ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NO. 2009 - 0958

STATE OF OHIO ex rel. SHIGALI JONES, Petitioner-Appellant vs. MARGARET BRADSHAW, et al. Respondents-Appellees	:	ON APPEAL FROM THE COURT OF APPEALS FOR LORAIN COUNTY, NINTH APPELLATE DISTRICT COURT OF APPEALS CASE NO: 09CA009545

MERIT BRIEF OF PETITIONER-APPELLANT

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STATEMENT OF THE CASE

Petitioner/Relator, Shigali Jones (Jones) instituted this action by filing his petition for a writ of habeas corpus and for a writ of mandamus in the Court of Appeals for Lorain County, Ninth Appellate District on February 26, 2009. After his petition was filed respondents filed a motion for summary judgment. Petitioner sought an extension of time to respond from the Court of Appeals ruling. However the Court of Appeals, before ruling on petitioner's request for an enlargement of time, dismissed the petition ruling that petitioner had not attached his original sentencing entry from the Court of Common Pleas of Cuyahoga County although that sentencing entry was attached to respondent's motion for summary judgment.

Petitioner thereafter filed a notice of appeal bringing this matter before this court as an appeal as of right.

STATEMENT OF FACTS

Petitioner/Relator, Shigali Jones (Jones), whose is confined at the Grafton Correctional Institution in Grafton, Ohio, filed his petition for a writ of habeas corpus and for a writ of mandamus in the Court of Appeals for Lorain County. His petition was filed on February 26, 2009.

Jones alleged that he was being held without any legal authority and in violation of his statutory and constitutional rights. Thereafter petitioner alleged the following:

> 1. Petitioner, Shigali Jones, files this original action seeking a writ of habeas corpus from the Court of Appeals for Lorain County.
> 2. Petitioner states that jurisdiction over this original action for writ of habeas is conferred by virtue of Article IV §3(B)(1)© of the Ohio Constitution and also Chapter 2735 of the Ohio Revised Code.
> 3. Petitioner, Shigali Jones, states that he has been unlawfully restrained of his liberty by respondents, Margaret Bradshaw, Warden of the Grafton Correctional Institution and the Ohio Adult Parole Authority; that he is being held without any legal authority and in violation of his statutory and constitutional rights.
> 4. Petitioner states that on September 17, 2003, he was released on parole from the Grafton Correctional Institution where he was being held under prisoner number 222-250.

5. Petitioner states that he is currently incarcerated and being held at the Grafton Correctional Institution under prisoner number 504-029.

6. Petitioner states that he had been released on parole and was being supervised by the Ohio Adult Parole Authority.

7. Petitioner states that on October 18, 2005 he was indicted in a six count indictment along with a co-defendant, Earl Adkins by the Grand Jury of Cuyahoga County, charged with one count of attempted murder with one (1) and three (3) year firearm specification, two counts of aggravated robbery with one (1) and three (3) year firearm specification, two counts of felonious assault with one (1) and three (3) year firearm specification. A sixth count of the indictment only charged co-defendant, Earl Adkins with having a weapon while under disability.

8. Petitioner states that on October 19, 2005 he was held in the Cuyahoga County jail and was eleven (11) days short of completing his period of parole under institution number 222-250 when he was arrested and charged in the Cuyahoga County indictment, Case No. CR 471599.

9. Petitioner states that on November 3, 2005 petitioner had a parole revocation hearing in the Cuyahoga County jail and was found guilty of four (4) violations of his parole; that this was prior to any proceedings being commenced in the Common Pleas Court of Cuyahoga County with respect to the indictment referenced above.

10. Petitioner states that the alleged parole violations were being in possession of a firearm, not notifying his parole officer of his arrest within twenty-four (24) hours, having contact and/or association with victim Jesus Morales and Earl Adkins.

11. Petitioner states that as a result of the parole revocation hearing he was informed he was to receive a nine (9) month sentence for the four (4) violations found as a result of the imposition.

