

1 Dionte English -A707762
North Central Correctional Complex
2 P.O.BOX 1812
670 Marion-Williamsport Rd.
3 Marion, Ohio, 43302

4 IN THE SUPREME COURT OF OHIO

5 DIONTE ENGLISH,

6 Relator,

7 vs.

8 JUDGE E. GERAKD PARKER JR,

9 Respondent

Case No.:

20-0281

CASE NO. 2014 CR-01291

ORIGINAL ACTIONS IN MANDAMUS

10 COMPLAINT FOR A WRIT OF MANDAMUS

11
12 Dionte English -A707762
North Central Correctional Complex
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670 Marion-Williamsport Rd.
14 Marion, Ohio, 43302

15
16 Judge E. Gerald Parker Jr.
Montgomery County Common Pleas Court

17 41 N. Perry Street, Dayton Ohio 45422

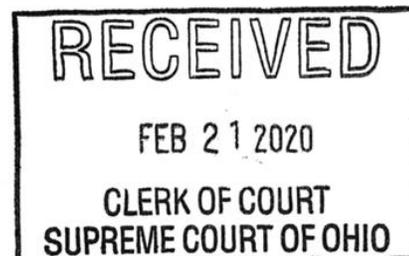
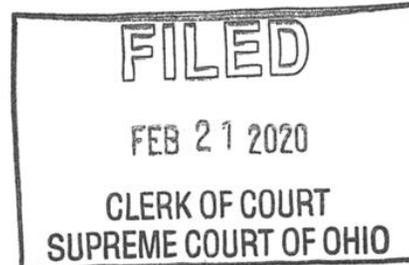
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23 DAYTON, OH 45422



ORIGINAL ACTIONS IN MANDAMUS - 1

JURISDICTION

Ohio Constitution, Article IV, Section 2(B)(1)(d) and the Rules of Practice of the Supreme Court.) of Ohio, Rule X, vest this Court with original jurisdiction to grant a writ of mandamus, a writ of prohibition, and other writs.

Ohio Revised Code §2503.40 vest this Court with original jurisdiction to grant an alternative, other writs when necessary to enforce the administration of justice.

(Smith v. Granville Two. Bd. of Trustees (1996), 77 Ohio St.3d 1215 671 N.E.2d 1277.

SPECIFIC STATEMENT OF FACTS

UPON WHICH THE CLAIM FOR RELIEF IS BASED

1. On April 14, 2014, an indictment was filed against Realtor Dionte English (hereinafter: D. English, Realtor Defendant) in the Montgomery County Court of Common Pleas, to which I plead not guilty to.

2. In July 2014, the defendant entered a change of plea in the Montgomery County Court of Common Pleas. Judge Heck courtroom (hereinafter: Trial Court) on said indictment in aforementioned Court of Common Pleas.

3. The Trial Court subsequently sentenced Defendant to a term of eight (8) years in prison.

4. The Trial Court Ordered a Warrant to Convey D. English, Defendant to the Ohio Department of Rehabilitation and Corrections in July 2014.

5. In July 2014, Realtor was delivered to the Lorain Correctional Institution. He has been incarcerated in the prison system since that time, with no release from

confinement. Therefore, he is deemed an "Eligible Offender" According to R.C. 2929.20 (C).

6. The Defendant filed a *timely pro se* Motion for Judicial Release on July 23, 2019.

MEMORANDUM IN SUPPORT

7. Under Ohio Revised Code 2929.20 (C) an eligible offender for Judicial Release is defined in pertinent part as:

(1) (a) Except as provided in division (A) (1) (b) of this section, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms.

(2) "Nonmandatory prison term" means a prison term that is not a mandatory prison term.

(C) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

"(2) If the aggregated nonmandatory prison term or terms is at least two years but less than five years, the eligible offender may file the motion not earlier than one hundred eighty days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than one hundred eighty days after the expiration of all mandatory prison terms."

8. Thereby the Realtor, being sentenced to a prison term of (8) years of incarceration and having served over 5 years, is deemed to be "eligible offender" under R. C. 2929.20(C).

9. R.C. 2929.20(D) states in pertinent part:

"(D) Upon receipt of a timely motion for judicial release filed by an eligible offender under division (C) of this section.:" "A hearing under this section shall be conducted in open court within sixty days after the motion is filed, provided that the court may delay the hearing for one hundred eighty additional days. If the court holds a hearing, the court shall enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, the court shall enter its ruling on the motion within sixty days after the motion is filed."

