

IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO, *ex rel.*,

RICHARD F. SCHWARTZ, In His Capacity As
The Director Of Law And Prosecuting Attorney
Of The City Of Newton Falls, Ohio,

Relator,

vs.

LARRY TURNER, In His Capacity As Judge Of
The Newton Falls Municipal Court,

Respondent.

CASE NO. 07-0303

ORIGINAL ACTION IN PROHIBITION

**RELATOR'S MEMORANDUM IN
OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS**

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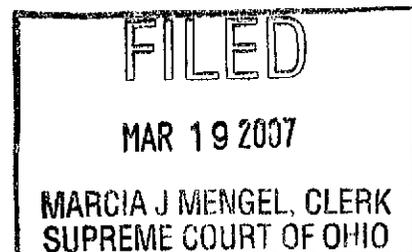
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Relator, Richard F. Schwartz, Director of Law and Prosecuting Attorney, City of Newton Falls, Ohio, respectfully opposes the Motion to Dismiss of Respondent, Larry Turner, Judge, Newton Falls Municipal Court. As demonstrated below, Respondent has failed to establish that dismissal of this original action in prohibition, seeking to prevent Respondent from engaging in additional extra-territorial judicial proceedings and to correct past such actions, is warranted. Accordingly, this Court should deny the Motion to Dismiss, issue the previously-requested Alternative Writ, establish a briefing schedule, and determine this matter on its merits.

I. INTRODUCTION AND RELEVANT ADDITIONAL FACTS

The issue now before this Court is the lawfulness of Respondent's decision to hold certain judicial proceedings at a location outside the prescribed territory of the Newton Falls Municipal Court. Relator submits that Ohio law does not sanction or authorize proceedings in a court of limited jurisdiction to be held outside of the prescribed territory of that court, and therefore such proceedings are null and void *ab initio*. To correct past such actions and to ensure that Respondent does not jeopardize the validity and integrity of future such proceedings, Relator seeks a writ of prohibition.

Respondent's motion goes to great lengths to describe various aspects of the January 9, 2007 Journal Entry pursuant to which he determined to convene the Newton Falls Municipal Court at the Trumbull County Jail (which lies outside of the statutorily-established territorial jurisdiction of the court) for purposes of conducting arraignments and other hearings involving incarcerated prisoners. His purported reasoning included that it was less expensive for him to travel to the jail than for the prisoners to be transported from the jail to the Newton Falls Courthouse, and that it was a better use

of resources to have police officers patrolling the community than transporting prisons. (Complaint, Exhibit 1 at 1; Mot. to Dismiss at 2-3.)

Noticeably absent from Respondent's discussion of these purported rationales is any description of the process by which he arrived at these conclusions or the evidence that supports them. In point of fact, that is because there was *no process* at all. The January 9th Journal Entry was issued *sua sponte* by Respondent, who provided no prior notice of his intent to study the issue, conducted no hearings, received no evidence, and obtained no input from any affected parties about the lawfulness of the proposed process. (Complaint ¶ 7.) Accordingly, the proffered justifications are merely *ipse dixit* entitled to no deference from this Court.

Moreover, this Court must carefully review the January 23, 2007 Journal Entry, on which Respondent bases many of the assertions in his motion. As noted below, that Journal Entry did not vacate, withdraw, or nullify the January 9th Journal Entry that purported to authorized proceedings to be held at the Trumbull County Jail. Instead, the January 23rd Journal Entry merely "stayed" the prior order, and only "until assurances can be made that all prisoners have a full and open court arraignment." (Exhibit 3 to Complaint.) The terms of the January 23rd Journal Entry make plain that Respondent intends to resume conducting proceedings at the Trumbull County jail once "assurances and procedures can be made for open court arraignments in the judicial suite" of the Trumbull County Jail. (*Id.*) The specter of those proceedings resuming compels Relator to invoke the jurisdiction of this request and seek a writ of prohibition.

II. LAW AND ARGUMENT

Respondent offers three arguments in support of his request that the Complaint be dismissed: that the claim is moot, that Relator lacks standing, and that Respondent's extra-territorial exercise of

jurisdiction is permissible. None of these arguments find support in the law or facts of this case. Accordingly, the Motion to Dismiss must be rejected.

