

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

State of Ohio, EX REL.,  
David M. Untied,

Appellant,

vs.

CASE NO. 11-1188

On Appeal from the Guernsey  
County Court of Appeals, Fifth  
Appellate District

Guernsey County Common  
Pleas Court Judge David A. Ellwood

Court of Appeals  
Case No. 11 CA 07

and

Guernsey County Common Pleas  
Clerk of Court Teresa Dankovic

Appellees.

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**BRIEF OF APPELLANT DAVID M. UNTIED**

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## STATEMENT OF THE CASE

This case involves an improper dismissal of a Petition for Writ of Prohibition and Mandamus filed by the Appellant in the Fifth Appellate District Court of Appeals of Ohio for Guernsey County.

The Appellant filed a Petition for Writ of Prohibition against Appellee Judge David A. Ellwood challenging an outright lack of jurisdiction when Judge David A. Ellwood improperly filed a Entry in the trial court attempting to conduct a probation revocation proceeding.

In the Trial Court, after a probation period was over and expired, Judge Ellwood prepared an Entry, file stamped the entry with a clerk of court file stamp he was not supposed to be in possession of, and then delivered the Entry to the Clerk of Courts office for filing into the record approximately three (3) days after the Court had lost jurisdiction.

The Appellant also filed a Petition for Writ of Mandamus in conjunction with the Petition for Writ of Prohibition to restore the rights of the Appellant and to correct and stop Judge Ellwood from file stamping his own Court Filings and for Clerk of Court Teresa Dankovic from allowing Judge Ellwood to do this and to remove her file stamp from the possession of Judge Ellwood as Judge Ellwood is not a Clerk of Court or an extension of the Clerks' Office.

The Fifth Appellate District Court completely ignored any arguments or facts placed before them regarding the admitted facts that Judge Ellwood file stamped his own Court Entry with a Clerk Stamp he improperly possesses and then filed that Entry days later with the Clerk's office thus depriving him of jurisdiction. Instead, the Fifth Appellate District cherry picked other less relevant issues to dismiss the Petition, again without considering, whether Judge Ellwood had lost jurisdiction by not properly filing his Court Entries with the Clerk of Court. This is a distinguished case as the Appellant can find no other case law where this has occurred. This appeal follows the Fifth Appellate District Court's improper dismissal of the Appellants

Petitions for Writs of Prohibition and Mandamus against respondents Judge David A. Ellwood and Clerk of Court Teresa Dankovic.

### **STATEMENT OF THE FACTS**

On June 8, 2009, the Appellant was indicted for one count of "passing a bad check" in violation of O.R.C. Section 2913.11 in the Guernsey County Court of Common Pleas in Case Number 09-CR-83 with Judge David A. Ellwood presiding.

On February 16, 2010 a negotiated plea was accepted by the Court and the Appellant was placed on probation for one year until February 16, 2011.

On February 16, 2011, the Appellant filed a Motion to Withdraw the plea. The Appellant checked with the Clerk of Court at the end of business day February 16, 2011 and the morning of February 17, 2011 and no other filings had been filed with the Clerk's Office.

Judge David A. Ellwood, as a matter of regular practice, has in his possession a manual Clerk of Court filing stamp. All of Judge Ellwood's Court Entries in all cases are stamped with his Clerk of Court Stamp and is a matter of record in every filing in every case in the Guernsey County Court of Common Pleas and every record of appeal from the Guernsey County Common Pleas Court in the Fifth Appellate District Court. The stamp in Judge David A. Ellwoods' possession can be dated manually. The Clerk of Court for Guernsey County accepts all other filings and file stamps their Court documents with an Electronic stamp that times and dates the filings. These two different Clerk of Court stamps is apparent in every case as a matter of record.

~~On February 18, 2011, Judge David A. Ellwood prepared and Entry setting an Evidentiary hearing for a probation revocation proceeding against the Appellant.~~

On February 18, 2011, Judge David A. Ellwood then file stamped the Court Entry with his Clerk of Court

manual file stamp and dated the Entry for February 16, 2011. The Entry was mailed to the Appellant on February 18, 2011 as well.

On February 18, 2011, Judge David A. Ellwood then delivered the Entry to the Clerk of Court for filing.

On February 22, 2011, the Clerk of Court filed the Entry in the file and the docket. In turn, the entry automatically appeared on the online docket as the online programming is programmed to do.