10. The prose Motion for Judicial Release that was filed on July 23th, 2019 on case no.2014 CR-01291, and is the matter for which relief is being sought, was filed according to all applicable Revised Codes and Criminal Rules, and thus is considered timely.

11. The Realtor pro se motion was properly filed. Realtor, is an "eligible offender", according to all applicable codes. R. C. 2929.20(D) is clear that if a Motion for Judicial Release is filed under 2929.20 and the offender is deemed an eligible offender under R.C. 2929.20(C) then the court in which the motion is filed must either; (1.) hold a hearing and rule on the motion within sixty (60) days of the motion being filed, (2.) if the Court chooses to deny the motion without a hearing the court must do so not later than sixty (60) days after the motion is filed, and must give the answer within ten days of the hearing (3.) may extend the period of time with which they have to rule on the motion for one hundred eighty days, but must order a hearing to take place, because a motion filed under 2929.20 may only be answered without a hearing in the first sixty days after the motion was filed.

12. It's clear by the record that more than sixty days have passed since the motion for Judicial Release was filed in the case at hand. Therefore, the trial court, in

which this motion is filed, must hold a hearing on the motion according to 2929. 20 (E) and enter a ruling on such hearing within ten days of the hearing.

13. The issue at hand is simple and Realtor, prays the court see it as so.

14. The Common Pleas Court of Montgomery County has error when it considers the original "Presentence Investigation" and the "Judicial Release Report" made by the Criminal Justice Services. *The Sentencing Judge Heck*, address the "Presentence Investigation" in his *Sentencing Report of July 2014, which is conveniently absent from the* "ORDER OVERRULES MOTION FOR JUDICIAL RELEASE" dated September 04, 2019. *The Sentencing Judge Heck, outline D. English, condition of Release*, when he sentences D. English, in *July 2014*.

D. English, has completed the "Rehabilitation Programs" that Judge Heck Order when they were made available to him.

The "Judicial Release Report" violates the Double Jeopardy Rule, in State v. Gustafson, Ohio St.3d 425 (1996). Double Jeopardy Rule prevents three wrongs from occurring, here we address the second one "(2) a second prosecution for the same offense after conviction." The "Judicial Release Report" is the "State" taking

another Bite of the Apple, without following "Judge Heck Sentencing Order of July 2014.

15. CLAIM FOR RELIEF, WHEREFORE, Realtor, prays this Honorable Court issue a Writ of Mandamus ordering the Respondent to schedule a hearing in accordance with R. C. 2929.20 (D) &(E) on the matter of the prose. Motion for Judicial Release filed July 23th 2019 in the case of State v. Dionte. English, trial court case no.2014 CR-01291, further order the Respondent to enter a ruling within ten days after the sought

Respectfully Submitted,

Dionte English date _____

Realtor Dionte English -A707762
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REALTOR'S AFFIDAVIT OF SUPPORT WRIT OF MANDAMUS

1. Dionte English, Realtor prose do hereby state that the writings set forth in this Affidavit are relevant for the purpose of supporting the Writ of Mandamus according to S Ct R X Section 4 (B), with which it was attached to and filed therewith, are admissible as evidence, are true and accurate to the best of my knowledge, and are as follows:

2. I'm an eligible offender for judicial release under O.R.C. 2929. 20 (C).

3. On July 23, 2019. I filed a timely, pro se Motion for Judicial Release, according to all relevant Ohio Revised Codes and Ohio Rules of Criminal Procedure, in The Common Pleas Court of Montgomery County, with the trial Judge Heck, who retired, now Judge E. Gerald Parker Jr. which has jurisdiction over the criminal matter I'm seeking judicial release on according to R.C. 2929.20 on case number 2014 CR- 01291.

4. I have not received a hearing on this motion as of December 04, 2019, thereby more than sixty (60) days have passed since I filed the Motion in question.

5. I have not given oral or written permission in any form or fashion to any entity for said Motion to not be heard and a hearing held according to the law.

6. I have the legal right to receive a hearing and ruling on said Motion according to O.R.C. 2929.20 (D) and choose to have the Court in which the motion was properly filed to bestow that right on me now.

7. I state I am of sound mind and competent to testify to all matters stated herein. I further state I have not been offered anything or threatened in any manner to make this Affidavit and do so by my own free will.



Affiant - Dionte English Relator

Sworn to, or affirmed, and subscribed in my presence this 13th day of February, 2020.



Randall K. Shears

Notary Public

My Commission Expires July 6, 2023