OPIGINAL

IN THE SUPREME COURT OF OHIO

ROBERT L. HILLMAN,

Appellant,

Case No. 2011-1790

Case No. 11AP-22

v.

Appeal of Tenth District Court of Appeals

SUSAN BROWN, JUDGE,

_

:

Appellee.

MERIT BRIEF OF APPELLEE JUDGE SUSAN BROWN

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Appellant, pro se

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JAN 27 2012

CLERK OF COURT SUPREME COURT OF OHIO

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I. INTRODUCTION

Appellant Robert Hillman, a pro se inmate, is challenging the decision by the Tenth District Court of Appeals Judge Susan Brown to deny his contempt complaint for lack of jurisdiction. That dismissal is the subject of this appeal, despite Hillman's attempt to bring forth several unfounded allegations against Judge Brown and others associated with his previous court filings. The only issue before this Court is whether the Tenth District Court of Appeals properly dismissed Hillman's contempt complaint against Judge Brown for lack of jurisdiction. As argued below, Ohio law required that the Tenth District Court of Appeals dismissed the contempt complaint against Judge Brown because it lacked jurisdiction to consider his contempt complaint.

II. STATEMENT OF CASE

A. Procedural Posture

During an appeal of an expungement case before the Tenth District, Hillman filed a show cause order for contempt against Judge Brown, who had signed a motion as a Tenth District judge during Hillman's appeal. *Hillman v. Brown* (10th Dist. Jan 6, 2011), No. 11AP-22 (Appx. at p. 19). The Tenth District court dismissed Hillman's complaint against Judge Brown for lack of jurisdiction. *Hillman v. State* (10th App. Dist. Sept. 29, 2011), No. 11AP-22 (Appx. at 7). Hillman appealed the Tenth District's dismissal to this Court as of right, which this Court granted. Case no. 2011-1790 (Appx. at pp. 37-38). In response to Hillman's Appellant brief in this action, Appellee Judge Susan Brown now enters her brief.

B. Statement of Facts

On November 20, 2008, Hillman filed a motion to expunge his criminal records in three cases in the Franklin County Court of Common Pleas, pursuant to R.C. 2953.52. See Dockets

for Franklin County Case Nos. 95CR-2298, 95CR-5414, and 03CR-3447 (Appx. at pp. 1, 3, and 5).

On April 5, 2010, the Franklin County Court of Common Pleas denied Hillman's motions to expunge his record in these cases. *Hillman v. Brown* (10th App. Dist. Sept. 29, 2011), No. 11-AP-22, p. 1 (Appx. at p.7).

Hillman timely appealed the denial of expungement for each case in the Tenth District Court of Appeals, and the court consolidated those appeals, under dockets for 10th App. Dist. Case Nos. 10AP-424, 10AP-425, and 10AP-426 (Appx. at pp. 10, 12, and 14).

On December 10, 2010, Hillman filed a motion to show cause in the Tenth District against the Franklin County Prosecutor's Office, pursuant to Civil Rule 7(B)(2). See Hillman v. State (10th App. Dist. Dec. 10, 2010), Nos. 10AP-424, 10AP-425, 10AP-426 (Appx. at p. 16). In this motion, Hillman requested that the court find the Franklin County Prosecutor in "direct or in-direct civil and criminal contempt of court, for committing fraudulent acts . . ." Id. at p. 16.

On December 15, 2010, in response to Hillman's motion, the Tenth District issued a journal entry, stating only that "Appellant's December 10, 2010 motion shall be submitted to the court for determination at such time as the court addresses the merits of this appeal." *State v. Hillman* (10th App. Dist. Dec. 15, 2010), Nos. 10AP-424, 10AP-425, 10AP-426 (Appx. at p. 18). Appellee Judge Susan Brown signed this journal entry. *Id*.

On January 6, 2011, Hillman filed another application for a show cause order in the Tenth District, this time as a separate complaint in mandamus to hold Judge Brown in "direct and or in-direct civil and criminal contempt of court." Hillman v. Brown (10th Dist. Jan 6,

Although docketed as a mandamus action, the Hillman Complaint was clearly not seeking a writ of mandamus. The case was mis-captioned for a mandamus petition, and since the issuance of contempt is discretionary, Hillman could never demonstrate a clear legal duty on the part of the Tenth District to grant him the relief he sought.

2011), No. 11AP-0022 (Appx. at p. 19). Hillman, adopting the same language he used in his previous motion for contempt against the Franklin County Prosecutor, alleged that Judge Brown committed fraudulent acts in her December 15, 2010 journal entry. *Id.*

On March 22, 2011, the Tenth District issued a decision in the expungement case overruling Hillman's assignments of error, denying his motion for show cause order against the prosecutor, and affirming the judgment of the Franklin County Court of Common Pleas. *State v. Hillman* (10th App. Dist. March 22, 2011), Nos. 10AP-424, 10AP-425, 10AP-426 (Appx. at pp. 22-26).

On September 29, 2011, the Tenth District issued its decision on Hillman's January 6, 2011 mandamus/contempt complaint against Judge Brown, dismissing his motion for lack of jurisdiction.² *Hillman v. State* (10th App. Dist. Sept. 29, 2011), No. 11AP-22 (Appx. at 9).

This September 29, 2011 decision is the subject of Hillman's current appeal. On October 24, 2011, this Court granted Hillman's appeal as of right. Appx. at p. 37. Hillman filed his appellant brief on December 19, 2011, to which appellee Judge Susan Brown of the Tenth District Court of Appeals now responds.

