONE LEE NOLING**

**JUDGMENT ENTRY**

**Defendant**

This matter came on for hearing on Defendant's application for post conviction relief DNA testing pursuant to Ohio Revised Code §2953.73. The procedural history regarding this is as follows:

On September 25<sup>th</sup>, 2008, Tyrone Noling filed a post conviction application for DNA testing. The Court overruled Defendant's application ruling that it was a definitive DNA test in that Tyrone Noling and all co-defendants were excluded as the person whose cigarette butt was left in the driveway of the victims' home. Defendant Tyrone Noling appealed to the Eleventh District Court of Appeals. On August 3<sup>rd</sup>, 2009, that court dismissed that appeal for lack of jurisdiction. Subsequent to the opinion issued on May 4<sup>th</sup>, 2010, in *State v. Prade*, 126 Ohio St.3d 27, 2010-Ohio-1842, the Ohio Supreme Court denied defendant's leave to appeal and on September 29<sup>th</sup>, 2010 dismissed his appeal in that Court.

Revised Code 2953.72 (A) (7) states that "If the court rejects an eligible offender's application for DNA testing because the offender does not satisfy the acceptance criteria described in Division (A) (4) of this section, the court will not accept or consider subsequent applications."

In this case Defendant Tyrone Noling submitted a properly filed application for post conviction testing on September 25<sup>th</sup> 2008, the Court rejected that application and the Defendant appealed to the Supreme Court. Therefore, as this is a statutory action, the Court must reject Defendant's second filing of the application for DNA testing based on Ohio Revised Code §2953.72 (A) (7).

**IT IS SO ORDERED.**



JOHN A. ENLOW, JUDGE

C:

Portage County Prosecutor's Office  
Attn: F. M. Ricciardi, Chief of the Criminal Division  
And Pamela Holder, Staff Attorney

Ralph Miller, Esq.  
1300 Eye Street NW Suite 900  
Washington, DC 20005

James A. Jenkins, Esq.  
1370 Ontario Street, Suite 2000  
Cleveland, OH 44113