

IN THE SUPREME COURT OF OHIO

Timothy Grinnell,	:	Case No. <u>2023-0253</u>
Petitioner,	:	
	:	On Appeal from the
V.	:	Ross County Court
	:	of Appeals, Fourth
William Cool ,Warden,	:	Appellate District
Respondent.	:	

MERIT BRIEF OF PETITIONER TIMOTHY GRINNELL

Timothy Grinnell, No. 218140
Ross Correctional Institution
P.O. Box 7010
Chillicothe ,Ohio 45601
In Pro Se

Stephanie L. Watson
Principal Assistant Attorney General
Corrections Litigation Section
30 East Broad Street, 23rd Floor
Columbus ,Ohio 43215-6001
(614) 644-7233/(866) 243-4966 Fax
Counsel for Respondent

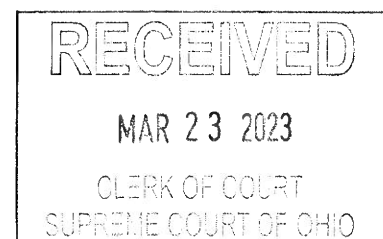
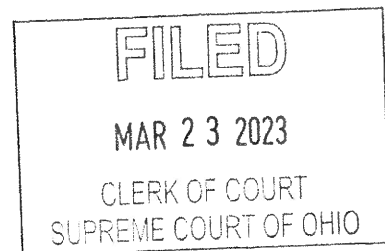


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF FACTS.....	1
ARGUMENT.....	5
 <u>Proposition of Law No. I</u>	
The Trial Court Lack Jurisdiction of The Subject Matter Because of The Improper Assignment of The Prosecuting Attorney Rendering The Judgment void and Constituting A Clear Usurpation of Jurisdiction.....	5
 <u>Proposition of Law No. II</u>	
ROBERT PIPER III, THE BUTLER COUNTY ASSISTANT PROSECUTOR PATENTLY AND UNAMBIGUOUSLY LACK JURISDICTION OVER THE SUBJECT MATTER IN THE UNDERLYING CRIMINAL CASE INVOLVING TIMOTHY GRINNELL CASE NO.94CR-6418	9
CONCLUSION.....	9
PROOF OF SERVICE.....	10

APPENDIX

Appx.Page

Notice of Appeal to the Ohio Supreme Court (FEB. 21,2023).....	1
Decision and Judgment Entry of the Ross County Court of Appeals (Jan. 11,2023).....	2
Entry Court of Common Pleas Ross County (Sept.20,2022).....	3
Entry The Supreme Court of Ohio (May 10,2022).....	4

CONSTITUTIONAL PROVISIONS;STATUTES

Ohio Constitution, Article I, section 2.....	10
Ohio Constitution, Article I, Section 16.....	10
First Amendment to the United States Constitution.....	11
Fifth Amendment to the United States Constitution.....	11
Fourteenth Amendment to the United States Constitution.....	11
R.C.2903.01.....	12
R.C.2901.12(K).....	13

ORC 2921.31.....	14
ORC 2921.32.....	14
ORC 2921.45.....	14
ORC 2931.29.....	13
ORC 2941.63.....	12
ORC 2969.25.....	14
ORC 2725.03.....	15
ORC 2725.05.....	15
Ohio Civ.R.15 (A).....	15

TABLE OF AUTHORITIES

<u>CASE:</u>	<u>Page</u>
Agee v. Russell, 92 Ohio St. 3d 540, 544, 2001 Ohio 1279, 751 N.E. 2d 1043 (2001).....	5
Ex parte Boswall, 16 Ohio Dec. 250.....	7
Fireproof Construction v. Brenner-Bell (1949), 152 Ohio St. 347, 89 N.E. 2d 472.....	7
Fox v. Eaton Corp. (1976), 48 Ohio St. 2d 236, 238, 358 N.E. 2d 536.....	8
Gaston v. Bd. of Review (1983), 17 Ohio App. 3d 12, 14, 477 N.E. 2d 460.....	8
Gates Mills Investment Co. v. Parks (1971), 25 Ohio St. 2d 16, 266 N.E. 2d 552.....	8
McCormac, Venue—New Concepts in Ohio, 39 Cincinnati L. Rev. 474; Field and Kaplan, Civil Procedure (2d Ed) 737.....	7
Smith v. Bradshaw, 109 Ohio St. 3d 50, 2006-Ohio-1829, 845 N.E. 2d 516, P 10.....	5
State ex rel. Kline v. Carroll, 96 Ohio St. 3d 404.....	7, 8
State ex rel. Steele v. Robinson, 4 th Dist. Ross No. 12CA3359, 2013-Ohio-3541, P 9...	5