III. ARGUMENT

A. Standard Of Review

The standard of review for the granting or denial of a motion to dismiss for lack of jurisdiction is whether the complaint raises any cause of action cognizable in the forum. State ex rel. Bush v. Spurlock (1989), 42 Ohio St.3d 77, 80. Because Hillman did not raise an action cognizable in the Tenth District Court of Appeals, this Court should uphold the Tenth District's judgment.

Id.

B. The Tenth District Court of Appeals properly dismissed an original complaint in contempt against Appellee Judge Susan Brown for lack of jurisdiction.

The Tenth District Court of Appeals had no jurisdiction to entertain a suit for contempt of court. Ohio courts of appeals are courts of limited jurisdiction, only having "such jurisdiction as may be provided by law." Section 3, Article IV, Ohio Constitution. The courts of appeals have original jurisdiction over actions in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and "such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the courts of appeals within the district." Section 3(B)(2), Article IV, Ohio Constitution. An original action for a "show cause" order is not included in the courts of appeals' jurisdiction.³.

Further, Hillman brought his complaint against Judge Brown pursuant to R.C. 2705.02. The Tenth District has recently considered the legislative intent of two particular contempt statutes, R.C. 2705.01 and 2705.02, in *Anderson v. Smith*, 2011-Ohio-5619. Specifically, the Tenth District determined that neither R.C. 2705.01 nor 2705.02 expressly authorize a party to sue for contempt of court, nor do these statutes create an implied right of action. *Id.* at ¶ 10. The court determined that "the power to punish contempt is inherent in the judiciary, and the statutes simply regulate the exercise of this power," but the statutes not intended to create a "private, independent right of action." *Id.* at ¶ 11. That this was the legislature's intent, reasoned the court, is further supported by the legislature's choice of language in R.C. 2705.031, which provides "that a party aggrieved by one of the punishable acts could initiate a complaint for contempt." *Id.* Considering the limits of Section 3(B)(2) and the legislative intent behind R.C. 2705.02, the Tenth District did not have express or implied jurisdiction to hear an original action in contempt.

Id.

Accordingly, the Tenth District was required to abstain from considering Hillman's original contempt complaint for lack of jurisdiction.

IV. CONCLUSION

For the reasons set forth above, the Tenth District Court of Appeals properly dismissed Hillman's complaint against Appellee Judge Susan Brown for lack of jurisdiction. Therefore, Appellee Judge Susan Brown respectfully requests that this Court uphold the decision of the Tenth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Merit Brief of Appellee Judge Susan Brown* was served by regular U.S. mail, postage prepaid, on January 27, 2012, upon the following:

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Appellant

ERINBUTCHER-LYBEN Assistant Attorney General

APPENDIX

Maryellen O'Shaughnessy 373 S. High St., 23rd Fl. (614) 525 - 3624 Арреаів: 345 S. High St., 1st Ft. (614) 525 - 3521 CNII. 345 S. High St., 1st FL (614) 525 - 3650 Criminal: (\$14) 525 - 4410 373 S. High St., 4th Fi. Domestic: Branklin County Olerk of Court (614) 525 - 4411 Juvenile: 373 S. High St. 4th Fl. Juvenile Traffic, 389 S. Front St. 1et Fl. (614) 525 - 5278 Public Retords: 345 S. High St., 1et Fl. (614) 525 - 3625 Court Schedule Case Information Online Home Sourch 002298 Case: CR Court: All Middle Init: Last Name: First Name: Email Update: Advanced Search CRIMINAL CASE DETAIL Теугон Сов ARREST DATE **STATUS** MUN COMP DATE FILED **HOW FILED** CASE NUMBER CLOSED 8985-1-2/95 04/09/1995 CPD 04/19/1995 INDICTMENT 95 CR 002298 **PROSECUTOR** COURTROOM JUDGE DOUG P STEAD COURTROOM 4F JOHN F BENDER 345 SOUTH HIGH STREET 4TH FLOOR COLUMBUS, OH 43215 DEFENDANT(S) Attorney Name RICHARD F SWOPE ■ ROBERT L HILLMAN Co-Defendant(s) None EXAMPLES (Disclaimer: The listed "Off. Date" may be inaccurate on cases filed prior to 10/9/92. This is the date the electronic docket for this case was converted to a new system, and not the actual date of the Offense. See docket entries below for Case History.) Degree Disposition Off. Date Code Description FINDING OF NOT GUILTY - BY JURY AGGRAVATED BURGLARY 2911.11 03/29/95 Specifications:Mone **⊞ BONDS** Posted By Description Status Amount Type Date N/A BOND SET - SURETY 30,000.00 INACTIVE SURETY 04/21/95 N/A BOND SET - REPORTING RECOGNIZAN INACTIVE 10,000,00 REPORT RECOG 04/21/95 Select Docket Category All Show All Descriptions DOCKET **Pages Fiche** Frame Image Date Chg.Description Lvl MASS TRANFER OF JUDGE LOCATION 00 €06/03/11 N44 57548 MISCELLANEOUS ORDER **@** 04/05/10 00 57249 H12 2 MOTION FILED ⊞05/05/09 01 K07 1 57244 MOTION DENIED 304/27/09 57181 M36 24 PROSECUTOR'S OBJECTION TO APPLICATION 02/03/09 00 V28 57131 **EXPUNGEMENT - MOTION FOR** 01 阑 11/20/08 22789 **B**16 ATTORNEY FEES ORDER **107/26/95** 00 6 **B11** 22789 ATTORNEY FEES - MOTION FOR **⊞07/26/95** n۵ 1 D10 22776 NOTICE RETURNED **⊞07/25/95** 00 00 BOND INACTIVATED 图 07/11/95 00 00 BOND INACTIVATED 00 ⊞07/11/95 22632 .105 CRIMINAL DISPOSITION SHEET FILED 06/30/95 22632 J04 1 FINDING OF NOT GUILTY - BY JURY 06/30/95 01 E05 22628 € 06/29/95 WITNESS FEE E04 1 22628 WITNESS FEE ⊕ 06/29/95 00 E19 22608 SUBPOENA - RETURNED NOT SERVED 图 06/28/95 1 22608 E12 SUBPOENA - RETURNED SERVED 00 **1**06/28/95 E11 22608 SUBPOENA - RETURNED SERVED 00 **3** 06/28/95 22602 D16 SUBPOENA - FILED 00 **±** 06/28/95 E05 22628 WITNESS FEE 3 06/28/95 00 E05 22628 WITNESS FEE 00 106/28/95 22628 E06 WITNESS FEE 00 E06 1 22628 00 WITNESS FEE **106/27/95** 22599 CRIMINAL DISPOSITION SHEET FILED 06/27/95 00

