IN THE

SUPREME COURT OF OHIO

STATE ex rel. OLUDAYO ASHIPA,	:	NO. 2007-0638
Petitioner,	:	
vs.	:	
CHARLES J. KUBICKI, JR., JUDGE,	:	
Respondent.	:	

MOTION TO DISMISS ORIGINAL ACTION IN WRIT OF PROHIBITION

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COUNSEL FOR RESPONDENT, CHARLES J. KUBICKI, JR., JUDGE

Oludayo Ashipa, #A486-067
Chillicothe Correctional Institution
15802 State Rt. 104 North
Chillicothe, Ohio 45601

PRO SE PETITIONER

FILED
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MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

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Respondent Judge Charles J. Kubicki, Jr. moves this Court to dismiss the "original action in writ of prohibition" that has been filed against him by Petitioner Oludayo Ashipa. The petition must be dismissed for either of two reasons.

First, a petition for a writ of prohibition is aimed at preventing action from taking place. The first thing that any petitioner must show to have a successful writ of prohibition is that the lower court is about to exercise judicial authority.[1] The action that Ashipa believes should be prevented has already occurred. There is nothing to prevent. If Ashipa felt that there was an error in his resentencing then he should have filed a direct appeal.

Second, the respondent followed this Court's mandates in resentencing Ashipa. Ashipa was one of many defendants who had their sentences remanded to the trial courts for resentencing in light of *State v. Foster*. This Court ordered Ashipa's case back to the respondent's court for resentencing on May 3, 2006. The respondent resentenced Ashipa on May 9th.

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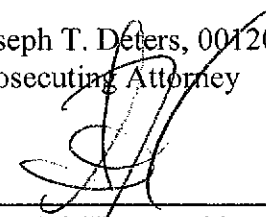
[1]*State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178, 631 N.E.2d 119.

Ashipa contends that the respondent lacked jurisdiction to resentence him because the respondent's clerk of courts did not receive and file stamp a copy of this Court's order until May 22nd. But just because the local clerk did not have a copy of that decision until the 22nd does not change when this Court's order became effective. The respondent in this matter was aware of this Court's decision and properly acted upon it.

For either of these reasons there is no relief that this Court may grant in this matter. Therefore, this matter must be dismissed.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney



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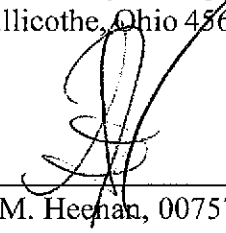
CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Motion to Dismiss Original Action in Writ of Prohibition, by United States mail, addressed to Oludayo Ashipa, #A486-067, Chillicothe Correctional Institution, 15802 State Rt. 104 North, Chillicothe, Ohio 45601, this 23rd day of April, 2007.



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