

ORIGINAL

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION

10-1691

LOWER TRIAL COURT CASE NO: 09-520709

S.Ct. CASE NO:

PAUL S. HENDERSON

Petitioner-Relator

-VS-

HECTOR SANTIAGO WARDEN

Defendant-Respondent

---

PETITION FOR WRIT OF HABEAS CORPUS

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PAUL S. HENDERSON #573468  
N.C.C.T.F.  
2000 South Avon-Belden Rd.  
Grafton, Ohio 44044

HECTOR SANTIAGO Warden  
N.C.C.T.F.  
2000 South Avon-Belden Rd.  
Grafton, Ohio 44044

FILED  
SEP 28 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

PAUL S. HENDERSON

#573468 M.C.I.

P.O. BOX 57

Marion, Ohio 43301-0057

Petitioner - Relator

-VS-

MARGARET BEIGHTLER

M.C.I. Warden

P.O. Box 57

Marion, Ohio

43301-0057

Defendant - Respondent

ORIGINAL ACTION

Lower Case No: 09-520709

S. CT. Case No:

Petition For Writ  
OF HABEAS CORPUS

Motion to Change Address

Relator was At:

PAUL S. Henderson #573468

N.C.C.T.F

2000 S. Avon-Belden Rd.

Grafton, Ohio 44044

Relator now has moved to:

PAUL S. HENDERSON #573468

M.C.I.

P.O. BOX 57

Marion, Ohio 43301-0057

Please Forward all mail to this new  
Address above.

1. State ex rel. Henderson v. Saffold,  
126 Ohio St.3d 1509, 930 N.E.2d 329 (Table), 2010 -Ohio- 3331, Ohio,  
July 21, 2010 (NO. 2010-0929)

... (The decision of the Court is referenced in the North Eastern Reporter  
in a table captioned "Supreme Court.....

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2. Henderson v. Saffold,  
126 Ohio St.3d 1510, 930 N.E.2d 329 (Table), 2010 -Ohio- 3331, Ohio,  
July 21, 2010 (NO. 2010-1024)

... (The decision of the Court is referenced in the North Eastern Reporter  
in a table captioned "Supreme Court.....

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3. Henderson v. Saffold,  
Slip Copy, 2010 WL 2332989, 2010 -Ohio- 2609, Ohio App. 8 Dist.,  
June 08, 2010 (NO. 94769)

... CHECK OHIO SUPREME COURT RULES FOR REPORTING OF  
OPINIONS AND WEIGHT OF LEGAL AUTHORITY. This.....

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4. Henderson v. Saffold,  
Slip Copy, 2010 WL 569906, 2010 -Ohio- 536, Ohio App. 8 Dist.,  
February 17, 2010 (NO. 94581)

... CHECK OHIO SUPREME COURT RULES FOR REPORTING OF  
OPINIONS AND WEIGHT OF LEGAL AUTHORITY. This.....

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5. Henderson v. Houk,  
Slip Copy, 2010 WL 376778, 2010 -Ohio- 368, Ohio App. 8 Dist.,  
February 02, 2010 (NO. 94426)

...two original actions in this court prior to commencing this action:  
Cuyahoga App. No. 94254, 2009-Ohio-6475, supra; and Henderson v.  
Saffold, Cuyahoga App. No. 93349, 2009-Ohio-4028 The petition is not,  
however, supported with an R.C. 2969.25 (A) affidavit.....

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6. Henderson v. Saffold,  
Slip Copy, 2009 WL 2462352, 2009 -Ohio- 4028, Ohio App. 8 Dist.,  
August 12, 2009 (NO. 93449)

... CHECK OHIO SUPREME COURT RULES FOR REPORTING OF  
OPINIONS AND WEIGHT OF LEGAL AUTHORITY. This.....

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7. Henderson v. Saffold,

Slip Copy, 2010 WL 3069410, N.D.Ohio, August 02, 2010 (NO.  
1:10CV1190)

... Only the Westlaw citation is currently available. This decision was  
reviewed by West editorial staff and not assigned.....

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RECEIVED

SEP 28 2010

CLERK OF COURT  
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

PAUL S. HENDERSON #573468 )  
N.C.C.T.F ) ORIGINAL ACTION  
2000 S. Avon-Belden Rd. ) Lower Case No: 09-520709  
Grafton, Ohio 44044 ) S.Ct. Case No:  
Petitioner-Relator )  
-VS- ) PETITION FOR WRIT OF  
HECTOR SANTIAGO ) HABEAS CORPUS  
N.C.C.T.F )  
2000 S. Avon-Belden Rd. )  
Grafton, Ohio 44044 )  
Defendant-Respondent )

Now comes Petitioner Paul S. Henderson to move this Honorable Court by petition for a **WRIT OF HABEAS CORPUS** to release petitioner from unlawful restraint and imprisonment without legal Authority from N.C.C.T.F at 2000 South Avon-Belden Rd. Grafton, Ohio 44044.