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CRIMINAL CASE DETAIL

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RICHARD FRYE	COURTROOM 5F 345 SOUTH HIGH ST 5TH FLOOR COLUMBUS, OH 432					DONALD E MICCEN	

DEFENDANT(S)

Name Attorney

■ ROBERT L HILLMAN MARK M HUNT

ROBERT L HILLMAN

Co-Defendant(s)

None

CHARGES (Disclaimer: The listed "Off. Date" may be inaccurate on cases filed prior to 10/9/92. This is the date the electronic docket for this case was converted to a new system, and not the actual date of the Offense. See docket entries below for Case History.)

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IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT FRANKLIN COUNTY

ON SEP 29 PM 2: 36 CLEAK OF COURTS

Robert L. Hillman,

Plaintiff,

Case No. 11AP-22

V.

Susan Brown, Judge, Tenth District Court of Appeals,

Defendant.

DECISION AND JUDGMENT ENTRY

Harsha, P.J.

This matter comes before the Court on Respondent Judge Susan Brown's motion to dismiss Plaintiff Robert L. Hillman's complaint. For the reasons that follow, Judge Brown's motion is **GRANTED** and this case if hereby **DISMISSED**.

PROCEDURAL HISTORY

Hillman filed an application to seal his record pursuant to R.C. 2953.52 in Franklin County Common Pleas Cases 95CR-2298, 95CR-5414, and 03CR-3447. The trial court denied the application on April 5, 2010. Hillman filed three appeals from this decision in *State v. Hillman*, Franklin App. No. 10AP-424, 10AP-425, and 10AP-426, which were subsequently consolidated.

In December 2010, Hillman filed a motion to issue a show cause order against the assistant prosecutor in the case, alleging that he fraudulently concealed material information. In response to this motion, Judge Brown signed a journal entry stating that, "Appellant's December 10, 2010 motion shall be

submitted to the court for determination at such time as the court addresses the merits of this appeal."

Thereafter, Hillman filed a complaint against Judge Brown seeking a show cause order against her pursuant to R.C. 2705.02. In his complaint, he argues that Judge Brown made a false statement in her journal entry by saying the Court would "rule on the contempt of court allegations at the same time the Court ruled on the merits or heard the merits of the actual case." Hillman argued that the Court heard the merits of the case on November 17, 2010 – the date of the scheduled oral argument – and, therefore, Judge Brown's statement was false and she should be held in contempt.

Judge Brown filed a motion to dismiss this complaint on the grounds that:

(1) the factual allegations in Hillman's complaint misrepresent the record; (2) this Court lacks jurisdiction to hold Judge Brown in contempt because any such request should have been made to the panel hearing Hillman's original appeal; and (3) Ohio courts of appeals have limited original jurisdiction, which does not include the action brought by Hillman. Because we agree that this Court lacks jurisdiction to hear Hillman's complaint, we address this argument first.

LAW AND ANALYSIS

Ohio law is clear that "[c]ourts of appeals have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *."

¹ On March 22, 2011, this Court issued a memorandum decision affirming the trial court's judgment and denying the show cause order. This Court journalized that decision in an entry on

Section 3(B)(2), Article IV, Ohio Constitution. Additionally, courts of appeals have original jurisdiction in the following: (1) quo warranto; (2) mandamus; (3) habeas corpus; (4) prohibition; (5) procedendo; and (6) in any cause on review as may be necessary to its complete determination. Id. at Section 3(B)(1).

Hillman is asking this Court to exercise original jurisdiction in a contempt proceeding. Pursuant to the Ohio Constitution, we have no such authority. Therefore, on this basis alone, we must dismiss his complaint.

CONCLUSION

Judge Brown's motion to dismiss is GRANTED. THIS CASE IS HEREBY DISMISSED. COSTS TO PETITIONER. IT IS SO ORDERED.

Harsha, P.J., Abele, J. and Kline, J.: Concur.

