

IN THE SUPREME COURT OF OHIO

TERRANCE HOUGH, : Case No.: 11-1430
Defendant-Appellant, :
vs. : On Appeal from the Cuyahoga
STATE OF OHIO, : County Court of Appeals,
Plaintiff-Appellee. : Eighth Appellate District

MERIT BRIEF OF APPELLANT TERRANCE HOUGH

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DEFENDANT-APPELLANT, PRO SE

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STATEMENT OF FACTS

As the result of an incident that occurred on July 5, 2007, Defendant-Appellant Terrance Hough ("Hough") was charged by the prosecution with three (3) counts of aggravated murder, R.C. § 2903.01, all with firearm specifications, R.C. § 2941.145, and mass murder specifications; and two (2) counts of attempted murder, R.C. § 2923.02, with firearm specifications.

On July 5, 2007, Hough shot five (5) individuals who had been setting off fireworks in his neighborhood. Hough, a Cleveland firefighter, was attempting to rest after a shift. It was not contested at trial that Hough was the perpetrator. The issues at trial centered on his mens rea. The defense argued that the offense was a spur of the moment decision, triggered by a variety of factors, and that there was never a reasoned intention by Hough to fire the weapon, as opposed to the state's argument that this offense was committed with prior calculation and design.

Following and eleven (11) day jury trial that commenced on April 30, 2008 and ended on May 14, 2008, the jury returned a verdict of guilty of three (3) counts of aggravated murder, with firearm specifications and mass murder specifications; and two (2) counts of attempted murder, with firearm specifications.

Trial Court held a Penalty/Mitigation hearing on May 20, 2008. On that same day, trial court sentenced Hough to life in prison, without the possibility of parole on each of the aggravated murder counts, and ten (10) years in prison on each of the attempted murder counts, with three (3) years of firearm specifications, all to run consecutively.

On June 23, 2008, Hough filed a Notice of Appeal, Praecipe and Docketing Statement in the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, assigned Appeal No.: CA-08-91691.

On December 30, 2009, Hough filed a Motion to Extend Page Limit of Post Conviction Claim; Petition to Vacate or Set Aside Judgment of Conviction, pursuant to R.C. § 2953.21; Motion For Expert Assistance; Motion For Appointment of Counsel; and Motion to Amend Post Conviction Petition in the Court of Common Pleas of Cuyahoga County, Ohio. Trial Court denied aforementioned motions on January 7 and 8, 2010.

On July 1, 2010, Hough's appeal of criminal judgment is affirmed by the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, Appeal No.: CA-08-91691.

On July 16, 2010, Hough filed a Motion For Leave to File a Delayed Post Conviction Petition; Petition to Vacate or Set Aside Judgment of Conviction or Sentence, pursuant to R.C. § 2953.23; and Motion to Extend Page Limit of Post Conviction Petition in the Court of Common Pleas of Cuyahoga County, Ohio. Trial Court denied aforementioned motions on August 8, 2010.

On July 22, 2010, Hough filed a Notice of Appeal; and a Memorandum In Support of Jurisdiction in the Supreme Court of Ohio, further appealing Case No.: CA-08-91691. This Honorable Court denied leave and dismissed appeal on August 13, 2010.

On September 19, 2010, Hough filed a Motion For Findings of Fact and Conclusions of Law/Crim.R. 35(C) in the Court of Common Pleas of Cuyahoga County, Ohio, for denial of successive Petition For Post Conviction Relief. An Order of Findings of Fact and Conclusions of Law/Crim.R. 35(C) was signed and ordered on October 5, 2010 by trial court.

On September 22, 2010, Hough filed a Motion For Judge Shirley Strickland Saffold to Recuse Herself; and a Motion to Supplement the Petition For Post Conviction Relief in the Court of Common Pleas of Cuyahoga County, Ohio. (See Exhibit A and B). Trial Court denied aforementioned motions on October 7, 2010.

(See Exhibit C).

On November 1, 2010, Hough filed a Notice of Appeal, Praecipe and Docketing Statement for denied Motion For Judge Shirley Strickland Saffold to Recuse Herself and denied Motion to Supplement the Petition For Post Conviction Relief, in the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, assigned Appeal No.: CA-10-095954. (See Exhibit D).

On November 12, 2010, Hough was given notice by the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, that Appeal No.: CA-10-095954 was dismissed, sua sponte, for lack of a final appealable order, pursuant to R.C. § 2505.02. (See Exhibit E).

The Journal Entry of October 7, 2010, denying Motion For Judge Shirley Strickland Saffold to Recuse Herself; and denying Motion to Supplement the Petition For Post Conviction Relief, is insufficient and fails to invoke the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District's jurisdiction, pursuant to R.C. §§ 2505.02 and 2953.02. (See Exhibits C and E).

On November 24, 2010, Hough filed a Motion For Findings of Fact and Conclusions of Law/Crim.R. 35(C) for the denied Motion For Judge Shirley Strickland Saffold to Recuse Herself; and denied Motion to Supplement the Petition For Post Conviction Relief in the Court of Common Pleas of Cuyahoga County, Ohio. (See Exhibit F). Trial Court denied aforementioned motions on December 13, 2010, on the grounds that said motion was "duplicitous" and already issued on October 5, 2010. (See Exhibit E).

On March 1, 2011, Hough petitioned the Court of Appeals of Cuyahoga County, Ohio, to issue a Writ of Mandamus and/or Procedendo compelling Judge Shirley Strickland Saffold to issue a final appealable order, pursuant to R.C. § 2505.02, for the denial of Motion For Judge Shirley Strickland Saffold to Recuse Herself; and the denial of Motion to Supplement the Petition For Post Conviction Relief,

so that Hough may pursue appellate rights, assigned Appeal No.: CA-11-096468.

On July 11, 2011, the Court of Appeals of Cuyahoga County, Ohio, issued a Journal Entry and Opinion denying Hough's Writ of Mandamus and/or Procedendo. (See Exhibit G).

On August 17, 2011, Hough filed Notice of Appeal in the Supreme Court of Ohio, for the Journal Entry and Opinion of the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District's denial of Writ of Mandamus and/or Procedendo, Case No.: CA-11-096468.

ARGUMENT

Proposition Of Law No. I: Defendant-Appellant Terrance Hough has a clear, legal right to a final appealable order that complies with R.C. §§ 2505.02 and 2953.02, regarding the denial of his Motion For Judge Shirley Strickland Saffold to Recuse Herself; and the denial of his Motion to Supplement the Petition for Post Conviction Relief, so he may pursue right of appeal.

It was determined by the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, that Hough's Journal Entry denying his Motion For Judge Shirley Strickland Saffold to Recuse Herself; and denying his Motion to Supplement the Petition for Post Conviction Relief are non-appealable.

In the Journal Entry and Opinion by the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, in Case No.: CA-11-096468, the issue of Hough receiving a **final appealable order** by Trial Court Judge Shirley Strickland Saffold for the denial of Motion for Judge Shirley Strickland Saffold to Recuse Herself; and the denial of his Motion to Supplement the Petition for Post Conviction Relief was only addressed on P. 4, ¶12 stating: "[A] trial judge's denial of a motion to recuse is not a final appealable order. In Beer v. Griffith (1978), 54 Ohio St.2d 440, 377 N.E.2d 775, the Supreme Court of Ohio ruled that only the Chief Justice of the Supreme Court of Ohio or his designee may rule upon the disqualification of a judge, and that includes review of a motion to recuse. ..."

