IN THE SUPREME COURT OF OHIO

STATE EX REL. LOTUS JUSTICE, Appellant, VS. STATE OF OHIO, ET AL., Appellee.	CASE NO. 2022-0811 On Appeal from the Franklin County Court of Appeals, Tenth Appellate District Appellate Case No. 22AP-53

MERIT BRIEF OF APPELLEES JUDGE DAVID YOUNG AND MARLA FARBACHER

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STATEMENT OF THE CASE AND FACTS

Appellant, Monica G. Justice (a.k.a ~r-lotus:justice), is currently incarcerated at the Franklin County Corrections Center on Jackson Pike. She is awaiting trial in the Franklin County Court of Common Pleas after being charged with four counts of felonious assault and two counts of possession of a weapon while under disability. Since she was indicted in July 2020, she has represented herself in her criminal case. She has also filed fourteen appeals before the Tenth District Court of Appeals, two of which were appealed to the Supreme Court of Ohio. Additionally, Appellant filed one affidavit of disqualification, two habeas corpus actions and two original mandamus actions before this Court. These actions are, for the most part, Appellant's attempts to fight procedural decisions made by Judge David Young in her criminal case. Appellant is operating under the mistaken belief that these are final, appealable orders that the higher courts can review and overturn before her criminal case goes to trial. Appellant's sole goal is to avoid the criminal trial and have her charges dismissed.

Thus far, her efforts have been unsuccessful. Both the courts and the attorneys representing various government agencies have repeatedly provided Appellant with the definition of a final appealable order. Despite this, Appellant has continued to appeal various procedural decisions made by Judge Young. The underlying case is one such example.

On January 20, 2022, Appellant filed a "Petition for Discharge for Want of Jurisdiction, Judicial Misconduct, and Abuse of Discretion, Obstructions to Justice, Prosecutorial Misconduct [and] Perjury [and] Brady Rule Violations, etc., Effected (sic) Pre-Trial by Respondents." She named the State of Ohio, the Bureau of Criminal Investigation, the Honorable Judge David Young

and Franklin County Prosecutor's Office Chief Counsel, Grand Jury Unit, Marla Farbacher as Respondents. In this Petition, she made various allegations against each of the parties.[1]

Appellant alleges that Judge Young prevented Appellant from making a record while her competency was under evaluation. Appellant claims he also refused to rule on Appellant's motions during this time. Specifically, Judge Young's delayed ruling on her demurrer. To remedy this delay, Appellant states that she repeatedly demurred both verbally and via motions filed on the record. Judge Young refused to address the demurrer until Appellant was deemed competent and Appellant contends that this delay infringed on Appellant's right to a speedy trial.

Furthermore, Appellant claims that Judge Young committed judicial misconduct and abused his discretion on a few different occasions. Appellant alleges that Judge Young failed to demonstrate that the Court had jurisdiction over this matter, that he relied on an expunged probate order to challenge Appellant's competency, and that he allowed the Prosecutor's Office to violate the Brady Rule by sealing medical records for ninety days. As a result, Appellant refused to recognize Judge Young's judicial authority.

The accusations against Marla Farbacher were less extensive. Appellant accuses Ms. Farbacher of committing perjury. Ms. Farbacher stated on the record that Appellant was offered discovery but refused to accept it. This, Appellant argued, constituted perjury. Appellant also alleges that Ms. Farbacher failed to provide discovery in a readily accessible format for Appellant, which Defendant argues amounted a Brady rule violation.

Appellees filed their motion to dismiss on February 15, 2022. They asserted that these issues were not ripe for appellate review and the Tenth District Court of Appeals did not have jurisdiction over the matter without a final appealable order to review. In its Judgement Entry filed

[1] Here, Appellees will only include the allegations that specifically relate to them.

on May 25, 2022, the Tenth District dismissed this matter. The Tenth District correctly ruled that Appellant failed to state a claim under any writ over which it has original jurisdiction. It also determined that Appellant's Petition failed to constitute a valid notice of appeal under App.R. 3.

