

ORIGINAL

IN THE SUPREME COURT OF OHIO

PAUL S. HENDERSON, #573-468, ) ORIGINAL ACTION  
 MARION CORRECTIONAL INSTITUTION )  
 P.O. BOX 57 ) Case No.: 09-520709  
 MARION, OHIO 43301-0057 )  
 Petitioner-Relator ) S.Ct. Case No.: ~~10-10916~~  
 vs. ) 10-1091

FILED  
 NOV 09 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

WARDEN MARGARET BIEHGTLER, )  
 MARION CORRECTIONAL INSTITUTION ) PETITION FOR WRIT OF  
 940 MARION-WILLIAMSPORT ROAD ) HABEAS CORPUS  
 MARION, OHIO 43301-0057 )  
 Defendant-Respondent )

MOTION FOR JUDGMENT BY DEFAULT

Now comes the petitioner, Paul S. Henderson, who states that the defendant, warden, Margaret Beightler, has not answered the action for Affirmative Relief and she has failed to plead, or otherwise defend, as provided by Civ.R. 55 (A), and now moves this Honorable Court for a Default Judgment Entry for the defendants who are in default. It is well settled law in Civ.R. 12 (A): When answering the defendants shall serve his/her answer within twenty eight (28) days after service of the summons and complaint upon him/her. Petitioner states he certified service to the defendants on/or about September 9, 2010. As of this date petitioner has not received an answer from the defendants.

JURISDICTION

(1) The Supreme Court of Ohio holds jurisdiction over the original action of the petitioner's claim of: the violation of his Federal Constitutional Rights under O.R.C. § 2725, the chapter on writ of habeas corpus, and Rules of Practice for the Supreme Court of Ohio.

(2) The Court has supplemental jurisdiction over the petitioner's state law writ of habeas corpus claims under O.R.C. § 2725. It is axiomatic that the writ of habeas corpus' existence affords some amount of protection that can not be eliminated without violation of the United States Constitution. See: *Boumediene vs. Bush*, supra, 128 S.Ct. at 2263; *Hamdi vs. Rumsfeld*, 542 U.S. 507 (2004), Rule 60 (b)(6), "Because of the following factors . . . all weigh strongly in favor of granting Rule 60 (b)(6) relief," Fed.R.Civ. 60 (b)(2), *Willis vs. Jones*, 2009 U.S. App. Lexis 10578, at 17-22 (6th Cir. May 15, 2009).

(3) The petitioner, Paul S. Henderson, also referred to as Relator-Complainant, in this instant complaint has been violated in regards to his rights guaranteed by the United States Constitution. His rights were also violated under the Criminal Rules of Procedure set by the State of Ohio when the rules were violated by prosecutor, William D. Mason, judge, Shirley S. Saffold, attorney, Thomas E. Shaughnessy, sheriff's detective, Anthony Quirino and all the defendants named in this Writ of Habeas Corpus.

(4) The petitioner states he never had a preliminary hearing on this case at bar, 09-520709, and that he did not waive his preliminary hearing right.

(5) There was no complaint filed, which made the indictment defective, because the complaint was not made, 'under oath,' *State vs. Green*, 48 Ohio App. 3d 121, 548 N.E. 2d 334, September 12, 1988.

Pursuant to Crim.R. 3, "A complaint must be made under oath

before any person authorized by law to administer oaths." For an excellent discussion of the proposition that the filing of a valid affidavit is a necessary prerequisite to a court's acquiring jurisdiction, See: South Euclid vs. Samartini, (M.C. 1965), 5 Ohio Misc. 38, 31 O.O. 2d 87, 204 N.E. 2d 425. Judgment was reversed and charges dismissed.

The indictment is also a charging instrument like a complaint, and it too has to be made under oath, same as the complaint. It is very clear this court erred if it allowed the indictment to stay after it was shown the trial court never acquired jurisdiction over petitioner on the unverified affidavit in the indictment.

The filing of a proper affidavit to the indictment is a necessary prerequisite to the acquiring of jurisdiction. See: 176 N.E. 2d at page 307.

(6) Sheriff's detective, Anthony Quirino, a Sheriff's Detective of Cuyahoga County, Ohio, is identified in this complaint as sheriff's detective processed this case. He maintains, out of his own mouth, that petitioner was not charged and he released him the next day for insufficient evidence.

(7) Prosecutor, James Moss, acting for prosecutor, William D. Mason, went before the grand jury with lies, and he withheld all evidence that would have freed the petitioner.

(8) Judge, Shirley S. Saffold, known as the judge for the Court of Common Pleas, Cuyahoga County accepted a guilty plea in exchange for petitioner's trucks, cell phone and money. She never gave the petitioner his property and violated

petitioner's constitutional rights under the due process clause of the United States Constitution. The prosecutor never did administer an oath to the indictment pursuant to the law under Crim.R. 3

(9) Attorney, Thomas E. Shaughnessy, known as the attorney for the petitioner in trial court, did nothing to protect the petitioner's U.S. Constitutional rights, which were his clear and his legal duty. He was paid by the State of Ohio for what amounts to: not doing his legal duty.

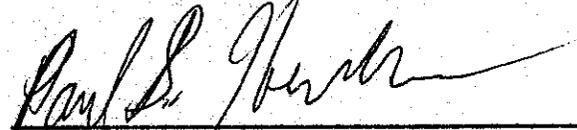
(10) The defendants in this instant writ and complaint are officers employed by Cuyahoga County Court of Common Pleas and the State of Ohio. All defendants failed to perform their duties under the Ohio Rules of Professional Conduct and the Code of Judicial Conduct. All the defendants failed to do their clear and legal duty for which the State of Ohio paid them.

(11) Petitioner has a statute of limitation of 1 year to file his complaint. Petitioner alleges the disability of imprisonment, which restricts toll statute of limitation following conviction under Ohio Statute, Austin vs. Brammer, 555 F.2d 142 (6th Cir.)(1990), Purdue vs. Handlemen, 6118 O.App. 2d 270 122 O.O. 3d 398 429 N.E. 2d 165 and O.R.C. § 2305.16 which provide: If a person is imprisoned at the time his cause of action accrues he may bring it within the respective time prescribed for that action after such disability is removed. The tolling provided therefore is not affected by petitioner's filing of other actions while under the same disability. Petitioner was imprisoned by Cuyahoga County Sheriff's Department

on September 23, 2009.

WHEREFORE, The petitioner now prays for an alternative writ of habeas corpus directing warden, Margaret Beightler, of M.C.I. located at 940 Marion-Williamsport Road, Marion, Ohio 43301-0057, to bring and produce petitioner, 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.

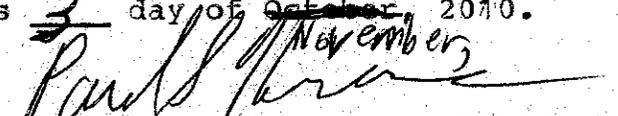
Respectfully submitted,



Paul S. Henderson, #573-463  
Marion Correctional Institution  
P.O. Box 57  
Marion, Ohio 43301-0057

#### 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 Margaret Beightler, Warden at Marion Correctional Institution, located at 940 Marion-Williamsport Road, Marion, Ohio 43301-0057 this 3 day of ~~October~~ <sup>November</sup>, 2010.



Paul S. Henderson