This petition for writ of habeas corpus is base on O.R.C. 2725 and the fact that the charges for which he is confined, comes from a **COURT THAT LACKED JURISDICTION TO RENDER JUDGMENT ON THE CHARGES.**

Diligent reseach has revealed that the INDICTED CHARGE OF **TRAFFICKING R.C. 2925.03(A)**, to which petitioner plead guilty to on or about June 16, 2009 in Cuyahoga County Court of Common Pleas was **NOT SUBSTANTIATED BY A VALID COMPLAINT IN ORDER TO LAWFULLY TRANSFER THE CHARGE TO THAT COURT JURISDICTION IN ACCORDANCE OR AS MANDATED BY CRIMINAL RULE PROCEDURE.** The action against petitioner was commenced by criminal complaint and must follow

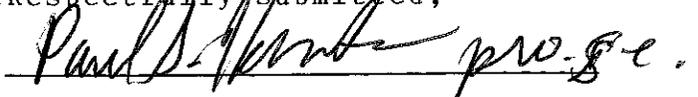
criminal rules, in accepting a guilty plea and rendering judgment for the charges without a valid complaint having been filed, the TRIAL COURT ASSUMED JURISDICTION THAT, could not be invoked and unsurped judicial power it did not possess. This violates Crim.R.(3), Crim.R.(5)(B), (5), (6), and (7)(B)(D) with Crim.R.(12)(C), also denied petitioner DUE PROCESS OF THE LAW, under the fourteenth(14) Amendment of the United States Constitution Article 1, section 10, of the Ohio Constitution.

The petitioner now states that the trial Court being Shirley S. Saffold cause a deficient performance that cause prejudice.

Prejudice is shown when there is a reasonable probability that, but for trial Court unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Reason in support of this WRIT OF HABEAS CORPUS are set forth in the attached, affidavit of details in particlarity, and memorandum and law.

Respectfully submitted,

 pro.se.

Petitioner Paul S. Henderson pro.se.

#573468 N.C.C.T.F

2000 South Avon-Belden Rd.

Grafton, Ohio 44044

AFFIDAVIT OF DETAILS IN PARTICULARITY

On or about June 16, 2009 Petitioner appeared in Cuyahoga County Court of Common Pleas to answer to (INVALID) DEFECTED INDICTMENT OF TRAFFICKING R.C. 2925.03(A) and an UNKNOWING UNINTELLIGENT GUILTY PLEA was entered for exchange for petitioner trucks and cell phone to be return back to him, and that he would be release on the same day on bond, Petitioner states this did not happen, he never to this day receive his trucks nor his cell phone back and that made the contract with the court none and void, as to this conviction to be void or voidable on Constitution Grounds for not doing what the Petitioner and the Trial Court agreed to do while in trial.

Also these was "(INVALID CHARGE WHICH WAS NOT SUBSTANIATED BY A VALID PROPERLY EXECUTED COMPLAINT CHARGING THE OFFENSES IN A COURT THAT LACKED JURISDICTION TO ACCEPT ANY PLEA ON OR HEAR, THE CHARGES)". Judgment was entered on the (INVALID) VOID OR VOIDABLE CONVICTION FOR THE CHARGES, without a properly executed complaint to substantiate it by a court that lacked the lawful jurisdiction to do so. Because the Prosecutor **OMISSION OF ALL THE TRUE FACTS AND EVIDENCE TO THE GRAND JURY DID PREJUDICIALLY MISLEAD THE PETITIONER.**

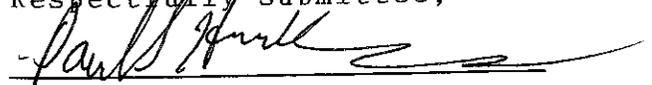
As stated in Crim.R.(7)(B), and right from the very first dayy this was a VOID OR VOIDABLE CONVICTION the prosecutor also cause a deficient and that deficient performance cause prejudice, when the prosecutor waited so long to go to the Grand Jury for an Indictment, as the WITNESS Being the Sheriff on the case has forgotten the facts of the case, as stated in case no: 09-530899 which was

use to show CONSTRUCTIVE INTENT, in the case at bar to case no: 09-530899, and PREJUDICE THE PETITIONER CASE AS STATED IN EVIDENCE RULE 404 (B), and the WITNESS OF THE SHERIFF'S DEPARTMENT COULD NOT REMEMBER TO WHAT HAPPEN IN THE PETITIONER CASE, and that is grounds to say that any defense for the petitioner would have been the first thing that the WITNESS WOULD HAVE CLAIM THEY FORGOT as they did in case No: 09-530899, THEY CLEARLY STATED THAT THEY DO NOT REMEMBER WHAT REALLY HAPPEN IN OPEN COURT AND THE JUDGE WOULD NOT LET THE DEFENSE ATTORNEY GO ANY FUTHER IN QUESTING THE WITNESS (SHERIFF'S).

