

IN THE SUPREME COURT OF OHIO

2012

12-1136

STATE EX REL ROBERTS

)

CASE NO.

Relator,

-vs-

)

F.C.C.P. CASE NO. 07CR-8717

KIMBERLY COCROFT, Judge

Respondent,

)

WRIT OF PROCEDENDO

Pursuant to Article IV, Section 2(B) of the Ohio Constitution

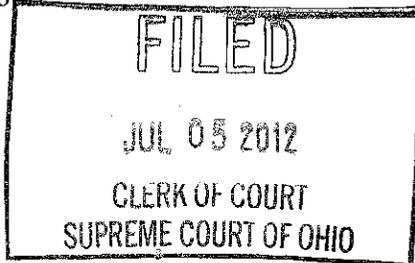
Comes now Relator, Michael Roberts acting in a Pro se capacity, who humbly moves this Honorable Court for the issuance of a Writ of Procedendo against Respondent, compelling Kimberly Cocroft, an officer of the court in Franklin County Court of Common Pleas to issue a timely ruling on his Motion to Withdraw Guilty Plea, and Judicial Notice. Please see the following memorandum that fully supports the granting of this request.

Respondent:

Kimberly Cocroft, Judge  
Franklin County Common Pleas Court  
369 S. High Street  
Columbus, Oh 43215

Relator:

Michael Roberts #609-069  
CCI P.O. Box #5500  
Chillicothe, Oh 45601



Sincerely submitted,

MEMORANDUM IN SUPPORT

Standard of Review:

Procedendo is an extraordinary remedy issued by a court of superior jurisdiction, ordering an inferior court to proceed to judgment in a case. State ex rel. Miley v. Parrott (1996), 77 Ohio St.3d 64, 671 N.E.2d 24; State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas (1995), 72 Ohio St.3d 461, 650 N.E.2d 899; State ex rel. Garnett v. Lyons (1975), 44 Ohio St.2d 125, 339 N.E.2d 628. In order for this court to issue a writ of procedendo, Relator must establish that: 1) he possesses a clear legal right to require Judge Cocroft to proceed to judgment; 2) Judge Cocroft possesses a clear legal duty to proceed to judgment; and 3) there exists no other adequate remedy in the ordinary course of the law. State ex rel. Grove v. Nadel (1998), 81 Ohio St.3d 325, 691 N.E.2d 275; State ex rel. Crandall, Pheils & Wisniewski v. DeCessna (1995), 73 Ohio St.3d 180, 652 N.E.2d 742.

### **Statements of Facts:**

On December 14, 2011, Relator filed a motion to withdraw guilty plea, pursuant to *Crim R. 32.1 & Crim R. 52(B); Plain Error*, predicated on a legally deficient Criminal Rule 11 plea colloquy, e.g., 1) improper Post Release Control notice, 2) failure to give any (PRC) notice as a consequence for violating subsequent Community Control Sanctions, and/or 3) failure to include (PRC) restrictions in its judgment as apart of “original” terms and conditions of Community Control Sanctions *ab initio*.

Then, on February 7, 2012, Relator filed a Judicial Notice of Certain Law & Adjudicative Facts amounting up to “non-waivable” *jurisdictional defects*. Then again on or about the month of April, Relator filed a Motion to Proceed to Judgment, which was effectively denied by the trial court requesting it to rule on the (two) still pending motions mentioned above.

It has been over One Hundred and Fifty days since the filing of Relator's Motion to Withdraw Guilty Plea, and over One Hundred and Twenty days since the filing of his Judicial Notice.

### **Law and Argument:**

In this instance, the trial court has a clear duty to “timely” rule on pending motions within 120 days, pursuant to *Superintendence Rule 40*. Sup.R. 40(A) provides that motions shall be ruled upon within 120 days from the date of filing. A period of more than 120 days has elapsed since Roberts filed his motion to Withdraw Guilty Plea and Judicial Notice, and thus an inordinate period of period of time has elapsed which warrants **procedendo** to compel a ruling. State ex rel. Mayes v. Ambrose, Cuyahoga App. No. 88259, 2006 Ohio 3322.

