

ORIGINAL

IN THE SUPRME COURT OF OHIO

THEODORE JACKSON  
APPELLANT

V.

WARDEN OF MARION CORRECTION INST.  
APPELLEE

:  
: On Appeal from the  
: Marion County Court  
: of Appeals, Third  
: Appellate District  
:  
: Court of Appeals  
: Case No. 9-11-37

12-0282

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MEOMRANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT THEODORE JACKSON

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THEODORE JACSKON  
P.O. BOX 57 #590-406  
P.O. BOX 57  
940 MARION-WILLIAMSPORT RD.  
MARION, OHIO 43302-0057

PRO SE COUNSEL

WILLIAM H. LAMB, ASST. ATT. GEN.  
441 VINE ST., 1600 CAREW TOWER  
CINCINNATI, OHIO 45202

COUNSEL FOR APPELLEE

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EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

On the facts of this case, it is a case of FIRST IMPRESSION in Ohio. The Appellant is denied his Liberty unlawfully, and illegally by the Warden on VOID SENTENCES due to the fact the Common Pleas Court NEVER sentenced Appellant to CONSECUTIVE SENTENCES as mandated by statute. Non obstante, the Ohio Dept. of Reh. & Corr. did in fact sentence Appellant to CONSECUTIVE SENTENCES. All these were entered over a (30) thirty year process, in the interim Appellant was released by the Warden ON VOID PAROLES.

The Ohio Dept. of Reh. & Corr. certified records show Appellant's sentences as CONCURRENT SENTENCES, while at the same time these same records show an ILLEGAL AGGREGATION OF SENTENCES. Can Appellant's sentences be CONCURRENT AND CONSECUTIVE AT THE SAME TIME? Without violating the State and Federal Constitutions?

Further, this case should be heard because Appellant has been and is now imprisoned after service of (1) one year sentence, where his parole or void parole has never been declared violated or revoked in violation of his Fundamental right to Liberty.

STATEMENT OF THE CASE AND FACTS

The Appellant is held by the Warden in denials of his Fundamental Rights to procedural and substantive due process and equal protection of law, and he's held in violation of the double jeopardy clause, and cruel and unusual punishment clauses as plead passim below. The Common Pleas Court and Third District Court of appeals possessed NO JURISDICTION TO DENY WRIT OF HABEAS CORPUS.

The Appellant (Mr. Jackson) appeared in the Marion Common Pleas Court as a Layman of the law, seeking equitable redress via his Fundamental Privilege to the Writ of Habeas Corpus guaranteed under the Ohio Constitution Article I § 8, of one (1) question see Petition page (p.) 1. quoted below:

**HABEAS CORPUS ISSUE**

**“ The (Pet.) is illegally and unlawfully held by the Warden of the Marion Correction Institution at the address above, where as here (Pet.) maximum sentence expired on 1-30-11 see certified court judgment exhibit (ex.) (A-9-10) attached hereto. Case law is clear see FRAZIER V. STICKRATH, 536 N.E.2d 1195 SYLLABUS; STATE EX REL. DAILEY V. MORGAN, 761 N.E.2d 140 (Marion Common Pleas Court) SYLLABUS 2, moreover, the writ of habeas corpus should issue here as (Pet.) is held by Warden in violation of the due process clause as explained infra see HAMILTON V KEITER, 241 N.E.2d 296.”**

This habeas corpus issue is verified by Affidavit in support of writ of habeas corpus Petition (hereinafter) (ASWHCP) ¶ 10 : “ All statements of fact seen in the foregoing petition for habeas corpus are true as I witnessed thus I say under the penalty of perjury”. See petition appendix .

The habeas corpus issue of Mr. Jackson's expiration of maximum sentence above, and continued illegal imprisonment by the Warden has never been addressed by the pleading of the asst., att., gen., filed 5/31/2011 and 6/16/2011.

The Court's Judgment rendered 7/28/2011 never mentions or adjudicates the Habeas Corpus issue Appellant raised above.

**ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**PROPOSITION OF LAW No. I:**

**THE APPELLANT'S MAXIMUM SENTENCE HAS EXPIRED AND BURDEN OF PROOF IS MET COMMON PLEAS COURT POSSESSES NO JURISDICTION TO OVERRULE THE PETITION DENYING LIBERTY INTEREST WITHOUT EQUAL PROTECTION AND DUE PROCESS OF LAW IN VIOLATION OF THE DOUBLE JEOPARDY BRINGING ABOUT CRUEL AND UNUSUAL PUNISHMENT VIA THE 5TH, 8TH, 14TH AMENDS. U.S.C.A.**

The Appellant (Mr. Jackson) presented a prima facie case of illegal imprisonment see petition at p.1, and (ASWCHP) ¶ 10; maximum sentence of one (1) year had expired on 1-30-2011, the Court below then ordered the Warden to show cause via CHARI V. VORE, 91 Ohio St.3d 323 HEADNOTE 14 “ If the court decides that the petition for habeas corpus states a facially valid claim, it must allow the writ. R.C. § 2725.06 .”.

The Warden then filed motions for summary judgment and motion to dismiss as the return of writ HAMMOND V. DALLMAN, 63 Ohio St. 3d 666,667 (respondent's motion to dismiss should be treated as a return of writ ). In these motion the Warden through the asst. att., gen., asserted invalid defenses, and submitted evidence that Mr. Jackson's maximum sentence was sixty (60) years, based on an exhibit (ex.) of the Ohio Department of Rehabilitation and Correction (hereafter) (ODR&C).

The Appellant filed a motion to overrule the state's motion above,.