12. Petitioner states that thereafter on March 23, 2006, a trial commenced in the Court of Common Pleas of Cuyahoga County. At this trial petitioner was found guilty of counts 2 and 3 of the indictment and was found guilty of counts 1, 4, and 5 of the indictment.

13. Petitioner states on April 26, 2006 he was sentenced to a term of imprisonment of thirteen (13) years along with five (5) years of post-release control.

14. Petitioner states that he thereafter filed a timely appeal to the Court of Appeals for Cuyahoga County; that on April 12, 2007 the Court of Appeals for Cuyahoga County reversed the trial court's decision and remanded the case for a new trial. ***State v. Jones***, Case No. 88203 (See attached journal entry).

15. Petitioner states that on August 6, 2007 a new trial was commenced. An August 17, 2007 petitioner was found not guilty of all the charges and the court ordered petitioner to be released in Case No. CR 471599. (See attached Journal Entry).

16. Petitioner states that on August 15, 2007 he was returned the Grafton Correctional Institution under prisoner number 504-029 even though he had no conviction for any criminal offenses which gave rise to that prisoner number.

17. Petitioner states that on November 6, 2007, petitioner had a parole hearing with Hearing Officer Kathleen Kovach at which time the Hearing Officer, Kathleen Kovach, again found petitioner guilty of possession of a firearm.

18. Petitioner states that as a result of the decision by Kathleen Kovach his next parole hearing was continued to February 2010.

19. Petitioner states that at this time he had already served the nine (9) month sentence imposed for the parole violation of possession of a firearm or related offenses for which he was found guilty prior to his first trial.

20. Petitioner states that on August 28, 2007 a letter was sent to the Ohio Adult Parole Authority and its Chairman, Cynthia Mauser outlining the status of the case and the fact that petitioner had been found not guilty; that respondent, Ohio Adult Parole Authority failed to acknowledge or respond to the letter. (See attached exhibit)

21. Petitioner further states that on March 7, 2008 another letter was sent outlining the same information but it again, Respondent Ohio Adult Parole Authority has failed to respond or even acknowledge receipt of the letter. (See attached exhibit)

22. Petitioner states that he has been subjected to multiple punishments and being illegally and unconstitutionally held as he had served the nine (9) months given to him at his initial parole revocation hearing; that he was being twice punished for the same offense as having been found not guilty of all of the offenses charged in the criminal indictment Case No. CR 471599. (See attached Journal Entry).

In second count petitioner sought a writ of mandamus requiring respondents to issue an immediate order releasing him from prison since he had served the nine (9) months of incarceration previously ordered and imposed by the Adult Parole Authority as a result of his parole revocation hearing conducted on November 3, 2005. Attached to his petition were nine (9) exhibits:

Exhibit 1	Indictment of Shigali Jones
Exhibit 2	Judgment Entry Reversing and Remanding for New Trial by the Court of Appeals for Cuyahoga County
Exhibit 3	Journal Entry of Not Guilty and Discharging and Releasing Defendant
Exhibit 4	Notice of Parole Revocation Hearing,10-19-05
Exhibit 5	PVR/Kellogg Screening Notification
Exhibit 6	Parole Board Order, February 29, 2008
Exhibit 7	Letter to Adult Parole Authority, August 28, 2007
Exhibit 8	Letter to Adult Parole Authority, March 7, 2008
Exhibit 9	Parole Board Administrative Regulations

Respondents, through the office of the Ohio Attorney General, filed a motion to dismiss alleging that the petition was fatally flawed because Jones had failed to state a claim upon which relief could be granted. Respondents contended that the petition failed to contain copies of Jones's commitment papers as required by §2725.04(D) of the Ohio

Revised Code.

Respondents also contended that Jones's double jeopardy claim was not cognizable in a habeas corpus action or a mandamus action. Respondents further contended that Jones was not sentenced to a nine (9) month term for a parole violation and that Jones's maximum sentence had not expired.

