ORIGINAL

IN THE SUPREME COURT OF OHIO

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| Felix Brown Jr.<br>Appellant, Pro se | : | Supreme Court of<br>Ohio Case No. 09-0819 |
| | : | On Appeal from the<br>Stark County Court |
| Richard Hall, Warden<br>Appellee | : | of Appeals, Fifth Appellate<br>District; Case No. 2009 CA 00034 |

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**Appellant's Direct Appeal Merit Brief**

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## STATEMENT OF FACTS

This is a direct appeal of right from a judgment of the Stark County Court of Appeals, Fifth Appellate District, which denied appellant's O.R.C. 2725.01 Petition For Habeas Corpus Relief on March 23, 2009, after a – cursory – determination of the raised constitutional merits.

However, such judgment remains **void and of no legal force or effect** because said court of appeals never received 'Territorial Jurisdiction' directly due to appellant unknowingly and thereby procedurally incorrectly filing his habeas petition with the Stark County Court of Appeals Office (in the county where the Fifth District Court of Appeals is actually located) instead of filing it properly with the Richland County Court of Appeals Office (the county in which petitioner remains confined). Therefore prior to any unauthorized determination of merit, appellant's habeas petition should have been transferred to the Richland County Court of Appeals Office; or the petition should have been dismissed without prejudice: thus permitting appellant to refile it within the appropriate county.

Appellant is a layman, untrained and unskilled in law, and thereby remains uncertain as to whether his properly presented 'Proposition of Law No. 1' is all that is required herein to ensure that the above listed denial by the fifth district appellate court is now ruled as 'void' by your honorable court: or is it also required of appellant to herein address the actual constitutional merits of his § 2725.01 habeas petition – including the constitutional claims properly raised therein which the fifth district court of appeals erroneously failed to determine - when it declared within its order, in essence, that petitioner has failed to state a claim on which habeas relief could be granted. Therefore, appellant shall reside on the side of caution and address such under the "Second Proposition of law": however if the court determines that the contents of the 'second proposition...' was unnecessary, then appellant respectfully request that the court overlook such

and does not penalize him for attempting to ensure that his merit brief was presented as procedurally correct.

The record clearly supports that the – jailed – defendant had at no time waived his United States Constitutional Rights under the Fifth, Sixth and fourteenth Amendments, personally or via trial counsel (1) to a Public Trial, (2) to Confrontation, (3) to Object to the trial court's elaboration on a jury instruction previously given or an additional supplemental jury instruction, or (4) to request additional instruction be given to the jury: including during the vitally important stages of his jury trial proceeding when on two (2) separate occasions the trial court summoned the deliberating jury back to the courtroom so as to deliver additional jury instruction that were critical to the outcome of said trial.

The record further clearly supports that the jailed defendant had at no point during his entire criminal jury trial proceeding been removed from the courtroom for any disruptive behavior. Therefore, the trial court had absolutely no justification in knowingly violating defendant's, above listed, constitutional rights by summoning the then deliberating jury back into the courtroom so as to deliver additional jury instruction, regarding vital legal importance: in the total absence of defendant (the county jail in which defendant was held was directly across the street from the courthouse, not even a quarter mile away).

The record clearly reflects – on trial transcript pages 584 thru 587[1] – that the trial court received two (2) questions from the jury during their' deliberations: "The first question, we're noticing discrepancies in evidence of a second shell casing found in Apartment Number 238. (Appellant's Father's Apartment). Are we to assume that this is only an error in apartment numbers, or was this found in Felix' Brown's dad's apartment? The second question, same time,

1 All referenced "Trial Transcript Pages" were attached to Appellant's "Petition's 'Verified' Petition For A Writ Of Habeas Corpus, ..." marked as 'Appendix "C"' thereto.

'is the stipulation of the murder charge, the word purposely, **in other words, if it was not a purposely committed act, is he not guilty?'"** And in response, the record continues to clearly reflect that the court pronounced that: "{I}t is now 6:50 p.m., and I have consulted with both counsel for the Defendant, counsel for the Defendant and counsel for the State – and therein the court informed the jury, basically that they had to rely on their own recollection regarding the first question. And in regard to the second question, the judge only gave the jury a rereading of the definition of 'Purposely.' Now, we will have you come back here at 8:00 o'clock, and we will enter into a inquiring from the Court, according to law, as to the status of your deliberations. In the meantime, return to the jury room and continue your deliberations,. Thank you very much."

The record continues to clearly reflect – on trial transcript pages 587 thry 591 – that the trial court received two (2) more inquires from the deliberation jurors: however, in addition to the court unlawfully excluding appellant from being present, this time, there is also nothing in the record which indicates the presence of counsel for the state or of that of defense counsel when the trial court returned the deliberating jury to the court room to respond to their questions. Rather, the trial court addressed the question and delivered a supplemental 'Allen Charge' instruction without informing either counsel for the state or that of the defense.