The Warden then filed a response via the order of the court, asserting that Mr. Jackson's maximum parole date was 8/27/2039, and the Warden for the first time introduced a document from the (ODR&C) which demonstrated the (ODR&C) had illegally and unlawfully judicially sentenced

The appellant to *consecutive sentences*, see state's motion filed 6/16/2011 p.1, and the exhibit attached at p. 2, ¶¶ 6-10 quoted verbatim infra;

“ To simplify the calculation of the maximum sentence: under R103-727 the inmate was sentenced to a 25 year maximum sentence. He committed a new crime while on parole, *therefore*, the parole violation is consecutive and he was admitted under inmate number A161-686. *His new sentence was a 25 year maximum sentence so that totaled 50 year maximum sentence.*

He committed a new crime while on parole again and was admitted under inmate number A 200-824 with a new sentence of *10 year maximum sentence WHICH WAS ADDED* and gave inmate a *total of 60 years maximum sentence.* He was again admitted under A 255-383 with a 15 year max, however, he was discharged from custody on this number and released back on parole. His maximum sentence remained at 60 years.

He was then admitted under inmate number A 399-526 under Senate Bill 2 cases which were concurrent and his maximum sentence remained 60 years from this point forward. His maximum expiration of sentence under A 399-526 was 7/28/2038.

*When he finished with his Senate Bill 2 cases he was released back to parole under his old cases.* He was admitted on inmate number A 513-915, *however his parole was never revoked* and he was returned to parole on his old cases.

He was at large several times while on parole and received lost time of 215 days and 180 days. This time was added to his old max of 7/28/2038. His new max date became 8/27/2039.”.

Honorable Judges at this point it became incumbent on Mr. Jackson to *plead facts* that would overcome the prima facie case of lawful imprisonment the Warden submitted, as in habeas corpus cases, the burden of proof is on the petitioner to establish his right to release see CHARI V. VORE, *id.* 325 citing HALLECK V. KOLOSKI, 4 Ohio St. 2d 76,77; YARBROUGH V. MAXWELL, 174 Ohio St. 287,288. More specifically, in habeas corpus proceedings, “ ‘ where the return sets forth a justification for the detention of the petitioner, the burden of proof is on the petitioner to establish his right to release.’ ” see CHARI, quoting YARBROUGH, 174 Ohio St. at 288.

Moreover, as held by the Ohio Supreme Court in CHARI V. VORE, HEADNOTE 4 “ To satisfy the burden of proving the right to release in a habeas corpus proceeding, after the return has set forth a justification for the detention of the petitioner, the petitioner must first introduce evidence to overcome the presumption of regularity that attaches to all court proceedings. R.C. § 2725.14.”

Mr. Jackson then on 6/23/2011 filed REPLY TO SUPPLEMENTAL RETURN, that motion proved at p.4-6 through the certified Cuyahoga County Common Pleas court record no presumption of jurisdiction should attach, and under such circumstances this Appellate Court has held the Writ of habeas corpus must issue discharging the petitioner see STATE EX REL. SMILACK V. BUSHONG, 112 N.E.2d 675 HEADNOTE 5 (“ Presumption as to jurisdiction of court of general jurisdiction is rebutted and overcome *only by recitals in record* affirmatively showing lack of jurisdiction.”).

In this instant The Appellant raised a question of jurisdiction in the common pleas court judgments used by the Warden supra to illegally sentence Mr. Jackson to sixty (60) years as shall be plead below, which sentences were entered *WITHOUT STATUTORY AUTHORITY*, see HEADNOTE 6, of the Third District Court of Appeals in STATE EX REL. PARSONS V. BUSHONG, 109 N.E.2d 692 (“ Any act of a court in violation of *statutory requirements may be considered to be in excess of jurisdiction.*”).

The Ohio Supreme Court has recently reaffirmed the legal doctrine of statutory mandates see STATE V. FISCHER, 128 Ohio St.3d 92 HEADNOTE 3.(“ **Sentence that is not in accordance with statutorily mandated term is void.**”); the reasoning of the Supreme Court is reflected at ¶ 8 infra:

“ But in the modern era, Ohio law has consistently recognized a narrow, and imperative exception to that general rule: **a sentence that is not in accordance with statutorily mandated terms is void.** See, e.g., *Simpkins*, at ¶ 14; *State v. Bezak*, 114 Ohio St.

94; *State v. Jordan*, 104 Ohio St. 3d 21; *State v. Beasley* (1984), 14 Ohio St. 3d 74,75; *Colegrove v. Burns*, (1964) 175 Ohio St. 437. See also *Woods v. Telb*, (2000) 89 Ohio St. 3d 504.

The Appellant's past convictions as cited in the exhibited at p. 2 ¶¶ 6-10 shall be quoted from certified journal entries attached to petition for habeas corpus as exhibits (A-1-2-3-4-5) to show the discrepancies in the actual court record and the *fabricated facts* submitted by the Warden to justify unlawful imprisonment of Mr. Jackson;

ex.(A-1) case no. CR-77-36641\*\*\*(1) year\*\*\* (5) years\*\*\*run concurrently case no.CR-36620  
ex.(A-2) case no. CR-77-36620\*\*\*(4) year\*\*\* (25) years\*\*\*.  
ex.(A-3) case no. CR-81-162099\*\* (7) year\*\*\* (25) years\*\*\*to run consecutive to parole violation.  
ex.(A-4) case no. CR-80-59044\*\*\* (2) year\*\*\* (10) years\*\*\*.  
ex.(A-5) case no. CR-87-222201\*\* (2) year\*\*\* (10) years\*\*\*.

