

ORIGINAL

IN THE SUPREME COURT OF OHIO

Kermit B. Harris, I

Relator

v.

Charmaine Bracy,

Respondent.

17-0615
Case No. _____

ORIGINAL ACTION
WRIT OF HABEAS CORPUS

WRIT OF HABEAS CORPUS

Kermit B. Harris,

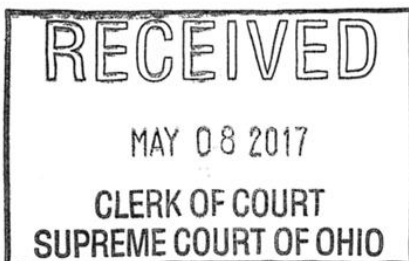
Relator.

v.

Charmaine Bracy (Warden)

Respondent.

T.C.I.
5701 Burnett Road
Leavittsburg, Ohio
44430



STATEMENT OF FACTS:

The Writ of Habeas Corpus arises from the attempt of Relator Kermit B. Harris ("Harris") To appeal a decision from the Eighth District Court of Appeals. On May 19, 2016 The Relator Kermit B. Harris attempted to have this Court to accept jurisdiction on the jurisdictional memoranda filed in Case No. 2016-0948 upon consideration this Supreme Court declined to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R.7.08(B)(4). The Relator seeks relief due to the fact when this Honorable Court decided Foster, It remanded the Relator Kermit B. Harris's case back to the Cuyahoga County Common Pleas Court for a Re-sentencing. In 2009, Instead of just Re-sentencing the Relator Kermit Harris like This Honorable Court ordered under Foster. The Cuyahoga County Common Pleas Courts Amended the charge of Attempted/Murder Count (3) of The Relator's indictment by changing the Revised Code Statute from 2923.02/2913.51 which is the Statute for Receiving Stolen Property not Murder to 2903.02 which is the Murder Statute without adding the Attempt Statute back on the offense which changed the identity of the crime that the Relator was originally convicted of by a Grand Jury. This Violated the Relator's Ohio Constitutional Rights Article I. 10 of the Ohio Constitution and the Fourteenth Amendment, by way of the Fifth Amendment of the United States Constitution. This violation accured by the Trial Court Judge amending the Charges that was sent to an Grand Jury. This amendment changed the nature of the charge in count (3) of the Relator's indictment the attempt/Murder the Relator's argument is that this amendment changed the charges that the Relator was convicted of by a grand jury and that the sentencing journal Entries do not charge an offense in count 3 of the indictment the supposedly Attempt/Murder Which is attempted/felony murder. The attempt statute is missing

all together from the journal entry from 1997 when the relator Kermit B. Harris was oroginally convicted and sentenced and the 2009 sentencing journal entry when this honorable Court ordered the Relator back under Foster instead of following the order under Foster the trial Court used that opportunity to try to correct the mistake that was made in 1997 by changing the charge that was presented to the Grand Jury with the wrong revised code statute for the Attempt/Murder offense. The Relator maintains that the trial used the Fischer analysis to try to justify changing the nature of the charge without taking the charge back to the Grand Jury that originally convicted the Relator of. The Relator was convicted before July of 2006 so the Fischer ruling should not have had any effect as far as the Trial Court refusing to give the Relator a De novo sentencing hearing. From the face of the record the facts are clear si since the whole Attempt statute is missing from the language of the indictment and the sentencing journal entries that the state convicted and sentenced the Relator on. R.C. 2923.02(B) Which states "No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violance that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04. Nobody was killed in the Relator's case. The language clearly support R.C. 2923.02(B), When the indictment, jury verdict forms, and sentencing journal entries do not state which section of R.C. 2903.02 applies, The lower of the two section's (B) of that statute must apply.