On March 24, 2011, the Appellant filed a Petition for Writs of Prohibition and Mandamus against Judge David A. Ellwood and Clerk Teresa Dankovic in the Fifth Appellate District Court.

On April 12, 2011, Clerk Teresa Dankovic represented by Guernsey County Prosecutor Dan Padden, filed a Reply Brief and Memorandum Contra not under oath.

On April 19, 2011 Judge Ellwood himself filed an answer and motion to dismiss and said filing was under oath.

In his April 19, 2011 Answer and Motion to Dismiss, Judge Ellwood admitted 1) That his Office has a manual file stamp in his office that he stamps his entries and filings with, 2) That after he file stamps his own entries at some point and time, said entries are then delivered to the Clerk Teresa Dankovic's Office, 3) That after Clerk Teresa Dankovic receives the entries from Judge Ellwood's Office, said entries are placed in the file, 4) And then Clerk Teresa Dankovic's office then enters said entries on the docket which is when they also appear online, and 5) That in this case, Judge Ellwood filed the Entry in question on February 18, 2011 with Clerk Teresa Dankovic's Office. The entry had been back dated for February 16, 2011.

~~On April 29, 2011, the Appellant filed a reply to Dankovic's Reply and Memorandum Contra.~~

On May 4, 2011, the Appellant filed a Reply and Memorandum Contra to Ellwood's Answer and Motion to Dismiss.

On June 6, 2011, the Fifth District Court dismissed the case stating the Entry had the date February 16, 2011 ignoring how the Entry got that date and when it was actually delivered to the Clerk of Court. Further, the Court improperly stated that the Ohio Supreme Court has ruled that Petition for Writ of Prohibitions cannot be filed in probation revocation proceedings. And indirectly, the Court reasoned that it was not clear whether the trial Court had lost jurisdiction.

This appeal follows.

1 PROPOSITION OF LAW NO. 1

2 **A Judge cannot file stamp his or her own Court Entries with a Clerk of Court Stamp, nor can a Judge**  
3 **have in their possession a Clerk of Court Stamp to file stamp their own Court Entries. A Judge must**  
4 **deliver all Court Entries or filings to the Clerk of Court to then be filed and stamped by the Clerk of**  
5 **Court. Mandamus lies to prevent a Judge from file stamping his or her own court documents and to**  
6 **prevent a clerk of court from allowing a clerk of court stamp to be in the possession of a judge to file**  
7 **stamp their own court filings.**

8  
9 As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural  
10 or otherwise, are "substantive laws" in character; *Allen v. Fisher*, 574 P.2d 1314, 1315.

11 Substantive due process is a doctrine that due process clauses of the Fifth and Fourteenth Amendments to  
12 the United States Constitution require legislation to be fair and reasonable in content as well as application.  
13 Such may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of  
14 his life, liberty, or property. The essence of substantive due process is protection from arbitrary and  
15 unreasonable action; *Jeffries v. Turkey Run Consolidated School Dist.*, C.A.Ind., 492 F.2d. 1, 3; *U.S. v.*  
16 *Smith*, D.C. Iowa, 249 F.Supp. 515, 516; and *Vaughn v. State*, 3 Tenn. Crim.App, 54, 456 S.W.2d 879, 883.

17 O.R.C. Section 2303 sets forth the authorities and duties of the Clerk of Court for Common Pleas Courts  
18 in the state of ohio.

19 2303.08 General duties.

20 The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's  
21 office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such  
22 individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the  
23 proper parties all moneys coming into the clerk's hands as clerk. The clerk may refuse to accept for filing  
24 any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under  
25 section 2323.52 of the Revised Code and who has failed to obtain leave to proceed under that section.

1 2303.09 Filing and preserving papers.

2 The clerk of the court of common pleas shall file together and carefully preserve in his office all papers  
3 delivered to him for that purpose in every action or proceeding.

4 2303.10 Indorsement of papers.

5 The clerk of the court of common pleas shall indorse upon every paper filed with him the date of the filing  
6 thereof, and upon every order for a provisional remedy and upon every undertaking given thereunder, the  
7 date of its return to his office.

8 The Constitution of the State of Ohio, Article IV, Section 4 establishes the authority for the Courts  
9 of Common Pleas and for the judges thereof and places those Courts subordinate to the Ohio  
10 Supreme Court and the rules governing practice and procedure set forth by the Ohio Supreme Court  
11 O.R.C. Section 2301.01 and 2301.02 establishes the amount of judges for each Ohio County.