CONSTITUTIONAL PROVISIONS;STATUTES

	<u>Page</u>
First Amendment to the United States Constitution.....	3
Fifth Amendment to the United States Constitution.....	3
Fourteenth Amendment to the United States Constitution.....	3,5
Ohio Constitution, Article 1, Section 2.....	5
Ohio Constitution, Article 1, Section 16.....	5
R.C.2903.01.....	1
R.C.2901.12(K).....	1,6
R.C.2921.31.....	1
R.C.2921.32.....	1
R.C.2921.45.....	1
R.C.2931.29.....	1,6
R.C. 2941.142.....	1,6
R.C.2969.25(C).....	3,4
R.C.2725.05.....	5
Ohio Civ.R.15 (A).....	2

STATEMENT OF FACTS

The Respondent committed the crime of intrinsic fraud upon the lower court when she (1) obstructed justice in violation of the Ohio Revised section 2921.32 A(4)(5) and (6) a felony of the fifth degree,(Appx 11),(2) obstructed official business in violation of Ohio Revised Code Section 2921.31(A)(Appx 11), a felony of the fifth degree due to her actions and knowingly and with malicious wanton intent to tamper with records falsifying and altering Mr. Grinnell's Writ of Habeas of Corpus to deceive the lower court in order to corrupt an official proceeding, and all those in which would follow. Also see interfering with civil rights R.C.2921.45(A)(Appx 11).

This case originated in Scioto County arising out of the April 1993 prison riot at the South Ohio Correctional Facility. Mr. Grinnell was indicted by the Scioto county grand jury on two count of aggravated murder in violation of O.R.C. 2903.01,with specifications pursuant to O.R.C.2941.142 attached to each count. Prior to being found guilty of two count of aggravated murder, Mr. Grinnell was serving a prison sentence of 2 and one half to 10 years for aggravated trafficking in drugs. The robbery conviction asserted by respondent was reversed on a Habeas Corpus in Federal Court.

Venue was changed to Franklin County, Ohio pursuant to O.R.C. 2901.12 (K)(Appx 12) the Franklin County Court of Common Pleas improperly assigned Robert N. Piper III, The Butler County Assistant prosecutor as a special prosecutor to try petitioner's case Mr .Piper did not have jurisdiction to try Mr. Grinnell case, Mr. Piper was operating independently when tried Mr. Grinnell's case in Franklin County contrary to R.C.2931.29(Appx 12).

The Franklin County Court could not render a verdict or sentence. On September 20,2022 ,Mr. Grinnell filed a Writ of Habeas Corpus in the Ross County Clerk of Court, the Ross County Clerk of Court's filed Mr. Grinnell Habeas Corpus in the Ross County Court of Common Pleas Case No. 22 CI 295,(Appx) which was the wrong court, after the elapse of more than forty (40) days, the Court of Common Pleas transferred the Habeas Corpus to the Fourth District Court of Appeals. Mr. Grinnell raised the follow ground for relief:

- (1) THE TRIAL COURT LACKED TERRITORIAL JURISDICTION AND JURISDICTION OF THE SUBJECT MATTER IN CASE NO.94-CR-6418.
- (2) THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION FOR WANT OF PROSECUTION.
- (3) THE ENTRY OF VERDICT AND JUDGMENT OF CONVICTION IS NULL AND VOID FOR A WANT OF JURISDICTION.

On November 16,2022, Mr. Grinnell amended his Habeas Corpus and raised the following grounds for relief:

- (1) THE TRIAL COURT LACK JURISDICTION OF THE SUBJECT MATTER BECAUSE OF THE IMPROPER ASSIGNMENT OF THE PROSECUTING ATTORNEY RENDERING THE JUDGMENT VOID.
- (2) ROBERT PIPER III, THE BUTLER COUNTY ASSISTANT PROSECUTOR PATENTLY AND UNAMBIGUOUSLY LACK JURISDICTION OVER THE SUBJECT MATTER IN THE UNDERLYING CRIMINAL CASE INVOLVING TIMOTHY GRINNELL CASE NO. 94CR-6418.

On or about march8,2023 petitioner called the Ross County Clerk of Courts and requested a certified copy of Mr. Grinnell Habeas Corpus mention above, the clerk forwarded petitioner a copy of a Habeas Corpus that was file stamped September 20,2022, and Habeas Corpus raised all of the same grounds for relief that this court sua sponte dismissed May 10,2022-Case No.2022-0306.That Habeas corpus raise the following grounds for relief.

