

STATEMENT OF FACTS

This cause originated in this Court on the filing of a petition for a writ of habeas corpus, filed on February 25th, 2013, and was considered in a manner prescribed by law. Upon consideration thereof, this Court ordered, sua sponte, that the writ is allowed on April 24th, 2013. It was further ordered that Respondent file a return of writ within twenty-one days of service of the petition, and petitioner may file a response within ten days after the return is filed. Petitioner's physical presence before the Court was not required.

On May 8th, 2013, Petitioner filed a "Request For Judicial Notice". On May 13th, 2013, Respondent filed a return of writ. Petitioner then filed a Response/Memorandum Contra on May 17th, 2013.

MEMORANDUM IN SUPPORT

Before issuing a writ of habeas corpus, this court necessarily had to determine whether the facts alleged created a prima facie case in favor of the petitioner's release. R.C. 2725.05 and 2725.06. Had the petition failed in that respect, this court would be required to refuse to issue the writ. Respondent's return of writ therefore lacks arguable merit, and petitioner shall be discharged immediately.

Petitioner would also assert that pursuant to § 2305.19 (A). {Saving in case of reversal or failure otherwise than upon merits}; provides: "In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant".

§ 2725.17. **Discharge of prisoner**, provides: "When the judge has examined the cause of caption and detention of a person brought before him as provided in section 2725.12 of the Revised

Code, and is satisfied that such person is unlawfully imprisoned or detained, he shall forthwith discharge such person from confinement". In this case, there is absolutely NO DISPUTE OF THE FACTS, and since the outcome would not be in any reasonable doubt, a trial or hearing would be a mere formality. *** Pursuant to **Civ. R. 56(C)**: This Court shall determine if, from all the available evidence, there exists a material issue of fact that is honestly disputed. Respondent has provided no authority to this court that suggests that the Respondent is empowered to arbitrarily and unilaterally alter the clear intention of a sentencing judgment entry. See **State ex rel. Dailey v. Morgan, 761 N.E. 2D 140,143.**

Respondent has acknowledged that the original sentence of the Hamilton County Court of Common Pleas originally granted the petitioner 1,530 days credit against his Hamilton County Case, Case No. B0901851, and that the Judge's Office was contacted **after** receiving the Entry Granting Motion For Jail Time Credit, filed by the trial court on February 17th, 2011, and a Bailiff stated "he would re do the entry". See **Exhibit (H) paragraph 3.** Confidence in and respect for the criminal-justice system flow from a belief that courts and officers of the courts perform their duties pursuant to established law. This case is beyond mis fortunate in respect to the petitioner, and with all due respect, the actions and procedures of the Respondent and the trial court are unequivocally [Unconstitutional, Inexcusable, and Contrary to Law]. The Entry Granting Motion For Jail Time Credit, filed by the trial court on February 17th, 2011 was a Final Appealable Order pursuant to **R.C. 2505.02 (A)(1)**, and was not appealed by any party. A court has no authority to reconsider its own final judgments in criminal cases. **Brook Park v. Necak (1986), 30 Ohio App.3d 118, 30 OBR 218, 506 N.E.2d 936.**

Wherefore, res judicata applied to the Order after the State failed to appeal that particular order.

NOTE: Pursuant to **Rule 4(A) of the Ohio Rules of Appellate Procedure**, a party must usually file a notice of appeal within thirty days of the entry of the final judgment or order.

Moreover, as petitioner pointed out in his **Request For Judicial Notice**, the fact also remains that the jail time credit, currently in Respondent's Records Office, would still have Petitioner deprived

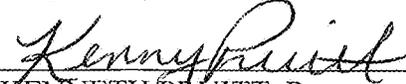
of his liberty, as of this date, However, the Respondent refused to enforce that credit as well. See Exhibit (H) paragraph 4. also See Ohio Admin. Code 5120-2-04.

The writ shall be granted by this Court of equity, whereby the Respondent shall refrain from confining petitioner (either way) as of this date “according to law”. There is no reason for Petitioner to remain deprived of his liberty as of this date. This Court has recognized that habeas corpus actions are typically exempt from res judicata because conventional notions of finality of litigation have no place where life or liberty is at stake. Natl. Amusements, Inc. v. Springdale (1990), 53 Ohio St. 3d 60, 63, 558 N.E. 2D 1178, 1181, quoting Sanders v. United States (1963), 373 U.S. 1, 8, 83 S. Ct. 1068, 1073, 10 L. Ed. 2D 148, 157, also See FootNote: Sanders v. United States (1963), 373 U.S. 1, 8.