Jones sought an enlargement of time to respond by filing a motion in the Court of Appeals. However, the Court of Appeals for Lorain County, without awaiting a response from Jones dismissed his petition ruling that petitioner Jones had not attached his original sentencing entry:

> Petitioner has attached numerous documents to his petition, but the judgment of conviction that resulted in his imprisonment in the first instance - and from which the parole violation stemmed - is conspicuously absent. Without this document, **"there is no showing o f how the commitment was procured and there is nothing before the court on which to make a determined judgment[.]"** *Blass* at 146. Petitioner failed to comply with R.C.2725.04(D). And the petition for habeas corpus in this case is **"fatally defective."** *Id.* (Journal Entry of Court of Appeals at p.2).

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW
PROPOSITION OF LAW NO. I
PETITIONER/RELATOR WAS DENIED DUE PROCESS OF LAW WHEN HIS PETITION WAS DISMISSED AS HE WAS NOT CONTESTING HIS ORIGINAL SENTENCE BUT WAS ONLY CONTESTING HIS CONTINUED CONFINEMENT ON THE PAROLE VIOLATION.

Jones was not contesting his original sentence imposed by the Court of Common Pleas of Cuyahoga County. Jones had been released on parole he was returned as a parole violator and sentenced as a parole violator. Thus the basis of his confinement was that his increased sentence was based on the parole violation and not his original sentence. Thus his original sentence was, in essence, irrelevant to a consideration of the action filed by petitioner.

Jones was not attempting to in any way attack his original sentence as he had been released on parole from the original sentence on September 13, 2003. Petitioner contended that his re-imprisonment as a parole violator violated his constitutional rights. Thus the relevant papers concerning his parole revocation were attached. These were the only papers needed for an adjudication of this claim.

The Court of Appeals acknowledged, in its journal entry, that in a habeas corpus petition, there must be attached with copies of the commitment papers which required petitioner to attach a copy of his sentencing entry from the trial court. That may be so but in this case petitioner was not contesting his original sentence imposed by the trial court. He was contesting his continued confinement based upon a parole violation which petitioner contended was unconstitutional and subjected him to double jeopardy. Thus, all relevant of those papers were attached to his petition. These would be all that would be necessary to review the merits of his claim. Thus the **"commitment papers"** were the parole revocation and subsequent imposition of a sentence after his parole revocation.

Respondents, instead of filing a return as required by §2725.15 of the Ohio Revised Code, filed a motion to dismiss. The motion to dismiss contained all matters outside of the pleadings.

The absence of any return filed by respondent would result in the allegation of the complaint to be deemed admitted as true.

Section 2725.15 of the Ohio Revised Code provides that the return **"shall be signed by the person who makes it, and shall be sworn to by him , unless he is a sworn public officer and makes the return in his official capacity."**

No such return was filed in this case. Consequently all of the allegations contained in the petition for a writ of habeas corpus and for a writ of mandamus had to be taken as true.

As declared by the Ohio Supreme Court, **"the admission by the defendant of the averments in plaintiff's petition dispensed with proof of these averments. ..."** See ***Burke v. Michigan Central R.R.***, 96 Ohio St.496, 504-05, 118 N.E. 111, 114 (1917). (quote)

Further, the Court of Appeals for Cuyahoga Count has likewise so concluded:

> We know it to be elementary the law of pleading that an admission in a pleading dispenses with proof and is equivalent to proof of fact. *Duffy v. Cleveland Coin Machine Exchange, Inc*, 77 Ohio L. Abs.27, 30, 138 N.E.2d 307, 310 (Ct.App.1956).

A motion for summary judgment may only be granted, pursuant to Rule 56 of the Ohio Rules of Civil Procedure, if the party moving for summary judgment demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. This has not been established by respondents.

