ORIGINAL

In the Supreme Court of Ohio

The State of Ohio on the relation of John E. Wells, Sr., P.O. Box 57 (344727), Marion. Ohio 43301, Relator, Vs. Jefferson County Court of Appeals, Care of the Clerk of Court, 301 Market Street, Steubenville, Ohio 43952, Gene Donofrio, Judge, Jefferson County Court of Appeals, Care of the Clerk of Court, 301 Market Street, Steubenville, Ohio 43952, Joseph J. Vukovich, Judge, Jefferson County Court of Appeals, Care of the Clerk of Court, 301 Market Street, Steubenville, Ohio 43952, and Mary DeGenaro, Judge, Jefferson County Court of Appeals, Care of the Clerk of Court, 301 Market Street, Steubenville, Ohio 43952, Respondents.	)	Case Number 11-0208

FILED
FEB 04 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Verified Complaint/Petition for a Writ of Mandamus

For the Relator:

John E. Wells, Sr.
Relator
P.O. Box 57 (344727)
Marion, Ohio 43301

RECEIVED
FEB 04 2011
CLERK OF COURT
SUPREME COURT OF OHIO

For the Respondents:

Thomas R. Straus (#0019073)
Jefferson County Prosecutor
Jefferson County Justice Center
State Route 7
Steubenville, Ohio 43952

Verified Complaint/Petition for a Writ of Mandamus

In the State of Ohio, County of Marion, SS:

To: The above entitled Court of The State of Ohio:

The Complaint/petition of the People of The State of Ohio on the Relation of John E. Wells, Sr. (relator), for a Writ of Mandamus against the Jefferson County Court of Appeals Gene Donofrio, Joseph J. Vukovich, and Mary DeGenaro, Judges of the Jefferson County Court of Appeals (respondents), shows that:

Jurisdictional Allegations

1. The above entitled Court of The State of Ohio is constituted and empowered with original jurisdiction over the subject matter, in the first instance, set forth in this original action in mandamus, as well as jurisdiction of the persons of the relator and respondent, pursuant to the supreme authority of the Constitution of The State of Ohio, Article IV, Section 2, pursuant to which the above captioned original action is brought;

2. The first respondent is the Jefferson County Court of Appeals, Seventh Judicial District of Ohio, and the remaining respondents act as judges of said

Court of Appeals in the relator's criminal appeal, to wit: The State of Ohio v. John Wells, Jefferson County Court of Appeals Case No. 98-JE-3;

3. The respondents owe the relator a clear legal duty to vacate the below described void judgment entered without subject matter jurisdiction in the relator's above referenced criminal appeal, and, after proper notice made by the relator on january 15, 2010, by Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction (Exhibit 1), the respondents have failed and refused in writing to perform such duty (Exhibit 2) as hereinafter more fully appears;

4. The relator is owed a clear legal duty by the respondents to vacate the below described void judgment entered by the respondents in the relator's above referenced criminal appeal without subject matter jurisdiction, as hereinafter more fully appears;

5. The relator is imprisoned subject to a "Judgment Entry of Sentence" filed in The State of Ohio v. John Wells, Jefferson County Court of Common Pleas Case No. 97-CR-163 (Exhibit 3); such "judgment" being void for failure to comply with Crim.R. 32(C), as the respondents have twice admitted: first in State ex rel. John E. Wells, Sr., v. Jefferson County Court of Common Pleas, et al., 7th Dist. No. 08-JE-28, 2008-Ohio-6972 (aff'd on tech. grounds 122 Ohio St.3d 39; and second, in State ex rel. Moore v. Krichbaum, 7th Dist. No. 09-MA-201, 2010-Ohio____; the respondents thusly admit the "judgment" is void, depriving the respondents of subject matter jurisdiction in the relator's above referenced criminal appeal; and there being a want of subject matter jurisdiction in the relator's above referenced criminal appeal, the appeal and judgment made thereon are void ab initio, and there being no final appealable order, the relator has no available appeal and no other adequate remedy available in the ordinary course of the law as hereinafter more fully appears;

Specific Statement of Facts upon which the Claim for Relief is Based

6. The respondents, after notice by motion (Exhibit 1), failed and refused to act, i.e., render judgment vacating the judgment in the relator's above referenced criminal appeal for want of subject matter jurisdiction, claim in their written refusal (Journal Entry, Exhibit 2) that due to the fact that they rendered judgment, albeit void for want of subject matter jurisdiction, affirming the trial court's above referenced void judgment stating that they have "no further jurisdiction to act in this manner and no ruling will be issued in (the relator's) January 15, 2010, motion";

