

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)
LEWIS LEROY MCINTYRE, JR.)
Inmate No. 571710)
North Central Correctional Complex)
P.O. Box 1812)
Marion, Ohio 43302)

Relator)

v.)

SUMMIT COUNTY)
COURT OF COMMON PLEAS)
209 South High Street)
Akron, Ohio 44308)

and)

JUDGE WILLIAM VICTOR (retired) (deceased))
c/o Summit County Court of Common Pleas)
209 South High Street)
Akron, Ohio 44308)

and)

JUDGE MARY SPICER (retired))
c/o Summit County Court of Common Pleas)
209 South High Street)
Akron, Ohio 44308)

and)

JUDGE THOMAS TEODOSIO)
209 South High Street)
Akron, Ohio 44308)

Respondents)

CASE NO.

ORIGINAL ACTION IN
PROHIBITION, MANDAMUS,
AND PROCEDENDO

COMPLAINT FOR WRITS OF PROHIBITION, MANDAMUS, AND PROCEDENDO

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ATTORNEY FOR RELATOR
LEWIS LEROY MCINTYRE, JR.

Relator, Lewis Leroy McIntyre, Jr., aka Leroy L. McIntyre, by and through undersigned counsel, hereby alleges the following:

PARTIES

1. McIntyre is an individual currently incarcerated in North Central Correctional Complex in Marion, Ohio. He remains there solely because of *State of Ohio v. Leroy L. McIntyre*, Summit County Case No. CR-91-01-0135.

2. Respondent Summit County Court of Common Pleas is the court charged with handling felony matters arising out of Summit County. It has been and still is the court of competent jurisdiction over McIntyre's case. It has multiple elected judges presiding over felony matters and assigns one of its elected judges to solely preside over a case.

3. Respondent Judge William Victor was an elected Summit County Court of Common Pleas judge and Ninth District Court of Appeals judge before retiring in 1983. He then presided over select cases in Summit County Court of Common Pleas as a visiting judge. In August 1991, he presided over the jury trial and sentencing in McIntyre's case. He passed away in 2004. Though now deceased, he is named as a party to this case in his official capacity as judge presiding over McIntyre's case so McIntyre can bring to light the non-jurisdictional acts performed by Judge Victor.

4. Respondent Judge Mary Spicer was elected judge in Summit County Court of Common Pleas in 1984 and reelected in 1990, 1996, and 2002. She retired in 2008 after serving four terms. She was the elected judge assigned to preside over McIntyre's case. Though now retired, she is named as a party to this case in her official capacity as judge presiding over McIntyre's case so McIntyre can bring to light the non-jurisdictional acts performed by Judge Spicer.

5. Respondent Judge Thomas Teodosio was elected judge in Summit County Court of Common Pleas in 2006 and reelected in 2012. He continues serves in this position today. Since February 27, 2009, he has been the elected judge assigned to preside over McIntyre's case. He is named as a party to this case in his official capacity as judge presiding over McIntyre's case so he can be compelled to act to correct the problems in McIntyre's case.

6. Any time this Complaint refers to an individual Respondent judge, it shall also be construed to include Respondent Summit County Court of Common Pleas.

JURISDICTION

7. This Court has original jurisdiction over this matter pursuant to Article IV, Section 2(B)(1)(b), (d), and (e) of the Ohio Constitution.

FACTS

8. All facts refer to events taking place in *State of Ohio v. Leroy L. McIntyre*, Summit County Case No. CR-91-01-0135. For over the past 20 years, McIntyre has fought a mostly one-man pro se battle to have the glaring problems in the case be addressed and resolved, but has largely been marginalized.

9. On February 7, 1991, McIntyre was indicted for felonious assault with a firearm specification and prior aggravated felony specification. The alleged victim was Galen Thompson.

10. On February 27, 1991, McIntyre was indicted for felonious assault with a firearm specification. This specification was labeled as "Specification One to Count One." The alleged victim was Robert Taylor. This indictment was labeled as Supplement One.

