

In support of its Response to Respondents' Motion to Dismiss, Relator state the following:

Introduction

Respondents' Motion misstates facts, clearly contorts the law in a fashion designed to serve Respondents' purpose instead of the law's intended purpose i.e. to protect the Relator and argues in such self-serving circles about the purported deficiencies of Relators' Original Petition that Respondents' blatant unconstitutional conduct, designed to strip and deprive this Relator of her life and liberty along with her ability of equal protection, almost gets lost.

Accordingly, Relator requests this Court examine the conduct described in Respondents' Complaint in a light most favorable to the Relator i.e. that the Respondents' have essentially terrorized this Relator to the point where she no longer feels safe as an average citizen. Not being afforded privileges of equal protection of the law, despite being born in the United States. Reading case law from this very Courts rulings, I am not the only one being treated in this barbaric manor, which is very sad to the citizens of this great County of Montgomery which the court presides over.

Counter-Statement of Fact

There is a strong temptation to manipulate discovery in civil cases in order to obtain information helpful in the criminal case. The courts watch closely for such manipulation and look for instances of intentional circumvention of the criminal discovery rules as "Case Law would prove. However, that is just not true in my case. The seminal case is *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962), *cert. denied*, 371 U.S. 955 (1963) in which a

taxpayer attempted to use a civil suit in order to obtain discovery in a criminal case. In *Campbell*, the Court expressed its distaste for such conduct and encouraged the government to file a request for a stay of its civil proceeding, stating, "A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal suit." *Id.* at 487. Similarly, in *In re Eisenberg*, 654 F.2d 1107, 1113-14 (5th Cir. 1981) the court stated that "*Campbell* held that liberal discovery procedures were not a 'back door to information otherwise beyond reach under the criminal discovery rules'" 654 F. 2d 1107 at 1113 and found the plaintiff's attempts to depose a witness under (Fed. R. Civ P. 27 (a) permits a party to take a civil deposition prior to bringing a lawsuit in federal court. There is no rule in criminal procedure analogous to Rule 27 by which a deposition can be taken by a potential defendant prior to the initiation of prosecution), a disguised attempt at criminal discovery. This case is remarkable similar to my civil case, *In United States v. Tison*, 780 F.2d 1569, 1572 (11th Cir. 1986), the Court held it improper for the defendant to file a civil suit to generate discovery for a criminal case and stayed the civil proceeding for three years in order to prevent the defendant from circumventing the criminal discovery provisions.

In *Afro-Lecon Inc. v. United States*, 820 F.2d 1198, 1200 (Fed. Cir. 1989), the Court found government abuse warranting a stay of the civil case where government investigators surreptitiously attended discovery meetings in parallel proceedings. Which this Detective Keller did exactly that. If a defendant cannot show specific evidence of agency bad faith, he may be entitled to stay the civil proceeding if he demonstrates that the civil case prejudices his criminal matter and the prejudice outweighs the public's interest in the civil matter. *Id.* at 1203.

The Respondents', including the court, has accreted that none of the evidence from my civil case should be allowed in their criminal case, except conveniently my bank records. Respondent in this said Motion, confesses that my civil matter is an "unrelated matter". The court even made a ruling stating this very fact. However, Detective Keller the states witness and investigator for both cases, obtained my bank records the state used in this criminal case. He obtained those records illegally by way of an Order and Entry through Judge Barbra Gorman dated on October 23, 2012. This Detective opened my case before July 26, 2012, because this is when the first subpoena was granted from the Grand Jury. I also have quite a bit of evidence that this detective committed perjury and falsified police reports. Which I could have had him impeached as a witness, along with all of his evidence, mainly the bank records and my children's medical reports and testimony. Not allowing me to present evidence to prove that those records were obtained illegally, denied my rights to a fair trial. The court denied my rights of due process not to hold a hearing. I made a multitude of Oral Motions on different dates, to assert this claim because my counsel refused to file anything formal. This Respondent had a duty to recognize that this evidence warranted an evidentiary hearing, causing prosecutorial neglect. My exculpatory evidence should have been allowed in, thus another due process violation among other things.

When this Relator proved to the Respondent that the record he had from Montgomery County Job and Family Services was not complete. He replied in a very rude and unprofessional manor with this Relator. When I provided this documentation to him he said "Cute, just Cute, well, it doesn't matter"! Because this Respondent had the court exclude all of my evidence. These Respondents' had a duty to report to the court that my case was ripe. When this Relator

accreted this claim of my rights to a "Speedy Trial" on a multitude of occasions, I was told things like, it doesn't pertain to this case.