Since "[A] trial judge's denial of a motion to recuse is not a final appeal-able order." (See Collier v. Picard, 237 F.2d 234), Hough's only remedy at law is a Writ of Mandamus and/or Procedendo to compel Judge Shirley Strickland Saffold for a final appealable order, pursuant to R.C. § 2505.02, so right of appeal may be pursued.

Hough contends under R.C. § 2505.03: Final order may be appealed:

(A) [E]very final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.

R.C. § 2505.03 provides for an appeal from every final order, judgment, or decree of a court and from a final order of any administrative tribunal ...

Johnson v. United Enterprises, Inc., 166 Ohio St.149, 140 N.E.2d 407 (1957).

According to R.C. § 2952.02: Review of Judgments:

... [i]n any other criminal case, ... , the judgment or final order of a court of record inferior to the court of appeals may be reviewed in the court of appeals ...

The Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District opined within its denial "[p]etitioner failed to use an adequate remedy at law." Hough can only conclude that this is referring to the lack of appeal of the sua sponte dismissal of Appeal No.: CA-10-095954 to the Supreme Court of Ohio.

Hough asserts that no such failure exists as the time for filing notice of appeal does not begin to run until findings of fact and conclusions of law have been filed by the trial court. (See Walker v. Doup (1988), 36 Ohio St.3d 229).

Trial court refused to file findings of fact and conclusions of law for the denial of Motion for Judge Shirley Strickland Saffold to Recuse Herself; and the denial of Motion to Supplement the Petition for Post Conviction Relief.

Trial court conveniently "claimed" this motion was previously filed on September 9, 2010, and that this court issued such findings and conclusions on

October 5, 2010. No further duplicitous findings will be issued. (See Exhibit H).

Trial court erred, as there were two (2) separate Motions for Findings of Fact and Conclusions of Law/Crim.R. 35(C) filed in the Court of Common Pleas of Cuyahoga County, Ohio, before Judge Shirley Strickland Saffold. (See Exhibits F and I).

As for the Motion to Supplement the Petition for Post Conviction Relief, trial court was in error in denying Hough's motion and the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District erred in not recognizing the error.

The claim in the Supplement to the Petition for Post Conviction Relief was based upon newly discovered evidence and therefore should have been allowed. Moreover, pursuant to R.C. § 2953.21(D), the petitioner is free to amend the petition at any time, for any reason, before the state responds. After the state responds, the petitioner may only amend the petition with leave of court.

R.C. § 2953.21(F) permits the petitioner to amend the petition without leave of court at any time prior to the prosecutor's response.

The petitioner's right to amend is absolute until the state files a responsive answer; ... State v. Milanovich (1975), 42 Ohio St.2d 46, 325 N.E.2d 540.

[A]ny civil complaintant - have the right, under the Federal Rules of Civil Procedure, to amend a petition once without leave of court "before being served with a responsive pleading" and therefore (following such a pre-answer amendment or the service of the respondent's filing) "with opposing party's written consent or the court's leave." Fed.R.Civ.Proc. 15(a)(1), (2)(2009); and Mayle v. Felix, 545 U.S. 644, 655 (2005).

The State of Ohio, by and through the Cuyahoga County Prosecutor, has never filed a response to (either of) Hough's Petition(s) for Post Conviction Relief; and the Motion to Supplement the Petition for Post Conviction Relief.

The Motion to Supplement the Petition for Post Conviction Relief was filed on September 22, 2010, prior to the Order of Findings of Fact and Conclusions of Law/Crim.R. 35(C), filed on October 5, 2010, in regards to the dismissal of the Petition for Post Conviction Relief.

Again, pursuant to Walker v. Doup, *infra*, Hough's time for filing a notice of appeal for the denial of his Motion for Judge Shirley Strickland Saffold to Recuse Herself; and the denial of his Motion to Supplement the Petition for Post Conviction Relief has not yet begun to toll, so Hough's only adequate remedy at law was to file a Petition for Writ of Mandamus and/or Procedendo.

According to State v. Connors (Ohio App. 1 Dist., Hamilton, 05-27-2005), 2005-Ohio-2644, 2005 WL 1250332, trial court is not required to make findings of fact and conclusions of law when it summarily dismisses a post conviction petition as untimely, however, in this case the trial judge **did not** dismiss petition(s) as untimely, therefore, requiring findings of fact and conclusions of law. As already stated, trial court refused when requested. (See Exhibit H).

Trial Court's order denying defendant's successive petition for post conviction relief from conviction ... was not final and appealable, absent findings of fact and conclusions of law. (See State v. Speed (Ohio App. 8 Dist., Cuyahoga 04-28-2005), 2005-Ohio-1979, 2005 WL 984500; see also State v. Fuller (Ohio App. 1 Dist., 04-27-2007) 171 Ohio App.3d 260, 870 N.E.2d 255, 2007-Ohio-2018.

In order for Hough to seek a remedy for an improper final order, he must file a motion in the trial court requesting a revised entry. (See Dunn v. Smith, 2008, 119 Ohio St.3d 364, at ¶8.

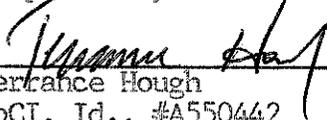
If the trial court refused the defendant's motion for a revised entry, the defendant may compel the trial court to act by filing an action for a writ of procedendo with the court of appeals. Id. at ¶9.

Hough did file for a revised entry. (See Exhibit F). Thus, Hough's only available remedy at law was to file a Petition for Writ of Mandamus and/or Proceadendo, in the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District.

CONCLUSION

For the reasons discussed throughout this brief, Defendant-Appellant Terrance Hough respecyfully requests that this Honorable Court reverse the decision of the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District.

Respectfully submitted,

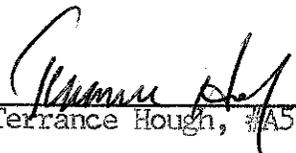


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Merit Brief of Appellant Terrance Hough, was forwarded by regular U.S. mail, postage pre-paid, to William Mason, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 5 day of October, 2011.



Terrance Hough, #A550442
DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

TERRANCE HOUGH,	:	Case No.: 11-1430
Defendant-Appellant,	:	
vs.	:	On Appeal from the Cuyahoga
STATE OF OHIO,	:	County Court of Appeals,
Plaintiff-Appellee.	:	Eighth Appellate District

APPENDIX

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No.: **11-1430**
Plaintiff-Appellee, :
vs. : On Appeal from the Cuyahoga
TERRANCE HOUGH, : County Court of Appeals
Defendant-Appellant. : Eighth Appellate District
C.A. Case No.: 095954
096468

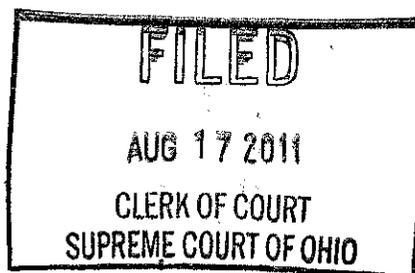
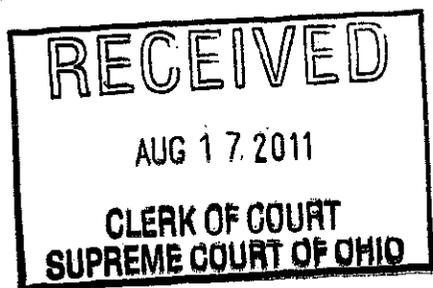
NOTICE OF APPEAL OF APPELLANT TERRANCE HOUGH

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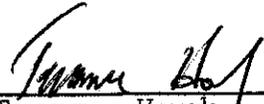
COUNSEL FOR APPELLEE, STATE OF OHIO



NOTICE OF APPEAL OF APPELLANT TERRANCE HOUGH

Appellant Terrance Hough hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in the Court of Appeals Case No.: 95954 on November 8, 2010 and continued through Case No.: 96468 on July 11, 2011.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

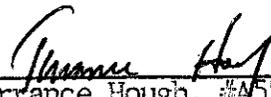


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DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. mail to William Mason, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 9 day of August, 2011.