- (1) THE TRIAL COURT LACK TERRITORIAL JURISDICTION AND JURISDICTION OF THE SUBJECT MATTER IN CASE NUMBER 94-CR-6418.
- (2) THE TRAIL COURT LACK SUBJECT MATTER JURISDICTION FOR WANT OF PROSECUTING.
- (3) THE ENTRY OF VERDICT AND JUDGMENT OF CONVICTION IS NULL AND VOID FOR WANT OF PROSECUTION.
- (4) THE TRIAL JUDGE LACK JURISDICTION TO PRESIDE OVER CASE NO.94CR-6418,AND ISSUE AN ENTRY AS HE WAS IMPROPERLY ASSIGNED.

Respondent addressed each one of the above mention grounds for relief in her motion to dismiss, however, petitioner did not raise ground four (4) for relief in his original habeas corpus filed with the Ross County Clerk of Courts office file stamped September 20,2022.

Because of the intrinsic fraud perpetrated upon the Fourth District Court of Appeals by Respondent, the court was deceived into denying Mr. Grinnell's of his rights under the 1st, 5th, and 14th (Appx 10) Amendment to the United States Constitution to meaningful access to the court, and the right to petition the government for redress. The lower court denied Mr. Grinnell's habeas corpus and held the substantive grounds for relief raised in Mr. Grinnell's amended habeas corpus as moot because Mr. Grinnell did not comply with the mandatory requirement of R.C. 2969.25 (C),but Mr. Grinnell did comply R.C. 2969.25 (C)(Appx 11), excepted for certification statement from the institution cashier, it was omitted because the institution cashier's office refused to provided Mr. Grinnell with the document, and Mr. Grinnell submitted viable evidence, kites , informal complaints and their responses as proof.

The respondent tampered with Mr. Grinnell's habeas corpus stealing page four (4) of the demand statement attached to Mr. Grinnell habeas corpus pertaining to 2969.25 (C). and altering petitioner's habeas corpus by adding the following ground four (4) for relief:

The trial judge lacked jurisdiction to preside over Case No.94CR-6418, and issue an entry as he was improperly assigned, so that the habeas corpus raise the same grounds for relief that this court sue sponte dismissed May 10, 2022, Case No.2022-0306.(See Exhibit-J attached to the Affidavit presentation of evidence) .Mr. Grinnell amended his habeas corpus and raised the following grounds for relief:(1) THE TRIAL COURT LACK JURISDICTION OF THE SUBJECT MATTER BECAUSE OF THE IMPROPER ASSIGNMENT OF THE PROSECUTING ATTORNEY RENDERING THE JUDGMENT VOID. (2) ROBERT PIPER III THE BUTLER COUNTY ASSISTANT PROSECUTOR PATENTLY AND UNAMBIGUOUSLY LACK JURISDICTION OVER THE SUBJECT MATTER IN THE UNDERLYING CRIMINAL CASE INVOLVING TIMOTHY GRINNELL CASE N.94CR-6418. The lower court held these substantive due process claims as moot because of respondent's intrinsic fraud upon that court.

The Fourth District Court of Appeals dismissed Mr. Grinnell Habeas Corpus because he did not comply with the mandatory requirement of R.C.2969.25, and because petitioner had adequate alternative legal remedies, either through direct appeal of post-conviction relief. The court further held that any pending motion are denied as moot.

Petitioner filed his notice of appeal to the Supreme Court of Ohio on February 21, 2023
(Appx 1)

ARGUMENT

Proposition of Law No. 1

The Trial Court Lack Jurisdiction Of The Subject Matter Because OF
The Improper Assignment of The Prosecuting Attorney Rendering The
Judgment Void and Constituting a Clear Usurpation of Jurisdiction.

The State of Ohio deprived Mr. Grinnell of his liberty without due process and equal protection of the law in violation of the 14th Amendment of the United States Constitution and of those rights pursuant to the Ohio Constitution.