For the Court,

William H. Harsha, Presiding Judge

Peter B. Abele, Jugge

Roger L. Kline, Judge

373 S. High St., 23rd Ft. (614) 525 - 3624 Maryelleji O'S<mark>naughness</mark> Appeals: 345 S. High St., 1st FL (614) 525 - 3621 CIVE: 345 S., High St., 1st Fit. (614) 525 - 3650 Criminali (614) 525 - 4410 373 S. High St., #th Fl. Domestic: Franklin County Clerk of Court 373 S, High St. 4th Fi (614) 525 + 4411 Juvenile: Public Records: 345 St. High St., Let Ft. (614) 525 - 3625 Court Schedi Case Information Online Home 000424 Case: AP Middle Init: First Name: Last Name: Advanced Search APPEALS CASE DETAIL Previous Com **STATUS** LC CASE ORD DATE DATE FILED LOWER CASE CAUSE TYPE CASE NUMBER CLOSED 04/05/10 05/04/10 08EP646 COMMON PLEAS 10-AP-000424 CRIMINAL STYLE CODE: STATE OF OHIO -VS- ROBERT L HILLMAN LOWER COURT JUDGE: N/A COURTROOM MAGISTRATE APPELLANT/RELATOR(S) Attorney Name N/A N/A ROBERT L. HILLMAN 圖ROBERT L. HILLMAN APPELLEE/RESPONDENT(S) Attorney Name JOHN COUSINS **■ STATE OF OHIO** PROCEEDING STAY N **ACCELERATED CALENDAR TYPE DOCKETING STATEMENT** Ν MEDIATION TRANSCRIPT 10AP426 STATE OF OHIO CONSOLIDATED CASES 10AP425 STATE OF OHIO PENDING EVENTS **SUB/ARG DATE: 11/17/10** ACTUAL **ESTIMATE ORIGINAL** 05/19/10 05/14/10 05/14/10 RECORD TRANSMITTAL DATE 06/14/10 06/07/10 APPELLANT/RELATOR BRIEF DATE 06/01/10 11/05/10 07/02/10 APPELLEE/RESPONDENT BRIEF 06/21/10 DATE N/A N/A REPLY BRIEF DATE N/A N/A N/A N/A STIPULATION DATE Select Docket Category Show All Descriptions DOCKET **Pages** Fiche Frame Image Description Date 20784 OHIO SUPREME COURT DECLINES JURISDICTION TO HEAR APPEAL 107/12/11 H06 20778 RETURN RECEIPT FOR TRIAL COURT FILES 06/13/11 NOTICE OF APPEAL FILED - OHIO SUPREME COUR ⊕ 04/25/11 COST BILL PREPARED ₩ 04/18/11 ADDITIONAL COST BILL CREATE ⊕ 04/12/11 086 20764 MOTION DENIED **1** 04/12/11 20764 086 JOURNAL ENTRY **304/12/11** PROOF OF REGULAR MAILING **3**04/12/11 PROOF OF REGULAR MAILING **304/12/11** F78 20763 MOTION 図 04/07/11 JEJ TRIAL COURT JUDGMENT AFFIRMED (±) 03/29/11 PROOF OF REGULAR MAILING ⊞ 03/29/11 PROOF OF REGULAR MAILING **3/29/11** PROOF OF REGULAR MAILING 国 03/22/11 PROOF OF REGULAR MAILING **⊞** 03/22/11 \$94 5 20758 200 MEMO DECISION ₩ 03/22/11 PROOF OF REGULAR MAILING 12/16/10 PROOF OF REGULAR MAILING 12/16/10 20738 **12/15/10** JOURNAL ENTRY 20736 V25 MOTION TO SHOW CAUSE **3 12/10/10** L41 20736 12/08/10 MEMO CONTRA 20734 091 JOURNAL ENTRY 图 11/30/10 PROOF OF REGULAR MAILING **田 11/30/10** PROOF OF REGULAR MAILING **3** 11/30/10

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373 S. High St., 23ml Fl. (614) 525 - 3624 Maryellen OShanginess Appeals: 345 S. High St., 1st Fl. (614) 525 - 3821 Civil: 345 S. High St., 1st Ft. (614) 525 - 3650 Criminal 373 S. High St., 4th Ft. (814) 525 - 4419 Domestic: thranklin County Clerk of Courts (814) 525 - 4411 373 S. High St. 4th Fl. juvenile: Juvenie Traffic, 389 S. Front St. 16171. (614) £25. \$278 Public Records: 345 S. High St., 1617). (614) \$25 -3625 Court Schedu Case Information Online Case: 🙀 🗚 000425 Middle Init: First Name: Last Name: Advanced Search APPEALS CASE DETAIL Previous Case LC CASE ORD DATE DATE FILED **STATUS** CAUSE TYPE LOWER CASE CASE NUMBER CLOSED 05/04/10 04/05/10 COMMON PLEAS 08EP665 10-AP-000425 CRIMINAL STYLE CODE: STATE OF OHIO -VS- ROBERT L HILLMAN LOWER COURT JUDGE: N/A COURTROOM MAGISTRATE APPELLANT/RELATOR(S) Attorney N/A ROBERT L. HILLMAN **図ROBERT L. HILLMAN** APPELLEE/RESPONDENT(S) Attorney Name JOHN COUSINS **国STATE OF OHIO** Ν PROCEEDING STAY **ACCELERATED** CALENDAR TYPE DOCKETING STATEMENT MEDIATION N TRANSCRIPT 10AP426 STATE OF OHIO **CONSOLIDATED CASES** 10AP424 STATE OF OHIO 2 PENDING EVENTS SUB/ARG DATE: 11/17/10 **ACTUAL ESTIMATE** ORIGINAL 05/19/10 05/14/10 05/14/10 RECORD TRANSMITTAL DATE 06/14/10 APPELLANT/RELATOR BRIEF DATE 06/01/10 06/07/10 11/05/10 07/02/10 APPELLEE/RESPONDENT BRIEF 06/21/10 DATE N/A N/A N/A REPLY BRIEF DATE N/A N/A N/A STIPULATION DATE Select Docket Category Show All Descriptions 🔲 DOCKET Pages Frame Image Fiche Description Date 20784 K66 OHIO SUPREME COURT DECLINES JURISDICTION TO HEAR APPE **107/12/11** H08 20778 RETURN RECEIPT FOR TRIAL COURT FILES 06/13/11 NOTICE OF APPEAL FILED - OHIO SUPREME COUL 王 04/25/11 COST BILL PREPARED 図 04/18/11 ADDITIONAL COST BILL CREA **3 94/12/11** 086 20764 MOTION DENIED **₩** 04/12/11 20764 JOURNAL ENTRY **⊞** 04/12/11 PROOF OF REGULAR MAILING 第 04/12/11 PROOF OF REGULAR MAILING **1** 04/12/11 5 F78 20763 **2** 04/07/11 MOTION JEJ TRIAL COURT JUDGMENT AFFIRMED **3/29/11** PROOF OF REGULAR MAILING 国 03/29/11 PROOF OF REGULAR MAILING **⊞** 93/29/11 PROOF OF REGULAR MAILING € 03/22/11 PROOF OF REGULAR MAILING ⊞ 03/22/11 A01 **HP000** MEMO DECISION ⊞ 03/22/11 PROOF OF REGULAR MAILING **12/16/10** PROOF OF REGULAR MAILING **3** 12/16/10 20738 JOURNAL ENTRY **12/15/10** V25 20736 MOTION TO SHOW CAUSE **12/10/10** L41 20736 MEMO CONTRA **12/08/10** Q91 20734 JOURNAL ENTRY 图 11/30/10

