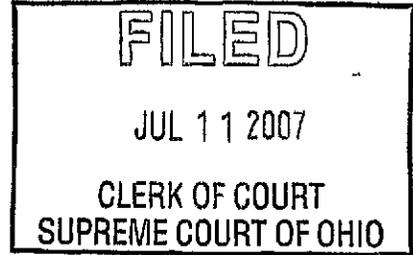


IN THE SUPREME COURT OF OHIO

Mark E. Howard, : Case No. 07-1154
 Relator, : MOTION TO DISMISS
 v. :
 STATE OF OHIO COURT OF COMMON :
 PLEAS, et al., :
 Respondents. :



Now comes Mary Lynne Birck, assistant prosecuting attorney and counsel for Respondents Judge Ringland, Donald White, Jason Nagel, Ronald Mason, and Sheriff Rodenberg and moves this Court to dismiss Relator’s Original Action in Mandamus as he has other adequate remedies of law and therefore, a writ of mandamus is not available to him.

Relator Howard is a pro se inmate who is trying to use a mandamus in order to: 1) reverse convictions of breaking and entering, theft, and criminal tools; 2) to recover \$500 a day for “unlawful imprisonment;” 3) to enforce his right to appeal and “a attorney from Cincinnati to represent him; 4) to credit him with 123 days served rather than the 15 he was awarded; and 5) order the Clermont County Jail to have a notary on staff.

As is oft-quoted, the issuance of a writ of mandamus is an extraordinary remedy that will not be issued where there is a plain and adequate remedy in the ordinary course of the law. R.C. §2731.05. Notice of Relator’s appeal to the 12th District Court of Appeals of his convictions was filed on June 22, 2007; it was filed by attorney Denise Barone (though she is not from Cincinnati). See attachment. Thus, Relator has an adequate remedy in the ordinary course of law by appeal to raise his belief that the State had insufficient evidence to convict him as well as his

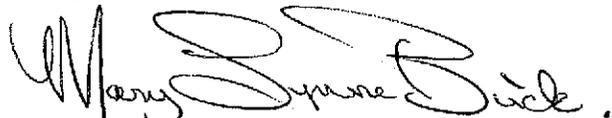
sentence. *See State ex rel. Elko v. Suster*, 111 Ohio St.3d 1212, at P3.

Relator's second demand for damages for unlawful imprisonment and his fifth demand for a jailhouse notary seem to be an attempt to state a claim under 42 U.S.C.§1983. "A civil rights action under Section 1983, Title 42, U.S. Code constitutes an adequate legal remedy which precludes extraordinary relief" as the statute "can provide declaratory, injunctive, (both mandatory and prohibitive), and/or monetary relief." *See State ex rel. Peeples v. Anderson* (1995), 73 Ohio St. 3d 559, 560.

Respondent State of Ohio Court of Common Pleas is not an entity which can be sued and therefore can be properly dismissed on that basis. *See Malone, et al. v. Court of Common Pleas of Cuyahoga County, et al.* (1976), 45 Ohio St. 245, 248 [internal citations omitted](a court is not sui juris; "absent express statutory authority, a court can neither sue nor be sued in its own right").

For the reasons stated herein, Respondents Judge Ringland, Donald White, Jason Nagel, Ronald Mason and Sheriff Rodenberg respectfully requests this Court to deny Relator's request for the issuance of a writ of mandamus and to dismiss this action.

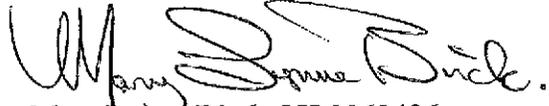
Respectfully submitted,



Mary Lynne Birck OH 0063496
Assistant Prosecuting Attorney
101 E. Main Street
Batavia, Ohio 45103
Phone: (513) 732-7313
Facsimile: (513) 732-8171
E-mail: mbirck@co.clermont.oh.us
Counsel for Respondents

Certificate of Service

I hereby certify that a copy of this Motion to Dismiss has been sent by ordinary prepaid U.S. mail to Mark E. Howard, Relator, Correctional Reception Center, 11271 State Route 762, P.O. Box 300, Orient, Ohio 43146 this 9th day of July, 2007.


Mary Lynne Birck OH 0063496
Assistant Prosecuting Attorney

FILED

NOTICE OF APPEAL TO THE TWELFTH DISTRICT
COURT OF APPEALS FROM A JUDGMENT OR
APPEALABLE ORDER

2007 JUN 22 AM 11:07
BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS COURT,
CLERMONT COUNTY, OHIO

CLERMONT COUNTY COURT OF COMMON PLEAS
BATAVIA, OHIO

STATE OF OHIO

CASE NO. 2007-CR-00109

Plaintiff

TRIAL JUDGE: ROBERT RINGLAND

vs.

2007 CA 06 074

MARK E. HOWARD

NOTICE OF APPEAL

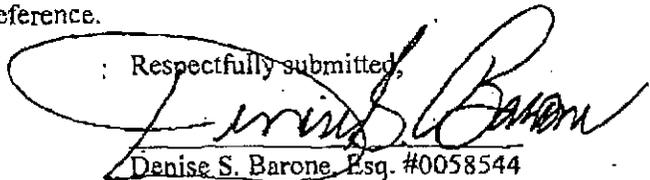
Defendant

Notice is hereby given that Mark E. Howard, the Defendant herein, hereby appeals to the Court of Appeals of Clermont County, the Twelfth Appellate District from the final judgment entry of May 29, 2007.

The attorney or party signing this Notice hereby certifies that the Judgment herein appealed is final as defined in R.C. 2505.02 and Civ.R. 54(B). A Photostatic copy of said Decision is attached hereto and incorporated herein by reference.

COURT OF APPEALS
FILED
JUN 22 2007
BARBARA A. WIEDENBEIN
CLERK
CLERMONT COUNTY, OH

Respectfully submitted,

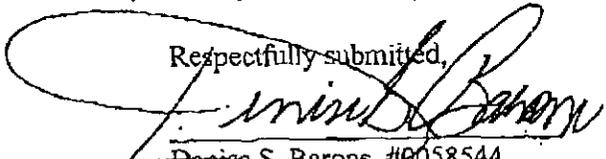


Denise S. Barone, Esq. #0058544
Attorney for Mark E. Howard
385 North Street
Batavia, Ohio 45103-3005
(513) 732-6740 (tel)
(513) 732-1628 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served, via ordinary, U.S. mail, postage prepaid, on this 26th day of June, 2007, to David Henry Hoffman, Clermont County Assistant Prosecuting Attorney, 123 N. Third Street, Batavia, Ohio 45103.

Respectfully submitted,



Denise S. Barone, #0058544
Attorney for Mark E. Howard

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