On June 30, Appellant filed her notice of appeal. Her brief is devoid of arguments designed to convince this Court to reverse the decision of the lower court. Instead, Appellant re-asserted several of her original arguments. Namely that Judge Young acted without jurisdiction when he failed to timely rule on the demurrer. Appellant asserts this delay caused the Franklin County Court of Common Pleas to permanently lose jurisdiction over her criminal case. Appellant also incorporated new arguments in her notice of appeal. For example, she challenged the validity of a probate order at issue in her criminal case. Another new argument challenged the constitutionality of one of this Court's previous decisions. Specifically, this Court's decision to abolish the demurer permitted by R.C. 2941.57. Unfortunately, these arguments, while important to Appellant, are outside of this Court's scope of review until the criminal case has issued a final, appealable order. Accordingly, Appellees now come to respectfully ask this Court to uphold the Tenth District's ruling.

ARGUMENT

PROPOSITION OF LAW ONE: THE TENTH DISTRICT COURT OF APPEALS' DECISION TO DISMISS APPELLANT'S APPEAL FOR LACK OF JURISDICTION WAS ACCURATE. APPELLANT FAILED TO DEMONSTRATE THE EXISTENCE OF A FINAL, APPEALABLE ORDER OR A WRIT OVER WHICH THE COURT HAD ORIGINAL JURISDICTION.

Before delving into their analysis, Appellees would like to point out various discrepancies in Appellant's Petition filed with the Tenth District Court of Appeals. In looking at the record, Appellant filed a mandamus action. However, the caption and style of her filed Petition does not

reference to the term "mandamus." Instead, the caption of her case indicates that this action is "on appeal from case #20-CR-03470 with Common Pleas Court Franklin County Ohio." Petition at 1, *Lotus Justice v. Marla Farbacher, et al.*, 10th Dist. Franklin No. 22 AP 53. The body of Appellant's Petition spanned fourteen pages. However, the arguments that specifically related to a mandamus action were sparse. As a result, in their motion to dismiss Appellees argued that Appellant's Petition did not qualify as a mandamus action. Ultimately the Tenth District Court of Appeals accepted this argument and dismissed the case. Appellant has failed to rectify this defect in her Brief.

The courts of appeals have original jurisdiction over the following actions: quo warranto, mandamus, habeas corpus, prohibition, procedendo, and "any cause on review as may be necessary to its complete determination." Ohio Constitution, Article IV, Section 3(B)(1). Based on the facts of this case, the only writs that could apply here would be prohibition and procedendo. Appellant did not establish the existence of a legal right to require Judge Young proceed to judgement as is required by a writ of procedendo. *State ex rel. Woods v. Digeronimo*, 8th Dist. Cuyahoga No. 111617, 2022-Ohio-2589, ¶4, quoting *State ex rel. Bechtel v. Cornachio*, 164 Ohio St.3d 579, 2021-Ohio-1121, 174 N.E.3d 744, ¶7. Appellant's arguments similarly failed to demonstrate she was entitled to a writ of prohibition. Judge Young was not exercising judicial power outside the scope of his authority. *Id* at ¶5. Therefore, the Tenth District's analysis is accurate here.

Furthermore, the Court of Appeals correctly concluded that the decisions made by Judge Young do not qualify as judgements or final orders. Ohio Constitution, Article IV, Section 3(B)(2). As both Appellant and this Court are aware, a final order must be one of the following:

> (1) An order that affects a substantial right * * * that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon summary application in an action after judgment;

(3) An order that vacates a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy to which both of the following apply:

(a) The order * * * determines the action with respect to the provisional remedy and prevents a judgement in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following a final judgement as to all proceedings, issues, claims and parties to the action.