7. The respondents, being a constituted Court of Appeals of The State of Ohio, and the Judges thereof, have inherent authority provided by the Ohio constitution to both determine their own jurisdiction, and to vacate their own judgments that are void for want of subject matter jurisdiction;

8. The respondent's authority to determine whether they had subject matter jurisdiction to act in and determine the relator's above referenced criminal appeal is an inherent power derived from the Constitution of Ohio, is not subject to Criminal Rules or statutes, and exists irrespective to whether the relator is entitled to the relief requested in the motion to vacate; the respondents clear legal duty to determine their own jurisdiction was invoked upon the relator having provided notice to them in the form of the above referenced Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction, and thus, the respondents owe the relator the clear legal duty of determining their jurisdiction in the relator's above referenced criminal appeal, and then to render judgment accordingly, whether such judgment be to sustain or deny the relator's claim; and thus, the relator is owed a clear legal duty by the respondents to determine their own jurisdiction in the relator's above referenced criminal appeal, and to render judgment

thereon;

9. The respondent Court of Appeals is constituted by Article IV, Section 3, of the Ohio Constitution, which provides jurisdiction to act in criminal appeals of "judgments and final orders" as provided by law; Ohio Revised Code Sections 2525.02 and 2953.02 limit the jurisdiction in criminal appeals to "judgments and final orders"; and "judgment" in a criminal case is defined by Criminal Rule 32(B) (formerly 32(B)) as a document that sets forth "the plea, the verdict or findings, and the sentence"; the respondent Judges received their jurisdiction and authority to act from the same sources, and are identically limited thereby;

10. The Respondents have expressly admitted that the above referenced judgment does not comply with Criminal Rule 32(C) in State ex rel. John E. Wells, Sr. v. Jefferson County Court of Common Pleas, 7th Dist. No. 08-JE-28, 2008-Ohio-6972 (aff'd on technical grounds 122 Ohio St.3d 39; and State ex rel. Moore v. Krichbaum, 7th Dist. No. 09-MA-201, ____-Ohio-____; and thus, such "judgment is not a "judgment or final order under R.C. 2502.02 or 2953.02, depriving the Respondents of subject matter jurisdiction over the Relator's appeal thereof under Article IV, Section 3, of the Constitution of Ohio;

11. The law being well settled and established on what constitutes a judgment in a criminal case, the effect of substantial omissions from an attempted judgment in a criminal case, and the resulting want of subject matter jurisdiction in appeals from non-final, non-appealable judgments rendered in criminal cases, as more fully appears in the Relator's Memorandum in Support attached hereto and incorporated by reference as if fully set forth herein, the respondents have no discretion or legal authority as a matter of law to fail or refuse, or to render any judgment other than vacating the judgment in the relator's above referenced appeal, and dismissing same for want of subject matter jurisdiction, as the sentencing Entry does not set forth

the manner of conviction (Judgment Entry of Sentence, Exhibit 3);

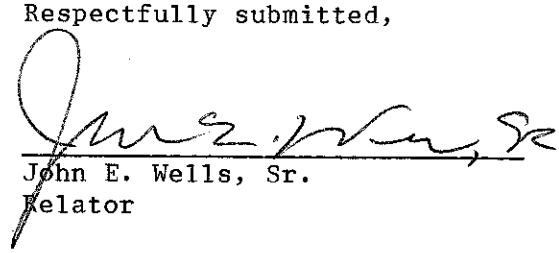
12. The respondents owe the relator a clear and legal duty to vacate the judgment rendered in the relator's above referenced appeal, and dismiss same for want of subject matter jurisdiction; and the relator is owed a clear legal duty by the respondents to render judgment vacating the void judgment rendered in the relator's above referenced criminal appeal, and to dismiss such appeal for want of subject matter jurisdiction;

13. The respondents named herein are the same persons who first acted and rendered judgment in the relator's above referenced criminal appeal, who have a clear legal duty to act, who owe a clear legal duty to the relator, and who have failed and refused to perform the clear legal duty; and thus, are the proper respondents in this case;

14. **Wherefore**, the relator is entitled to judgment compelling the respondents to determine their own jurisdiction in the relator's above referenced criminal appeal, and to vacate the judgment and dismiss the appeal for want of subject matter jurisdiction.

