

ORIGINAL

IN THE SUPREME COURT OF OHIO

PAUL S. HENDERSON,
PETITIONER-RELATOR,

VS.

CASE NO. 2011-0084

JUDGE WILLIAM R. FINNEGAN
DEFENDANT-RESPONDENT.

ACTION IN PROCEDENDO
(EMERGENCY HEARING REQUESTED)

PETITION FOR RECONSIDERATION

Now comes Petitioner, Paul S. Henderson, whom states that this Honorable court, with all due respect, is acting contrary to the laws of the Judicial process R.C. 2921.52, and it appears the Judge has became part of the conspiracy to kidnap under R.C. 2905.01(A)(5), and is clearly acting as an DE-FACTO-GOVERNMENT; When the Court display of force against the Will of the rightful legal Government and is successfully at least temporarily in over turning the institution of the rightful legal government by setting up this Court own in Lieu thereof. WORTHAM V. WALKER, 133 Tex. 255, 128 S.W.2d 1138, 1145.

Petitioner, maintains that this Court based it's dismissal on the Motion to Dismiss filed by Judge William Finnegan. In which the Defendants has mislead this Court in its pleading.

1) Look at the lower case Number on the ruling from the Court of Common Pleas, it is NOT the case used in S.ct case no. 2011-0084, and furthermore, the Defendants with the help of the Trial Courthas committed fraud in the procuring of the dismissal of the case at bar, also as stated in the Motion to Dismiss filed by Judge William Finnegan, it also does NOT state any issue but as the issue in Case no. 11-0027, of the Supreme Court of Ohio and the case no. 11-cv-1003 which goes with case no. 11-0084.

The Petitioner maintains that in his Motion in Opposition to Defendants Motion to Dismiss, he has clearly stated that the Defendants was using tricks and an act of fraud which was committed by the Defendants in case at bar.

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The Petitioner has also clearly asked this Court to stricken it from the records for it is clearly an act of fraud and using the sham legal process R.C. 2921.52 in the procuring of the Dismissal of the case at bar.

The Petitioner maintains that this VOID Conviction is based on what is NOT in the records and files as to the Accusation by Affidavit and Complaint to cause the arrest and prosecution of Petitioner and Co-Defendant, as stated in R.C. 2935.09, and 2935.10.

Petitioner, maintains that the Defedants are acting contrary to the laws and has committed fraud in the procuring of the dismissal.

1- The Defednats submitted evidence that went to ANOTHER CASE AND ALL ISSUES WERE COMPLETELY DIFFERENT FROM THE CASE AT BAR, CLEARLY COMMITTING DECEPTION TO THE COURT, and the Petitioner, which clearly mislead The Court and the Petitioner into thinking that these were the issues.

2- This is clearly a case of fraud being committed by the Defendant which by law it clearly states that using of the sham legal process under R.C. 2921.52 is a felony of the Third degree, and which the Defendant has used to procuring of the Dismissal.

3- Petitioner, further states that the ruling from the Trial Court of Judge Finnegan are clearly illegal and improperly dismissed by Judge Finnegan as the Petitioner has attached the Court Room of Judge Finnegans Ruling on Emergency Writ of Habeas Corpus where the Court even used the Supreme Court to state its reasons for the dismissal be with prejudice and barred by res-judicata, see attached EX. "B",

4- As to the ruling in case at bar, the Defendants has clearly committed fraud in using the sham legal process and as acting under an DE-FACTO-GOVERNMENT; when the Court displayed an act of force of fraud against the will of the rightful legal government and was successful, at least temporarily in overturning the institutions of the rightful legal government by setting up its own in lieu thereof. WORTHAM id.

5- Plain error correction is a discretionary act and requires the Petitioner to show that his substatial rights were violated and effected by prejudice from the Defendants that the outcome clearly would have been otherwise and that a manifest miscarriage of justice would occur absent the error. STATE V. LONG (1978), 53 Ohio St.2d 91, STATE V. PERRY 101 Ohio St.3d 118, 2004-Ohio-297.

6- Now this legal issue must be reviewed DE NOVO and the admission of evidence must be reviewed for an abuse of discretion. STATE V. BROWN 9th Dist. App.no. 25206, 2010-Ohio-4863, STATE V. SAGE (1987) 31 Ohio st.3d 173.