Habeas corpus petitions are governed by R.C. 2725. In order to be entitled to a writ of habeas corpus, the petitioner must be able to establish that his present incarceration is illegal because _ the trial court that rendered the conviction lacked jurisdiction over the criminal case. R.C. 2725.05. A petitioner is only entitled to habeas corpus if he can show he has no adequate remedy at law. Agee v. Russell, 92 Ohio St.3d 540, 544, 2001 Ohio 1279, 751 N.E.2d 1043 (2001). A narrow exception exists to the adequate-remedy-at-law element required for habeas relief: the situation in which the trial court patently and unambiguously lacked jurisdiction. Smith v. Bradshaw, 109 Ohio St.3d 50, 2006-Ohio-1829, 845 N.E.2d 516, P 10; State ex rel. Steele v. Robinson, 4th Dist. Ross No. 12CA3359, 2013-Ohio-3541, P 9. Thus, even if the petitioner could have raised the errors on appeal, the petitioner may nevertheless raise the claims by a petition for habeas corpus.

This case originated in Scioto County. On May 19, 1994, Petitioner was indicted by the Scioto County grand jury for two counts of aggravated murder pursuant R.C. 2903.01, with a specification of prior conviction pursuant to 2941.142, attach to each count, the case was filed in the Scioto County Court of Common Pleas under Case No. 94CR00281.

Venue was changed to Franklin County, Ohio pursuant to R.C. 2901.12 (K). (Appx 8).

ORC 2901.12 (K) provide the following :Notwithstanding any other requirement for the place of trial, venue may be changed, upon motion of the prosecution, the defense, or the court, to any court having jurisdiction of the subject matter outside the county in which trial otherwise would be held, when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held, or when it appears that trial should be held in another jurisdiction for the convenience of the parties and in the interests of justice.

Following a jury trial from September 5 to September 12, 1995, Mr. Grinnell was Found guilty of both count of aggravated murder and sentence to two concurrent 20 to life sentences.

The trial court did not follow the mandatory procedures required by R.C. 2931.29 (Appx 12) on assigning the prosecuting attorney to prosecute petitioner's case.

R.C. 2931.29 Provide the following: When a change of venue is ordered pursuant to section 2901.12 of the Revised Code, the clerk of the court in which the cause is pending shall make a certified transcript of the proceedings in the case, which, with the original affidavit, complaint, indictment, or information, he shall transmit to the clerk of the court to which said case is sent for trial, and the trial shall be conducted as if the cause had originated in the jurisdiction of the latter court. The prosecuting attorney, city director of law, or other officer who would have prosecuted the case in the court in which the cause originated shall take charge of and try the cause, and the court to which the cause is sent may on application appoint one or more attorneys to assist the prosecutor in the trial, and allow the appointed attorneys reasonable compensation.

The statute, by its plain language, permits the court to appoint an attorney to assist the prosecutor in the trial of a pending case. The statute contemplates that the prosecutor appointed thereunder will not operate independently but will serve in an assistory role to the regular prosecutor.

Challenging improper assignment and transfer of a case is an attack on the subject-matter jurisdiction of the transferee court; hence, the doctrines of invited error and waiver do not apply. See State ex rel. Kline v Carroll, 96 Ohio st. 3d 404, "Proper assignment, like jurisdiction over the subject matter, is required for the valid exercise of judicial power").

Subject-matter jurisdiction distinguished from venue, Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits, while venue connotes the locality where the suit should be heard. See *Fireproof Construction v. Brenner-Bell* (1949), 152 Ohio St. 347, 89 N.E.2d 472; Subject-matter jurisdiction defines the competency of a court to render a valid judgment in a particular action. See McCormac, Venue -- "New" Concepts in Ohio, 39 Cincinnati L. Rev. 474; Field and Kaplan, Civil Procedure (2d Ed.) 737.

In the instant case, petitioner's is challenging subject-matter jurisdiction of the transferee court. The Franklin County Court of Common please improperly assigned Robert Piper III, the Butler County assistant prosecutor as a special prosecutor to try Mr. Grinnell case, Mr. Piper was not an official under authority of law when he tried Petitioner's case in Franklin County. Robert Piper was operating independently when he tried petitioner's case in The Franklin County Court of Common Pleas. A court speaks by its proceeding as shown by its journal or record. Ex parte Boswall, 16 Ohio Dec. 250. The docket indicates the assignment of Robert Piper. See Exhibit-D attached to the affidavit-presentation of evidence at page #1 date file 11-03-94 (No. frame number).

