

IN THE SUPREME COURT OF OHIO

12-0895

STATE EX REL
Donald L. Searles
P.O. Box 7010
Chillicothe, Ohio 45601

S. Ct. Case No. _____

-RELATOR

Tr. Case No. CR-01-043

-VS-

D. W. Favreau, Judge
Morgan County
Court of Common Pleas
19 East Main Street
McConnelsville, Ohio 43756

-RESPONDENT

COMPLAINT FOR WRIT OF PROCEEDENDO

1. Judge D. W. Favreau is named as respondent in this complaint.
2. Relator, Donald L. Searles, is an Ohio citizen domiciled in the city of Chillicothe, county of Ross, Ohio from a commitment order by the Respondent.
3. This Court has original jurisdiction over this action Pursuant to Article IV, Section 3(B) of the Constitution of the State of Ohio.
4. On the 18 January 2012 Relator, Searles - Petition The Morgan County Court of Common Pleas Judge, D. W. Favreau For Reconsideration to contest Classification/Adjudication Pursuant to Ohio Revised Code 2950 ET SEQ.
5. As of the filing of this petition, Respondent has failed to issue a decision on the 18 January 2012, on the Reconsideration to Contest Classification, the Relator filed in Morgan County, Ohio Civil Division. See attached Exhibit (A1A) Motion for Reconsideration Filed.
6. Respondents failure to rule is contrary to the requirements of Superintendance Rule 40.

(1)

RECEIVED

MAY 23 2012

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

MAY 23 2012

CLERK OF COURT
SUPREME COURT OF OHIO

7. Relator has a clear legal right to a ruling on the said Motion filed on 18 day of January, 2012 - 11:28 A.M. Time Stamped. See attached Exhibit (A1A) Motion for Reconsideration.
8. Respondent has a clear legal duty to issue a ruling in a reasonable amount of time.
9. There exists no plain and adequate remedy in the ordinary course of the law.
10. Relator's request does not involve an investigative work Product or Confidential Law Enforcement Investigatory record.
11. The information requested involves Relator's civil case and only Relator's civil case.
12. Relator is entitled to have Respondent issue a decision on said Motion for Reconsideration to contest classification.

Wherefore, Relator, Donald L. Searles, prays this Court will grant the following relief.

(A) Writ of Proscedendo compelling Respondent to issue a ruling on the Reconsideration to Contest Classification filed on January 18, 2012.

Respectfully Submitted,
Donald L. Searles, I.M.# 419-561

x Donald L. Searles
Ross Correctional Inst.
P.O. Box 7010
Chillicothe, Ohio 45601

MEMORANDUM IN SUPPORT

On November 2nd, 2001, the Morgan County Grand Jury indicted the Petitioner on Four (4) counts of Rape, four (4) counts of Gross Sexual Imposition, and one (1) count of Weapons Under Disability (WUD). (NOTE: The indictment, nor any Bill of Information attached to the indictment charged the Petitioner as a "Sexual Violent Predator, nor did the indictment, information or the complaint, include a specification that the Petitioner committed the offense with a sexual motivation).

The Petitioner pled guilty to the WUD charge, but not guilty to the remaining charges. Trial was held on December 18th, 2001, and the Petitioner was found guilty of all the offenses charged in the indictment. Despite the fact the Petitioner was not indicted as a Sexual violent predator, nor did the indictment charge that the Petitioner was committing an offense with sexual motivation. (Which is required pursuant to: O.R.C. §2941.147 & O.R.C. §2941.143).

The Court held a civil hearing, to determine if the Petitioner should be labeled as a sexual violent offender, or designated some other offender status. The Court determined at that time that the Petitioner was a Sexual Violent Predator, based upon the conviction for all the above mentioned offenses. The Petitioner appealed the conviction, and the classification to the Fifth District Court of Appeals for Morgan County, Ohio.