11. On July 24, 1991, McIntyre was indicted for a prior aggravated felony specification for the felonious assault charge in the second indictment (Supplement One) and for a new charge

of aggravated burglary with a firearm specification. This indictment was labeled as Supplement Two. This indictment labeled the prior aggravated felony specification as “Specification One to Count One of Supplement One,” which is the same title as the firearm specification in the second indictment (Supplement One).

12. Judge Spicer was the elected judge assigned to preside over McIntyre’s case.

13. On August 8, 1991, McIntyre went to trial on the three indictments. However, Judge Spicer did not preside over the trial. Instead, to McIntyre’s surprise, Judge Victor, who was retired and did not hold elected office, walked in and presided over the trial. Judge Victor patently and unambiguously had no authority to do this.

14. No record exists evidencing Judge Victor to have authority to preside over McIntyre’s trial. The Ohio Supreme Court has no record of the Chief Justice assigning Judge Victor as a visiting judge to the case. There is no Certificate of Assignment in McIntyre’s case file with the Summit County Clerk of Courts that evidences authority to Judge Victor.

15. Shortly before the trial started, the prosecutor amended the felonious assault charge in Supplement One indictment to include Denise Harrison as a victim. Judge Victor later allowed this amendment.

16. Judge Victor instructed the jury to consider the two counts of felonious assault and one count of aggravated burglary with firearm specifications supposed to go with each. He did not instruct the jury to consider the prior aggravated felony specifications pertaining to each felonious assault.

17. For each charge, Judge Victor issued verdict forms that contained the charge and the firearm specification on the same form, but with one set of juror signatures at the end of the form.

18. On aggravated burglary verdict form, the firearm specification referred to “felonious assault” instead of aggravated burglary.

19. On August 13, 1991, a jury found McIntyre guilty of felonious assault with a firearm specification as charged in the original indictment and guilty of aggravated burglary with a firearm specification (which referred to felonious assault on the form) as charged in Supplement Two of the indictment. The jury was unable to reach a decision on the felonious assault with a firearm specification as charged in Supplement One of the indictment.

20. Judge Victor discharged the jury. After the prosecutor alerted him to the unresolved prior aggravated felony specification pertaining the felonious assault in the original indictment, Judge Victor, on his own, pronounced McIntyre guilty of a prior offense of violence.

21. McIntyre never waived his right to a jury trial. He was never charged with a prior offense of violence.

22. On August 16, 1991, McIntyre was indicted for failing to appear at his trial. This indictment was labeled as Supplement Three.

23. On August 23, 1991, McIntyre was indicted for felonious assault and having a weapon under disability. The alleged victim was Tyrone Howard. This indictment was labeled as Supplement Four.

24. On August 29, 1991, McIntyre appeared before Judge Victor for arraignment and sentencing in the same case. McIntyre’s trial counsel, without McIntyre’s permission or consent, filed a plea of not guilty by reason of insanity on the failure to appear charge in Supplement Three. In the arraignment, Judge Victor ordered McIntyre to be evaluated by mental health professionals and continued the arraignment on the charges of Supplement Four of the indictment.

25. Even though McIntyre's trial counsel had just alleged him to be insane during trial, Judge Victor immediately proceeded after arraignment to hold a bench hearing on the prior aggravated felony specification in the original indictment and then sentence McIntyre on the charges he was found guilty of in trial. After hearing testimony from an Akron police officer, Judge Victor pronounced McIntyre guilty of having a prior offense of violence, which McIntyre was never charged with. Judge Victor never pronounced judgment on the prior aggravated felony specification.

26. The felonious assault charge was an aggravated second degree felony. The aggravated burglary charge was an aggravated first degree felony. Under the sentencing ranges at the time pursuant to old ORC 2929.11, an aggravated second degree felony carried a minimum of 3-8 years to a maximum 15 years. An aggravated first degree felony carried a minimum of 5-10 years to a maximum 25 years. A firearm specification was an additional three years. If convicted of a prior aggravated felony specification, then an aggravated second degree felony was a minimum of 8-12 years actual incarceration to a maximum 15 years.

27. Judge Victor sentenced McIntyre to serve an enhanced minimum 8 years of actual incarceration to a maximum 15 years for the felonious assault plus three years for the firearm specification. He based this on his erroneous finding that McIntyre had a prior offense of violence.