Alternatively, the Relator respectfully requests that the Supreme Court of Ohio issue a Writ of Mandamus compelling the Respondents to vacate the judgment and dismiss the above referenced appeal for want of subject matter jurisdiction.

Respectfully submitted,



John E. Wells, Sr.
Relator

In the State of Ohio)
) SS: Affidavit of Verity
The County of Marion)

The relator having first been duly sworn, states and verifies that the facts, statements, and allegations, set forth in the foregoing Verified Complaint/Petition for a Writ of Mandamus, incorporated herein by reference as if fully restated and set forth herein, are made upon personal, firsthand knowledge; are true and correct to the best of the relator's knowledge, recollection, and belief; are matters relevant and admissible in the above captioned action; and are matters to which the relator is competent to testify under penalty of law.

John E. Wells, Sr.
Relator

Sworn to or affirmed and subscribed in my presence this 30TH day of JANUARY, 2011

PATRICK GLAZE
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
MAY 31, 2014

Notary Public

May 31, 2014
My Commission Expires:

COURT OF APPEALS
FILED JEFFERSON COUNTY, OHIO FILED
JAN 15 2010
JOHN A. CORRIGAN
CLERK

In the Court of Appeals
Seventh Appellate District
Jefferson County, Ohio

State of Ohio,	)	
	)	
Appellee,	)	C.A. No. 98-JE- 3
	)	
Vs.	)	On Appeal from the Jefferson
	)	County Court of Common Pleas,
John (E.) Wells(, Sr.),	)	Case No. 97-CR-163
	)	
Appellant.	)	

Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction

---

For the Appellant:

John E. Wells, Sr.
Appellant, Pro se
P.O. Box 57 (344727)
Marion, Ohio 43301

For the Appellee:

Thomas R. Straus (#)
Jefferson County Prosecutor
Jefferson County Justice Center
16001 State Route 7
Steubenville, Ohio 43952

COMMON PLEAS COURT JEFFERSON CO. OHIO
The State of Ohio
County of Jefferson SS
I, John A. Corrigan, Clerk of Courts
do hereby certify that the annexed writ is
a true copy of the original
John A. Corrigan, Clerk of Courts
By Deputy

EXHIBIT 1

Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction

Now comes the Appellant, John E. Wells, Sr., and moves the Court of Appeals to vacate the judgment and dismiss the appeal for want of subject matter jurisdiction.

The above captioned appeal was taken from a "Journal Entry of Sentence" (Exhibit 1) that fails to comply with Crim.R. 32(C) (former Crim.R. 32(B)), and does not constitute a "judgment or final order" as required by either R.C. 2505.02, R.C. 2953.02, or Article IV, Section 3(B)(2), of the Constitution of the State of Ohio, depriving the Court of Appeals of subject matter jurisdiction as more fully appears in the attached Memorandum in Support.

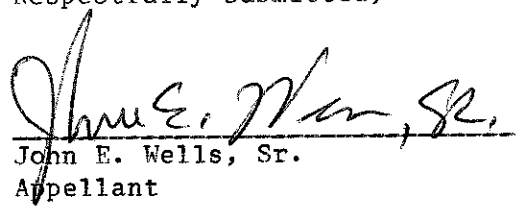
Additionally, the "Judgment Entry of Sentence" is void as it sets forth sentences that were legally unavailable on the basis of the limitations of the trial court's power to impose judgment as set by the jury's verdict (Exhibit 2), and such unavailable sentences were substituted by the trial court for the sentences required by law, and is not a valid judgment or final order depriving the Court of Appeals of subject matter jurisdiction as more fully appears in the attached Memorandum in Support.

Further, the "Judgment Entry of Sentence" is void as it sets forth an illegal and/or unlawful and unconstitutional term of "Bad Time" under R.C. 2967.11, and is not a valid judgment or final order, depriving the Court of Appeals of subject matter jurisdiction as more fully appears in the attached Memorandum in Support.

Wherefore, the Appellant is entitled as a matter of law to have the Court of Appeals vacate the judgment rendered in the above captioned appeal, to have the appeal dismissed for want of subject matter jurisdiction, and to have the cause remanded to the trial court for imposition of a valid judgment or final order that complies with Crim.R. 32(C), is final and appealable, and comports

to the restrictions set on the trial court's authority by the jury verdicts.