It is well-settled that lack of subject-matter jurisdiction may be raised at any stage of the proceedings. Fox v. Eaton Corp. (1976), 48 Ohio St. 2d 236, 238, 358 N.E.2d 536. Parties may not, by stipulation or agreement, confer subject-matter jurisdiction on a court or administrative body where such jurisdiction does not otherwise exist. *Id.* See, also, Gates Mills Investment Co. v. Parks (1971), 25 Ohio St. 2d 16, 266 N.E.2d 552. Further, it is a fundamental proposition that just as parties cannot confer subject matter jurisdiction by consent, subject matter jurisdiction cannot be acquired based upon a theory of estoppel or waiver arising from the acts of the parties or their agents. Gaston v. Bd. of Review (1983), 17 Ohio App. 3d 12, 14, 477 N.E.2d 460. See, also, Gates Mills, 25 Ohio St. 2d, at 19-20 (failure of litigant to object to subject-matter jurisdiction at first opportunity is undesirable and procedurally awkward but does not give rise to a theory of waiver which would have the force of investing subject-matter jurisdiction in a court which has no jurisdiction). The doctrine of invited error is a branch of the waiver doctrine and is also inapplicable to an attack on the subject matter jurisdiction of the court State ex rel. Kline v. Carroll, 96 Ohio st.3d 404.

The lower court decision is erroneous, the trial court lack subject-matter jurisdiction because of the improper assignment of the prosecuting attorney, and the lower court's decision is based on intrinsic fraud perpetrated upon the court by respondent.

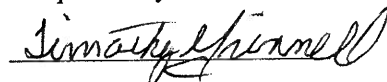
Proposition of Law No. II

**ROBERT PIPER III, THE BUTLER COUNTY ASSISTANT
PROSECUTOR PATENTLY AND UNAMBIGUOUSLY LACK
JURISDICTION OVER THE SUBJECT MATTER IN THE
UNDERLYING CRIMINAL CASE INVOLVING TIMOTHY
GRINNELL CASE NO.94CR-6418 .**

CONCLUSION

Petitioner is restrained of his liberty without due process and equal protection of the law in violation of the 14th Amendment of the United States Constitution and of those rights pursuant to the Ohio Constitution because the trial court lack jurisdiction of the subject matter because of the improper assignment of the prosecuting attorney. Mr. Grinnell is entitled to immediate release from prison or in the alternative remand this case back to the lower court to hold a hearing on the intrinsic fraud perpetrated on that court by respondent.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Timothy Grinnell", written over a horizontal line.

Timothy Grinnell, In Pro se

Certificate of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to counsel of record for respondent Stephanie L. Watson Assistant Attorney General 30 E. Broad Street, 23rd fl. Columbus, Ohio 43215 on March 21, 2023.

A handwritten signature in black ink, appearing to read "Timothy Grinnell", written in a cursive style.

Timothy Grinnell, In Pro se

APPENDIX

Petitioner's Copy
Please file Stamp
Return

IN THE SUPREME COURT OF OHIO

	:	23-0253
Timothy Grinnell,	:	On Appeal From The Ross County
Petitioner,	:	Court of Appeals, Fourt Appellate
	:	District
V.	:	
	:	Court of Appeal
William Cool, Warden,	:	Case No.22CA34
Respondent.	:	

NOTICE OF APPEAL OF PETITIONER TIMOTHY GRINNELL

Timothy Grinnell , No.218140

Ross Correctional Institution

P.O.Box 7010

Chillicothe ,Ohio 45601

In pro se

Stephanie L. Watson (0063411)

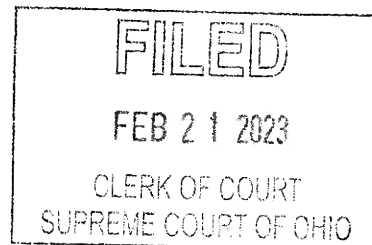
Principal Assistant Attorney General

30 East Broad street, 23rd Floor

Columbus, Ohio 43215-6001

(614) 644-7233

Counsel for Respondent



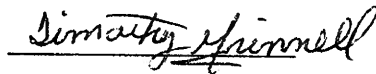
Appx 1

Notice of Appeal of Petitioner Timothy Grinnell

Petitioner Timothy Grinnell hereby give notice of appeal to the Supreme Court of Ohio
From the judgment of the Ross County Court of Appeals ,Fourth Appellate District ,entered in
the court of Appeals case No.22CA34 on January 11,2023.

The case originated in the court of Appeals and raises a substantial Constitutional
question.

Respectfully Submitted



Timothy Grinnell

In Pro se

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Stephanie
L. Watson Assistant Attorney General 30 East Broad Street,23rd Floor,Columbus ,Ohio 43215-
6001 on January 23,2023.



Timothy Grinnell

In pro se

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

COURT OF APPEALS

2023 JAN 11 PM 12:08

Timothy Grinnell,

Petitioner,

v.

