

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE ex rel AKO THOMAS,	:	NO. 2010-0789
	:	
Petitioner,	:	On Appeal from the Hamilton County
	:	Court of Appeals, First Appellate
vs.	:	District
	:	
DAVID P. DAVIS, JUDGE,	:	Court of Appeals
	:	Case Number
Respondent.	:	

MOTION TO DISMISS

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PRO SE PETITIONER

FILED
MAY 13 2010
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
MAY 13 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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Petitioner,	:	
vs.	:	<u>MOTION TO DISMISS</u>
DAVID P. DAVIS, JUDGE,	:	
Respondent.	:	

Ako Thomas has petitioned this Court for a writ of prohibition to prevent him from being placed on post-release control. This matter should be dismissed for five reasons.

First, David P. Davis, the named Respondent, is no longer a sitting Common Pleas Judge. He retired after he became too old to run for re-election. He has since been replaced by Judge Patrick DeWine. Because he has filed his action against a sitting judge, it should be dismissed.

Second, if this action had any merit whatsoever it is not properly filed against a sitting judge and instead should be filed against the Department of Rehabilitation and Correction. Because it has been brought against the wrong party, it should be dismissed.

Third, even if the trial court were the correct party to take this action against, the trial court substantially complied with post-release control notification in this matter.¹ Thomas was told during his plca hearing that he would be on five years of mandatory post-release control. During his sentencing hearing, while he was not retold that it would be five years, he was told that he would be placed on post-release control when he was released from prison. Finally, Thomas' sentencing entry

¹*Watkins v. Collins*, 111 Ohio St. 3d 426, 2006-Ohio-5082, 857 N.E.2d 78.

sentenced him to five years of mandatory post-release control. Because the trial court substantially complied with post-release control notification his petition should be dismissed.

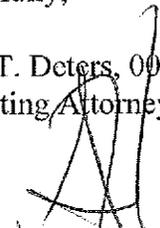
Fourth, even if there had not been substantial compliance, the trial court would be authorized to correct any error in notifying Thomas about post-release control under R.C. 2929.191.

Finally, if any of the issues Thomas has raised held any merit they could be addressed through motions before the trial court (indeed, he has filed numerous motions alleging the things raised in his petition) and could seek further relief through the appellate process. Because there is no need for the extraordinary relief Thomas seeks, his petition should be dismissed.

Thomas can pursue the relief he is seeking without resorting to this type of extraordinary action. Further, because this matter has been brought against the wrong party and because there is no merit to Thomas' argument that he was improperly sentenced to post-release control, it should be dismissed.

Respectfully,

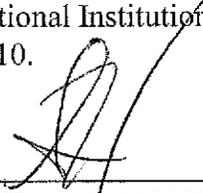
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CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Motion to Dismiss, by United States mail, addressed to Ako Thomas, 587-821, London Correctional Institution, P.O. Box 69, London, Ohio 43140, counsel of record, this 11th day of May, 2010.



Scott M. Heenan, 0075734P
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