This Relator found "Case Law" from this Court that involved this exact issue, with none other but this lower court, read as follows:

THE STATE OF OHIO, APPELLANT, v. SELVAGE, APPELLEE.

[Cite as State v. Selvage (1997), ___ Ohio St.3d ____.] Criminal law — Statutory periods of limitations not relevant to determination of whether individual's constitutional right to speedy trial has been violated by an unjustified delay in prosecution.

(No. 96-1386 — Submitted October 7, 1997 — Decided December 31, 1997.)

APPEAL from the Court of Appeals for Montgomery County, No. 15530.

Tina R. Selvage, appellee, allegedly made two sales of marijuana to undercover police officers, one on March 17, 1994 and one on March 23, 1994.

The alleged purchases were part of an extensive, ongoing narcotics investigation.

As a result of the purchases, Officer Patrick Rice of the Huber Heights Police Department filed a criminal complaint against appellee on June 7, 1994 in the Common Pleas Court of Montgomery County. In an effort to preserve the

anonymity of the officers involved in the investigation, the state did not pursue the complaint at that time, and appellee was never served. Thereafter, in April 1995, appellee was indicted on felony charges stemming from the March 1994 alleged sales of marijuana.

At appellee's June 6, 1995 arraignment, after the reading of the indictment was waived, appellee, while present in court and with counsel, failed to enter a plea to the charges. As a result, the trial court, sua sponte, entered a not guilty plea on her behalf.

On July 6, 1995, appellee filed a motion to dismiss the charges, claiming that the delay in bringing the indictment constituted a violation of her right to a speedy trial. A hearing on the motion to dismiss was held on September 8, 1995.

From the testimony taken at the hearing, the trial court concluded that the delay in bringing the indictment did violate appellee's speedy trial rights and granted the motion to dismiss. In its order dated September 29, 1995, the trial court held that the thirteen-month delay between the alleged commission of the crimes and

appellee's indictment and the ten-month delay between the filing of the criminal complaint and appellee's indictment were prejudicial to appellee. The court found appellee's assertion that she had no recollection of the events in question compelling evidence that she was prejudiced in her defense.

On May 17, 1996, the Montgomery County Court of Appeals affirmed the judgment of the trial court and adopted the trial court's order as its opinion. The state of Ohio, appellant, filed a notice of appeal with this court on June 17, 1996.

The matter is now before this court pursuant to the allowance of a discretionary appeal.

This case is very monumental to this Petition because it is extremely similar.

Mathias H. Heck, Jr., Montgomery County Prosecuting Attorney, and

George A. Katchmer, Assistant Prosecuting Attorney, for appellant.

Lynn G. Koeller, Montgomery County Public Defender, and Anthony R.

Cicero, Assistant Public Defender, for appellee.

DOUGLAS, J. The sole question in this case is whether a statutory period of

limitations for commencing a criminal prosecution is dispositive of an individual's constitutional right to a speedy trial. Appellant contends that because appellee was indicted within the statutory period of limitations for commencing a criminal prosecution under R.C. 2901.13, the trial court and the court of appeals erred as a matter of law in determining that appellee's speedy trial rights had been violated.

In effect, appellant argues that appellee could not have been prejudiced by any delay in commencing prosecution when that delay did not exceed the six-year

limitations period for felony offenses contained in R.C. 2901.13(A)(1). We

disagree and hold that statutory periods of limitations are not relevant to a

determination of whether an individual's constitutional right to a speedy trial has

been violated by an unjustified delay in prosecution. Accordingly, and for the

reasons that follow, we affirm the judgment of the court of appeals.

The Sixth Amendment to the United States Constitution provides that "[i]n

all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial * * *." This provision has been held to be applicable to state criminal trials

via the Fourteenth Amendment. *Klopfer v. North Carolina* (1967), 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1. The Ohio Constitution provides similar protection.

See Section 10, Article I. In *State v. Meeker* (1971), 26 Ohio St.2d 9, 55 O.O.2d

5, 268 N.E.2d 589, paragraph three of the syllabus, this court held that “[t]he

constitutional guarantees of a speedy trial are applicable to unjustifiable delays in commencing prosecution, as well as to unjustifiable delays after indictment.”¹

(Emphasis added.)