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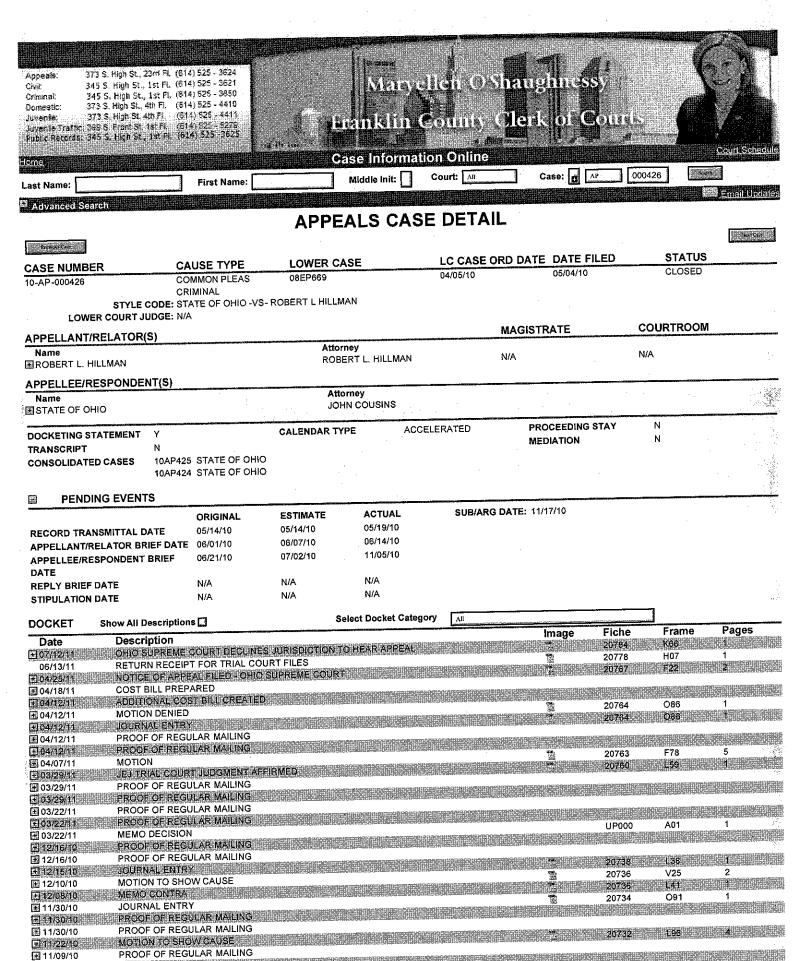
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20736 - V25

ROBERT L. HILLMAN#529-955

C.C.I.

POST OFFICE BOX 5500 CHILLICOTHE, OHIO 45601

PLAINTIFF APPELLANT.

-VS-

STATE OF OHIO
FRANKLIN COUNTY PROSECUTOR
MR JOHN COUSINS IV (0083498)
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215

DEFENDANT APPELLEE.

CONTEMPT NO.

ORIGINAL APPEAL NOS. 10AP-424 10AP-425 AND 18AP_426

compelling the court by (MOTION TO ISSUE SHOW CAUSE ORDER). AND CIVIL RULE 7 (6)(2)

NOW COMES THE APPELLANT-PLAINTIFF RESPECTFULLY REQUESTING THIS COURT TO ISSUE A SHOW CAUSEORDER UPON THE APPELLEE-DEFENDANT IN THE ABOVE CAPTIONED CASE, AS APPELLANT ON NOVEMBER 22, 2010 FILED WITHIN THIS COURT HIS APPLICATION FOR A SHOW CAUSE ORDER PURSUANT TO R.C. 2705.01 THROUGH 2705.05 ALLEGING THAT ON NOVEMBER 5, 2010 MR. JOHN COUSINS COMMITTED THE CRIMES OF FRAUDULENT CONCEALING MATERIAL INFORMATION IN A DELIBERATE ATTEMPT TO CORRUPT THE OUTCOME OF THESE OFFICIAL PROCEEDINGS WHICH IS CIVIL AND CRIMINAL IN-DIRECT, AND OR DIRECT CONTEMPT ACTS BY DELIBERATELY EVADING THE ISSUE'S AND DEFENDANT IN ACCORDANCE WITH DUE PROCESS REQUIREMENTS MUST BE MADE TO ANSWER THESE CHARGES, AND APPELLANT THE RIGHT TO APPEAL THIS COURTS DECISION.