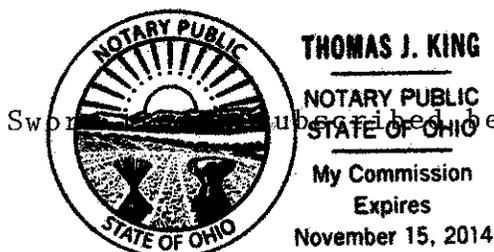
Because it is AXOMATIC that "( A COURT OF RECORD SPEAKS ONLY THOUGHT IT'S JOURNAL ENTRIES )", and each action by a court has to be Journalized and Docket by date and entry on its docket sheets all of the pertinent docket sheets for this case will substantiate all claims within this writ and the other case, case No: 09-530899 the docket sheet(s) will display by its entrys and proof of Jurisdictional defect, and this VOID OR VOIDABLE CONVICTION.

On Feburary 10, 2009 a complaint was filed, complaint No: 10147761, alleges (1) offense charge, of VIOLATION OF STATE DRUG LAW CHAPTER 2925, Bond was set at 50.000.00 dollans for the charges as they appears on the Indictment which is defected, as MANDATED BY Crim.R.(3), Crim,(R). (5)(B)(1), (5), (6), and (7)(B)(D),"(THERE WAS NO COMPLAINT FILED FOR THE CHARGES IN THE INDICTMENT. "(DUE TO INDUCEMENT)" Petitioner enter a guilty plea to "( AVOID DOING LIFE)".

Respectfully submitted,



Petitioner Paul S. Henderson pro.se.



Sworn and subscribed before me on this 7<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2010.

  
Notary Public

MEMORANDUM AND LAW

ACCORDING, IT IS WELL SETTLED LAW and a VOID OR VOIDABLE CONVICTION that if an INDICTMENT FAILS TO CHARGE, (CONDEMM HIS CONDUCT) to an offense by OMISSION OF ALL THE TRUE FACTS AND EVIDENCE TO THE GRAND JURY, AND DID PREJUDICIALLY MISLEAD THE ACTIONS OF THE PETITIONER.

As stated in Crim.R.(7)(B), and right from the very first day this was a VOID OR VOIDABLE CONVICTION as the Prosecutor cause a deficient and that deficient performance cause prejudice to the defense in case at bar, when the prosecutor waited so long to go to the Grand Jury for an Indictment, as the WITNESS Being the Sheriff's on this case has forgotten the facts of the case, as stated in Case No: 09-530899 which was the case use to show CONSTRUCTIVE INTENT, IN THE CASE AT BAR, to case No:09-530899, and PREJUDICE THE PETITIONER CASE AS STATED IN EVIDENCE RULE 404(B), and the WITNESS OF THE SHERIFF'S DEPARTMENT COULD NOT REMEMBER TO WHAT HAPPEN IN THE PETITIONER CASE AT BAR, and that was the GOUNDS for them to say that any defense for the petitioner would have been the first thing that the WITNESS WOULD HAVE CLAIM THEY FORGOT as they did in case No: 09-530899, THEY CLEARLY STATED THAT THEY DO NOT REMEMBER WHAT REALLY HAPPEN IN OPEN COURT AND THE JUDGE WOULD NOT LET THE DEFENSE ATTORNEY GO ANY FURTHER INQUESTING THE WITNESS AND IN FACT ONE SAID THE PETITIONER WENT INTO A TWO FAMILY HOUSE WHILE ANOTHER SAID THAT THE PETITIONER WENT INTO A FOUR SUITER APT. BUILDING.

AN IN FACT THEY WERE ALL WRONG THE PETITIONER WENT INTO AN

(12) SUITER APT. COMPLEX.

Petitioner states that this has prejudice the defense and this is what they went in front of the Grant Jury with, see: State vs. Glazer 111 Ohio App. 3d 769, 677 N.E. 2d 368.

**Crim.R.(7)(B)**, Clearly states that each count of the Indictment or Information shall state the numerical designation of the statute that the defendant is alleged to have violated. Error in the NUMERICAL DESIGNATION or omission of the numerical designation shall not be ground for dismissal of the indictment or Information, or for OR FOR REVERSAL OF A CONVICTION, IF THE ERROR OR OMISSION DID NOT PREJUDICIALLY MISLEAD THE DEFENDANT.

BLACK LAW STATES: Plain Error, An error that is so obvious and prejudicial that an appellate court should address it despite the parties' failure to raise a proper objection. A plain error is often said to be so obvious and substantial that failure to correct it would infringe a party's DUE\_PROCESS rights and damage the integrity of the Judicial process. See Fed.R. Evid. 103(d). Also termed fundamental error; error apparent of record. [Cases: Appeal and Error key 181; Criminal law key 1030. C.J.S. Appeal and Error Section 202,207; Criminal law section 1682.].