12 Absolutely no where in law, does a Judge have the authority to perform the duties of a Clerk of Court.  
13 Absolutely, no where in law, does a Judge have the ability to maintain a Clerk of Court file stamp in his  
14 office to file stamp his own documents. A judge, like everyone else, must deliver his or her Court Entries,  
15 filings or documents to the Clerk of Court for filing. It is clearly the Clerk of Court who stamps the document  
16 into the record, files, and then post the filing to the docket.

17 In this case, Judge David A. Ellwood admitted he prepared and file stamped the Alleged February 16,. 2011  
18 Entry. In his Answer under oath to the Appellant's Petition, paragraph 21 " The Respondent Judge admits  
19 that the entries prepared by the Court are stamped filed on the date prepared [WRITER ADDS EMPHASIS]  
20 and then taken to the Clerk's Office". In order for Judge Ellwood to prepare and file stamp the Entry, the  
21 file stamp must have been in his possession. Then he delivered the file stamped Entry to the Clerk of Court  
22 two days later according to him. However, as discussed below in Proposition of Law Number two, his

1 admissions contradict his denials of back dating the Entry.

2 Mandamus has traditionally issued in response to abuses of judicial power. Thus, where a judge takes some  
3 action he is not empowered to take, mandamus will lie; Bankers Life & Cas. Co. Holland, 346 U.S. 379, 384,  
4 74 S.Ct. 145, 98 L.Ed. 106. In this instance, Judge Ellwood did something he was not empowered to do,  
5 Judge Ellwood file stamped his own Court Document with a Clerk of Court file stamp. Further, Judge  
6 Ellwood does this on all his court filings. Mandamus is the only and correct remedy to correct this from  
7 happening and to restore the Appellants' rights back to the point where Judge Ellwood tried to take the  
8 Appellant's rights from him. February 16, 2011. Mandamus must issue against Judge David A. Ellwood.

9 Mandamus must issue to Clerk Teresa Dankovic as well. Teresa Dankovic is the Clerk and responsible to  
10 maintain the Clerk of Court stamp under her control. Teresa Dankovic must be ordered to remove her Clerk  
11 of Court Stamp from Judge Ellwoods' Office and not allow her Clerk Stamp to leave her office without  
12 proper designated authority to do so; see Nebel v. Nebel, 241, N.C. 491, 85 S.E.2d 876, 882.

### 13 PROPOSITION OF LAW NO. 2

14 **A Court Entry or filing must be file stamped and dated on the same date that the Entry or filing is**  
15 **actually delivered to, and received by, the Clerk of Courts' Office for filing and must be stamped and**  
16 **dated by the Clerk of Court. Any Court document not file stamped and dated in this manner is void**  
17 **and if the deadline for filing the document has past, jurisdiction is lost. Prohibition lies in this instance**  
18 **to prevent future exercise of judicial authority.**

19 As set forth in Proposition of Law Number one above, the Clerk of Court must file stamp a court document  
20 into the record. A judge cannot do the stamping. That alone voided the alleged February 16, 2011 Entry.

21 There are numerous case law authority that establishes a Court Document is not considered filed until the  
22 Clerk of Court actually receives the Court Document.

23 “[H]istorically, ‘filing’ occurs when a person manually presents a paper pleading to the clerk of

1 courts. See, e.g., *King v. Paylor* (1942), 69 Ohio App. 193, 196, 23 O.O. 594, 43 N.E.2d 313 ('a  
2 filing can only be accomplished by bringing the paper to the notice of the officer, so that it can be  
3 accepted by him as official custodian')." *Louden v. A.O. Smith Corp.*, 121 Ohio St.3d 95, 2009-Ohio-  
4 319, 902 N.E.2d 458, ¶ 15.

5 By Judge David A. Ellwoods' own admissions, he prepared and file stamped the Entry and dated the Entry  
6 for February 16, 2011. Then on February 18, 2011, two days later, the Entry was delivered and received buy  
7 the Clerks' Office for filing and the Clerk mailed the Entry to the Appellant on that same day. The Clerk then  
8 posted the Entry to the file. Finally, Judge Ellwood admits that on February 22, 2011, the Clerk posted the  
9 Entry to the docket which would have automatically posted the Entry to the online docket.

