

IN THE SUPREME COURT OF OHIO

Jeffrey C. Keith #334-054
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430
Petitioner – Appellant,

Case No.: 07-1982

On Appeal from the Portage
County Court of Appeals
Eleventh Appellate District

v.

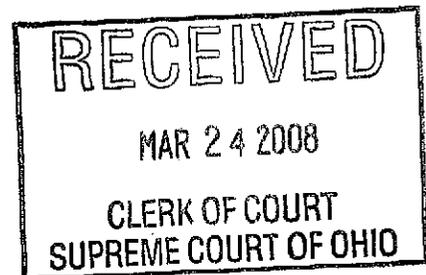
David Bobby, Warden
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430
Respondent – Appellee.

Habeas Corpus
Case No. 07PA27

MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO STRIKE
APPELLANT'S MOTION FOR SUMMARY JUDGMENT

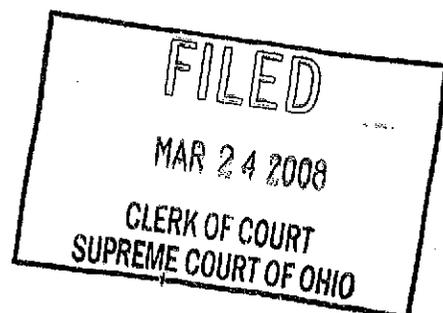
Jeffrey C. Keith #334-054
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430

COUNSEL FOR APPELLANT, PRO SE



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Columbus, OH 43215

COUNSEL FOR APPELLEE, STATE OF OHIO



IN THE SUPREME COURT OF OHIO

JEFFREY C. KEITH,

Appellant,

v.

Case No.: 07-1982

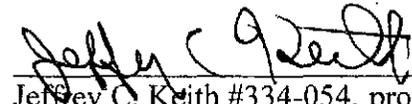
DAVID BOBBY, WARDEN,

Appellee.

MEMORANDUM IN OPPOSITION TO APPELLEE'S MOTION TO STRIKE
APPELLANT'S MOTION FOR SUMMARY JUDGMENT

Appellant moves the Court to dismiss Appellee's Motion to Strike Appellant's Motion for Summary Judgment and enter a Default Judgment against the state. A Memorandum in Support is attached.

Respectfully Submitted,



Jeffrey C. Keith #334-054, pro se
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430

MEMORANDUM IN SUPPORT

The state's Motion to Strike the Appellant's Motion for Summary Judgment is an admission that there is no genuine issue of material facts between the parties. A motion to strike, Civ.R. 12(F), applies only to responsive pleadings and **not** to a motion for summary judgment. The state has failed to respond to Appellant's motion for summary judgment and is now in default, the state's motion to strike should be stricken from the record. *Dawson v. City of Kent* (N.D. Ohio 1988), 682 F.Supp. 920, affirmed 865 F.2d 257.

The state's erroneously asserts that a motion for summary judgment is a supplemental pleading. A motion for summary judgment is a **procedural** motion. Summary judgment is available when: 1) there is no issue at to any material fact; 2) the moving party is entitled to judgment as a matter of law; 3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party whom the motion for summary judgment is made and all relevant evidence is before the court. Civ.R. 56(C). Summary judgment is applicable on appeal in a habeas corpus action. *State ex rel. Ortiz v. Franklin County Court of Common Pleas*, slip copy 2007 WL 1816272, 2007-Ohio-3221, Ohio App. 10 Dist., June 21, 2007; *State ex rel. Thompson v. Gansheimer*, slip copy 2007 WL 1965466, 2007-Ohio-3477, Ohio App. 11th Dist. July 26, 2007.

The state also erroneously states that pursuant to Civ.R. 1(C) the civil rules of procedure are not applicable on appeal. The amendment of Civil Rule 1(C) applies civil rules to actions on appeal, "the Civil Rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules." Appx. 3. The Appellee has **failed** to show that summary judgment does not apply to the special proceeding, habeas corpus, and has also **failed** to show there is good or sufficient reason to not to apply rule 56(C).

Summary judgment is appropriate in this case as the state has been and continues to be **unable to refute** by document or affidavit:

1. That any judge has ever been properly assigned to the underlying cases, thus the court and judges who ruled on the actions **lacked subject matter jurisdiction.**

2. The state has failed to produce a certificate of assignment by the Chief Justice of the Ohio Supreme Court for any of the judges in the underlying cases, thus the judges **lacked subject matter jurisdiction.**

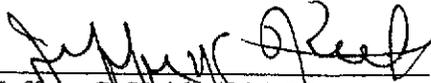
3. The state has failed to show that any judge in the underlying cases was properly assigned through the assignment process and thus the courts and judges **lacked subject matter jurisdiction.**

None of these issues are new, as the state erroneously implies.

The state has used a motion to strike when they are unable to respond to the overwhelming and convincing facts presented in this case. They utilized the same tactic previously against the Appellant's Reply Brief attempting to assert that Attorney General Marc Dann is not the proper party to be served in a habeas corpus action. The motion was without merit. Appx. 1, 2. This was only a tactic to divert the court's focus from the genuine substantive issues presented in this case.

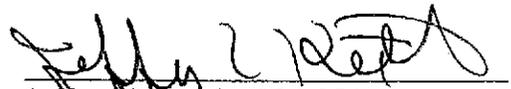
The Appellant's request of a writ of habeas corpus should be immediately granted and order his release from wrongful detainment.

Respectfully Submitted,


Jeffery C. Keith #334-054, pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Opposition to Appellee's Motion to Strike Appellant's Motion for Summary Judgment was sent via regular U.S. Mail, postage pre-paid, to Marc Dann and/or Diane Mallory, Attorney for Respondent, David Bobby, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, on this 18 day of March 2008.



Jeffrey C. Kent #334-054, *pro se*

APPENDIX

11

Personal A/C Withdrawal Check Out-Slip

Dollars: Cents: \$245

| | | | |
|---|-----------------------|---------------------------|--|
| Institution: <u>TCT</u> | | Date: <u>1-17-08</u> | |
| Name: <u>MARC PAWY ATTORNEY GENERAL</u> | | | |
| Address: <u>150 E GAY STREET 16th FLOOR</u> | | | |
| City: <u>COLUMBUS</u> | State: <u>OHIO</u> | Zip Code: <u>43218</u> | |

- Postage
 Copies
 ID
 Misc. _____
 Check-out CK # _____

The inmate's signature on this withdrawal request verifies that the information listed above has been read to or by the inmate and is correct. In the event of an error in the address which results in the return of this package, the inmate shall assume financial responsibility.

| | | |
|--|--------------------------------|--|
| Inmate's Signature: <u>Jeffrey C. Reeth</u> | Number: <u>334-054</u> | Block & Cell Number: <u>18W 184 B</u> |
| Approved By: <u>[Signature]</u> | Witness: <u>[Signature]</u> | |

RECEIVED
 JAN 18 2008
 By _____

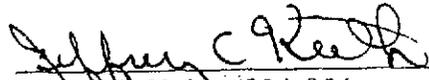
| | |
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| Ship VIA: | Date Processed: |
|-----------|-----------------|

DRC 1004 (Rev. 3/01) DISTRIBUTION: WHITE - Cashier CANARY - Inmate Pink - _____ ACA 4046

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief of Appellant was sent via regular U.S. Mail, postage pre-paid, to Marc Dann, Attorney for Respondent, David Bobby, 17th Floor State Office tower, 30 East Broad Street, Columbus, Ohio 43215. on this 17 day of January, 2008.


Jeffrey C. Keith #334-054. *pro se*