R.C. 2505.02(B)(1) – (4). Judge Young's procedural decisions do not satisfy any of the definitions supplied by the statute. Appellant's brief is devoid of arguments to the contrary. Therefore, the Tenth District Court of Appeals was correct that it lacked the jurisdiction to review this appeal under App.R. 3.

Appellant's arguments—as they related to claims against Marla Farbacher—similarly failed to demonstrate that the Court of Appeals had jurisdiction. Appellant's claims do not satisfy the definition of any writs over which the Tenth District Court of Appeals has original jurisdiction. Appellant's allegations of perjury, non-disclosure of evidence, and delayed disclosure of evidence are not final, appealable orders that this court can review. As a result, the Tenth District's decision to dismiss was correct and should be affirmed.

PROPOSITION OF LAW TWO: THIS COURT LACKS JURISDICTION OVER THE ADDITIONAL CLAIMS PRESENTED IN APPELLANT'S BRIEF.

Like the Tenth District Court of Appeals, the Ohio Constitution similarly limits this Court's scope of review. This Court has original jurisdiction over the same five writs as the appellate courts. Ohio Constitution, Article IV, Section 2(B)(1). As discussed previously, Appellant's arguments do not satisfy the definition for any of these writs. Therefore, Appellant must rely on other provisions of the Ohio Constitution to establish this Court's jurisdiction over her claims.

This Court also has appellate jurisdiction over "appeals from the courts of appeals as a matter of right in * * * (i) [c]ases originating in the courts of appeals; * * * (iii) [c]ases involving questions arising under the constitution of the United States or of this state." Ohio Constitution, Article IV, Section 2(B)(2). Here, the underlying case before the Tenth District Court of Appeals is filed as a mandamus action. Therefore, this Court does have the ability to review it. However, as previously discussed, this Court's scope of review is limited strictly to the mandamus action. As a result, this Court cannot review the other arguments presented.

Appellant attempted to circumvent this by raising a question under the Ohio Constitution. She argues that this Court acted unconstitutionally when it abolished the demurrer. This is "an unconstitutional expansion of the judiciary to legislate law." Appellant's Brief at 22. Appellant believes that a demurrer "is a substantive right pursuant to 'due process of law'[sic]" Appellant's Brief at 23. This argument is inaccurate for several reasons.

First, Appellant has failed to demonstrate that the ability to demur is a substantive right. Appellee maintains that the use of a demurrer is procedural rather than substantive. This Court has held that "substantive law is that which creates duties, rights, and obligations, while procedural or remedial law prescribes methods of enforcement of rights or obtaining redress." *State ex rel. Holdridge v. Industrial Commission*, 11 Ohio St.2d 175, 178, 228 N.E.2d 621, (1967), citing *State*

v. Elmore, 179 La. 1057, 1058, 155 So. 896; *Manuel v. Carolina Casualty Ins. Co.*, 136 So.2d 275, 277 (La.App.1961); 40 Words and Phrases (Perm.Ed.), 857. R.C. 2941.57, which discusses demurrer, essentially outlines a list of defenses Appellant can assert in her criminal trial. In using the word "may" in the language of the statute, the legislature was essentially creating a permissive statute rather than an duty, right or obligation. As a result, Appellant's argument must fail.

Second, the Ohio Constitution gave this Court the power to "prescribe rules governing practice and procedure in all courts of the state." Article IV, Section 5(B). By updating Crim.R. 12(A) to abolish the demurrer,[2] this Court was complying with the state's constitution. Additionally, the Court's purpose is to interpret the law in light of the legal issues before it and strike unconstitutional statutes. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 452, 715 N.E.2d 1062 (1999). As a result, it is reasonable to expect that this Court would exercise this power to keep the other two branches in check.

Appellant's other arguments are based on the U.S. Constitution. For example, Appellant alleges Judge Young violated Appellant's right to due process, right to a speedy trial, and right to self-defense. She states this occurred when Judge Young refused to permit Appellant to make a record or to rule on her various motions while her competency to stand trial was under review. Appellant misunderstands the law and, as a result, these arguments are baseless.