STATEMENT OF ALL THE RELIEF SOUGHT:

The Relator seek's relief from the improperly conviction and sentencing of attempt felony murder when the crime of attempt felony murder has been declared impossible to commit in Ohio. In Count (3). Of the relator's indictment attempt/murder The relator Kermit B. Harris maintain that the amendment that the Trial Court amended count (3) attempted/murder was unconstitutional due to the fact the verdict forms are void due to it fails to specify a specific subsection of revised code 2923.02, or 2903.02 Pursuant to Section 3(B)(4), Article IV and Article IV 3 (B)(2) of the Ohio Constitution and the Fourteenth Amendment of the United States Constitution. The failure to set out all the essential elements of the offense is a defect that cannot be cured by a Crim.R.7(D) Amendment. State v. Yslas, 173 Ohio App. 3d 396, 401, 2007 Ohio 5646(2007)(citing State v. Headley, 6 Ohio St. 3d 475, 453 N.E. 2d 716 (1983)). The Relator seeks relief due to the fact the language of statute may be used in general description of offense, It must be accompanied with statement of facts and circumstances as will inform accused of specific offense with which he is charged. The Relator maintain's that he is charged with Attempt Felony-Murder which has been declared unconstitutional in the state of Ohio. The Relator's sentencing Entries, and indictment, is missing the Attempt revised code statute due to the fact the Trial Court amended the sentencing entry illegally amending a complaint or entry so that it changes the charge to a violation under the Ohio Rev. Code Ann.2923.02/2903.02 without stating (A) or(B) Changes the identity of the crime charged and the state cant substitute

One charge for another without taking the charges before a Grand Jury due to the fact it improperly changes the identity of the crime charged by the Grand Jury. The jury verdict form indicated the following:

VERDICT

We, The jury in this case being duly impaneled and,
do find the Defendant, Kermit B. Harris(*) Guilty
of Attempted Murder in violation of Section 2923.02/
2903.02 of the Ohio Revised Code, as charged in count
Three of the Indictment.**

The indictment incorrectly gave the wrong Revised Code number and neither the revised code, nor the verdict forms listed which section of R.C. 2903.02-(A) or (B)- was applicable. Upon Appeal, the Eighth District Court of Appeals affirmed the Relator's conviction. On 03/23/2015 The Relator filed a motion for re-sentencing by way of Attorney Jonathan T. Sinn(004108) with the Trial Court. Requesting to be re-sentenced due to the fact the Relator's jury verdict form failed to state whether the relator was convicted under 2923.02/2903.02(A) or (B). Which makes the Relator sentenced under the least degree which is (B) Attempted Felony Murder. On 10/30/2015 the Trial Court denied the Relator's motion for resentencing claiming the Relator was barred by res judicata. The Relator appealed to the Eighth District Court of Appeals Pursuant to R.C. 2505.02(B)(1), (B)(2), and (B)(4)(a) Requesting the Court to order the Relator to be remanded back to the Trial Court for resentencing on count 3 the Attempted Felony Murder Count. In support of its position on these issues, the Relator presented the following argument.

Proposition of Law No. I: the state errored by improperly convicting and sentencing the Relator of attempted felony murder when the crme of attempted felony murder has been declared impossible to commit in Ohio.

and Proposition of Law No. II. The Court of Appeals Eighth Appellate District Errored by dismissing the Appellants Appeal under the Doctrine of res judicata instead of applying the standards of R.Cc. 2505.02 when a substantial right was effected violating the united states constitution and the Ohio Constitution.

AFFIDAVIT IN SUPPORT:

1. Affiant do Hereby states that the Trial Court failed to charge an Offense in Count (3) of the Relator's Kermit B. Harris's indictment, Jury Instruction's and Sentencing Journal Entries from 1997, 2009, and 2015.
2. Affiant do hereby states that the verdict form's do not state if the Relator is convicted of Attempted/Murder or Attempted/Felony Murder due to The fact R.C. 2923.02/ 2903.02(A) or (B) dont state which one it is.
3. Affiant do hereby states that the Relator's Kermit B. Harris's indictment from 1997 was sent to the Grand Jury and returned a True Bill with the wrong Revised Code Statute for count (3) Attempted/Murder with the Attempt Statute R.C. 2923.02/ 2913.51. The Attempt statute was right but the murder Statute was wrong the Court had R.C. 2913.51 which is the Statute for Receiving Stolen Property a total diffrent charge, which was count (2) of the indictment.
4. Affiant do hereby states that the Relator Kermit B. Harris was ordered back to Trial Court by this very Court The supreme Court in 2008 under the Foster decision for a Re-sentencing and at that time the Cuyahoga County Common Pleas Court's ilegally Amended the Relator's Kermit B. Harris's Indictment in Count (3) Attempted/Murder from R.C. 2923.02/R.C. 2913.51 to R.C. 2903.02 Without putting the Attempt Statute back on the indictment or the sentencing journal entry, Which changed the nature of the offense.
5. Affiant do hereby states that Pursuant to Section 10, Article I of the Ohio Constitution, and 14, I of the United States Constitution, States a Failure to comply with Constitutional Due Process Requirements are a Due Process Violation of the Relator's Rights and cannot be cured by a Crim.R.7(D) Amendment,

