

IN THE SUPREME COURT OF OHIO

07-0925

RICHARD CLARK SR.,
TOCI * 470-648 * D-1-N-1
BOX 80033 * TOLEDO, OH., 43608

CASE NUMBER: 03 cr 492

Relator

C.A. NUMBER: 04 MA 246

v.

ORIGINAL ACTION

TO SUBMIT EMERGENCY PETITION

FOR WRIT OF MANDAMUS.

STATE OF OHIO, JUDGE KRICHBAUM,
O.P.D. WILLIAM MOONEY, #0002729
CHIEF APPELLATE COUNSEL, ROBERT LANE
#0018368, 120 MARKET STREET, 2ND FLOOR,
YOUNGSTOWN, OHIO * 44503

& O.P.D.'S OFFICE,
8 E. LONG STREET, 11TH FLOOR,
COLUMBUS, OHIO * 43215-9925

ORIGINAL ACTION TO SUBMIT EMERGENCY PETITION
FOR WRIT OF MANDAMUS

RICHARD CLARK SR., DEFENDANT, PRO SE
TOCI * 470-648 * D-1-N-1 * BOX 80033
TOLEDO, OHIO * 43608-0033
DEFENDANT, PRO SE, RELATOR

FILED
MAY 18 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

STATE OF OHIO, JUDGE KRICHBAUM
RESPONDENT, 120 MARKET STREET,
YOUNGSTOWN, OHIO * 44503

&

O.P.D. WILLIAM MOONEY, #0002729,
O.P.D. ROBERT LANE, #0018368 CHIEF APP,
COUNSEL, 8 E. LONG STREET, 11TH FLOOR
COLUMBUS, OHIO * 43215-9925

RESPONDENTS

Richard Clark Sr.
RICHARD CLARK SR., RELATOR, PRO SE

RHYS- B. CARTWRIGHT JONES
ASSISTANT PROSECUTOR
21 WEST BOARDMAN STREET, 6TH FLOOR
YOUNGSTOWN, OHIO * 44503,

RECEIVED
MAY 18 2007
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

COUNSEL FOR JUDGE KRICHBAUM, STATE OF OHIO

IN THE SUPREME COURT OF OHIO
AT COLUMBUS

THE STATE, EX REL., PRO SE
RICHARD CLARK SR., TOCI, 470-642, *D-1-N-1*
P.O. Box Relator
80033, Toledo, Ohio * 43608
vs.

CASE NO: 03 CR 492
04 MA 246
ORIGINAL ACTION
EMERGENCY PETITION FOR
WRIT OF MANDAMUS

STATE OF OHIO, JUDGE KRICHBAUM//O.P.D. WILLIAM J. MOONEY, # 0002729:120 Market St.
Respondent Youngstown, Ohio, 44503/// 8 E. Long St., 11th Floor,
Columbus, Ohio, 43215/// respectively, *Robert Lane, Chief O.P.D., Appellate Counsel.*

Now comes the relator, Richard Clark Sr., pro se, seeking issue of a Writ of Mandamus ORDERING respondent, JUDGE Krichbaum & *Robert Lane, O.P.D.* William J. Mooney* to do its clear legal duty and *(O.P.D.0002729) (col 8368) 5 1* allow the Relator to present "INFORMATION AS TO WHY SENTENCE SHOULD NOT BE IMPOSED, and allow Relator Ample time to confer with counsel Mooney, O.P.D. to give Relator more than "SEVERAL MINUTES" to discuss and receive legal help and analysis from Mooney.

RELATOR

Relator, Richard Clark Sr., is an adult citizen of the United States and the State of Ohio. He is presently in the custody of the Ohio Department of Corrections and housed at the Toledo Correctional Institution in Toledo, Ohio, P.O. Box 80033, Toledo, Ohio, 43608-0033.