28. Judge Victor also sentenced McIntyre to serve 8 to 25 years on the aggravated burglary plus three years for the firearm specification, even though the specification referred to felonious assault on the jury verdict form. Judge Victor ordered all sentences to run consecutive to each other for a composite 22 to 46 year sentence.

29. At the time of sentencing, the felonious assault charge with the firearm specification in Supplement One was undisposed. The prior aggravated felony specification in Supplement Two was undisposed. The prosecutor never dismissed them. A new jury trial was never set to adjudicate these charges.

30. At the time of sentencing, McIntyre was facing three new charges in two new indictments in the case. These were not disposed at the time of sentencing.

31. On September 9, 1991, Judge Spicer signed and filed a journal entry attempting to memorialize the events of the trial. The entry correctly stated that McIntyre was found guilty of the felonious assault and firearm specification in the original indictment. The entry then stated that McIntyre was found not guilty of the prior aggravated felony specification, which was not correct.

32. The entry further recited that McIntyre was found guilty of aggravated burglary with a firearm specification, which was referred to as “Specification One to Count One of Supplement Two to Indictment.” The entry then stated that the jury hung on the felonious assault charge in Supplement One and on “Specification One to Count One of the Supplement One to Indictment,” but did not specify whether it was the firearm specification or the prior aggravated felony specification. The entry further stated that the jury hung on “Specification One to Count One of the Supplement Two to Indictment,” the same specification the entry stated earlier that the jury found McIntyre guilty of.

33. Judge Spicer signed the journal entry for herself as if she were the judge on McIntyre’s case. She did not sign for Judge Victor.

34. On September 9, 1991, Judge Spicer signed and filed a sentencing entry that pronounced McIntyre to serve 8 to 15 years on the felonious assault plus three years for a firearm

specification and 8 to 25 years on the aggravated burglary plus three years for a firearm specification with all sentences to run consecutive. The sentencing entry made no mention of any sentencing enhancement based on a prior offense of violence or prior aggravated felony.

35. On September 11, 1991, Judge Spicer signed and filed a nunc pro tunc entry that amended the sentencing entry so that the 8 to 15 year sentence for the felonious assault was an 8 year minimum of actual incarceration. The nunc pro tunc entry did not specify the reason for this enhancement.

36. Judge Spicer signed the sentencing and nunc pro tunc entries for herself as if she were the judge on McIntyre's case. She did not sign for Judge Victor.

37. On October 15, 1991, McIntyre was indicted for a prior aggravated felony specification to the felonious assault charge in Supplement Four and a prior offense of violence specification to the weapons under disability charge in Supplement Four. This indictment was labeled as Supplement Five.

38. On May 19, 1992, McIntyre was indicted for two counts of felonious assault with prior aggravated felony specifications to each charge. Both charges pertained to the same event alleged in the felonious assault charge in Supplement Four. This indictment was labeled as Supplement Six.

39. On May 21, 1992, McIntyre accepted a plea bargain in which he pled guilty to a single amended charge of aggravated assault while all the counts and specifications contained in Supplements Three, Four, Five, and Six were dismissed. McIntyre received an 18 month sentence to run concurrent to the sentence rendered in the entry filed September 9, 1991 and the nunc pro tunc two days later.

40. On May 22, 1992, Judge Spicer issued a sentencing entry to memorialize the plea bargain and sentence to resolve Supplements Three, Four, Five, and Six. However, the entry refers to “Specification One to Count One of Supplement Five” and “Specification One to Count Two of Supplement Five” that do not exist. It does not dispose of the two specifications contained in Supplement Six. Also, the entry does not contain a signature by a judge.

41. On February 22, 2010, McIntyre, acting pro se, filed a motion to vacate the September 1991 sentence because it did not comply with Crim. R. 32(C). McIntyre attacked the sentencing entry purely on its face and did not raise the issues of all charges not being resolved and that the sentencing judge, Judge Victor, did not sign the entry. On February 26, 2010, Judge Teodosio denied the motion. McIntyre appealed to the Ninth District Court of Appeals, but on September 30, 2010, the Ninth District affirmed.

