

ORIGINAL

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SUPREME COURT OF OHIO

The State of Ohio ex rel. )  
Philip George )  
 )  
Relator, )  
 )  
-vs- )  
 )  
The Honorable Mark A. Betleski )  
Judge of the Court of Common Pleas )  
Lorain County Ohio )  
302 Second Street )  
Elyria, Ohio 44036-0749 )  
 )  
Respondent. )

CASE NO. 10-1966

An Original Action in  
Procedendo

Verified Complaint for a  
Writ of Procedendo or for an  
Alternative Writ

Now comes Relator, Philip George, and for his Complaint seeking a Writ of  
Procedendo, does allege and state as follows:

1. Respondent Honorable Mark A. Betleski is, and at all time relevant hereto was, a Judge of the Court of Common Pleas for Lorain County, Ohio. He is sued here solely in his official capacity for purposes of obtaining a Writ of Mandamus or Procedendo.
2. Relator, Philip George, is and at all times relevant hereto was, a natural person and a citizen of the State of Ohio.
3. On September 11, 2002, the Relator was indicted by the grand jury in Lorain County, Ohio, Case No.: 02-CR-61237, and charged with Engaging in a Pattern of Corrupt activity, 2923.32; Conspiracy, 2923.01; Operating a Gambling House, 2915.03; Possession of Criminal Tools, 2923.24; Money Laundering, 1315.55 and Theft, 2913.02.

**GMPVL**  
Attorneys  
At Law  
  
DONALD J.  
MALARCIK  
Attorney at Law  
  
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4. The Relator was arraigned on October 2, 2002, and various Pretrial Motions were thereafter filed by him. Pretrial conferences were held on October 10, 2002.

5. Relator filed three (3) Motions to Dismiss including a Motion to Dismiss the Indictment for violation of the Sixth Amendment right to counsel on April 1, 2003.

6. Before a Hearing was concluded on these Motions, Relator filed additional Motions to Dismiss on July 30, 2003, August 13, 2003 and August 22, 2003.

7. The Matter was reset for further Hearing on Motions for September 17, 2003.

8. On October 29, 2003, Relator filed a Post Hearing Brief in support of his Motion to Dismiss the indictment on Sixth Amendment grounds.

9. On January 13 and 14, 2004, the State filed its Briefs in Opposition to Relator's various Motions to Dismiss.

10. On January 20, 2004, Relator filed a Reply to the State's Brief in Opposition.

11. On August 13, 2004, Relator filed another Motion to Dismiss the Indictment.

12. Despite holding hearings on all the Motions to Dismiss, despite receiving Post-Hearing Briefs and the State's Response to the same, Respondent has failed to rule on the Motions for over six years.

13. On July 16, 2010, Relator filed a Motion to Dismiss for denial of his speedy trial rights or in the alternative, a Motion to Grant previously filed Motions to Dismiss.

14. As of the date of the filing of this original action in Procedendo, Respondent has failed to rule on any of the outstanding Motions to Dismiss filed by Relator.



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15. The nature of the Motions filed in the underlying criminal case, the dates on which those Motions were filed, and the dates on which the State responded may be discerned from the docket sheet. A copy of which is attached to this complaint as Exhibit "1" to the Affidavit of Counsel, Donald J. Malarcik.

16. Prior to the return of the indictment in the underlying case, Relator's office and home were searched and personal property along with over \$60,000.00 in cash were seized. Accordingly, Relator has been deprived of the benefit and use of this property, without a Judicial determination of his rights, for over eight years.

17. The Relator, as the Defendant in the underlying criminal case at issue, waived his statutory right to a speedy trial on October 10, 2002, the day of this Arraignment. Such a waiver was never intended to operate and it is inconceivable that such a waiver should operate to permit the Common Pleas Court to delay ruling upon his motions for over six years.

18. By delaying rulings upon his Motions to Dismiss, and by delaying the trial for over eight years since indictment, Respondent has acted to deprive the Relator of his right to a speedy trial under Ohio Revised Code §2945.71, under Article I §10 of the Ohio Constitution and under the Sixth and Fourteenth Amendments to the United States Constitution.

19. On July 16, 2010, Relator filed his most recent Motion to Dismiss upon speedy trial grounds. This Motion is premised upon the inherent denial of his statutory and constitutional right as a result of the delay in Respondent failing to rule upon pending Motions or set this matter for a trial. The State has never responded to that Motion and is in default and



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Respondent has not ruled upon it.