These certified Cuyahoga County common Pleas court journal entries of sentence conclusively prove that court *did not sentence appellant to consecutive sentences*. So this proves that the sentences above are void, because Mr. Jackson being on parole *mandated statutorily consecutive sentences* via R.C. § 2929.41(B)(3); see the case law of this Appellate Court attached STATE V. DETWILER, 1984 WL 7976 (Ohio App. 3 Dist.) at \*5.

Appellant's trial court had a duty, him being a parolee to record consecutive sentence on the *journal* see STATE V. SIMMONS, Case No. 82-J-16 (Ohio App. 7 Dist.) at p. 2. Further, the (ODR&C) record exhibit (ex.)(1), attached to Appellant's motion to overrule (filed: 6-8-2011), this document on its face reflects *no consecutive sentences to be served*, ex.(1) was originally entered in another matter of Mr. Jackson's by the Assistant Attorney General see appendix hereto. On these facts Appellant's liberty was denied by the Judge of Marion Common Pleas Court without *Due Process of law*.

Here the (ODR&C) without statutory authority *illegally aggregated* the appellant's sentences see STATE V. WELLMAN, 1980 WL 351129 (Ohio App. 4 Dist.) attached at \*1 and \*3 showing the procedures employed by the Common Pleas court of *imposing consecutive sentences* on parolees who were convicted of new criminal charges while being detained on parole warrants. The record here and below demonstrates Mr. Jackson was detained by (ODR&C) parole warrants when sentences were pronounced in all old law convictions above see RESPONDENT'S REPLY filed 6/16/2011 evidence exhibit p.1, ¶¶ 1,2,3,4. Therefore, in uniform application of the law R.C. § 292941 (B)(3), appellant's sentences were void ab initio where the trial court's failed to impose consecutive sentences as mandated by Ohio Law as shown by DETWILER, and WELLMAN id above, and thus the sentences seen in petitions exhibits (A1-2-3-4-5) violate the equal protection and due process clauses of the 5<sup>th</sup>, 14<sup>th</sup> Amends. U.S.C.A., and the mandate of the Ohio Supreme Court STATE V. O'MARA, 105 Ohio St. 94 quoted below:

#### SYLLABUS

**“ The power to define and classify and prescribe punishment for felonies committed within the state is lodged in the general assembly of the state, and, when so defined, classified, and prescribed, such laws must have uniform operation throughout the state.”**

The Ohio Department of Rehabilitation and Correction (ODR&C) with all the technology available to that state agency in Sept. 2005 when it released Mr. Jackson after service of Senate Bill 2 sentences see petition ex.(A-6-7) and p.4 supra, ¶ 5 quoting Warden's evidence; “*When he finished with his Senate Bill 2 cases he was released back to old parole.*” These senate bill 2 sentences were first degree felonies *mandating (5) years Post Release Control* per R.C. § 2967.28 (B).

**APPELLANT/PETITIONER**  
**MET HIS BURDEN OF PROOF**  
**BY SHOWING ILLEGAL AND**  
**UNLAWFUL IMPRISONMENT**

The Courts of Ohio have held the Ohio Department of Rehabilitation and correction (ODR&C) possesses *no jurisdiction* Constitutional, or statutory to *sentence* Mr. Jackson to consecutive sentences see **WHITE V. KONTEH**, 1999 WL 587976 (Ohio App. 11 Dist.) \*\*3,4 (“ The judicial power of the state is vested in the Supreme Court, courts of Appeal, courts of common pleas and the divisions thereof, and such other courts as provided by law” **Section 1, Article IV** of the Ohio Constitution.”

“Under the doctrine of separation of powers the judicial branch cannot be encroached upon by the legislative and executive branches; i.e. the doctrine is intended to protect the integrity and independence of all three branches. See **STATE V. HOCHHAUSLER**, (1996), 76 Ohio St.3d 455,463 . Stated differently, “[the] administration of justice by the judicial branch of the government cannot be impeded by the other branches of government *in the exercise of their respective powers.*”**STATE EX REL. JOHNSTON V. TAULBEE**, (1981), 66 Ohio St.2d 417, first paragraph of the syllabus.”

“Consistent with the forgoing general principles, the Supreme Court of Ohio has indicated that the General Assembly *cannot* delegate the *authority of a court to a state agency.*see **SOUTH EUCLID V. JEMISON**, (1986), 28 Ohio St.3d 157 (“ In concluding that the statute violated the doctrine of the separation of powers, the court *emphasized* that, pursuant to Section 1, Article IV of the Ohio constitution, judicial authority *can only* be given to “courts”, not other types of public entities, under the facts of the Warden's evidence above the (ODR&C) has violated the separation of powers doctrine and illegally sentenced Mr. Jackson to consecutive sentences as show supra by certified record.