Terrance Hough, #A550442
DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 :
 vs. :
 :
 TERRANCE HOUGH, :
 :
 Defendant-Appellant. :

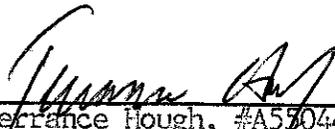
Case No.: 11-1430

AFFIDAVIT OF INDIGENCY

I, Terrance Hough, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

I am currently incarcerated at the Toledo Correctional Institution and I have been incarcerated since July 5, 2007. I work at the prison but receive only \$18.00 a month.

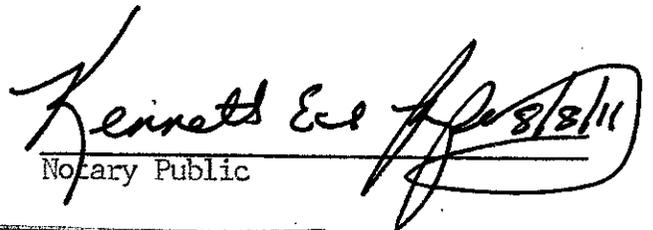
Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.


Terrance Hough, #A570442
AFFIANT

Sworn to, or affirmed, and subscribed in my presence this 8th day of August, 2011.



Kenneth Earl Rupert
Notary Public, State of Ohio
Commission Expires 4/30/2012


Notary Public

FILED
AUG 17 2011
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY
CRIMINAL DIVISION

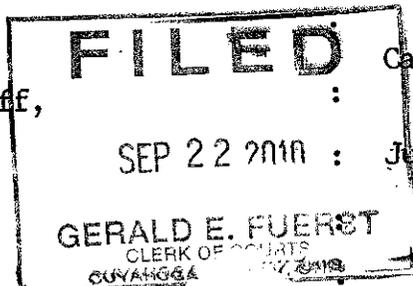
State of Ohio,

Plaintiff,

vs.

Terrance Hough,

Defendant.



Case No.: CR-07-499308-A

Judge: Shirley Strickland-Saffold

MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF

Now Comes, Terrance Hough, in propria persona, in the above-styled cause, and respectfully makes motion that Honorable Judge Shirley Strickland-Saffold to recuse herself from this Defendant's case.

Defendant presents this motion that Judge Saffold should recuse herself, is because of judicial bias has occurred in this case. Defendant has filed a supplement to the petition for post-conviction relief and, has claimed:

"Petitioner was denied his Constitutional rights of due process and complete trial by an impartial judge as guaranteed by the Fourteenth Amendment of the United States Constitution, because the result of impermissible appearance of judicial bias."

Judge Saffold should recuse herself, for she is unable to protect her interest while it is being challenged. She is unable to be a judge and testify through an evidentiary hearing as it relates to defendants claim.

In further support Judge Saffold should recuse herself, is that a judge can and should be disqualified for "bias, [] a likelihood of bias[,] or [even] an appearance of bias." (See Ungar v. Sarafit (1964), 376 U.S. 573;

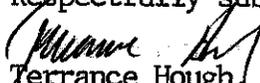
see also In re Murchison (1955), 349 U.S. 133, at 136 ("[O]ur system of law has always endeavored to prevent even the probability of unfairness.")).

With all due of respect, Defendant only makes this motion to protect his constitutional rights to a fair and adequate review of all his claims presented within the petition for post-conviction for relief requested. As his constitutional rights are in jeopardy, and any unfavorable review would be further judicial bias if it were not to recuse itself.

Therefore, based upon this defendant has presented a nonfrivolous claim within his supplement to the petition for post-conviction relief, this honorable court is respectfully to recuse itself from this case.

WHEREFORE, this Honorable Court is respectfully to recuse itself from this Defendant's case, based upon the current supported claim that judicial bias is presented within a pending post-conviction before this court.

Respectfully submitted,

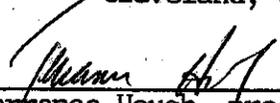

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PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF was sent by regular U.S. Mail to the following parties on this 14 day of September, 2010:

Common Pleas Court of Cuyhoga County
Clerk of Courts
1200 Ontario Street
Cleveland, Ohio 44113

Prosecutor's Office
1200 Ontario Street
Cleveland, Ohio 44113


Terrance Hough, pro-se
ToCI, Id. #A550-442

IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY
CRIMINAL DIVISION

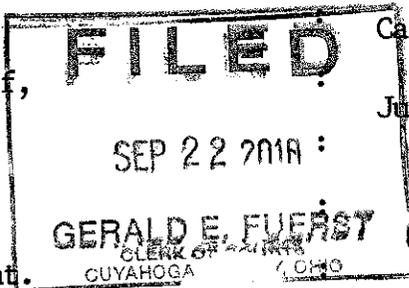
State of Ohio,

Plaintiff,

vs.

Terrance Hough,

Defendant.



Case No.: CR-07-499308-A

Judge: Shirley Strickland-Saffold

**MOTION TO SUPPLEMENT THE PETITION
FOR POST-CONVICTION RELIEF**

Now Comes, Terrance Hough, in propria persona, in the above-styled cause, and respectfully makes motion with this Honorable Court to supplement the pending petition for post-conviction relief pursuant to Ohio Rev. Code § 2953.23, as follows:

- 1) Petitioner filed a post-conviction on July 16, 2010;
- 2) Petitioner raised fifteen issues.
- 3) Since the petition has been filed, petitioner has discovered one (1) additional issue, which he asserts needs to be included in this courts review;
- 4) The issue petitioner request this court to allow him to add to the existing pending post-conviction motion is:

"Petitioner was denied his Constitutional rights of due process and complete trial by an impartial judge as guaranteed by the Fourteenth Amendment of the United States Constitution, because the result of impermissible appearance of judicial bias."

- 5) Petitioner has attached the additional claim, typewritten and in

the same format as the pending petition. If this Honorable Court grants this motion, petitioner requests this court accept the attached claim as filed and added to the pending motion for post-conviction relief, recognizing that said petition would then contain sixteen total constitutional claims; and;

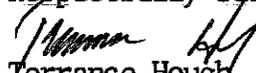
6) The Court's acceptance of the attached claim would not unduly delay the proceedings, and would allow instantaneous addition upon the court's ruling.

WHEREFORE, petitioner request:

- A. That he be allowed to add ONE (1) new claim to the pending motion for post-conviction relief;
- B. This Court accept the attached claim as the addition, so no delay of proceedings occurs; and
- C. That it be recognized that the pending petition relief contains a total of sixteen constitutional claims, after supplement.

Dated: September 7, 2010.

