

OPENING STATEMENT

Relator, Lewis Leroy McIntyre, Jr., aka Leroy L. McIntyre, by and through undersigned counsel, hereby petitions the Ohio Supreme Court to issue writs of prohibition, mandamus, and procedendo against the Summit County Court of Common Pleas and its individual judges that have presided over McIntyre's criminal case, *State of Ohio v. Leroy L. McIntyre*, Summit County Case No. CR-91-01-0135. These judges include Judge William Victor, Judge Mary Spicer, and Judge Thomas Teodosio.

Judge Victor, who presided over open court in trial and sentencing as a visiting judge, is now deceased. Judge Spicer, who was the elected judge assigned to the case and signed the journal and sentencing entries, is retired. Judge Teodosio currently presides over McIntyre's case.

Not only is the case rife with errors, the subsequent efforts, mostly pro se, by McIntyre to have these errors corrected and the Respondents' refusal to correct the errors for nearly the past 24 years have made the case a giant compounded web of confusion and complication. As an overall point, there has never been a final appealable order in McIntyre's case, thus an extraordinary writ must issue from this Court to compel the Summit County Court of Common Pleas and Judge Teodosio to ensure a final conclusion in McIntyre's case.¹

In their respective tenures presiding over the case, Judges Victor, Spicer, and Teodosio have each performed acts to which they had no jurisdiction. In addition, Judge Teodosio, the current judge, refuses to perform acts to which he is obligated to ensure McIntyre's case has a final conclusion.

¹ McIntyre's claims for writ relief against any particular individual judge shall always be construed to include the Summit County Court of Common Pleas. For ease of discussion, McIntyre will not name Summit County Court of Common Pleas every time he discusses an individual judge.

McIntyre, who has steadfastly maintained his innocence, was found guilty by a jury of two charges and a specification solely on questionable eyewitness testimony. However, a jury hung on another charge. This hung charge and other specifications remained unresolved. McIntyre has exhausted every conceivable means of obtaining a final resolution in his case. However, the Respondents have continually ignored him and refused to provide such final resolution. Now McIntyre needs this Court's help to force the Respondents to do their jobs.

FACTS

The Jumbled Indictment

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.²

On February 27, 1991, in a supplemental indictment (Supplement One), McIntyre was indicted for another count of felonious assault with a firearm specification. This specification was labeled as "Specification One to Count One." The alleged victim was Robert Taylor.

On July 24, 1991, in another supplemental indictment (Supplement Two), 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. However, the third indictment (Supplement Two) labeled the prior aggravated

² Galen Thompson, who was 15, testified against McIntyre in trial, stating that McIntyre shot him in the lower leg. In 2010, Thompson independently retracted his trial testimony and swore under oath in an affidavit that he was pressured by police and prosecutors to accuse McIntyre. McIntyre, acting pro se, brought this to Judge Teodosio's attention, but just 14 days later, Judge Teodosio dismissed McIntyre's motion without a hearing, stating that he found Thompson's recantation suspicious because McIntyre admitted to contacting Thompson about the case. In July 2013, undersigned counsel, personally visited Thompson in Franklin County Jail and Thompson made very clear to undersigned counsel that he was under no duress or undue pressure or coercion from anyone when he made his retraction. He maintained that the retraction was his own voluntary act and that he could not understand why Judge Teodosio was so apt to disbelieve and dismiss it.

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).

All three indictments related to alleged incidents taking place the same late evening of December 30, 1990. That night, two men with ski masks terrorized a neighborhood in southwest Akron. Even though two men were involved, McIntyre was the only one who was ever prosecuted. He was implicated solely on eyewitness testimony, despite the men’s faces being covered with ski masks while it was dark outside and the witnesses were under stressful circumstances.

As discussed later, more indictments would come in this same case number (CR-91-01-0135) after McIntyre was tried on these first three indictments.

Trial

The case proceeded to trial on the jumbled piecemeal indictments on August 8, 1991. The elected judge assigned to the case was Judge Mary Spicer. However, retired Summit County Court of Common Pleas and Ninth District Court of Appeals Judge William Victor stepped in and presided over the trial.

It was a total surprise to McIntyre and his trial counsel to see Judge Victor walk into the courtroom to preside over trial. They had no prior knowledge or idea. No notices were ever given to them.

There is no indication or evidence in the trial court record to suggest that Judge Spicer ever recused herself or was otherwise disqualified. Further, there is no indication or evidence in the record to suggest that Judge Victor was ever assigned or given any authority by the Chief Justice of the Ohio Supreme Court to be a visiting judge and preside over the trial and sentencing in this case.

The Ohio Supreme Court Guidelines for Assignment of Judges effective May 24, 1988, which are attached, were in effect at the time of trial. Guideline 6 states that if in a multiple-judge court like the Summit County Court of Common Pleas, the sitting elected judge is absent, then the presiding judge must first seek a replacement judge using another sitting elected judge of the court. Based on the record, this did not happen in McIntyre's case.

Guideline 27 states that the copy of the Certificate of Assignment shall be entered into the case file under the assignment. An exhaustive search of the file for this case yields no Certificate of Assignment for Judge Victor to preside. The Summit Court of Common Pleas has no record of assigning Judge Victor to McIntyre's case or to Judge Spicer's docket at the time of trial.

Before the jury was seated and sworn, the State orally moved to amend the felonious assault charge in the second indictment (Supplement One) to add Denise Harrison as a victim along with Robert Taylor. Tr. 5. Judge Victor later approved the amendment. Tr. 220.

Faulty Jury Instructions, Forms, and Discharge

On August 12, 1991, closing arguments concluded and Judge Victor instructed the jury to deliberate on all charges and firearm specifications, but not the prior aggravated felony specifications. Tr. 220-236.

In his instructions, Judge Victor stated that the grand jury indicted McIntyre for felonious assault on Robert Taylor and Denise Harrison, which was not true. Tr. 226. The grand jury only indicted for Robert Taylor. Denise Harrison was added later through an oral amendment by the prosecutor.

Judge Victor also issued defective verdict forms to the jury. First, there were no separate verdict forms for the charges and specifications to ensure separate findings of fact for each. For

each charge, the firearm specification was on the same form with one block of signatures to apply to both.

Further, on the verdict form for the aggravated burglary charge, the firearm specification refers to “felonious assault” as the underlying charge, not aggravated burglary. Tr. 234.

