

IN THE OHIO SUPREME COURT

State ex rel. Carter
2338 North West Street
P. O. Box 4501
Lima, OH. 45802

Case No. 19-0794

Relator

VS

Allen County Court of Common Pleas
Judge Richard Warren (Ret.)
Judge David Cheney (Ret.)
Judge Terri Kohlrieser
333 North Main Street
P.O. Box 1243
Lima, OH. 45801

Original Action in
Mandamus or
Prohibition

Respondent

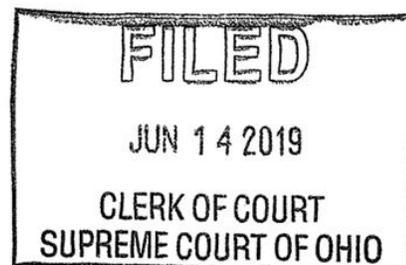
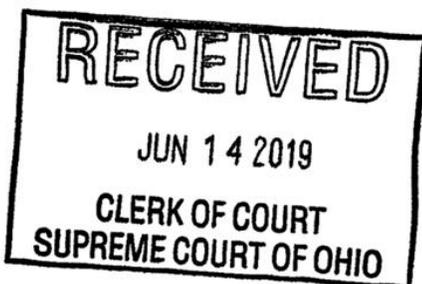
COMPLAINT FOR WRIT OF MANDAMUS / PROHIBITION

Allen County Prosecutors Office
P.O. Box 1243
Lima, OH. 45802

Counsel for Respondent

William T. Carter #618997
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Lima, OH. 45802

Pro-se Relator



IN THE OHIO SUPREME COURT

AFFIDAVIT IN SUPPORT OF SPECIFIED CLAIM

COMPLAINT FOR WRIT OF MANDAMUS / PROHIBITION

I, William T. Carter, having been duly warned and sworn, do hereby swear and attest that the following statements are true and correct to the best of my ability and knowledge under penalty of perjury of law.

1. I am the Relator in the attached complaint
2. I am competent to testify in these matters
3. I was sentenced to a non-mandatory aggregated twenty (20) year prison term.
4. The law required my sentences to be mandatory by Ohio Revised Codes.
5. I have attempted to have the Respondent to correct the void sentences.
6. The Respondent refuses to recognize the void sentences or make any corrections.
7. I have no alternative remedy at law as an appeal cannot be taken from a void judgment.
8. The trial court will exercise judicial power in the future.
9. I have filed one (1) civil action in the past five (5) years.

Further Affiant Sayeth Naught


William T. Carter – Affiant

Sworn and scribed in my presence on this 7 day of June, 2019

My commission expires on ____ / ____ / ____.



DENISE A. MICHAEL
Notary Public, State of Ohio
My Commission Expires
May 14, 2022


Notary Public

STATEMENT OF FACTS FOR COMPLAINT FOR
WITH OF MANDAMUS / PRHIBITION

This complaint originates with the Relator being convicted of Aggravated Robbery and a Repeat Violent Offender Specification and a resentencing after remand from the Third District Court of Appeals, see *State v Carter*, Case No. 1-10-04 (December 27, 2010).

At the resentencing hearing on June 16, 2011, the trial court sentenced the Relator as follows:

“IT IS HEREBY ORDERED that the defendant serve a started term to the Ohio Department of Rehabilitation Correction as follows;

COUNT 2- AGGRAVATED ROBBERY FOR A PERIOD OF TEN (10) YEARS which is not a mandatory term pursuant to R.C. 2929.13 (F), 2929.14(D) (3) or 2925.”

On the repeat violent offender specification, the trial court imposed a consecutive and maximum term of an additional ten (10) years and imposed the sentence as follows;

“THEREFORE, ON THE REPEAT VIOLENT OFFENDER SPECIFICATION AS TO COUNT 2 THE COURT BASED UPON THE ABOVE IMPOSES AN ADDITIONAL TERM OF 10 YEARS WITH THE SAME TO BE SERVED CONSECUTIVE TO AND PRIOR TO THE PRISON TERM IMPOSED FOR THE UNDERLYING OFFENSE (AGGRAVATED ROBBERY) OF TEN YEARS FOR A TOTAL AGGRATE SENTENCE HEREIN OF 20 YEARS.” (bold, underline emphasis original)

By law, the trial court was required to impose a mandatory prison term on both the aggravated robbery and the repeat violent offender specification as required by ORC 2929.213(F) and R.C. 2929.14(D)(2)(d) as in effect at the time of the Relators offenses.

As this Court has consistently found, a trial court can not impose any other sentence than that which is prescribed by law, see *State v Fischer*, Case No. 2009-0897, at pg. 98.

Any sentence that is unauthorized by law is void, see *State v Billiter*, 134 Ohio St. 3d 103 at pg. 106.

Any sentence that is contrary to law is void, see State v Ramey, 2006 Ohio 6429 at [P6], (citing State v Beasley 14 Ohio St. 3d 74).