Respectfully submitted,

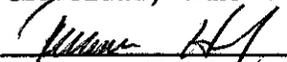

Terrance Hough, pro-se
ToCI, Id.#A550-442
2001 East Central Avenue
Post Office Box 80033
Toledo, Ohio 43608-0033

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this MOTION TO SUPPLEMENT THE PETITION FOR POST-CONVICTION RELIEF was sent by regular U.S. Mail to the following parties on this 14 day of September, 2010:

Common Pleas Court of Cuyahoga County
Clerk of Courts
1200 Ontario Street
Cleveland, Ohio 44113

Prosecutor's Office
Cuyahoga County
1200 Ontario Street
Cleveland, Ohio 44113


Terrance Hough, pro-se

IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY
CRIMINAL DIVISION

State of Ohio, :
 : Case No.: CR-07-499308-A
Plaintiff, :
 : Judge: Shirley Strickland-Saffold
vs. :
 :
Terrance Hough, : EVIDENTIARY HEARING REQUESTED
 :
Defendant. :
 :
_____ /

SUPPLEMENT TO PETITIONER'S
PETITION FOR POST-CONVICTION RELIEF

Now Comes, Terrance Hough, in propria persona, who offers one (1) additional claim to his pending petition for post-conviction relief, as follows: Claim Number Sixteen

Petitioner was denied his Constitutional rights of due process and complete trial by an impartial judge as guaranteed by the Fourteenth Amendment of the United States Constitution, because the result of an impermissible appearance of judicial bias.

Supporting Facts:

Petitioner contends that his Constitutional Rights were denied and violated as the result of the trial judge's impermissible appearance of judicial bias, and led to a fair trial impossible.

Judge Shirley Strickland-Saffold was bias in this instant case, because she was personally embroiled with a high degree of antagonism as to make a fair trial impossible. This judicial bias of Judge Saffold was discovered

through articles written by her under anonymous postings on websites under the alias lawmiss. This posting made by lawmiss (Judge Saffold) include comments about this petitioner's case which were found in an article from the plain dealer (See Exhibit S).

Judge Saffold's comments posted under the username lawmiss involved legal issues in three high-profile criminal cases before her, including the Sowell case, a RTA driver and this case concerning a triple-murder that resulted in a conviction against this petitioner, which all related to capital-murder cases. The Plain Dealer posted that Judge Saffold referred that:

"If a black guy had massacred five people then he would've received the death penalty," lawmiss stated in a May 22, 2008, post about the sentencing of Hough to life without parole. "A white guy does it and he gets a pat on the hand. The jury didn't care about the victims. They were set to cut him loose from day one. All of them ought to be ashamed"

(McCarty, James F. "Anonymous online comments are linked to the personal e-mail account of Cuyahoga County Common Pleas Judge Shirley Strickland Saffold." The Plain Dealer. blog.cleveland.com. 26 March 2010. Online. 25 August 2010) (See Exhibit S).

Based upon the aforesaid comments mentioned above, it seems clear that Judge Saffold was personally insulted that a "white guy" is to kill someone and only gets a pat on the hand. As if a "black guy" does it he would've received the death penalty. With that being said, her remarks present she suffered a severe personal insult and expected that petitioner should have received the death penalty.

According to the Supreme Court of the United States "[a] fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of

unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." See In re Murchison (1995), 349 U.S. 133, at [3].

The Supreme Court has further held in Murchison that judicial bias includes "such a high degree of favoritism or antagonism as to make fair judgment impossible." Id. Such bias, in turn, can deprive the defendant of a fair trial because "[f]airness of course requires an absence of actual bias in the trial of cases." Id. 349 U.S. at 136.

Nevertheless, relying upon the Supreme Courts precedent, petitioner asserts that Judge Saffold's remarks show bias on that she was unable to be impartial in this instant case without expecting that a "white guy" should receive the death penalty if convicted of multiple murders.

Consequently, the due process "require[s] not only an absence of actual bias, but an absence of even the appearance of judicial bias," and that "[a]lthough there is no mechanical test for determining when bias and/or hostility exist, when a trial judge exhibits the open hostility and bias at the beginning of a judicial proceeding as was exhibited here, it follows that the judgment entered herein must be reversed." Anderson v. Sheppard (6th Cir. 1988), 856 F.2d 741, 746-47 (citing Joint Anti-Fascist Refugee Comm v. McGrath (1951), 341 U.S. 123, 172 n.19).

Therefore, because it is found above and herein that Judge Saffold had exhibited actual bias, petitioner was denied his rights to due process to a judge being unbiased (In re Murchison, supra), and a fair trial because of an impermissible appearance of judicial bias.

WHEREFORE, this Honorable Court is respectfully to conduct an Evidentiary Hearing to determine whether judicial bias occurred and to appropriately review the merit of this claim, and preserve Petitioner's Constitutional Rights.

Petitioner has attached the following evidence to further support this claim:

McCarty, James F. "Anonymous online comments are linked to the personal e-mail account of Cuyahoga County Common Pleas Judge Shirley Strickland Saffold." The Plain Dealer. blog.cleveland.com. 26 March 2010. Online. 25 August 2010 (See Exhibit S).

PRAYER FOR RELIEF

WHEREFORE, Petitioner request:

- A. That Petitioner be granted an evidentiary hearing on the above claim;
- B. That Petitioner's conviction(s) be vacated or set aside; and/or
- C. That Petitioner be granted such other relief this court deems appropriate.

Dated: September 8, 2010.

Respectfully submitted,

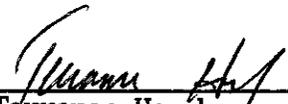

Terrance Hough, pro-se
ToCI, Id.#A550-442
2001 East Central Avenue
Post Office Box 80033
Toledo, Ohio 43608-0033

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this SUPPLEMENT TO PETITIONER'S PETITION FOR POST-CONVICTION RELIEF was sent by regular U.S. Mail to the following parties on this day of September, 14, 2010:

Common Pleas Court of Cuyahoga County
Clerk of Courts
1200 Ontario Street
Cleveland, Ohio 44113

Prosecutor Office
Cuyahoga County
1200 Ontario Street
Cleveland, Ohio 44113


Terrance Hough, pro-se
ToCI, Id.#A550-452

IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY
CRIMINAL DIVISION

State of Ohio, :
Plaintiff, : Case No.: CR-07-499308-A
vs. : Judge: Shirley Strickland-Saffold
Terrance Hough, : SUPPLEMENT TO PETITIONER'S
Defendant. : PETITION FOR POST-CONVICTION
RELIEF

AFFIDAVIT OF VERIFICATION

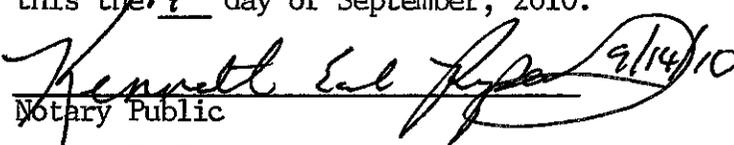
Now Comes, the undersigned Petitioner and does hereby state that the facts in the foregoing Motion to Supplement to Petitioner's Petition for Post-Conviction Relief, and the foregoing document attached hereto, are true and correct to the best of my knowledge.

This the 14 day of September, 2010.



Terrance Hough, Affiant
ToCI, Id.#A550-442
2001 East Central Avenue
Post Office Box 80033
Toledo, Ohio 43608-0033

Sworn to and subscribed before me
this the 14 day of September, 2010.