The Court of Appeals exalted form over substance. In ***Watkins v. Collins***, 111 Ohio St.3d 425, 857 N.E.2d 78 (2006), a number of petitioners filed for writs of habeas corpus contending that they were entitled to released because they had not received adequate notice of post-release control and that their respective sentencing entries failed to incorporate adequate notice of post-release control into their sentencing entries. Even though these entries were not attached to the petition, this omission did not require a dismissal because the court could determine the merits of petitioners claims. Thus, the

court ruled:

> The habeas corpus petition here did not contain any copies of the Adult Parole Authority decisions that resulted in the petitioners' current confinement. Nor does the petition included any sworn statement verifying the allegations of the petition.
>
> In general, a habeas corpus petition that fails to comply withe commitment-paper and verification requirements of R.C.2725.04 is fatally defective and is subject to dismissal. ...
>
> Nevertheless, the petition here includes a stipulation of the parties agreeing to all the pertinent facts, including that **"[e]ach and every Petitioner is currently detained in an Ohio prison, serving a sanction imposed by Respondent for violating the terms of his/her postrelease control."** Therefore, because the stipulated facts as well as the sentencing entries included in the petition are sufficient for a complete understanding of the petitioners' habeas corpus claim, we refrain from invoking our general rules requiring dismissal and proceed to address the merits of the claim. 111 Ohio St.3d @ 430-31, 857 N .E.2d 78 @ 83-84.

The Court of Appeals in this case would have a full understanding of petitioner's claim. If the Court of Appeals believed that the original sentence entered was in any way relevant that entry was attached to the motion to dismiss. The relevant documents were those by the Adult Parole Authority which found petitioner to be a violator and ordered his continued confinement. Petitioner contended that this violated his statutory and constitutional rights and he was entitled to his release.

Petitioner was not seeking to attack his criminal conviction. He was attacking his being held after he was found not guilty by a jury for the same claims that supported his alleged parole violation. Petitioner was attacking the revocation of his parole and continued confinement and not the original conviction. He had been released on parole from his indefinite sentence. Thus, he need not provide the original sentencing entry in Case No. CR238869 because he is not being held on that original sentence but is being held on the basis of a claimed parole violation after he had been paroled.

The information submitted in connection with this case shows that petitioner had, in fact, been paroled. Petitioner is being held as an alleged parole violator for alleged violations for which he was found not guilty by a jury.

Petitioner attached the relevant commitment papers based on the actions of the parole board for which he is being detained as an alleged parole violator. These were the current commitment papers and not the original sentencing entry from Case No. CR238869. Petitioner received a nine (9) month term of imprisonment after he was determining to have violated his parole based upon the same evidence used at his trial for which he was subsequently acquitted and found not guilty.

Petitioner's parole revocation hearing was held at the Cuyahoga County jail on November 3, 2005. Petitioner obtained has a copy of the tape recorded hearing. Respondent should have the original recording and, if necessary, that hearing can be transcribed and submitted to the court. Thus, to claim there was no hearing was absolutely untrue. Petitioner's counsel had requested a copy of the parole revocation hearing held at the Cuyahoga County jail and received a tape recording of that hearing in which witnesses appeared. Petitioner was informed at the hearing that he would receive a nine (9) month sentence. This sentence was prior to his trial in the Common Pleas Court.

The more significant claim in this case was that petitioner, who was already sentenced as a parole violator had the underlying facts which supported his parole violation vitiated when he was found not guilty at his retrial. Although petitioner was originally found guilty and sentenced by the Common Pleas Court that conviction was reversed and remanded for a new trial. At petitioner's new trial petitioner was found not guilty. Thus there is no basis for continuing to hold petitioner.

The syllabus in ***Zanders v. Anderson***, 74 Ohio St.3d 269, 658 N.E.2d 300 (1996), states that **"A reversed criminal conviction may serve as the basis for probation revocation unless the probationer pleads and proves that reversal removes all factual support for the probation revocation."** The Supreme Court cited with approval a parole revocation case, ***Flenoy v. Ohio Adult Parole Authority***, 56 Ohio St.3d 131, 564 N.E.2d 1060 (1990), in support of its pronouncement. In ***Stahl v. Shoemaker***, 50 Ohio

St.2d 351, 264 N.E.2d 286 (1977), the court has recognized that habeas corpus was an appropriate remedy in similar circumstances.