10 Judge Ellwood repeatedly referred to a "processing time" and a "process" as being the time frame after he  
11 prepared and file stamped the Entry with his own Clerk of Court file stamp in his office, and his secretary  
12 two days later delivering the Entry to the Clerk of Court, and then the Clerk posting the Entry to the file and  
13 then later posting the Entry to the docket. See paragraphs 8, 10, 19, 20, and 21 of Judge David A. Ellwoods'  
14 Answer and Motion to Dismiss filed under oath in the Appellate Court.

15 Judge Ellwood repeatedly denies that the Entry was back dated because he believes he can file stamp his  
16 own documents, then process them to the Clerks' Office within three days. This is not legal and none of  
17 Judge Ellwoods' Court documents can be file stamped until they are received by the Clerk of Court and the  
18 Clerk file stamps the document. Then the processing time Judge Ellwood speaks of would commence.

19 The Entry is void because Judge Ellwood file stamped the Entry himself. The Entry is void because Judge  
20 Ellwood delivered the pre-dated Entry physically to the Clerk's Office two days later. The Clerk should have  
21 affixed a new file stamp indicating the actual date she received the Entry but failed to do so. This is because  
22 the Clerk knows Judge Ellwood has a Clerk of Court Stamp and stamps all of his own filings. This is the way

1 these appellees conduct business on a day to day basis. This is altering records and providing Judge Ellwood  
2 with a three day window to file something disregarding deadlines to do so. This is a built in advantage for  
3 Judge Ellwood to manipulate his dockets and violates Equal Protection of the Laws prohibited by the  
4 Fourteenth Amendment to the United States Constitution. Numerous jurisdictions in the State of Ohio  
5 prohibit any Court filing to accepted by, stamped by, and processed by no one other than the Clerk of Court.

6 A Court entry, like any other Court document filed in a case, by a prosecutor, attorney, or litigant must be  
7 delivered to the Clerk of Court to be file stamped and processed.

8 *Fulton v. State ex rel. Gen. Motors Corp.* (1936), 130 Ohio St. 494, 5 O.O. 142, 200 N.E. 636,  
9 paragraph one of the syllabus ("The term 'filed' \* \* \* requires actual delivery \* \*  
10 \*").

11 State, ex rel. La Boiteaux Co., v. Court (1980), 61 Ohio St. 2d 60, 61 -- "Three conditions must  
12 exist to support the issuance of a writ of prohibition: (1) The court or officer against whom it is  
13 sought must be about to exercise judicial or quasi-judicial power, (2) the exercise of such power  
14 must be clearly unauthorized by law, and (3) it must appear that the refusal of the writ would result  
15 in injury for which there is no adequate remedy in the ordinary course of law." Also see State, ex rel.  
16 Northern Ohio Telephone Co., v. Winter (1970), 23 Ohio St. 2d 6, 8.

17 It is clear in this case that all three conditions are met. 1) Judge Ellwood was about to, and is still fighting  
18 to, exercise judicial power, 2) Judge Ellwood illegally file stamped his own Court Entry and dated it for  
19 February 16, 2011, then Judge Ellwood delivered the Entry to the Clerk of Court on February 18, 2011 two  
20 days after the filing deadline and then legally filed the Entry with the Clerk of Court losing jurisdiction, and  
21 3) refusal of the writ would result in injury to the Appellant as Judge Ellwood has laid an agenda he intends  
22 to impose upon the Appellant and there is no remedy in any ordinary coarse of law to prevent this from

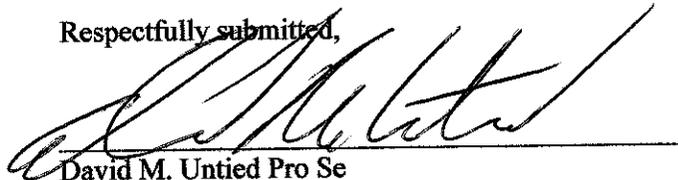
1 occurring. The Writ of Prohibition must issue in this instance to avoid injustice.