6. Affiant do hereby states that because a Voluntary Act is an essential Element of the Attempt Offense, The State Constitutionally bears the burden of proving such element beyond a reasonable doubt. The Due Process Clause requires the Prosecution to prove beyond a reasonable doubt all of the elements included in the definition of the offense of which the ~~defe~~ defendant is charged.
7. Affiant do hereby states that failure to include the elements of predicate offenses in a State Court indictment deprives a defendant of fair notice of the charges when, as here, a Bill of Particulars spcifies that the predicate offense are the ones charged later in the same indictment.
8. Affiant do hereby states that the Supreme Court of Ohio Ruled that under S.B.2. R.C. 2929.14(E) Violates Principles announced in Blakely, and The Court found Ohio Rev. Code Ann. 2929.14(E) Unconstitutional, Severed it from S.B.2, Gen. Assembly(Ohio) and ordered that cases on direct review be remanded for resentencing, Which the Affiant was ordered back for a Re-sentencing.
9. Affiant do hereby states that the Trial Court disregared the Ohio Supreme Court and attempted to change the identity of the Crime charged by a Grand Jury and failed to put the Attempt statute in the ilegal amendment.
10. Affiant do hereby states in support of the facts were made on personal ~~know~~ Knowledge and Affiant Kermit B. Harris swears to the truth of the affidavit and is competent to testify to all matters stated in the affidavit.

Kermit B. Harris

Kermit B. Harris

Sworn To, or affirmed, and subscribed in my presence this 3rd day of May, 2017.

Nancy Kuan
Notary Public

My Commission Expires: _____

NANCY SCIARRA
NOTARY PUBLIC • STATE OF OHIO
My commission expires May 4, 2019

IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCE

I Kermit B. Harris, do hereby state that I am without the necessary funds to pay the costs of this action for the following reason(s):
I am a Inmate that was declared indigent by the courts and I only receive a pay from the state once a month for \$20 bucks, I use most of the \$20 dollars for hygiene.

Pursuant to Rule 3.06, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

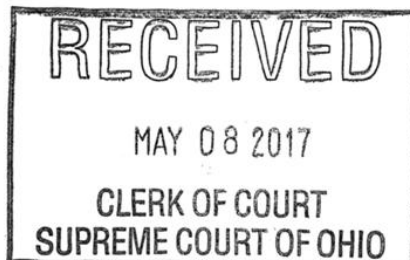
Kermit B. Harris

Affiant

Sworn to, or affirmed, and subscribed in my presence this 3rd day of May, 2017.

Nancy Sciarra
Notary Public

My Commission Expires: NANCY SCIARRA
NOTARY PUBLIC • STATE OF OHIO
My commission expires May 4, 2019



The Supreme Court of Ohio

FILED

OCT -5 2016

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2016-0948

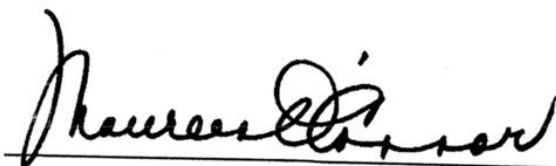
v.

ENTRY

Kermit B. Harris

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Cuyahoga County Court of Appeals; No. 103807)



Maureen O'Connor
Chief Justice