William Cool, Warden,

Respondent.

Case No. 22CA34 FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
JUDY D. HINTON
DECISION AND
JUDGMENT ENTRY

{¶1} Petitioner, Timothy Grinnell, has attempted to petition this Court for a writ of habeas corpus ordering his release from custody. Petitioner is an inmate at the Ross Correctional Institution in Chillicothe, Ohio. As grounds for his petition, he alleges: 1) "the trial court lacked territorial jurisdiction and jurisdiction of the subject matter in case number 94-CR-6418;" 2) "the trial court lacked subject matter jurisdiction for want of prosecution;" 3) the entry of verdict and judgment of conviction is null and void for a want of jurisdiction;" and 4) "the trial judge lacked jurisdiction to preside over Case No. 94CR-6418, and issue an entry as he was improperly assigned." Respondent is the warden at the Ross Correctional Institution and has filed a motion to dismiss and a motion to declare Timothy Grinnell a vexatious litigator.

I. BACKGROUND

{¶2} On September 12, 1995, a Franklin County jury convicted Petitioner of two counts of aggravated murder stemming from his participation in beating to death two inmates during the 1993 Lucasville prison riot. Petitioner was sentenced to two concurrent terms of life in prison, with eligibility for parole after 20 years.

{¶3} As enumerated in Petitioner's affidavit of prior actions, he has filed many unsuccessful challenges, including prior habeas corpus actions, in both state and federal courts and the Supreme Court of the United States.

II. LAW AND ANALYSIS

Habeas corpus is the proper remedy when seeking release from prison. *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, 814 N.E.2d 866, ¶ 5. As an extraordinary writ, however, habeas corpus is available only "where there is an unlawful restraint of a person's liberty and no adequate remedy at law." *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, at ¶8. However, "as long as adequate remedies for the issues in question are available, through direct appeal and post-conviction relief, the issues may not be addressed in a petition for habeas corpus." *Young v. Brunsman*, 4th Dist. Ross No. 06CA2938, 2008-Ohio-64 at ¶ 17, citing *Cornell v. Schotten*, 69 Ohio St.3d 466, 1994-Ohio-74, 633 N.E.2d 1111, at 467. "If an issue raised in a petition for a writ of habeas corpus could have been raised on direct appeal or in a petition for post-conviction relief, the petition for a writ of habeas corpus will be denied." *Id.*, citing *Garrett v. Wilson*, 5th Dist. Richland No. 07-CA-60, 2007-Ohio-4853, at ¶ 9.

{¶4} In support of his motion to dismiss, Respondent argues that Petitioner's complaint is barred "because he had alternative remedies in the ordinary course of law, e.g., appeal and postconviction relief." Indeed, as the Seventh District Court of Appeals noted in its denial of Petitioner's own 2018 petition for habeas corpus:

Habeas corpus is only available in extraordinary circumstances where there is no adequate alternative legal remedy. Habeas corpus is not available when the issue could have been raised on direct appeal. Further, "where a Petitioner possessed the adequate legal remedies of appeal and post-conviction to challenge his sentencing, a petition for habeas corpus may properly be dismissed." (Citations omitted.)

Grinnell v. Bowen, 7th Dist. Mahoning No. 18 MA 0007, 2018-Ohio-2791, ¶ 7, *aff'd*, 156 Ohio St.3d 409, 2019-Ohio-1311, 128 N.E.3d 195, ¶ 7. Because Petitioner had adequate alternative legal remedies, either through direct appeal or post-conviction relief, his petition for habeas corpus must be dismissed.

{¶5} Likewise, Petitioner's arguments are barred by res judicata. A party may not seek a writ of habeas corpus to obtain successive appellate reviews of the same issue. *Wells v. Hudson*, 113 Ohio St.3d 308, 2007-Ohio-1955, 865 N.E.2d 46, ¶ 7. Petitioner's allegations regarding violations of Crim.R. 32 echo those he has previously made to the Seventh District Court of Appeals and the Supreme Court of Ohio. In that case, the Supreme Court found:

A trial court's failure to comply with Crim.R. 32 does not call into question the court's jurisdiction, nor does it entitle an inmate to immediate release from confinement. *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, 894 N.E.2d 312, ¶ 10. Grinnell's allegations, even if true, do not state a claim cognizable in habeas corpus. *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, 913 N.E.2d 442, ¶ 1.