PETITIONER STATES THAT THE PROSECUTOR WILLIAM D. MASON MISLEAD THE GRAND JURY WITH THE OMISSION OF THE TRUE FACTS AND THE ACTIONS OF THE PETITIONER, WITH THE HELP OF THE SHERIFF'S, WHO ARRESTED THE PETITIONER, THE FACTS AND THE EVIDENCE OF THE CASE WAS NEVER GIVEN TO THE GRAND JURY, THE PROSECUTOR CIRCUMVENTED THE LAW, THE LAW STATES THAT NO WITNESS CAN BE MADE TO TESTIFY TO SOMETHING THEY DON'T R

(2)

REMEMBER. The Petitioner now would like Entertain this Honorable Court with the real facts of this case at bar; First we must look at how long it took for the prosecutor to go before the GRAND JURY for an INDICTMENT: Petitioner was ARRESTED on or about September 23, 2008 and was not INDICTED until March of 2009, this was done to let the Sheriff's Department forget about what really happen, and only remember the fact that the petitioner was driving the van with the (CRATE) Wooden Box, and when stop that's what was found in the van and when ask by a member of the Grand Jury this would be all he could remember, as he stated in open court, he did not remember all the facts of the case cause it had been so long when it happen, and he arrested Paul S. Henderson and found a wooden box in his van.

And mind the court NO ONE WENT BEFORE THE GRAND JURY, BUT THE PROSECUTOR AND THE SHERIFF'S, the Grand Jury never saw the C.I.F nor any evidence.

When one looks at the true facts and the evidence in this case and compare it to the INDICTMENT it becomes all to clear that the PETITIONER, COULD NOT HAVE COMMITTED THESE CHARGES, and the INDICTMENT WAS MISLEADING THE ACTIONS OF THE PETITIONER.

In fact the COMPLAINT was the first CHARGING INSTRUMENT and it clearly states: A SUCCESSFUL CONTROLLED DELIVERY WAS CONDUCTED AND PAUL S. HENDERSON WAS ARRESTED. There is nothing about Paul S. Henderson knowing or even proved that the petitioner knew what was in the (CRATE) WOOD BOX, and that the petitioner had possess of the

(3)

MARIJUANA and/or any OTHER CONTROLLED SUBSTANCES: "(THE SHERIFF'S DEPARTMENT CLEARLY STATED THAT THEY HAD CONTROLLED OVER THE WOODEN BOX (CRATE) AND NO WEAR IN THE RECORD OR FILES WEAR IT STATES THAT THE PETITIONER DID POSSESSED THE MARIJUANA)", as it states in the INDICTMENT, other words all the actions by the PETITIONER was not acts of committing a CRIME as it states in the charges in the indictment in which the petitioner plead guilty to.

This was a direct violation and an act of PROSECUTOR MISCONDUCT, VEXATIOUS, FRIVOLOUS, AND IN BAD FAITH, BY NOT GIVING THE GRAND JURY ALL THE TRUE FACTS AND EVIDENCE.

The petitioner would now like to entertain this Honorable Court with exhibits that was not used in case at bar; Exhibit (A) Search Warrant: Do not say anything about Paul S. Henderson, (B) Investigation Report: which do not state that Paul S. Henderson possessed any Marijuana and/or any other controlled substances. Exhibit (C) Sheriff's Anthony Quirion-Controlled follow quirion doc. only stating that petitioner was arrested as the driver of the van. Exhibit (D); only stating how many people was involved in this CONTROL DELIVER. Exhibit(E) which is the Incident Report which states the same things. Exhibit(F); Booking History Clearly states that the petitioner was released DUE TO INSUFF. EVIDENCE. Exhibit (G) C.I.F. SAYS THE SAME THING. Exhibit(H) the INDICTMENT; clearly states all the things that the petitioner did not do and what the prosecutor present to the GRAND JURY, (LEFT OUT THE TRUE), (BAD FAITH),

**THE RECORD AND THE FILES WILL SHOW THESE FACTS.**

The state warrants Dismissal of the INDICTMENT AND CONVICTION  
State ex.rel, davis vs. fuerst, Cuy. App. No:90553, (2005) Ohio 584-4  
"(FAILURE OF THE STATE TO FILE A COMPLAINT FOR THE CHARGES IN THE  
INDICTMENT)", Petitioner charges has a structural error that cannot,  
be cured by the Court at any stage.

As stated in State vs. Childs (2000), 88 Ohio St. 3d 194:.

**IF ONE OF THE VITAL AND MATERIAL ELEMENTS IDENTIFYING AND  
CHARACTERIZING THE CRIME HAS BEEN OMITTED FROM THE INDICTMENT SUCH  
DEFECTIVE IS INSUFFICIENT TO CHARGED AN OFFENSE, AS STATED IN CRim.R.7(B)**

Petitioner did not plea to what was in the INDICTMENT, in fact  
the petitioner made a deal with the trial Court in order to plea  
guilty, it was that the petitioner trucks and cell phone was to be  
release and the petitioner was also to be released on that same day  
on bond, and this cannot be cured by the Trial Court.