Further, the laws raised in the Common Pleas court below see Appellant's **REPLY TO SUPPLEMENTAL RETURN**, at p.4-6, and **MOTION FOR RELIEF AND AMENDED RELIEF FROM JUDGMENT**, filed 8/18/2011 at p.1-5. These laws confer on Mr. Jackson the substantive rights to Liberty as protected by the 5<sup>th</sup>,14<sup>th</sup> AMENDS. U.S.C.A. His vested rights to procedural and substantive due process of law and the equal protection of the laws **O'MARA id.** Statutes below have been violated;

**R.C. § 5145.01 DURATION OF SENTENCE**

**“ Courts shall impose sentences \*\*\*. \*\*\* no prison term shall exceed the maximum term provided for the felony \*\*\*. If a prisoner is sentenced for two or more separate felonies, the prisoner's term of imprisonment shall run as a concurrent sentence, \*\*\* If sentenced consecutively \*\*\*.”**

Also;

**R.C. § 2929.41(B)(3) MULTIPLE SENTENCES**

**“ A sentence of imprisonment shall be served consecutively \*\*\*; When *imposed* for a new felony committed by a probationer, parolee, or escapee;**

**R.C. § 2929.41(C)(2) “ When *consecutive sentences* are imposed for a felony under *division (B)(2)(3) of this section.* ”.**

Where as here the Warden continues to imprison Appellant on void sentences see p.4 above cf. p.6, supra as these *consecutive sentences originated with (ODR&C) not a court of law.*

The Cuyahoga County Common Pleas Court in ex.(A-1-2-3-4-5) made these sentences *concurrent* by not sentencing Mr. Jackson to consecutive sentences see WELLMAN ;DETWILER id. above.

The Ohio Dept. Reh. & Corr., then after the Court had sentenced Mr. Jackson in ex.(A-1-2-3-4-5) *re-sentenced* him to consecutive sentences a procedure the Ohio Attorney General had informed the (ODR&C) *would be illegal* see 1986 Ohio Op. Atty. Gen. 2-175, 1986 Ohio Op. Atty. Gen. No. 86-034, 1986 WL 237857 (Ohio A.G.) cited below;

#### SYLLABUS

*“ Where a court has ordered that sentences of imprisonment be served concurrently, the Department of Rehabilitation and Correction is without authority to determine independently that R.C. § 2929.41(B)(3) requires such sentences to be served consecutively and, based upon such determination, to require a prisoner to serve such sentences consecutively.”*

On the facts here this is exactly whats occurred in this case sub judice, contrary to the Attorney General's Opinion the (ODR&C) sentenced Mr. Jackson contrary to law, below in habeas corpus proceedings the Appellant raised the fact that the Marion County common Pleas Court has held the procedures of the (ODR&C) above are unlawful and illegal see petition ¶ 1, citing STATE ex rel. DAILEY V. MORGAN, 761 N.E.2d 140 below;

#### SYLLABUS 2.

**The Department of Rehabilitation and Correction may not “correct” sentencing errors, real or perceived, by imposing the department's interpretation of a proper term of sentence”.**

It has long been held in Ohio that the Common pleas Court's have only the jurisdiction conferred by statute see STATE EX REL. MILLER V. KEEFE, 168 Ohio St. 234 (Syllabus 1.) As said by **Ranney, J.**, more than a century ago: "The Constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either in civil or criminal cases. It gives it the capacity to receive jurisdiction in all such cases, but it can exercise none, until fixed by law." STEVENS V. STATE, 3 Ohio St. 453; Cf: 14 Ohio Jurisprudence (2d), 584, section 166.

Moreover, in meeting his burden of proof after replies of Warden were filed Mr. Jackson demonstrated through ex.(D-2) attached to motions to overrule filed 6-8-2011, and ex.(C); ex.(D-4) attached appellant's MOTIONS TO SUPPLEMENT THE RECORD/AND MOTION FOR LEAVE TO SUPPLEMENT THE MOTION attached in the appendix of this appellate brief show *according to (ODR&C) records* Mr. Jackson's sentences seen in petition's exhibits (A-1-2-3-4-5) were *to be served CC/W; CC/W means concurrent with* compare ex.(D-2) and (D-4) , (D-2) in Column 9 contains all (" C ")'s , ex.(D-4) in Column 9 contains one ( " S " ) the (S) stands for consecutive, as is shown when the sentences in ex.(D-4) as calculated. Therefore, it may be said the finding of the Court below seen on p. 2, of its judgment and quoted here is not based in law or fact: " \*\*\* the exhibits submitted by the Petitioner all include the aggregated sentence of 13 to 60 years \*\*\* ."

The Appellant having demonstrated his maximum sentence has expired, and having met his burden of proof or showing contrary to the returns of the Warden Mr. Jackson's old law sentences of twenty-five (25) year maximum sentence albeit void has also expired, a situation this Honorable Appellate Court has held deserves redress see STATE V. MCCOLLOCH, 608 N.E.2d 1108 at Footnote 1. "\*\*\*\* the Ohio Supreme Court has indicated that *full satisfaction of even a void sentence* would certainly invoke the bar of Double Jeopardy, *a proposition we have no quarrel with* " see BEATTY V. ALSTON, 43 Ohio St.2d 126 citing EX PARTE LANGE, 85 U.S. (18 WALL) 163.

From the totality of the record simple calculation shows maximum sentence of (25) years from the sentences in ex.(A-1-2-3-4-5), supra, plus (18) months *consecutive for parole violation* connected with ex.(A-4) case see p. 6, above, in that case the parole board on revoking Mr. Jackson's parole ordered him committed for (18) months until he could be considered for release, this was done according to R.C.§ 2929.11(B)(6), that sentence of two (2) to ten (10) years required service of (18) months for purposes of parole consideration, *please note* the evidence submitted in both responses of the Warden *fails* to addresses these facts, *in fact* the Warden's evidence seen above at p. 4, *completely conceals the sentence in ex.(A-4)*, the evidence shows that if ex.(A-4) sentence is calculated, then according to the calculations of the Warden on p. 4 above, Mr. Jackson's maximum sentence would be *seventy (70) years, instead of their alleged sixty (60) years*, calculate the certified sentences on p. 6, supra. So Appellant's maximum sentence under the old cases was (25) years plus (18) months has also expired depending on the beginning of the count starting from the 1977 conviction, the maximum expiration date would be *August 18, 2004*; counting from the 1980 conviction the maximum expiration date would be *December 19, 2007*, thus would be the reason the Ohio Parole Board, or Adult Parole Authority *did not revoke* any void parole of Mr. Jackson in 2007 see both motions filed by the Warden at evidence exhibit p. 2, ¶ 4, and the same process occurred July 15, 2010, the Asst. Atty. Gen., says on this date Mr. Jackson's void parole and old expired sentences were *aggregated* see both motions submitted by Warden at exhibited evidence p. 2, ¶ 4. Now compare this *incorrect evidence* with ex.(D-2) submitted to the court below see judgment at p. 2, ex.(D-2) dated August 24,2010 *conclusively proves* Mr. Jackson's void parole *was not revoked* but his *sentence was illegally aggregated*.