42. On December 22, 2010, McIntyre, acting pro se, filed a motion to set the unresolved charge and specification in Supplement One, which the jury hung on, for a re-trial. On January 7, 2011, Judge Teodosio denied the motion. McIntyre appealed, but on December 30, 2011, the Ninth District Court of Appeals dismissed the appeal because the January 7, 2011 order was not final and appealable since McIntyre’s motion was pretrial in nature.

43. On August 4, 2011, McIntyre, acting pro se, filed a motion raising the issue of the September 9, 1991 journal entry’s double reference to the “Specification One to Count One of Supplement Two to Indictment” and how the entry simultaneously stated the jury found him guilty and hung on it.

44. On October 12, 2011, Judge Teodosio filed an amended journal entry that eliminated the original entry’s second reference to “Specification One to Count One of Supplement Two to

Indictment.” Judge Teodosio’s amended journal entry did not account for both specifications to the felonious assault charge in Supplement One to which the jury was unable to reach a verdict.

45. On June 14, 2012, McIntyre, acting pro se, filed a pleading raising attention to the felonious assault charge and firearm specification in Supplement One that the jury hung on and had since never been disposed of. The State responded on June 27, 2012 saying it had no intention of retrying McIntyre on the charge and sought a dismissal. On June 28, 2012, Judge Teodosio issued a written entry stating that the felonious assault charge and the firearm specification were dismissed. However, the entry did not dismiss the prior aggravated felony specification.

46. On July 10, 2012, McIntyre, acting pro se, filed motions, among others, to set the prior aggravated felony specification for trial, void the sentence, and convey him to court so that the felonious assault charge in Supplement One could be properly dismissed under Crim. R. 48(A). On September 25, 2012, Judge Teodosio denied these motions and others without explaining why.

47. On September 10, 2012, McIntyre, acting pro se, filed for a writ of mandamus against Judge Teodosio in the Ninth District Court of Appeals in Summit County App. No. CA-26619. He sought to compel Judge Teodosio to set the felonious assault charge in Supplement One for trial. McIntyre argued that Judge Teodosio lacked authority to dismiss the felonious assault because the Ninth District was considering an appeal from the case at the time. McIntyre did not seek a writ of prohibition. He did not argue Judge Teodosio’s lack of authority to dismiss without an open court hearing as required under Crim. R. 48(A). On February 21, 2013, the Ninth District rejected McIntyre’s complaint, stating there was no appeal pending at the time Judge Teodosio made his ruling to dismiss the felonious assault charge.

48. On July 18, 2014, McIntyre, through undersigned counsel, filed a Motion to Declare Mistrial. In the motion, he addressed the lack of a final appealable order in the case and all the issues referenced in this Complaint. He implored Judge Teodosio to address the errors by declaring a mistrial, which could be done since the case was still in presentence mode.

49. On December 2, 2014, Judge Teodosio denied the Motion to Declare Mistrial. In his entry, Judge Teodosio stated that the Ninth District Court of Appeals had previously found there to be a final appealable order in McIntyre's case. As justification, he cited *State v. McIntyre*, 2012-Ohio-1026 (9th Dist.), which was an appeal from a case McIntyre had in 1985 in *State of Ohio v. Leroy McIntyre*, Summit County Case No. CR-85-02-0171.

COUNT ONE – WRIT OF PROHIBITION

50. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

51. Judge Victor patently and unambiguously lacked authority preside over McIntyre's trial and sentencing as a visiting judge. As a direct result, McIntyre has suffered injuries to his life and liberty for the past 24 years. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

52. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate the trial proceedings in their entirety.

COUNT TWO – WRIT OF PROHIBITION

53. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

54. Judge Victor patently and unambiguously lacked authority to allow the prosecutor to amend the felonious assault charge in Supplement Two of the indictment to add a second victim. As a direct result, McIntyre was injured because his right to have a grand jury issue an

indictment was violated. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

55. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate the amendment.