The jury returned guilty verdicts on the felonious assault and firearm specification in the original indictment and aggravated burglary and firearm specification that referred to felonious assault. Tr. 248-249. The jury hung on the felonious assault with a firearm specification in the second indictment (Supplement One). Tr. 247-248. Judge Victor then discharged the jury. Tr. 253.

Immediately after the jury was discharged, the prosecutor mentioned the outstanding prior aggravated felony specification remaining on the felonious assault charge that McIntyre was found guilty of. Tr. 253. Even though McIntyre never waived his right to a jury on any of the charges and specifications, Judge Victor went ahead on his own and found McIntyre guilty of a prior offense of violence, something McIntyre was never charged with. Tr. 256.

Additional Indictments

On August 16, 1991, three days after McIntyre’s trial concluded and thirteen days before he was sentenced, a new indictment (Supplement Three) was issued in the same Summit County Case No. CR-91-01-0135. This time, McIntyre was indicted for failure to appear at his trial.

A week later, on August 23, 1991, another indictment was issued (Supplement Four). This time, McIntyre was indicted for felonious assault and having a weapon under disability.

Arraignment and Sentencing

On August 29, 1991, McIntyre appeared in court for sentencing. Before that, however, he was arraigned on the failure to appear charge. His trial attorney, seemingly out of habit and

without McIntyre's permission, filed a boilerplate plea of not guilty by reason of insanity. In essence, the plea alleged McIntyre to be insane in failing to appear at his trial earlier in the month, which means the plea alleged McIntyre to be insane during the trial. Judge Victor ordered McIntyre to undergo a mental health evaluation.

Immediately after arraignment, McIntyre was then sentenced on the charges he was found guilty of in trial while these new charges were pending. It makes no sense how Judge Victor first orders a mental health examination to determine whether McIntyre was insane in failing to appear for trial, but then engages in a proceeding to order him to prison based on the trial's outcome.

McIntyre stood before Judge Victor for sentencing on the felonious assault and aggravated burglary counts he was found guilty of. Tr. 359. As for the felonious assault charge that the jury hung on, this was never addressed. The State did not move to dismiss the charge. McIntyre was never retried. This was left floating in the wind as Judge Victor ordered McIntyre serve consecutive prison terms for the other charges. In addition, as discussed later, new charges were pending in the same case at this time as well.

The firearm specification on the aggravated burglary charge was not addressed either. This was never addressed by the jury because the specification on the aggravated burglary verdict form referred to "felonious assault." Neither the State nor Judge Victor addressed it either. It still remains pending today.

The felonious assault charge in the original indictment 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.

On the felonious assault, McIntyre was ordered, under the repeat aggravated second degree felony guideline to serve an enhanced minimum 8 years of actual incarceration to a maximum 15 years for felonious assault plus three years for the firearm specification. Tr. 381-382. Judge Victor based the enhancement on a prior offense of violence specification under the old ORC 2941.143(B), which was not part of the indictment. Tr. 382. Judge Victor made no mention of the prior aggravated felony specification under old ORC 2941.142.

On the aggravated burglary, McIntyre was ordered, under the standard aggravated first degree felony guideline, to serve 8 to 25 years plus three years for the firearm specification, even though the specification referred to felonious assault. Tr. 382. All terms were to run consecutive for a 22 to 46 year composite sentence. McIntyre is still serving this sentence today.

The Journal Entry

On September 9, 1991, the Summit County Court of Common Pleas filed a journal entry memorializing the events of trial. This entry was not signed by the purported visiting Judge William Victor, who presided over the trial, but instead signed by the assigned elected Judge Mary Spicer, who did not preside over the trial.

The entry correctly stated that McIntyre was found guilty of the felonious assault and firearm specification in the original indictment. However, the entry then said that McIntyre was found not guilty of the prior aggravated felony specification, which was not correct. No

pronouncement had been made on the specification even though McIntyre was ordered to serve a prison sentence enhanced by the specification.

McIntyre feels the purported acquittal was nothing more than an attempt to whitewash the serious errors of not instructing the jury on the prior aggravated felony specification, then discharging the jury, then overriding McIntyre's right to a jury trial by conducting a bench trial on the specification, and then pronouncing an enhanced sentence based on the specification. By stating that McIntyre was not guilty of the specification, the Summit County Court of Common Pleas, through Judge Spicer, attempted to moot the errors so they would not be spotted, highlighted, and subject to appellate review. After all, what defendant would question an acquittal?

When McIntyre later appealed, the Ninth District Court of Appeals stated that he was convicted of the prior aggravated felony specification. *State v. McIntyre*, Summit County App. No. 15348 (9th Dist. 1992). Ironically enough, the Ninth District later noted the error of the guilty finding on the prior aggravated felony specification, but then stated the jury acquitted him of it, which was not true either. *State v. McIntyre*, 2010-Ohio-4658, fn. 1 (9th Dist.). There is no jury verdict form in accordance to ORC 2945.78 that renders a decision on the specification. Unfortunately, this would just be the start of the Ninth District's own inattention to the larger problems in McIntyre's case.

The journal entry went on to recite 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 correctly stated that the jury hung on the felonious assault charge in the second indictment (Supplement One). However, the entry then states that the jury hung on

“Specification One to Count One of the Supplement One to Indictment,” but which specification? The firearm specification or prior aggravated felony specification? The prior aggravated felony specification in the third indictment (Supplement Two) was labeled as the same specification as the firearm specification. The indictment was never amended. Lastly, the entry then states that the jury hung on “Specification One to Count One of the Supplement Two to Indictment,” which is the firearm specification to the aggravated burglary charge that the entry said the jury found him guilty of.

The Sentencing Entry

On the same day, September 9, 1991, the Summit County Court of Common Pleas filed the written sentencing entry. Like the journal entry, this sentencing entry was not signed by Judge Victor, who presided over the sentencing, but instead signed by Judge Spicer, who did not preside over the sentencing.

Like the journal entry, the sentencing entry correctly stated that McIntyre was found guilty of the felonious assault and firearm specification in the original indictment. However, the sentencing entry makes no mention of the prior aggravated felony specification that Judge Victor used to enhance McIntyre’s sentence in the hearing.

The sentencing entry then correctly stated that McIntyre was found guilty of aggravated burglary with the firearm specification in the third indictment (Supplement Two).