In this action, the trial court determined that the delay in prosecuting

appellee violated her constitutional right to a speedy trial. The trial court based its

determination on the test used for analyzing speedy trial claims set forth in the

seminal case of *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d

101. In *Barker*, the United States Supreme Court stated that “[a] balancing test

necessarily compels courts to approach speedy trial cases on an ad hoc basis.” *Id.*

at 530, 92 S.Ct. at 2192, 33 L.Ed.2d at 116-117. The court identified four factors

which courts should assess in determining whether the right to a speedy trial has

been violated: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. *Id.* at 530, 92 S.Ct. at 2192, 33 L.Ed.2d at 117. Although the court stated that no one factor is controlling, *id.* at 533, 92 S.Ct. at 2193, 33 L.Ed.2d at 118, it noted that the length of the delay is a particularly important factor:

"The length of delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."

(Emphasis added and footnote omitted.) *Id.* at 530-531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117.

Appellant argues that appellee's speedy trial rights could not have been

violated because the length of the delay was not presumptively prejudicial, and the Barker analysis was therefore not triggered. In support of its argument, appellant relies on R.C. 2901.13, which provides time periods within which the state must commence criminal prosecutions:

“(A) Except as otherwise provided by this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

“(1) for a felony other than aggravated murder or murder, six years.”

Appellant contends that prejudice, presumptive or otherwise, cannot occur when an action is brought within the six-year period of limitations for the commencement of a felony prosecution under R.C. 2901.13(A)(1). Thus, according to appellant, because appellee was indicted within six years of the alleged offense, Barker is inapplicable.

However, appellant’s argument overlooks the fact that R.C. 2901.13 is a statute of limitations, not a prescribed minimum of time which must run before

prejudicial delay can occur. In addition, the Barker court specifically rejected a fixed approach to speedy trial analysis by finding “no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months.” *Id.* at 523, 92 S.Ct. at 2188, 33 L.Ed.2d at 113. While acknowledging that states are free to set such time periods, the court stated that they must be reasonable and within constitutional standards. *Id.* at 523, 92 S.Ct. at 2188, 33 L.Ed.2d at 113. Adopting appellant’s assertion that presumptive prejudice cannot arise until after the six-year statute of limitations contained in R.C. 2901.13 has expired would ignore the Barker court’s recognition that prejudice to a defendant varies and ought to be reviewed on a case-by-case basis.

Further, the United States Supreme Court recognized in a later case, *Doggett v. United States* (1992), 505 U.S. 647, 652, 112 S.Ct. 2686, 2691, 120 L.Ed.2d 520, 528, fn. 1, that “courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.” In the instant action, there was a ten-month delay from the filing of the criminal complaint until

appellee was indicted and a one-year delay from the filing of the criminal complaint until appellee was arraigned.

Appellant also argues that the trial court erred in finding that appellee suffered presumptive prejudice by relying on appellee's assertion that she could not recall her actions on the day that the alleged criminal acts occurred. Appellant contends that such an assertion of forgetfulness does not rise to the level of presumptive prejudice required by Barker and therefore a more objective standard is required. According to appellant, that standard is the legislatively sanctioned period of limitations, as pointed out in *United States v. MacDonald* (1982), 456 U.S. 1, 102 S.Ct. 1497, 71 L.Ed.2d 696. The United States Supreme Court stated in *MacDonald* that "[t]he Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations." *Id.* at 8, 102 S.Ct. at 1502, 71 L.Ed.2d at 704. However, in *Doggett*, the court distinguished *MacDonald*, noting that "[o]nce triggered by arrest,

indictment, or other official accusation, however, the speedy trial enquiry must weigh the effect of delay on the accused's defense just as it has to weigh any other form of prejudice that Barker recognized." (Emphasis added.) Doggett, 505 U.S. at 655, 112 S.Ct. at 2692, 120 L.Ed.2d at 530.

The appellee was formally accused when appellant filed the criminal complaint in June 1994. The filing of the criminal complaint triggered the speedy trial inquiry under Barker. If we were to adopt the standard put forth by appellant we would be disregarding the current status of the law as well as depriving appellee, and others like her, of the important safeguards guaranteed by the Sixth Amendment.² This we decline to do.

In addition, for purposes of the right to a speedy trial, "consideration of prejudice is not limited to the specifically demonstrable, and * * * affirmative proof of particularized prejudice is not essential to every speedy trial claim."