To Wit: "The Court: Let the record reflect that at 8:00 o'clock p.m. The Court received two inquiries, one at 7:59 and one at 8:00 O'clock p.m. And the first one was, we all agree on the second count (having a weapon under disability), should we sign the verdict on Count Number 2? The second one was, we the jury are unable to come to a unanimous agreement in regard to the case of State versus Felix O. Brown Jr., Case Number 95-CR-127 on Count One (The Murder Charge)." *Id at Trial Transcript page 591.* And once the court had the deliberating jury returned to the courtroom where therein it delivered a supplemental 'Allen Charge' Instruction; the record

eventually declares: "at 8:10 p.m. The jury retired from the courtroom to continue its' deliberations." Id. At trial transcript page 591:

ARGUMENT

PROPOSITION OF LAW NO. 1:

The Fifth District Court of Appeals, for Stark County, merit determination and order which denied Appellant's Petition for a Writ of Habeas Corpus is totally void and of no legal force or effect: when said court of appeals never properly obtained Territorial Jurisdiction as a direct result of appellant unknowingly filing the habeas petition in the wrong county i.e. in a county different from the county that he's confined in.

Appellant at all time in filing his § 2725.01 habeas petition remained confined in Richland Correctional Institution, located in Richland County – Mansfield, Ohio. Further, pro se appellant remained completely unaware that he was required by rule to file such petition with the Court of Appeals office in the county that he was confined in: until he received the order which denied his habeas petition.[2]

**A) The doctrine(s) of R.C.2725.03, Goudlock v. Voorhies, State ex rel. Jamison, State ex rel. Kirklin v. Ohio Dept. of Rehabilitation and Corrections, and State ex rel. Darden v. Money: applies with full force to this Improper Venue Issue.**

*Goudlock v. Voorhies (2008), 119 Ohio St. 3d 398,401,* provides that "'[I]f a person restrained of his liberty is an inmate of a state benevolent or correction institution, the location of which is

2 In fact, just prior to said court of appeals order: appellant had been involved in legal research so as to ascertain the proper procedure in which to acquire the transcripts from the February 19, 1998 limited remand hearing – held within the state criminal trial court for the purpose of correcting appellant's criminal jury trial record – so as to supplement his habeas court filing with official documented evidence, i.e. actual testimony from the criminal jury trial courtreporter, which affirmly declared therein that appellant was not present in the courtroom when the trial court summoned the deliberation jury back into the courtroom on two (2) separate occasions for reinstruction on the law and supplemental 'Allen Charge" instruction.

Filed by statue and at the time is in the custody of the offices of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for production or discharge.' ...See also Sevayaga v. Bobby, Mahoning App. No. 03MA48, 2003 – Ohio – 6395, 2003 WL 22839346, {4} (habeas corpus petition filed in county different from one in which petitioner is confined was not properly filed even though it reached the same court of appeals)." "One of the basic requirements for a proper habeas corpus proceeding is that ,...., the case can only proceed in the county where he is actually incarcerated.... The courts of this state have concluded that this particular requirement is jurisdictional in nature...." State ex rel. Jamison, 2008 WL 1849650, at {7} (Ohio App. 5 Dist. 2008). "If appellant wishes to adjudicate the issue raised in his petition, *R.C. 2725.03* requires that he first file it in the proper forum, i.e., Richland County." State ex rel. Kirklin v. Ohio Dept. of Rehabilitation and corrections, 2003 WL1458619, at *2 (Ohio App. 11 Dist. 2003). Thereby appellant's habeas petition should have been transferred to the county where proper venue would lie. See, e.g., Darden v. Money, 1997 WL 799597 (Ohio App. 6 Dist. 1997).

**B) The doctrine of State v. Payne, Gorden v. Gorden and State v. Kenny: applies with substantial force to this issue of the unavailability of an appeal of a 'void judgment'.**

*State v. Payne (2007), 114 Ohio St. 3d.* 502, 873 N.E. 2d. 306, has pronounced that: "A void judgment is one that has been imposed by a court that lacks subject – matter jurisdiction over the case **or the authority to act.**" A void judgment is necessarily not a final appealable order." *Gorden v. Gorden,* 2009 WL 106653, at {30} (Ohio App. 5 Dist. 2009). "Where the trial court enters an order without jurisdiction, it's order is void and a nullity. No appeal can be taken

from a void judgment, as a void judgment is necessarily not a final appealable order." *State v. Kenny,* 2003 WL 1924639, at {59} (Ohio App. 8 Dist. 2003).

PROPOSITION OF LAW NO. 2:

When it is shown by substantial evidence that the trial court put forth a **knowingly** disregard of a defendant's fundamental constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution just to deny the criminal defendant his right to a public trial where he could be present during a critical stage of the trial proceeding, to confront, object and/or request appropriate additional jury instruction: such judgment is wholly unauthorized and void and as such may be attacked at any time and any place.

