

IN THE OHIO SUPREME COURT

DONALD CROSSWHITE  
Petitioner,

vs.

WARDEN SAMUEL TAMBI  
Respondent.

) Case No. 08-1823

) Trial No. CR-04-458947

) MOTION FOR SUMMARY JUDGMENT  
)  
)  
)

Now comes the Petitioner, Donald Crosswhite, In Pro Se in the above-styled case, hereby moves this Honorable Court to issue Summary Judgment pursuant to Ohio Rules of Civil Procedure Rule 56(A), and for reasons that will be stated in the Memorandum In Support attached hereto.

Petitioner prays that this Honorable Court will grant the relief he seeks.

Respectfully submitted,



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FILED  
OCT 29 2008  
CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED  
OCT 29 2008  
CLERK OF COURT  
SUPREME COURT OF OHIO

## MEMORANDUM IN SUPPORT

In support of my Motion For Summary Judgment, I would like to offer the following reasons why this court should grant said relief at this time.

### STATEMENT OF FACTS

Petitioner Donald Crosswhite hereinafter Petitioner filed a Petition For A Writ of Habeas Corpus which was timed stamped by the Clerk of Courts on September 15, 2008. Respondent had Twenty-Eight (28) days from the date of filing the Petition to file their answer or ask for a continuance to answer the Writ.

Petitioner hasn't received an answer from the Respondent within the time prescribed by law and the local rules of the court.

### LAW AND ARGUMENT

Rule 56(A) is an adaptation of Federal Rule 56(a) and Section 2311.041(A), R.C. It allows a claimant upon an original claim, counterclaim, cross-claim or declaratory judgment to move for summary judgment at any time after the expiration of the time for moving or pleading (generally twenty-eight days after service of complaint) or at any time after service of a motion for summary judgment. See, Rule 12(A)(1) and (2) for time requirements.

This court should issue a Summary Judgment because there are no genuine issue of material fact as to whether the Petitioner is being held illegally and against his will at this time. A review of the petition for a writ of habeas corpus will show that the Petitioner is being denied his rights because the completion of his lawful sentence has expired with all time being given for

time served before his sentence of Four (4) years on case number 454733 and case number 458947.

Petitioner's rights under the Fourteenth (14th) Amendment to the United States Constitution is being violated which guarantees him due process of law and equal protection of the law. As a result of Respondent not answering said Petition For A Writ of Habeas Corpus within the 28 days prescribed by law, this court should issue Summary Judgment and render its decision concerning the petition for a writ of habeas corpus based upon the evidence submitted by the Petitioner. See: State ex rel. Corrigan v. Masten, 43 Ohio St, 3d 66.

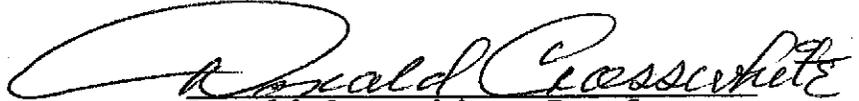
WHEREFORE, based upon the fact that the Respondent has fail to answer the Petition For A Writ of Habeas Corpus in a timely manner as prescribed by law, this court should issue Petitioner's motion for Summary Judgment against the Respondent.

Respectfully submitted,

  
Donald Crosswhite, Pro Se  
#463926

PROOF OF SERVICE

I hereby Certify that a copy of this Motion For Summary Judgment was sent to the Ohio Attorney General Office at 150 East Gay Street, Columbus, Ohio 43215, on this 28<sup>th</sup> day of October, 2008 by regular U.S. Mail.



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