A. Relator's Request For Relief Is Not Moot.

Initially, Respondent asserts that Relator's claim for relief is moot. This argument is based on Relator's January 23rd Journal Entry that temporarily halted the holding of arraignments and other judicial proceedings at the Trumbull County Jail. Of course, he ignores that portion of his order that provides that these proceedings will resume once "assurances can be made that all prisoners have a full and open court arraignment." (Exhibit 3 to Complaint.) That alone demonstrates that this case is not moot.

In any event, Respondent misapprehends the applicable law. Prohibition is an appropriate means for this Court to redress past jurisdictionally-unauthorized activity. Moreover, even if the present dispute is moot (which it is not), the facts of the present scenario fall within the scope of the "capable of repetition yet evading review" exception to the mootness doctrine.

1. A Writ Of Prohibition Is The Proper Means By Which To Correct Prior Jurisdictionally-Unauthorized Activity, Such As That At Issue In The Complaint.

The jurisprudence from this Court, including cases Respondent cites, make clear that even if the dispute giving rise to a request for a writ of prohibition is moot, the writ may nevertheless issue if necessary to correct a prior jurisdictionally-unauthorized activity. (See Motion to Dismiss at 5-6, citing *State, ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, ¶ 15 (per curiam); see also *State, ex rel Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, ¶ 12 (per curiam)). Although this Court denied the writ in *Cruzado*, it did so on the merits, finding that the trial court did not unambiguously lack jurisdiction. See *Cruzado*, 111 Ohio St.3d at 356, 2006-Ohio-5796, ¶ 15.

In this case, however, Respondent in fact unambiguously lacks jurisdiction to conduct arraignments and probation violation proceedings – or any other judicial proceedings, for that matter – at any location outside of the territorial jurisdiction of the Newton Falls Municipal Court. As explained in Relator’s Memorandum in Support of Motion for Alternative Writ of Prohibition, and as further explained in Section II(C), *infra*, a court of limited geographical jurisdiction may not conduct proceedings at any location outside of its defined territory. There is no question that Respondent did just this when he conducted arraignments and probation violation hearings of Newton Falls Municipal Court defendants at the Trumbull County Jail, which is outside of the territory of the Newton Falls Municipal Court. (Complaint, ¶ 11 & 12.) Thus, a writ of prohibition is warranted not only to prevent future such proceedings, but also to correct Respondent’s prior jurisdictionally-unauthorized activity.

2. Even If The January 7th Journal Entry Was Moot, Respondent’s Conduct Is Reviewable Under The “Capable Of Repetition, Yet Evading Review” Exception To The Mootness Doctrine.

Respondent’s mootness argument also fails, because under the particular facts of this case, the objectionable conduct remains reviewable under the “capable of repetition yet evading review doctrine.” As this Court have previously explained, “this exception arises when the challenged action is too short in duration to be fully litigated before its cessation or expiration, and there is a reasonable expectation that the same complaining part will be subject to the same action again.” *State, ex rel. Dispatch Printing Company v. Loudon*, 91 Ohio St.3d 61, 64, 2001-Ohio-268 (per curiam).

This Court has routinely applied this exception to review trial court orders restricting public or media access to courts. For example, in *Dispatch Printing Company*, this Court issued a writ of prohibition directing that a trial court not enforce a courtroom closure order, even though the order

was claimed to be moot. *Id.* This Court specifically noted that application of this exception to the mootness doctrine was warranted because “there is a reasonable expectation that in the absence of the requested writ, [Respondent] will again close further proceedings.” *Id.*; *see also State, ex rel. Beacon Journal Publishing Co. v. Donaldson* (1992), 63 Ohio St.3d 173, 175 (per curiam).

This case is entirely parallel to courtroom closure cases. Respondent summarily issued an *ex parte* order determining that he would conduct proceedings outside of the jurisdiction of the Newton Falls Municipal Court, and then just as summarily issued an order that temporarily halted that practice. (Complaint ¶ 7.) Importantly, however, the January 23rd Journal Entry did not vacate, withdraw, or nullify the January 9th Journal Entry that first purported to authorize Respondent’s extra-territorial exercise of jurisdiction. Rather, it merely “stayed” that practice “until assurances can be made that all prisoners have a full and open court arraignment.” (Exhibit 3 to the Complaint.) Therefore, on literally a moment’s notice – and certainly before Relator could re-commence proceedings in this Court – Respondent could resume his exercise of extra-territorial jurisdiction. Then, once Relator applied to this Court for relief, Respondent could once again “temporarily” suspend this practice.