As earlier documented above, within the 'Statement of Fact; during the second critical stage of appellant's criminal jury trial proceeding: where ,therein, appellant, appellant's trial counsel or counsel for the state was present; the trial court summoned the deliberating jury back into the courtroom to deliver to them a supplemental 'Allen Charge' instruction – as a direct result of the jury announcement to the court that it was unable to come to a unanimous agreement in direct regard to 'the murder charge': and contained therein the trial court **knowingly** judicially proclaimed to the jury what he absolutely knew to be a total misstatement of fact concerning critical exculpatory evidence in which appellant's entire theory of defense was based .

The record indisputably reveals that Appellant maintained that it was a struggle over the weapon between himself and the, now, decedent: and during said struggle the weapon accidentally discharged twice, whereas the decedent was accidentally struck **by the second discharge.**

Now the jury had, during its initial stage of its deliberations, posed the following question to the court: "[W]e're noticing discrepancies in evidence of a second casing found in Apartment

Number 238 (Appellant's Father's Apartment), and not Apartment 278 (Appellant's Apartment). Are we to assume that this is only an error in apartment numbers, or was this found in Felix' Brown Dad's apartment?" And once the court, for the second time, summoned them back into the courtroom, **without jailed defendant being present**, he informed the jury that: they had to rely on their own recollection regarding that question. *See, again, trial transcripts pages 584 thru 587.*

Now it was substantial evidence presented during said trial that the second shell casing, although not discovered on the same day of the incident as the first shell casing was, was also discovered in the bedroom of appellant's apartment. And that the writing on the receipt of Apartment 238 as the recovery location for the second shell casing was nothing more than a clerical error: made by the detective in charge upon receiving the shell casing from the investigator (whom actually discovered and recovered the second shell casing in the thick pile carpet carpet in appellant's bedroom days after the incident, and then immediately turn it over to the detective in charge).

Yet, in clear spite of the irrefutable fact that the jury had clearly lost their way in this vital regard and could thereby easily conclude that it was not a struggle over the weapon where two shots were accidentally discharged: where the second bullet accidentally struck the decedent as appellant had testified; because it was only one shell casing recovered in appellant's apartment, Apt. 278. And the shell casing discovered within appellant's Father's Apartment could have been there as a result of a totally unrelated occurrence. The trial court judicially assured them therein that: **"[L]ikewise, there is no reason to believe that more or clearer evidence will be produced by either side [during a retrial]."**

Therefore, in clear view of such a vital revelation, it should make no difference

whatsoever that said 'segment' is quoted directly from the approved 'Supplemental... Instruction'. The trial court is commanded by unambiguous fundamental as well as structural law to,: (1): "Respect and comply with the law at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". And (2) "A judge shall be faithful to the law and maintain professional competence in it."

What this judicial constitutional infringement amounted to was nothing less than a unauthorized partial closure of appellant's jury trial proceeding i.e. the denial of fundamental federal constitutional mandates of appellant's right to a 'Public Trial'.

A) **The doctrine(s) of Brookhart v. Janis, Walter v. Georgia, Johnson v. Zerbst, Kalb v. Feuerstein, French v. hones and Curtis v. Duval, apply with tremendous force to the above, knowing, fifth, sixth and fourteenth amendment violations.**

The United States Supreme Court, in *Brookhart v. Janis*, 384 U.S. 1,4, applied a stringent standard for waiving the right of confrontation: requiring **the prosecution** to establish "an intentional relinquishment or abandonment of a known right or privilege." And one of the most basic of the rights guaranteed by the 'Confrontation Clause' is the accused right to be present in the courtroom at every stage that is critical to the outcome.[3]

The Sixth Amendment to the United States Constitution, clearly provides that an

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3 Section 10, Article 1 of the Ohio Constitution provides that : "[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel." "A criminal defendant has a federal and fundamental due process right to be present at all critical stages of his trial, absent a waiver of rights or other extraordinary circumstances." *State v. Williams* (1998), 82 Ohio St.3d 16, 26; *State v. Hill* (1995), 73 Ohio St.3d 433, 444; *see also Crim R.* 43(A). "[F]urthermore, courts must 'indulge every reasonable presumption against waiver' of fundamental constitutional rights and... we 'do not presume acquescence in the loss of fundamental rights." *State v. Adams* (1989) 43 Ohio St.3d. 67, 69. "A waiver is an intentional relinquishment or abandonment of a known right. Tho be effective, the trial court's journal **must** affirmatively demonstrate that the accused waived his right by a signed written waiver, or by acquiescence made in open court on the record. *State v. King* (1994) 70 Ohio St. 158, 160 (cited from *State v. Henry*, 2005 WL 1491462, at {10}, Ohio App. 5 Dist. 2005).