A trial court has a duty to recognize a void sentence and can not ignore it, see In re N.G. 2014 Ohio 3190 at [P6], (citing State v Boswell, 121 Ohio St. 3d 575).

The Relator filed a motion to vacate the void sentence with the trial court. However the court refuses to realize the sentence as being void and instead re-cast the Relators motion as a untimely petition for post conviction relief even though the Relator raised no constitutional claims and the trial courts recasting was not proper as found by this Court in State v Apanovitch, Case No. 2016-0696, at pg. 26.

The Relator then filed an appeal to the Third District and the appellate court affirmed the trial court finding that res judicata applied. The appellate court actually had no jurisdiction to even hear the appeal as the sentence was void and considered a nullity and therefore, the sentencing entry was not a final appealable order and the case remains pending until a legal sentence is imposed, see McDonald v Moinet, 139 F. 2d 939 (6th Cir. Court of Appeals) at pg. 942, citing Wilson v Bell, 137 F. 2d 716.

The Relator will be seeking future legal decisions / actions by the trial court and any legal decisions made by the trial court must be prohibited until a legal sentence is imposed.

This Complaint now follows.

MEMORANDUM IN SUPPORT

To be entitled to a writ of mandamus or prohibition, a relator must establish that 1. They have a clear legal right to the relief requested, 2. The respondent has a clear legal duty to perform the relief, and 3. The relator has no adequate legal remedy in the ordinary course of law. And additionally, in a Prohibition, the Relator must show that a lower court will exercise judicial power in the future, and to correct previous unauthorized acts, see *State ex rel Emhoff v Medina Cty. Bd. of Elections*, 153 Ohio St. 3d 313, at pgs. 316, 317. *State ex rel. V.K.B. v. Smith*, 142 Ohio St. 3d 469, at pg. 470, respectively.

It is axiomatic that a trial court speaks only through its journal entries, see *Schenley v Kauth*, 60 Ohio St. 109 where this Court stated;

“A court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum.”
(paragraph one of syllabus)

In the judgment entry from resentencing, the Respondent imposes its sentence as follows;

“**IT IS HEREBY ORDERED** that the defendant serve a started term to the Ohio Department of Rehabilitation Correction as follows;

COUNT 2- AGGRAVATED ROBBERY FOR A PERIOD OF TEN (10) YEARS which is not a mandatory term pursuant to R.C. 2929.13 (F), 2929.14(D)(3) or 2925.”

As for the repeat violent offender specification, the Court sentenced the Relator as follows:

“THEREFORE, ON THE REPEAT VIOLENT OFFENDER SPECIFICATION AS TO COUNT 2 THE COURT BASED UPON THE ABOVE IMPOSES AN ADDITIONAL TERM OF 10 YEARS WITH THE SAME TO BE SERVED CONSECUTIVE TO AND PRIOR TO THE PRISON TERM IMPOSED FOR THE UNDERLYING OFFENSE (AGGRAVATED ROBBERY) OF TEN YEARS **FOR A TOTAL AGGRATE SENTENCE HEREIN OF 20 YEARS.**” (bold, underline emphasis original)

In accord with R.C. 2929.13(F)(6) as in effect 9-11-08 (Senate Bill 183) at the time of Relators offenses required a mandatory prison term and read:

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20 or 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 shall not reduce the term or terms pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

Likewise, the repeat violent offender sentencing statute as in effect 1-1-08, (Senate Bill 10) at the time of the Relators offenses, R.C. 2929.14(D)(2)(d) also required a mandatory term and read;

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

A trial court has no authority to create sentences, as has been consistently found by this Court, see State v Fischer, 128 Ohio St. 3d 92 which found;

“Judges have no inherent power to create sentences. Griffin & Katz, Ohio Felony Sentencing Law (2008) 4, Section 1:3, fn. 1. See also Woods v Telb, 89 Ohio St. 3d at 507-509, 733 N.E. 2d 1103 (describing the legislative intent behind a new, comprehensive sentencing structure, including postrelease control). Rather, judges are duty-bound to apply sentencing laws as they are written. See State v Thomas (1996), 111 Ohio App. 3d 510, 512, 676 N.E. 2d 903. “[T]he only sentence which a trial court may impose is that provided for by statute. A court has no power to substitute a different sentence for that provided for by statute or one that is either greater or lesser

than that provided for by law." *Colegrove*, 174 Ohio St. at 438, 25 O.O. 2d 447, 195 N.E. 2d 811." (*Fischer* at pg. 98)

Any criminal sentence that is not authorized by law is void, see *State v Billiter*, 134 Ohio St. 3d 103 where this Court stated:

"As we have consistently stated, if a trial court imposes a sentence that is unauthorized by law, the sentence is void." (*Billiter* at pg. 106)

Additionally this Court has further stated in *State v Simpkins*, 117 Ohio St. 3d 420, that;