2

**CONCLUSION**

**FOR ALL** the foregoing reasons, the Appellant moves this court to reverse the Fifth District's June 6, 2011 decision by judgment entry and that this court grant the writ or that this court will order that the Fifth Appellate District Court grant the Appellant's Petition for Writ of Prohibition against Judge David A. Ellwood from exercising and judicial authority regarding probation revocation proceedings in the trial court in case no 09-CR-83 in the Guernsey County Court of Common Pleas and that a Writ of Mandamus and or Prohibition be issued against Judge Ellwood from file stamping his own court documents and against Clerk Teresa Dankovic preventing her from allowing her Court Stamp to be used by Judge Ellwood to file stamp his own Court Documents and for Clerk Teresa Dankovic to require all future Court Filings to be received by her office from anyone before any documents are stamped and processed. Appellant further requests that all costs in this court and the appellate court be assessed to the Appellees.

Respectfully submitted,



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## PROOF OF SERVICE

This is to certify that a copy of the foregoing was served upon David A. Ellwood at 801 Wheeling Ave., Cambridge, Ohio 43725 and Dan Padden at 139 West 8th Street, Cambridge, Ohio 43725 by regular U.S. Mail on this 19<sup>th</sup>. Day of September, 2011.



David M. Untied

**IN THE SUPREME COURT OF OHIO**

State of Ohio, EX REL.,  
David M. Untied,

**Appellant,**

vs.

CASE NO. 11-1188

On Appeal from the Guernsey  
County Court of Appeals, Fifth  
Appellate District

Guernsey County Common  
Pleas Court Judge David A. Ellwood

Court of Appeals  
Case No. 11 CA 07

and

Guernsey County Common Pleas  
Clerk of Court Teresa Dankovic

**Appellees.**

---

**APPENDIX TO BRIEF OF APPELLANT OF DAVID M. UNTIED**

App. 001: Notice of Appeal

App. 002: Judgement / Opinion

App. 003: Fifth and Fourteenth Amendments to United States Constitution

App. 004: Article IV, Section 4 of Ohio Constitution

"APP 001"

IN THE SUPREME COURT OF OHIO

11-1188

State of Ohio ex rel.

CASE NO.

David M. Untied,

Appellant,

vs.

On Appeal from the Fifth  
Appellate District Court  
Of Appeals of Ohio

Guernsey County Court of Common Pleas  
Judge David A. Ellwood

Court of Appeals  
Case No. Case No. 11 CA 07

and

Guernsey County Common Pleas  
Clerk of Court  
Teresa Dankovic

Appellees.

NOTICE OF APPEAL OF APPELLANT DAVID M. UNTIED

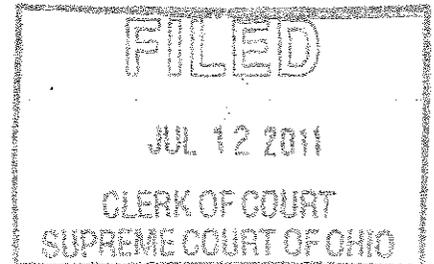
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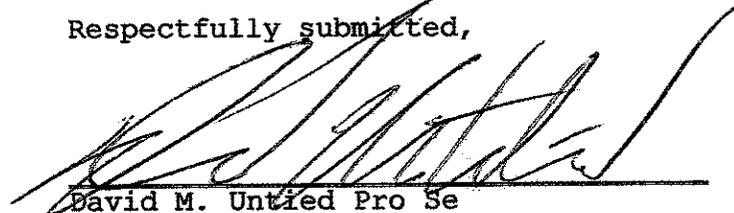


**Notice of Appeal of Appellant David M. Untied**

Appellant David M. Untied hereby gives notice of Appeal to the Supreme Court of Ohio from judgment of the Guernsey County Court of Appeals, Fifth Appellate District, entered in the Court of Appeals case No.11CA07 on June 9, 2006 ( attached ).

This case is an appeal as of right as this case originated in the Court of Appeals.

Respectfully submitted,



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**PROOF OF SERVICE**

This is to certify that a copy of the foregoing was served upon David A. Ellwood at 801 Wheeling Ave., Cambridge, Ohio 43725 and Dan Padden at 139 West 8th Street, Cambridge, Ohio 43725 by regular U.S. Mail on this 12<sup>th</sup> Day of July, 2011.



David M. Untied

1 APP. 002 1

**FILED  
COURT OF APPEALS**

**JUN 9 - 2011**

**COURT OF APPEALS  
GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT**

**GUERNSEY COUNTY, OHIO  
Teresa A. Dankovic, Clerk of Court**

STATE OF OHIO, EX REL.,  
DAVID UNTIED

Relator/Petitioner

-vs-

GUERNSEY COUNTY COURT  
OF COMMON PLEAS  
JUDGE DAVID A. ELLWOOD

and

GUERNSEY COUNTY CLERK OF  
COURT, TERESA DANKOVIC

Respondents

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. Sheila G. Farmer, J.  
Hon. Patricia A. Delaney, J.