In order for this court to issue a **writ** of **procedendo**, Roberts must demonstrate that he possesses a clear legal right to the relief requested and that there exists no adequate remedy in the ordinary course of the law. State ex rel. Brown v. Shoemaker (1988), 38 Ohio St.3d 344, 528 N.E.2d 188. Roberts must also demonstrate that Judge Cocroft possesses [a] clear legal duty, which requires her to proceed to judgment. State ex rel. Cochran v. Quillin (1969), 20 Ohio St.2d 6, 251 N.E.2d 607. Finally, a **writ** of **procedendo** is appropriate when a court has refused to render a judgment or has unnecessarily delayed proceeding to judgment. State ex rel. Doe v. Tracy (1988), 51 Ohio App.3d 198, 555 N.E.2d 674.

A motion to **withdraw** a guilty **plea** under Ohio R. Crim. P. 32.1, does not contain any time limitations. An Ohio R. Crim. P. 32.1 motion is not barred by the **failure** to appeal the defect in the

**Law and Argument Continued:**

plea process. Instead, a defendant may appeal, contending the trial court failed to comply with Ohio R. Crim. P. 11, or a defendant may file a motion to **withdraw** a guilty plea at any time and then **timely** appeal the trial court's **failure** to grant the motion. State v. Yuen, 2002 Ohio 5083 2002 Ohio 5083, \*; 2002 Ohio App. LEXIS 5120.

Moreover, a Judicial Notice of Certain Law and Adjudicative Facts may be taken at any stage of a proceeding even though it had not been presented to the court, pursuant to *Civ R. 44.1, Evid R. 201*, in conjunction with *Crim R. 27*.

**WHEREFORE:** Since Respondent has failed in her duty to timely rule on Relator's, above named motions within the guidelines set forth by this Court, pursuant to *Sup. R. 40*. Relator's request for issuance of a Writ of Procedendo should be granted because he has no alternative remedy at law.

**DECLARATION OF PREVIOUS CIVIL SUITES**

Relator Michael Roberts certifies under the threat and penalty of perjury that the following statements are the truth.

- 1) Roberts/Relator has filed (3) previous Civil Actions against a government entity and or its employees within the last Five Years.
- 2) Roberts v. City of Columbus, Franklin County Court of Common Pleas, adjudicated by Judge Kimberly Cocroft, denied with prejudice. See Case No. 10CVH-04-6439
- 3) Roberts v. ODRC; Ohio Court of Claims, still pending. See Case No. 2011-05874
- 4) Roberts v. Warden Chillicothe Correctional Inst.,; United States Dist. Court Southern Dist. Of Ohio, Writ of Habeas Corpus, still pending; See Case No. 2: 12-CV-371.

Sworn and subscribed to within my presence  
on this 13 day of June, 2012

Sincerely submitted,

  
Michael Roberts

**SEAL**

  
NOTARY PUBLIC

My commission expires on: 8-11-2013

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

v.

Case No. 07CR-8717 (Cocroft, J.)

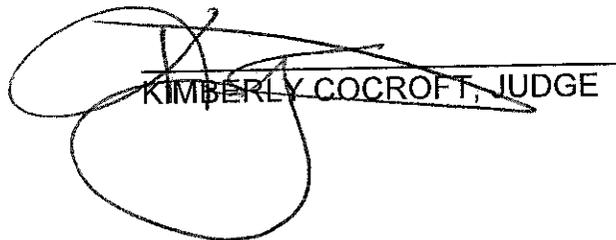
MICHAEL ROBERTS,

Defendant.

ENTRY DENYING MOTION TO PROCEED TO JUDGMENT ON DEFENDANT'S  
MOTION TO WITHDRAW GUILTY PLEA AND JUDICIAL NOTICE

Defendant's Motion to Proceed to Judgment on Defendant's Motion to Withdraw Guilty Plea and Judicial Notice, filed March 30, 2012, is hereby DENIED.