Respondent further asserted that habeas corpus or mandamus were improper remedies in this situation. However, in similar circumstances, habeas corpus and mandamus has been utilized sed to rectify the continued incarceration of one whose conviction has been reversed. Thus, in ***In re Mallory***, 17 Ohio St.3d 34, 476 N.E.2d 1045 (1985), habeas corpus relief was granted to one who was held as a probation violator after his conviction had been reversed. In so ruling, the Supreme Court stated as follows:

> The trial court had a duty to terminate the unauthorized incarceration resulting from the reversal of the 1982 conviction. Appellee did make an appropriate motion to vacate the sentence, but the motion was not ruled upon, apparently because the trial court felt it lacked jurisdiction to do so. Such jurisdiction, however, was not lacking. In Van DeRyt v. Van DeRyt (1966), 6 Ohio St.2d 31, at 36, 215 N.E.2d 698 [35 O.O.2d 42], we explained: **"Although a court does not have inherent power at common law to make substantive amendments to its judgments after term *** [citations omitted], it does have inherent power to vacate after term a judgment which is void *ab initio* ***. A court has inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity. **"**
>
> We agree with the analysis of the court of appeals in the present case. It state:
>
> **" *** [W]e must find that a reasonable time for action by the trial court has now expired. His [appellee's] continued detention in jail denied him minimal due process protection. He has no adequate alternative remedy to law. He cannot appeal because seek a discretionary delayed appeal from the original probation violation order, because the record there would show a second conviction to support the revocation order.**
>
> **" *** Procedendo could cause the trial court to rule, so that an appealable order might result. However. We know of no authority which precludes habeas corpus where precedendo might lead to an order which thereafter permits an appeal."**
>
> Although the state argues that appellee's remedy is via direct attack on his detention, we cannot imagine what form that attack could take. Appellee has no apparent remedy at law.
>
> In Carafas v. LaVallee (1968), 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554, the United States Supreme Court, with respect to the writ of habeas corpus, at 238 commented: **"**** Its province, shaped to guarantee the most fundamental of all rights, is to provide an *effective and speedy* instrument by which judicial inquiry may be had into the legality of the detention of a person."** (Emphasis added.) Indeed if procedendo should

be required instead of habeas corpus, appellee would be compelled to bring two actions instead of one, resulting in an even longer period of unlawful confinement. Because procedendo is un extraordinary and not a legal remedy, it is not necessary that appellee jump through such procedural hoops to secure his release.

"* The very nature of the writ [of habeas corpus] demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected."** Harris v. Nelson (1969), 394 U.S. 286, 291, 89 S.Ct.1982, 22 L.Ed.2d 281. Therefore the judgment of the court of appeals is affirmed. 17 Ohio St.3d at 35-36, 476 N.E.2d at 1047-48.

Other cases have ruled that either habeas corpus or mandamus are proper remedies in these circumstances. ***State ex rel Smith v. Tate***, 77 Ohio App.3d 228, 601 N.E.2d 544 (1991); ***In re. Anderson***, 55 Ohio App.2d 199, 380 N.E.2d 368 (1978).

The further assertion by respondent that petitioner should have appealed the case was totally without merit. Petitioner had no right nor need to appeal his original conviction which was irrelevant to his present claim. Petitioner, who had served his sentence, had been released on parole. If he violated his parole supervision he had no remedy of an appeal. Thus the assertion that petitioner needed to appeal in Case No. CR238869 was totally without merit. There would be no appeal as petitioner was not contesting his original sentence. Petitioner was only contesting his continued incarceration as an alleged parole violator after he had been declared a parole violator and a sentence imposed by the parole board had been served. However, the underlying basis for the parole revocation no longer exited as petitioner was found not guilty of the offenses and the claims which were the basis of his parole revocation. In these circumstances petitioner had no adequate remedy by way of an appeal. Habeas corpus or mandamus were his only available remedies.