Doggett, 505 U.S. at 655, 112 S.Ct. at 2692, 120 L.Ed.2d at 530. As the United States Supreme Court recognized in Doggett, "impairment of one's defense is the

most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.' " Id. at 655, 112 S.Ct. at 2692-2693, 120 L.Ed.2d at 530-531, quoting *Barker v. Wingo*, 407 U.S. at 532, 92 S.Ct. at 2193, 33 L.Ed.2d at 118. In *Doggett*, the court stated that "[o]ur speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. The government may need time to collect witnesses against the accused, oppose his pretrial motions, or, if he goes into hiding, track him down. We attach great weight to such considerations when balancing them against the costs of going forward with a trial whose probative accuracy the passage of time has begun by degrees to throw into question. * * * Thus, in this case, if the government had pursued *Doggett* with reasonable diligence from his indictment to his arrest, his speedy trial claim would fail." Id., 505 U.S. at 656, 112 S.Ct. at 2693, 120 L.Ed.2d at 531.

In the case at bar, if the state had pursued appellee with "reasonable diligence," the trial court's conclusion may have been different. However, the alleged transactions which led to appellee's indictment occurred in March 1994.

A criminal complaint was filed against appellee three months later, in June 1994.

Appellee was not indicted until April 1995, thirteen months after the date of the alleged occurrences, and ten months after the filing of the criminal complaint.

Additionally, evidence before the trial court indicated that other persons implicated by the undercover investigation were first arrested in late September or early October 1994. Subsequent to these arrests, appellee was left in limbo for seven months and not given an opportunity to answer the criminal charge against her. These facts led the trial court to conclude that the state did not act with reasonable diligence in commencing prosecution against appellee.

In the proceedings on appellee's motion to dismiss, the trial court considered Barker and found that the delay in prosecuting appellee prejudiced her defense. There is no indication that the trial court abused its discretion in applying the test and making its determination, and that determination will be accorded due deference.

Therefore, we hold that the trial court did not abuse its discretion in determining that appellee was deprived of her Sixth Amendment right to a speedy

trial. The trial court did not err in determining that the delay in commencing prosecution in this case, when considered in light of the appellant's reason for the delay, was constitutionally unreasonable. We further find that appellee did not fail to assert her right to a speedy trial and that appellee was indeed prejudiced under the facts herein.

Accordingly, the judgment of the court of appeals is affirmed.

Judgment affirmed.

M OYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG

STRATTON, JJ., concur.

FOOTNOTES:

1. In *State v. Luck* (1984), 15 Ohio St.3d 150, 153, 15 OBR 296, 299, 472 N.E.2d 1097, 1101, this court limited the application of *Meeker* to those cases that are factually similar to it. We believe that the facts herein are analogous to *Meeker* and, thus, we find that the holding in *Meeker* is applicable to the instant matter. In *Luck*, the defendant was indicted nearly sixteen years after the offense.

The court distinguished Luck from Meeker on the basis that the defendant in Luck “was not the subject of any official prosecution” until her indictment, so the court found that the delay between the offense and the indictment was not covered by the speedy trial guarantee. (Emphasis added.) *Id.* at 153, 15 OBR at 299, 472 N.E.2d at 1101. The appellee in this case, as well as the defendant in Meeker, was the subject of an official prosecution, i.e., official accusation. Thus, the delay between accusation and indictment triggered the protection afforded by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.

2. “Because the Court broadly assays the factors going into constitutional judgments under the speedy trial provision, it is appropriate to emphasize that one of the major purposes of the provision is to guard against inordinate delay between public charge and trial, which, wholly aside from possible prejudice to a defense on the merits, may ‘seriously interfere with the defendant’s liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial

resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.” *Barker v. Wingo* (1972), 407 U.S. 514, 537, 92 S.Ct 2182, 2195, 33 L.Ed.2d 101, 120-121 (White, J., concurring), quoting *United States v. Marion* (1971), 404 U.S. 307, 320, 92 S.Ct. 455, 463, 30 L.Ed.2d 468, 478.

This case not only shows that this court is lacking the prescribed legal statue, jurisdiction, rights to a speedy trial, misconduct by all parties involved because being attorney’s they should have known better. It also show the abuse of discretion and thus proving that my rights of due process where in fact violated gregariously.