Notary Public

[SEAL]

My Commission Expires: _____



Kenneth Earl Rupert
Notary Public, State of Ohio
Commission Expires 4/30/2012

IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY
CRIMINAL DIVISION

State of Ohio, :
Plaintiff, : Case No.: CR-07-499308-A
vs. :
Terrance Hough, : Judge: Shirley Strickland-Saffold
Defendant. :

INDEX FOR:

SUPPLEMENT TO PETITIONER'S
PETITION FOR POST-CONVICTION RELIEF

EXHIBIT

PAGE NO.



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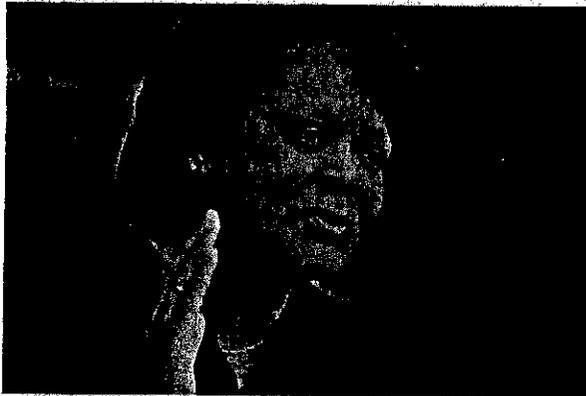
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Anonymous online comments are linked to the personal e-mail account of Cuyahoga County Common Pleas Judge Shirley Strickland Saffold

By James F. McCarty, The Plain Dealer March 26, 2010, 7:00AM



Gus Chan/The Plain Dealer

More than 80 anonymous online comments originated from the personal Internet address of Cuyahoga County Common Pleas Judge Shirley Strickland Saffold.

CLEVELAND, Ohio -- Someone using a personal e-mail account of Cuyahoga County Common Pleas Judge Shirley Strickland Saffold has written anonymous, opinionated online comments relating to some of the judge's high-profile cases, including that of accused serial killer Anthony Sowell.

The judge's 23-year-old daughter, Sydney Saffold, said Thursday that she posted the comments as "lawmiss" on cleveland.com, a Web site affiliated with The Plain Dealer. But in a conference call with her lawyer and a reporter, the onetime law school student could not recall the number of comments she posted. The newspaper found more than 80 comments posted by lawmiss.

The judge said in an interview Wednesday that she had nothing to do with any comments posted by lawmiss.

An examination of Saffold's court-issued computer, obtained Thursday by The Plain Dealer with a public records request, shows someone used the computer to access cleveland.com at the exact times and dates of three comments

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- Plain Dealer sparks ethical debate by unmasking anonymous Cleveland.com poster Read Lawmiss' comments

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posted under the username lawmiss. A lawyer representing the judge's daughter challenged the accuracy of the times shown in the listing.

Saffold's daughter declined to talk about the specifics of her postings.

"I don't think the content of my posts is necessarily pertinent," she said from her home in Columbus. "I know all of the people I spoke about . . . I don't see why I owe any explanations about my blogging activities."

Her disclosure came a day after the newspaper questioned her mother about the comments posted as lawmiss, a moniker created by someone using the judge's personal America Online account. Saffold confirmed that the e-mail account linked to lawmiss is her own. But she said she would never make comments about cases before her.

"Never," the judge said in an interview in her Justice Center chambers. "I have not. My daughter may have, but I have not."

Another lawmiss posting, which did not originate from Saffold's courthouse computer, referenced Saffold's sentencing of an RTA bus driver to six months for vehicular homicide. The post criticizes Rufus Sims, who defended the woman and is now one of the lawyers on Sowell's capital-murder case.

"Rufus Sims did a disservice to his client," the Nov. 21, 2009, post reads. "If only he could shut his Amos and Andy style mouth. What makes him think that is [sic] he insults and acts like buffon [sic] that it will cause the judge to think and see it his way. There are so many lawyers that could've done a much better job. This was not a tough case, folks. She should've hired a lawyer with the experience to truly handle her needs. Amos and Andy, shuffling around did not do it."

The Plain Dealer removed the comment for violating cleveland.com's community rules, which do not allow personal attacks.

Sims said he suspects that Saffold authored the post and intends to address the matter in court filings next week.

"This shows a personal disdain for me and a personal bias against me that she could easily take out on our client," he said, referencing Sowell. "That's the problem."

Asked about Saffold's daughter saying she wrote the post, Sims said: "That doesn't make any sense to me. Someone else is using the judge's account? Come on. Why would Sydney do it? I don't get it."

Jonathan Coughlin, disciplinary counsel for the Ohio Supreme Court, said he has never dealt with a case involving a judge anonymously commenting online about cases before the bench.

Legal experts contacted Friday said that a judge posting comments about his or her cases -- even under the anonymity of a screen name -

- Cuyahoga County judge orders arrest of Plain Dealer reporter, wants to know source of story on murder suspect Anthony Sowell
- Plain Dealer photographers are denied permission to work at reporter's hearing on source for Sowell documents
- County judge reveals himself as source of leaked Sowell psychiatric evaluation
- Video: Judge Shirley Strickland Saffold drops request for source's identity
- Judge Timothy McGinty admits sharing Sowell report; defense unsure of next move
- Sunshine Week spotlights the need for open government: Regina Brett
- Judge Saffold's attempt to jail PD reporter was a judicial assault: Phillip Morris
- Follow the Sowell case on Cleveland.com

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- Death penalty sought against Maple Heights man accused of killing his grandparents 1:46PM
- P.M. Links: Memorial service for bear victim; Tallmadge man dies of crash injuries; county fairs bustling 1:21PM
- Humane Society asks Gov. Strickland to immediately ban wild animals as pets 11:47AM

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Douglas MacArthur Girls Leadership Academy

- would be guilty of improper conduct and could be subject to disciplinary action.

But if someone else posts the comments, using the judge's personal e-mail account, the judge should not be held responsible, the experts said.

Christopher Fairman, a legal ethics expert and professor at Ohio State University's Michael E. Moritz College of Law, said the person authoring the comments makes "all the difference in the world.

"If the judge is doing it, it's a matter for the Office of Disciplinary Counsel," he said. "If it's the daughter, a different type of counselor is in order."

Attorney Bob Housel, who until recently served on the Ohio Supreme Court's disciplinary board, would not speak specifically about Saffold, whom he considers a friend. But he said no judge should comment about cases or lawyers.

"To express an opinion about a certain lawyer, even though they are disguised on an Internet chat site, I don't know why a judge would do that, and it is something that could be considered inappropriate," Housel said.

The more than 80 comments posted under the lawmiss moniker since May 2007 covered a wide range of Northeast Ohio and national current events, and showed a familiarity with the inner workings of the Cuyahoga County government and Saffold's courtroom, in particular.

Comments included the Cleveland Browns' quarterback competition, the conditions at a local golf course, the quality of work by Plain Dealer columnists and news reporters, the county corruption investigation, and the performances of local politicians, prosecutors and defense lawyers.

Many of the most recent comments involved legal issues in three high-profile criminal cases before Saffold, including the Sowell case, the RTA driver and a triple-murder case that resulted in the conviction of Cleveland firefighter Terrance Hough Jr., another capital-murder case.

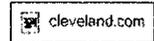
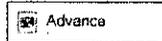
"If a black guy had massacred five people then he would've received the death penalty," lawmiss stated in a May 22, 2008, post about the sentencing of Hough to life without parole. "A white guy does it and he gets pat on the hand. The jury didn't care about the victims. They were set to cut him loose from day one. All of them ought to be ashamed."

Saffold's daughter said in the Thursday interview that she posted the comments as an active "blogger" with an interest in the court system. Asked how many comments she posted as lawmiss, she said "quite a few, more than five."

