IN THE SUPREME COURT OF OHIO

STATE ex rel.OLUDAYO ASHIPA, Relator	:	CASE NO. 2007-0638
-vs-	:	
CHARLES J. KUBICKI, JR., JUDGE HAMILTON COUNTY COURT OF COMMON PLEAS, Respondent.	:	

FILED
APR 30 2007
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

ALL PROPERLY-SERVED PETITIONER'S MEMORANDUM IN OPPOSITION

Comes now the Relator/Petitioner, Oludayo Ashipa, acting by and through pro se capacity, and hereby respectfully files "Memo In Opposition" pursuant to Supreme Court of Ohio, Practice Rule X, Section 5.

Respondent filed affirmative defense motion to dismiss on April 24,2007, pursuant to Relator's April 11,2007, filed original action in prohibition.

Relator contends that Respondent timely filed its initial response but the Relator expressly rejects/denies all other arguments/facts/laws raised in Respondent's affirmative defense pleading captioned as "Motion To Dismiss Original Action In Writ Of Prohibition".

Please be further advised hereto.

Respectfully Submitted By:

Oludayo Ashipa#A486-067
Pro Se Relator/Petitioner.
Chillicothe C.I.
15802 SR 104 North
Chillicothe,Ohio 45601

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I. RELATOR OBJECTS TO RESPONDENT'S SUMMARY DISMISSAL PLEADING AS PREMATURE AND UNWARRANTED:

The allegations in Relator's case were not in themselves so **"vague [Or] conclusory"**, as to warrant the granting of Respondent's affirmative defense pleading to dismiss. **Blackledge v. Allison (1977), 97 S.Ct. 1630.**

II. RELATOR'S MERIT DETERMINATION AND PREREQUSITE SATISFACTION OF PROHIBITION:

Relator specifically takes issue with Respondent's first procedural defense claiming that Relator's first prong of prohibition has not been satisfied. **Respondent's Motion to Dismiss, at 1.** Respondent contends inter alia, that the act Relator complains about has already occurred and there is nothing to prevent. Respectfully, the Respondent's argument must fail because this Supreme Court has long since held that a writ is available to correct previous unauthorized judicial exercises of power, and not limited to prospective applications. **State ex rel. Petro v. Marshall, Ohio App.4th District, 2006 WL 2924762, October 10,2006.See also, State ex rel. Cruzado v. Zaleski (Ohio 2006), 856 N.E.2d 263, at 266 ¶ 14-15.**

Morover, Relator specifically makes objections to Respondent's procedural defense claiming that Relator had adequate remedy at law via direct appeal. **Respondent's Motion to Dismiss, at 1.**
Relator asserts that this Supreme Court of Ohio has consistently stated when the lower court lacked jurisdiction patently and unambiguously, then the availility of appeal is immaterial. **State ex rel. Rogers v. McGee Brown (Ohio 1997), 80 Ohio St.3d 408,410.**

Relator also objects to Respondent's contention that the Honorable Charles J. Kubicki, Jr., (Respondent) acted properly in resentencing him on May 09, 2006. **Respondent's Motion to Dismiss, at 1-2.**
The first dispute comes to play when Respondent claims that it simply resentenced Relator pursuant this Court's remand inlight of State v. Foster.**Id**
Relator's exhibit A as attached to his initial pleading clearly shows that this Supreme Court "affirmed" the Hamilton County,Ohio Court of Appeals October 19,2005, decision finding the more than the minimum terms were contrary to law and findings in support of consecutive sentences were unsupported. **Relator's Exhibit C, as Attached in Initital Pleading.**

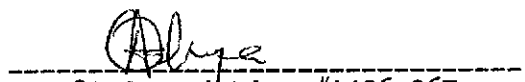
Relator in this aspect fully adopts his previously made argument found on initial pleading at 7-10. **State ex rel. TRW, Inc. v. Jaffe, (Ohio 1992), 604 N.E.2d 1376, at 1378-79.**

III.CONCLUSION:

Accordingly, the critical question is whether the mandate from this supreme court issued prior to the relator's May 09,2006 re-sentencing and under what authority did the Respondent acted when he claimed that the Court of Appeals issued a mandate on March 23,2006-thus issuing a conveyance order over Relator. Relator posits that respondent exceeded the scope of his authority and jurisdiction, when he failed to comply with the announced judgement of this court as well as its mandate,which incorporates the opinion.

The May 09,2006 re-sentencing in Relator's case was definately inconsistent with this court's opinion.See Exhibit A as attached to this initial pleading;thus exceeding the jurisdiction of the Respondent.

Respectfully Submitted By:



Oludayo Ashipa #A486-067
Pro-Se Relator

IV. PROOF OF SERVICE:

I hereby certify that one true and accurate copy of the foregoing legal document has been served upon opposing party of record via regular U.S. mail on this 25th day of April,2007.