To this end, the court in *State v. Brinkley*, (2005) 105 Ohio St.3d. 231, 249, clearly declared: "[T]hen, the Court carefully explained Brinkley's right to be present and obtained from him a voluntary, knowing and intelligent waiver of the right." See also, *State v. Frazier* (2007) 115 Ohio St. 3d. 139, 160. Further, the federal constitutional right of one accused of crime to a public trial and to be present during a critical stage cannot be waived by his counsel. See *State v. Grisafulli* (1939), 135 Ohio St. 87, 91-92.

"accused shall enjoy the right to a... public trial." Id. And if the right to a public trial is violated said violation is a structural error. See *Walter v. Georgia* (1984) 467 U.S. 39, 49-50; see also *Evans v. United States,* 284 F.2d. 393, 394-95 (6th Cir. 1960). "[T]he Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. A court's jurisdiction at the beginning of trial may be lost 'in the course of the proceedings' due to failure to complete the court – as the Sixth Amendment requires - .... The judgment of conviction pronounced by a court without jurisdiction **is void**, and one imprisoned may obtain release by habeas corpus...." *Johnson v. Zerbst (1938), 304 U.S. 458, 468;* see also *In re Lockhart* (1952), 157 Ohio St. 192 '[R]ecalling the jury for supplementary instructions after deliberations are underway is a critical stage of a criminal trial." *Curtis v. Duval*, 124 F3d. 1,4 (1st Cir. 1997); *French v. Jones, 332 F.3d 430* (6th Cir. 2003). "Clarifying the substantive elements of the charged offense or instructing a deadlocked jury affirmatively guides jurors as to how they should fulfill their decision-making function." *U.S. v. Toliver*, 330 F.3d. Different or substantive instruction are fiven to the jury, he is unable to review the content, and thereby loses his apportunity to object, request additional instruction or cure any error." *Fillippon v. Albion Vein Slate Co.*(1919), 250 U.S. 76; see also *Jones v. State* (1875), 26 Ohio St. 208; *Bastic v. Connor* (1988) 37 Ohio St.3d. 144, 149.

Yet, the Supreme Court of Ohio case law precedent clearly conflicts with United States Supreme Court precedent – as well as with its own case law precedent – directly regarding the above fundamental waiver issue.

Within *State v. Clark* (1988) 38 Ohio St. 3d 252, the court pronounced that: the record must affirmatively establish that the (**jailed**) defendant was not present in the courtroom during a critical stage of his trial proceeding in order for the constitutional merits to be determined. In

essence, declaring that all a trial judge has to do, whom **knowingly** violates said fundamental constitution rights of a defendant, is to ensure that such violation is not placed on the record! And this holds true regardless of the fact that at every critical stage of the defendant's trial proceeding that defendant was present, the record affirmatively establishes such. "The Clourt: Let the record reflect that the jury is in the courtroom, Defendant is present...." *Id. Trial Transcript Page 592.* "Defendant is present with his counsel...." *Id Trial Transcript page 595.* Further, the record announces whom was present therein when the defendant was not, i.e., trial counsel and counsel for the state!

Now several of Ohio's Appellate District Courts have seen the error in, the above, blanket holding. *See State v. Sales,* 2002 WL 316899433, at *4 (Ohio App. 10 Dist. 2002); see also *State v. Lloyd,* 2004 WL 19755, at *5 (Ohio App. 4 Dist 2004).

"[T]he states cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land "Kalb v. Feuerstein, (1940) 308 U.S. 433, 439 "The Ohio Constitution provides for the creation of the courts of common pleas. The constitution, however, does not confer jurisdiction on the courts. Rather, it provides that the grant of jurisdiction must be conferred on the courts by the legislature. Section 4(B), Article IV of the Constitution reads: 'The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such power of review of proceedings of administrative officers and agencies **as may be provided by law.**'" *In re Seltzer* (1993), 67 Ohio St.3d. 220, 222, 616 N.E.2d 1108. While Ohio ;Revised Code §2931.03 generally gives the courts of common pleas "original jurisdiction of all crimes and offenses", courts have held that subject – matter jurisdiction can only be maintained as directed by law. In other words, the courts cannot **knowingly and/or willfully** disregard or violate controlling fundamental and/or

substantive structural law and retain the power to act! Because then such knowing and/or willful judicial acts become much more than a mere instance of an exercise in "**excess of jurisdiction**": but instead a clear act of a "**usurpation of power**". To wit: "It is fundamental, however, that courts have only such jurisdiction as is conferred upon them by the Constitution or by the Legislature acting within its constitutional authority." *Humphrys v. Putnam* (1961), 172 Ohio St. 456, 460, 178 N.E.2d 506. "We have stated on numerous occasions that if a meaning of a statute is clear on its face, then it **must** be applied as it is written. To construe or interpret what is already plain is not interpretation but legislative, which is not the function of the courts." *Lake Hosp. Sys. Inc. v. Ohio Ins. Guar. Assn.* (1994) 69 Ohio St.3d 521, 524, 634 N.E.2d 611; *State v. Pelfrey* (2007), 112 Ohio St.3d 422, 425, 860 N.E.2d 735. "In construing a statute, a court's paramount concern is the legislature's intent in enacting it. (citations omitted). 'The court **must** look to the statute itself to determine legislative intent and if such is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible be accorded every word, phrase, sentence and part of an act***.' (citations omitted). 'In construing the terms of a particular statute, words **must** be given their usual, normal and/or customary meanings.'

