

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. ANTWAN D. COLVIN : Case No. 2012-0986  
Relator :  
v. : Original Action in Prohibition  
MONTGOMERY COUNTY COMMON :  
PLEAS COURT JUDGE :  
MARY KATHERINE HUFFMAN :  
Respondent :

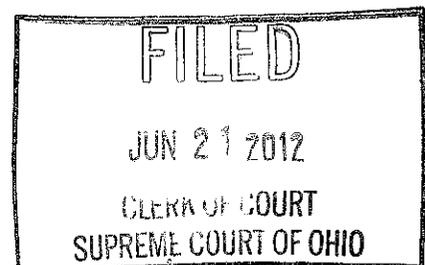
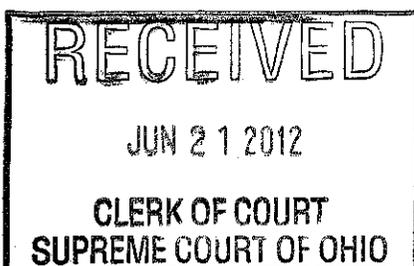
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**MOTION TO DISMISS**

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Antwan D. Colvin #611-116, Pro Se  
P.O. Box 209  
Orient, Ohio 43146

John A. Cumming (0018710)  
Assistant Prosecuting Attorney  
Montgomery County Prosecutor's Office  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
(937) 496-7797  
Fax No. (937) 225-4822  
cummingj@mcoho.org  
Attorney for Respondent



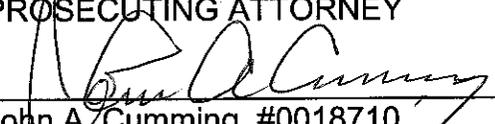
**MOTION TO DISMISS**

Pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure and S. Ct. Prac. R. 10.5(A), the Respondent moves the Court to Dismiss Relator's Petition for Writ of Prohibition in its entirety, for the reason that the Relator's Petition fails to state a claim against Respondent upon which relief in prohibition can be granted.

Respectfully submitted,

MATHIAS H. HECK, JR.  
PROSECUTING ATTORNEY

By: \_\_\_\_\_

  
John A. Cumming, #0018710  
Assistant Prosecuting Attorney  
Montgomery County Prosecutor's Office  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
(937) 496-7797  
Fax No. (937) 225-4822  
cummingj@mcoho.org  
Attorney for Respondents

**MEMORANDUM**

On June 8, 2012, Relator, Antwan D. Colvin, an inmate at the Pickaway Correctional Institution, filed his Petition for a Writ of Prohibition against the Respondent, Montgomery County Common Pleas Court Judge Mary Katherine Huffman ("Judge Huffman"). In his Petition, Relator alleges that he was convicted of one court of Failure to Comply in his underlying criminal case (Case No. 2010-CR-3649, Montgomery County Common Pleas Court); that Judge Huffman imposed a two-year sentence upon Relator; that, on March 29, 2012,

the Adult Parole Authority approved Reator's placement in the Transitional Control program; and that, on April 5, 2012, Judge Huffman disapproved Relator's placement in Transitional Control. Petition, ¶¶ 1-5, pp. 2-3. In the "Conclusion" portion of his Petition, Relator requests this Court to "issue this writ against the respondent and order [her] to remove [her] judgment of disapproval off the record where the relator could receive placement on (TC)." Petition, p.5.

For the reasons which follow, Judge Huffman submits that Relator's Petition fails to state a claim upon which relief in prohibition can be granted, and that the Petition should be dismissed in its entirety as a matter of law.

- 1. The Petition must be dismissed because the Relator had an adequate remedy at law by way of direct appeal, and because Judge Huffman did not patently and unambiguously lack jurisdiction to disapprove Relator's placement in transitional control.**

In order for a writ of prohibition to issue, a relator must establish (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) that denying the writ will result in injury for which no other adequate remedy exists in the ordinary cause of law. State ex rel. Sliwinski v. Unruh, 118 Ohio St. 3d 76, 2008-Ohio-1734, at ¶ 7; Fraiberg v. Cuyahoga County Court of Common Pleas, 76 Ohio St. 3d 374, 375, 1996-Ohio-384. "A court of common pleas, as a court of general jurisdiction, has the authority to determine its own jurisdiction over both the person and the subject matter of an action." State ex rel. City of Northwood v. Court of Common Pleas of Wood County, 109 Ohio App. 3d 487, 490 (Ct. App. Wood Cy. 1996), citing State ex rel. Ruessman v. Flanagan, 65 Ohio St. 3d 464, 1992-Ohio-79. "Generally, a writ of prohibition will

not issue against a court having jurisdiction over the subject matter of an action pending before it to deprive such court of the authority vested in it by the laws of Ohio to determine its own jurisdiction... [and]... appellant would have the availability of an appeal should the trial court ultimately rule against him.” State ex rel. Smith v. Avellone, 31 Ohio St. 3d 6, 7 (1987). However, where a Court “patently and unambiguously” lacks jurisdiction to consider a matter, direct appeal is not an adequate remedy at law, and a writ of prohibition will be allowed. Rosen v. Celebrezze, 117 Ohio St. 3d 241, 2008-Ohio-853, ¶18; Ruessman, *supra*, 65 Ohio St. 3d, at 34; Sliwinski, *supra*, 118 Ohio St. 3d, at ¶ 8; City of Northwood, *supra*, 109 Ohio App. 3d, at 490.