The finding in COCHRAN ON APPEAL, he asserted that count (4) of  
his INDICTMENT was faulty because it failed to allege that he  
committed any substantial overt act in furtherance of the conspiracy  
thought the State argued that he waived this objection by not raising  
it at the trial Court, the Court of Appeals found that count (4) of  
his INDICTMENT that he appealed, in which the Appellate Court  
(REVERSED AND VACATED), State vs. Cochran (Dec. 29, 1995) 2nd. Dist.  
No: 94CA 80 unreported. A LACK OF SUBJECT MATTER JURISDICTION FOR  
FAILURE TO CHARGE AN OFFENSE.

As to Petitioner case at bar; It was this same issue that the Appellate Court (REVERSED AND VACATED.

To address the aforementioned error, petitioner relies on Ohio Supreme Court case law and the DOCTRINE OF STARE DECISIS WHICH STATES; (TO STAND BY THINGS DECIDED), The doctrine of precedent, under which is necessary, for a court to follow earlier decisions when the same points arise again in litigation, to stand by things decided, and not disturb settled points. The Supreme Court held that whatever is prescribed by the Constitution and our laws of that state to be DONE IN PROSECUTIONS FOR CRIMES IS ESSENTIAL TO THE JURISDICTION AND POWER OF THE COURT TO CONVICT, AND NEITHER CAN BE OMITTED OR WAIVED. Goodin vs. State 16 Ohio St. 344.

The material and essential facts constituting an offense are found by the presentment of the Grand Jury and if one of the vital and material elements IDENTIFYING and CHARACTERIZING the crime has been omitted from the INDICTMENT, and is insufficient to charge an offense, and cannot be cured by the court,\*\*\*\*IN THE COURTS OPINION JUSTICE COOK STATES: THE MAJORITY APPARENTLY AGREES THAT THE INDICTMENT FAILED TO CHARGE AN OFFENSE AND COULD BE CHALLENGE AT ANYTIME, State vs. Childs, Supar, see; also Harms vs. State (1932), 125 Ohio St. 257, 264, under State vs. O'Brien (1987), 39 Ohio St., 3d 122. An Indictment charging an offense solely in the statutory and Language is INSUFFICIENT WHEN A SPECIFIC INTENT ELEMENT HAS BEEN OMITTED JUDICIALLY AND INTERPRETED FOR THAT OFFENSE and has that omission did prejudicially mislead the Actions of the Defendant.

Therefore to justify conviction, the, Grand Jury and not the PROSECUTOR, even with the approval of the Court, must charge Defendant with the essential elements of the crime. State vs. Woznial (1960), 172 Ohio St. 517. Accordingly the guilty plea must confess some punishable offense to form the basis of a sentence, the effect of guilty plea is a record admission of whatever is well alleged in the Indictment. If the latter is Insufficient the plea confesses nothing. Pratt vs. Hurley 102 Ohio St. 3d 81, (2004) Ohio 1980.

The Petitioner did not Admit to any Thing or Crime, this rule laid down by our Supreme Court and is well settled law, there can be no conviction, or punishment for a crime without a formal and sufficient accusation. IN THE ABSENCE THERE OF THE COURT ACQUIRES NO JURISDICTION WHAT SO EVER, AND IF IT ASSUMES JURISDICTION A TRIAL AND CONVICTION ARE NULLITY, State vs. Atwood (1990) 61 Ohio App. 3d 650, 654. The want of sufficient affidavit, complaint, Information or Indictment goes to the jurisdiction of the court\*\*\*\* and renders all proceedings prior to filing of a proper instrument void (ab-initio). If a Court acts without Jurisdiction, then any (PROCLAMATION) by that Court is VOID. Dowell vs. Maxwell, (1983), 174 Ohio St. 289; Pattion vs. Diemer (1988) 35 OHio St. 3d 68. also in Click vs. Parrish 89 Ohio App. 318, 98 N.E. 2d 333, 60 Ohio law Abs. 169, 460.0 38. False Imprisonment rules of LAW. Brinkman vs. Drolesbaugh 97 Ohio St. 171, 119 N.E. 451, L.R.A. 1 1918 F. 1132

The Petitioner, therefore not ever charged with an offense cognizable under the laws of the State of Ohio, the Court had no jurisdiction of subject matter. State vs. Presler (1960), 112 Ohio App. 437. Moreover, when a want of jurisdiction is suggested by the court's examination of the case, or otherwise, the Court has a duty to consider it, for the Court is powerless to act without jurisdiction, Pal vs. Abs. Industries (1983), Ohio App. 11 Dist. 11 Ohio App. 3d 156, the parties may not by Stipulation or agreement confer subject matter jurisdiction is otherwise lacking. Fox vs. Eaton Comp. (1979), 48 Ohio St, 2d. 236, 238. The fact that petitioner enter a plea to such indictment as originally drawn does not bestow Jurisdiction on the Trial Court. Presler supra. In general, a void judgment is one that has been imposed by a Court that lacked subject matter jurisdiction over the case or the authority to act. State vs. Payne 114 Ohio St. 3d 502. Case law clearly supports the facts that subject matter jurisdiction, IN CASE AT BAR; was never lawfully acquired by invoked unto or conferred upon the trial court to act.

