ORIGINAL

In The Supreme Court of Ohio

Samuel Freeman **Relator** **-VS-** **Charles Schneider(Court of Common Pleas Judge)** **Respondent**	**Ohio Supreme Court #** 09-1293 **Writ of Prohibition**

Now comes the Relator, and ask this honorable court to issue this Writ, to stop the Court of Common Pleas from exercising unauthorized Jurisdiction over the Relator. As the Court lack authority to Prosecute and Punish the Relator as subject matter jurisdiction was lacking.

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JUL 17 2009
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SUPREME COURT OF OHIO

Humbly Submitted,

Samuel Freeman #547229

Samuel Freeman

FILED
JUL 17 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Relator:
Samuel Freeman 0547-229
Le. C.I.
P. O. Box 56
Lebanon, Ohio 45036

Respondent:
Judge Charles Schneider (Common Pleas)
369 South High Street
Columbus, Ohio 43215

Memorandum In Support

In the case at hand, Relator was charged with Aggravated Robbery 2911.01 (A)(1) which omit the Mens Rea Element as required by law, And Aggravated Murder charge, which gets it Mens Rea from the Aggravated Robbery charge.

By failing to include an essential element in the body of the indictment, for the Aggravated Robbery charge, it failed to charge a crime.

Relator request that this matter be well taken, and relieve granted as such, that A Writ Issues.

Writ of Prohibition

The purpose of a Writ of Prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction. **State ex Rel. Barton V. Butler City Bd. Of Elections 39 Ohio St 3d 291**

The Ohio Supreme Court has original jurisdiction to issue a Writ of Prohibition. **Section 2 (B)(1)(d), Article IV, Ohio Constitution.**

A Writ of Prohibition " Tests and determines 'solely and only' the subject matter jurisdiction" of the lower court. **State ex Rel. Staton V. Franklin Cty. Common Pleas Court 5 Ohio St. 2d 17**

A Writ of Prohibition may issue before a lower court has made a determination of it's own jurisdiction, even where an adequate remedy in the ordinary course of the law may exist. **Dept. of Adm. Serv., office of Collective Bargaining V. State Emp. Relation Bd. 54 Ohio St. 3d at 51-52.**

The Relator must prove that (1) the lower court is about to exercise judicial authority,

(2) The exercise of authority is not authorized by law, and (3) the Relator possesses no other adequate remedy in the ordinary course of law if the Writ of Prohibition is denied. **State ex Rel. Keenan V. Calabrese 69 Ohio St. 3d 176**

If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictional unauthorized actions. **State ex Red. Funas V. Monnin 1220 Ohio St 3d 279**

Where Jurisdiction is Patently and Unambiguously lacking in lower court, Relators seeking a Writ of Prohibition need not establish the lack of an adequate remedy at law because of Alternate Remedies like append would be immaterial. **State ex Rel. Funas V. Monnin 120 Ohio St. 3d 279**

R.C. 2901.11 (A)(1) patently unambiguously divest a Common Pleas to Prosecute or Punish a person, unless they commit an offence under Ohio Laws.

Court of Common Pleas Jurisdiction In Criminal Cases

Subject Matter Jurisdiction is a court's power to hear and decide a case on the Merits. **Morrison V. Sterner 32 Ohio St 2d 86**

If a court acts without jurisdiction, then any proclamation by that court is void. **Patton V. Diemer 35 Ohio St 3d 68**

The constitution itself confers no jurisdiction whatever upon that court neither in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, but it can exercise none until fixed by law. **Stevens V. State 1854 WL 34**

Criminal Jurisdiction does not attach until a charge is filed alleging some violation of the Ohio Criminal Statues. **State V. Brooks (4th District) 1988 WL 69117, State V. Battle (9th District) 2007-Ohio-2475, State V. Nye (10th District) 1996 WL 303675**

To give a court jurisdiction in a criminal case, it is essential that the indictment charge the accused with a crime. **State V. Cimpritz 158 Ohio St 490**

The trial Court is vested with jurisdiction where the defendant has been charged with offenses via a valid indictment. **State V. Bogan 2005-Ohio-3412**

A valid complaint must be filed in order to vest a court with Subject Matter Jurisdiction. **State V. Wood 357 NE 2d 1106**

Statutes establishing subject matter jurisdiction are substantive laws, because they create and define the rights of parties. **Proctor V. Kardassilaris 115 Ohio St 3d 71**

The Jurisdiction of the Common Pleas Court can be said to be statutory. **State V. Keefe 168 Ohio St 3d 71**

The Validity of an accused's conviction depends upon a proper invocation of the trial court's jurisdiction by way of a valid indictment or information. **Brown V. Maxwell 174 Ohio St 29**

The Court of Common Pleas is by Section 2913.03, R.C. given original jurisdiction in Felony Jurisdiction is invoked by the return of a proper indictment by the Grand Jury of that County. **Click V. Eckle 174 Ohio St 88**

Sufficiency of Indictment R.C. 2941.03

An indictment or information is sufficient if it can be understood there from:

(A) That it is entitled in a court having authority to receive it, though the name of the court is not stated.