The sentencing entry made no mention of the felonious assault charge and firearm specification in the second indictment (Supplement One) and the prior aggravated felony specification in the third indictment (Supplement Two). The jury hung on this felonious assault charge, but the State never dismissed this charge and McIntyre was never retried on it.

Two days later, on September 11, 1991, Judge Spicer issued a nunc pro tunc amendment to the sentencing entry. This amendment was to make sure that McIntyre's sentence on the felonious assault in the original indictment reflected the enhancement of serving the minimum eight years. Of course, this was based on the prior aggravated felony specification, but the amendment makes no mention of that.

More Indictments and Second Sentencing

More indictments kept coming. Supplement Five was issued on October 15, 1991, which indicted McIntyre for a prior aggravated felony specification to the felonious assault charge in Supplement Four and a prior offense of violence specification to the weapon under disability charge in Supplement Four.

On May 19, 1992, McIntyre was indicted for two counts of felonious assault with prior aggravated felony specifications to both charges (Supplement Six). Both charges pertained to the same event alleged in the felonious assault charge in Supplement Four.

Eventually, the second jumbled mess of Supplements Three, Four, Five, and Six was resolved in a plea bargain that McIntyre accepted since he was already serving a lengthy prison sentence on the charges he was found guilty of in the August 1991 trial. McIntyre pled guilty to a single amended charge of aggravated assault while all the counts 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.

However, the sentencing entry filed on May 22, 1992 purported to be authored by Judge Spicer, does not contain her signature or any judge's signature. It is blank. Also, the entry refers to fictitious "Specification One to Count One of Supplement Five" and "Specification One to

Count Two of Supplement Five.” The entry did not dispose of the two specifications contained in Supplement Six.

The victim in the aggravated assault was Tyrone Howard, whom McIntyre felt was one of real culprits (the other being Howard’s brother) in the felonious assault and aggravated burglary charges that McIntyre was found guilty of in the August 1991 trial. The day after McIntyre was found guilty, he wanted to let Howard know that he did not appreciate that he was going to do time for crimes committed by Howard.

Interestingly enough, the May 21, 1992 sentencing took place while the Ninth District Court of Appeals was considering an appeal from the September 9, 1991 sentencing (*State v. McIntyre*, Summit County App. No. CA-15348, May 27, 1992). The Ninth District assumed jurisdiction over a case that had not been fully resolved yet. Even then, the Summit County Court of Common Pleas should not have been taking actions in the case while the Ninth District was considering the direct appeal. Oddly enough, the Ninth District would later state when an appeal is pending before it, the Summit County Court of Common Pleas did not have jurisdiction to act on McIntyre’s motions. *State ex rel. McIntyre v. Teodosio*, Summit County App. No. CA-26619. It seems the Ninth District has spoken in two opposite ways at different junctures in evaluating McIntyre’s case.

Subsequent Correction Attempts

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, not signing the entry.

On February 26, 2010, Judge Teodosio, who was now presiding over McIntyre's case, denied the motion. McIntyre appealed to the Ninth District Court of Appeals, but on September 30, 2010, the Ninth District affirmed. *State v. McIntyre*, 2010-Ohio-4658 (9th Dist.). Again, the issues only dealt with the sentencing entry on its face. The issues of the Supplement One charges still being unresolved and the sentencing judge not signing the entry were not raised or addressed.

On December 22, 2010, McIntyre, acting pro se, filed a motion to set the unresolved charges in Supplement One, which the jury hung on, for a re-trial. On January 3, 2011, the prosecutor filed a response that was very snappy and agitated. The prosecutor claimed that McIntyre's motion was frivolous and then falsely stated that the unresolved charges were dismissed without prejudice. There is absolutely no dismissal or declared mistrial on the unresolved charges anywhere in the transcript of the open court proceedings or anywhere else in the record. 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. The Ninth District stated the reason was that McIntyre's motion was pretrial in nature.

On August 4, 2011, McIntyre, acting pro se, brought to the Summit County Court of Common Pleas' attention the September 9, 1991 journal entry's double reference to the "Specification One to Count One of Supplement Two to Indictment." McIntyre pointed out how the entry stated he was found guilty of the specification, but then the jury hung on it.

On October 12, 2011, Judge Teodosio issued an amended journal entry. First, he erroneously stated it was amending the journal entry dated August 13, 1991. No such journal entry exists on that date. In substance, he sought to amend the September 9, 1991 journal entry.

In the amended entry, Judge Teodosio recited the original entry word for word, but excised the second reference to “Specification One to Count One of Supplement Two to Indictment.” This now created more confusion because now the entry only addresses one of the two specifications attached to the hung felonious assault charge.

On June 14, 2012, McIntyre, acting pro se, filed a pleading raising attention to the hung felonious assault charge and firearm specification in the second indictment (Supplement One) that had still been pending. The State responded on June 27th saying it had no intention of retrying McIntyre on the charge and sought a dismissal. On the next day, Judge Teodosio then issued a written entry purporting to dismiss the felonious assault charge and the firearm specification. However, he did not dismiss the prior aggravated felony specification that also came with the charge.

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). However, in a September 25, 2012 entry, Judge Teodosio blankly denied this and other motions in a numerical list without explaining why.

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 charge 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 issued its decision rejecting McIntyre's complaint. First, the Ninth District seemed quite agitated at McIntyre for his exhaustive pro se efforts to bring the issues of his case to light. The Ninth District listed every appeal McIntyre had pursued in its court. This was not necessary to adjudicate his claim.

The Ninth District ruled that there was no appeal pending at the time Judge Teodosio made his ruling to dismiss the felonious assault charge. Thus, the Ninth District said he was not without jurisdiction. However, since the argument was not raised, the Ninth District never addressed Judge Teodosio's lack of authority to dismiss without an open court hearing under Crim. R. 48(A).

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 just discussed. He implored Judge Teodosio to address the errors by declaring a mistrial, which could be done since the case was still in presentence mode. McIntyre attached many of the same exhibits attached to this Complaint. The total stacked to 90 pages.

After responses were exchanged, all was completely quiet until December 2, 2014 when Judge Teodosio issued a one page entry that summarily denied McIntyre's motion.

In the entry, Judge Teodosio stated the Ninth District Court of Appeals had previously found there to be a final appealable order in McIntyre's case. He cited *State v. McIntyre*, 2012-Ohio-1026 as his justification. However, a closer look at that case reveals that the case 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. It had nothing to do with the 1991 case at issue in the instant action. At the very least, this, along with his other short denials, shows that Judge Teodosio will not

correct the problems in McIntyre's case. Instead, the denials show that his reaction to McIntyre's motion is to swat them away as if McIntyre is some annoying gnat.