At several points during the interview, her lawyer, Larry Zukerman, broke into the conversation. "She's not going to sit here and be cross-examined," he said. "I think Sydney indicated she spoke through her words."

A lawmiss comment referencing the mental state of a relative of Plain Dealer reporter Jim Ewinger prompted the newspaper to investigate the source of the comment. The newspaper was able to trace the lawmiss username to the judge's personal AOL account.

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The investigation represents a departure from the newspaper's general practice of allowing commenters on cleveland.com to remain anonymous. (Please see companion story).

Saffold criticized the newspaper for singling out the lawmiss comments for inspection. In the interview in her chambers, she cited the decision to trace the comment as further evidence that the newspaper is on a campaign to remove her from the bench.

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"This smut and smear crap you're doing is disturbing," she said.

For many of her 16 years on the Common Pleas bench, Saffold has taken issue with the newspaper's coverage of her career. Much of her ire has focused on Ewinger, who covered Common Pleas courts for years but has not been on the beat for about 10 years.

Her complaints date to at least 1996, when Ewinger reported on the judge telling a woman who pleaded guilty to credit card fraud to find a better man.

"Men are easy," the judge told the woman. "You can go sit at the bus stop, put on a short skirt, cross your legs and pick up 25. Ten of them will give you their money. It's the truth." Saffold went on to tell the defendant: "If you don't pick up the first 10, then all you got to do is open your legs a little bit and cross them at the bottom and then they'll stop."

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Previous story: Plain Dealer sparks ethical debate by unmasking anonymous Cleveland.com poster

Next story: Plain Dealer sparks ethical debate by unmasking anonymous Cleveland.com poster

Story tags: anthony sowell | bob house | cuyahoga county common pleas court | judge shirley strickland saffold | rufus sims | terrance hough

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Posted by **necron99**
March 26, 2010, 10:21AM

The data seems to have changed hands somehow. I doubt the webmasters decided to make a public information request out of the blue.

Exhibit



65341162

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

2010 OCT -7 A @ 20

TERRANCE HOUGH
Defendant

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

Case No: CR-07-499308-A

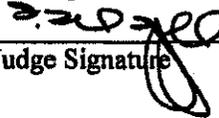
Judge: SHIRLEY STRICKLAND SAFFOLD

INDICT: 2903.01 AGGRAVATED MURDER /FRM3 /MM
2903.01 AGGRAVATED MURDER /FRM3 /MM
2903.01 AGGRAVATED MURDER /FRM3 /MM
ADDITIONAL COUNTS...

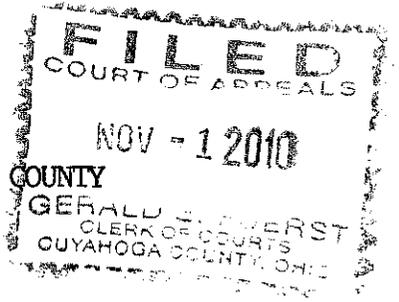
JOURNAL ENTRY

MOTION OF DEFENDANT FOR JUDGE TO RECUSE IS DENIED AS CASE IS CONCLUDED.
MOTION OF DEFENDANT TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF IS DENIED.

09/28/2010
CPCLF 10/05/2010 08:43:06


Judge Signature

10/4/10
Date



IN THE COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY

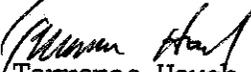
State of Ohio, :
 Plaintiff-Appellee, : Case No.: CR-07-499308-A
 vs. :
 Terrance Hough, : Judge: Shirley Strickland Saffold
 Defendant-Appellant. :

Judge:

DEFENDANT TERRANCE HOUG

CA 10 095954

NOTICE is hereby given that Terrance Hough, Defendant-Appellant, in the above case, hereby appeals to the Eighth Appellate District Court of Appeals, from this Court's October 7th, 2010 Denial of Defendant's Motion to Supplement the Petition For Post Conviction and Motion For Judge Shirley Strickland Saffold to Recuse Herself.

Respectfully submitted,

 Terrance Hough, pro se
 ToCI, Id., #A550442
 2001 East Central Avenue
 Post Office Box 80033
 Toledo, Ohio 43608-0033

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this document was sent by ordinary U.S. mail, postage pre-paid, to the following parties on this 25 day of October, 2010:

Clerk of Courts
 Cuyahoga County
 1200 Ontario Street
 Cleveland, Ohio 44113

Prosecutor's Office
 Cuyahoga County
 1200 Ontario Street
 Cleveland, Ohio 44113


 Terrance Hough

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.
95954

LOWER COURT NO.
CP CR-499308

COMMON PLEAS COURT

-vs-

TERRANCE HOUGH

Appellant

MOTION NO. 439023

Date 11/08/2010

Journal Entry

SUA SPONTE, THIS APPEAL IS DISMISSED AT APPELLANT'S COST FOR LACK OF A FINAL APPEALABLE ORDER. SEE R.C. 2505.02.

FILED AND JOURNALIZED
PER APP.R. 22(C)

NOV X 8 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY G. Fuerst DEP.

Judge MARY EILEEN KILBANE, Concur

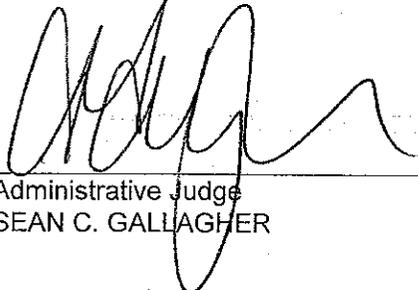

Administrative Judge
SEAN C. GALLAGHER

Exhibit E

VOL 0716 PG 0742



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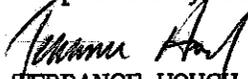
GERALD E. FUERST, CLERK
By Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, : Case No.: CR-07-499308
Plaintiff,
vs. : Judge Shirley Strickland Saffold
TERRANCE HOUGH,
Defendant. : MOTION FOR FINDINGS OF FACT AND
CONCLUSIONS OF LAW/CRIM.R. 35(C)

Now comes the Defendant, Terrance Hough, in propria persona, and moves this Court pursuant to Crim.R. 35(C), to issue Findings of Fact and Conclusions of Law for the dismissal of MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF and MOTION TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF. A memorandum in support is attached.

Respectfully submitted,


TERRANCE HOUGH
Defendant, pro se
ToCI, Id. #A550442
2001 East Central Avenue
Post Office Box 80033
Toledo, Ohio 43608-0033

PROOF OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this document was sent by ordinary U.S. mail, postage pre-paid, to the Cuyahoga County Prosecutor's Office, 1200 Ontario Street, Cleveland, Ohio 44113 on this 22 day of November, 2010.


Defendant, pro se

Exhibit F

MEMORANDUM

On September 22, 2010, Defendant, Terrance Hough filed two (2) motions in the Court of Common Pleas of Cuyahoga County, Ohio, under case number CR-07-499308-A in the Court of Judge Shirley Strickland Saffold. Said motions are: MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF and MOTION TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF.

On October 7, 2010, both motions were denied by this Court. (See Exhibit A).

On November 1, 2010, Defendant filed Notice of Appeal, Praecipe, and Docketing Statement for two (2) denied motions in the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, and was assigned case number CA-10-095954.

On November 12, 2010, Defendant was informed by the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, that appeal of denied motions (CA-10-095954) was dismissed, sua sponte, for the lack of a final, appealable order, pursuant to R.C. § 2505.02. (See Exhibit B).

