

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., Aden D. Fogel, *
Richland Correctional Inst. *
#A451-382 *
P.O. Box 8107 *
Mansfield, Ohio 44901 *

Relator, *

VS. *

Edward M. Zaleski, Judge *
Lorain County Common Pleas Court *
225 Court Street *
Elyria, Ohio 44036-0749 *

Respondent. *

Supreme Court No.

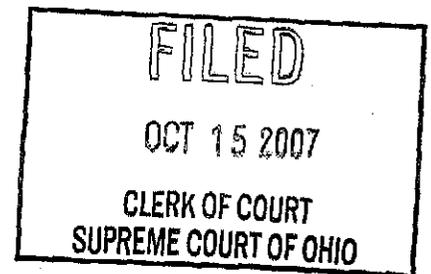
07-1897

ORIGINAL ACTION IN
PROHIBITION

MEMORANDUM IN SUPPORT OF A WRIT OF PROHIBITION

Aden D. Fogel
Richland Correctional Inst.
#A451-382
P.O. Box 8107
Mansfield, Ohio 44901

Relator Pro se



MEMORANDUM IN SUPPORT OF WRIT

In order to be entitled to a Writ of Prohibition the relator must establish that:

1. Judge Zaleski is about to exercise judicial power;
2. The exercise of such judicial power is unauthorized by law;
3. There exists no other adequate remedy in the ordinary course of law.

State ex rel. Largent v. Fisher, 43 Ohio St.3d 160 (1989).

A writ of prohibition is an extraordinary writ issued by a higher court to a lower court or tribunal power to prevent usurpation or exercise of judicial powers or functions for which the lower court or tribunal lacks jurisdiction. State ex rel. Winnefeld v. Butler Cty. Ct. of Common Pleas, 159 Ohio St.225 (1953).

"Generally, once a notice of appeal is filed, a trial court is divested of jurisdiction during the pendency of the appeal." In re Estate of Radcliff-Umstead (Sept. 16, 1994), Portage App. No. 93-P-0086, unreported, at 3, 1994 WL 587972.

"It is a well-recognized principle that once an appeal has been perfected, the trial court loses jurisdiction over the matter, pending the outcome of the appeal." Kane v. Ford Motor Co.(1984), 17 Ohio App.3d 111,116, 17 OER 173, 178-179, 477 N.E. 2d 662, 668.

Furthermore, "The trial court, by the appeal, loses all power to do anything in the case. See 2 Ohio Jurisprudence, 373, 375, 376, 377, Sections 317, 318, 319, and 321; Taylor v. Fitch, 12 Ohio St. 169, 172; 3 American Jurisprudence 192, Section 528; 4 Corpus Juris**627 Secundum, Appeal and Error, p. 1091, § 607.

In this case, the Relator perfected an appeal in the Ohio Ninth District Court of Appeals on October 3, 2007 (case number 07CA009261). The Respondent has no jurisdiction or authority to re-sentence the Relator and/or take any action in the case pending outcome of the appeal.

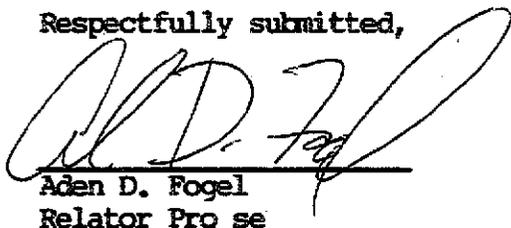
"A writ of prohibition must issue when the trial court patently and unambiguously lacks jurisdiction to act. See State ex rel. Adams v. Gusweiler, 30 Ohio St.2d 326 (1972); State ex rel. Lewis v. Warren Cty. Court of Common Pleas, 52 Ohio St.3d 249 (1990).

and;

"where a cause is appealed to the Court of Appeals on questions of law and fact, it no longer remains in the lower court. The whole cause is transferred to the appellate court for trial de novo. The jurisdiction of the lower court is terminated, and it loses all power to do anything in the cause." Barnes v. Christy, 102 Ohio St. 160, 131 N.E. 352; McCormick v. McCormick 124 Ohio St. 440, 179 N.E. 286.

In this case, the Respondent has no legal authority or jurisdiction to re-sentence the Relator or to take action in the underlying case pending the decision of the Ninth District Appellate Court.

Respectfully submitted,



Aden D. Fogel
Relator Pro se