

IN THE SUPREME COURT OF OHIO

State ex. rel., Rusty Mootispaw  
Inmate Prisoner No. #A164-741  
Chillicothe Correctional Institution  
15802 State Route 104 North  
P. O. Box 5500  
Chillicothe, Ohio 45601,

: Case No. 15-1834

Relator,

vs.

Honorable Steven Patrick Beathard  
Court of Common Pleas  
of Fayette County, Ohio  
110 East Court Street  
Washington Court House, Ohio 43160,

Respondent.

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PETITION FOR WRIT OF MANDAMUS

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I. Introduction

Petitioner, Rusty Mootispaw, in pro se, respectfully moves this Court with Petition For Writ of Mandamum, pursuant to Section 2731.01 of the Ohio Rules of Civil Procedure.

II. Jurisdiction

The Supreme Court has jurisdiction in this matter pursuant to Section 2731.02 of the Ohio Rules of Civil Procedure.

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CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
NOV 16 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

### III. Statement of the Case and Facts

(A) On May 22, 1981, Peitioner was indicted by a Grand Jury of Fayette County, Ohio, charging him with three counts of aggravated burglary, one count complicity in aggravated burglary, and one count of aggravated murder with death specifications. See copy of Indictment attached.

(B). On September 25, 1981, Petitioner appeared before the Fayette County Court of Common Pleas on the advice of court appointed counsel and pled guilty to an amended indictment. The plea agreement consisted that: Petitioner would pled guilty to a reduced charge of murder, and the death specificafication would be removed, and that the three counts of aggravated burglary would be dismissed and the complicity to aggravated burglary would be also dismissed. Plaintiff would be sentenced to a prison term of fifteen (15) years to Life. See copy of Affidavit by former Fayette County Prosecutor, James A. Kiger attached.

(C) On or about October 9, 2014, Petitioner filed a "Breach of Plea Agreement" in the Fayette County Court of Common Pleas and requested an Evidentiary Hearing. Petitioner complained that when he appeared before the Ohio Parole Authorities for parole release consideration, the Fayette County Prosecutors Office would request that the Ohio Parole Board to breach his Plea agreement made with the Sate of Ohio in September of 1981. The Fayette County Prosecutors Office would request the Ohio Parole Board to use Petitioner's original indictment against him at all his Parole Board Hearings and to continue

his imprisonment by requesting an enhancement of his prison term handed down by the trial court. The Fayette County Prosecutors Office requested the Ohio Parole Board to change Petitioner's sentence of fifteen (15) years to Life to that of Life without parole. Petitioner has appeared before the Ohio Parole Board eleven (11) times and has been denied parole upon the prosecutor(s) request.

(D) On or about October 31, 2014, the State of Ohio through the Fayette County Prosecutors Office responded to Petitioner's claim of Breach of Plea Agreement and stated that "no promises of any kind were made by Plaintiff (State of Ohio) to Defendant (Petitioner) to secure his plea nor to affect the duration of either his sentence or term of confinement. See copy of Plaintiff's Answer And Motion to Dismiss Defendant's Claim of Breach of Plea Agreement attached.

(E) On March 27, 2015, Petitioner filed in the Fayette County Court of Common Pleas a "Motion For Decision" on his claim of Breach of Plea Agreement. To date, the Fayette County Court of Common Pleas has refused to rule in this matter.

(F) The Relator/Petitioner has no plain and adequate remedy in the ordinary course of the law and this is why he files this Petition For Writ of Mandamus.

#### IV. Law and Argument

In order to be entitled to a writ of mandamus, a relator must show: (1) that he has a clear legal right to the relief prayed for; (2) that the respondents are under a clear legal duty to perform the acts; and (3) that the relator has no

plain and adequate remedy in the ordinary course of the law. State ex.rel., McGrath v. Ohio Parole Auth., 2003 Ohio App. LEXIS 1865, 2003 Ohio 1969, (2003), affirmed by 100 Ohio St. 3d 72, 2003 5062, 796 N.E.2d 526, 2003 Ohio LEXIS 2563 (2003).