"Therefore, in circumstances in which the judge disregards what the law clearly commands, such as when a judge fails to impose a nondiscretionary sanction required by a sentencing statute, the judge acts without authority. *Beasley*, 14 Ohio St.3d at 75, 14 OBR 511, 471 N.E.2d 774. Such actions are not mere errors that render a sentence voidable rather than void. If a judge imposes a sentence that is unauthorized by law, the sentence is unlawful. "If an act is *unlawful* it not erroneous or voidable, but it is wholly unauthorized and void." (Emphasis sic.) *State ex rel. Kudrick v Meredith* (1922), 24 Ohio N.P. (N.S.) 120, 124, 1992 WL 2015, *3." (*Simpkins* at pg. 425)

Any criminal sentence that is contrary to law is void, see *State v Boswell*, 121 Ohio St. 3d 575 where this Court stated:

"A sentence that does not comport with statutory requirements is contrary to law and the trial judge is acting without authority in imposing it." (*Boswell* at pgs. 577, 578)

A motion to vacate a void sentence is not a petition for post conviction relief, see *In re N.G.* 2014 Ohio 3190, where the Third District (citing rulings from this Court), found;

"If the sentence is void, then it can be raised at any time and is not a petition for post-conviction relief. *State v Holcomb*, 184 Ohio App. 3d 577, 2009 Ohio 3187, 921 N.E. 2d 1077, ¶ 19 (9th Dist.) (citing *State v Boswell*, 121 Ohio St. 3d 575, 2009 Ohio 1577, 906 N.E. 2d 422, ¶ 13, holding that a trial court has an obligation to recognize a void sentence and to vacate it and may not ignore it)." (*N.G.* at [*P6])

As set forth in *State v Bozek*, 2016 Ohio 3105, even though the Respondent recast the Relators motion to vacate a void sentence as a untimely petition for post conviction relief, the Respondent was required to "ignore the procedural irregularities of the petition, vacate the void

sentence, and resentence the defendant. State v. Dawson, 2d Dist. Greene No. 2012-CA-54, 2013-Ohio-1817, ¶18” *Id* at P23.

A party can not appeal from a void judgment, see City Friends v. Kuhlman, 1991 Ohio App. LEXIS 4988, (HN 5, [*P8]). See also State v Bozek, 2106 Ohio 1305 where the Eleventh District found;

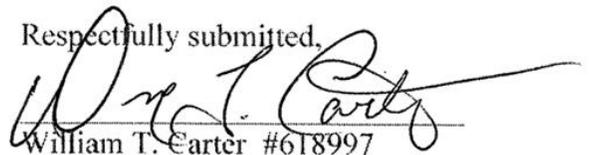
"[B]ecause the trial court's sentencing entry is void, there has been no judgment from which [the defendant] could file a direct appeal."
(*Bozek* at pg. [*P23])

In the future, the Relator will file a motion for judicial release pursuant to R.C. 2929.20. However, the State and the Respondent will no doubt claim that the Relator is serving a mandatory prison term and therefore is not eligible for judicial release even though the Respondent's sentencing entry clearly and unambiguously imposes a non mandatory prison term.

CONCLUSION

The Respondent clearly imposed a sentence that was and is unauthorized by law, contrary to law, unlawful and void. A writ of prohibition / mandamus will issue to correct previous unauthorized acts, (i.e. the imposition of the illegal sentence, the Respondents refusal to vacate the illegal sentence, the Respondents refusal to correct the illegal sentence and the future acts of the Respondent concerning the decision on judicial release of the Relator. It is therefore prayed that this Court will issue a writ of prohibition / mandamus whichever the court deems appropriate to compel the Respondent to perform the legal duty it has been commanded by statute. That the Relator is entitled to receive the relief requested and that the Relator has no adequate remedy at law in which to force the trial court to perform the duty requested.

Respectfully submitted,


William T. Carter #618997

IN THE SUPREME COURT OF OHIO

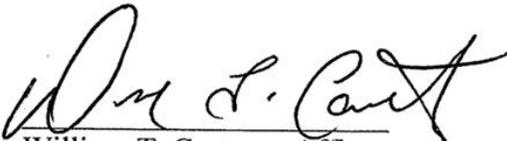
Affidavit of Indigence

I, William T. Carter, do hereby state that I am without the necessary funds to pay the cost of this action for the following reasons;

- I am in the custody of the Ohio Department of Rehabilitation Correction's.
- I am paid only \$18.00 per month from my prison job assignment.
- I am required to pay for all hygiene products, including laundry detergent.
- I am required to pay for all postage.
- I am required to pay for all stationary products.
- I am required to pay for all copies.
- I am required to pay a \$2.00 medical co-pay (each occurrence).

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

Further Affiant Sayeth Naught


William T. Carter - Affiant

Sworn and scribed in my presence on this 6 day of June, 2019.

My commission expires on ____ / ____ / ____.



DENISE A. MICHAEL
Notary Public, State of Ohio
My Commission Expires
May 14, 2022


Notary Public