"When the language of a state is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory construction...." *Washington Cty. Home v. Ohio Dept of Health,* 178 Ohio App. 3D 78-88, 896 N.E.2d 1011 (Ohio App. 4Dist. 2008).

The plain and ordinary meaning of "**must**" is: 1. to be obliged or bound to by an imperative requirement. 2. to be under the necessity to; need to. 3. to be required or compelled to. 4. to be compelled to in order to fulfill some need or achieve an aim. *** 12. something necessary, vital or required. *This law is **must.***

"[D]oes a trial court have the inherent power to at contrary to validly enacted and constitutionally sound legislation? The obvious answer, if one subscribes to the doctrine of separation of powers, is no. ; To hold otherwise would permit an unfettered judiciary to absorb the policy making function of the legislative branch and would violate Article IV, section 18 of the Ohio Constitution, which states that judges shall 'have and exercise such power and jurisdiction *** **as may be directed by law!** There is no inherent Authority for a trial court to do anything but follow the directive of law enacted by the general assembly." "*Youngstown v. Garcia,* 2005 WL 3642495, at {21} (Ohio App. 7 Dist. 2005. "[U]nless a statute is ambiguous, the court must give effect to the plain meaning of a state". *Kendrick v. Ford Motor Co.,* 2003 WL 152824, at *2(Ohio App. 5 Dist. 2003). "It is difficult to prove a strong presumption of constitutional. All statutes have a strong presumption of constitutionality. Before a court may declare unconstitutional an enactment of the legislative branch, 'it **must** appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible!" *Grock v. Gen. Motors Corp.* (2008) 117 Ohio St.3d 192, 196, 883 N.E.2d 377.

"The line which separates errors in judgment from the usurp of power is very definite; and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally, when it is offered in evidence in an action concerning the matter adjudicated or purporting to have been so. In the one case, it is a record importing absolute verity;...." *Voohees v. Jackson ex. Dem. Bank of U.S.* 449, 474-475, 1036 WL 3750; *Reynolds v. Stansbury* (1857), 20 Ohio 344, 352-53. **Usurpation:** "The unlawful seizure and assumption of another's position, office or authority." Black's Law Dictionary (2004) Eighth Edition, page 1580.

"The effect of determining that a judgment is void is well established it is as though such

proceedings had never occurred; the judgment is nullity... and the parties are in the same position as if there had been no judgment." *Romito v. Maxwell* (1967), 10 Ohio St.2d. 266, 267, 227 N.E.2d 223, 224. "A void judgment has no legal force or effect, and any party whose rights are affected may challenge its invalidity at **any time and any place**" Blacks Law Dictionary (8th Ed. 2004) 861. "A 'collateral attack' on a judgment may be defined as an attempt to avoid, defeat or evade judgment or deny its force and effect in some judicial proceeding not provided by law for the express purpose of reviewing it." 63 Ohio *Jurisprudence* (2003) 285, *judgments*, Section 471.

If the court of confinement lacked jurisdiction – because it **knowingly** invaded the sole providence of the legislature – then its judgment is void and may be attacked by way of habeas corpus regardless if petitioner had adequate remedy at law. See *Davis v. Wolf* (2001), 92 Ohio St.3d 549, 552, 751 N.E.2s 1051 (herein the petitioner stated a viable habeas claim in-spite of the trial court initially having subject -- matter jurisdiction: because it lost its authority to proceed to lawful judgment the moment it **knowingly** violated constitutionally statutory law; a clear act of usurpation). As directly compared to *State v. Lake* 2002 WL 358682. *(Ohio App. 5 Dist. 2002); State v. Rose, 1997 WL 127195 (Ohio App. 8 dist. 1997)* Several addition States – within the surrounding area – have also continued to recognize the sustainable importance in the accessibility of the Great Writ for prisoners so as to address 'void judgment(s)'. See *Floyd v. Lindamood,* 2009 WL 111655, at *1 (Tenn. Crim. App. 2009) ("To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void".); Beacham v. Walker, 231 III. 2D 51, 58-59, 896 N.E.2d 327 (III. 2008)("[a] void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' including a habeas proceeding...") *Com. v. Carneal,* 2008 WL 5046730, at *8 (Ky. 2008)("The

writ of habeas corpus remains for a prisoner who can establish... that the judgment by which he is detained is void ab initio."); and *Moses v. Department of Corrections,* 274 Mich App. 481, 485-486, 736 N.W. 2D 269 (Mich App. 2007)("The writ of habeas corpus deals with radical defects that render a judgment or proceeding absolutely void... a radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an expressed legal requirement in existence at the time of the act or omission.")