COUNT THREE – WRIT OF PROHIBITION

56. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

57. Judge Victor patently and unambiguously lacked authority to issue a jury verdict form for the felonious assault charge and firearm specification in the original indictment that contained only one set of juror signatures for both. The charge and specification each require separate and independent fact finding by the jury. With only one set of signatures, the Summit County Court of Common Pleas could not find McIntyre guilty of both the charge and specification. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

58. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate the verdict.

COUNT FOUR – WRIT OF PROHIBITION

59. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

60. Judge Victor patently and unambiguously lacked authority issue a jury verdict form for the aggravated burglary charge and firearm specification in Supplement Two of the indictment that contained only one set of juror signatures for both. The charge and specification each require separate and independent fact finding by the jury. With only one set of signatures,

the Summit County Court of Common Pleas could not find McIntyre guilty of both the charge and specification. Further, the firearm specification refers to felonious assault instead of aggravated burglary, rendering the form incapable of adjudicating McIntyre. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

61. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate the verdict.

COUNT FIVE – WRIT OF PROHIBITION

62. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

63. Judge Victor patently and unambiguously lacked authority to conduct a bench trial on the prior aggravated felony specification in the original indictment. As a direct result, McIntyre was injured because his right to a jury trial was violated. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

64. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate Judge Victor’s findings in the bench trial.

COUNT SIX – WRIT OF PROHIBITION

65. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

66. Judge Victor patently and unambiguously lacked authority to find McIntyre guilty of having a prior offense of violence without McIntyre being charged with such. As a direct result, McIntyre was injured because his right to due process was violated. Because no final appealable

order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

67. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate Judge Victor's finding.

COUNT SEVEN – WRIT OF PROHIBITION

68. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

69. Judge Victor patently and unambiguously lacked authority to conduct a sentencing hearing when there were unresolved charges in the case and right after ordering McIntyre to a mental health examination to determine sanity. The unresolved charges still pending were the felonious assault charge in Supplement One the jury hung on in trial and the new charges contained in Supplements Three and Four. Plus, McIntyre's trial attorney had just alleged him to be insane. As a direct result, McIntyre suffered injuries to his life and liberty. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

70. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate Judge Victor's sentence.

COUNT EIGHT – WRIT OF PROHIBITION

71. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

72. Judge Victor patently and unambiguously lacked authority to give McIntyre an enhanced sentence based on a prior offense violence and/or prior aggravated felony. As a direct result, McIntyre suffered injuries to his life and liberty. Because no final appealable order has

ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

73. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Victor declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate Judge Victor's sentence.

COUNT NINE – WRIT OF PROHIBITION

74. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

75. Judge Spicer patently and unambiguously lacked authority to sign the journal and sentencing entries filed September 9, 1991 and the nunc pro tunc filed two days later. As a direct result, McIntyre suffered injuries to his life and liberty. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

76. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Spicer declaring her lack of authority and compelling the Summit County Court of Common Pleas to vacate the entries.

COUNT TEN – WRIT OF PROHIBITION

77. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

78. Judge Spicer patently and unambiguously lacked authority to declare that McIntyre was acquitted of the prior aggravated felony specification in the September 9, 1991 journal entry. As a direct result, McIntyre suffered injuries to his right of due process since the purported acquittal frustrated his right to appeal. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

79. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Spicer declaring her lack of authority and compelling the Summit County Court of Common Pleas to vacate the phantom acquittal.

COUNT ELEVEN – WRIT OF PROHIBITION

80. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

81. Judge Spicer patently and unambiguously lacked authority to approve sentencing and nunc pro tunc entries that ordered McIntyre to serve an enhanced sentence based on the prior aggravated felony specification even though she purportedly acquitted him of it. As a direct result, McIntyre suffered injuries to his life and liberty. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

82. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Spicer declaring her lack of authority and compelling the Summit County Court of Common Pleas to vacate the sentence.

COUNT TWELVE – WRIT OF PROHIBITION

83. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

84. Judge Teodosio patently and unambiguously lacked authority to dismiss the felonious assault charge of the second indictment (Supplement One) without an open court hearing. As a direct result, McIntyre has suffered injuries to his right of due process and obtain a final appealable order in his case. Because no final appealable order has ever existed and still does not exist, McIntyre has no other adequate remedy at law to challenge the issue.

