

IN THE SUPREME COURT OF OHIO

ON COMPUTER-ALM

IN THE MATTER OF THE
COMPLAINT FOR A WRIT OF
HABEAS CORPUS FOR

Case No. 05-2258

COMPLAINT FOR WRIT OF
HABEAS CORPUS

HENRY HERNANDEZ,
inmate number 358-168,

Petitioner

vs.

Bennie Kelly, Warden

Respondent.

Lorain Correctional Institution
2075 S. Avon Belden Road
Grafton, Ohio 44044

COUNSEL FOR PETITIONER
JOHN P. PARKER
0041243
4403 St. Clair Avenue
Cleveland, Oh 44103
(216) 881-0900
(216) 881-3928 (fax)
johnpparker@earthlink.net

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DEC 01 2005
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SUPREME COURT OF OHIO

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IN THE MATTER OF

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COMPLAINT FOR A
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HENRY HERNANDEZ
inmate number 358-168

Petitioner,

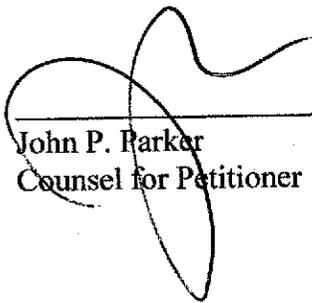
To the Honorable Justices of the Supreme Court of Ohio:

1. John P. Parker, respectfully represents that Henry Hernandez is unlawfully restrained of his liberty by the warden of the Lorain Correctional Institution, without any legal authority, but under the color of a pretended commitment, a true copy of which is attached.
2. On August 9, 2000 the petitioner, Henry Hernandez, entered a guilty plea in State of Ohio vs. Henry Hernandez in CR 360708, Cuyahoga County Common Pleas Court to a felony of the first degree, R.C. 2925.11. The trial court imposed an agreed sentence of 7 years with credit for time served. The trial court did not impose a period of post release control. This agreed sentence was not appealed by either party. (See attached certified journal entries)

3. The petitioner successfully completed his sentence but was released and placed on post release control for five years by the Ohio Adult Parole Authority on February 7, 2005. (See attached documents)
4. On October 6, 2005 the Ohio Adult Parole Authority conducted a hearing pursuant to R.C. 2967.28. At the hearing, the petitioner was found to have violated terms of his post release control and the APA imposed a prison sentence of 160 days with continued supervision by the APA once the petitioner is released. The petitioner was given credit for 8 days of incarceration. (See attached documents)
5. The petitioner asserts that he is unlawfully restrained of his liberty and is entitled to a writ of habeas corpus pursuant to RC 2725.01 et seq., Art. I, Section 9 of the Ohio Constitution and the Fourteenth Amendment of the U.S. Constitution.
6. It is axiomatic that a court speaks only through its journal. Kaine v. Marion Prison Warden (2000), 88 Ohio St. 3d 454,455, 2000 Ohio 381, 727 N.E.2d 907.
7. This court has held that unless a trial court includes post release control into its original sentence, then the Ohio Adult Parole Authority is without authority to impose it. Woods v. Telb, 89 Ohio St.3d 504, 2000 Ohio 171, 733 N.E.2d 1103.
8. The Woods decision was reaffirmed in State v. Jordan, 104 Ohio St. 3d 21, 2004 Ohio 6085, 817 N.E.2d 864 at paragraph 19.
9. The State of Ohio agreed to the original sentence imposed in this case, i.e. 7 years incarceration with no post release control.
10. If the State believed the sentence imposed was in error or contrary to law, then it could have appealed the sentence. R.C. 2953.08(B)(2) and (E).

11. The State's decision to agree to the sentence and to not appeal the sentence waived any potential error or defect in the sentence. The doctrine of laches applies and the State is estopped from arguing the sentence is void.
12. The petitioner has completed the sentence imposed by the trial court.
13. The Ohio Adult Parole Authority did not have the authority to place the petitioner on post release control, did not have the authority to revoke such post release control and did not have the authority to place the petitioner in prison for 160 days.
14. The petitioner must be immediately released from his confinement as it is without authority.
15. In addition, the petitioner must be released from any further obligation to the State of Ohio as it relates to the underlying case.
16. Petitioner seeks other relief as deemed appropriate by this Honorable Court.