Grinnell v. Bowen, 156 Ohio St.3d 409, 2019-Ohio-1311, 128 N.E.3d 195. Moreover, as Respondent points out, "the Ohio Supreme Court has already thrice rejected Grinnell's assertion(s) that the trial court lacked jurisdiction." Grinnell's petition raises claims that have been previously rejected and therefore, it must be dismissed.

{¶6} Petitioner is not entitled to extraordinary relief because his maximum sentence has not expired. According to the judgment entry attached to his petition, Mr. Grinnell was sentenced to a prison term of two concurrent terms of life in prison, with eligibility for parole after 20 years. An individual may only petition for a writ of habeas corpus if his maximum sentence has expired and he is being held unlawfully. *Nedea v. Cook*, 4th Dist. Hocking No. 15CA12, 2015-Ohio-3668, ¶ 8, citing *State v. Wilburn*, 4th Dist. Lawrence No. 98CA47, 1999 WL 1281507 (Dec. 22, 1999) and *Frazier v. Strickrath*, 42

Ohio App.3d 114, 115-116, 536 N.E.2d 1193 (4th Dist.1988); see also *Bradley v. Hooks*, 4th Dist. Ross No. 16CA3576, 2017-Ohio-4105, ¶ 10. Mr. Grinnell cannot demonstrate that his maximum sentence has expired and therefore he is not being unlawfully restrained.

{¶7} Mr. Grinnell did not pay the cost deposit required by this Court's Local Rules. He also failed to comply with R.C. 2969.25(C), which sets forth specific requirements for an inmate who seeks to proceed without paying the cost deposit. Mr. Grinnell did file an affidavit of indigency, but he did not file a statement of his prisoner trust account that sets forth the balance in his inmate account for *each* of the preceding six months, as certified by the institutional cashier. Rather, the document he included is missing page 4 so it only provides the account balance as of May 16, 2022. It also lacks any certification from the institutional cashier. Thus, Mr. Grinnell failed to comply with the mandatory requirements of R.C. 2969.25(C). The requirements of R.C. 2969.25(C) are mandatory, and failure to comply with them subjects the complaint to dismissal. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ¶ 1. *State ex rel. Arroyo v. Sloan*, 142 Ohio St.3d 541, 2015-Ohio-2081, 33 N.E.3d 56, ¶ 4 (2015). Because Mr. Grinnell failed to comply with the mandatory statutory requirement, the petition must be dismissed.

{¶8} In his motion to dismiss, Respondent requests that Mr. Grinnell be declared a vexatious litigator pursuant to R.C. 2323.52. That code section provides:

(B) A person * * * who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person * * * may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.


"R.C. 2323.52 unambiguously requires a party to commence a civil action, by the filing of a complaint, to have the trial court declare a person a vexatious litigator, and a party's filing of a motion in a pending case does not satisfy the requirements of R.C. 2323.52." *Catudal v. Catudal*, 10th Dist. Franklin No. 13AP-492, 2013-Ohio-4801, ¶ 5. Accordingly, Respondent's motion to declare Mr. Grinnell a vexatious litigator must be denied.

III. CONCLUSION

{19} Because Mr. Grinnell did not comply with the mandatory requirements of R.C. 2969.25, and his maximum sentence has not expired, and because Petitioner had adequate alternative legal remedies, either through direct appeal or post-conviction relief, his petition for habeas corpus must be dismissed. The petition is **DISMISSED. COSTS TO PETITIONER. ANY PENDING MOTIONS ARE DENIED AS MOOT. IT IS SO ORDERED.**

Abele, J., & Smith, P.J.: Concur.

FOR THE COURT



Michael D. Hess
Administrative Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.

The Supreme Court of Ohio

Timothy Grinnell

v.

William Cool, Warden

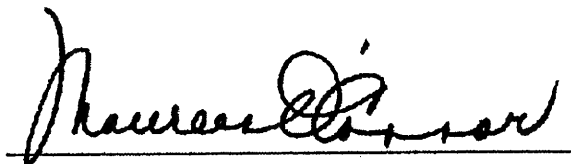
Case No. 2022-0306

IN HABEAS CORPUS

ENTRY

This cause originated in this court on the filing of a petition for a writ of habeas corpus and was considered in a manner prescribed by law.

Upon consideration thereof, it is ordered by the court, sua sponte, that this cause is dismissed.



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

FILED
WITH THE JUDGE

SEP 20 2022

IN THE COURT OF COMMON PLEAS, ROSS COUNTY, OHIO OF THE ROSS COUNTY
COMMON PLEAS COURT

TIMOTHY GRINNELL,
PLAINTIFF,

CASE NO. 22 CI 295

-VS-

JUDGE ATER

WILLIAM COOL, WARDEN,
DEFENDANT.