As stated in Re.Netotea, 11th Dist. No:(2004) to 120: Ohio 1445 at 1113; We first point out that State waiver argument is inaccurate regardless of parties failure to object, the issue of subject matter jurisdiction cannot be waived and may be raised at any stage of the proceeding, Citing: State ex. rel, White vs. Cuyahoga Metro Hous. Auth, 79 Ohio St. 3d 543, 544. (1997) Ohio 366.

The issue of subject matter jurisdiction cannot be waived and can be raised at anytime. Davis vs. Wolfe (2001), 92 Ohio St. 3d 549; State ex.rel. Bond vs. Velotta Co. (2001), 91 Ohio St. 3d 418, 419;

Stateex. rel. Wilson Simmons vs. Lake county. Sheriff's Dept. (1998)  
Ohio St. 3d 37, 40. Furthermore, because subject matter jurisdiction goes to the power of the court to adudicate the merits of a case, it can never be waived and may be challenged at anytime.

United States vs. Cotton (2002), 122 S.Ct. 1781. [S]ubject matter jurisdiction may not be waived or bestowed upon a court by the parties to the case. Moreover where a court lacks jurisdiction of subject, it is powerless to act and its proceeding in the matter are void, in re. Appeal of Peterson, (Ohio App. 11th Dist). (2004) Ohio 2308, (2004) W11043461. Clearly the Court, in this matter has abused its discretion in its finding that petitioner waived any objection to the aforementioned issues as stated in; Blakemore vs. Blakemore (1983), 5 Ohio St. 2d 217, 219: An abuse of Discretion connotes more than a mere error of law or judgment, rather it implies that the courts attitude was unreasonable, arbitrary and unreasonable in its finding that petitioner waived any obection to the settled law that jurisdiction of subject matter must be invoked by valid indictment the lack there of can never be waived and that a challenge to that judgment can be raised at anytime.

The court in State vs. Stevens, (1986) W.L. 7552. Parallets Appellant's where it found that; the trial court always has inherent power to vacate its own void judgments. \*\*\*\* The trial court here recognized its continuing authority by not accepting and ruling on

on petitioner motions and writ of habeas corpus. It erred in failing to grant motions and writ of habeas corpus and dismiss the indictment as void. The trial court erred and abused its discretion by denying petitioner aforementioned motions and writ of habeas corpus rendered by that court when it clearly had the inherent power to do so, the authority to do so, the jurisdiction to do so, and the obligation to do so, once the court was made aware of the fact(s) that: at all times, the court lacked jurisdiction of subject matter for the drug offense upon which judgment was rendered as the structurally defective indictment failed to charge an offense and invoke jurisdiction by omission of the requisite intent element, and that the underlying judgment therefore is VOID (ab-intio). Now refuting the courts denial and abuse of discretion, petitioner relies on both Ohio Supreme Court and [11th District Appellate Court] decisions, and the doctrine of stare decisis, whenever it appears by suggestion of the parties or otherwise that the court shall dismiss the action (EMPHASIS ADDED) Pal vs. abs Industries (1983), 11 Ohio App. 3d 156, Ohio App. 11th Dist.

In a successful challenge to a VOID SENTENCE, or to the absence of subject matter jurisdiction, a court lacks the authority to do anything but announce its lack of Jurisdiction and Dismiss, see: Paul S. Henderson vs. Mare Houk, Warden Lor.C.I. Eighth App. Dist. No: 94254 December 7, 2009. Also see: Day vs. McDonough; 547 U.S. 198, 212 (2006) (Scalia, J. Dissenting) (" The Civil Rules 'govern the procedure").

CONCLUSION

In light of the about and the Exhibits to be seen Petitioner Paul S. Henderson, states that (1) THE PROSECUTOR PERFORMANCE WAS DEFICIENT AND THAT THE, DEFICIENT PERFORMANCE CAUSED PREJUDICE.

Prejudice was shown when the prosecutor cause a delay in going before the Grand Jury for an INDICTMENT, but for prosecutor UNPROFESSIONAL ERRORS, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. see: State vs. Glazer 111 Ohio App. 3d 769, 677 N.E. 2d 368. As was done in case at bar; the witness at trial did not REMEMBER what really happen when they were in trial "(one said that the petitioner went into a two family house)" and another said that petitioner went into a four suiter apartment building and all their testimony were in conflict with each others testimony see: TRANSCRIPT, of case No: 09-530899.