**SO ORDERED.**

  
KIMBERLY COCROFT, JUDGE

Copies to:

Richard Termuhlen  
Counsel for Plaintiff

Michael Roberts  
Defendant, pro se

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2012 APR 18 PM 4:56  
CLERK OF COURTS

IN THE SUPREME COURT OF OHIO

2012

STATE EX REL ROBERTS

Relator,

-vs-

KIMBERLY COCROFT, Judge

Respondent,

CASE NO. \_\_\_\_\_

F.C.C.P. CASE NO. 07CR-8717

**MOTION TO PROCEED IN FORMA PAUPERIS/ AFFIDAVIT OF INDIGENCE**

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I Michael Roberts hereby certify that I am an inmate in the ODRC, and only receive a small stipend of \$18 per month minus any medical co-pay. I am without the necessary funds to pay for the filing and other associated cost with this cause of action.

Pursuant to Rule 15.3, of the Rules of Practice of the Supreme Court of Ohio, and for the reasons stated above, I am requesting that the filing fee and security deposit be deemed paid/waived upon acceptance of this Affidavit.

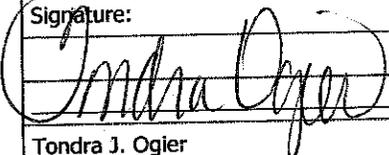
Sincerely submitted,

  
Affiant, Michael Roberts

Sworn to, and subscribed in my presence this  
13 day of June, 2012

  
SEAL  
NOTARY PUBLIC

My commission expires on: 8-1-2013

Description	Beginning	Ending	Amount
Resident Id: A609069			
Last Name: ROBERTS			
First Name: MICHAEL			
Middle Name:			
Total Deposits	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$634.25
Average Monthly Deposits	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$105.71
Total 1st Day Balances	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$178.63
Average 1st Day Balances	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$29.77
Balance as of		7/4/2012 12:00:00 AM	\$39.11
Current Balance		7/4/2012 12:00:00 AM	\$39.11
FFF Initial Payment as of		7/4/2012 12:00:00 AM	\$21.14
Total Pay (State, OPI, Commission) Deposits	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$95.25
Average Total Pay Monthly Deposits	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$15.88
Total Commissary Expenditures	1/4/2012 12:00:00 AM	7/4/2012 12:00:00 AM	\$498.99
I certify this document is a true and accurate acco			
of the inmate's financial record on file in my office			
Signature:			
			
Tondra J. Ogier			
Chillicothe Correctional Institution			
15802 St. Rt. 104 North			
Chillicothe OH 45601			

07/03/2012

Chillicothe Correctional Institution

Inmate Demand Statement

Inmate Name: ROBERTS, MICHAEL  
Lock Location: CCI,D,D2,T,,219

Number: A609069

Date Range: 01/03/2012 Through 07/04/2012

Beginning Account Balances:

Ending Account Balances:

	Saving	Debt	Payable		Saving	Debt	Payable
Pos Exemption	\$15.00	\$0.00	\$0.00	Pos Exemption	\$15.00	\$0.00	\$0.00
Inmate's Personal	\$3.56	\$0.00	\$0.00	Inmate's Personal A	\$24.11	\$0.00	\$0.00
<b>Begin Totals</b>	<b>\$18.56</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>End Totals</b>	<b>\$39.11</b>	<b>\$0.00</b>	<b>\$0.00</b>