The Fifth District Court of Appeals reversed the Appellants Conviction in it's entirety. See: State v. Searles, (Morgan County Court of Appeals), Ca. No. 02-CA-4, 2003 Ohio 3498. The State had the option of releasing the Petitioner, or proceeding to a second trial. The State entered into a negotiated plea agreement, which the Petitioner accepted, entering a plea to two (2) counts of Unlawful Sexual Conduct with a Minor, a violation of O.R.C. §2907.04(A)(B)(3). This particular section of the Statute is reserved for a First Time Offender.

The Petitioner was thereafter sentenced to ten years on prison for both offenses, and the Court did not hold a civil hearing to classify the Petitioner to any particular level of offense, which was of course required by statute. Had the Court held the statutorily required classification hearing, the conviction as a first time offender, for two counts of unlawful sexual conduct with a minor, would have resulted in the Petitioner being labeled only as a sexual oriented offender, not a sexual ~~violent~~ predator. The designation as a ^Hsexual violent predator, had it even been properly imposed in the 2001 proceedings, would not apply to a conviction for two counts of unlawful sexual conduct with a minor, as such a classification is reserved for the worst offenders.

Moreover, the original designation, even had it been properly imposed, was reversed by the the Morgan County Court of Appeal in 2003, and the state failed to make a motion requesting the court to hold a new classification hearing following reversal in 2003, wherein the Petitioner could have been properly labeled. As stated above, even had the hearing been held, as is required by statute, the results, based upon the conviction following reversal, would have been for the Court to classify the Petitioner a sexual oriented offender. His worst offense was Unlawful Sexual Conduct With a Minor, violative of O.R.C. §2007.04(A)(B)(3), which is specifically reserved for a First time Offender.

Therefore, the Petitioner contends that since no indictment in his case ever contained a Violent Predator Specification, a classification hearing is required to comply with statute. The Court must hold a hearing and properly classify the Petitioner, in accordance with the law in that regards. Pursuant to O.R.C. §2950.09(A), a person who is convicted or plead guilty to a sexually oriented offense, that contains a sexual violent predator specification in the indictment, is automatically classified a sexual predator. Ohio Revised Code 2950.01(E) provides that to be classified as a sexual predator, the convicted person must:

1.) Have been previously convicted or pled guilty to committing a sexually oriented offense; 2.) He must be likely to engage in the future in one or more sexually oriented offenses. The determination that an offender is a sexually violent predator must be based on clear and convincing evidence. See: O.R.C. §2950.09(B)(3). Not be an after the fact determination attached to an individual, without an actual hearing being held. In this case, it is not clear who actually labeled the Petitioner as he is now labeled, as there is no hearing anywhere on the record anywhere in a State or Federal Court.

It is important to note ORC §2950.09 does not place limits on the factors a court may consider, but simply directs the Court to consider all relevant factors, at a classification hearing. Relevant factors could come from many sources. The Supreme Court of Ohio has previously held that, reliable hearsay, such as a Presentence Investigation Report, may even be relied upon by the Trial Judge. Again, this is if a hearing is actually held. Ohio Revised Code 2950.09(B)(1) permits the State, as well as the defense, at a classification hearing to call witnesses and expert witnesses, and the Supreme Court has held that the Court should find no reasons, absent privilege or any other legal restraint on testimony to limit who might testify on matters of fact, and assuming relevance, what that testimony may entail.

The Petitioner in this matter has never had a hearing held on the question of his classification, just a conviction and someone later saying he was a sexually violent offender.

As such, this Appellant filed another petition with the Morgan County Court of Common Pleas for a new Sexual Offender Classification Hearing. On August 19, 2011 at 8:40 A.M., the Morgan County Prosecutor filed a Motion to dismiss the Petition citing, "This matter has already been heard by the Court." On the same day, August 19, 2011, at exactly the same time, 8:40 A.M.

the Court filed an entry granting the State's Motion to Dismiss, which had just been filed only within seconds at best. The Court's entry used exactly the same language as the State saying, "This matter has already been heard by the Court." This action in itself, can in no way comport with the demands of Due Process or Procedural Due Process as Constitutionally guaranteed to all criminal Defendant's in this Country.