FANNE SECTO

RESPECTFULLY SUBMITTED BY

APPELLANT ACTING IN PRO SE

[CERTIFICATE OF SERVICE]

THIS IS TO CERTIFY THAT A TRUE COPY OF THE FOREGOING MOTION WAS SENT TO THE APPELLEE AT 373 SOUTH HIGH STREET, COLUMBUS, OHIO 43215 BY REGULAR U.S. MAIL

THIS 87 DAY OF DECEMBER 2010.

Appellee's Appendix have 160f Hellman

See Criminal Ru 55(A) X To the Clerk of Court Please find enclosed 2 Different motions To be filed within this Court, The kontempt of Court motion should have Been given a new Case number according To the rules of Court. (YEt) This office did not comply with the Rules, which is why the Contempt no ___ is Blank This office has the opportunity to Correct this Clerical mistake mior to the show Cause order Being issued. I would like a time stamp lopy back of Both motions. Criminal Rule 55(A) Places a duty upon the clerk so file a complaint with a new case upon the Clerk so file a complaint with a new case rumber. number. Sincerely me R. I. Hillman

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

7 DEC 15 PM 3: 11

CLERI OF COURTS

State of Ohio,

Plaintiff-Appellee,

Nos.

10AP-424

10AP-425

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:

10AP-426

Robert L. Hillman,

(ACCELERATED CALENDAR)

Defendant-Appellant.

JOURNAL ENTRY

Appellant's December 10, 2010 motion shall be submitted to the court for determination at such time as the court addresses the merits of this appeal.

Judge Susan Brown

cc: Deputy Court Administrator
Court Assignment Commissioner

Offe

20743 - N37

COURT OF APPEALS

FRANKLIN COUNTY, OHIO

201 JAN -6 AH 10: 15

CLENTIL. COURTS

ROBERT L. HILLMAN#529-955

C.C.I.

POST OFFICE BOX 5500

CHILLICOTHE, OHIO 45601

APPELLANT

COMPLAINTANT

11A PD 01 0022

-VS-

TENTH DISTRICT APPELLATE COURT

JUBGE

SUSAN BROWN 373 SOUTH HIGH STREET

COLUMBUS, OHIO 43215

DEFENDANT. RESPONDENT. (COMPLAINT)

APPLICATION FOR A SHOW CAUSE ORDER BY THE APPELLANT-COMPLAINTANT AGAINST THE ABOVE NAMED DEFENDANT PURSUANT TO R.C. 2705.02-04

ON THIS 47 DAY OF JANUARY 2011 THE APPELLANT/PLAINTIFF HEREIN ACTING IN PRO SE FILES WITHIN THIS COURT A COMPLAINT AGAINST THE DEFENDANT NAMED IN THE CAPTION FOR DIRECT AND OR IN-DIRECT CIVIL AND CRIMINAL CONTEMPT OF COURT, FOR COMMITTING FRAUDULENT ACTS WITH THE DELIBERATE INTENT TO HINDER THE FAIR AND APPROPRIATE ADMINISTRATION OF JUSTICE, AND OR TO CORRUPT THE OUT-COME OF THESE OFFICIAL PROCEEDINGS BY MAKING KNOWINGLY FALSE MISSTATE-MENT OF MATERIAL FACTS, / AMOUNTING TO LEGAL MISREPRESENTATION.

THE PLAINTIFF HEREIN REQUEST A HEARING IN THIS MATTER SO THAT HE CAN PRESNT NOT JUST HIS EVIDENCE WHICH HIS BEEN IGNORED BY THE COURT BECAUSE OF HIS CURRENT POSITION OF BEING IN PRISON, BUT BECAUSE PLAINTIFF FEELS HE HAS

Appellee's Appendix Page 19 of 27

20A7 CONSTITUTIONAL RIGHT TO DUE PROCESS, AND EQUAL PROTECTION OF LAW

SEE TENTH DISTRICT APPELLATE COURT CASE STATE EX REL. BOSTON-VS-THOMPKINS

1996 WL 550255 OHIO APP. 10TH DIST STATING AT *1 AND *2;

AS AN INITIAL MATTER, WE NOTE THAT AN ORDER DENYING A MOTION TO SHOW CAUSE CONSTITUTES A FINAL APPEALABLE ORDER WHERE THE PARTY MAKING THE MOTION IS PREJUDICED BY THE BISMISSAL, ALSO SEE DENOVCHEK-VS-Bd OF TRUMBULL CTY, COMMS (1988) 36 ST.3d 14.

FURTHER IN THAT CASE THIS COURT STATES THAT;

OIN ALL CONTEMPT PROCEEDINGS, THE COURT SHALL CONDUCT A HEARING AT THE HEARING, THE COURT SHALL INVESTIGATE THE CHARGE AND HEAR ANY ANSWER OR TESTIMONY THAT THE ACCUSED MAKES OR OFFERS, AND DETERMINE WHETHER THE ACCUSED IS GUILTY OF THE CONTEMPT CHARGED.

THE TENTH DISTRICT WENT ON TO SAY;

THAT ALTHOUGH THE VAST BODY OF CASE LAW ADDRESSES ONLY THE ACCUSED RIGHTS TO A HEARING, "WE FIND NO REASON WHY FUNDAMENTAL FAIRNESS DOES NOT ALSO ENTITLE THE MOVING PARTY TO A HEARING.

HERE THE DEFENDANT IN RESPONSE TO THE PLAINTIFF'S APPELLANT'S INQUIRY INTO THE CONTEMPT COMPLAINT HE FILED AGAINST A MR. WILLIAM JOSEPH EDWARDS IN THE COURT ON DECEMBER 10, 2010 DELIBERATELY MADE THE FALSE STATEMENT IN RESPONSE TO THE PLAINTIFF'S INQUIRY THET THE COURT (TENTH DISTRICT) WOULD RULE ON THE CONTEMPT OF COURT ALLEGATIONS AT THE SAME TIME THE COURT RULED ON THE MERITS OR HEARD THE MERITS OF THE ACTUAL CASE.