Petitioner says the trial court had one hundred twenty days to rule on motions, Rules Governing The Courts of Ohio - Sup.R. 40., Review of Cases; Dismissal; Rulings on Motions and Submitted Cases. Rule 40(A)(3), states: All motions shall be ruled upon within one hundred twenty days from the date of the motion was filed. In this case, the Respondent has allowed the Petitioner's claim of Breach of Plea Agreement remain on file unresponded to by the court since on or about October 9, 2014. The State of Ohio filed its response to Petitioner's claim of breach on or about October 31, 2014. The Petitioner filed on March 27, 2015, a Motion For Decision, which the Respondent still allows to remain on file unresponded to by the trial court. This matter of Petitioner's claim of Breach of Plea Agreement has been on file with the trial court for over one year, well beyond the Sup.R. 40(A)(3), of only one hundred twenty days for the trial court to make its ruling in the case.

For these reasons, an Order should be granted allowing this Writ of Mandamus.

V. Relief

Petitioner demands that this Court issue an Order allowing this Petition For Writ of Mandamus .

VI. Conclusion

For all the above stated reasons, this court should allow this Petition For Writ of Mandamus. An Order should be issued ordering the trial court to rule upon Petitioner's claim of Breach of Plea Agreement.

Respectfully submitted,

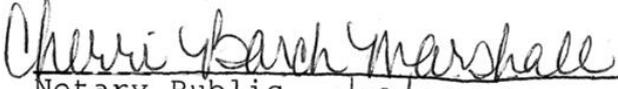
  
Rusty Mootispaw

VERIFICATION

I, Rusty Mootispaw, declare that the foregoing is true and correct.

  
Rusty Mootispaw

Sworn to before me this 10 day of November, 2015.

  
Notary Public 11/9/2015

IN THE COURT OF COMMON PLEAS  
FAYETTE COUNTY, OHIO

State of Ohio

Plaintiff,

vs.

Rusty Eugene Mootispaw

Defendant

Case No. 81CR87

Hon. Steven P. Beathard

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CLERK OF COURTS  
FAYETTE COUNTY  
WASHINGTON C.H. OHIO

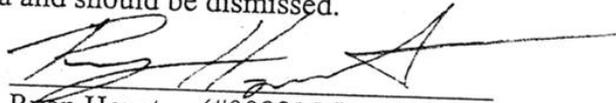
**PLAINTIFF'S ANSWER AND MOTION TO DISMISS DEFENDANT'S  
CLAIM OF BREACH OF PLEA AGREEMENT**

Plaintiff State of Ohio, in response to Defendant's most recent filing challenging his continued incarceration for the crime of murder, says that Plaintiff's filing fails to state any cognizable claim for which this Court may grant relief and for the other reasons set forth herein should be dismissed with prejudice. Plaintiff says that the Court's own records in this case demonstrate the circumstances under which Defendant entered a plea of guilty to an amended indictment for the crime of murder, and that no promises of any kind were made by Plaintiff to Defendant to secure his plea nor to affect the duration of either his sentence or term of confinement. At no time has Plaintiff represented, nor could it legally do so, that it would not oppose Defendant's application for, or any review of his eligibility, for parole or other release prior to the maximum date of his sentence.

Materials submitted by Defendant in support of his filing herein by way of an October 2000 Decision of the Ohio Parole Board actually indicate that Defendant's continued incarceration was determined by the Board to be appropriate as indicated by the Board's notes in considering the "heinous crime" which Defendant had committed as well as

Defendant's "negative behavior while incarcerated" (see Exhibit "D," Page 2, paragraph 8). At no point does the Board's record of decision state that Defendant committed a rape of the murder victim, 86 year old Lillian McCarty, and notes accurately the criminal offenses with which Defendant was initially charged and indicted.

Plaintiff further says the Defendant's claim must fail as the same constitutes yet another effort to challenge his conviction in this case and should be deemed an untimely Petition for Post Conviction Relief, which raises issues which were previously decided against Defendant in a multitude of prior filings. See State vs. Reynolds, 79 Ohio St.3d 158 and R.C. 2953.21(A)(1) and (2). Accordingly, the Defendant's claim is barred by the applicable statute of limitations and the doctrine of res judicata and should be dismissed.