Since Mr. Jackson's void sentences above cannot be corrected, as they have been completed see **STATE EX REL. CRUZADO V. ZALESKI, 111 Ohio St.3d 353,358; STATE V. BLOOMER, 122 Ohio St.3d 200,206**, and Warden's evidence sub judice, discharge on writ is the only speedy remedy via **HERNANDEZ V. KELLY, 108 Ohio St. 3d 395,401**.

**PROPOSITION OF LAW No.II:**

**WHERE APPELLANT HAS BEEN RELEASED  
ON PAROLE AND RECOMMITTED TO SERVE  
NEW CONVICTION AND PAROLE IS NEVER  
REVOKED OR DECLARED VIOLATED AFTER  
EXPIRATION OF NEW SENTENCE CONTINUED  
IMPRISONMENT VIOLATES DUE PROCESS AND  
EQUAL PROTECTION UNDER THE 5TH AND 14TH  
AMENDS. U.S.C.A. CONSTITUTING CRUEL AND  
UNUSUAL PUNISHMENT VIA 8TH AMEND.U.S.C.A.**

As raised in response to Warden's motion for summary judgment/dismissal, captioned **MOTION TO OVERRULE** \*\*\* filed 6/8/11 *passim*, shows Appellant's attempted parole has never been revoked, Mr. Jackson further demonstrated to the court below in motion **REPLY TO SUPPLEMENTAL RETURN** p. 1-3, that by law his void parole had never been declared violated or revoked by law, mandating redress.

The Asst. Atty. Gen. Pleads that the Appellant's parole was *based on void judgment* see **RESPONDENT'S REPLY** at p. 2, ¶ 2, citing STATE V. DICKENS, 535 N.E.2d 727 syllabus 3,

**As a general rule, a trial court does not have authority to tamper with discretionary order of the Adult Parole Authority. It may do so where the exercise of discretion was based upon void sentencing order by that trial court**

The law that was in effect when Mr. Jackson was first sentenced R.C. § 2967.15 (eff. 3-18-65) is contained in the appendix attached, that law required a parolee's parole be declared violated before the parole could be revoked see **REPLY TO SUPPLEMENTAL RETURN** at p. 1-3, therein is seen by argument and documentary evidence that Appellant's parole was never violated, moreover, Appellant's motion to overrule motions of respondent for summary judgment and dismissal (filed 6/8/2011) at p. 1-7 clearly show Mr. Jackson's parole was never violated. Further, none of the evidence submitted by the Warden proved Appellant's void parole was ever declared violated or revoked, the Court below went so far as to admit the Appellant may well be unlawfully held see that Court's opinion at p. 2, ¶¶ 1,3:

**“\*\*\*. If a court was to determine that the APA's actions were not legal, \*\*\* the petitioner would presumably be set free as a result of the declaratory judgment action.”**

This statement/finding by the court below is contrary to law;

**Ohio Constitution Article I § 8**

**“ The Privilege of the writ of habeas corpus shall not be suspended,\*\*\*”.**

And;

**R.C. § 2725.01 PERSONS ENTITLED TO WRIT OF HABEAS CORPUS**

**“ Whoever is *unlawfully restrained* \*\*\* may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment \*\*\* .”**

As held;

**EX PARTE COLLIER, 6 Ohio 55, at 58:**

**“ The State Courts and Judges have jurisdiction to hear and determine all questions of imprisonment without regard to the power which imposes it, or the process by which the captive is held.”**

The facts contained in the record on appeal, and for the convenience of this Appellate Court there a appendix index page listing the same parts of the record as attached to this brief. This documentary evidence clearly demonstrates Mr. Jackson was denied minimum due process rights *where as here his alleged parole has never been revoked* see MORRISSEY V. BREWER, 408 U.S. 471:

**DUE PROCESS**

**“ The minimum requirements of due process in revoking paroles include (a) written notice of claimed parole violations; (b) disclosure to the parolee of evidence against him; ( c ) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a neutral and detached hearing body such as a traditional parole board,\*\*\* ; (f) a written statement by the fact finders \*\*\* the reasons for revoking parole.”**

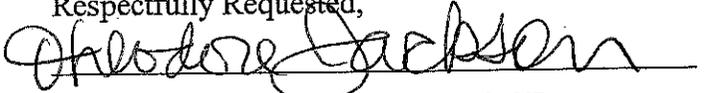
The petition's CRONOLOGY OF EVENTS p.2, ¶ 6, pleads Mr. Jackson's attempted parole has *never been declared violated*, so obviously he has never been given the opportunity to exercise his MORRISSEY V. BREWER id. Substantive and procedural rights enumerated above, *do to no notice*.