LAW AND ARGUMENT

The Lack of a Final Appealable Order

In all criminal cases in which a defendant is found guilty of a charge, the Court must craft a final appealable order to comply with the requirements of Crim. R. 32(C) and ORC 2505.02. For one, this means complying with this Court's interpretation of those provisions in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, and *State v. Lester*, 130 Ohio St.3d 103, 2011-Ohio-5204, as to what the final judgment entry must contain. But that is not all.

In criminal cases, the sentencing entry has to be a final disposition of the cause before the trial court. *State v. Chamberlain*, 177 Ohio St. 104 (1964). This means the entire trial court case has to be resolved and closed. It also means there has to be a finding of guilt and pronouncement of sentence in order for a conviction to be a final appealable order. *Lester* at ¶24. This means in cases involving multiple charges, all charges have to be disposed of, meaning there has to be a dismissal or a finding of guilty or not guilty on each charge. *State v. Goodwin*, 2007-Ohio-2343 (9th Dist.); *State v. Hayes*, Lorain County App. No. 99CA007416 (9th Dist.) (2000). If a sentence is not final and appealable, then the case has always been and is still pending in the trial court, meaning the appellate courts lack jurisdiction to perform review. See *State v. Griffin*, 138 Ohio St.3d 108 (2013).

In addition to being a final disposition of all trial court matters, the sentencing entry must be signed by the judge presiding over the sentencing hearing. Crim. R. 32(C); See *State v. Rye*, 2013-Ohio-1774 (9th Dist.).

When a sentencing entry is not final and appealable, then all appellate proclamations thereafter are void due to lack of jurisdiction. See *State v. Griffin*, 138 Ohio St.3d 108 (2013). As a result, res judicata does not apply to bar issues that were previously argued or could have been argued because the trial court case still remains open. See *Id.*

There are many reasons why McIntyre's case does not contain a final appealable order. (1) First, Judge Victor, who was a retired judge in 1991, was never vested the authority by the Chief Justice of this Court to preside over McIntyre's case. (2) Second, Judge Victor, who presided over the sentencing hearing, did not sign the sentencing entry and nunc pro tunc filed September 9, 1991 and September 11, 1991, respectively. Instead, they were signed by Judge Spicer, who did not preside over the trial or sentencing in open court. (3) Third, not all charges and specifications were resolved at the time of sentencing and there still remains a charge (felonious assault in Supplement One) and six specifications (firearm in Supplement One and firearm in Supplement Two) unresolved and pending. (4) Fourth, McIntyre received an enhanced sentence based on a prior offense of violence specification that he was not indicted for. No mention was made of the prior aggravated felony specification that was not sent to the jury, but tried in a subsequent bench proceeding without McIntyre's consent and then later labeled as acquitted in a journal entry. The enhanced sentence is contrary to law and void. (5) Fifth, the sentencing entry filed May 22, 1992 lacks a judge's signature and does not dispose of the two specifications in the seventh indictment (Supplement Six).

For Judge Victor to have authority, he needed to be assigned by the Chief Justice of this Court. For that to happen, there needed to be a recusal and/or disqualification of the assigned elected judge and then a request from the trial court to the Chief Justice to assign a retired judge. The recusal and/or disqualification is necessary because it divests the authority of the assigned

elected judge and clears the way for the visiting judge to be granted sole authority. *State v. Keith*, 2002-Ohio-7250 (8th Dist.).

Once the Chief Justice grants a retired judge the authority to preside over an active case or docket, the Chief Justice issues a Certificate of Assignment to be permanently placed in the records of the local court. If it is a case assignment, the Certificate goes into the trial court's case file. If it is a docket assignment, the certificate goes into the trial court's general file. This Court does not permanently store records of judge assignments.

In this case, there is no evidence that Judge Victor was ever assigned by Chief Justice Thomas Moyer to preside over this case. This Court has no record of it. More importantly, there is no record of it in the Summit County Court of Common Pleas file of McIntyre's case. If Judge Victor were actually assigned by Chief Justice Moyer, then one would expect to see a Certificate of Assignment in the trial court file of McIntyre's case. Further, there is no evidence that Judge Spicer ever recused herself, was disqualified, or otherwise removed from the case.

If Judge Victor truly had authority over this case, then why did he not sign the journal entry filed September 9, 1991? Why did he not sign the sentencing entry filed the same day? Or the nunc pro tunc two days later? The answer is simple. He had no authority. Judge Spicer was the one who was supposed to have authority because she was the assigned judge. However, since she did not preside over the trial and sentencing, she no longer had authority to sign the sentencing entry. Judge Spicer signed for herself as if she were the judge on the case. She did not sign for Judge Victor. This "judge by committee" arrangement is completely irregular for a trial court.

Assuming, for sake of argument, Judge Victor's authority was valid, the September 9, 1991 sentencing entry is still not final and appealable because Judge Victor, who presided over

the sentencing hearing, did not sign the sentencing entry. See Crim. R. 32(C); *State v. Anderson*, 2006-Ohio-3905 (8th Dist.); *Lungaro v. Lungaro*, 2009-Ohio-6372 (9th Dist.), *Rye*, supra.

The sentencing entry is also not final and appealable because it did not resolve all matters of the case. *Chamberlain*, supra. At the time of sentencing, the felonious assault charge and firearm specification in the second indictment (Supplement One) were still pending. The jury hung on that charge and no retrial or proper dismissal of the charge was ever done. In addition, the firearm specification to the aggravated burglary charge in the third indictment (Supplement Two) was still pending because it was never submitted to the jury due to the defective verdict form. Further, the prior aggravated felony specification was still pending because it also was never submitted to the jury. None of these items were properly disposed at the time of sentencing and they still remain not disposed today.

Further, at the time of sentencing, two new supplemental indictments had been issued, charging McIntyre with three new offenses. These were not disposed of at the time of sentencing. After sentencing, two more indictments were issued. Finally, these were resolved in a plea deal on May 21, 1992, but even with these charges, there is still no final appealable order. The entry concerning these charges did not resolve the charges McIntyre was tried on in August 1991.