Ohio statute permits the court, prosecutor, or defense to raise the issue of competency. R.C.2945.37(B). In the underlying criminal case, police were dispatched to Appellant's home in

[2] When the Rules of Civil Procedure were enacted in 1970, Civ.R. 7(C) abolished the use of demurrer. *Mills v. Whitehouse Trucking Co.*, 40 Ohio St.2d 55, 59, 320 N.E.2d 668 (1974). It is unclear when the Rules of Criminal Procedure were changed to mirror this. However, the Court held in *Village of St. Paris v. Galluzzo* that "Crim.R. 12(A) does abolish demurrers." 2nd Dist. Champaign, 2014-Ohio-3260, ¶10. Since Crim.R. 57(B) directs litigants to rely on the Rules of Civil Procedure, it would make sense that this Court would want to ensure continuity between these two authorities.

response to a Magistrate's Order of Detention issued by the Franklin County Probate Court. The existence of the magistrate's order[3] gave the court "sufficient indicia of incompetency" to make an inquiry into this issue necessary. *State v. Shine,* 7th Dist. Mahoning No. 16 MA 0116, 2018-Ohio-2491, ¶14, citing *State v. Berry*, 72 Ohio St.3d 354, 650 N.E.2d 433 (1995). This Court has previously ruled that, when it comes to evaluating competency, "[d]eference on these issues should be given to those 'who see and hear what goes on in the courtroom.'" *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶33, quoting *State v. Cowans*, 87 Ohio St.3d 68, 717 N.E.2d 298 (1999). As a result, this Court cannot review Judge Young's ruling on this issue.

When it comes to Marla Farbacher, Appellant's claims are outside the scope of review. Appellant's claims do not satisfy the definition for the five writs over which this Court has jurisdiction. Appellant also does not make any constitutional arguments, nor does she argue that this case is of public or great general interest. Ohio Constitution, Article IV, Section 2(B)(2)(e) Therefore, this Court does not have jurisdiction here.

PROPOSITION OF LAW THREE: APPELLANT HAS FAILED TO DEMONSTRATE THAT SHE IS ENTITLED TO THE REQUESTED WRIT.

Even assuming that this Court has jurisdiction to review the Tenth District's dismissal, Appellant cannot show that she is entitled to an extraordinary writ. When reviewing a court of appeals judgement on a mandamus action, the Court reviews the action as if it had been filed originally in the Supreme Court. *State ex rel. Duncan v. American Transmission Systems, Inc.*, 166 Ohio St.3d 416, 2022-Ohio-323, 186 N.E.3d 800, ¶14, quoting *State ex rel. Dynamic Industries, Inc. v. Cincinnati*, 147 Ohio St.3d 422, 216-Ohio-7663, 66 N.E.3d 734, ¶7. Here, Appellant's

[3] Appellant spends a significant portion of time focusing on the fact that the probate order was expunged. She, incorrectly, believes that this makes the order invalid and that it cannot be used as a basis for either the warrant for her arrest or for inquiries regarding her competency. She has failed to supply case law supporting this personal belief.

original action was dismissed after the Tenth District Court of Appeals granted Appellee's motions to dismiss. This Court, then, must "review[] de novo a court of appeals' dismissal of a mandamus complaint for failure to state a claim." *State ex rel Mitchell v. Pittman*, 2022-Ohio-2542, ¶8, citing *State ex rel. McKinney v. Schmenk*, 152 Ohio St.3d 70, 2017-Ohio-9183, 92 N.E.3d 871, ¶8. As a result, "[d]ismissal is appropriate if it appears beyond doubt, after presuming all factual allegations in the complaint are true and drawing all reasonable inferences in the relator's favor, that the relator can prove no set of facts entitling him to the extraordinary relief in mandamus." *Id.* In order to demonstrate she is entitled "to extraordinary relief in mandamus" Appellant must establish by clear and convincing evidence that (1) she has a clear legal right to the requested relief, (2) Judge Young and Marla Farbacher have a clear legal duty to provide it, and (3) Appellant lacks an adequate remedy in the ordinary course of the law. *Id.*