Petitioner is entitled to immediate relief as a matter of law, and to avoid the needless expenses, delay and further damages. In this case, the Respondent clearly has no effective defense on the merits, and the facts alleged are undisputed.

Therefore Petitioner Prays that this Honorable Court ORDER, ADJUDGE, AND DECREE that respondent shall immediately release petitioner, Kenneth Pruitt, from confinement, subject only to such sanctions of postrelease control as may be imposed by the Ohio Adult Parole Authority.

Respectfully Submitted,


KENNETH PRUITT- Pro se
#A635780
P.O. Box 209
Pickaway Correctional Institution
Orient, Ohio 43146
Petitioner

CERTIFICATE OF SERVICE

I, Kenneth Pruitt, hereby certify that the foregoing "Motion For Equitable and Injunctive Relief" was mailed, by regular U.S. Mail, to the Ohio Attorney General's Office, located at 150 East Gay St. 16th, Floor, Columbus, Ohio 43215, on this 1st day of August 2013.


KENNETH PRUITT #A635780
Petitioner-Pro se



Ohio Department of Rehabilitation and Correction

Bureau of Sentence Computation
P.O. Box 2650
Columbus, OH 43216

John F. Kasich, Governor

www.drc.ohio.gov

Gary C. Mohr, Director

TO: Linda Hill, Legal Assistant
Criminal Justice Section
Office of Ohio Attorney General Mike DeWine

FROM: Lora Heiss, Corr. Records Mgt. Supervisor *LHeiss*
Bureau of Sentence Computation

DATE: June 22, 2012

RE: Kenneth Pruitt, A635-780

Pursuant to your request for sentence computation on the above offender, I can provide the following.

Pruitt was admitted to ODRC on 8/4/10. He was sentenced on Hamilton Co. case B0901851 on 7/28/10. Judge Nadel sentenced him to a 5 years sentence on count 1, Possession, Felony 3; count 2 Trafficking, Felony 2; count 3 and 6, Possession, Felony 1; counts 4 and 5, Trafficking, Felony 1; and count 7, Having Weapon While Under Disability, Felony 3. The counts were ordered concurrent to each other for an aggregate sentence of 5 years. The entry was silent to jail credit so 7 days convey was applied from the day of sentencing up to his admission date. His computed release date was 7/26/15.

Our office received a jail time credit filed 8/24/10 granting 11 days credit as of the date of sentencing. Pruitt was resentenced 9/22/10 on B0901851 for PRC notification with no change to his sentence of 5 years. No credit was listed in the resentencing entry. His 5 years sentence was reduced by 11 days credit plus 6 days convey for a total of 17 days credit. His computed released was 7/15/15 which included 1 day of earned credit.

Our office received an entry filed 2/17/2011 granting 1530 day credit on his sentence. The judge's office was contacted and the bailiff informed our office that amount was incorrect and he would re-do the entry. We received an entry filed 2/18/11 granting 553 days as of 9/22/10 to which 4 days of conveyance time was added for a total of 557 days. His 5 years sentence was computed effective his return from court date of 9/27/10 and reduced by 557 days of credit for an Expiration of Stated Term of 3/15/14 which included 2 days earned credit.

Pruitt's sentence was reversed and remanded by the appellate court. He was resentenced on 11/7/11 to serve 5 years concurrently on counts 2, 3, 5, and 7. The resentencing entry granted 964 days credit plus 1 day convey was added for a total credit of 965 days. Again, the judge's office was contacted and the bailiff confirmed the amount in the entry was total credit and his release date should not change. His sentence was computed effective his return from court date of 11/9/11 and reduced by 965 days credit for a release date of 3/11/14 which included 6 days earned credit.

Due to receiving 6 more days of earned credit, Pruitt's Expiration of Stated Term is 3/5/14 as of this date.

I hope this information is helpful.

(8)

EXHIBIT

H