20. The Relator has no adequate remedy at law to compel the relief which he seeks and to which he is entitled; to wit: prompt judicial determination of the Motions he has filed and/or a speedy trial on the charges against him. Indeed, Relator has already been denied, to his prejudice, a speedy trial on all the charges in the indictment.

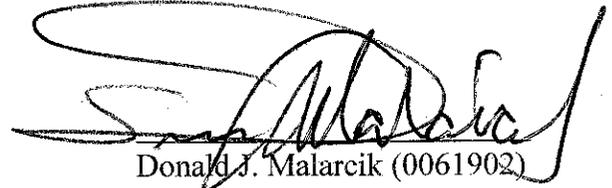
Wherefore, having fully stated the basis upon which he is entitled to extraordinary relief. The Relator prays that this Court will:

A. Issue a Writ of Procedendo ordering the Respondent to rule upon Relator's Motions and should he not grant those Motions to Dismiss, to schedule a Trial within a fixed and reasonable time; or

B. Issue an Alternative Writ granting Relator's Motion to Dismiss upon speedy trial grounds; or

C. Issue an Alternative Writ such as this Court in the sound exercise of its discretion, deems just.

Respectfully submitted,



Donald J. Malarcik (0061902)  
Attorney for Philip George  
54 E. Mill Street, Suite 400  
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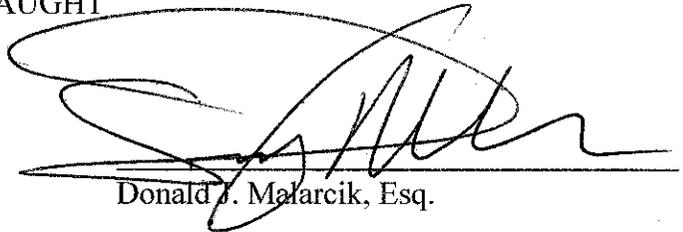
STATE OF OHIO )  
 ) SS:  
COUNTY OF SUMMIT )

**Affidavit of Donald J. Malarcik, Esq.**

**Now comes Attorney Donald J. Malarcik, having been duly cautioned and sworn,  
does depose and testify as follows:**

1. My name is Donald J. Malarcik. I am an adult, competent to testify under oath, and an Attorney licensed in and by the State of Ohio. The information set forth in the affidavit is based upon my personal knowledge and belief.
2. I am one of the Attorneys for the Defendant in a case captioned State of Ohio vs. Philip F. George, Jr., Lorain County Common Pleas Case Number 02 CR 061237, and in this capacity I am familiar with the procedural history of that case.
3. The representations contained in the foregoing complaint with respect to the dates on which certain Motions were filed in the above mentioned case, the dates on which responses to those motions were filed, and the present status of those motions still pending before the court are correct, to the best of my knowledge and belief.
4. I have reviewed the allegations set forth in the Complaint to which this affidavit is attached, and all are true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT



Donald J. Malarcik, Esq.

Sworn before me and subscribed in my presence this 10<sup>th</sup> day of Nov 2010.



Notary Public - State of Ohio  
My commission has no expiration date  
Notary Public - State of Ohio  
My Commission has no expiration date  
Sec. 147.03 R.C.



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Public Docket Information

**OHIO VS. GEORGE, JR.** Case Number: **02CR061237**

Case Details

Type Of Action: Criminal  
 Judge: Betleski, Judge Mark  
 Filed On: 9/11/2002

Parties

Name	Birth Date	Party	Address	Attorney(s)
STATE OF OHIO	N/A	P		
GEORGE, JR., PHILLP F	04/03/59	D	326 OAK CREST COPLEY, OHIO 44321	RICOTTA, JOHN J 1370 ONTARIO ST. SUITE 1810  Cleveland, OHIO 441130000  SINN, JOHN Attorney Jonathan T. Sinn 7 W. Bowery Street Suite 907 Akron, OHIO 44308  BURGE, JAMES M 600 BROADWAY, 1ST FL  LORAIN, OHIO 44052  MALARCIK, DONALD J. 54 E. MILL ST., STE 400  AKRON, OHIO 44308