When it comes to the requested relief, Appellant asked for a discharge of her criminal charges. This is not a relief that can be granted under a mandamus action. When beginning a mandamus action, the remedy "must actually be [based on a] ministerial [act] at the time the application seeking its performance is made." *Summit County Bd. of Ed. v. State*, 15 Ohio St. 333, 336, 154 N.E. 742 (1926). A ministerial act is defined as "one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of his own judgement upon the propriety of the act being done." *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 618, 64 N.E. 558 (1902), citing *Flournoy v. City of Jeffersonville*, 17 Ind. 169 (In.1861). The decision to dismiss charges is discretionary. Crim.R. 48(B); *State ex rel. Capron v. Dattilio*, 146 Ohio St.3d 7, 2016-Ohio-1504, 50 N.E.3d 551, ¶4, citing *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 27, 661 N.E.2d 180 (1996) (holding that

the prosecutors office's decision to prosecute is discretionary). As a result, this Court cannot find that this is a ministerial act, and the writ cannot be granted.

Appellant's arguments are similarly brief when it comes to discussing the clear legal duties at issue. Appellant wrote pages educating this Court on various procedural matters occurring in her criminal case but failed to point to a default in a clear legal duty. For example, she accused Judge Young of unfairly relying on an expunged probate order to question her competency to stand trial. As of the date of this filing, the record indicates Appellant is competent to stand trial. She has also accused Marla Farbacher of failing to provide discovery. The underlying criminal case record indicates that the prosecution completed their initial disclosures in April 2021. Based on these facts, there is no evidence that Marla Farbacher was derelict in her duty when this mandamus action was filed on January 20, 2022. Appellant did not connect these issues to "a present existing duty as to which there is a default." *State ex rel. Byers v. Carr*, 2016-Ohio-241, 57 N.E.3d 482, ¶16 (6th Dist.) (internal quotations omitted), quoting *State ex rel. Judges of Toledo Mun. Court v. Mayor of Toledo*, 179 Ohio App.3d 270, 2008-Ohio-5914, 901 N.E.2d 321, ¶9 (6th Dist.). As noted, the record of the underlying criminal case clearly demonstrates that there is no existing default to any clear legal duty. As a result, this writ should not be granted.

Finally, this Court must determine whether or not there is an adequate remedy at law that would prevent a writ from issuing. Here, an adequate remedy exists. Appellant could permit her criminal case to move forward. If she is found guilty, she has the right to appeal her criminal conviction and any postconviction matters. *State ex rel. Kirk v. Burcham*, 82 Ohio St.3d 407, 409, 696 N.E.2d 582 (1998). Appellant's brief is devoid of arguments indicating that this remedy is not "complete, beneficial, and speedy." *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249, 673 N.E.2d 1281 (1997), citing *State ex rel. Huntington Ins. Agency, Inc. v. Duryee*,

73 Ohio St.3d 530, 536, 653 N.E.2d 349, 355 (1995). As a result, a plain and adequate remedy exists. This Court should refuse to grant the requested writ and affirm the Tenth District's dismissal.

CONCLUSION

Appellees Judge David Young and Marla Farbacher respectfully request that this Court affirm the decision of the Tenth District Court of Appeals and deny Appellant's appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on September 12, 2022, a copy of the foregoing was electronically filed using the Court's electronic filing system. Notice of this Filing will be sent to all counsel by operation of the Court's electronic filing system. Parties may access this fling through the Court's system.

A copy of the foregoing was served via regular U.S. mail, postage prepaid, upon Appellant Monica G. Justice, 2460 Jackson Pike, Columbus, Ohio 43223, on the 13th day of September 2022.