II.
MANDAMUS, IN ADDITION TO HABEAS CORPUS IS AN AVAILABLE REMEDY WHERE ONE CONTENDS THAT THE ACTION OF THE PAROLE AUTHORITY HAS VIOLATED EITHER STATUTORY OR CONSTITUTIONAL RIGHTS.

The Court of Appeals, in its decision, as an aside, ruled that mandamus was not appropriate because petitioner sought release from prison. The essence of the complaint

for writ of mandamus in this case was that petitioner wanted the Court of Appeals to order that the Adult Parole Authority vacate its ruling and decision to continue to confine petitioner. If that resulted in his release from prison then that would be a correct result

Mandamus has been recognized as an appropriate remedy where a specific action is sought where it is contended that the Adult Parole Authority has violated either statutory law or a constitutional right. In ***State ex rel. Leis v. Clark***, 53 Ohio St.2d 101, 372 N.E.2d 101 372 N.E.2d 810 (1978), the prosecuting attorney for Hamilton County and a judge of that court sought a writ of mandamus requiring the Adult Parole Authority to set aside a parole already awarded to a prisoner. Petitioners, in the ***Leis*** case, contended that the Adult Parole Authority had released a prisoner without giving the notice required by §2967.12 of the Ohio Revised Code. They sought relief by having the previously awarded parole be set aside and vacated because they were not given proper notice. This court granted a writ of mandamus ordering that the Parole Board comply with the statutory mandate of §2967.12 of the Ohio Revised Code.

Thus mandamus was an appropriate remedy where statutory rights have been violated by the Adult Parole Authority or constitutional rights have been violated.

As noted, petitioner's constitutional rights were violated as he had been sentenced as a parole violator and received nine (9) months. Therefore, after the alleged basis of the parole revocation was removed when petitioner was found not guilty of the underlying offenses for which the parole violation was premised. Respondents had no right to continue to confine petitioner. Therefore, he was entitled to an award of the writ of mandamus.

CONCLUSION

A review of the record in this case shows that the conclusion by the Court of Appeals that the original entry, which was not being attacked in any form was necessary to consider the habeas corpus petition or the mandamus petition was totally without merit.

Petitioner was contending that his parole revocation and his subsequent confinement as a parole violator was the subject of his claim. Those were the relevant documents concerning that were attached.

Further, the Court of Appeals deemed that the original sentence entry was necessary to consider the claims of that sentencing entry, which petitioner was not attacking, was attached to respondents' motion for summary judgment. Thus, the avoidance of the merits of these claims on specious grounds was improper. The judgment of the Court of Appeals must be reversed.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a copy of the within ***Merit Brief of Petitioner-Appellant*** has been sent to Richard Cordray, Ohio Attorney General, and Stephanie L. Watson, Principal Assistant Attorney General, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, on this 17th day of July, **2009**.

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Attorney for Petitioner-Appellant

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IN THE SUPREME COURT OF OHIO

CASE NO. 09-0958

STATE OF OHIO ex rel. SHIGALI JONES, Petitioner-Appellant vs. MARGARET BRADSHAW, et al. Respondents-Appellees	:	ON APPEAL FROM THE COURT OF APPEALS FOR LORAIN COUNTY, NINTH APPELLATE DISTRICT COURT OF APPEALS CASE NO: 09CA009545

NOTICE OF APPEAL OF PETITIONER-APPELLANT

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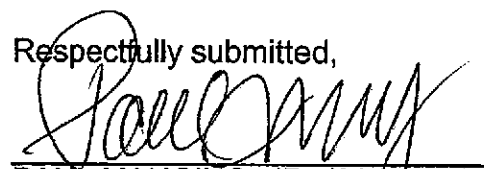
APPENDIX
A

13

NOTICE OF APPEAL OF PETITIONER-APPELLANT

Appellant, Shigali Jones, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment and final entered by the Court of Appeals for Lorain County on April 20, 2009. This case originated in the Court of Appeals and this is an appeal as of right to the Ohio Supreme Court pursuant to Article V, Section 2(B)(2)(a)(I) of the Ohio Constitution.