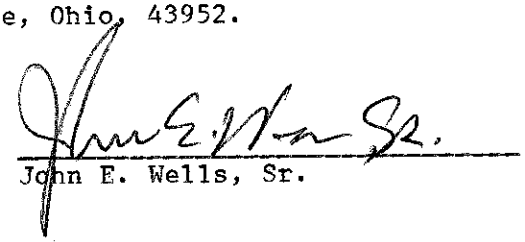
Respectfully submitted,



John E. Wells, Sr.
Appellant

Certificate of Service

The Appellant, John E. Wells, Sr., certifies that on the 8th day of December 2009, a true and correct copy of the foregoing Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction, with the attached Memorandum in Support, has been sent to the Appellee by regular U.S. Mail, postage prepaid, care of Thomas R. Straus, Prosecutor, at the Jefferson County Justice Center, 16001 State Route 7, Steubenville, Ohio, 43952.



John E. Wells, Sr.

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COURT OF APPEALS
JEFFERSON COUNTY, OHIO
FILED
FEB 17 2010
JOHN A. CORRIGAN
CLERK

COURT OF APPEALS
JEFFERSON COUNTY, OHIO
FILED
FEB 17 2010
JOHN A. CORRIGAN
CLERK

STATE OF OHIO) IN THE COURT OF APPEALS OF OHIO
)
JEFFERSON COUNTY) SS: SEVENTH DISTRICT

STATE OF OHIO,)
) CASE NO. 98 JE 3 ✓
PLAINTIFF-APPELLEE,)
)
VS.) JUDGMENT ENTRY
)
JOHN E. WELLS, Sr.,)
)
DEFENDANT-APPELLANT.)

On January 15, 2010 appellant, acting on his own behalf, filed a "Motion to Vacate Judgment and Dismiss Appeal for Want of Subject Matter Jurisdiction."

Court records show that this matter was terminated by this Court on March 22, 2000 when the judgment of the trial court was affirmed. This Court has no further jurisdiction to act in this matter and no ruling will be issued on appellant's January 15, 2010 motion.

Copy to the County Prosecutor and Mr. John E. Wells, Sr., #344-727, P.O. Box 57, Marion, OH 43301.

1 Pg 156

JUDGE GENE DONOFRIO

JUDGE JOSEPH J. VUKOVICH

JUDGE MARY DeGENARO

COMMON PLEAS COURT
JEFFERSON CO. OHIO

The State of Ohio
County of Jefferson SS
I, John A. Corrigan, Clerk of Courts
do hereby certify that the annexed writ is
a true copy of the original
John A. Corrigan, Clerk of Courts
By Deputy

EXHIBIT 2

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

STATE OF OHIO :

Plaintiff

-vs-

JOHN WELLS

Defendant :

JUDGMENT ENTRY OF SENTENCE

CASE NO. 97-CR-163

FILED
IN COMMON PLEAS COURT
JEFFERSON COUNTY, OHIO
DEC 24 1997
JOSEPH G. HAMROCK
CLERK

On the 24th day of December, 1997, a sentencing hearing was held pursuant to R.C. 2929.19, notice having been given to all parties. Defendant was present in person represented by counsel, was given an opportunity to speak and afforded all rights pursuant to Criminal Rule 32. The Court has considered the record, testimony during the trial, the victim impact statement, the statement of the spokesperson for the victims in this case, the purposes and principles of sentencing, the seriousness and recidivism factors relevant to the offense and offender pursuant to R.C. 2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution.

The Court finds that the Defendant has been convicted under Count One of the Indictment of a violation of Revised Code Section 2907.02(A)(1)(b), Rape of a person under the age of 13, a felony of the first degree; under Count Two of a violation of Section 2907.02(A)(1)(b), Rape of a person under the age of 13, a felony of the first degree; under Count Three of a violation of Revised Code Section 2907.02(A)(1)(b), Rape of a person under the age of 13, a felony of the first degree; under Count Four of a violation of Revised Code Section 2907.02(A)(1)(b), Rape of a person under the age of 13 and a finding that said offense was committed with force, a felony of the first degree with a required term of imprisonment of life; under Count Five a violation of Revised Code Section 2907.02(A)(1)(b), Rape of a person under the age 13 with a finding that said offense was committed with force, a felony of the first degree with a mandatory penalty of a term of imprisonment of life.

IT IS ORDERED that the offender serve a stated term of 10 years in prison under Count One for the violation of Revised Code Section 2907.02(A)(1)(b), 10 years in prison under Count Two for the violation of Revised Code Section 2907.02(A)(1)(b), 10 years in prison under Count Three for the violation of Revised Code Section 2907.02(A0(1)(b), life in prison under Count Four for the violation of Revised Code Section 2907.02(A)(1)(b), for having committed said offense with force, and life in prison under Count Five for the violation of Revised Code Section 2907.02(A)(1)(b) and for having committed said offense with force. The sentences shall be served consecutively. Defendant is further ORDERED to pay costs of prosecution.