Another reason why McIntyre's sentence, even if it did resolve all matters, is not final and appealable is because it was contrary to law. On the felonious assault charge in the original indictment, Judge Victor announced that he enhanced McIntyre's sentence to that of a repeat aggravated F-2, requiring a minimum 8-12 to maximum 15 years, based on a prior offense of violence. However, McIntyre was never indicted for a prior offense of violence specification

under the old ORC 2941.143(B), which only applied to third and fourth degree felonies. Instead, he was indicted for a prior aggravated felony specification under the old ORC 2941.142.

Judge Victor did not instruct the jury on the prior aggravated felony specification, but instead tried McIntyre on it in a bench proceeding and then never made a finding on it. The Summit County Court of Common Pleas then purports to acquit McIntyre of the specification in a journal entry signed by Judge Spicer. The sentencing entry makes no mention of the specification. Nothing in the sentencing entry explains why McIntyre must serve an enhanced minimum 8-12 to maximum 15 year sentence instead of the standard minimum 3-8 to maximum 15 years for a plain aggravated felony. To this end, the sentence is contrary to law and void. *State v. Cunningham*, 113 Ohio St.3d 108, 2007-Ohio-1245, ¶23, quoting *State v. Beasley*, 14 Ohio St.3d 74, 75 (1984).

Lastly, the May 22, 1992 sentencing entry does not resolve all charges because it fails to dispose of two specifications in Supplement Six. Also, it is facially not compliant with Crim. R. 32(C) because it lacks a judge's signature.

Under the laws in effect at the time of McIntyre's trial and that are still in effect today, McIntyre did not have a final appealable order then and still does not now. The procedures to assigning a visiting judge are substantively the same. The requirement in *Chamberlain* that there be a full disposition of all charges to qualify as a final appealable order was good law then and still is now. Crim. R. 32(C), which was Crim. R. 32(B) in 1991, governed the contents of the sentencing entry then and still does now. The *Beasley* case on void sentences was good law then and still is now.

Entitlement to a Final Appealable Order

All criminal defendants who have been found guilty of a charge, including McIntyre, are entitled to a final appealable order. *Lester* at ¶15. In McIntyre's case, in order to achieve his right to a final appealable order, the trial court has to first untangle the mess of unresolved charges and a sentencing entry that is contrary to law.

McIntyre brought these matters to the trial court's attention, mostly in his Motion to Declare Mistrial filed on July 18, 2014. In the motion, he first discussed the Crim. R. 32(C) issue in how he lacked a final appealable order. Before the trial court could address the issues regarding a mistrial, a presentence matter, it first had to recognize there was no final appealable order and that the case was in the presentence stage. Unfortunately, the Summit County Court of Common Pleas and Judge Teodosio refused to recognize this and take the steps necessary to fix the problem.

Remedy to Obtain a Final Appealable Order

When there is no final appealable order in a criminal case under Crim. R. 32(C), the defendant must bring the issue directly to the trial court's attention in the criminal case itself. As just discussed, McIntyre did this in his Motion to Declare Mistrial.

When a trial court refuses to recognize the lack of a final appealable order and refuses to provide a defendant a final appealable order that complies with Crim. R. 32(C) upon request, a defendant may then compel the court to do so by filing a writ of mandamus or writ of procedendo. *State ex rel. Culgan v. Medina County Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, ¶8. Therefore, based on the lone issue of McIntyre not having a final appealable order for the reasons previously discussed and Judge Teodosio's refusal to recognize this issue, McIntyre is already entitled to a writ of mandamus and writ of procedendo.

When Writs Should Issue

A writ of prohibition will lie when (1) the judge is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) the denial of the writ will result in injury for which no other adequate remedy exists. *State ex rel. Jones v. Garfield Hts. Mun. Court* 77 Ohio St.3d 447, 448 (1997). This doctrine has also applied to correct past unauthorized acts. “If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, 2009-Ohio-4986, ¶26 (quoting *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, ¶12).

A writ of mandamus will lie when a relator can “demonstrate (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29 (1983) (quoting *State ex rel. Harris v. Rhodes*, 54 Ohio St. 2d 41 (1978)).

A writ of procedendo will lie “when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. Rodak v Betleski*, 104 Ohio St.3d 345, 2004-Ohio-6567, ¶13 (internal quotations omitted).

CLAIMS FOR WRITS OF PROHIBITION

McIntyre has claims for writs of prohibitions against all respondents because all have performed jurisdictionally unauthorized acts. As a result, the Summit County Court of Common Pleas proceeds in a cause, which it patently and unambiguously lacks jurisdiction, of ordering McIntyre to a conviction and prison sentence founded on those illegal acts. Because there has

never been a final appealable order, McIntyre has no other adequate remedy at law to correct these defects. Therefore, an extraordinary writ is necessary and writs of prohibition lie to correct the situation.

First Claim for Writ of Prohibition

McIntyre's first of claim for writ of prohibition concerns Judge Victor never having authority to preside over McIntyre's trial and sentencing in August 1991. At that time, Judge Victor was a retired Ninth District Court of Appeals and Summit County Court of Common Pleas judge. He did not hold elected office. To be a visiting judge on McIntyre's case, he needed to be assigned by the Chief Justice of this Court to preside. The Chief Justice would issue a Certificate of Assignment to be placed in the trial court's file on McIntyre's case. A notation on McIntyre's case docket would reflect this action.

However, a complete review of the docket in McIntyre's case reveals that (1) Judge Spicer, the elected judge assigned to the case, was never recused or disqualified and (2) no Certificate of Assignment exists to provide Judge Victor the authority to preside over the trial and sentencing as a visiting judge. In fact, there is no record anywhere, not even in this Court, of Judge Victor being provided authority to preside over McIntyre's case.

Further, according to McIntyre, he and his trial attorney did not learn of Judge Victor presiding over the case until the day of trial. As far as McIntyre knew, Judge Spicer was to preside over his case. Because he maintained his innocence, McIntyre rejected a plea deal that would have given him just 1 ½ to 5 years imprisonment. When McIntyre appeared for trial, suddenly it was Judge Victor who walked in to preside over the case, not Judge Spicer.

Without a Certificate of Assignment from the Chief Justice, Judge Victor patently and unambiguously lacked jurisdiction to preside over McIntyre's trial and sentencing and make

decisions therein. He was no more authorized than the average man on the street to conduct trial and sentencing. Without Judge Victor having a Certificate of Assignment, McIntyre's trial and sentencing were simply a sham and nullity. Every decision made by Judge Victor is void.