"(NO ONE SEEMS TO REMEMBER WHAT REALLY HAPPEN IN THIS CASE AT BAR.)"

Preindictment delays can affect due process rights in areas where speedy trial guarantees do not safeguard the accused. U.S.C.A. Const. Amends. 6, 14; Const. Art. 1, section 16. Petitioner did not waived his rights to a speedy trial cause he raise this issue before the trial court.

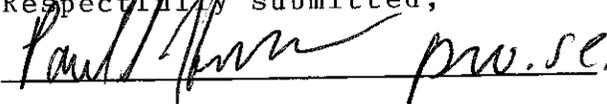
When a claim in Writ of Habeas Corpus is sufficient on its face to raise an issue that the petitioner's conviction is VOID OR VOIDABLE on constitutional grounds, and the claim depends on factual allegations

that can be determined by examining the courts records and files, the WRIT states a substantive ground for relief. State vs. Milanovich (1975), 42 Ohio St. 2d 46.

Paul S. Henderson Petitioner respectfully submits that the judgment of this Court and the fact that the prosecutor cause delay in going to the grand Jury for an Indictment, and the Sheriff's Department just went out on a glorified fishing trip and arrested petitioner Paul S. Henderson for no reason at all. see: State vs. Anderson 100 Ohio App. 3d 688. 654 N.E. 2d 1034, State vs. Correa 108 Ohio App. 3d 362, 670 N.E. 2d 1035.

WHEREFORE: The Petitioner now prays for an alternative Writ of Habeas Corpus Directing Hector Santiago Warden of N.C.C.T.F at 2000 South Avon-Belden Rd. Grafton, Ohio 44044, to bring and product Paul S. Henderson before the Court for a hearing and Determination on his detention, and for an order of discharge from such Detention, and Restraint of his liberty.

Respectfully submitted,

 Paul S. Henderson pro. se.

Petitioner Paul S. Henderson  
pro. se. #573468 N.C.C.T.F  
2000 South Avon-Belden Rd.  
Grafton, Ohio 44044

CERTIFICATE OF SERVICE

I Paul S. Henderson certify that a true and accurate copy of the foregoing Petition for Writ of Habeas Corpus has been forwarded to the office of HECTOR SANTIAGO Warden at 2000 South Avon-Belden Rd. Grafton, Ohio 44044 via U.S. Mail on this 9 day of ~~August~~, 2010.

*September*

*Paul S. Henderson pro-se.*

Relator Paul S. Henderson pro

se. #573468 N.C.C.T.F

2000 South Avon-Belden Rd.

Grafton, Ohio 44044

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PAUL S. HENDERSON	)	CASE NO. 1:10CV1190
	)	
Plaintiff,	)	
	)	JUDGE DAN AARON POLSTER .
v.	)	
	)	
SHIRLEY SAFFOLD, et al.	)	<u>MEMORANDUM OF OPINION</u>
	)	<u>AND ORDER</u>
Defendants.	)	

Plaintiff *pro se* Paul S. Henderson filed this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983 against Judge Shirley Saffold, Cuyahoga County, Ohio Common Pleas Court Judge, William Mason, Cuyahoga County Prosecutor, and Attorney Thomas E. Shaunessy. Plaintiff pled guilty to Drug Trafficking, R.C. 2925.03A, and on August 17, 2009 was sentenced to three years community control. *State of Ohio v. Henderson*, Case No. CR-09-520709. A month later, he was found to have violated community control and was sentenced to a term of imprisonment of three years. After he filed the present action, he was found guilty by a jury of drug trafficking, R.C. 2925.03A, possession of drugs, R.C. 2925.11A and possession of criminal tools, R.C. 2923.24A. *State of Ohio v. Henderson*, Case No. CR-09- 530899. On June 8, 2010, he was sentenced to a term of imprisonment of 9 years. Also before the Court are Plaintiff's Motion to Amend Complaint (ECF 4) and Motion for Court Order requesting transcripts. (ECF 6).

A district court is expressly authorized to dismiss any civil action filed by a prisoner seeking relief from a governmental entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the

plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A; *Siller v. Dean*, 2000 WL 145167 \* 2 (6th Cir. Feb. 1, 2000); *see Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974) (citing numerous Supreme Court cases for the proposition that attenuated or unsubstantial claims divest the district court of jurisdiction); *In re Bendectin Litig.*, 857 F.2d 290, 300 (6th Cir. 1988) (recognizing that federal question jurisdiction is divested by unsubstantial claims).

Plaintiff alleges that the trial court lacked jurisdiction to accept a plea without a properly executed complaint. He was forced to plead guilty by his ineffective attorney. The Judge allegedly knew that the plea was improper but she allowed it because she knew he could not appeal. The court and grand jury transcripts will show that he is not guilty. Moreover, he asserts that he is being deprived of a speedy trial in his second case.