## Filter Docket

 Show All INDICTMENT (TWJ) BOND WRIT SERVICE RETURN (MAB) ARRNMMENT. ENTRY FILING MOTION CONTINUED WARRANT REPORTER

Date	Type	Description
09/11/2002	INDICTMENT	INDICTMENT FILED. WARRANT TO ARREST W/COPY OF INDICTMENT ISSUED TO LORAIN COUNTY SHERIFF. INDICTMENT FOR ENGAGING IN A PATTERN OF CORRUPT ACTIVITY, 2923.32 F-1 (WITH FORFEITURE SPECIFICATION); CONSPIRACY, 2923.01 F-2; GAMBLING, 2915.02(A)(2) M-1; OPERATING A GAMBLING HOUSE, 2915.03(A)(1) M-1; POSSESSION OF CRIMINAL TOOLS, 2923.24 F-5 MONEY LAUNDERING, 1315.55(A)(1) F-3; MONEY LAUNDERING, 1315.55(A)(2) F-3; MONEY LAUNDERING, 1315.55(A)(3) F-3; THEFT, 2913.02(A)(3) F-5
09/13/2002	(TWJ)	ALL INDICTMENTS ISSUED ON 9/10/02 & 9/11/02 FOR WHICH PERSONAL RECOGNIZANCE BONDS HAVE ISSUED SHALL BE FILED AND THE CASES MADE PUBLIC. JNL. 893, PG. 2224
09/13/2002	BOND	BOND SET AT \$20,000 CASH. (TWJ) VOL. 893 PAGE 2400
09/13/2002	(TWJ)	BOND IS HEREBY AMENDED FROM \$20,000 CASH TO \$20,000 PERSONAL. CLERK TO NOTIFY SHERIFF. (1 CC TO SHERIFF) VOL. 893 PAGE 2399
09/13/2002	BOND	BOND POSTED: \$20,000 PERSONAL BOND POSTED BY PHILLIP GEORGE, JR.
09/13/2002	WRIT	WARRANT TO DISCHARGE ISSUED TO LORAIN COUNTY SHERIFF
09/19/2002	SERVICE	CERTIFICATE OF SERVICE FILED.
09/19/2002	RETURN	SHERIFF'S RETURN - I ARRESTED DEFENDANT ON SEPTEMBER 18, 2002, PHIL R. STAMMITTI, SHERIFF
09/19/2002	(MAB)	DEFENDANT NOT HAVING BEEN SERVED WITH THE INDICTMENT, ARRAIGNMENT CONTINUED. ARRAIGNMENT AND PRE-TRIAL SET FOR 10/2/02 AT 10:00 A.M. FAILURE TO APPEAR AT ARRAIGNMENT AND PRE-TRIAL MAY RESULT IN A CAPIAS BEING ISSUED. THIS CASE IS HEREBY ASSIGNED TO JUDGE BETLESKI. ATTORNEY JOHN SINN PRIVATELY RETAINED. VOLUME 894 PAGE 897
10/10/2002	ARRNMMENT.	DEFENDANT ARRAIGNED. WAIVED READING OF INDICTMENT, ENTERED PLEA OF NOT GUILTY. BOND CONTINUED. CASE ASSIGNED TO JUDGE BETLESKI. PRETRIAL SET FOR 10/2/02 AT 9:00 AM. (MAB) VOLUME # 895 PAGE # 1968

10/10/2002 ENTRY FIRST PRETRIAL HAD. DEFT DOES REQUEST DISCOVERY AND BILL OF PARTICULARS. PROSECUTOR TO PROVIDE DISCOVERY AND BILL OF PARTICULARS ON OR BEFORE: 1/25/03. DEFT TO PROVIDE PROSECUTOR WITH DISCOVERY ON OR BEFORE: 2/25/03. ALL MOTIONS SHALL BE FILED ON OR BEFORE: FINAL PRETRIAL IS SET FOR : 2/11/03 AT 10:00 AM. TRIAL IS SET FOR 3/10/03 AT 8:30 AM. DEFT WAIVES STATUTORY TIME PURSUANT TO R.C. 2945.71 ET SEQ. (MAB) VOLUME # 895 PAGE # 1969

10/24/2002 FILING REQUEST FOR DISCOVERY, BILL OF PARTICULARS, NOTICE OF SPECIFIC INTENTION TO USE EVIDENCE FILED BY DEFENDANT.

11/20/2002 MOTION MOTION FILED BY DEFENDANT TO COMPEL DISCOVERY.