Respondent

The Respondent, State of Ohio, is described as Judge Kirchbaum & William J. Mooney, #0002729, Assistant State Public Defender. Mooney filed his appearance as counsel on 4/2/07, but did not see me until 4/13/07! He met me for the first time in the courtroom. I had written a letter *4-1-07* asking to see him before the date of the hearing. I needed to talk to Mooney about all the motions I had filed, but "several minutes" WAS NOT plenty of time! Why did the Judge make that statement to "SLANT THE RECORD", when he should have asked were we done conferring?! Our answer would have been NO! I even filed my motion for a continuance, 2nd request, that I had been without my medications for pain and that I was in constant pain and I requested more time so that I could *Get my Pain meds &* be restored to my former self and be ready for the sentencing hearing. I am confined to a wheelchair and I have Traumatic Brain Injury (T.B.I.) from years ago and I am getting headaches and many other pains in my back that has compressed fractured vertebrae

** Robert Lane, O.P.D.
(Exhibit One)
Sent to
prosecutor
3/29/07*

also from many years ago when my mother, twin 9 year old sisters, and my 12 year old and my 17 year old brother were killed when our stationwagon got hit by a semi! I was in a coma for 8 days and I was paralyzed from the neck down. I spent a very long time recovering and getting physical therapy and learning how to talk all over again. I could not think straight or focus or concentrate on the matters of presenting information as to why the sentence should not be imposed and also that goes directly in the mitigation of punishment at the sentencing hearing. When asked by the judge was I prepared I immediately answered "NO", but he proceeded anyway. The judge admitted on the record that he told my 15 year old defense witness, Kirk Snipes, that Kirk went to Ursuline because he couldn't get into Mooney! In a courtroom where a man's life and liberty are at stake, is it appropriate for the judge to "crack jokes" that are inside jokes known to him the bailiff, the deputies but not to Kirk Snipes or myself, and this was intimidating to Kirk Snipes because he had no idea the judge was making fun of him or belittling him because he didn't get into Mooney! Kirk is at the top of his class at Ursuline. Unethical conduct! The judge says this at trial and at ~~XXXXXXXXXXXX~~ sentencing.

LEGAL CLAIMS

1. Relator has a clear legal duty that is owed to him by respondent and that duty is not being performed.
2. Relator has no plain and adequate remedy in the ordinary course of law.

FACTS OF CASE

Relator's sentence was vacated according to Foster. Relator has tried to file his Affidavit of Prejudice with this court since April 8, 2007, to disqualify the judge from sitting in on the sentencing hearing. I have filed other motions with this court, the 7th District court of appeals and the Mahoning County Court of Common Pleas, Courtroom #3. These motions are:

March 21, 2007 pursuant to ORC §2929.19(A)(1) the defendant wishes to say why sentence shouldn't be imposed and wishes to make a statement to present any information in mitigation of punishment.

March 21, 2007 - Praecipe to Clerk of Courts pursuant to Cr. R. 17(A). Compulsory Process.

March 26, 2007 the 7th District Court of Appeals Petition for Writ of Mandamus to compel the Judge Kirchbaum to issue subpoenas and by directing the clerk of courts to issue them, to compel the attendance of people who all have relevant information as to why sentence should not be imposed and in mitigation of punishment and letting the judge know a motion was filed for his recusal, etc. plus an original action to submit an AFFIDAVIT OF PREJUDICE, (April 5, 2007 filed and Certificate of service. filed with this court, (delayed by circumstances beyond the control of Relator), but still sent to Judge Krichbaum on April 5, 2007. This judge knew of information extrajudicially and his bias, prejudice and animosity toward me is overwhelming.

This judge also had to have the Affidavit of Prejudice and had to know it was pending before the Supreme Court Of Ohio, *because I sent it to him a full 5 days before I was whisked back to the hearing 4-13-07.*

