

ORIGINAL

IN THE SUPREME COURT OF OHIO

DOMINGO VELEZ JR. -#687-770
STATE OF OHIO EX. REL.
ALLEN CORRECTIONAL INSTITUTION
P.O. BOX 4501
LIMA, OHIO 45802

18-0662

Relator,

v.

Common Pleas CASE NO. 12-13-10

CASHIER FOR ALLEN CORRECTIONAL INSTITUTION
ALLEN COUNTY, OHIO
2338 NORTH WEST STREET.
LIMA, OHIO 45802

Respondent.

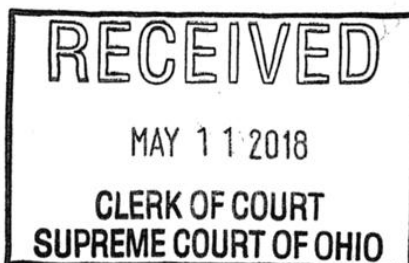
RELATOR'S PETITION FOR WRIT OF MANDAMUS

COUNSEL FOR RESPONDENT

UNKNOWN

RELATOR, *PRO SE*

DOMINGO VELEZ JR
ALLEN CORRECTIONAL INSTITUTION
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Now comes Relator, Domingo Velez Jr. - #687-770, *pro se*, and who having no other adequate remedy at law, respectfully request this Honorable Court pursuant to Article IV, Section 3(B)(1) of the Ohio Constitution, and R.C. §2501.02, to invoke its original jurisdiction and issue forthwith the Great Writ of Mandamus upon the Cashier's office of the Allen Correctional Institution, Allen County, Ohio, the herein responsible party, and compel the same to carry out his legal duty and obligations to Relator by refunding \$199.30 which was unjustly seized from his inmate trust account on November 19th, 2017, thereby, violating procedural due process.

I. INTRODUCTION

1. On June 20, 2012, the Putnam County Grand Jury indicted Velez on Count One of felonious assault in violation of R.C. 2903.11(A)(1) "and/or" 2903.11(A)(2), a second-degree felony; Count Two of possession of cocaine in violation of R.C. 2925.11(A), (C)(4)(a), a fifth-degree felony; and, Count Three of menacing in violation of R.C. 2903.22(A), a fourth-degree misdemeanor.
2. The jury found Velez guilty of Counts One and Three, felonious assault and menacing, but not guilty of Count Two, possession of cocaine.
3. On August 8, 2013, the trial court sentenced Velez to an aggregate term of six years imprisonment.
4. On November 19th, 2017 the Cashier for the Allen Correctional Institution, unjustly, seized \$199.30 from the Relator's inmate trust account without notice. Even further, the cashier failed to allow Velez the opportunity to present any defense or exemptions as to why he should not be liable for paying court cost.
5. Relator filed an Informal Complaint, Notification of Grievance to the Allen Correctional Inspector, and Appeal to the Chief Inspector in Columbus, Ohio to resolve this unjust act. (Reference #ACI 1117000065).

II. MANDAMUS

A. Generally

Clearly Established Law

Mandamus is defined as:

A writ issued in the name of the State to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.

To entitle to a writ of mandamus, a relator must demonstrate (1) that it has a clear legal right to the relief requested; (2) that the respondent is under clear legal duty to perform the requested act; and (3) that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180.

4. A writ of mandamus shall be issued when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. See *State ex rel. Doe. V. Tracy* (1988), 51 Ohio App.3d 198, 555 N.E.2d 674. Before a writ of mandamus may issue, a relator must demonstrate a clear legal right to require the respondent to proceed to judgment, a clear legal duty on the part of the respondent to proceed to judgment, and the lack of an adequate remedy in the ordinary course of law to obtain the requested

relief. *State ex rel. Weiss v. Hoover* (199), 84 Ohio St.3d 530, 705 N.E.2d 1227. A writ of mandamus is proper in cases where a trial court has refused render judgment, has unnecessarily delayed proceeding to judgment, or has erroneously stayed proceeding to judgment. *Id.*; *State ex rel. Miley v. Parrot* (1996), 77 Ohio St.3d 64, 671 N.E.2d 24. In fact, an “inferior court’s refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.” *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33, 35, 656 N.E.2d 332, quoting *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 110, 637 N.E. 319.