THE ACTUAL MERITS OF THE CASE WAS HEARD BACK ON NOVEMBER 17, 2010 WHICH WOULD MAKE THAT STATEMENT FALSE, AND INDICATE THAT THE DEFENDANT WAS SIMPLY WILLING TO SAY ANYTHING IN A RESPONSE TO ME BECAUSE IM A INCARCERATED PRISONER. NUMETHELESS, THIS IS A CRIMINAL OFFENSE, AND MISCONDUCT BY A PUBLIC OFFICIAL, AND THIS GOURT MUST CONDUCT A HEARING, AND ALLOW THE APPELLANT/PLAINTIFF THE RIGHT TO APPEAL TO THE OHIO SUPREME COURT, AND THE FEDERAL COURT FROM ANY ADVERSE RULING IN THIS MATTER.

(PAGE 2)

RESPECTFULLY SUBMITTED BY

APPELLANT/ PLAINTIFF PRO SE

CONCLUSION TO MOTION

20743 - N39

APPELLANT SUBMITS THAT THIS WAS THE EXACT SAME SHAM THIS COURT RAN IN

CASE NUMBER 06AP-1230, AS ON JANUARY 3, 2008 WHEN THE APPELLANT FILED A

MOTION TO STRIKE THE APPELLEE'S BRIEF FOR CONTAINING FRAUDULENT MISSTATE—

MENTS OF MATERIAL FACTS NOT FOUND ANYWHERE IN THE RECORDS/TRIAL TRANSCRIPTS.

(THIS COURT'S RESPONSE THAT DAY WAS, AND I QUOTE"

"APPELLANT'S DECEMBER 31, 2007 MOTION TO STRIKE APPELLEE'S BRIEF IS DENIED,

THIS COURT REFERRING TO ADDRESS APPEALS ON THE MERITS BASED UPON BRIEFING

FROM ALL THE PARTIES. SIGNED BY JUDGE WILLIAM KLATT, YET ON,

JANUARY 14, 2008 THIS COURT RESPONDED TO MY JANUARY 9, 2008 LETTER/MOTION

SAYING THIS COURT DOES NOT HEAR COMPLAINTS FILED UNDER R.C. 2935.09 AND

2935.10 SIGNED BY COURT ADMINISTRATOR MR. JACK KULLMAN.

ON MAY 15, 2008 THIS COURT DESPITE BEING MADE AWARE OF THE FACT THAT THE FRANKLIN COUNTY PROSECUTOR WHO HANDLED THE APPEAL ON BEHALF OF THE STATE OF OHIO HAD BLYANTLY LIED TO THIS COURT CONCERNING THE TESTIMONY OF THE ALLEGED VICTIM, THIS COURT AFFIRMED THE CONVICTION BASED UPON THE FALSE STATEMENTS ANYWAY, AND NOW THIS COURT IS ATTEMPTING TO DO THE EXACT SAME THING AGAIN HERE IN THIS CASE. THIS COURT MUST FIRST COMPLY WITH THE TRULES OF STATUTORY PROCEDURES, AND ISSUE THE SHOW CAUSE ORDER, AND THEN DETERMINE THE DEFENDANTS GUILT AS A SEPERATE MATTER.

RESPECTFULLY SUBMITTED BY

APPELLANT

[CERTIFICATE OF SERVICE]

THIS IS TO CERTIFY THAT A TRUE COPY OF THE FOREGOING MOTION WAS SENT TO THE DEFENDANT/RESPONDENT BY REGULAR UNITED STATES MAIL SERVICE LOCATED AT 373 SOUTH HIGH STREET, COLUMBUS, OHIO 43215 ON THIS 440 DAY OF MANUALLY 2011

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IN THE COURT OF APPEALS OF OHIO 2011 MAR 22 PM 12: 00 TENTH APPELLATE DISTRICT COURTS

State of Ohio,

Plaintiff-Appellee,

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Robert L Hillman,

Defendant-Appellant

Nos 10AP-424 (C P C No 08EP-646) 10AP-425 (C P C No 08EP-669) 10AP-426 (C P C No 08EP-665)

(ACCELERATED CALENDAR)

MEMORANDUM DECISION

Rendered on March 22, 2011

Ron O'Brien, Prosecuting Attorney, and John H. Cousins, IV, for appellee.

Robert L. Hillman, pro se

APPEALS from the Franklin County Court of Common Pleas

RINGLAND, J

{¶1} Defendant-appellant, Robert L. Hillman, brings these three consolidated appeals from three judgments of the Franklin County Court of Common Pleas denying his request to expunge his record in five separate criminal cases.