At the April 13, 2007 sentencing hearing the judge admitted on the record that there are "MISTAKES" in the record. (These are major mistakes that trial counsel Ted Macejko Jr. repeatedly made and he said things that undermined defense strategy, but his Honor said they were Court Reporter Mistakes. I am trained and have a degree in Court Conference Reporting and I know they were not court reporter mistakes but things defense counsel said that go to prove his ineffectiveness and also the fact that trial counsel was not prepared for trial and had some other issues that tend to prove something else was going on with trial counsel. This judge also ruled he was not biased but to the contrary, when I informed him of ALL the motions filed, he said he hadn't seen them all. But the prosecutor, Krueger stated she had them! I filed a motion for a continuance from the April 11th 2007 date, I informed the judge of all the motions filed and especially the Affidavit of Prejudice I filed with him and also this court. It is obvious, like at the 3 day trial, the judge was in a hurry. Defense counsel Mooney only had a chance to talk to me for several minutes. The bailiff came in and then the judge appeared and stated on the record, "YOU HAVE BEEN GIVEN ALL THE TIME YOU NEED!" He slanted the record by saying this because it was not true and ineffective *Mooney never objected. I of course told the judge I was unprepared and I let him know by motion that I was in pain and had problems focusing and concentrating. I had not intended to talk but had hoped I would have been able to talk to Mooney when he showed up and I hoped we would have been given enough time so I could let him know of all the motions I had filed and the contents and the reasons for them. When I brought people who all had the information to provide as to mitigation of punishment and why the sentence shouldn't be imposed, he refused to allow them to speak and never addressed the motion I had filed with the judge to permit them to speak. My right to allocution was denied by a clever judge who knew he didn't give me enough time to confer with OPD Mooney, and he refused to allow the people ^{witnesses} to present information as to why the sentence shouldn't be imposed and he didn't allow the subpoenas to be served ~~to~~ the many others who also had vital information as to why the sentence shouldn't be imposed. Mooney was also ineffective because he knows we were not given enough time to confer and he never objected and never objected to the judges slanted statement that we were given enough time to confer! I asked Mooney if he told the Bailiff we were ready. He said no at all! (NO) I was given a chance to speak, but the combination of the pain I was in and the fact that I was not given enough time to confer with Mooney denied me my right to present information that goes directly to "Actual Innocence".*

Mooney stood silent thruout the entire hearing!

Again O.P.D. Mooney never spoke & just sat in his chair & was silent.

-3- Apparently O.P. Defenders DO NOT help in the defense or help at sentencing hearings! why was he there? Was he afraid of the judge or a friend of the court?

Chief Appellate Counsel Robert Lane, O.P.D. has represented me over the last few years, and I have NEVER spoke with him on the phone or ever spoke with him face to face, I need EFFECTIVE, PROFESSIONAL, REPRESENTATION.

~~Therefore~~ "This judge scoffs at this court and the legislature. He says you must obey all the rules, but he doesn't follow them himself. I also am asking for a Stay of execution of the Sentences until all the motions that I filed can be decided by this court and the court of Common Pleas and the 7th District Court of Appeals.

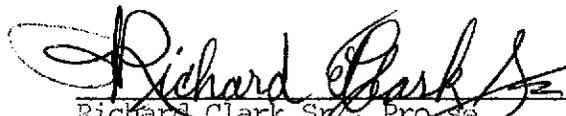
PRAYER

THEFORE, as relator has a clear legal duty owed to him by the respondents, said duty is not being performed, and there is no plain and adequate remedy in the ordinary course of law, this Court must issue a Writ of Mandamus requiring the respondents to do their clear legal duty as described herein. This also includes but is not limited to requiring OPD Mooney to do his clear and legal duty to come see me BEFORE ANY HEARING so we can confer and be informed to present a fair and effective presentation of ~~XXXXXXXXXX~~ all the information that justice demands be presented at this Relator's sentencing hearing and the issues relevant to as to why the sentence should not be imposed. Also, after sentencing I asked to speak with Mooney and we were shown to a room, the door was left open and 2 deputies stood in the doorway and hallway and could hear everything we said. Mr. Mooney said I was probably guilty but even if I werent I should have "TAKEN THE DEAL". The judge states on the record the deal was for 3 years. When I didn't take the deal the judge said I would get life w/o parole. He was right. Mooney rushed off and he said he had to get back to columbus!

I need the resentencing transcripts of 4/13/07. I need Robert Lane to confer with me as often as necessary to determine matters relevant to resentencing. Compel Krichbaum to do his duty and VERIFICATION not retaliate against me, Delores Orlavic, he held her for contempt of Court, & ~~my~~ my son arrested, acting under the color of Law, I, Richard Clark Sr., relator herein state under penalty of perjury that all the

facts in this petition are true and correct to the best of my knowledge and beliefs.