Moreover, the Ohio Supreme Court has long since held that if the trial court's judicial act(s) – or willful lack of performance thereof – is **unlawful** it [sic] not erroneous or voidable, but it is wholly unauthorized and void." *State ex rel. Kudrick v. Meredith* (1992), 24 Ohio N.P. (N.S.) 120, 124, 1992 WL 2015, at *3. to this end, Ohio revised code §2921 – Interfering With Civil Rights – clearly declares: "(A) No public servant, under color of his office, employment, or authority, shall **knowingly** deprive, or conspire or attempt to deprive any person of a constitutional or statutory right. (B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree." And such revised code makes absolutely no distinction of what fundamental or structural law(s) was **knowingly** violated and/or disregarded.

Further, R.C. §2901.22 – Culpable Mental State – clearly reads:... (B) "A person acts **knowingly**, regardless of purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

The writ of habeas corpus is the remedy provide by law for the enforcement of the civil right of personal liberty...." *Henderson v. James, Warden* (1985), 52 Ohio St. 242, 259. "the writ of habeas corpus is the remedy which the law gives for the enforcement of civil rights of personal liberty.*** (T)he judicial proceeding under it is not the criminal act which is

complained of, but into the right to liberty notwithstanding the act. Exparte Tom tong (1883) 108 U.S. 556, 539, 2 S.Ct. 871, 872.

'[I]t is the prevailing view that habeas corpus is, in its nature, a civil rather than criminal proceeding, even when it is sought in behalf of one charged with or convicted of crime.'" *Bar Assn. Of Greater Cleveland v. Steele,* (1981), 65 Ohio St.2d 1, 2; see also *Littleton v. Ginter* (1985) 1985 WL 9344, at *1; and *Limpach v. Lane,* 2000 WL 33226312, at *3 (Ohio App. 4 Dist. 2000)("The writ of habeas corpus is an extraordinary remedy to enforce the right of personal liberty: to obtain freedom. The writ requires one to produce an alleged unlawful detainee to the court and to give good cause for the detainment").

Now '**knowingly**' does not necessarily imply corruption or criminal intent, regarding the trial court's willful disregard of the, above argued, controlling constitutional and statutory laws. Yet, such **unlawful** structural and fundamental violations: were much more than mere instances of erroneous acts of 'deciding such wrongly' or 'Dereliction of duty' or 'Abuse of Discretion' or even 'Biasness'. Instead, the evidence contained within petitioner's 'Claim for relief' shall substantially prove that the trial court had an eccentric and capricious way to him: which was tantamount to its' conscious disregard of his sworn duty and thereby, as such, willful decision in deciding which'... **laws**' he would abide by and which ones he would actively disregard and/or violated. Thereinto, the trial court put forth knowing acts of usurpation of judicial authority. And again, at the very moment the court **knowingly** as well as **unlawfully** invaded the sole providence of the legislature – i.e. violated what the law clearly and unambiguously commanded – for the sole purpose of satisfying his eccentric and capricious urges: the court not only l9st its' requisite jurisdiction but its' judgment became 'void ab initio' because of the lack of authority to pronounce judgment. Not even a common Pleas court Judge retains the judicial authority after it'

**knowingly** violated the law. And petitioner is unaware of any presidential weight to the contrary. Thus, a void claim, for the purpose of habeas corpus proceeding, is one which strikes at the jurisdictional integrity conditionally bestowed on the Common Pleas Court, via, Constitutionally Sound Statutory Law: which is synonymous with the term authority or power to act lawfully and not perform in a manner that is **knowingly illegal** or **unlawful.**

Moreover, credible evidence of said usurpation of power would also be an unlawful violation of the 'Due Process Clause' under The fourteenth Amendment of the United States as well. Thereby such presentation in this specific regard, would further exhibit extraordinary circumstances warranting the granting of this 'Writ': directly due to the unauthorized, knowing and unlawful use of judicial power.

"The vague contours of the Due Process Clause do not leave judges at large. We may not draw on our mere personal and private notions and disregard the limits that bind judges in their judicial function. Due Process of Law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend 'a sense of justice'" *Rockin v. People of California* (1952), 346 U.S. 165, 170-173, 72 S.Ct. 205; see also *In re C.S.* (2007) 115 Ohio St.3d 267, 277, 874 N.E.2d 1177, 1187. "As we explained recently..., due – process rights are malleable ones that are designed to ensure that individuals are treated with fundamental fairness in light of the given situation and the interest at stake." *State v. Simpkins,* (2008) 2008 WL 751750, at [21].

There is no judicial power without the presence of fundamental due process, thereby judicial power can only be exercised within the scope of 'fundamental due process' and not beyond it. If courts **knowingly** transcend the limits which the constitutionally sound law

prescribes then their' acts are not only unlawful, but void as well.