Case No. 11 CA 07

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Guernsey County Court of  
Common Pleas, Case No. 09-CR-83

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

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VOL 11 PG 296

*Farmer, J.*

{¶1 } On February 16, 2010, Relator was convicted of passing bad checks and sentenced to a term of community control for a period of one year. On February 16, 2011, the trial court prepared a judgment entry setting a community control violation hearing for March 28, 2011. Relator argues he was placed on community control at 10:30 a.m. on February 16, 2010, therefore, his community control ended at 10:30 a.m. on February 16, 2011. It is Relator's assertion that the trial court lost subject matter jurisdiction over the community control violation after 10:30 a.m. on February 16, 2011. The Complaint in this case names two Respondents: Judge Ellwood and the Clerk of Courts. Relator seeks a writ of mandamus ordering the Clerk of Courts to time stamp all documents presented to it in this case.

{¶2 } Relator filed an Affidavit of Disqualification with the Supreme Court which Relator argues prevents Respondent Ellwood from holding the community control violation hearing on March 28, 2011. Subsequent to the filing of this Complaint, Respondent Ellwood stayed the March 28, 2011 hearing until the Supreme Court issued a ruling on the Affidavit of Disqualification. Relator seeks a writ of prohibition to prevent Respondent Ellwood from holding a community control violation hearing.

{¶3 } For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondents must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶14} In order for a writ of prohibition to issue, petitioner must prove that: (1) the lower court is about to exercise judicial authority; (2) the exercise of authority is not authorized by law; and, (3) the petitioner has no other adequate remedy in the ordinary course of law if a writ of prohibition is denied. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178, 631 N.E.2d 119. A writ of prohibition, regarding the unauthorized exercise of judicial power, will only be granted where the judicial officer's lack of subject-matter jurisdiction is patent and unambiguous. *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.* (1990), 54 Ohio St.3d 48, 562 N.E.2d 125. *State ex rel. Daniels v. Harris*, 2008 WL 5197131, 1 (Ohio App. 5 Dist.). Prohibition will not issue where there is an adequate remedy at law. *Id.*

{¶15} Relator advances two reasons why the community control violations hearing should not be held. First, he argues the trial court lacks jurisdiction because Relator filed an Affidavit of Disqualification with the Supreme Court. Second, Relator argues the trial court lost jurisdiction once Relator's community control ended.

{¶16} With regard to the Affidavit of Disqualification, the trial court stayed the hearing until the Supreme Court issued a ruling on the Affidavit. For this reason, the requested writ is moot because the relief sought was already granted by the trial court's stay of proceedings. See *State ex rel. Denton v. Bedinghaus* (2003), 98 Ohio St.3d 298, 304, 784 N.E.2d 99, 105. Furthermore, the Supreme Court has now denied the Affidavit of Disqualification which also makes this portion of the Complaint moot.

{¶17} Next, Relator argues a writ should issue because the trial court lacks jurisdiction to hold a community control violation hearing because Relator's community control expired prior to the filing of the entry setting the matter for a hearing. Within this

argument, Relator offers two reasons in support of his argument. First, he argues his community control expired at 10:30 a.m. on February 16, 2011. He maintains that the Clerk was required to place a stamp on the entry bearing the time it was filed. Second, he argues the entry was not filed by the Clerk on February 16, 2011. He suggests it was not fully filed until it was placed on the Clerk's online docket which was on February 22, 2011.

{¶8} With regard to the notion that Relator's community control would end at a particular time during the day, we have previously held that there are no partial days. It is the common-law rule that there is no fraction of a day. *State v. Clark* (1993), 84 Ohio App.3d 789, 791, 618 N.E.2d 257, 258. For this reason, this portion of Relator's argument is overruled.

{¶9} We will now examine whether there is a duty on the part of the Clerk of Courts duty to time stamp documents. Even assuming arguendo the Clerk was required to place a time stamp on the document, the Supreme Court has held, "[W]hen a document is filed, the clerk's failure to file-stamp it does not create a jurisdictional defect. *State v. Otte* (2002), 94 Ohio St.3d 167, 169, 761 N.E.2d 34, citing *State ex rel. Larkins v. Baker* (1995), 73 Ohio St.3d 658, 653 N.E.2d 701." *Zanesville v. Rouse* (2010), 126 Ohio St.3d 1, 3, 929 N.E.2d 1044, 1046. For this reason, we find any alleged failure of the clerk to put a time stamp on the document does not deprive the trial court of jurisdiction over the community control violation.