III. MERITS

5. In this case, the cashier for the Allen Correctional Institution seized \$199.30 from Velez’s inmate trust account without providing him a right to claim any exemptions available under section 2329.66 of the Revised Code, and a right to raise a defense as well as an opportunity to discuss any objections. Based on the facts, the petitioner is entitled to the issuance of this extraordinary writ of mandamus. The Relator has a clear legal right to the relief requested and the respondent has a clear legal duty to perform the requested act, and there is no other adequate remedy at law.

The order for a writ of prohibition lies in this case because: (1) the court or officer against whom it is sought is exercises judicial or quasi-judicial power; (2) the exercise of such power is unauthorized by law; and (3) it will result in injury for which no other adequate remedy exists. Thus, Relator is entitled to a writ of mandamus. Here, Velez has a legal right to the relief he seeks. See *State ex rel. Wallace v. Tyack* (1984), 15 Ohio St.3d 4.

WHEREFORE, Relator prays this Honorable Supreme Court grants a writ of mandamus in the original action arising from the case of *State v. Velez*., Putnam County Ohio Case No. 12-13-10 CR02-3200 and return this matter to status quo.

6. Considering all of the factors in the instant matter, this Court should find that the Cashier for the Allen Correctional Institution unjustly seized \$199.30 without providing him a **right to claim any exemptions available under section 2329.66 of the Revised Code, and a right to raise a defense as well as an opportunity to discuss any objections with the warden's designee, thereby,** in violation of due process. Therefore, Relator's request for writ of mandamus should be granted. Moreover, the Cashier must be directed to refund the \$199.30 to his inmate trust account. Thereafter, compel the warden's designee to restore the matter to status quo prior and allow him to claim any exemptions, raise any defense available, and an opportunity to discuss any objections with the warden's designee.

IV. ARGUMENT

The purpose of OAC Ann. 5120-5-03 is to establish guidelines and procedures for withdrawing money that belongs to an inmate and that is in an account kept for the inmate by the department of rehabilitation and correction (DRC), upon receipt of a certified copy of a judgment of a court of record in an action in which an inmate was a party that orders an inmate to pay a stated obligation. The DRC may apply such money toward payment of the stated obligation to the court or in another matter as directed by the court. Upon the DRC's receipt of a certified copy of a judgment that orders an inmate to pay a stated obligation in a matter which an inmate was a party, the warden or designee shall determine if the inmate is

still in the custody of the DRC. If the inmate is not in the custody of the DRC, the warden or designee shall advise the clerk of the court or other appropriate authority issuing the order of that fact and, if known, the forwarding address of the inmate. If the inmate is in custody of the DRC the warden or designee shall forward such judgment to the institution where the inmate is presently incarcerated, specifically addressed to the attention of the warden or designee who is responsible for the inmate's account at the institution. Requests for funds to fulfill court orders are prepared by the warden's designee where the inmate is presently housed.

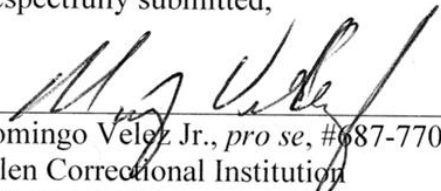
When a certified copy of a judgment from a court of proper jurisdiction is received directing the DRC to withhold funds from an inmate's account, the warden's designee shall take measures to determine whether the judgment and other relevant documents are facially valid. If a facial defect is found then a letter of explanation shall be sent to the clerk or other appropriate authority and the collection process stops until the defect is cured. If no defect is found, *the warden's designee shall promptly deliver to the inmate adequate notice of the court-ordered debt and its intent to seize money from his/her personal account. The required notice must inform the inmate of a right to claim exemptions and types of exemptions available under section 2329.66 of the Revised Code and a right to raise a defense as well as an opportunity to discuss these objections* with the warden's designee. This practice provides safeguards to minimize the risk of unlawful deprivation of inmate property.

After the inmate's timely opportunity to assert any exemption or defense, the designee shall review the record and determine the department's authority to withdraw money from the inmate's account. The inmate shall receive notice of the designee's decision to either remove the case and withdraw no money or initiate payments.