A copy of the foregoing was served via electronic mail upon both Taylor Mick, counsel for Appellant State of Ohio, at tmick@franklincountyohio.gov and Zahid H. Siddiqi, counsel for BCI, at Zahid.Siddiqi@OhioAGO.gov on this 12th day of September 2022.

/s/ Nickole K. Iula
Nickole K. Iula 0099895
Assistant Prosecuting Attorney

Appendix
Judgment Entry of the Franklin County Court of Appeals (May 25, 2022)

OA483 - X72

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Lotus Justice,

Relator,

No. 22AP-53

v.

(Regular Calendar)

State of Ohio,

Respondent.

JUDGMENT ENTRY

Lotus Justice initiated this case by filing a pleading captioned "Petition For Discharge for Want of Jurisdiction, Judicial Misconduct and Abuse of Discretion , Obstructions of Justice, Prosecutorial Misconduct & Perjury & Brady Rule Violations, ETC., Effected Pre-Trial by Respondents" on January 20, 2022. This pleading is not sufficient to state a claim for any of the five writs over which this court has original jurisdiction, nor does it constitute a valid notice of appeal under App.R. 3. Accordingly, this matter is dismissed. Our dismissal of this matter renders all other pending motions moot and we decline to address them. Any outstanding appellate court costs are assessed to Lotus Justice.

JUDGE

JUDGE

JUDGE

cc: Magistrate Office

Court Disposition

Case Number: 22AP000053

Case Style: LOTUS JUSTICE -VS- STATE OF OHIO

Motion Tie Off Information:

1. Motion CMS Document Id: 22AP0000532022-03-0199950000
   Document Title: 03-01-2022-MOTION FOR TRANSCRIPT AT STATE EXPENSE - LOTUS JUSTICE
   Disposition: 3204

2. Motion CMS Document Id: 22AP0000532022-02-2299970000
   Document Title: 02-22-2022-MOTION TO DISMISS AS TO CERTAIN PARTIES - OHIO BUREAU OF CRIMINAL INVESTIGATION
   Disposition: 3204

3. Motion CMS Document Id: 22AP0000532022-02-1599960000
   Document Title: 02-15-2022-MOTION TO DISMISS AS TO CERTAIN PARTIES - DAVID YOUNG
   Disposition: 3204

4. Motion CMS Document Id: 22AP0000532022-01-2699980000 Document
   Title: 01-26-2022-MOTION TO DISMISS - STATE OF OHIO
   Disposition: 3204

Constitutional Provisions

Ohio Constitution, Article IV, Section 2

(A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

(a) Quo warranto;

(b)Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases in which the death penalty has been affirmed;

(iii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained,

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the Supreme Court shall be reported, together with the reasons therefor.

Ohio Constitution, Article IV, Section 3

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall 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, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

Ohio Constitution, Article IV, Section 5

(A)(1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court.

(2) The Supreme Court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The Supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the Supreme Court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

Statutes

R.C. Chapter 2505.02

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67,

2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly), and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

R.C. Chapter 2941.57

The accused may demur:

(A) When the facts stated in the indictment do not constitute an offense punishable by the laws of this state;

(B) When the intent is not alleged and proof thereof is necessary to make out the offense charged;

(C) When it appears on the face of the indictment that the offense charged is not within the jurisdiction of the court.

R.C. Chapter 2945.37

(A) As used in sections 2945.37 to 2945.402 of the Revised Code:

(1) "Prosecutor" means a prosecuting attorney or a city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has authority to prosecute a criminal case that is before the court or the criminal case in which a defendant in a criminal case has been found incompetent to stand trial or not guilty by reason of insanity.

(2) "Examiner" means either of the following:

(a) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I) of section 5122.01 of the Revised Code or is employed by a certified forensic center designated by the department of mental health and addiction services to conduct examinations or evaluations.