11/27/2002 MOTION MOTION FOR BILL OF PARTICULARS FILED BY DEFT.

12/17/2002 (MAB) IN THE MATTER OF THE ABOVE MENTIONED CASE, PRETRIAL IS SET FOR WEDNESDAY, 12/18/02 AT 9:00 AM. VOL. 900 PAGE 346

12/23/2002 CONTINUED DEFENDANT WAIVES STATUTORY TIME LIMITS FOR SPEEDY TRIAL. AT DEFENDANT'S REQUEST THE PRE-TRIAL IS CONTINUED TO 1/29/03 AT 8:30 AM. MOTIONS DEADLINE EXTENDED 60 DAYS. (MAB) VOL. 900 PAGE 1764

02/05/2003 CONTINUED DEFENDANT WAIVES STATUTORY TIME LIMITS FOR SPEEDY TRIAL. AT DEFENDANT'S REQUEST THE PRE-TRIAL IS CONTINUED TO 2/26/03 AT 8:30 AM. (MAB) VOLUME # 903 PAGE # 704

03/25/2003 (MAB) DEF HAVING BEEN CONVICTED AND SENTENCED TO MULTIPLE FELONY OFFENSES IN JEFFERSON COUNTY, OHIO THIS COURT HEREBY REVOKES THE BOND IN THE MATTER ABOVE. VOLUME # 906 PAGE # 1945

04/01/2003 MOTION MOTION TO DISMISS COUNTS ONE, TWO, THREE, FOUR, SIX, SEVEN AND EIGHT OF THE INDICTMENT FILED BY DEFT.

04/01/2003 MOTION MOTION TO DISMISS THE INDICTMENT FOR VIOLATION OF 6TH AMENDMENT RIGHT TO COUNSEL FILED BY DEFT.

04/01/2003 MOTION MOTION TO DISMISS COUNT FIVE OF THE INDICTMENT FILED BY DEFT.

04/18/2003 (MAB) DEF HAVING FILED THREE MOTIONS TO DISMISS ON 4/1/03, STATE TO FILE ANY RESPONSIVE PLEADING(S) BY 5/9/03. VOLUME # 908 PAGE # 704

05/07/2003 (MAB) AT THE REQUEST OF DEFENSE COUNSEL AND IN AGREEMENT WITH THE PROSECUTOR'S OFFICE, PRE-TRIAL IS HEREBY CONTINUED TO 5/21/03 AT 2:30 P.M. VOL. 909 PAGE 1320

05/07/2003 (MAB) THE LORAIN COUNTY SHERIFF OR HIS DESIGNEE IS HEREBY ORDERED TO TRANSPORT DEFT, PHILLIP F. GEORGE, JR., INMATE #A446-081 FROM WARREN CORRECTIONAL TO LCCF ON OR ABOUT 5/20/03 FOR PRETRIAL SCHEDULED ON 5/21/03 AT 9:30 A.M. VOL. 909 PAGE 1321

05/07/2003 WARRANT WARRANT TO CONVEY TO LORAIN COUNTY CORRECTIONAL FACILITY.

05/21/2003 RETURN SHERIFF'S RETURN - I CONVEYED THE DEFENDANT TO PLACE DESIGNATED ON MAY 20, 2003 PHIL R. STAMMITTI, SHFF

05/22/2003 (MAB) MATTER RESET FOR PRE-TRIAL ON 7/16/03 AT 1:30 PM. MATTER HEARING ARE RESET FOR 7/16/03 AT 1:30 PM. INMATE # 446081 IS ORDERED TRANSPORTED TO THE PRETRIALS. VOLUME # 910 PAGE # 1164

06/18/2003 MOTION MOTION TO MODIFY BAIL FILED BY DEFT.

06/26/2003 (MAB) ATTY JAMES M. BURGE IS HEREBY ENTERED AS COUNSEL OF RECORD FOR DEF, REPLACING ATTY JOHN J. RICOTTA, WHO IS WITHDRAWN. VOLUME # 912 PAGE # 2150

06/30/2003 (MAB) THE LORAIN COUNTY SHERIFF OR HIS DESIGNEE IS HEREBY ORDERED TO TRANSPORT DEFT: PHILLIP F. GEORGE, JR., INMATE # A446-081 FROM WARREN CORRECTIONAL TO LCCF ON OR ABOUT 7/15/03 FOR PRETRIAL AND HEARINGS SCHEDULED ON 7/16/03 AT 1:30 P.M. VOL. 912 PAGE 2864

07/01/2003 WARRANT WARRANT TO CONVEY TO LORAIN COUNTY CORRECTIONAL FACILITY.