On September 25, 2014 this Relator filed a Motion to Dismiss For Ineffective Assistance of Counsel and Abuse of Discretion. The very first line in the Motion states: Samantha Harrison moves this court to dismiss all pending charges against the Defendant for ineffective assistance of counsel and denial of her right to a speedy trial in this matter. Then it goes on to state the abuse that this Relator was suffering from these Respondents’. Proving that this Relator has been accreting her claim this entire time of this case. When I brought this Motion up in court to the judge, she screamed at me stating “NO, NO, NO, DISMISSED”! As I was being led away in hand cuffs. This Judge and my attorney both threatred me through coercion and intimidation by this Judges power to lock me up indefinitely. This Court can verify all of this by obtaining the CD’s of my hearings. I tried to get them, However, I was told NO, not till the case was disposed

of. I don't recommend the transcripts because they can always be altered, same thing I am dealing with in my civil case. With the proof I have of this court changing dates, I am sure the transcripts will be, if they even give them up at all. All of the Case Law stated below has a direct relation to this case that is spelled out clearly.

State ex rel. Koren v. Grogan (1994), 68 Ohio St. 3d 590 -- Defendant and the driver of another car involved in an accident were both charged with aggravated vehicular homicide. The defendant was granted immunity to testify against the other driver. Writ of prohibition properly issued to bar prosecution for OMVI in another court. Though appeal might have furnished a remedy had the trial court determined its jurisdiction, "a writ of prohibition will issue where there is a patent and unambiguous restriction on the jurisdiction of the court which clearly places the dispute outside the court's jurisdiction."

In re Disqualification of Corrigan, 94 Ohio St. 3d 1234, 2001-Ohio-4092 -- Judge's failure to respond to allegations contained in the affidavit of disqualification leads to disqualification to avoid the appearance of impropriety *Disciplinary Counsel v. O'Neill*, 103 Ohio St. 3d 204, 2004-Ohio-4704 -- Two-year suspension, one stayed, to a common pleas judge based on a pattern of intemperate conduct including threats of bond revocation if cases proceeded to trial, conduct causing a loss of respect for the judicial system, and misconduct during the disciplinary process.

Cleveland Bar Association v. Cleary, 93 Ohio St. 3d 191, 2001-Ohio-1326 -- Former judge's offer of an improper sentencing quid pro quo based on her moral opposition to abortion leads to six month suspension. Syllabus: "A judge acts in a manner 'prejudicial to the administration of justice' within the meaning of DR 1-102(A)(5) when the judge engages in conduct that would appear to an objective observer to be unjudicial and prejudicial to the public esteem for the judicial office." Judge deemed to have exhibited partiality in her sentencing choice based upon whether the defendant acted in accordance with the judge's personal views.

State v. Wade (1978), 53 Ohio St. 2d 182, 188 -- "Generally in determining whether a trial judge's remarks were prejudicial, the courts will adhere to the following rules: (1) The burden of proof is placed upon the defendant to demonstrate prejudice, (2) it is presumed that the trial judge is in the best position to decide whether a breach is committed and what corrective measures are called for, (3) the remarks are to be considered in light of the circumstances under which they are made, (4) consideration is to be given to their possible effect upon the jury, and (5) to their possible impairment of the effectiveness of counsel." Also see *Bursten v. United States* (5th Cir. 1968), 395 F. 2d 976, 983; *Starr v. United States* (1894), 153 U.S. 614, 626; *Hicks v. United States* 150 U.S. 442, 452; *United States v. Michienzi* (6th Cir. 1980), 630 F. 2d 455; *State v. Thomas* 36 Ohio St. 2d 68, 71-72; *Columbus v. Andrews* (February 27, 1992), Franklin Co. App. Nos. 91AP-590, 880-881, unreported (1992 Opinions 667, 672-678).

State, ex rel. Adamo, v. Gusweiler (1972), 30 Ohio St. 2d 326, 329 -- "If an inferior court is without jurisdiction whatsoever to act, the availability or adequacy of a remedy of appeal to

prevent the resulting injustice is immaterial to the exercise of supervisory jurisdiction by a superior court to prevent the usurpation of jurisdiction by the inferior court."

State v. Saunders (1994), 98 Ohio App. 3d 355 -- Trial court erroneously overruled motions for new trial or mistrial based upon prosecutorial misconduct during closing argument. At p. 358: "(W)hen the motion addresses prosecutorial misconduct, a reviewing court must undertake a due process analysis to determine whether the conduct of the prosecutor deprived the defendant of his or her due process right to a fair trial. *State v. Johnston* (1988), 39 Ohio St. 3d 48, 60..."