(b) For purposes of a separate intellectual disability evaluation that is ordered by a court pursuant to division (I) of section 2945.371 of the Revised Code, a psychologist designated by the director of developmental disabilities pursuant to that section to conduct that separate intellectual disability evaluation.

(3) "Nonsecured status" means any unsupervised, off-grounds movement or trial visit from a hospital or institution, or any conditional release, that is granted to a person who is found incompetent to stand trial and is committed pursuant to section 2945.39 of the Revised Code or to a person who is found not guilty by reason of insanity and is committed pursuant to section 2945.40 of the Revised Code.

(4) "Unsupervised, off-grounds movement" includes only off-grounds privileges that are unsupervised and that have an expectation of return to the hospital or institution on a daily basis.

(5) "Trial visit" means a patient privilege of a longer stated duration of unsupervised community contact with an expectation of return to the hospital or institution at designated times.

(6) "Conditional release" means a commitment status under which the trial court at any time may revoke a person's conditional release and order the rehospitalization or reinstitutionalization of the person as described in division (A) of section 2945.402 of the Revised Code and pursuant to which a person who is found incompetent to stand trial or a person who is found not guilty by reason of insanity lives and receives treatment in the community for a period of time that does not exceed the maximum prison term or term of imprisonment that the person could have received for the offense in question had the person been convicted of the offense instead of being found incompetent to stand trial on the charge of the offense or being found not guilty by reason of insanity relative to the offense.

(7) "Licensed clinical psychologist," "mentally ill person subject to court order," and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.

(8) "Person with an intellectual disability subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.

(B) In a criminal action in a court of common pleas, a county court, or a municipal court, the court, prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before the trial has commenced, the court shall hold a hearing on the issue as provided in this section. If the issue is raised after the trial has commenced, the court shall hold a hearing on the issue only for good cause shown or on the court's own motion.

(C) The court shall conduct the hearing required or authorized under division (B) of this section within thirty days after the issue is raised, unless the defendant has been referred for evaluation in which case the court shall conduct the hearing within ten days after the filing of the report of the evaluation or, in the case of a defendant who is ordered by the court pursuant to division (I) of section 2945.371 of the Revised Code to undergo a separate intellectual disability evaluation conducted by a psychologist designated by the director of developmental disabilities, within ten

days after the filing of the report of the separate intellectual disability evaluation under that division. A hearing may be continued for good cause.

(D) The defendant shall be represented by counsel at the hearing conducted under division (C) of this section. If the defendant is unable to obtain counsel, the court shall appoint counsel under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code before proceeding with the hearing.

(E) The prosecutor and defense counsel may submit evidence on the issue of the defendant's competence to stand trial. A written report of the evaluation of the defendant may be admitted into evidence at the hearing by stipulation, but, if either the prosecution or defense objects to its admission, the report may be admitted under sections 2317.36 to 2317.38 of the Revised Code or any other applicable statute or rule.

(F) The court shall not find a defendant incompetent to stand trial solely because the defendant is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. or a voluntary or involuntary resident with an intellectual disability under Chapter 5123. of the Revised Code or because the defendant is receiving or has received psychotropic drugs or other medication, even if the defendant might become incompetent to stand trial without the drugs or medication.

(G) A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

(H) Municipal courts shall follow the procedures set forth in sections 2945.37 to 2945.402 of the Revised Code. Except as provided in section 2945.371 of the Revised Code, a municipal court shall not order an evaluation of the defendant's competence to stand trial or the defendant's mental condition at the time of the commission of the offense to be conducted at any hospital operated by the department of mental health and addiction services. Those evaluations shall be performed through community resources including, but not limited to, certified forensic centers, court probation departments, and community mental health services providers. All expenses of the evaluations shall be borne by the legislative authority of the municipal court, as defined in section 1901.03 of the Revised Code, and shall be taxed as costs in the case. If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 of the Revised Code.