The Asst. Atty. Gen., hereinafter (A.G.'s) motion filed 5/25/11 in response to petition chose not to answer habeas corpus question raised :EXPIRATION OF MAXIMUM SENTENCE, instead chose to plead Mr. Jackson's parole was revoked 7/15/2010, see that motions evidence exhibit at p.2, ¶ 4, *while submitting evidence that Appellant's parole was not revoked*, see same exhibit p.2, ¶ 2\*\*\*\* since a parole revocation was not completed\*\*\*\**inmate was returned to parole on 8/31/2007*".

Now compare this evidence with the evidence submitted below Mr. Jackson's motion to overrule (filed 6/8/2011) at p.5, ¶ 2 and attached in appendix hereto ex.(1), originally entered by (A.G.) in JACKSON V. BEIGHTLER, 2007 CV 638 (Marion Cty.), exhibit (1) Release date 08/31/2007; "*Period of supervision 1 year*". Ergo, Appellant's one year term of supervision originally granted 9/1/2005; and *re-issued* 8/31/2007, after crediting the (9) months Mr. Jackson spent *in prison on active parole*, the ex.(1), stipulated (1) year term of parole *expired 10/31/2007* see ex. (X-1) attached to motion to overrule, and exhibited in the appendix attached hereto, *showing out-date 7/14/2007*. Under these facts *this Appellate Court* found Appellee was entitled to time credit see McNARY V. GREEN, 12 Ohio St.2d 10 HEADNOTE 2 (change word sentence to *parole*);parole authority should not be able to *circumvent the law* see JOHNSON V. HASKINS,254 N.E.2d 362 HEADNOTE 2 (fundamental fairness mandates Mr. Jackson receive the *(10 ½) credit toward (12) month parole above*).

**In conclusion:** as plead passim this brief, Appellant is denied his Liberty without due process or equal protection fifth,fourteenth Amends. U.S.C.A., constituting cruel and unusual punishment eight Amend. U.S.C.A., for the writ to issue discharging Appellant from unlawful custody of warden I pray. **or that the Supreme Court accept jurisdiction of case.**

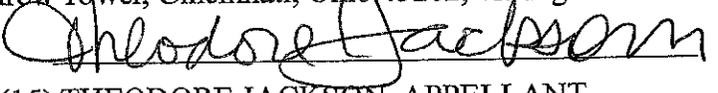
Respectfully Requested,



THEODORE JACKSON, IN PRO SE

CERTIFICATE OF SERVICE

A copy of this Brief was sent this 10<sup>th</sup> day of FEBRUARY 2011, to William H. Lamb,asst. Atty. Gen., 441 Vine Street, 1600 Carew Tower, Cincinnati, Ohio 45202, via reg. U.S. Mail.

  
(15) THEODORE JACKSON, APPELLANT

FILED  
COURT OF APPEALS

JAN 17 2012

MARION COUNTY OHIO  
JULIE M. KAGEL, CLERK

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
MARION COUNTY**

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**STATE, EX REL.,  
THEODORE JACKSON,**

**PETITIONER-APPELLANT,**

**CASE NO. 9-11-37**

**v.**

**WARDEN OF MARION CO.  
CORRECTIONAL INST.,**

**J U D G M E N T  
E N T R Y**

**RESPONDENT-APPELLEE.**

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This appeal, having been placed on the accelerated calendar, is being considered pursuant to App.R. 11.1(E) and Loc.R. 12. This decision is therefore rendered by summary judgment entry, which is only controlling as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions.

Defendant-appellant, Theodore Jackson (hereinafter "Jackson"), pro se, appeals the Marion County Court of Common Pleas' judgment denying his petition for writ of habeas corpus. For the reasons that follow, we affirm.

This appeal stems from Jackson's lengthy criminal history, beginning in 1978. On February 17, 1978, Jackson pleaded guilty to receiving stolen property in violation of R.C. 2913.51, a felony of the fourth degree, and aggravated robbery

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in violation of R.C. 2911.01, a felony of the first degree, in the Cuyahoga County Court of Common Pleas. (Doc. No. 2). The trial court sentenced Jackson to a minimum of one year and maximum of five years imprisonment for the receiving stolen property offense, to run concurrent with a minimum of four years and maximum of twenty-five years imprisonment for the aggravated robbery offense. (*Id.*). The Ohio Department of Rehabilitation and Corrections (hereinafter "ODRC"), released Jackson on parole on July 1, 1980. (Doc. No. 17).

On February 25, 1981, the Cuyahoga County Court of Common Pleas accepted Jackson's plea of guilty to receiving stolen property in violation of R.C. 2913.51, a felony of the fourth degree, and sentenced Jackson to a minimum of two years and maximum of ten years imprisonment. (Doc. No. 2). The trial court also found Jackson guilty of aggravated robbery in violation of R.C. 2911.01, a felony of the first degree, after a jury trial. (*Id.*). The trial court sentenced Jackson to a minimum of seven years and maximum of twenty-five years imprisonment, to run consecutive with his parole violation on his previous cases. (*Id.*). Jackson's files were aggregated and he was again released on parole on September 10, 1986. (Doc. No. 17).

On January 13, 1988, The Cuyahoga County Court of Common Pleas accepted Jackson's guilty plea to receiving stolen property in violation of R.C. 2913.51, a felony of the fourth degree, sentencing him to a minimum of two and

maximum of ten years imprisonment. (Doc. No. 2). Jackson's files were aggregated and his parole was revoked. (Doc. No. 17). ODRC released Jackson on parole on April 19, 1991. (*Id.*).