Even if the issue of Judge Victor lacking a Certificate of Assignment is just voidable, not void, then a writ of prohibition still lies. When a matter is voidable, that means the defendant has to challenge the issue in court and on appeal. However, there is no final appeal in McIntyre's case. Therefore, McIntyre has not had a legal opportunity to challenge the issue on appeal. Thus, *res judicata* does not apply. He brought it to Judge Teodosio's attention, but was rejected. Therefore, the only remedy McIntyre has is to seek an extraordinary writ from this Court.

The only form of relief that can be provided for Judge Victor's patent and unambiguous lack of authority is to wipe a clean slate and start all over again. This means vacating the entire trial and sentencing and ordering the Summit County Court of Common Pleas to conduct a *de novo* trial on all charges.

Second Claim for Writ of Prohibition

McIntyre's second claim for writ of prohibition regards Judge Victor allowing the prosecutor to amend the second indictment (Supplement Two) to add Denise Harrison as a victim. This essentially changed the identity of the offense and added a new charge, which would potentially increase McIntyre's punishment. Such amendments are not allowed unless sanctioned by the grand jury. *Crim. R. 7(D)*; *State v. Dilley*, 47 Ohio St.3d 20 (1989); *State v. Davis*, 121 Ohio St.3d 239 (2008). Judge Victor patently and unambiguously lacked jurisdiction to allow the amendment. The only relief that can be provided to this claim is to retry the felonious assault count, but just in regards to Robert Taylor.

Third Claim for Writ of Prohibition

McIntyre's third claim for writ of prohibition regards the defective jury verdict form used to adjudicate the felonious assault charge and firearm specification in the original indictment. On the verdict form, there was only one block of signatures for the jury to sign for both the charge and specification. This rendered the form fatally defective. *State v. Tyson*, 19 Ohio App.3d 90, 94 (Ohio App. 1 Dist. 1984).

The *Tyson* case was based on the old ORC 2929.71, which spoke of how a specification requires a separate conviction and/or guilty plea. This statutory language is still alive and well today under ORC 2929.14(B). Therefore, it follows that a separate jury finding must be made on the specification apart from the underlying charge, especially since the specification calls for its own sentence in addition to the sentence for the charge. This was not done in McIntyre's case.

In a later habeas corpus action, in *McIntyre v. Alexander*, Summit County Case No. CV-04-03-1857, Judge Judy Hunter went out of her way to note how there was only one block of juror signatures for both the charge and specification, instead of separate signature blocks for each.

Judge Victor patently and unambiguously lacked jurisdiction to issue a jury verdict form that only contained one set of juror signatures for both the charge and specification instead of separate and independent signatures for each. Without two sets of signatures, the verdict form does not resolve the felonious assault charge and firearm specification. One cannot tell which finding of fact the juror signatures apply to. Therefore, a writ must issue and the entire verdict vacated.

Fourth Claim for Writ of Prohibition

McIntyre's fourth claim for writ of prohibition is similar to the previous one in that it regards the defective verdict form for the aggravated burglary charge and firearm specification of the third indictment (Supplement Two) having one set of signatures. However, this form is worse because the firearm specification refers to "felonious assault." Thus, the firearm specification for aggravated burglary was never sent to the jury for consideration.

Judge Victor patently and unambiguously lacked jurisdiction to issue a jury verdict form that contained the wrong specification and only one block of juror signatures. *Tyson*, supra. Therefore, a writ must issue and the entire verdict vacated.

Fifth Claim for Writ of Prohibition

McIntyre's next claim for writ of prohibition centers on Judge Victor conducting a bench trial on the prior aggravated felony specification in the original indictment. As discussed earlier, Judge Victor erred by not instructing the jury to consider the specification. After the jury rendered its verdicts and Judge Victor discharged the jury, the prosecutor told Judge Victor that the prior aggravated felony specification still needed to be disposed of. Tr. 253. Judge Victor then pronounced McIntyre guilty of a prior offense of violence. Tr. 256.

For some reason, Judge Victor kept referring to a prior offense of violence, which was not the same as the specification. McIntyre was never indicted for a prior offense of violence specification under the old ORC 2941.143(B), which only applied to third and fourth degree felonies. In reality, he was indicted for a prior aggravated felony specification under the old ORC 2941.142.

At a later date, on August 29, 1991, just before sentencing, Judge Victor conducted a hearing on the prior aggravated felony specification in which an Akron police officer testified.

Tr. 359. After this testimony, Judge Victor made a statement about McIntyre being the same person in a prior conviction, but did not actually pronounce McIntyre guilty or not guilty of the specification. Tr. 363-364.

McIntyre was entitled to have the prior aggravated felony specification heard and decided by a jury. He never waived his right to a jury trial. When Judge Victor failed to instruct the jury on the specification and then discharged the jury, the only remedy was to call the jury back in or reset the specification for another jury trial. Judge Victor could not remedy the problem by conducting bench trial without McIntyre's permission. *State v. Miller*, 122 Ohio App.3d 111, 123-124 (Ohio App. 3 Dist. 1997), 701 N.E.2d 390. He patently and unambiguously lacked jurisdiction to do this.

Sixth Claim for Writ of Prohibition

From the transcript, it appears that Judge Victor found McIntyre guilty of having a prior offense of violence. However, McIntyre was never charged with having a prior offense of violence, so Judge Victor patently and unambiguously lacked jurisdiction to find McIntyre guilty. No finding on the prior aggravated felony specification was ever made. The only relief that can be granted is to vacate the finding.

Seventh Claim for Writ of Prohibition

Judge Victor patently and unambiguously lacked authority to conduct a sentencing hearing for two reasons. First, there were unresolved charges in the case. The felonious assault charge in Supplement One that the jury hung on in trial and the new charges in Supplements Three and Four were all pending at the time. Second, McIntyre's trial attorney had just alleged him to be insane in committing the failure to appear charge in Supplement Three while on trial for the charges he was being sentenced on. Judge Victor ordered McIntyre to undergo a mental

health evaluation, but then conducts sentencing hearing. The only relief that can be granted is to vacate the sentencing and require a de novo sentencing hearing to be held.

Eighth Claim for Writ of Prohibition

Judge Victor patently and unambiguously lacked authority to order an enhanced sentence based on a prior offense of violence. Tr. 381-382. Again, McIntyre was never charged with a prior offense of violence and was never pronounced guilty of the prior aggravated felony specification.