In theory, then, Respondent could perpetually avoid any review by this Court. Application of the “capable of repetition yet evading review” exception to the mootness doctrine ensures that Respondent is unable to engage in such a never-ending cycle. *Cf. Beacon Publishing Co.*, 63 Ohio St.3d at 175 (issuance of writ necessary to review order closing court proceedings, because “a closure order usually expires before an appellate court can consider it”).

B. Respondent Has Standing To Challenge Respondent's Extra-Territorial Exercise Of Jurisdiction Because Respondent Is A Party To All Criminal Matters Prosecuted In The Newton Falls Municipal Court And Because He Seeks To Enforce And Protect The Public's Right To Valid Criminal Proceedings.

Respondent's claim that Relator does not have standing to seek a writ of prohibition lacks merit as a matter of law. Relator is a party to all court proceedings at issue in this action and, even if he was not, has standing to assert a public right.

Respondent correctly asserts that a prohibition action may only be commenced by a person who is *either* a party to the proceeding sought to be prohibited *or* demonstrates an injury in fact to a legally protected interest. *State, ex rel. Barth v. Hamilton County Bd. of Elections* (1992), 65 Ohio St.3d 219, 222 (per curiam), citing *State, ex rel. Pratt v. Earhart* (1956), 164 Ohio St. 480, *State, ex rel. Dayton Newspapers v. Phillips* (1976), 46 Ohio St.2d 457, and *State, ex rel. Matasy v. Morley* (1986), 25 Ohio St.3d 22, 23. Respondent addresses the majority of his argument, however, toward only the second prong of this standard, ignoring the fact that Relator has standing in this matter as a party to the criminal proceedings held outside the territorial jurisdiction of the Newton Falls Municipal Court.

This matter is captioned *State of Ohio, ex rel. Richard F. Schwartz, In His Capacity As The Director Of Law And Prosecuting Attorney Of The City Of Newton Falls, Ohio v. Larry Turner, In His Capacity As Judge Of The Newton Falls Municipal Court*. The State of Ohio or the City of Newton Falls is a party to each and every criminal proceeding over which Respondent presides, including the arraignments specifically identified in Paragraph 10 of the Complaint in this action (*State v. Becker*, Case No. TRC 0700464-A, -B, and -C (January 22, 2007), and *State v. Boyd*, Case Nos. CRA 0700059, 0700060, and 0700061 (January 22, 2007)) and the probation violation hearings held in the specifically identified in Paragraph 11 of the Complaint (*State v. Chambers*, Case No.

TRC 0603469 (probation violation hearing on January 18, 2007), and *State v. Lester*, Case No. TRC 0400257 (probation violation hearing on January 18, 2007)).

The General Assembly of the State of Ohio has empowered – indeed, mandated – municipal law directors and prosecuting attorneys to prosecute criminal cases:

The village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court ***shall prosecute all cases brought before the municipal court for criminal offenses occurring within the municipal corporation*** for which that person is the solicitor, director of law, or similar chief legal officer. Except as provided in division (B) of this section, the village solicitor, city director of law, or similar chief legal officer of the municipal corporation in which a municipal court is located shall prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory of the municipal court.

O.R.C. § 1901.34(A) (emphasis added). Moreover, “[t]he village solicitor, city director of law, or similar chief legal officer shall perform the same duties, insofar as they are applicable * * * as are required of the prosecuting attorney of the county.” O.R.C. § 1901.34(C). In exercising the obligation to prosecute criminal actions, the law director or prosecuting attorney presents the case on behalf of the municipal corporation for violation of a municipal ordinance or on behalf of the State of Ohio for violation of an Ohio statute. O.R.C. § 2938.13. Accordingly, Relator, as Newton Falls’ Law Director and Prosecuting Attorney, has standing as a party to the affected criminal proceedings in which Respondent exercised extra-territorial jurisdiction.