On March 12, 1992, the Cuyahoga County Court of Common Pleas found Jackson guilty of robbery in violation of R.C. 2911.02, a felony of the second degree, after a trial to the court. (*Id.*). The trial court sentenced Jackson to a minimum of eight years and maximum of fifteen years imprisonment. (*Id.*). Jackson's files were aggregated and his parole revoked. (*Id.*). ODRC again released Jackson on parole on January 25, 1996. (*Id.*).

Over the next four years, Jackson was determined to have violated his parole and then restored to parole on three separate occasions. (*Id.*). On February 9, 2001, subsequent to his parole violations, Jackson entered pleas of guilty to: kidnapping in violation of 2905.01, a felony of the first degree; aggravated robbery in violation 2911.01, a felony of the first degree; felonious assault in violation of 2903.11, a felony of the second degree; and escape in violation of 2921.34, a felony of the second degree, in the Cuyahoga County Court of Common Pleas. (*Id.*). The trial court sentenced Jackson to four years on each count, to run concurrent with each other. (Doc. No. 2). Jackson's files were aggregated and his parole revoked. (Doc. No. 17). ODRC released Jackson on parole on September 1, 2005. (*Id.*).

Over the next three years, Jackson was declared a parole violator and then restored to parole numerous times. (*Id.*) The ODRC report states:

**Inmate was then admitted on A 513 915 on 10/23/06. Inmate's files were aggregated. Since a parole revocation was not completed on time the files were de-aggregated and the inmate was returned to parole on 8/31/07. The inmate's maximum expiration of sentence was 7/28/2038. Inmate was [d]eclared parole violator on 5/9/08 and then restored to parole on 12/10/08. The inmate's maximum expiration of sentence was calculated as 2/28/2039 after adding 215 days of lost time. Declared [p]arole [v]iolator on 6/16/09 and [r]estored to [p]arole on 12/13/09. The inmate's maximum expiration of sentence was calculated as 8/27/2039 after adding 180 days of lost time.**

(*Id.*)<sup>1</sup> Thus, Jackson was last restored to parole on December 13, 2009. (*Id.*) At that time, Jackson's maximum sentence would expire on August 27, 2039. (*Id.*)

On May 3, 2010, Jackson pleaded guilty to attempted escape in violation of R.C. 2923.02/2921.34(A)(1), a felony of the third degree. (Doc. No. 2). The trial court sentenced Jackson to one year imprisonment. (*Id.*) Jackson's files were aggregated and his parole revoked. (Doc. No. 17). The Parole Board held a hearing on December 7, 2010, but did not grant Jackson parole. (*Id.*) Jackson's current maximum sentence expires on August 27, 2039. (*Id.*)

On March 10, 2011, Jackson filed a petition for writ of habeas corpus with the Marion County Court of Common Pleas. (Doc. No. 2). The court overruled

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<sup>1</sup> The Warden of the Marion Correctional Institution submitted the ODRC report as an exhibit attached to its response to Jackson's petition for a writ of habeas corpus and in its brief to this Court. The report is a cursory review of Jackson's criminal history, providing few procedural details. It appears both parties relied on the report for the purposes of this appeal.

Jackson's petition, determining he has an adequate remedy at law through declaratory judgment. (*Id.*) The court explained:

**The Petitioner in effect is maintaining that the APA's actions were illegal. Whether or not the APA has performed lawfully in the Petitioner's case, can be determined by a declaratory judgment action. If a court was to determine that the APA's actions were not legal, the Court could make such a determination, and if there was no other basis to hold the Petitioner, the Petitioner would presumably be set free as a result of the declaratory judgment action.**

(*Id.*) Jackson timely appeals, raising two assignments of error. We will address each assignment of error in turn.

#### **ASSIGNMENT OF ERROR NO. I**

**WHETHER THE APPELLANT'S MAXIMUM SENTENCE HAS EXPIRED AND BURDEN OF PROOF IS MET, COMMON PLEAS COURT POSSESSES NO JURISDICTION TO OVERRULE THE PETITION, DENYING LIBERTY INTEREST WITHOUT EQUAL PROTECTION AND DUE PROCESS OF LAW IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE BRINGING ABOUT CRUEL AND UNUSUAL PUNISHMENT VIA 5TH, 8TH, 14TH AMENDS. UNITED STATES CONSTITUTION**

In his first assignment of error, Jackson argues he has completed his sentence of one year imprisonment for his attempted escape conviction. According to Jackson, ODRC illegally sentenced him to consecutive sentences resulting in a maximum of sixty years imprisonment. Jackson contends that he has completed his sentence and is entitled to release.

Appellate review of a trial court's decision regarding a habeas corpus petition is an abuse of discretion standard. *Charlton v. Money*, 3rd Dist. No. 9-97-12, 1997 WL 452012 (Aug. 7, 1997) citing *Dragojevic-Wiczen v. Wiczen*, 101 Ohio App.3d 152, 155, 655 N.E.2d 222 (1995). An abuse of discretion constitutes more than an error of judgment and implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying the abuse of discretion standard, a reviewing court may not simply substitute its judgment for that of the trial court. *Id.*

The scope of a petition for a writ of habeas corpus is dictated by R.C. 2725.01, which provides:

**Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.**

Typically, for the writ to be granted, the petitioner must successfully attack the jurisdiction of the sentencing court. R.C. 2725.05. See, also, *Wireman v. Ohio Adult Parole Auth.*, 38 Ohio St.3d 322, 528 N.E.2d 173 (1988). Alternately, a court may issue a writ even though non-jurisdictional issues are involved. In that case, the petitioner must state with particularity the extraordinary circumstances of unlawful restraint and possess no other adequate legal remedy. *State ex rel.*

*Jackson v. McFaul*, 73 Ohio St.3d 185, 187, 652 N.E.2d 746 (1995). In either circumstance, the petitioner carries the burden of proof in establishing his right to release. *Chari v. Vore*, 91 Ohio St.3d 323, 325, 744 N.E.2d 763 (2001). “In satisfying this burden of proof, the petitioner must first introduce evidence to overcome the presumption of regularity that attaches to all court proceedings.” *Id.*, citing *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288, 189 N.E.2d 136 (1963).