Holmes v. North Carolina, 547 U.S. ___, 126 S.Ct. 1727 -- South Carolina held defendant could not introduce evidence another might be guilty based on the strength of the state's forensic evidence. A state rule of evidence excluding defense evidence based on the strength of the state's case is arbitrary and improperly denies the defendant's constitutional right to have a meaningful opportunity to present a complete defense. This right is guaranteed either directly under the Due Process Clause of the

The Respondents' states in her Motion, "Should she take issue with the judge assigned to her particular case, her sole remedy is to file an affidavit of disqualification with this Court pursuant to R.C. 2701.03 She did not do that here.

On the advice of my attorney at the time, he is the one that told me to file my Motion with this lower court and said nothing about this Superior Court. At the very least the court should have held a hearing on my Motion and recused herself. This violated my rights to a "Speedy Trial" and among other things my due process. The legal remedy would have been to dismiss this case with prejudice as proven by the case law that I provided. However, it also proves just how bias Judge Wiseman is. So this Relator has already done that with NO avail. Also this Relator contends that this judge has no jurisdiction over said case due to the Original Petition, however, she has issued a heinous and un lawful warrant for this Relator, with a bond of 150,000.00 and home detention. When "Good Cause" was shown. I ask this Court to demand her remove said warrant because not only in it a due process violation, it is extremely unethical.

On January 9, 2014, this Relator was indicted on one count of Theft by Deception (\$1000 But Less Than \$7,500).

I will provide this Court with another copy. However, a copy is in the Original Petition. It states: Montgomery County Ohio Clerk of Courts Public Records Online System Version II. Which reads 2014 CR 00138 – STATE OF OHIO Vs SAMANTHA HARRISON Case Summary Criminal, DOB - 12-SEP-69, Arrest Date – 05-JUN-14, Judge – MARY WISEMAN, Jurisdiction – DIR, Defendant – SAMANTHA HARRISON, Capture Status - 516 CALEB DR. BROOKVILLE OH 45309, Prosecutor – HEATHER N JANS, SSN – Not Displayed, Case Information, File Date: 09-

JAN-14, Status: OPEN, Additional Information, Case Comments, CHARGE – 1, INDICTED CHRGE – THEFT (\$1000 But Less Than \$7,500) (By Deception), COUNTS – 1, DISPOSITION COMMENT – 2014 CR 00138 – STATE OF OHIO vs SAMANTHA HARRISON

I copied this report from the docket for my criminal case, right after I went to court the very first time. Today is Wednesday, April 15, 2015, and looking at the docketing report on the very same system, this report is now, nowhere to be found. Just one more clear abuse of discretion by the trial court. I asserted my claim in a Motion I filed on September 25, 2014, along with other issues, miss representing many dates of hearings by failing to provide the real reason the hearing was being held. Like when my counsel was really appointed and discharged. As well as the dates certain events took place. Mary E. Montgomery, Assistant Prosecuting Attorney that filed this MOTION TO DISMISS, is trying to miss lead this Court by reporting that this Relator was indicted on April 30, 2014. Moreover, in this relator's original petition she filed a recorded meeting at Montgomery County Children Services that took place on February 14, 2014, with Kim Bayless (supervisor) and Vicki Carter (caseworker). During this meeting for a Semi-Annual Review in her civil case, the relator was told that the Sheriff's Office (MCSO) already went to the Grand Jury and had me indicted for theft. (See exhibit 3 or 4 in the Original Writ)

State v. Myers (1997), 119 Ohio App. 3d 642, 645 -- "Because a court speaks through its journal, it is imperative that the court's journal reflect the truth...All 'litigants have a clear legal right to have the proceedings they are involved in correctly journalized'...Therefore, making an incorrect journal entry is a clear abuse of discretion by the trial court."

State v. Keenan (1993), 66 Ohio St. 3d 402, 410-411 -- Prosecutorial misconduct is a denial of due process.

This Relator addressed some of the issues with the trial proceedings in my Emergency Motion to Stay of Execution of Judgment. However, the relator brought up a couple of issues I will address.

On Friday, March 13, 2014, this Relator tried to file her Original Writ. This can be proven at the Federal Building. This Relator's Affidavit of Indigency is stamped on that day as well. When I arrived at the clerk's office, I could not file my Writ because I did not have the actual Writ notarized. The clerk's office refused to accept it, and it was too late in the day to get it done. I had it notarized the next day and gave it to a person that lived closer to file it on my behave. This person was going to file it on Monday, however, they got called into work. The soonest they could get it filed was Tuesday.