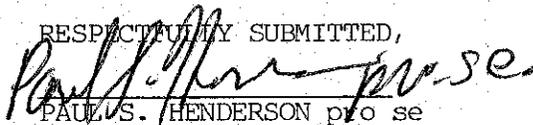
7- R.C. SEC. 2925.52 provides: Exculpatory or that the State acted in bad faith. STATE V. MOULRY 9th Dist. App.no. 25065, 2010-Ohio-3010, UNITED STATES V. JOBSON (6th Cir. 1996), 102 F.3d 214, 218, bad faith means official animus or a conscious effort to suppress exculpatory evidence.

8- Memorandum of Opinion and Order by United States District Court for the Northern District of Ohio Eastern Division case no. 1:11-cv-0219, Judge Donald C. Murgent in the case of PAUL S. HENDERSON V. CITY OF CLEVELAND has clearly stated that petitioner filed a Petition for Writ of Habeas Corpus in Marion County Common Pleas Court which was improperly dismissed by Judge Finnegan, Deputy Quirino, Prosecutor Mason and Assistant Prosecutor Brodnick did allegedly secured an indictment without having any evidence further, Defendant Mason, permitted Defendant Brodnick to investigate and continue prosecution knowing the petitioner was innocent. See attachment, EX. "A".

WHEREFORE,

The Petitioner, now prays for this Honorable Court to Grant this petition for reconsideration and an order for Defendants to also, or for this Court to immediately release and discharge me from this illegal arrest and wrongful conviction as it states by the legal Government and Laws.

RESPECTFULLY SUBMITTED,


PAUL S. HENDERSON pro se
c/o MARION CI no. 573468
P.O. BOX 57
MARION OHIO, 43301-0057

CERTIFICATE OF SERVICE

I, PAUL S. HENDERSON, CERTIFY THAT A COPY OF THE FORGOING PETITION HAS BEEN SENT TO THE DEFENDANT JUDGE WILLIAM R. FENNEGANS COUNSEL, BRENT YAGER, PROSECUTING ATTORNEY OF MARION COUNTY AT 134 EAST CENTER ST., MARION OHIO 43302, ON THIS 13 DAY OF APRIL, 2011.

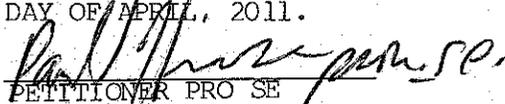

PETITIONER PRO SE

Exhibit (A)

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

PAUL S. HENDERSON,)	CASE NO. 1:11CV0219
)	
Plaintiff,)	
)	JUDGE DONALD C. NUGENT
v.)	
)	
CITY OF CLEVELAND, <i>et al.</i> ,)	<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 the City of Cleveland, Cuyahoga County Deputy Sheriff Anthony Quirino, Cuyahoga County Prosecutor William Mason, Cuyahoga County, Ohio Common Pleas Court Judge Shirley S. Saffold, Margaret Beightler, Warden of the Marion Correctional Institution, Prison Cashier Sterlingnl, Assistant Cuyahoga County Prosecutor Louis Brodnick and Marion County Common Pleas Court Judge William R. Finnegan. Plaintiff was found guilty by a jury of Trafficking Offenses, R.C. 2925.13A(2), Drug Possession, R.C. 2925.11A, and Possession of Criminal Tools, R.C. 2923.24A, and was sentenced to a term of imprisonment of 9 years. *State of Ohio v. Henderson*, Case No. CR-09-530899.

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. §1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197

Exhibit (A)

(6th Cir. 1996). For the reasons stated below, this action is dismissed pursuant to section 1915(e).

Plaintiff alleges that he received a phone call to deliver a crate. After he picked up the crate he was stopped by Cuyahoga County sheriff deputies, arrested and later convicted of the above named crimes. He contends that he is innocent. His appeals to the Eighth District Court of Appeals and the Ohio Supreme Court were unsuccessful. Plaintiff then filed a Petition for Writ of Habeas Corpus in the Marion County Common Pleas Court which was improperly dismissed by Judge Finnegan. Deputy Quirino, Prosecutor Mason and Assistant Prosecutor Brodnick allegedly secured an indictment without having any evidence. Further, Defendant Mason permitted Defendant Brodnick to investigate and continue prosecution knowing he was innocent. His criminal trial took place before Judge Saffold. Apparently, the City of Cleveland is a party because Plaintiff believes it controls the Sheriff's Department or because the alleged events occurred here. There are no allegations against Warden Beightler or Cashier Sterling. Plaintiff requests damages in the amount of \$352,000.00. Further Plaintiff adds that while in the Cuyahoga County Jail he was denied access to a law library.