ENTRY

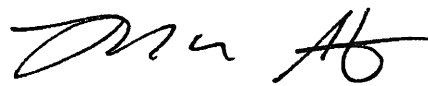
* * * * *

This cause came on the Court's own motion. The Ross County Clerk of Courts erroneously docketed this matter as a Civil Complaint, when in fact the heading states this should have been filed in the Fourth District Court of Appeals.

As such, this case number shall be dismissed, and Plaintiff's filings shall be filed in the correct Court.

Costs waived.

ENTRY: 9/20/22



MICHAEL M. ATER
JUDGE, COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

The Clerk of this Court is hereby directed to serve a copy of this Judgement Order, and its date of Entry upon the Journal, upon all counsel of record and all parties not represented by counsel, by personal service or by U.S. Mail and to note service on the Docket.

Judge

APPX 9

Oh. Const. Art. I, § 16

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Oh. Const. Art. I, § 2

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

The fourteenth amendment to the Constitution of the United States

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

USCS Const. Amend. 1, Part 1 of 8

Amendment 1 Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

USCS Const. Amend. 5, Part 1 of 13

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

USCS Const. Amend. 14, Part 1 of 15

Amendment 14

Sec. 1. [Citizens of the United States.] **All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Ohio Crim. R. 18(B)(3)

Additional counsel for prosecuting attorney. The prosecuting attorney of the political subdivision in which the action originated shall take charge of and try the case. The court to which the action is sent may on application appoint one or more attorneys to assist the prosecuting attorney in the trial, and allow the appointed attorneys reasonable compensation.

ORC Ann. 2903.01

(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

ORC Ann. 2931.28

When a change of venue is ordered pursuant to section 2901.12 of the Revised Code, the clerk of the court in which the cause is pending shall make a certified transcript of the proceedings in the case, which, with the original affidavit, complaint, indictment, or information, he shall transmit to the clerk of the court to which said case is sent for trial, and the trial shall be conducted as if the cause had originated in the jurisdiction of the latter court. The prosecuting attorney, city director of law, or other officer who would have prosecuted the case in the court in which the cause originated shall take charge of and try the cause, and the court to which the cause is sent may on application appoint one or more attorneys to assist the prosecutor in the trial, and allow the appointed attorneys reasonable compensation.

ORC Ann. 2941.63

The court of common pleas, or the court of appeals, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a case pending in such court. The board of county commissioners shall pay said assistant to the prosecuting attorney such compensation for his services as the court approves.

ORC Ann. 2901.12

§ 2901.12 Venue.

K) Notwithstanding any other requirement for the place of trial, venue may be changed, upon motion of the prosecution, the defense, or the court, to any court having jurisdiction of the subject matter outside the county in which trial otherwise would be held, when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held, or when it appears that trial should be held in another jurisdiction for the convenience of the parties and in the interests of justice.

ORC Ann. 2931.29

§ 2931.29 Procedure on change of venue.

When a change of venue is ordered pursuant to section 2901.12 of the Revised Code, the clerk of the court in which the cause is pending shall make a certified transcript of the proceedings in the case, which, with the original affidavit, complaint, indictment, or information, he shall transmit to the clerk of the court to which said case is sent for trial, and the trial shall be conducted as if the cause had originated in the jurisdiction of the latter court. The prosecuting attorney, city director of law, or other officer who would have prosecuted the case in the court in which the cause originated shall take charge of and try the cause, and the court to which the cause is sent may on application appoint one or more attorneys to assist the prosecutor in the trial, and allow the appointed attorneys reasonable compensation.

ORC Ann. 2921.45

§ 2921.45 Interfering with civil rights.

(A) No public servant, under color of the public servant's office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

ORC Ann. 2921.31

§ 2921.31 Obstructing official business.

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division, obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony of the fifth degree.

ORC Ann. 2921.32

§ 2921.32 Obstructing justice.

(4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence;

(5) Communicate false information to any person;

(6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

ORC Ann. 2969.25

§ 2969.25 Inmate's affidavit as to prior actions; review of multiple actions; waiver of prepayment.

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.



ORC Ann. 2725.03

If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in the custody of the officers of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge. Any writ issued by a court or judge of another county to an officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

ORC Ann. 2725.05

If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed. If the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order..

Ohio Civ. R. 15(A)

(A) Amendments. A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within fourteen days after service of the amended pleading, whichever is later.