If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and must dismiss the appeal. Fleenor v. Cardill, 2003 Ohio App. LEXIS 5814 (Nov. 26, 2003).

Defendant asserts Findings of Fact and Conclusions of Law are mandatory because it would be impossible to know what was and was not considered by the Court in making its decision; such facts and/or law are necessary for the appeals court to review to make a just determination. See In re Adoption of Gibson (1986), 23 Ohio St.3d 170; Davis v. Wilkerson (1986), 29 Ohio App.3d 100; State v. Clemmons (1989), 58 Ohio App.3d 45; State v. Perkins (1982), 5 Ohio App.3d 182; and State ex rel. Konoff v. Moon (1997) 79 Ohio St.3d 211.

The court must file findings and conclusions upon request, even where it finds the petition without merit. State ex rel. Brown v. Court (1986), 23 Ohio

St.3d 46.

Defendant has the right to seek appeal as R.C. § 2505.03 provides for an appeal from every final order, judgment, or decree of a court and from a final order of any administrative tribunal ... Johnson v. United Enterprises, Inc. (1957), 166 Ohio St.149, 140 N.E.2d 407.

The time for filing notice of appeal does not begin to run until findings of fact and conclusions of law have been filed by the trial court. Walker v. Doup (1988), 36 Ohio St.3d 229 (Per curiam).

Therefore, Defendant asserts that pursuant to Crim.R. 35(C), this Court is required to issue a decision which includes findings of fact and conclusions of law in support of the dismissal and denial of MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF and MOTION TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF.

WHEREFORE, Defendant moves this Court for Findings of Fact and Conclusions of Law concerning its October 7, 2010 journal entry dismissing and denying MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF and MOTION TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF.

Respectfully submitted,


TERRANCE HOUGH
Defendant, pro se
ToCI, Id. #A550442
2001 East Central Avenue
Post Office Box 80033
Toledo, Ohio 43608-0033

#550442



Gerald E. Fuerst, Clerk of Courts
Court of Common Pleas - Cuyahoga County, Ohio



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DOCKET INFORMATION

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Case Number **Case Title** **Image Viewer**
 CR-07-499308-A THE STATE OF OHIO vs. TERRANCE HOUGH [AlternaTIFF](#)

/ /
 Ascending
 Descending
 [v] [v] [v] [v]

Proceeding Date	Filing Date	Side	Type	Description	Image
10/04/2010	10/07/2010	N/A	JE	DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL IS DENIED. 10/04/2010 CPCLF 10/05/2010 08:38:10	
09/29/2010	09/29/2010	D1	MO	MOTION FOR APPOINTMENT OF COUNSEL, FILED. PRO-SE, #A550442, TOLEDO CORR. INST.	
09/28/2010	10/07/2010	N/A	JE	MOTION OF DEFENDANT FOR JUDGE TO RECUSE IS DENIED AS CASE IS CONCLUDED. MOTION OF DEFENDANT TO SUPPLEMENT THE PETITION FOR POST CONVICTION RELIEF IS DENIED. 09/28/2010 CPCLF 10/05/2010 08:43:06	
09/27/2010	10/05/2010	N/A	JE	ORDER OF FINDING OF FACTS AND CONCLUSIONS OF LAW SIGNED, ATTACHED AND ORDERED FILED. ORDER SEE JOURNAL. 09/27/2010 CP1TT 10/05/2010 09:06:56	
09/22/2010	09/22/2010	D1	MO	MOTION TO SUPPLEMENT THE PETITION FOR POST-CONVICTION RELIEF, FILED. PRO-SE 550-442 TOLEDO CORR. INST.	
09/22/2010	09/22/2010	D1	MO	MOTION FOR JUDGE SHIRLEY STRICKLAND SAFFOLD TO RECUSE HERSELF, FILED. PRO-SE 550-442 TOLEDO CORR. INST.	
09/09/2010	09/09/2010	D1	MO	MOTION FOR FINDINGS OF FACT AND CONCLUSION OF LAW, CRIM. R. 35 (C), FILED. PRO-SE, #A550-442, TOLEDO CORRECTIONAL INST.	
07/29/2010	08/04/2010	N/A	JE	DEFENDANT'S MOTION TO VACATE OR SET ASIDE JUDGMENT OF CONVICTION OR SENTENCE IS DENIED. 07/29/2010 CPCLF 07/29/2010 14:56:43	
07/29/2010	08/04/2010	N/A	JE	NUNC PRO TUNC ENTRY AS OF AND FOR 06/17/2010. IT IS HEREBY ORDERED THAT JOURNAL ENTRY AND OPINION OF 6/17/2010 BE AMENDED NUNC PRO TUNC TO CORRECT THE MIS-SPELLINGS IN PARAGRAPHS 2, 4 TO ROSBY REPLACING RISBY. AS SO AMENDED JOURNAL ENTRY AND OPINION OF 6/17/2010 SHALL STAND IN FULL FORCE AND EFFECT. 07/29/2010 CPCLF 08/02/2010 08:52:22	

Terrance Hough
#A550442
Toledo Correctional Inst.
2001 East Central Avenue
Toledo, Ohio 43608

Gerald E. Fuerst
Clerk of Courts
1200 Ontario Street
Cleveland, Ohio 44113

RE: Obtaining copies of the following documents for CR-07-499308-A

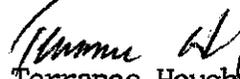
Clerk,

Would you inform me of how many pages are in the following documents, I need copies of them:

1. Denial of Motion of Defendant For Judge To Recuse, filed on 10/07/2010.
2. Denial of Motion of Defendant To Supplement the Petition For Post Conviction Relief, filed on 10/07/2010.
3. Order of Finding of Fact and Conclusions of Law, filed on 10/05/2010.

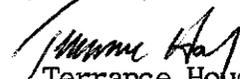
Do you accept money orders from correctional institutions as payment for copies? Enclosed is a SASE, as required for your response. Thank you for your time and consideration.

Respectfully submitted,


Terrance Hough
#A550442
Toledo Correctional Inst.
2001 East Central Avenue
Toledo, Ohio 43608
October 15, 2010

PLEASE TIME STAMP, DATE AND RETURN IN SASE

This is a copy of the letter mailed to the Clerk of Courts in regard to obtaining copies of information being appealed. As of this mailing, I have received no information from the Cuyahoga County Clerk of Courts.


Terrance Hough
October 25, 2010

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

S/O EX REL., TERRANCE HOUGH

Relator

COA NO.
96468

ORIGINAL ACTION

-vs-

JUDGE SHIRLEY STRICKLAND SAFFOLD

Respondent

MOTION NO. 445491

Date 07/11/11

Journal Entry

WRIT DENIED. SEE JOURNAL ENTRY AND OPINION OF SAME DATE SIGNED BY MARY J. BOYLE,
J.; MELODY J. STEWART, P.J., AND SEAN C. GALLAGHER, J., CONCUR.

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 11 2011

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge SEAN C. GALLAGHER, Concurs


Judge MARY J. BOYLE

COPIES MAILED TO COUNSEL FOR
ALL PARTIES. COSTS TAXED

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96468

STATE OF OHIO EX REL.,
TERRANCE HOUGH

RELATOR

vs.