We agree with the trial court that declaratory judgment is the appropriate action for Jackson’s claim. Habeas corpus is not available when the petitioner has an adequate remedy at law. *Ridenour v. Randle*, 96 Ohio St.3d 90, 2002-Ohio-3606, 771 N.E.2d 859, ¶ 10. Where a petitioner seeks to challenge the legality of an ODRC action, declaratory judgment is the appropriate legal remedy. *State v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 04AP-339, 2004-Ohio-5267, ¶ 15.

In the present case, Jackson fails to demonstrate the Cuyahoga County Court of Common Pleas lacked jurisdiction to sentence him on each of his cases. Furthermore, Jackson does not provide any extraordinary circumstances entitling him to immediate release for which he has no adequate legal remedy. Instead, Jackson argues ODRC’s actions are illegal and an unconstitutional violation of the separation of powers. The Marion County Court of Common Pleas correctly concluded that Jackson could challenge ODRC’s actions through a declaratory judgment action. Were Jackson successful, the court would presumably release

him from prison. Since Jackson has an adequate legal remedy, we cannot find that the Marion County Court of Common Pleas abused its discretion by overruling Jackson's writ of habeas corpus on this basis.

Jackson's first assignment of error is, therefore, overruled.

#### ASSIGNMENT OF ERROR NO. II

**WHETHER WHERE APPELLANT HAS BEEN RELEASED ON PAROLE AND RECOMMITTED TO SERVE NEW CONVICTION AND PAROLE IS NEVER REVOKED OR DECLARED VIOLATED AFER EXPIRATION OF NEW SENTENCE CONTINUED IMPRISONMENT VIOLATES DUE PROCESS AND EQUAL PROTECTION UNDER THE 5TH, 14TH AMENDS. UNITED STATES CONSTITUTION.**

In his second assignment of error, Jackson argues the Adult Parole Authority never revoked his parole. Consequently, Jackson contends he is still on parole and ODRC is wrongfully imprisoning him for a parole violation.

A writ of habeas corpus is inappropriate to address parole issues. Habeas corpus is only appropriate when the prisoner is entitled to immediate release from prison. *Ridenour* at ¶ 7. "[I]t has long been established that Ohio does not give a convicted person a claim of entitlement to parole before the expiration of a valid sentence of imprisonment." *Linger v. Ohio Adult Parole Auth.*, 10th Dist. No. 97APE04-482, 1997 WL 638411, \*3 (Oct. 14, 1997), citing *Greenholtz v. Inmates of the Neb. Penal and Corr. Complex*, 442 U.S. 1, 99 S.Ct. 2100 (1979).

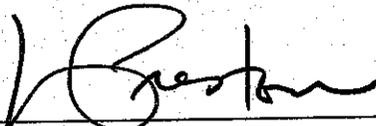
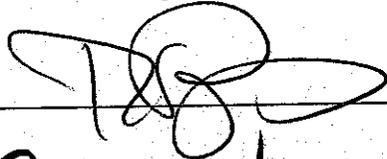
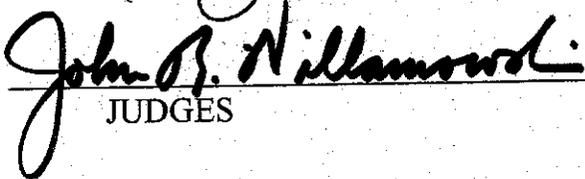
Jackson bases his argument on the ODRC report, which states "When he was finished with his Senate Bill 2 cases he was released back to parole under his old cases. He was admitted on inmate number A 513 915, however his parole was never revoked and he was returned to parole on his old cases." (Doc. No. 17). However, the remainder of the report reveals that Jackson was released back to parole on his old cases because his parole revocation was not completed on time. (*Id.*). After he was released back to parole, he was declared a parole violator on May 9, 2008, June 16, 2009, and after he began serving time for his most recent conviction on July 15, 2010. (*Id.*). Thus, it is clear Jackson is currently not on parole as he contends.

Furthermore, according to the ODRC report, Jackson's maximum sentence expires on August 27, 2039. (Doc. No. 17). Jackson did not submit a transcript of his sentencing for our review and provided an incomplete record of the judgments for each of his convictions. See App.R. 9(B). Consequently, Jackson has not overcome the presumption of regularity by demonstrating ODRC's calculation of his prison term is incorrect. Since Jackson's sentence has not expired, Jackson is not entitled to immediate release on parole and a writ of habeas corpus is inappropriate. Consequently, we cannot find that the Marion County Court of Common Pleas abused its discretion by overruling Jackson's petition for writ of habeas corpus.

Jackson's second assignment of error is, therefore, overruled.

Accordingly, for the aforementioned reasons, it is the order of this Court that the Judgment Entry of the Marion County Court of Common Pleas be, and hereby is, affirmed. Costs are assessed to Appellant for which judgment is hereby rendered. This cause is remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this judgment entry to the trial court as the mandate prescribed by App.R. 27, and serve a copy of this judgment entry on each party to the proceedings and note the date of service in the docket as prescribed by App.R. 30.

  
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JUDGES

DATED: January 17, 2012

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