In the instate case, Judge Huffman clearly had jurisdiction to disapprove of Relator’s placement in Transitional Control.<sup>1</sup> Section 2929.14(I)(1) of the Ohio Revised Code expressly provides in the fifth paragraph thereof that, in the event the sentencing court makes no recommendation regarding placement in a program at the time of sentencing and in the event the sentencing court is then notified of a proposed placement by the Ohio Department of Rehabilitation and Correction, “[t]he court shall have ten days from receipt of the notice to disapprove the placement.” This is precisely what occurred in the instant case. In a “Notification to the Sentencing Court” dated March 29, 2012 (see attachment), the Ohio Department of Rehabilitation and Correction notified Judge Huffman that Relator was eligible for placement in the Transitional Control program. In a response filed on April 4, 2012 (see attachment), Judge Huffman

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<sup>1</sup> For the Court’s convenience, a certified copy of Judge Huffman’s notification of disapproval of Relator’s placement in Transitional Control is attached hereto.

advised the Ohio Department of Rehabilitation and Correction that she disapproved of Relator's placement in the Transitional Control program due to his prior record. Clearly, under R.C. §2929.14 (I)(1), Judge Huffman, as the sentencing judge, had the jurisdiction to disapprove Relator's placement in the Transitional Control program. Since Judge Huffman clearly had jurisdiction to disapprove of Relator's placement in the Transitional Control program, Relator had an adequate remedy at law by way of direct appeal of Judge Huffman's order of disapproval, and his Petition for a Writ of Prohibition must be dismissed as a matter of law.

In his Petition, Relator appears to be asking this Court to issue a writ of prohibition "reversing" Judge Huffman's disapproval of his placement in the Transitional Control program. It is axiomatic, however, that writ of prohibition will not issue to control juridical discretion. State ex rel. Mason v Burnside, 117 Ohio St.3d1, 2007-Ohio-6754, ¶ 11; Berthelot v. Dezso, 86 Ohio St.3d 257, 259, 1999-Ohio-100. As a result, this Court cannot issue a writ of prohibition against Judge Huffman to "order [her] to remove [her] judgment of disapproval off the record..." as Relator has requested in the "Conclusions" position of his Petition.

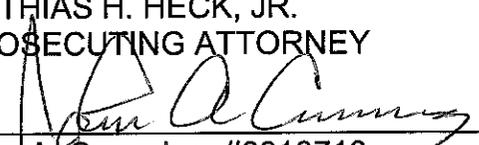
## **2. Conclusion**

For all of the foregoing reasons, Judge Huffman respectfully requests this Court to dismiss Relator's Petition for a writ of Prohibition with prejudice, assess costs to Relator, and order any other relief deemed necessary and just by this Court.

Respectfully submitted,

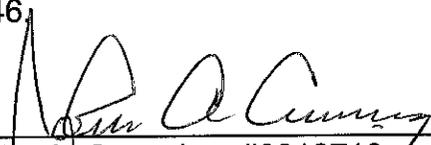
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\_\_\_\_\_  
John A. Cumming, #0018710  
Assistant Prosecuting Attorney  
Montgomery County Prosecutor's Office  
301 West Third Street  
P.O. Box 972  
Dayton, Ohio 45422  
(937) 496-7797  
Fax No. (937) 225-4822  
cummingj@mcoho.org  
Attorney for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was mailed by ordinary U.S. Mail, postage prepaid, on the 20<sup>th</sup> day of June, 2012, to Antwan D. Colvin, #611-116, P.O. Box 209, Orient, Ohio 43146.

  
\_\_\_\_\_  
John A. Cumming, #0018710  
Assistant Prosecuting Attorney

Case: 2010 CR 03649  
DEPT: CR030PR



# Ohio Department of Rehabilitation and Correction

FILED  
COURT OF COMMON PLEAS

2012 APR -4 AM 11:32

770 West Broad Street  
Columbus, Ohio 43222

John R. Kasich, Governor

CLERK OF COURTS  
MONTGOMERY CO. OHIO

Gary C. Mohr, Director

03/29/2012

## NOTIFICATION TO THE SENTENCING COURT

**To:** Presiding Judge  
Court of Common Pleas  
MONTGOMERY County, Ohio  
41 N. PERRY STREET  
DAYTON, Ohio 454220000

**From:** BUREAU OF SENTENCE COMPUTATION  
DIVISION OF LEGAL SERVICES  
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION.

**Offender Name:** COLVIN, ANTWAN D      **Number:** A611116

**Admission Date:** 07/07/2011      **Time Served:** 0 YEARS & 8 MONTHS

**Docket Number(s):** 2010CR3649

**Sentence:** 2.00 TERM

**Crime:** 2921.331 4 - FAIL TO COMPLY

This letter hereby notifies the court that the above offender is eligible for the TRANSITIONAL CONTROL PROGRAM for a maximum of 6 months. Offenders are placed in a licensed halfway house and then may be stepped down to electronic monitoring. Offenders are required to either obtain employment or continue their education. All offenders are supervised while participating in the program.

Please note that you may choose to disapprove the placement, by notifying the Department within 30 days after receipt of this notice, by your indication below. Please send all responses to:

Transitional Control Prison Program  
ODRC, 770 West Broad Street, Columbus Ohio 43222-1419  
(614) 752-1188 or FAX (614) 728-9946

The offender's placement in the Prison Release Program is:

Approved       Disapproved       No comment

If disapproved, please state the reason(s):

Prior record.

Respectfully,  
*Mary K. Huffman*  
Judge MARY KATHERINE HUFFMAN

MARY KATHERINE HUFFMAN  
PRINT NAME Judge

I hereby certify this to be a true and correct copy.

Witness my hand and seal this 18th day of June 2012

*Gary C. Mohr*, Clerk  
Clerk of Common Pleas  
Court of Montgomery County, Ohio  
By *[Signature]* Deputy