Judge Victor sentenced McIntyre to an enhanced minimum 8 years of actual incarceration to a maximum 15 years on the felonious assault in the original indictment. Judge Victor announced that he enhanced McIntyre's sentence based on a prior offense of violence, which was inapplicable to an F-2. A regular F-2 was 3-8 to 15 years, but Judge Victor, without finding McIntyre guilty of a prior aggravated felony, substantively applied the specification to enhance McIntyre's sentence under the 8-12 to 15 year range.

As said earlier, a sentence contrary to law is null and void. *Cunningham* and *Beasley*, supra. Therefore, Judge Victor patently and unambiguously lacked jurisdiction to sentence McIntyre to the enhanced minimum. The only relief that can be provided is to vacate the sentence and conduct a de novo sentencing. Of course, such sentencing cannot occur until other matters of the case are resolved.

Ninth Claim for Writ of Prohibition

McIntyre's next claim for writ of prohibition is against Judge Spicer for her role in signing the journal and sentencing entries filed September 9, 1991 and the nunc pro tunc filed two days later. Even though she was the assigned elected judge on McIntyre's case, she did not preside over the trial and sentencing. At this point, only Judge Victor, assuming arguendo that

his authority was valid, could sign the entries. Under Crim. R. 32(C), the judge who presides over sentencing has to be the one to sign the entry. Instead, Judge Spicer signed it as if she were the judge that conducted the sentencing. Because Judge Spicer patently and unambiguously lacked authority to do this, the sentence must be vacated and new sentencing must be conducted. Again, as stated previously, such sentencing cannot occur until other matters of the case are resolved.

Tenth Claim for Writ of Prohibition

The tenth claim for writ of prohibition concerns an act that is downright stunning. The journal entry filed September 9, 1991 signed by Judge Spicer states that McIntyre was **acquitted** of the prior aggravated felony specification! The transcript of the proceedings clearly shows that no such acquittal ever occurred. The prosecutor never dismissed it. Judge Spicer patently and unambiguously had no authority to acquit McIntyre of the specification.

The purported acquittal should make one wonder why it would suddenly appear in the written entry. For sure, Judge Victor had clearly mishandled the prior aggravated felony specification and the sentencing on the specification. This provided McIntyre a strong issue on appeal, not only just on sentencing, but possibly to undo the trial itself. But when the entry states that he was acquitted of the specification, it could not be questioned on appeal. As a result, McIntyre's appellate rights were frustrated.

The only remedy for Judge Spicer's phantom acquittal of the prior aggravated felony specification, which was unresolved, is to set the issue for trial.

Eleventh Claim for Writ of Prohibition

McIntyre's next claim for prohibition against Judge Spicer regards her approving 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. The inverse logic alone means that Judge Spicer patently and unambiguously lacked jurisdiction to order the enhanced sentence. As stated earlier, the specification was never disposed of. The only remedy that can be done is to compel Summit County Court of Common Pleas to set the specification for trial.

Twelfth Claim for Writ of Prohibition

McIntyre's twelfth and final claim for writ of prohibition is against Judge Teodosio for sua sponte dismissing the felonious assault charge in the second indictment (Supplement One) without an open court hearing. On June 14, 2012, McIntyre brought to Judge Teodosio's attention the felonious assault charge that had still been pending. The State responded on June 27th saying it had no intention of retrying McIntyre on the charge and sought a dismissal. On the next day, the Court then issued an entry reclassifying the State's filing as a "Motion to Dismiss" and then dismissing the felonious assault charge.

However, Crim. R. 48(A) states that any dismissal sought by the State must be done in open court. This means the attempt by Judge Teodosio to dismiss the charge purely by written pleadings is void. The only way it can be dismissed is for McIntyre to be brought into the Court and the State orally announce the dismissal. *State v. Davis*, 2008-Ohio-6741 (9th Dist.). Therefore, Judge Teodosio patently and unambiguously lacked jurisdiction to issue a dismissal of the felonious assault charge without a hearing in open court.

The only remedy that can be done to correct this is to void the purported dismissal and compel Judge Teodosio to set the felonious assault charge for trial. It should be noted, however, that this issue may be mooted by the upcoming first claim for writ of mandamus because the felonious assault charge was orally amended by the State after the jury was seated and before

trial began. Tr. 5. The purported dismissal did not refer to the charge as amended, but just the original charge in the indictment.

CLAIMS FOR WRITS OF MANDAMUS

First Claim for Writ of Mandamus

McIntyre's first claim for writ of mandamus is to compel Judge Teodosio to set the felonious assault charge in the second indictment (Supplement One), as amended, for trial. As stated earlier, Judge Teodosio's written dismissal of the charge did not take into account the oral amendment that took place in trial. It also did not take into account the prior aggravated felony specification attached to charge.

Judge Teodosio has a clear duty to ensure that all charges in McIntyre's case are properly resolved. The motions McIntyre has filed are all presentence in nature. Given the lack of a final appealable order, Judge Teodosio is required to resolve them in a manner that leads to a final conclusion in the case. Instead, he has simply ignored McIntyre's concerns at every turn. Because there is no final appealable order in the case, the motions are presentence in nature. Therefore, since McIntyre cannot validly appeal Judge Teodosio's non-final appealable orders, he has no other adequate remedy at law but to seek a writ from this Court to compel Judge Teodosio to address the issue.

Second Claim for Writ of Mandamus

McIntyre's second claim for writ of mandamus is to compel Judge Teodosio to set the firearm specification to the aggravated burglary charge in the third indictment (Supplement Two) for trial. This specification was never presented to the jury due to the defect in the verdict form. It was never dismissed. Judge Teodosio denied McIntyre's request to have it dismissed. The reasons to why McIntyre is entitled to the writ are the same as in the previous claim for writ of

mandamus. McIntyre has a right to a final appealable order and Judge Teodosio has a clear duty to ensure that happens, but he has refused to address the issues that would pave the way to a final appealable order.

Third Claim for Writ of Mandamus

McIntyre's final claim for writ of mandamus is a catch-all to ensure that Judge Teodosio takes all actions necessary to remedy the unlawful acts previously discussed in McIntyre's claims for writs of prohibition and ensure that McIntyre has a full final disposition of all matters in his case and a final appealable order that complies with Crim. R. 32(C). In his Motion to Declare Mistrial, McIntyre brought these issues to Judge Teodosio's attention, but Judge Teodosio has refused to correct them. McIntyre has a clear legal right that the unlawful acts are corrected because they impact his right to a fair trial and final conclusion in his case. With no other adequate remedy at law available to McIntyre, a writ must issue to grant him relief.