Respectfully submitted,



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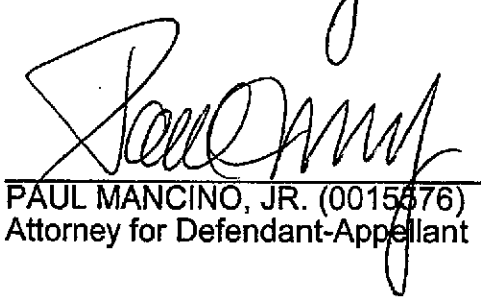
PROOF OF SERVICE

I hereby certify that a copy of the within ***Notice of Appeal*** has been sent to Richard Cordray, Ohio Attorney General and Stephanie L. Watson, Assistant Attorney General, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, on this 23rd day of May, 2009.



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14

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COURT OF APPEALS
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LORAIN COUNTY
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CLERK OF COMMON PLEAS
RON NABAKOWSKI
9th APPELLATE DISTRICT

STATE OF OHIO ex rel. SHIGALI JONES

Petitioner

v.

MARGARET BRADSHAW, WARDEN, et al.

Respondents

C.A. No. 09CA009545

JOURNAL ENTRY

Petitioner, Shigali Jones, sought writs of habeas corpus and mandamus to order his release from prison. Respondent, Margaret Bradshaw, is warden of the Grafton Correctional Institution. Respondent moved for summary judgment arguing, in part, that Petitioner failed to attached all necessary commitment papers to his petition.

A petition for habeas corpus must be accompanied by copies of all relevant commitment papers. R.C. 2725.04(D); *Day v. Wilson*, 116 Ohio St.3d 566, 2008-Ohio-82, at ¶4. This ordinarily requires a petitioner to attach copies of all sentencing entries from the trial court that resulted in the confinement. See *Tisdale v. Eberlin*, 114 Ohio St.3d 201, 2007-Ohio-3833, at ¶6; *Hairston v. Seidner* (2000), 88 Ohio St.3d 57, 58. "These commitment papers are necessary for a complete understanding of the petition. Without them, the petition is fatally defective. When a petition is presented to a court that does not comply with R.C. 2725.04(D), there is no showing of how the commitment was procured and there is nothing before the court on which to make a determined judgment except, of course, the bare allegations of petitioner's application." *Bloss v. Rogers* (1992), 65 Ohio St.3d 145, 146.

The petition in this case states that "on September 17, 2003, [Petitioner] was released on parole from the Grafton Correctional Institution where he was being held under prisoner number 222-250." The petition recounts that Petitioner was subsequently found in violation of the terms of his parole and taken into custody; that he was convicted and sentenced to prison in another case, but that his conviction was reversed on appeal and remanded; and that the second trial in that case resulted in an acquittal. Petitioner has attached numerous documents to his petition, but the judgment of conviction that resulted in his imprisonment in the first instance – and from which the parole violation stemmed – is conspicuously absent. Without this document, "there is no showing of how the commitment was procured and there is nothing before the court on which to make a determined judgment[.]" *Bloss* at 146. Petitioner failed to comply with R.C. 2725.04(D), and the petition for habeas corpus in this case is "fatally defective." Id.

The petition in this case is also captioned as a petition for writ of mandamus. The relief that Petitioner seeks is release from prison, and mandamus is not the appropriate remedy. *State ex rel. Nelson v. Griffith*, 103 Ohio St.3d 167, 2004-Ohio-4754, at ¶5.

Because Petitioner failed to comply with R.C. 2725.04(D) by attaching all relevant orders of commitment to his petition and because mandamus is not the appropriate remedy to seek release from prison, this Court dismisses the petition for habeas corpus and for mandamus. Costs to Petitioner.

The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal.

Judge

Concur:
Carr, J.
Whitmore, J.

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