Transaction Date / Inst.	Transaction Amount	Description	Comment	Saving Balance	Debt Balance	Payable Balance
01/05/2012	(\$2.50)	Copy Charges	COPIES/LIBRARY	\$16.06	\$0.00	\$0.00
CCI						
01/06/2012	\$18.00	State Pay	State Pay	\$34.06	\$0.00	\$0.00
CCI						
01/20/2012	(\$30.82)	Commissary Sale	Ticket Number 321772	\$3.24	\$0.00	\$0.00
CCI						
01/24/2012	(\$2.50)	Copy Charges	COPIES/LIBRARY	\$0.74	\$0.00	\$0.00
CCI						
01/31/2012	\$97.00	OffConnect Kiosk Deposit	3814031886228414770/VA NTAH, OSAKEMI	\$97.74	\$0.00	\$0.00
CCI						
02/01/2012	(\$15.00)	Inmate's Personal Account	POS Exemption Transfer	\$82.74	\$0.00	\$0.00
CCI						
02/01/2012	\$15.00	Pos Exemption	POS Exemption Transfer	\$97.74	\$0.00	\$0.00
CCI						
02/03/2012	(\$2.00)	Copy Charges	COPIES/LIBRARY	\$95.74	\$0.00	\$0.00
CCI						
02/03/2012	(\$75.28)	Commissary Sale	Ticket Number 323746	\$20.46	\$0.00	\$0.00
CCI						
02/03/2012	\$13.50	State Pay	State Pay	\$33.96	\$0.00	\$0.00
CCI						
02/15/2012	(\$1.05)	Postage Charges (USPS)	POSTAGE	\$32.91	\$0.00	\$0.00
CCI						
02/21/2012	(\$2.00)	Copy Charges	COPIES/LIBRARY	\$30.91	\$0.00	\$0.00
CCI						
02/21/2012	(\$23.06)	Commissary Sale	Ticket Number 326351	\$7.85	\$0.00	\$0.00

CCI					
02/29/2012	(\$6.00) Commissary Sale	Ticket Number 327820	\$1.85	\$0.00	\$0.00
CCI					
03/01/2012	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$1.85	\$0.00	\$0.00
CCI					
03/02/2012	(\$1.85) Copy Charges	COPIES/LIBRARY	\$0.00	\$0.00	\$0.00
CCI					
03/09/2012	\$18.00 State Pay	State Pay	\$18.00	\$0.00	\$0.00
CCI					
03/19/2012	(\$1.50) Copy Charges	COPIES/LIBRARY	\$16.50	\$0.00	\$0.00
CCI					
03/22/2012	\$77.00 OffConnect Kiosk Deposit	3877121887539061043/FILER, MYRNA	\$93.50	\$0.00	\$0.00
CCI					
03/22/2012	(\$1.50) Copy Charges	COPIES/LIBRARY	\$92.00	\$0.00	\$0.00
CCI					
03/22/2012	(\$91.61) Commissary Sale	Ticket Number 330929	\$0.39	\$0.00	\$0.00
CCI					
04/01/2012	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$0.39	\$0.00	\$0.00
CCI					
04/04/2012	\$300.00 Money Order	RONDA MEETIN	\$300.39	\$0.00	\$0.00
CCI					
04/05/2012	(\$144.82) Commissary Sale	Ticket Number 332856	\$155.57	\$0.00	\$0.00
CCI					
04/09/2012	\$18.00 State Pay	State Pay	\$173.57	\$0.00	\$0.00
CCI					
04/09/2012	(\$69.91) Withdrawal to UNION SUPPLY DIRECT	CK #94094	\$103.66	\$0.00	\$0.00
CCI					
04/11/2012	(\$3.00) Copy Charges	COPIES/LIBRARY	\$100.66	\$0.00	\$0.00
CCI					
04/20/2012	(\$70.34) Commissary Sale	Ticket Number 335274	\$30.32	\$0.00	\$0.00
CCI					
04/25/2012	(\$2.00) Copy Charges	COPIES/LIBRARY	\$28.32	\$0.00	\$0.00
CCI					
04/26/2012	(\$5.30) Postage Charges (USPS)	POSTAGE/LEGAL	\$23.02	\$0.00	\$0.00
CCI					
04/26/2012	(\$1.25) Postage Charges (USPS)	POSTAGE	\$21.77	\$0.00	\$0.00
CCI					