"Only in the rare circumstance in which a court ... acts in a manner inconsistent with due process will a judgment be found void." *Thompson v. Thompson,* 2008 WL 555439, at {5} (Ohio App. 9 Dist. 2008); *State v. Harrold,* 2004 WL 1462991, at {15} (Ohio App. 9 dist. 2004); *Kingery's Blackrun Ranch, Inc v. Irvin Kellough 2001 WL 1767382,* at *3 (Ohio App. 4 Dist 2001). "[U]nless a violation of a constitutional right results in a complete lack of due process or otherwise deprives a trial court of jurisdiction over a case, such violation cannot form the basis of a viable claim in habeas corpus." *State ex. Rel. Fitzpatrick v. Trumbull Correctional Inst. Warden,* 2003 WL 22171427, at {9} (Ohio App. 11 Dist. 2003); see also *Chadwick v. Claulfield,* 834 A. 2d 562, 566 (Pa. Super 2003)("A petition for a writ of habeas corpus 'lies to correct void or illegal detention, or where the record shows a trial ... so fundamentally unfair as to amount to a denial of due process or other constitutional rights ..."); *Erickson v. Weber,* 748 N.W. 2D 739, 744 (S.D. 2008).

"The privilege of the writ of habeas corpus shall not be suspended, unless, in the case of rebellion or invasion, the public safety require it." *Ohio Const. Art. 1, § 8.* "Habeas Corpus, now embodied in the statutory law of Ohio, is a high prerogative remedy of ancient origin, one purpose of which is to secure immediate relief from illegal confinement. The remedy is designed to effect speedy release of one who has been unlawfully incarcerated. The office of the remedy is ... to ascertain whether he has been imprisoned by due process of law. In short, the object of habeas corpus is to determine the legality of the restraint under which a person is held.....: *In re lockhart,* supra, 157 Ohio St. 192 "[I]f it appears that the writ ought to issue, a court or judge authorized to grant the writ must grant it forthwith." *R.C. 2725.06*

## Conclusion

Appellant respectfully request that the Honorable Court grant appellant's appeal: by declaring the Fifth District Court of Appeals, for Stark County, order which denied Appellant's Petition For Habeas Corpus on the merits; void, And any and all relief that the court deems appropriate in the interest of substantive justice: should now be afforded to Appellant.

## Prejudice

In full accordance with his 'Oath of Office' as well as O.R.C. §2921.45: the Appellee cannot legally assert that he would suffer any prejudice by the granting of appeal or relief granted, because he had no right to reasonably expect finality from this void order and illegal confinement.

## Certificate of Service

I, Felix Brown Jr., hereby certify that a correct and true copy of this 'Appellant's Direct Appeal Merit Brief' has been served via U.S. First Class Mail upon Appellee's legal representative, Richard Cordray, 30 East Broad St., Columbus, Ohio 43215-3428, on this 13th day of July, 2009.

Felix Brown

Felix Brown Jr. #312-676

Verified Declaration

I, Felix Brown Jr., do herein verify and firmly declare under penalty of perjury, that every facts asserted herein this, Appellant's Direct Appeal Merit Brief' pertaining to the lack of proper Territorial Jurisdiction by said appellate Court; as well as the trial court's knowing and unlawful acts of (1) Usurpation, (2) Civil Rights violations, and (3) Fundamental constitutional and Structural Due Process of Law Violations, are true and correct.

Further, I, Felix Brown Jr., do herein also verify and firmly declare under penalty of perjury, that every reference word that appellant cited is 'directly from the certified record' verbatim.

Also, Appellant has declared under a good faith basis that, said, February 19, 1998 limited remand transcripts shall affirmatively establish that appellant was not present during the two (2) declared critical stages of his state criminal jury trial proceeding:

Sworn to the truthfulness and correctness in my presence on this 13 day of July, 2009.

Rebecca Williams
Notary

Felix Brown Jr.
Appellant, Pro se

Rebecca Williams
Notary Public
State Of Ohio
My Commission Expires
4 Mar 2013

A

# APPENDIX

A

PLEASE FILE STAMP & RETURN TO APPELLANT

In The Supreme Court of Ohio

| | | |
|---|---|---|
| Felix Brown Jr., prisoner<br>Appellant, Pro se | : | The Supreme Court of Ohio<br>Case No. 09-0819 |
| v. | : | From The Stark County Court of Appeals, Fifth Appellate District, |
| Richard Hall, Warden<br>Appellee | : | Case No. 2009CR0034 |

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Notice of Appeal of Appellant Felix Brown Jr.