Respectfully submitted,



Richard Clark Sr., Pro se
TPCO * 470-648 * D-I-N-I * TOCI
P.O. Box 80033
Toledo, Ohio * 43608-0033

These Deputies approached my son & started talking about Krichbaum to him. It is from this "COINCIDENTAL" CONVERSATION that he was arrested.

* After the hearing of 4/13/07 this judge arrested my sister in-law & she was handcuffed & shackled for "contempt of court" & 2 deputies talked to my 19 year old son who is Developmentally Disabled! He told his sister the 2 Deputies "twisted his words" and the next thing he knew he was being handcuffed, taken to Jail, charged with retaliation and put on anti-psychotic drug

AFFIDAVIT

I, RICHARD CLARK SR., PRO SE, hereby certify under the penalty of perjury that the information provided in this AFFIDAVIT is true and correct.

This AFFIDAVIT and any and all information given in this WRIT OF MANDAMUS is made on my personal knowledge, setting forth facts admissible in evidence, and I am competent to testify to all matters stated in this AFFIDAVIT.

1. Compel Respondent O.P.D. WILLIAM MOONEY AND CHIEF APPELLATE COUNSEL ROBERT LANE, to do their clear and legal duty to confer with me as often as necessary and to make sure we have enough time to discuss all matters prior to the sentencing hearing that are relevant as to why the sentence should not be imposed and that are relevant as to why the sentence can be mitigated in the punishment phase.
2. Compel Respondent Judge Krichbaum to obey the laws of the land, to rule on all motions before him filed by the Relator, and to allow the Relator to present any information as to why the sentence should not be imposed, to compel the Respondent to "step aside" until this Court can decide the affidavit of Prejudice filed in this Court and filed with the judge, to compel compulsory process, and to give Relator all the rights statutorily given by the Ohio and the U.S. Constitution, and this Relator also requests a stay of execution of sentence until all matters and motions can be decided by this Court and the 7th District Court of Appeals, and the Relator's motions filed with the judge Krichbaum's Court of Common Pleas #3.

Respectfully submitted,

Richard Clark Sr. PRO-SE

Richard Clark Sr., Pro se, AFFIANT
TOCI * 470-648 * D-1-N-1
BOX 80033 * TOLEDO, OHIO * 43608-0033

Sworn to and subscribed in my presence this 14th day of May, 2007.



Patricia R. Ceglie
NOTARY PUBLIC

Patricia R. Ceglie
Notary Public
Commission Expires 3/29/14



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF APPEARANCE was sent by regular U.S. Mail, postage prepaid to Paul Gains, Prosecutor, Mahoning County, 21 W. Boardman Street, 6th Floor, Youngstown, Ohio 44503 on this 20th day of March, 2007.



WILLIAM J. MOONEY # 0002729
Assistant State Public Defender

COUNSEL FOR DEFENDANT

Dear Daddy

April 29, 2007

Hello how are you? I am just fine. Straight to the point. I am being falsely accused of threatening to kill Judge Scott Krichbaum. In that case, I did not say what the deputy thought I said. It all happened when I went downstairs after your resentencing. I sat down against the wall. The Deputy asked me what is wrong, I told him nothing is wrong. I don't know what brought up the conversation on Krichbaum. But the deputy said that Krichbaum ~~can~~ can do anything he wants and I said that's fine. Then the deputy said that Krichbaum can throw the deputy in contempt and the Krichbaum can throw me in contempt; And I said that I rather kill myself before that judge threw me in contempt. Which the deputy thought I said that I was going to kill the judge which I didn't say. Hey look on the bright side worst case scenario is I could get 1 to 5 years. that's the worst! But can they really convict a man who is innocent? I went to a video arraignment on the first of may and now I am waiting for my next court date. And by the way don't send me any money if you got it, any paper or envelopes. It is a violation of the

Mahoning County Jail rules. I received a slip saying so. saying so! I have all that taken care of in my indigent list.

I appreciate all the things that you are doing for me. I Love you Dad. Have faith, for I will get out of here. In Jesus's name, Amen.

P.S.

I Love You Daddy
You Pistachio.

Another P.S.

I am sending some more mail soon.