04/30/2012	(\$8.05) Postage Charges (USPS)	POSTAGE	\$13.72	\$0.00	\$0.00
CCI					
05/01/2012	\$0.00 \$15.00 Reservation to Pos Exemption	OdrC Pos Exemption	\$13.72	\$0.00	\$0.00
CCI					
05/04/2012	\$18.00 State Pay	State Pay	\$31.72	\$0.00	\$0.00
CCI					
05/08/2012	(\$26.30) Commissary Sale	Ticket Number 337090	\$5.42	\$0.00	\$0.00
CCI					
05/08/2012	(\$2.00) Copy Charges	COPIES/LIBRARY	\$3.42	\$0.00	\$0.00
CCI					
05/09/2012	\$25.00 Money Order	BEVERLY ROBERTS	\$28.42	\$0.00	\$0.00
CCI					
05/16/2012	(\$1.90) Postage Charges (USPS)	POSTAGE/LEGAL	\$26.52	\$0.00	\$0.00
CCI					
05/23/2012	(\$2.00) Medical Co-Payment	MCP 5/21/2012	\$24.52	\$0.00	\$2.00
CCI					
05/31/2012	(\$2.00) Payment to Medical Co-Pay Fund	MCP MAY 2012	\$24.52	\$0.00	\$0.00
CCI					
06/01/2012	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$9.52	\$0.00	\$0.00
CCI					
06/01/2012	\$15.00 Pos Exemption	POS Exemption Transfer	\$24.52	\$0.00	\$0.00
CCI					
06/06/2012	(\$24.10) Commissary Sale	Ticket Number 341270	\$0.42	\$0.00	\$0.00
CCI					
06/08/2012	\$9.75 State Pay	State Pay	\$10.17	\$0.00	\$0.00
CCI					
06/15/2012	(\$1.50) Copy Charges	COPIES/LIBRARY	\$8.67	\$0.00	\$0.00
CCI					
06/18/2012	(\$1.50) Copy Charges	COPIES/LIBRARY	\$7.17	\$0.00	\$0.00
CCI					
06/21/2012	(\$6.66) Commissary Sale	Ticket Number 343363	\$0.51	\$0.00	\$0.00
CCI					
06/26/2012	(\$0.10) Copy Charges	COPIES	\$0.41	\$0.00	\$0.00
CCI					
06/29/2012	\$40.00 Money Order	BEVERLY ROBERTS	\$40.41	\$0.00	\$0.00
CCI					
07/01/2012	(\$15.00) Inmate's Personal Account	POS Exemption Transfer	\$25.41	\$0.00	\$0.00
CCI					

07/01/2012	\$15.00 Pos Exemption	POS Exemption Transfer	\$40.41	\$0.00	\$0.00
CCI					
07/02/2012	(\$1.30) Postage Charges (USPS)	POSTAGE/LEGAL	\$39.11	\$0.00	\$0.00
CCI					

Outstanding Debts:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
05/25/2010	Court Costs	09-APA-816	Franklin County Clerk of Courts		(\$53.00)	\$53.00	\$0.00
01/18/2011	Court Costs	10 AP 170	Franklin County Civil Division Clerk of Courts		(\$45.00)	\$45.00	\$0.00
05/17/2011	Court Costs	10 APA 729	Franklin County Clerk of Courts		(\$41.00)	\$41.00	\$0.00
09/27/2011	Court Costs	10AP863	Franklin County Clerk of Courts		(\$43.00)	\$43.00	\$0.00
<b>Total Outstanding Case Balances</b>					<b>\$0.00</b>		

Outstanding Holds:

Start Date	Description	Case	Agency	County	Total Debt	Paid to Date	Balance Owed
<b>Total Outstanding Case Holds</b>					<b>\$0.00</b>		

Outstanding Investments / EPC:

Investment Type	Investment Type Description	Invest Company	Company Description	Balance
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