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

EXHIBIT (B)
IN THE COURT OF COMMON PLEAS FOR MARION COUNTY, OHIO
GENERAL DIVISION

COMMON PLEAS COURT
PAUL S. HENDERSON, #573-468, MARION CO. Case No. 10CV1003

2011 JAN -4 PM 1:30
Judge William R. Finnegan

Petitioner,

vs.

JULIE M. KAGEL
CLERK OF COURTS
RULING ON EMERGENCY
WRIT OF HABEAS CORPUS

MARGARET BEIGHTLER, WARDEN *
Marion Correctional Institution,

*

RESPONDENT.

This day this cause came on before the Court upon the Emergency Writ of Habeas Corpus filed by the Petitioner.

Upon consideration, the Court notes that this is the fourth Writ of Habeas Corpus which has been filed by the Petitioner. See Henderson v. Shaeffer, 2010-Ohio-915 (Cuyahoga App.), Henderson v. Saffold, 126 Ohio St. 3d 1510, 2010-Ohio-3331, and Henderson v. Santiago, 2010-Ohio-5762 (Ohio Supreme Court).

The claims raised in the case pending this Court were previously raised in the earlier filings of the Petitioner in other courts.

In all three of these previously mentioned cases, the Petitioner request for a Writ of Habeas Corpus were denied. These decisions were decisions on the merits.

Res judicata bars a defendant from filing a successive habeas corpus decision insofar as he raises claims that he either raised or could have raised in his previous petition. Mubashir v Sheldon, 2010-Ohio-4808 (Marion App.)

The Petitioner's claims are barred by res judicata.

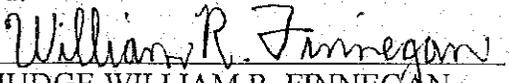
The Court further notes that the Defendant has failed to pay the filing fee along with his Petition, and has not file an affidavit of indigency in compliance with Ohio Revised Code 2969.25.

Noncompliance with R.C. 2969.25(C) which requires the filing of a certified statement from the prison cashier setting forth the balance in an inmate's private account for each of the preceding six months, is reason to deny the writ, deny indigency status, and assess cost against the petitioner. Henderson v Saffold, 2010-Ohio-2609 (Cuyahoga App.)

Exhibit (B)

Failing to pay the filing fee without filing an Affidavit in compliance with Ohio Revised Code Section 2969.25 ascertaining indigent status warrants dismissal. Henderson v Beightler, Marion County Common Pleas Court Unreported Case No. 10CV794 (2010).

For all of the above-stated reasons, the Court finds the Emergency Writ of Habeas Corpus not well-taken and the Request for Writ will be denied.


JUDGE WILLIAM R. FINNEGAN

c: Paul S. Henderson #573-468, Petitioner
MCI, POB 57, Marion, OH 43301-0057
Margaret A. Beightler, Warden and Ohio Adult Parole Authority
Marion Correctional Institution, Respondent
940 Marion Williamsport Rd., Marion, OH 43301-0057

Exhibit (B)

IN THE COURT OF COMMON PLEAS FOR MARION COUNTY, OHIO
GENERAL DIVISION
MARION CO. OHIO

PAUL S. HENDERSON #573-468 1:38 *

Case No. 10CV1003

Petitioner, JULIE M. KAGEL *
CLERK OF COURTS *

Judge William R. Finnegan

vs. *

JUDGMENT ENTRY
OF DISMISSAL

MARGARET BEIGHTLER, WARDEN *
Marion Correctional Institution, *

RESPONDENT.

This day this case came on before the Court upon consideration of the Emergency Writ of Habeas Corpus filed by the Petitioner.

For the reasons stated in the accompanying Ruling on Emergency Writ of Habeas Corpus, it is the Judgment and Order of the Court that the Petition of Petitioner Paul S. Henderson, No. 573-468, against Margaret Beightler, Warden, Marion Correctional Institution, is hereby dismissed with prejudice.

Court costs are to be paid by the Petitioner.

TO THE CLERK: Pursuant to Civil Rule 58(B), the Clerk is directed to serve upon the parties a notice of the filing of this Judgment entry and of the date of entry upon the Journal.

William R. Finnegan
JUDGE WILLIAM R. FINNEGAN

c: Paul S. Henderson #573-468, Petitioner
MCI, POB 57, Marion, OH 43301-0057
Margaret A. Beightler, Warden and Ohio Adult Parole Authority
Marion Correctional Institution, Respondent
940 Marion Williamsport Rd., Marion, OH 43301-0057