85. McIntyre seeks a writ of prohibition against the Summit County Court of Common Pleas and Judge Teodosio declaring his lack of authority and compelling the Summit County Court of Common Pleas to vacate the dismissal.

COUNT THIRTEEN – WRIT OF MANDAMUS

86. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

87. The felonious assault charge in Supplement One of the indictment, as amended to include a second victim, was never dismissed and is still pending for trial.¹ This also includes the firearm and prior aggravated felony specifications that go with it. Judge Teodosio has a clear legal duty to ensure that the charge and specifications are resolved as part of his larger duty to ensure that McIntyre has a final appealable order, which McIntyre is entitled to. However, Judge Teodosio has refused to recognize the lack of a final appealable order and other problems in the case despite McIntyre bringing them to his attention. Therefore, McIntyre has no other adequate remedy at law but to seek an extraordinary writ.

88. McIntyre seeks a writ of mandamus to compel Judge Teodosio and the Summit County Court of Common Pleas to set the felonious assault charge in Supplement One of the indictment, as amended, along with the firearm and prior aggravated felony specifications, for trial.

COUNT FOURTEEN – WRIT OF MANDAMUS

89. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

90. The firearm specification to the aggravated burglary charge in Supplement Two of the indictment was never presented to the jury because the aggravated burglary verdict form stated a specification for felonious assault. The specification for aggravated burglary was never

¹ If Count Two is granted, then this issue becomes moot.

dismissed and is still pending for trial.² Judge Teodosio has a clear legal duty to ensure that the specification is resolved as part of his larger duty to ensure that McIntyre has a final appealable order, which McIntyre is entitled to. However, he has refused to recognize the lack of a final appealable order and other problems in the case despite McIntyre bringing them to his attention. Therefore, McIntyre has no other adequate remedy at law but to seek an extraordinary writ.

91. McIntyre seeks a writ of mandamus to compel Judge Teodosio and the Summit County Court of Common Pleas to set the firearm specification to the aggravated burglary charge in Supplement Two of the indictment for trial.

COUNT FIFTEEN – WRIT OF MANDAMUS

92. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

93. McIntyre has never had a final appealable order in his case and is entitled to a full final disposition of all matters in the case and a final appealable order that complies with Crim. R. 32(C). To achieve this, the problems in the foregoing counts must be addressed. Judge Teodosio has a clear legal duty to provide McIntyre a final appealable order, which means he has to address and resolve the outstanding issues and problems in the case. However, he had refused to recognize the lack of a final appealable order despite McIntyre's efforts to raise the issue to his attention. Therefore, McIntyre has no other adequate remedy at law but to seek an extraordinary writ.

94. McIntyre seeks a writ of mandamus to compel Judge Teodosio and the Summit County Court of Common Pleas to resolve all matters in the case and provide McIntyre a final appealable order that complies with Crim. R. 32(C).

² If Count Four is granted, then this issue becomes moot.

COUNT SIXTEEN – WRIT OF PROCEDENDO

95. McIntyre realleges Paragraphs 1 to 49 as if fully rewritten herein.

96. McIntyre has never had a final appealable order in his case and is entitled to a full final disposition of all matters in the case and a final appealable order that complies with Crim. R. 32(C). Despite McIntyre’s efforts to raise the issue, Judge Teodosio has refused to enter a judgment that would qualify as a final appealable order. McIntyre has no other adequate remedy at law but to seek an extraordinary writ.

97. McIntyre seeks a writ of procedendo to compel Judge Teodosio and the Summit County Court of Common Pleas to resolve all matters in the case and provide McIntyre a final appealable order that complies with Crim. R. 32(C).

PRAYER FOR RELIEF

Relator, Lewis Leroy McIntyre, Jr., asks the Court the grant all extraordinary writ relief requested in Counts 1 to 16 and any other relief he is entitled to in law and/or equity as well as costs and attorney fees.

Respectfully submitted,

/s Stephen P. Hanudel
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