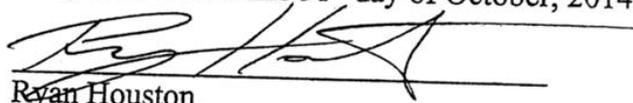


Ryan Houston (#0088156)  
Assistant Fayette County Prosecutor  
110 East Court Street  
Washington Court House, Ohio 43160  
(740) 335-0888  
(740) 333-3539 Facsimile  
E-mail: [ryan.houston@fayette-co-oh.com](mailto:ryan.houston@fayette-co-oh.com)

Attorney for Plaintiff

### CERTIFICATE OF SERVICE

I certify I served a copy of the foregoing response upon Defendant, Rusty Eugene Mootispaw, by ordinary U.S. Mail to his address at A164-741, Chillicothe Correctional Institution, 15802 State Route 104 North, P.O. Box 5500, Chillicothe, Ohio 45601 this 31<sup>st</sup> day of October, 2014.



Ryan Houston  
Assistant Fayette County Prosecutor

Attorney for Plaintiff

## AFFIDAVIT

State of Ohio, County of Fayette, ss:

James A. Kiger, being first duly cautioned and sworn, makes the following affidavit in support of his motion to be dismissed as a party to Case No. 12 CVH-07-8412, Common Pleas Court of Franklin County, Ohio.

Affiant says that plaintiff Rusty Eugene Mootispaw is an inmate duly confined in the Ohio Prison System.

Affiant says that in 1981 plaintiff was charged with First Degree Murder in the County of Fayette and thereafter plead guilty to the said charge in lieu of facing a jury and imposition of the death penalty. He was duly sentenced on the 22 day of October 1981 to life in prison.

Affiant was the Prosecuting Attorney of Fayette County, Ohio in 1981. Since 1981, plaintiff continuously has sued this defendant and nearly all of the other elected Fayette County officials, including the common pleas judge and judges of the court of appeals, and a series of prosecuting attorneys who succeeded this defendant.

Affiant says he was personally sued in excess of six times over the last twenty (20) years by this plaintiff in an effort to secure his release from prison, the latest being in Case 11 CVH 00506 in the Common Pleas Court of Fayette County, essentially alleging the series of facts as this case in Franklin County, No. 12 CVH 07-8412.

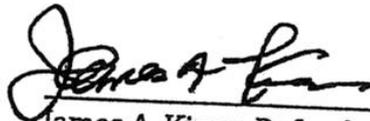
Affiant says the Fayette County case was summarily dismissed by the Common Pleas Court on the authorities in Case Nos. 11 CVH 00504, 11 CVH 00507, 11 CVH 00508, finding him to be a vexatious litigator and that his claims were baseless.

Affiant attaches to this affidavit a copy of the latest court entry dismissing the Fayette County case on 28 August 2012 and the Court of Appeals case on 3 December 2012, together with the docket statements of common pleas court from 1992 through 2012 in support of this affidavit.

Affiant says the record is replete with the conduct of this plaintiff.

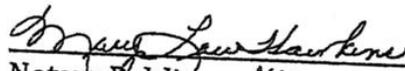
Affiant further says this Court has the authority and a duty to the undersigned to dismiss this complaint without notice and respectfully requests that such decree be made sua sponte.

Affiant further sayeth nothing.



James A. Kiger, Defendant

Sworn to before me and subscribed in my presence by James A. Kiger, defendant, this 1st day of May 2013.



Notary Public

MARY LOU HAWKINS

Notary Public State of Ohio

My Commission Expires 5-26-18

State of Ohio,

Plaintiff,

vs

Rusty Eugene Mootispaw,

Defendant.

Case No. 81-CR-87

INDICTMENT CHARGING:

AGGRAVATED BURGLARY, in violation of Section 2911.11 of the Revised Code, (THREE COUNTS), and, COMPLICITY IN AGGRAVATED BURGLARY, in violation of Section 2923.03 of the Revised Code, and, AGGRAVATED MURDER, in violation of Section 2903.01 of the Revised Code

IN THE APRIL, 1981, TERM OF THE GRAND JURY OF FAYETTE COUNTY, OHIO

I N D I C T M E N T

The Grand Jurors of this County, in the name and by the authority of the State of Ohio, upon their oath, do find and present that:

COUNT ONE: On or about the 13th day of May, 1981, and in Fayette County, Ohio, the defendant, Rusty Eugene Mootispaw; violated Section 2923.03 of the Revised Code in that he purposely solicited or procured and aided and abetted William Owen Ramsey in committing the offense of Aggravated Burglary of the dwelling house of Pauline F. Wilson located at 510 Third Street, Washington Court House, Fayette County, Ohio, in violation of Section 2911.11 of the Revised Code, a felony of the first degree, which offense was actually committed by the said William Owen Ramsey; and,

COUNT TWO: On or about the 14th day of May, 1981, and in Fayette County, Ohio, the defendant, Rusty Eugene Mootispaw, violated Section 2911.11 of the Revised Code in that he, by force, stealth or deception, trespassed in an occupied structure, to-wit: a dwelling house located at 226 South North Street, Washington Court House, Fayette County, Ohio, and it was the said Rusty Eugene Mootispaw's purpose in committing such trespass to commit a theft offense in such occupied structure, which was the permanent habitation of Augustine L. McDonald, and in which at the time Augustine L. McDonald was present; and,

COUNT THREE: On or about the 15th day of May, 1981, and in Fayette County, Ohio, the defendant, Rusty Eugene Mootispaw, violated Section 2911.11 of the Revised Code, in that he, by force, stealth or deception, trespassed in an occupied structure, to-wit: a dwelling house located at 820 South North Street, Washington Court House, Ohio, and it was the said Rusty Eugene Mootispaw's purpose

FILED COURT OF APPEALS FAYETTE CO., OHIO

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Ann Marvin CLERK OF COURTS

JAMES A. KIGER PROSECUTING ATTORNEY 132 S. MAIN STREET WASHINGTON C. H. OHIO 43160 335-5271 (A. C. 614)

JOHN H. ROSZMANN ASSISTANT PROSECUTING ATTORNEY

in committing such trespass to commit a theft offense in such occupied structure which was the permanent habitation of Jean Bach and in which at the time Jean Bach was present; and,

COUNT FOUR: On or about the 15th day of May, 1981, and in Fayette County, Ohio, the defendant, Rusty Eugene Mootispaw, violated Section 2911.11 of the Revised Code in that he, by force, stealth or deception, trespassed in an occupied structure, to-wit: a dwelling unit located at 813 Sycamore Street, Washington Court House, Fayette County, Ohio, and it was the said Rusty Eugene Mootispaw's purpose in committing such trespass to commit a theft offense in such occupied structure which was the permanent habitation of Lillian McCarty and in which at the time the said Lillian McCarty was present; and,

COUNT FIVE: On or about the 15th day of May, 1981, and in Fayette County, Ohio, the defendant, Rusty Eugene Mootispaw, violated Section 2903.01 of the Revised Code in that he purposely caused the death of Lillian McCarty while the said Rusty Eugene Mootispaw was committing the offense of Aggravated Burglary in violation of Section 2911.11 of the Revised Code, a felony of the first degree.

Specification to Count Five: The Grand Jurors further find and specify that the offense presented in Count Five above, the murder of Lillian McCarty, was committed while the said Rusty Eugene Mootispaw was committing the offense of Aggravated Burglary.

All within this County and against the peace and dignity of the State of Ohio.

A TRUE BILL:

Robert L. Seima  
Foreman

[Signature]  
Asst. Prosecuting Attorney of Fayette County, Ohio

Rusty Mootispaw  
A164-741  
Chillicothe Corr. Institution  
15802 State Route 104  
P. O. Box 5500  
Chillicothe, Ohio 45601

November 10th, 2015

Clerk, Supreme Court of Ohio  
65 South Front Street  
Columbus, Ohio 43215

To the Clerk:

Please find enclosed a "Petition For Writ of Mandamus" that I wish to file in this court. There are two (2) copies enclosed. Please forward a copy to the Respondent(s) counsel at the address below:

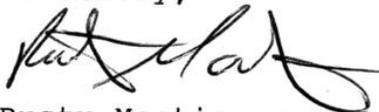
Jess Carter Weade, Prosecutor  
for Fayette County, Ohio  
110 East Court Street  
Washington Court House, Ohio 43160

Counsel for Respondent  
Steven Patrick Beathard

Also, please forward a copy back to me once you have stamped file it. Also, please find enclosed an Affidavit of Indigency. Thank you.

Cc: File  
Enclosures

Sincerely,



Rusty Mootispaw