CLAIM FOR WRIT OF PROCEDENDO

McIntyre's sole claim for writ of procedendo is to compel Judge Teodosio, after correcting the errors highlighted in this Complaint and Memorandum, to bring McIntyre's case to full and final disposition of all charges. If this results in a sentence, then McIntyre asks this Court to compel Judge Teodosio to provide a final appealable order in compliance with Crim. R. 32(C).

In his Motion to Declare Mistrial, McIntyre brought to Judge Teodosio's attention all the reasons why there is no final appealable order in the case. However, Judge Teodosio has refused to acknowledge this problem and will not provide the final appealable order that McIntyre is entitled to.

CONCLUSION

McIntyre is not insensitive to the fact that all three judges have had positive reputations in their respective tenures on the bench. In particular, Judge Victor, was positively written about in the local newspaper shortly after presiding over McIntyre's trial and after he passed away in 2004. Undersigned counsel has personally met Judge Teodosio several times at various functions over the years and despite the disagreement over how McIntyre's case has been handled, counsel has nothing but positive respect for Judge Teodosio.

However, those positives are of no consolation to McIntyre and the price he has paid for the last 24 years. While McIntyre does not seek to besmirch any of the judges' records of public service, their aforementioned failures to follow the law in his case have caused him great harm to his constitutional due process rights of life and liberty.

To recap, McIntyre's claims for writs are as follows:³

1. Writ of prohibition on Judge Victor for not having proper vested authority as a visiting judge to preside over McIntyre's trial and sentencing.
2. Writ of prohibition on Judge Victor for allowing an amendment to the second indictment (Supplement One) which added a victim to the felonious assault charge.
3. Writ of prohibition on Judge Victor for issuing a defective jury verdict form for the felonious assault charge and firearm specification in the original indictment.
4. Writ of prohibition on Judge Victor for issuing a defective jury verdict form for the aggravated burglary charge and firearm specification in Supplement Two of the indictment.

³ To reiterate, every time McIntyre names an individual judge in his claims for writs, he also directs the claim toward the Summit County Court of Common Pleas.

5. Writ of prohibition on Judge Victor for conducting a bench trial on the prior aggravated felony specification even though McIntyre never waived his right to a jury.

6. Writ of prohibition on Judge Victor for finding McIntyre guilty of a prior offense of violence, which McIntyre was never charged with.

7. Writ of prohibition on Judge Victor for conducting a sentencing hearing when there were unresolved charges and McIntyre had just been ordered to undergo a mental health examination to determine his sanity.

8. Writ of prohibition on Judge Victor for sentencing McIntyre to an enhanced sentence based on a prior offense of violence that McIntyre was never charged with. Even if referred to the prior aggravated felony, McIntyre was never found guilty of it by a jury or judge.

9. Writ of prohibition on Judge Spicer for signing the journal and sentencing entries filed September 9, 1991 and the nunc pro tunc filed two days later when she never presided over the trial and sentencing proceedings in open court.

10. Writ of prohibition on Judge Spicer for wrongly stating that McIntyre was acquitted of the prior aggravated felony specification in the original indictment.

11. Writ of prohibition on Judge Spicer approving a sentencing entry that ordered McIntyre to serve an enhanced minimum sentence based on the prior aggravated felony specification that was never actually disposed and the journal entry said he was acquitted of.

12. Writ of prohibition on Judge Teodosio in granting the State's request to dismiss the felonious assault charge in the second indictment (Supplement One) by written entry when Crim. R. 48(A) requires him to do so in open court.

13. Writ of mandamus to compel Judge Teodosio to set the felonious assault charge in the second indictment (Supplement One), as amended, including the firearm specification and prior aggravated felony specification, for trial.

14. Writ of mandamus to compel Judge Teodosio to set the firearm specification to the aggravated burglary charge in the third indictment (Supplement Two) for trial.

15. Writ of mandamus to compel Judge Teodosio to take whatever actions necessary to remedy the errors in McIntyre's case to ensure that McIntyre has a final conclusion of all matters in his case and final appealable order in compliance with Crim. R. 32(C).

16. Writ of procedendo to compel Judge Teodosio to bring McIntyre's case to full and final disposition of all charges and final appealable order in compliance with Crim. R. 32(C).

All of these claims are ripe because McIntyre has no final appealable order in his case and never has. Therefore, he has never had a true legal remedy of direct appeal to address these issues. The Ninth District Court of Appeals' proclamations are void because it never had jurisdiction to entertain an appeal in McIntyre's case. With no other adequate remedy at law, McIntyre has no other choice but to seek extraordinary writs from this Court.

The federal Sixth Circuit Court of Appeals just recently spoke of "extreme malfunction" in Ohio's criminal justice system. *Gumm v. Mitchell*, Case No. 11-3363 (6th Cir. 2014) (decided December 22, 2014). In *Gumm*, the defendant raised issues that were so blatant and flagrant, yet the Ohio courts overlooked and dismissed them every time.

This is precisely what McIntyre has faced for the last 24 years. The term "extreme malfunction" does not go far enough. It is simply the nice and polite term that can only minimally characterize what has occurred with the case. It is unbelievable how the Summit County Court of Common Pleas and the Ninth District Court of Appeals have been making

pronouncements on McIntyre's case for all these years, not realizing there has never been a final appealable order in the case.

In conclusion, McIntyre asks this Court to issue writs of prohibition, mandamus, and procedendo as discussed in this Memorandum to return his case back to Summit County with a clear mandate stating the errors to be corrected, how they should be corrected, and that the case be brought to a full and final resolution with a final appealable order in compliance with Crim. R. 32(C). He also seeks attorney fees and any other relief necessary that he is entitled to in law and/or equity.

Speaking of this Court's equity power, given the extreme malfunction of justice that has occurred in McIntyre's case, perhaps the best remedy is for this Court is to just issue a writ of mandamus and procedendo ordering the Summit County Court of Common Pleas to outright dismiss McIntyre's case in its entirety with prejudice so the respondents cannot do any more harm to McIntyre's constitutional rights, life, and liberty.

Respectfully submitted,

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