{¶10} Further, we find the entry in question bears a file stamp with the endorsement of the Clerk of Courts dated February 16, 2011. We find this file stamp to be evidence of the filing of this entry on this date. Again, the Supreme Court held,

"Certification by a clerk on a document attests that it was indeed filed." *Zanesville v. Rouse* (2010), 126 Ohio St.3d 1, 3, 929 N.E.2d 1044, 1046.

{¶11} The Supreme Court has recently considered a case very similar to the case at bar wherein the Relator argued the trial court lacked jurisdiction over a community control violation because the hearing on the violation was to be held after the community control term ended. In its holding, the Supreme Court stated, "[T]he court was authorized to conduct proceedings on the alleged community-control violations even though they were conducted after the expiration of the term of community control, provided that the notice of violations was properly given and the revocation proceedings were commenced before the expiration." *State ex rel. Hemsley v. Unruh* (2011), 943 N.E.2d 1014, 1017. The community control proceedings in the underlying criminal case were commenced prior to the expiration of the term of community control, therefore, the trial court does not patently and unambiguously lack jurisdiction.

{¶12} Finally, the Supreme Court in *Helmsley* found prohibition is precluded when raising a jurisdictional challenge to a community control violation because an adequate remedy at law exists, "[The Petitioner] has an adequate remedy by way of appeal and motion for stay of the court's judgment pending appeal to raise his jurisdictional claim." *State ex rel. Hemsley v. Unruh* (2011), 943 N.E.2d 1014, 1018.

{¶13 } For these reasons, Respondent's motion to dismiss is granted.

By Farmer, J.

Gwin, J. and

Delaney, J. concur.

*John J. Farmer*  
*W. Scott Gwin*  
*Patricia A. Delaney*

JUDGES

SGF/as

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

**FILED**  
**COURT OF APPEALS**

**JUN 9 - 2011**

**GUERNSEY COUNTY, OHIO**  
Teresa A. Dankovic, Clerk of Court

STATE OF OHIO, EX REL.,  
DAVID UNITED

Relator/Petitioner

-vs-

GUERNSEY COUNTY COURT OF  
COMMON PLEAS, JUDGE  
DAVID A. ELLWOOD

and

GUERNSEY COUNTY CLERK OF  
COURT, TERESA DANKOVIC

Respondents

JUDGMENT ENTRY

Case No. 11 CA 07

For the reasons stated in our accompanying Memorandum-Opinion, the  
Complaint for Writ of Prohibition and/or Writ of Mandamus is dismissed.

Costs to Relator.

*Shubert Foreman*  
*W. Scott G.*  
*Leticia A. Blaney*

JUDGES

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"APP 003"

**Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Amendment VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

#### **Amendment XIII<sup>5</sup>**

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Section 2.** Congress shall have power to enforce this article by appropriate legislation.

#### **Amendment XIV<sup>6</sup>**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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5 The Thirteenth Amendment was ratified December 6, 1865.

6 The Fourteenth Amendment was ratified July 9, 1868.

each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgement that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

#### §4 Common pleas court.

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas court of all counties in the district, as may be provided by law. Judges serving a district shall

judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the Supreme Court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

#### §5 Other powers of Supreme Court.

(A)(1) In addition to all other powers vested by this article in the Supreme Court, the Supreme Court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court

(2) The Supreme Court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessary arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules

and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the Supreme Court. The Supreme Court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the Supreme Court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing or disqualification matters involving judges of courts established by law.

#### §6 Election of judges; compensation.

(A)(1) The chief justice and the justices of the Supreme Court shall be elected by the electors of the state at large, for terms of not less than six years.

(2) The judges of the courts of appeals shall be elected by the electors of their respective appellate districts, for terms of not less than six years.

(3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located.

(4) Terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribe the times and mode of their election.

(B) The judges of the Supreme Court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive for their services such compensation as may be provided by law, which shall not be diminished during their term of office. The compensation of all judges of the Supreme Court, except that of the chief justice, shall be the same. The compensation of all judges of the courts of appeals shall