(D) That an offense was committed at some place within the jurisdiction of the court.

(E) That an offense was committed at some time prior to the time of finding of the indictment or filing of information.

The court does not have the authority to receive and commence Prosecution on a defective indictment that does not charge a crime or offense under the Laws of the State of Ohio. See R.C. 2931.03, which give the court of Common Pleas original jurisdiction of all crimes and offenses as a Courts Jurisdiction is fixed by law. **Stevens V. State 1854 WL 34**

Trial Court (Common Pleas) has no Judicial Power in Criminal Cases. Except as derived from statutes, courts cannot exercise any power derived from any other source. **Ex parte Steinmetz 172 NE 623**

As well as Criminal Law Jurisdiction does not conferred onto the court of Common Pleas unless h commits an offense under the laws in the State of Ohio. R. C. 2901.11(A)(1)

No Judge has the authority to disregard law, a sentence that does is void.

The Purpose of an Indictment

An indictment or information serves 2 distinct purpose:

1) One purpose is to set up the elements of the offense, so as to sufficiently to meet, in order to satisfy due process, as well as, to identify the criminal charges in a way sufficient to protect against a second prosecution that violates the Double Jeopardy Clause. (**Russell V. U. S. 369 U. S. 749**) The standards that satisfy that requirement are set out in **R.C. 2941.05.**

And

2) The other and proceeding purpose an indictment serves is to invoke the jurisdiction of the court in which it is filled, to proceed to try the defendant for the public offense charged in the indictment. As stated by **Judge J. Grady** in **State V. Wilkinson 2008-Ohio-4400**

Aggravated Robbery R.C. 2911.01(A)(1) Requires the Mens Rea of Recklessness

Aggravated Robbery requires the ***Mens Rea***, of ***Recklessness*** in regards to the use of the Deadly Weapon. See **State V. Lester 2008-Ohio-1624 & State V. Jones 2008-Ohio-6971**

The *Mens Rea* as being required by law, is an essential element, and as such, the indictment failed to invoke the jurisdiction of the Court of Common Pleas.

An indictment that omits an essential element fails to charge an offense. See **State V. Wozniak 172 Ohio St 517**

Also, an indictment that does not charge a defendant with intent does not charge a defendant with the crime. **State V. Wozniak**

Going all the way back to 1842, the Ohio Supreme Court held in **Lamberton V. State 1842 WL 14**

All fact constituting the crime must be set forth in the indictment.

Conclusion

By failing to charge the defendant with a crime under Ohio Laws, the indictment failed to invoke the jurisdiction of the Court of Common Pleas, to Prosecute and Punish him by way of the Statues. R. C. 2901.11 (A)(1)

As, No act is a crime except an act is done in violation of the express provisions of a statute or ordinance legally enacted. **Toledo Disposal Co. V. State 89 Ohio St 230**

This violates a number of U. S. and Ohio Constitutional Rights such as 5th and 6th Amendments and Art.I Section 10 of the Ohio Constitution.

Sam Freeman #547229

Relator

Certificate of Service

A copy of this Writ was served to Judge Charles Pater VIA U. S. Mail, this 15 Day of July, 2009.

Affidavit of Indigency

And

Statement of Facts

Now comes the Relator, and under penalty of perjury, attest to the following as true based on persona; knowledge, and Relator stands competent to testify to all matters stated in this affidavit:

Relator is indigent and has no means of support.

Relator is currently incarcerated and lives off $17.00 a Month.

Relator said state-pay is used for basic upkeep, postage, and medical care.

Relator owns no property, or Real-estate or, bank accounts.

Relator is unable to pay filing fee, copies, or for attorney.

Relator was charged with Aggravated Robbery 2911.0 (A)(1), which contains no Mens Rea Element and was insufficient to charge the crime of Aggravated Robbery.

Relator was also charged with Aggravated Murder, which contains no Mens Rea Element, but gets it's element from the underlining offense of Aggravated Robbery, which contains no Mens Rea in Relator indictment

Relator ask that this Writ Issue to prevent the continued unauthorized exercise of Jurisdiction

It is so prayed.

#547229

Relator

Notary of Public

Sworn and Attested in my presence, A notary in and for the State of Ohio, this 15 Day of July, 2009.

Notary

RICHARD L. KROWIALIS, Notary Pl.
In and for the State of Ohio
My Commission Expires Feb. 1, 2011

Exp. Date