

IN THE SUPREME COURT OF OHIO

State ex rel., :
 Christopher R. Bruggeman, : Case No. 10-1808

 Relator, *pro se*, : (Original Action in Prohibition/Mandamus)
 v. :
 : **MEMORANDUM IN OPPOSITION**
 The Honorable Judges Willamowski, Rogers and : **MOTION TO DISMISS; INCLUDING,**
 Shaw of the Auglaize County, Ohio Court of : **MOTION TO STRIKE**
 Appeals, Third Appellate District, *et al.*, :
 Respondents.

NOW COMES THE RELATOR, Christopher R. Bruggeman, *pro se*, in the above-titled case and styled cause, pursuant to Rule 10.5(B) of the Supreme Court Rules of Practice, and, Rule 12(f) of the Ohio Rule of Civil Procedure.

Relator attaches forthwith, a *Memorandum in Support* of this cause of action.

Memorandum in Support

I. Respondents “patently and unambiguously” lacked subject-matter appellate jurisdiction concerning Appeal Case No. 2-94-1, due to a lack of a final appealable order.

This Court in *State v. Baker* (2008), 119 Ohio St. 3d 197, 893 N.E. 2d 163, made it very clear that in order for a conviction and sentence to be a “final appealable order,” such must comply with Ohio Crim. R. 32(C) and Ohio Rev. Code § 2505.02. Also, this Court made it clear in *State ex rel., Culgan v. Medina Cty. Court of Common Pleas* (2008), 119 Ohio St. 3d 535, 895 N.E. 2d 805 that, in order for a Court of Appeals to have subject-matter appellate jurisdiction of an appeal, there must be a final appealable order. See, also, *State v. Mitchell* (2010), 187 Ohio App. 3d 315, 931 N.E. 2d 1157, wherein that court held in pertinent part:

“Defendant did not waive and consent to appellate court's jurisdiction by appealing his original noncompliant sentencing entry in drug prosecution, and therefore defendant was not precluded due to collateral estoppel from rearguing the merits of his conviction on appeal from trial court's subsequent corrected judgment of conviction and resentencing; parties could not stipulate to appellate court's jurisdiction when it did not otherwise exist.” *Id.* 319

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II. Respondents assertions Relator's 1993 Journal Entry Order on Sentencing was a "final appealable order," is erroneous, scandalous and must be stricken.

Respondents assertions that the 1993 Sentencing Order, as affixed to the Petition at *Exhibit "A"* pp. 1a-2a, as being a final appealable order as a matter of law, is erroneous, scandalous and must be stricken, pursuant to Ohio Civ. R. 12(f). It's obvious such does "not" comply with Ohio Crim. R. 32(C). See, also, *Exhibit "B"* pp. 3a-4a, affixed to the Petition.

III. The availability or nonavailability of an appellate remedy is irrelevant to a lack of subject-matter appellate *jurisdictional* claim.

As presented previously in Relator's petition, where a lower court is without jurisdiction to act, availability or adequacy of appellate remedy is immaterial to issuance of writ of prohibition (or mandamus). See, *State ex rel., Stern v. Mascio* (1996), 75 Ohio St. 3d 422, 662 N.E. 2d 370.

IV. Conclusion.

WHEREFORE, based on the forgoing, Relator prays Respondents motion is denied and, his petition is granted for the relief requested therein.

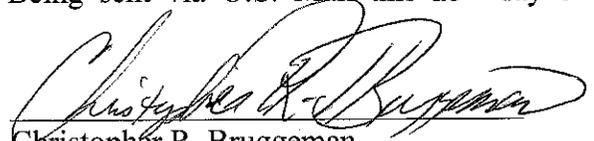
Respectfully Submitted,


Christopher R. Bruggeman #A 286-466
Oakwood Correctional Facility
3200 North West Street
Lima, Ohio 45801

Relator, *pro se*.

Proof of Service

A foregoing copy of this Memorandum in Opposition & Motion to Strike has been remitted forthwith, to the Office of Counsel for Respondents. Being sent via U.S. Mail this 23rd day of November, 2010.


Christopher R. Bruggeman,

Relator, *pro se*.