Now, the Morgan County Sentencing entry reads, after remand from the Fifth District Court of Appeals, clearly states that both counsel "stipulated" to the imposition of a sexual predator label. This is clearly stated in the Appellant's sentencing entry of which this Appellant asks this Court to take notice of as he asks this Court to reconsider the Defendant's prior Petition to Contest Classification/Adjudication.

Aside from the fact that this Appellant disputes any such stipulation as he was promised by his attorney that he would be adjudicated a sexually oriented offender, Jurisdiction of the Court to impose a sexual predator classification is clearly outlined in R.C. 2950.01 and the legislature mandated that a hearing be held in order to confer that jurisdiction on the Court.

Without such a hearing being conducted, the Trial Court lacked Jurisdiction to label the Defendant at all.

It is well established law both State and Federal that, "Parties cannot (stipulate) to a Court's Jurisdiction where it otherwise does not exist." See *Durguns v. Durguns*, 2001 WL 114983.

However, the sentencing entry clearly reads that the court's classification was based on prior criminal history where the defendant had been convicted of a sexual offense in 1992.

Based upon the Ohio Supreme Court's holdings in State v. Smith, 104 Ohio St.3d 106, 204-Ohio-6238, 818 N.E.2d 283 which the Court held it to be improper to use a conviction prior to 1996 to enhance a Defendant's classification. The Defendant's prior conviction from 1992, was the basis for the enhancement of his classification, and the record shows the Defendant Plead guilty to two counts of unlawful sexual conduct with a minor as they are third degree felonies and being the Defendant plead guilty since this put the Defendant as a first time offender as of 1996, and the Defendant should be classified as a Sexually Oriented Offender.

WHEREFORE, the Petitioner prays this Court will hold a classification hearing, and allow the Petitioner to be present to defend himself, and submit proof he should be labeled a sexually oriented offender.

Respectfully Submitted,


Donald L. Searles, im# 419-561

CONCLUSION

For all the foregoing reasons, the Petitioner requests:

- 1.) That the Court hold a hearing on his motion;
- 2.) That the Court direct the Clerk of the Court to issue a "Transfer Order" to compel the Petitioner's presence in the Court for a pre-hearing conference on this matter;
- 3.) That the Petitioner motion for a hearing be granted, and an order be issued to vacate the Petitioner's current classification.

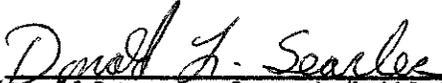
Respectfully Submitted,


Donald L. Searles, im# 419-561

CERTIFICATE OF SERVICE

I, Donald L. Searles, hereby certify that a true and correct copy of the foregoing has been forwarded via First Class U.S. Mail to opposing counsel on this 17th day of January, 2012.

Respectfully Submitted,


Donald L. Searles, im# 419-561
R.C.I., P.O. Box 7010
Chillicothe, Ohio 45601

AFFIDAVIT OF INDIGENCE

I, Donald L. Seales, after first being duly sworn and cautioned on my oath, hereby depose and say:

- 1.) That I am the Affiant herein, the Appellant in the above captioned action;
- 2.) That after purchasing the necessary personal hygiene items, I am not able to pay court costs, filing fees, or to even make the required number of copies the Court requires to file this action;
- 3.) That I understand I must inform the Court should my financial situation should change before this action is resolved, and if the Court does impose costs, I have the right to be present and move the Court for a waiver of the costs so imposed, and to request to appeal any adverse action. See: *State v. Joseph*, 125 Ohio St.3d 76, 926 N.E.2d 278 (2010); *State v. White*, 103 Ohio St.3d 580 ("An indigent defendant is entitled to move the Court for a Waiver of Costs imposed.") See also: Crim. R. 43(A);
- 5.) That I understand and acknowledge that I am subject to criminal prosecution if I provide false financial information in connection with this action Pursuant to O.R.C. §120.05 and O.R.C. §2921.13(A)(13);
- 6.) That I am a true pauper, within the meaning of the law.