07/08/2003 (MAB) HEARING ON DEF'S MOTION TO MODIFY BAIL SET FOR 7/16/03 AT 1:30 PM. VOLUME # 913 PAGE # 1412

07/09/2003 RETURN SHERIFF'S RETURN - I CONVEYED THE DEFENDANT TO PLACE DESIGNATED ON JULY 8, 2003 PHIL R. STAMMITTI, SHFF

07/18/2003 (MAB) MATTER CAME ON FOR HEARING. HEARING CONT'D UNTIL MONDAY, 8/25/03 AT 2:00 PM. VOLUME # 914 PAGE # 451

07/30/2003 MOTION DEFT'S MOTION TO DISMISS COUNT ONE OF THE INDICTMENT FILED.

08/13/2003 MOTION DEFT'S MOTION TO DISMISS COUNT TWO OF THE INDICTMENT FILED.

08/22/2003 MOTION DEFT'S MOTION TO DISMISS COUNTS SIX, SEVEN AND EIGHT OF THE INDICTMENT FILED.

09/04/2003 (MAB) MATTER RESET FOR FURTHER HEARING ON DEFT'S MOTION TO DISMISS ON 9/17/03 AT 1:30 P.M. VOL. 917 PAGE 623

09/18/2003 REPORTER COURT REPORTER CERTIFICATION FILED

10/29/2003 FILING POST-HEARING BRIEF IN SUPPORT OF MOTION TO DISMISS ON SIXTH AMENDMENT GROUNDS FILED BY DEFT.

01/13/2004 FILING STATE'S BRIEF IN OPPOSITION TO DEFT'S MOTION TO DISMISS COUNT ONE FILED.

01/13/2004 FILING STATE'S BRIEF IN OPPOSITION TO DEFT'S MOTION TO DISMISS COUNT TWO FILED.

01/13/2004 FILING STATE'S RESPONSE TO DEFT'S MOTION TO DISMISS COUNT FIVE OF THE INDICTMENT FILED.

01/14/2004 FILING STATE'S BRIEF IN OPPOSITION TO DEFT'S MOTION TO DISMISS COUNTS SIX, SEVEN AND EIGHT FILED.

01/20/2004 FILING DEFT'S REPLY TO STATE'S RESPONSES TO MOTIONS TO DISMISS FILED BY DEFT.

03/17/2004 (MAB) DEFENDANT HAVING MOVED TO MODIFY BOND, AND DEFENDANT HAVING RECENTLY BEEN AWARDED BOND BY HAMILTON COUNTY COURT OF APPEALS, HEARING ON BOND TO BE HELD 3/19/04 AT 10:00 A.M. JOURNAL 930 PAGE 486

03/19/2004 (MAB) MOTION FOR BOND MODIFICATION/REINSTATEMENT HEARD. COURT GRANTS REQUEST TO MODIFY BOND TO \$10,000.00 CASH/SURETY AND \$10,000.00 PERSONAL BOND. STATE'S OBJECTION NOTED. VOLUME 930 PAGE 920

03/19/2004 BOND BOND POSTED: \$10,000 SURETY BOND POSTED BY ABC BAIL BONDING. \$10,000 PERSONAL BOND POSTED BY DEFT.

03/19/2004 WRIT WARRANT TO DISCHARGE ISSUED TO LORAIN COUNTY SHERIFF

08/13/2004 MOTION MOTION TO DISMISS (OHIO CRIM. R. 12) FILED BY THE DEFENDANT.

08/13/2004 MOTION MOTION TO REDUCE COUNT NINE OF THE INDICTMENT CRIM. R. 12 FILED BY THE DEFENDANT.

07/16/2010 MOTION DEFT'S MOTION TO DISMISS FOR DENIAL OF HIS SPEEDY TRIAL RIGHTS OR IN THE ALTERNATIVE TO GRANT PREVIOUSLY FILED MOTION TO DISMISS ON SIXTH AMENDMENT GROUNDS FILED

07/16/2010 FILING NOTICE OF APPEARANCE FILED BY ATTY DONALD J. MALARCIK

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