

Original copy

IN THE SUPREME COURT OF OHIO

ORIGINAL

CASE NO: 07-330

ALRENZO BLANDIN
607 MARION-WILLIAMSPORT
ROAD EAST
P.O.BOX 1812
MARION, OHIO 43301,

Original Action In Mandamus

ON COMPUTER-ALM

Relator,

-Vs-

BECK, ALLEN COUNTY SHERIFF
301 N. MAIN STREET
P.O.BOX 1243
LIMA, OHIO 45802-1243,

Respondent.

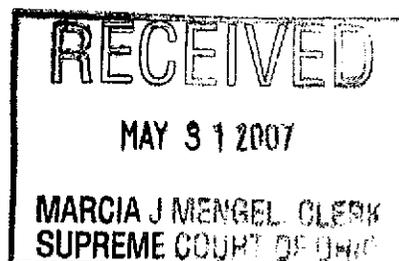
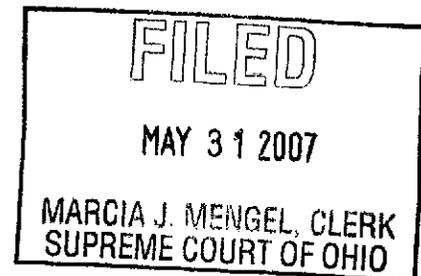
PETITIONER'S MERIT BRIEF

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Counsel for Petitioner, Pro Se.

Jana E. Emerick (Counsel of Record)
Allen County Asst. Prosecutor
Court of Appeals Building
204 N. Main Street
Suite 302
Lima, Ohio 45801

Counsel for Respondent.



MEMORANDUM IN SUPPORT

The Relator submits the following reasons in support of being granted relief:

The Respondent concedes that on August 3, 2005, money was taken from the Relator's person by Allen County jail officials to be placed on his behalf into a commissary account at the jail.¹The Respondent also asserts that on the same day, Sgt. Paula Martin from the Allen County jail took the \$1058.80 removed from the Relator's person at the time of his booking, and turned it over to "investigators" from the West Central Ohio Crime Task Force,² herein after, WCOCTF. The Respondent states that this money was turned over to WCOCTF upon receiving information that the money "may be evidence in the drug case against Blandin."³The Relator now states that these statements, made under penalty of perjury, are at best misleading, and borderline false.

The Respondent would have this Court believe that the arrest of the Relator, subsequent booking, search of house that was not his home, and seizure of all monies took place in close proximity, one event after the other. This simply is not true. Moreover, if the WCOCTF believed that it was appropriate to seize the Relator's money found on his person, it should have done so at the scene of the arrest, and not concoct this explanation without *verifiable* evidence. The Relator was in fact arrested on August 3, 2005, and subsequently booked into the county jail after being held at the scene of a "traffic stop" for over an hour before any drugs were allegedly found on his person. The warrantless search of the home did in fact occur on the same day, despite the fact that a judge did not sign a warrant⁴ for the search until after midnight. On the "property inventory sheet", submitted with the original Writ, the Relator clearly signs a form witnessed by the booking officer, which along with jail policy as conceded by the Respondent, assures him and leads him to believe that his monies would then be placed into a commissary account. At no time did jail officials inform the Relator that his funds

¹(Respondent's evidentiary materials, Affidavit of Clyde Breitigan, pg.2, ¶1.)

²(Id, at ¶2)

³(Id, at ¶2)

⁴if in fact the judge did sign a warrant.

had been removed from that account and turned over to the WCOCTF. Furthermore, there is no signature on any document from a Sgt. Martin stating that she turned over the Relator's money to the WCOCTF on August 3, 2005, and Sgt. Martin signed no such affidavit stating that this was the case. None of the evidence submitted by the Respondent is journalized to insure it's accuracy, and in fact, even the statement signed by Butler and Breitigan are dated 5 days after Sgt. Martin allegedly turned over the money to them. In addition, on the document signed by Butler and Breitigan, the date, which Sgt. Martin turned over the money, is now the following day, and not the same day as stated in Breitigan's affidavit. The Respondent does not submit a receipt issued to the Relator notifying him that his funds were taken; does not show when the funds were deposited into a county account; and, the Respondent does not submit any documents confirming that the money was used at trial.

Even if the Respondent was entitled to possession of the funds taken from the Relator as possible evidence at an upcoming trial, the fact that the \$1058.80 was not included in the States Discovery of Evidence causes the Relator to be entitled to the immediate possession of such monies as ordered by the Court's judgment entry filed on July 5, 2006, which orders the release of such funds. The Respondent in Breitigan's affidavit conveniently omitted this judgment. As stated above, on July 5, 2006, the trial Court ordered all property not intended and included as evidence to be released to the Relator. On August 15, 2006, the State filed its "Response to Defendant's Motion to use Physical Evidence", which does not include the \$1058.80 as the Respondent would have this Court believe. This being so, the Relator had a right to these returned funds as directed by the Court's earlier order.

The Respondent also relies on a judgment from the trial Court subsequent to the filing of this Writ, ordering all funds to be assessed toward mandatory fines imposed at sentencing, however, as the Court's earlier order to release all property not intended for use at trial was a valid order, it can not now reconsider it's own valid judgment. It is also worth noting that the detectives and the State did not produce this evidence or paperwork

at trial, nor did they attempt to assess these monies toward the Court's invalid judgment until after this Court was made aware that the money was in fact missing. But why not?

IN CONCLUSION

Since the Respondent had no legal authority to hold the Relator's monies after the Court ordered the return of such funds, it cannot now assert that it was proper to withhold such funds from the Relator after August 15, 2006, when the State submitted its list of physical evidence intended for trial. There was no seizure specification in the indictments against the Relator, and the trial Court has no authority to reconsider its own valid previous judgment ordering the release of such funds to the Relator.

PROOF OF SERVICE

I CERTIFY THAT A COPY OF THE FOREGOING RESPONSE WAS SENT BY
REGULAR US MAIL ON May 28, 2007, TO:

Jana E. Emerick (Counsel of Record)
Allen County Asst. Prosecutor
Court of Appeals Building
204 N. Main Street
Suite 302
Lima, Ohio 45801



ALBENZO BLANDIN.