

IN THE SUPREME COURT OF OHIO

2012

State ex rel. Roberts
Relator,

)

CASE NO. 12-1136

-vs-

)

Kimberly Cocroft, Judge
Respondent,

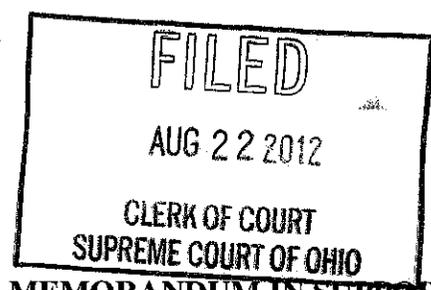
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(INSTANTER)

MOTION OF LEAVE FOR EXTENSION OF TIME TO SUPPLEMENT WRIT OF
PROCEDENDO WITH SUPPORTING AFFIDAVIT OF OPERATIVE FACTS

Pursuant to S. Ct. Prac. R. 14.3(B)(2)(a)

Comes now Relator, Michael Roberts who humbly moves this Honorable Court for leave for extension of time to supplement his Writ of Procedendo with a supporting affidavit of particularized operative facts specifying the details of his claim. Pursuant to Rules 10.7 and 14.3(B)(2)(a) of the Supreme Court Practice Rules, Relator seeks to present more evidence in perfection of his Writ. Please see the following memorandum in support of this request.



Respectfully submitted,

[Signature]
Michael Roberts #609-069
CCI PO Box 5500
Chillicothe, OH 45601

MEMORANDUM IN SUPPORT

Relator being a unlernt *Pro se* litigant ask that this request be construed with utmost liberality, and substance not form be the motivating factors for equitable relief. Due to *unavoidable* conditions, Relator is forced to use procedures that demands his relinquishment of filings to the Institution's Cashier Dept. for the insertion of [a] Certified Inmate Account Statement [b]efore and/or [without] being allowed to inspect said filings before mailing.

As a result of the above, notwithstanding the restrictions and/or extraneous conditions in trying to get said affidavit properly notarized by Institutional Staff, Relator was unable and/or unavoidably prevented from timely submitting his affidavit of specifying details with the envelope containing his Initial Writ of Action.

Wherefore: Relator submits, all the above forgoing reasons for the granting of this request in interest of justice, and equitable relief.

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SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF WRIT OF PROCEDENDO

Pursuant to S. Ct. Prac. R. 10.7.

I, Relator/Michael Roberts herein swear under the threat and penalty of perjury that the foregoing statements are the truth, the whole truth, and nothing but the truth so help me God, that I am of sound mind, body, and Spirit, and willing to testify under oath in Court of Law.

- 1) On or about December 13, 2011, I did file a Motion to Withdraw my Plea before Respondent based on the following Constitutional infirmities, to wit: (A) Initial Trial Judge failed in his duty, pursuant to *Crim R. 11*, and *U.S. XIV Amend.* to properly described to me what the meanings and [a]dditional consequences of Post-Release Control were before excepting my plea, nor did he explain the difference of meanings and terms between “**Community Control and Post Release Control,**” thereby rendering my plea [less] than “*Knowing, Intelligent, and Voluntary.* (B) After accepting the joint plea agreement and imposing Communtiy Control sanctions the Trial Judge not only failed to give me any fair verbal notice of [all] the specific consequences should my probation be later revoked, he also failed to include the extraneous, (PRC) consequences as a definite part of the original terms and conditions in the Court's Judgment Entry, pursuant to *R.C. 2929.19(B)(5)*
- 2) On December 27, 2011, the State of Ohio filed “PLAINTIFF'S MEMORANDUM CONTRA DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA.”
- 3) On January 4, 2012, Relator filed “DEFENDANT'S REPLY TO PLAINTIFF'S MEMO IN CONTRA DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA,” pursuant to *Crim R. 32.1, & Crim R. 52(B)*.
- 4) Then on February 13, 2012 Relator filed a “Judicial Notice,” essentially brought the same set of adjudicative facts and law to the respondent's attention as an act of due diligence.

AFFIDAVIT CONTINUED

- 5) Then after patiently waiting for over 90 days, Relator then filed his "MOTION TO PROCEED TO JUDGMENT ON DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA AND JUDICIAL NOTICE." However, this motion was quickly denied without any explanation.
- 6) On July 5, 2012 approximately Two Hundred and Ten days from the date of filing his Motion to Withdraw, and approx. One Hundred and Fifty days from the date of filing his Judicial Notice, Relator has filed this current Writ of Procedendo.
- 7) Relator aduers, that he has a fundamental right to Due Process and Equal Protection of the laws of this State, and notwithstanding the U.S. Constitution, and submits that the Ohio Supreme Court has promulgated Rule of SuperIntendence (40) as an express duty upon all competent courts of jurisdiction within this State as a guideline to insure Relator's rights are protected.
- 8) Relator aduers that in light of all the previous attempts mentioned above, there lacks any other adequate remedy in the ordinary course of law. State ex rel. Miley v. Parrott, 77 Ohio St.3d 64, 65, 1996 Ohio 350, 671 N.E.2d 24 (1996). A **writ of procedendo** is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.
Id.

Sworn and subscribed to in my presence on this 20 day of August, 2012

SEAL

Cherri Barch

NOTARY PUBLIC

My commission expires on: 11/19/2017

Respectfully submitted,

Michael B. [Signature]

MLR/Sc
CC:FILED

CERTIFICATE OF SERVICE

I Michael Roberts, hereby certify that I did forward a true copy of the attached Supplemental Affidavit in Support of Writ of Procedendo, and Motion of Leave for Extension of Time, to Respondent's counsel of record Asst. Prosecutor, Jeremy D. Smith, located at 373 S. High Street, 13th Floor, Columbus, OH 43215, via., regular U.S. Mail on this 20th day of August, 2012.



Michael Roberts, Relator