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Felix Brown Jr. #312-676
Richland Correctional Inst.
1001 Olivesburg Road
P.O. Box 8107
Mansfield, Ohio 44901
Appellant, *Pro se*



Attorney General of Ohio: Richard Cordray
150 East Gay Street
Columbus, Ohio 43215
*Appellee Legal Representative*

**Notice of Appeal of Appellant Felix Brown Jr.**

Appellant, Felix Brown Jr., hereby gives notice of Appeal to the Supreme Court of Ohio from the judgment of the Stark County court of Appeals, Fifth Appellate District, entered in court of Appeals *case No. 2009CA00034* on April 6, 2009. *See Appendix "A"*

This case originated in the above court of Appeals. And it raises a substantial constitutional question which is also one of public or great general interest.

Respectfully submitted

Felix Brown Jr. #312-676

Appellant, *Pro se*

**Certificate of Service**

I, Felix Brown Jr., certify that a true copy of this Notice of Appeal was sent by First Class U.S. Mail upon counsel of record for Appellee, Richard Cordray, 150 East Gay Street, Columbus, Ohio, 43215, on this 29th day of April, 2009.

Felix Brown Jr. #312-676

Attachment not scanned

# APPENDIX

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FELIX BROWN JR.

Petitioner

-vs-

RICHARD HALL, WARDEN

Respondent

JUDGES:
Hon. Sheila G. Farmer, P.J.
Hon. W. Scott Gwin, J.
Hon. John W. Wise, J.

Case No. 2009 CA 00034

OPINION

CHARACTER OF PROCEEDING: Petition for Writ of Habeas Corpus

JUDGMENT: Denied

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Petitioner

FELIX BROWN, JR.
Richland Correctional Institute
1001 Olivesburg Road
Post Office Box 8107

For Respondent

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FELIX BROWN JR.

Petitioner

-vs-

RICHARD HALL, WARDEN

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JUDGES:
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Case No. 2009 CA 00034

OPINION

CHARACTER OF PROCEEDING: Petition for Writ of Habeas Corpus

JUDGMENT: Denied

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Petitioner

FELIX BROWN, JR.
Richland Correctional Institute
1001 Olivesburg Road
Post Office Box 8107

For Respondent

*Wise, J.*

**{¶1}** Petitioner, Felix Brown, Jr., has filed a Petition for Writ of Habeas Corpus alleging unlawful detention based upon the claim his constitutional rights were violated because of his alleged absence from the courtroom when the trial court answered questions submitted by the jury.

**{¶2}** Petitioner was convicted of one count of murder with a gun specification and one count of having weapons under disability. Following a finding of guilty by a jury, Petitioner was sentenced to a term of incarceration of 15 years to life consecutive to three years for the gun specification for a total sentence of 18 years to life.

**{¶3}** The Supreme Court has held "habeas corpus is not available when there is an adequate remedy in the ordinary course of law." *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6. In this case, Petitioner has or had an adequate remedy at law by way of an appeal. As noted above, Petitioner's only complaint deals with his alleged absence during a critical stage of the proceedings. Numerous appellants have raised the very issue Petitioner now raises in direct appeals. See e.g. *State v. Hale* 119 Ohio St.3d 118, 134, 892 N.E.2d 864, 890 (Ohio, 2008); *State v. Frazier* 115 Ohio St.3d 139, 159, 873 N.E.2d 1263, 1288 (Ohio, 2007) (An accused's absence, however, does not necessarily result in prejudicial or constitutional error.); and *State v. Nichols* 2007 WL 1840865, 4 (Ohio App. 5 Dist.).

**{¶4}** Even assuming arguendo habeas corpus would be an available remedy to challenge a petitioner's alleged absence at a critical stage in the proceedings, Petitioner's claim lacks merit for the reason the record fails to affirmatively establish

Petitioner's absence. Petitioner actually concedes the record fails to affirmatively establish his absence stating, "Moreover, it has been pronounced by case law that the record must affirmly (sic) show the petitioner's absence in the courtroom. Thereinto, the record does exactly that, indicate the total absence of petitioner from said two referenced instances by its' (sic) silence!"

**{¶5}** Where a defendant's absence is not affirmatively established, the Supreme Court has held there is no merit to a complaint relative to a defendant's absence. *State v. Frazier* 115 Ohio St.3d 139, 159, 873 N.E.2d 1263, 1289 (Ohio, 2007) citing *State v. Clark* (1988), 38 Ohio St.3d 252, 258, 527 N.E.2d 844 ("the record must affirmatively indicate the absence of a defendant or his counsel during a particular stage of the trial").

**{¶6}** For these reasons, Petitioner's request for Writ of Habeas Corpus is denied.

By: Wise, J.

Farmer, P. J., and

Gwin, J., concur.

JUDGES

JWW/d 316

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|---|---|---|
| FELIX BROWN JR. | : | |
| Petitioner | : | |
| -vs- | : | JUDGMENT ENTRY |
| RICHARD HALL, WARDEN | : | |
| Respondent | : | Case No. 2009 CA 00034 |

For the reasons stated in our accompanying Memorandum-Opinion, Petitioner's request for Writ of Habeas Corpus is denied.

Costs assessed to Petitioner.

JUDGES