HONORABLE SHIRLEY STRICKLAND SAFFOLD

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus and/or Procedendo
Motion No. 442897
Order No. 445491

RELEASE DATE: July 11, 2011

FOR RELATOR

Terrance M. Hough, Jr.
Inmate No. A550-442
Toledo Correctional Institution
2001 East Central Avenue
Toledo, Ohio 43608-0033

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

**COPIES MAILED TO COUNSEL FOR
ALL PARTIES. COSTS TAXED**

MARY J. BOYLE, J.:

On March 1, 2011, the relator, Terrance Hough, commenced this mandamus and/or procedendo action against the respondent, Judge Shirley Strickland Saffold, to compel the judge to issue final, appealable orders for (1) a denial of a motion to recuse herself, and (2) a denial of a motion to supplement a postconviction relief petition in the underlying case, *State v. Hough*, Cuyahoga County Common Pleas Court Case No. CR-499308. The respondent moved for summary judgment on March 17, 2011, and Hough filed his reply brief on April 1, 2011. For the following reasons, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus or procedendo.

Factual and Procedural Background

In the underlying case in May 2008, a jury convicted Hough of three counts of aggravated murder and two counts of attempted murder, all with three-year firearm specifications, and the trial court sentenced him to three consecutive sentences of life without parole, consecutive to two consecutive ten-year sentences and consecutive to three years for the firearm specifications. The docket of the underlying case shows the following: On December 30, 2009, Hough filed his first postconviction relief petition along with a motion to amend. On January 7, 2010, the trial court denied both the postconviction relief petition and

the motion to amend. On July 16, 2010, Hough filed a second postconviction relief petition, which the trial court denied on August 4, 2010. On September 9, 2010, Hough moved the trial court to issue findings of fact and conclusions of law. Then on September 22, 2010, he moved for Judge Saffold to recuse herself and moved to supplement the postconviction relief petition. Judge Saffold issued findings of fact and conclusions of law on October 5, 2010. She denied the motion to recuse herself and the motion to supplement the postconviction relief petition on October 7, 2010.

Hough appealed these decisions in *State v. Hough*, Cuyahoga County Court of Appeals Case No. 95954. This court sua sponte dismissed this appeal for lack of a final, appealable order pursuant to R.C. 2505.02 on November 8, 2010. Hough then commenced this mandamus and/or procedendo action to compel Judge Saffold to issue final, appealable orders.

Discussion of Law

The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v.*

Niehaus (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108, and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Bd. of Ed.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie*

County Sheriff's Dept. (1990), 51 Ohio St.3d 43, 553 N.E.2d 1354. *Procedendo* is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, *procedendo* will not lie to control the exercise of judicial discretion. Moreover, it will not issue if the petitioner has or had an adequate remedy at law. *State ex rel. Utley v. Abruzzo* (1985), 17 Ohio St.3d 202, 478 N.E.2d 789; *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 589 N.E.2d 1324; and *Howard v. Cuyahoga Cty. Probate Court*, Cuyahoga App. No. 84702, 2004-Ohio-4621 (petitioner failed to use an adequate remedy at law).

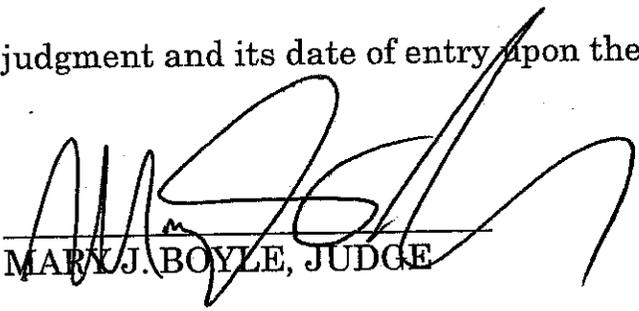
A trial judge's denial of a motion to recuse is not an appealable order. In *Beer v. Griffith* (1978), 54 Ohio St.2d 440, 377 N.E.2d 775, the Supreme Court of Ohio ruled that only the Chief Justice of the Supreme Court of Ohio or his designee may rule upon the disqualification of a judge. Thus, the Court of Appeals is without jurisdiction to rule upon the disqualification of a judge, and that includes review of a motion to recuse. *State v. Ramos* (1993), 88 Ohio App.3d 394, 623 N.E.2d 1336; *State v. Cody*, Cuyahoga App. No. 95753, 2011-Ohio-2289; and *State v. Scruggs*, Cuyahoga App. No. 94518, 2010-Ohio-5604.

Therefore, Hough does not have a clear, legal right to a final, appealable order for a motion to recuse, and the trial judge has no duty to issue one. Furthermore, Judge Saffold ruled on the motion. Neither mandamus nor procedendo will lie for this matter.

As to the motion to supplement the postconviction relief petition, the respondent judge fulfilled her duty by ruling on the motion. There is no duty to issue findings of fact and conclusions of law for untimely or successive postconviction relief petitions, much less motions to supplement such petitions. *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155; *State ex rel. Workman v. McGrath* (1980), 40 Ohio St.3d 91, 532 N.E.2d 105; and *State ex rel. Jefferson v. Russo*, Cuyahoga App. No. 90682, 2008-Ohio-135. Thus, Hough has not established a clear, legal duty or a clear, legal right to a more complete ruling on the motion to supplement. Moreover, Hough had an adequate remedy at law by seeking appeal to the Supreme Court of Ohio.

Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus and/or procedendo.

Costs assessed against relator. This court directs the clerk of court for the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).



MARK J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and
SEAN C. GALLAGHER, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 17 2011

GERALD B. FINEST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.



66288208

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

2010 DEC 13 A 9 04

Case No: CR-07-499308-A

Judge: SHIRLEY STRICKLAND SAFFOLD

TERRANCE HOUGH
Defendant

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2903.01 AGGRAVATED MURDER /FRM3 /MM
2903.01 AGGRAVATED MURDER /FRM3 /MM
2903.01 AGGRAVATED MURDER /FRM3 /MM
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFENDANT'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW IS DENIED.
THIS MOTION WAS PREVIOUSLY FILED ON SEPTEMBER 9, 2010.
THIS COURT ISSUED SUCH FINDINGS AND CONCLUSIONS ON OCTOBER 5, 2010.
NO FURTHER DUPLICITOUS FINDINGS WILL BE ISSUED.

12/06/2010
CPCLF 12/07/2010 09:02:09

G. E. Fuerst 12/10/10

Judge Signature Date

RECEIVED FOR FILING

SEP 09 2010

By GERALD E. FUERST, CLERK
Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

)

Case No.: CR-07-499308

v.

)

Judge Shirley Strickland Saffold

TERRANCE HOUGH,
Defendant.

)

MOTION FOR FINDINGS OF FACT AND
CONCLUSIONS OF LAW/CRIM.R. 35(C)

Now comes the Defendant, Terrance Hough, in propria persona, and moves this Court pursuant to Crim.R. 35(C), to issue Findings of Fact and Conclusions of Law for the dismissal of his petition for post conviction relief. A memorandum of support is attached.

Respectfully submitted,



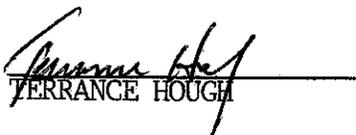
TERRANCE HOUGH
Defendant, pro/se
#A550442
Toledo Correctional Inst.
2001 East Central Avenue
Toledo, Ohio 43608

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this document was sent by regular U.S. mail to the following parties on this 3 day of September, 2010:

Common Pleas Court of Cuyahoga County
Clerk of Courts
1200 Ontario Street
Cleveland, Ohio 44113

Prosecutor's Office
Cuyahoga County
1200 Ontario Street
Cleveland, Ohio 44113


TERRANCE HOUGH