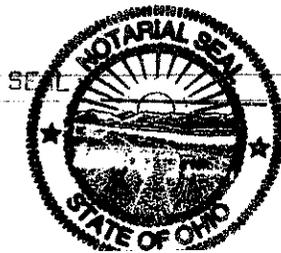
FURTHER AFFIANT SAYETH NAUGHT. Executed this 15th day of January, 2012

s: Donald L. Seales 419-561

NOTARY

Sworn to and subscribed in my presence, a Notary Public for the State of Ohio, County of Ross on this 15th day of January, 2012

NOTARY: Janet E. Speary
My commission expires: 8-25-2013



Janet E. Speary
Notary Public - Ohio
My Commission Expires 8-25-2013

IN THE SUPREME COURT OF OHIO

STATE EX REL

Donald L. Searles
P.O. Box 7010
Chillicothe, Ohio 45601

S. Ct. Case No. _____

-RELATOR

Tr. Case No. CR-01-043

-VS-

D. W. Favreau, Judge
Morgan County
Court of Common Pleas
19 East Main Street
McConelsville, Ohio 43756

-RESPONDENT

AFFIDAVIT OF VERITY

I, DONALD L. SEARLES, who having been duly SWORN and cautioned as to the penalty for perjury, deposes and says I the RELATOR filed a civil action in 2009, in the WARREN County Court to contest the Adam Walsh Law, in which case the Ohio Supreme Court ruled in RELATOR's behalf in 2010.

I further assert that I have read the information submitted in the attached "MOTION FOR THE ISSUANCE IF A WRIT OF PROSCEDENDO" is to the best of my knowledge and belief true and correct for Relief.

Further Sayeth Naught:

Donald L. Searles
Defendant

Date: MAY 15, 2012

NOTARY

Sworn to, or Affirmed, and subscribed in my presence on this _____ day of May, 2012.

Janet E. Speary
Notary Public - Ohio
My Commission Expires 8-25-2013

SEAL

Janet E. Speary
NOTARY PUBLIC



IN THE SUPREME COURT OF OHIO

DONALD L. SEARLES
419-561
P.O. BOX 7010 - R.C.I
Chillicothe, OH 45601

RELATOR,

-VS-

D.W. FAYREAU, Judge et al.
Morgan County, COURT
19 EAST main Street
McConnelville, OH 43256

RESPONDENT.

Sct. NO. _____

TR - CASE NO: CR-01-043

MOTION TO PROCEED IN FORMA
PAUPERIS AND AFFIDAVIT OF
INDIGENCY

Comes now the Relator in the above styled case who hereby [Moves] this court to dispense with the docketing fee's and request leave to proceed in Forma Pauperis for the reasons stated in the Affidavit Of Indigency.

Donald L. Searles.

AFFIDAVIT OF INDIGENCY

I, DONALD L. SEARLES, who while acting in Pro Se. do hereby swear that I have presently this 15th day of MAY 2012 no means of financial support and no assets of any value and therefore, cannot afford to pay for any legal services on my behalf. I further assert that i receive \$18.⁰⁰ per month "State Pay" which is to used for the purpose of buying personal hygiene items and writing material. I have attached a "Cashier's Statement" as proff.

RESPECTFULLY SUBMITTED

Donald L. Searles



WITNESSED, SUBSCRIBED, AND AFFIRMED, AND SUBSCRIBED IN MY PRESENCE THIS 15 DAY OF

Janet E. Speary 2012.
Notary Public - Ohio
My Commission Expires 8-25-2013

Janet E. Speary

IN THE SUPREME COURT OF OHIO

CERTIFICATE OF SERVICE

I, DONALD L. SEARLES, do hereby certify that a copy of the foregoing "MOTION FOR THE ISSUANCE OF A WRIT OF PROSCEDENDO" was mailed by regular U.S. Mail to the office of the Prosecutor for MORGAN County, Ohio on this the 16th day of MAY, 2012.

Donald L. Searles
I.M. # 419-561

x Donald L. Searles
Relator-
R.C.I. - P.O. Box 7010
Chillicothe, Ohio 45601