The Court finds that consecutive sentences are necessary in this case in order to protect the public from future crimes as well as to punish the offender and that said sentences are not disproportionate to the seriousness of the Defendant's conduct and danger that the Defendant poses to the public. The Court further finds that the harm caused by the multiple offenses was so great and

The State of Ohio
County of Jefferson SS
I, Joseph G. Hamrock, Clerk of Courts
do hereby certify that the annexed writ is
a true copy of the original
JOSEPH G. HAMROCK, Clerk of Courts
By [signature] Deputy

EXHIBI 3

unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

The Court further finds that the mental injuries suffered by the victim's was exercerbated because of the ages of the victims; that the victims suffered serious psychological harm as a result of the offenses; and that the offender's relationship with the victims facilitated the offenses.

The Court has further, prior to imposition of sentence, found that the Defendant committed sexually oriented offenses, that the offenses committed are sexually violent offenses, and that the Defendant should therefore be classified as a sexually violent predator. The Defendant was then provided his obligations to register his place of residence should he be released from incarceration in accordance with Section 2950.03 of the Ohio Revised Code.

As a part of the sentence herein, the parole board may, pursuant to R.C. 2967.11, extend the stated prison term(s) in increments of 15, 30, 60, and 90 days for each violation of the criminal laws of the State of Ohio and of the United States that it determines to have been committed by the offender while in prison, but those additional prison terms may not total more than one-half of the stated prison term.

Defendant was then advised that by virtue of his conviction as well as the type of a sentence being imposed that he had the right to appeal, if unable to pay the costs of appeal that he had the right to appeal without payment of costs, that if unable to obtain counsel for an appeal, that counsel would be appointed for him without costs, that if unable to pay the costs of documents necessary to appeal, that the same would be provided him without costs, and that he had the right to have a Notice of Appeal timely filed on his behalf.

Defendant advised the Court that he was unable to afford counsel and that he did wish to file an appeal. IT IS THEREFORE ORDERED that Attorney Eric M. Reszke, 115 S. Fourth Stree, P.O. Box 1571, Steubenville, Ohio 43952, Tel. No. 614-283-1313, is hereby appointed as Appellate Counsel for said Defendant. IT IOS FURTHER ORDERED that Trial Counsel shall cause a timely Notice of Appeal to be filed on behalf of said Defendant.

Defendant is further given credit for time served in the Jefferosn County Jail of 58 days through December 24, 1997 and for one additional day for each day thereafter until conveyed to the appropriate State Penal Institution.

IT IS FURTHER ORDERED that within five (5) days of the date of this Order that the Sheriff of Jefferson County, Ohio, shall cause the Defendant to be conveyed to the Lorain Correctional Institution for execution of sentence.

Upon completion of the prison term, the offender shall be subject to such further period of supervision being under post-release control as the parole board may determine pursuant to law. As authorized by law, the Adult Parole Authority may increase or reduce restrictions imposed by the parole board. If the Defendant violates the terms of post-release control, the parole board may return the offender to prison for a maximum period of nine months for each violation, but the total period

I, Joseph G. Hamrock, do hereby certify that the annexed writ is a true copy of the original
JOSEPH G. HAMROCK, Clerk of Courts
By [signature] Deputy

of additional prison time imposed by the parole board for violations while under post-release control shall not exceed one-half of the Defendant's stated prison term. If the Defendant is convicted of a felony committed while under post-release control, the Court having jurisdiction over the new felony may return the Defendant to prison under this case for an additional period of time as authorized by law and any prison term for the new felony may be served consecutively with the extension of prison time in this case. If the Court imposes additional prison time in this case the Defendant shall be credited with any additional prison time imposed by the parole board for the same violation.

The additional periods of time imposed by another Court because of a felony committed while under post-release control in this case or by the parole board for violations in this case while in prison or on post-release control are part of the sentence in this case.

Dated at Steubenville, Ohio, this 14th day of December, 1997.

JOHN J. MASCIO, JUDGE

The State of Ohio SS
County of Jefferson
I, Joseph G. Hamrock, Clerk of Courts
do hereby certify that the annexed writ is
a true copy of the original
JOSEPH G. HAMROCK, Clerk of Courts
By Deputy