Even if, however, this Court determined that Relator was not a party in the actions affected by the conduct at issue in this case, Relator has standing to prosecute this action because Relator seeks to enforce and protect a public right. This Court has long held that “when the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to named parties.” *State, ex rel. Ohio AFL-CIO v. Ohio Bureau of Workers’ Comp.* (2002), 97 Ohio St.3d 504, 506, 2002-Ohio-6717, ¶ 11; *State, ex*

rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, 471, syllabus (“Where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that the relator is an Ohio citizen and, as such, interested in the execution of the laws of this state”). There is no question that Relator is an Ohio citizen, and his seeks the requested writ to enforce or protect a public right of great importance, that being the validity and integrity of criminal proceedings conducted in the Newton Falls Municipal Court. Accordingly, Relator has standing and Respondent’s arguments to the contrary must be rejected.

C. Respondent’s Exercise Of Extra-Territorial Jurisdiction Is Patently And Unambiguously Unauthorized, Thus Warranting Issuance Of A Writ Of Prohibition.

Respondent’s main argument against prohibition is that the physical location of proceedings is not a component of the court’s subject matter jurisdiction and thus holding proceedings outside of the defined territory of the Newton Falls Municipal Court does not represent a patent and unambiguous lack of jurisdiction. Respondent’s argument ignores key cases and statutes cited in Relator’s prior submissions to this Court, and is otherwise without merit. Three points only need be made in response.

First, Respondent has specifically recognized that territorial jurisdiction is an important component in evaluating the exercise of judicial power. His January 9th Journal Entry *twice* makes reference to the concept of territorial jurisdiction:

(ix) should a defendant object or, sought assigned counsel and that assigned counsel requested re-arraignment, such arraignment would be *in the territorial jurisdiction of the Court*,

* * *

(x) the Warren Municipal Court has consented to this Judge conducting arraignments for Newton Falls Municipal Court defendants within its, Warren Municipal Court's, *territorial jurisdiction*.

(Exhibit 1 to Complaint (emphasis added).) Having previously acknowledged the concept, Respondent's present effort to disavow the importance of territorial jurisdiction in evaluating a Court's right to undertake judicial action rings especially hollow.

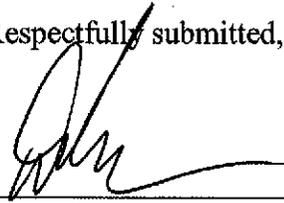
Second, although Respondent argues that O.R.C. § 1901.021 does not limit the scope of the Newton Falls Municipal Court's jurisdiction, Respondent offers no response to the numerous other provisions of the Revised Code cited by Relator that specifically link the power of a Municipal Court to act with its territorial jurisdiction. *See* Memorandum in Support of Motion for Alternative Writ, at 6. Nor does he address the Ohio jurisprudence Relator cited that reinforces the limits that territorial jurisdiction impose on the power of a court to act. *See id.* at 5-6.

Third, Respondent's position, taken to its logical conclusion, would authorize Judges of the courts in Ohio, if they determine that it would be more convenient or less expensive to hold court other than within their territorial jurisdiction, to convene Court in any geographic location of their choosing. Surely, neither the Ohio Constitution nor the Revised Code can be read to empower a Judge of the Court of Common Pleas of Franklin County to hold Court in Cuyahoga or Hamilton Counties, for example. To state the conclusion is necessarily to refute it.

III. CONCLUSION

For the foregoing reasons, and the reasons set forth in Relator's Memorandum in Support of Motion for Alternative Writ of Prohibition, this Court should this Court should deny Respondent's Motion to Dismiss, issue the previously-requested Alternative Writ, establish a briefing schedule, and hear this matter on its merits.

Respectfully submitted,

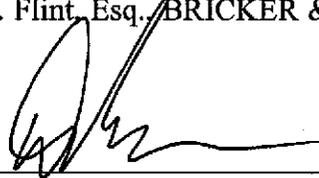


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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2007, a true and correct copy of the foregoing was sent by electronic-mail and first-class mail, postage-prepaid, properly addressed, to the following: Anne Marie Sferra, Esq. & Jennifer A. Flint, Esq., BRICKER & ECKLER LLP, 100 South Third Street, Columbus, Ohio 43215-4291.



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