- [¶2] In expungement case No. 08EP-646, appellant asks to seal the records related to his criminal case No. 94CR-3584, in which he was charged with breaking and entering. Those criminal charges were eventually subject to a nolle prosequi entered by the prosecution when the victim did not appear. In expungement case No. 08EP-665, appellant applied to seal the record in his criminal case No. 94CR-4110, comprising an indictment for aggravated robbery and theft. Appellant entered a guilty plea to a theft charge and the prosecution agreed to enter a nolle prosequi in the aggravated robbery charge. Finally, in expungement case No. 08EP-669, appellant applied to seal the record in three additional criminal cases, case No. 95CR-2298, in which appellant was charged with aggravated burglary and criminal trespass; case No. 95CR-5414, in which appellant was charged with one felony drug possession count, and case No. 03CR-3447, in which appellant was charged with one count of receiving stolen property. All of these criminal charges were eventually dismissed.
- The Franklin County Court of Common Pleas initially denied appellant's application to seal these records in each of the three expungement cases. Appellant appealed and this court reversed the trial court. State v. Hillman, 10th Dist. No. 09AP-478, 2010-Ohio-256. We did so on the basis that the trial court had explicitly cited the incorrect statute in its entries denying the expungement requests. We therefore remanded the matter to the trial court for further proceedings.
- {¶4} The trial court has again heard and denied appellant's three expungement cases. Appellant now appeals and brings the following assignments of error

The appellant contends that the trial court denied him due process, and equal protection of the law under the 5th and

- 14th Amendments to the United States Constitutions when (1) the trial court abused its discretion in failing to comply with well established law in both the state and federal systems.
- (2) For failing to comply with state law, and court rules, and provide written findings of facts and conclusions of law, and
- (3) For the trial courts granting of the states objections to the appellants applications without requiring the state to provide a legitimate government need to maintain the records, or constitutional reason.
- {¶5} Also before us is appellant's application for a show cause order citing alleged misconduct by the assistant prosecutor defending this appeal.
- addressed together. Appellant has not ordered a transcript in the present case Appellant did move this court to substitute an audio recording in lieu of a transcript. We denied that motion by entry on June 21, 2010. On July 7, 2010, we denied as untimely appellant's attempt to file an App R 9(C) statement in lieu of a transcript. Neither the appellate rules nor any applicable precedent provide for an audio recording to be substituted for a transcript in an appeal of this nature. Appellant has provided no further supporting argument to establish the availability of such a remedy to furnish a record of the proceedings before the trial court. In addition, there is no indication that the transcript is "unavailable" in the present case as described in App.R. 9(C) for any reason other than appellant's refusal to pay for the transcript and supply it in this appeal
- {¶7} As we noted in our prior decision, it is the responsibility of an appellant to furnish a sufficient record of the case upon appeal to allow review of the proceedings before the trial court. The defendant claiming error bears the burden of proving such

error by reference to matters reflected in the record on appeal *Knapp v Edwards* Laboratories (1980), 61 Ohio St 2d 197, 199 In the absence of a transcript demonstrating the alleged error, we will presume the regularity of proceedings in the trial court. *State v. Rehaut*, 10th Dist No 02AP-571, 2003-Ohio-884, ¶13.

While in the prior incarnation of this case before this court we were able to discern error from the face of the trial court's judgment entries, no such error appears in the entries entered by the trial court upon remand.

statutory eligibility to have his record sealed. State v. Brown, 10th Dist. No 07AP-255, 2007-Ohio-5016, ¶4. The defendant must also establish his reasons and need to see the records sealed. State v. Newton, 10th Dist. No 01AP-1444, 2002-Ohio-5008, ¶9. Even when such reasons are set forth by the person seeking expungement, the trial court must weigh contrary any interest asserted by the State in maintaining free open, and accurate records of criminal proceedings. Id; R.C. 2953 52(C) and 2953.52(B)(2). In weighing the competing interests, the trial courts have great discretion in making a decision, and we will not reverse such a decision in the absence of an abuse of that discretion. State v. Haney (1991), 70 Ohio App.3d 135, 139. The term abuse of discretion connotes more than mere error of law or reasoning, it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. State v. Adams (1980), 62 Ohio St 2d 151, 157.

{¶10} The trial court cited the appropriate statutes on the face of its judgment entries in the present case, respectively for the cases resulting in conviction and those

20758 - S98 Nos. 10AP-424, 10AP-425 and 10AP-426

charges that did not result in conviction. The trial court set forth the appropriate standard in its entry, stating that appellant's interest in sealing the records were outwelphed by the governmental interest in maintaining free and open access to criminal records of criminal proceedings. In the absence of a transcript, we are unable to find any basis to conclude that the trial court abused its discretion in denying the expungements sought. Unlike our previous review of this matter, there is no obviously discernable error on the face of the trial court entries, and we have nothing more from which to find error in the present case. Appellant's assignments of error are overruled, and the judgments of the trial court denying appellant's requests to seal his records are affirmed.

{¶11} We now turn to appellant's show cause order, which we deny. Appellant alleges misconduct on the part of opposing counsel in the form of defective legal arguments. Our affirmance of the trial court's decisions largely moots this motion, and in any case, we would note that mere inaccurate legal argument, even if substantiated in the present case which it is not, does not constitute a "fraud upon the court" as appellant asserts.

{¶12} In accordance with the foregoing, appellant's assignments of error are overruled, his motion for a show cause order is denied, and the judgments of the Franklin County Court of Common Pleas are affirmed.

Judgments affirmed

BROWN and CONNOR, JJ., concur

RINGLAND, J, of the Twelfth Appellate District, sitting by assignment in the Tenth Appellate District

FILED

OCT 24 2011

CLERK OF COURT SUPREME COURT OF OHIO

The Supreme Court of Phio

Robert L. Hillman

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Susan Brown, Judge, Tenth District Court of Appeals

Case No. 2011-1790

ENTRY

This cause was filed as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's jurisdictional memorandum, it is determined by the Court that this cause originated in the court of appeals and, therefore, should proceed as an appeal of right pursuant to S.Ct. Prac. R. 2.1(A)(1).

It is ordered by the Court that the Clerk shall issue an order for the transmission of the record from the Court of Appeals for Franklin County, and the parties shall otherwise proceed in accordance with S.Ct. Prac. R. 6.2 - 6.7.

(Franklin County Court of Appeals; No. 11AP-22)

Maureen O'Connor Chief Justice

COURT OF APPEAL:
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