"The Due Process Clause creates a right to a fair opportunity to defend oneself. In this matter, the Cashier for the Allen Correctional Institution failed give adequate notice of its intent to seize money from his personal account. Additionally, he was not a timely opportunity or his right to assert any exemption or defense whatsoever.

Against the backdrop, it is well established that when the statute's language is plain, the sole function of the court is to enforce it according to its terms. Because Relator asserts has been denied due process of law in this matter, a writ of mandamus must be granted.

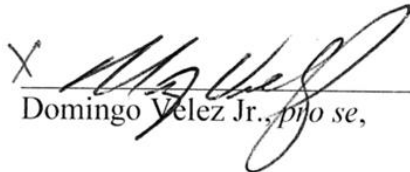
Respectfully submitted,


Domingo Velez Jr., *pro se*, #687-770
Allen Correctional Institution
P.O. Box 4501
Lima, Ohio 45802

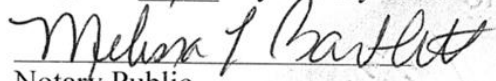
VERIFICATION OF RELATOR DOMONGO VELEZ JR.

I, Domingo Velez Jr., hereby certify that the information contained in the foregoing Petition for Writ of Mandamus is true and accurate. Additionally, in compliance with R.C. 2969.25(c), I had included a certified statement from his prison cashier setting forth the balance in my private account for each of the preceding six months. I have not filed any civil complaints in any courts within the previous five years.

Dated: May ____, 2018.

X 
Domingo Velez Jr., *pro se*,

Sworn to and subscribed in my presence, a notary public, this 7 day of May 2018.


Notary Public



MELISSA L. BARTLETT
Notary Public, State of Ohio
My Commission Expires
12/13/2020

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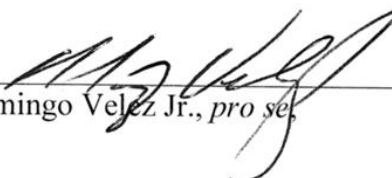
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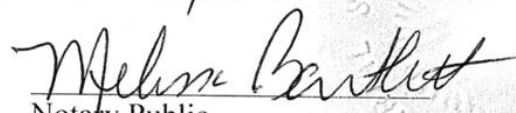
COMPLAINT

The Prison Litigation Reform Act, 42 U.S.C.S. § 1997e, attempts to eliminate unwarranted interference with the administration of prisons, and thus seeks to afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a case. Proper exhaustion allows the prison a full and fair opportunity to address complaints by requiring the prisoner to escalate the matter to such a level and in such a manner as to allow decision makers the chance to respond. The petitioner has exhausted his grievance procedures pursuant to A.R. 5120-9-31, and complied with all deadlines and other critical procedural rules. Therefore, Relator has demonstrated a clear legal right to require the Respondent to return the \$199.30 which was unjustly seized from his inmate account, a clear legal duty on the part of the

Respondent. Additionally, there is no adequate remedy in the ordinary course of law to obtain the requested relief. As such, a writ of mandamus should issue to compel the Cashier's office of the Allen Correctional Institution to refund Relator's unjustly withdrawn funds from his inmate account while returning this matter to status quo prior to the date of the seizure.

X 
Domingo Velez Jr., pro se

Sworn to and subscribed in my presence, a notary public, this 7 day of May 2018.


Notary Public

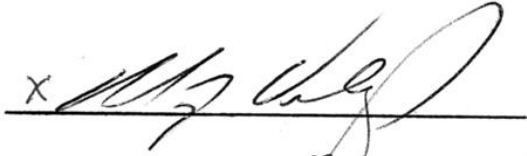


MELISSA L. BARTLETT
Notary Public, State of Ohio
My Commission Expires
12/13/2020

IN THE SUPREME COURT OF OHIO

NOTARIZED AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Domingo Velez Jr, do hereby certify and state that all facts included in this complaint is true and accurate to the best of my knowledge.

x 

Sworn to and subscribed in my presence, a notary public, this 17 day of May 2018.


Notary Public



MELISSA L. BARTLETT
Notary Public, State of Ohio
My Commission Expires
12/13/2020