Respectfully submitted,



John P. Parker
Counsel for Petitioner

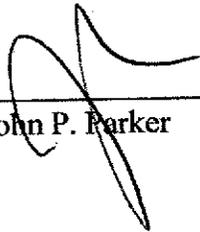
VERIFICATION AND AFFIDAVIT

STATE OF OHIO

CUYAHOGA COUNTY

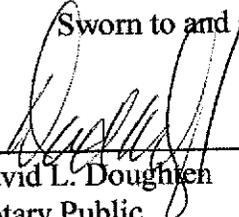
: S.S.

The above named John P. Parker, being duly sworn, says that the facts stated and matters contained in the foregoing complaint and application are true.



John P. Parker

Sworn to and subscribed before me this ^{20th} Day of Nov. , 2005.



David L. Doughen
Notary Public
Attorney at Law
*atty at law
no expiration*



STATE OF OHIO,
CUYAHOGA COUNTY

SS. IN THE COURT OF COMMON PLEAS

MAY TERM, 2000
09 2000

STATE OF OHIO
VS.

PLAINTIFF

TO-WIT: AUGUST
NO. CR 360708

DEFENDANT

INDICTMENT POS DRGS W/MAJOR OFEN/JUV, CONSP
POS DRUGS W/MDO/JUV, POSSESS
CRIMINAL TOOLS

HENRY HERNANDEZ
9823 MEMPHIS AVE #12
BROOKLYN, OH 44112
05/10/72
ITN: 386635B

JOURNAL ENTRY

DEFENDANT IN COURT WITH COUNSEL, JOHN PARKER AND PROSECUTING ATTORNEY JOSE TORRES. DEFENDANT WAS ADVISED OF ALL CONSTITUTIONAL RIGHTS AND PENALTIES. ON RECOMMENDATION OF THE PROSECUTOR COUNT 1 IS AMENDED TO READ "IN THE AMOUNT OF 500 GRAMS TO 1000 GRAMS" AND BY DELETING MAJOR DRUG OFFENSE AND JUVENILE SPECIFICATIONS.

DEFENDANT RETRACTS FORMER PLEA OF NOT GUILTY AND ENTERS A PLEA OF GUILTY TO POSSESSION OF DRUGS IN THE AMOUNT OF 500 GRAMS TO 1000 GRAMS RC 2925.11 F-1 (SENATE BILL 2) AS AMENDED IN COUNT 1 OF THE INDICTMENT.

COURT FINDS DEFENDANT GUILTY.
COUNTS 2 AND 5 ARE NOLLED. REMAINING COUNTS DO NOT APPLY TO THIS DEFENDANT.

DEFENDANT ADDRESSES THE COURT.
THE COURT CONSIDERED ALL OF THE REQUIRED FACTORS OF THE LAW.
THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSES OF R. C.

2929.11.
THE COURT IMPOSES A PRISON TERM AT LORAIN CORRECTIONAL INSTITUTION OF 7 YEARS (MANDATORY TIME). DEFENDANT TO RECEIVE JAIL TIME CREDIT FOR ALL TIME SERVED, SHERIFF'S DEPARTMENT TO CALCULATE. THE SENTENCE INCLUDES ANY EXTENSIONS PROVIDED BY LAW. DEFENDANT IS TO PAY COURT COSTS.

THE STATE OF OHIO } I. GERALD E. FUERST, CLERK OF
Cuyahoga County } SS. THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL Criminal
Journal Ent. Cr# 360708
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 9
DAY OF November A.D. 20 05
GERALD E. FUERST, Clerk
By Deirdre McCafferty Deputy

RECEIVED FOR FILING

AUG 17 2000

GERALD E. FUERST, CLERK

JUDGE [Signature]
TIMOTHY MCCORMICK

08-09-2000
P-S MAB 08/14/00 10:35

COPIES SENT TO:
 Sheriff 8-17-00 Other LORCI & cat
 Defendant

Exhibit I-A