The present case is clearly an instance where a court decision would express an opinion as to the validity of Plaintiff's conviction, as any opinion by this Court on the issue he seeks to raise would necessarily implicate the validity of that conviction. Thus, absent an allegation that Plaintiff's conviction has been reversed, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus, there is no cause of action. *Heck v. Humphrey*, 512 U.S. 477 (1994); *Omosule v. Hurley*, 2009 WL 5167641 \* 2 (S.D. Ohio, Dec 21, 2009). In other words, a complaint seeking relief under 42 U.S.C. §1983 is not a permissible alternative to a petition for writ of habeas corpus if the Plaintiff essentially challenges the legality of his conviction. *Preiser v. Rodriguez*, 411 U.S. 475, 477 (1973); *Kuehne v. Foley*, 2009 WL 1045897 \* 2 (S.D. Ohio, Apr. 20, 2009). For this reason alone, Plaintiff's Complaint and Amended Complaint must be dismissed.

In addition, Judge Saffold is a Common Pleas Court Judge. It is well established that judges are immune from liability for actions taken within the scope of their official duties. *Pierson v. Ray*, 386 U.S. 547 (1967). This is true even if a judge acts erroneously, corruptly, or in excess of jurisdiction. *Stump v. Sparkman*, 435 U.S. 349 (1978). When the function complained of is truly a judicial act, judicial immunity applies. *Yarbrough v. Garrett*, 579 F.Supp.2d 856, 860 (E.D. Mich., 2008)(citing *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994)). There are no facts alleged reasonably suggesting Judge Saffold acted outside the scope of her official duties. Judge Saffold definitely acted within the scope of her official duties in presiding over Plaintiff's court cases.

Prosecutors are absolutely immune from liability under § 1983 for their conduct as long as that conduct is intimately associated with the judicial phase of the criminal process. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). "The analytical key to prosecutorial immunity ... is advocacy-whether the actions in question are those of an advocate." *Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir. 2006) (citations and internal quotation marks omitted). There is no indication in the Complaint that Prosecutors Mason acted outside of the scope of his responsibilities.

Plaintiff's attorney, Thomas E. Shaunessy is not responsible for the manner in which court proceedings are conducted. The claim that he has not been effective counsel is not a matter for this Court.

Accordingly, Plaintiff's Motion to Amend Complaint is granted. (ECF 4). His Motion for Court Order is denied. (ECF 6). This action is dismissed pursuant to 28 U.S.C. § 1915A. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this decision could not be

taken in good faith.

IT IS SO ORDERED.

*/s/Dan Aaron Polster 8/2/10*  
JUDGE DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE



59667977

# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

**FILED**

THE STATE OF OHIO  
Plaintiff

Case No: CR-09-520709-A

PAUL S HENDERSON  
Defendant

2009 SEP 30 P 1:00

Judge: SHIRLEY STRICKLAND SAFFOLD

WALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

INDICT: 2925.03 TRAFFICKING OFFENSES /FORS  
2925.11 DRUG POSSESSION /FORS  
2923.24 POSSESSING CRIMINAL TOOLS /FORS

## JOURNAL ENTRY

DEFENDANT IN COURT. DEFENDANT INDIGENT; ATTORNEY SAMUEL R. SMITH, II ASSIGNED AND PRESENT.  
COURT REPORTER PRESENT.

DEFENDANT, PAUL S HENDERSON, IN OPEN COURT REPRESENTED BY COUNSEL FOR HEARING ON ALLEGED  
VIOLATION OF COMMUNITY CONTROL SANCTIONS.

HEARING HAD.

COURT FINDS DEFENDANT, PAUL S HENDERSON, TO BE IN VIOLATION OF COMMUNITY CONTROL SANCTIONS.  
DEFENDANT'S COMMUNITY CONTROL SANCTION(S) IN THIS CASE ARE TERMINATED.

IT IS THEREFORE, ORDERED THAT SAID DEFENDANT, PAUL S HENDERSON, IS NOW SENTENCED TO THE LORAIN  
CORRECTIONAL INSTITUTION FOR A TERM OF 3 YEAR(S).

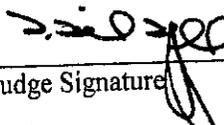
POST RELEASE CONTROL IS PART OF THIS PRISON SENTENCE FOR 3 YEARS FOR THE ABOVE FELONY(S) UNDER  
R.C.2967.28.

DEFENDANT IS TO PAY COURT COSTS.

DEFENDANT REMANDED.

SHERIFF ORDERED TO TRANSPORT DEFENDANT PAUL S HENDERSON, DOB: 02/17/1953, GENDER: MALE, RACE:  
BLACK.

09/29/2009  
CPEDB 09/29/2009 15:20:10

  
Judge Signature

9/30/09  
Date

PVS



HEAR  
09/29/2009

Sheriff Signature 