

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       24735

Appellee

v.

TAWAN CHILDS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 1995-11-2881

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 2, 2009

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BELFANCE, Judge.

{¶1} Defendant-Appellant Tawan Childs appeals the judgment of the Summit County Court of Common Pleas denying his “Request for Remedy, Review and Judicial Notice of Potentially Void Judgment/Lack of Subject Matter Jurisdiction.” For the reasons set forth below, we vacate the trial court’s decision.

I.

{¶2} In 1994 Chris Robinson was shot and killed. At the time of the shooting, Childs was seventeen-years old. In 1995, a juvenile court found probable cause that Childs committed aggravated murder concerning the shooting of Robinson and bound him over for trial as an adult in the general division. In 1996, a jury found Childs guilty of murder and an accompanying firearm specification and Childs was sentenced to fifteen years to life for murder and three years for the firearm specification. Childs filed a direct appeal and we affirmed his conviction. *State*

*v. Childs* (Sept. 18, 1996), 9th Dist. No. 17653, at \*1. The Supreme Court dismissed his subsequent appeal. *State v. Childs* (1997), 77 Ohio St.3d 1519.

{¶3} In 1997, Childs filed a petition for a writ of habeas corpus which was dismissed by the court of appeals. *State ex rel. Childs v. Wingard* (1998), 83 Ohio St.3d 346, 348. The Supreme Court affirmed the dismissal. *Id.* Childs filed a second petition for habeas corpus in 1999 which was sua sponte dismissed by the Supreme Court. *State ex rel. Childs v. Wingard* (1999), 85 Ohio St.3d 1475. Childs' motion for reconsideration was denied. *State ex rel. Childs v. Wingard* (1999), 86 Ohio St.3d 1422.

{¶4} Childs filed a petition for post-conviction relief in 1999 alleging that an error occurred at his bindover proceeding which was subsequently denied by the trial court. Childs appealed to this Court and we affirmed the decision of the trial court concluding that the trial court lacked jurisdiction to consider Childs' petition as it was untimely. *State v. Childs* (Feb. 16, 2000), 9th Dist. No. 19757, at \*1.

{¶5} Childs filed a third petition for habeas corpus in 2000, which the court of appeals subsequently dismissed, alleging that his conviction and sentence were void as he never received a physical examination prior to being bound over. See *State ex rel. Childs v. Lazaroff* (2001), 90 Ohio St.3d 519, 520. The Supreme Court affirmed the dismissal stating that “*res judicata* barred Childs from filing successive habeas corpus petitions.” *Id.* In July 2001, Childs filed a motion to dismiss his indictment alleging the same errors he argued in his third petition for habeas corpus. The trial court denied his motion on the authority of *State ex rel. Childs v. Lazaroff* (2001), 90 Ohio St.3d 519.

{¶6} Between June 23, 2006 and April 1, 2009, no entries appear on the trial court docket in this case. The next entry appearing on the docket is an entry by the trial court ruling on

Childs’ “Request for Remedy, Review and Judicial Notice of Potentially Void Judgment/Lack of Subject Matter Jurisdiction.” However, no such motion by Childs appears in the record and there is no entry on the docket indicating such a motion was filed. In the trial court’s judgment entry it states that Childs “asserts his convictions and sentence are void because he was never given the physical examination required by the then-applicable versions of R.C. [§]2151.26 and Juv.R. 30 before being bound over. Defendant’s argument and request for remedy are barred by the doctrine of res judicata.” Childs has appealed from this entry raising two assignments of error for our review.

## II.

### ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT AND VIOLATED DUE PROCESS AND SEPARATIONS OF POWER DOCTRINE BY FAILING TO AFFORD APPELLANT A REMEDY FULL AND FAIR HEARING BELOW WHEN DEFENDANT ALLEGED THAT ORIGINAL ADULT COURT CONVICTION AND JUDGMENT IS VOID BECAUSE JUVENILE COURT FAILED TO CONDUCT MANDATORY PHYSICAL EXAMINATION AND JUVENILE RECORD FAILS TO SHOW A COMPLETION OF THE FULL INVESTIGATION REQUIRED UNDER THEN[§] APPLICABLE BINDOVER PROCEDURES [sic]. \* \* \* .”

### ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT IN ITS APPLICATION OF RES JUDICATA TO A VOID JUDGMENT WHEN IT DENIED REMEDY FAILING TO DISPOSE OF CASE ON MERITS WHICH VIOLATES DUE PROCESS [sic]. \* \* \* .”

{¶7} We do not reach the merits of Childs’ assignments of error as we can only conclude from the record before us that the trial court’s jurisdiction was never invoked by Childs. While the trial court’s judgment entry of April 1, 2009 states that Childs filed a “Request for Remedy, Review and Judicial Notice of Potentially Void Judgment/Lack of Subject Matter Jurisdiction” on December 18, 2008, there is no record of that “Request” being filed, nor is a

copy of that “Request” contained in the record before us. Thus, we have no evidence that Childs properly invoked the jurisdiction of the trial court. “If a court acts without jurisdiction, then any proclamation by that court is void.” (Citation omitted.) *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75. Therefore, we are required to vacate the judgment of the trial court.

{¶8} If Childs’ motion is found and properly docketed, the State can then be given an opportunity to respond, and the trial court can *then* appropriately rule on the motion. Should that occur, and if Childs would decide to appeal, we would then be able to consider his appeal.

### III.

{¶9} In light of the foregoing, we vacate the judgment of the Summit County Court of Common Pleas.

Judgment vacated.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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EVE V. BELFANCE  
FOR THE COURT

CARR, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

TAWAN R. CHILDS, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant  
Prosecuting Attorney, for Appellee.