This Respondent stated that "Instead, on March 17, 2015, while her trial was still pending, and her alleged medical condition was such that trial was halted for the day, Harrison, calling herself Samantha Johns in the instant Petition, filed this Writ of Prohibition with the Supreme Court. In this Petition, Harrison filed a 49 page outline of her complaints against Judge Wiseman, the assistant prosecuting attorneys, her assigned defense attorney and the police, the majority of which had little or nothing to do with the charges on which she was indicted and instead seemed to be a litany of complaints regarding the investigation of an unrelated matter.

This is also impossible for me to have filed the Writ because I have tape recordings of my attorney Mr. Wilmes making threats while on the phone with me and my doctor's office staff just before 4:00 p.m. My doctor's office is in Miamisburg, Ohio. I would have had to have gotten through downtown Dayton traffic and then drove to Columbus and dealt with their traffic, all before 5:00 p.m. So I am very confident to say, that would simply be impossible. I also have the temporary badge that the Federal Building gives you to be allowed in the building, of the person that filed it on my behalf, with her picture and name printed on it.

The Respondent also concedes to the fact that Mr. Wilmes is in fact my attorney. This is important because not only have I had to suffer this man's abuse but he filed a Motion stating: Johns having been in disagreement with three prior attorneys herein, the trial court personally called undersigned counsel and asked him to consider *servicing* as "stand-by counsel" who was disgruntled and wished to proceed *pro se*.

This attorney by his own admission, concedes that this Relator "who was disgruntled" In fact I just filed my Motion to Dismiss.

On March 17, 2015, this Relator was taken to the hospital from court by way of ambulance. After leaving the hospital I drove straight to my doctor's office. Where I was until almost 4:00 p.m. I watched the Office Manager fax the court a doctor's note excusing this Relator from court until at least Monday, March 23, 2015. This Relator was so sick she could not drive herself home. I had to stop at my grandmother's house just a couple of miles away. That is where I had to stay for a few days to just get the strength up to finish driving home.

This Relator satisfied the requirements of Rule 43, "Show of good cause" why this Relator was not present. It was a major violation of my due process rights among other things.

State v. Walker (1959), 108 Ohio App. 333 -- Unless the defendant has requested in writing (in accordance with R.C. 2945.12), that he be tried in absentia, it is error to proceed to trial without the defendant being present, regardless of whether or not he has been notified of the trial date and despite the fact he was present at the time the jury returned a verdict.

State v. Kirkland (1984), 18 Ohio App. 3d 1 -- When the defendant is detained by the authorities, his absence from an ongoing trial is not voluntary. His right to be present cannot be waived by counsel, and the opinion suggests counsel is professionally remiss if he fails to attempt to locate the defendant or otherwise determine the cause of his absence.

2945.12 When accused may be tried in his absence.

A person indicted for a misdemeanor, upon request in writing subscribed by him and entered in the journal, may be tried in his absence by a jury or by the court. No other person shall be tried unless personally present, but if a person indicted escapes or forfeits his recognizance after the jury is sworn, the trial shall proceed and the verdict be received and recorded. If the offense charged is a misdemeanor, judgment and sentence shall be pronounced as if he were personally present. If the offense charged is a felony, the case shall be continued until the accused appears in court, or is retaken.

Effective Date: 10-01-1953

Standard of Review

Under Rule 12(b)(6) a complaint may be dismissed “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984) (citing *Conley v. Gibson*, 355 U.S. 41,45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957)); See also *Davis H. Elliot Co. v. Caribbean Utilities Co.*, 513 F.2d 1176, 1182 (6th Cir.1975). The complaint must be construed in the light most favorable to plaintiff, and its well-pleaded facts must be accepted as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683,11686, 40 L.Ed.2d 90 (1974); see also *Westlake v. Lucas*, 537 F.2d 857,858 (6th Cir.11976). There is no requirement to accept as true legal conclusions or unwarranted factual inferences. See *Westlake*, 537 F.2d at 858; *Davis H. Elliott*, 513 F.2d at 1182; *Blackburn v. Fisk University*, 443 F.2d 121, 124 (6th Cir. 1971).2:12-cv-10203-PDB-PJK Doc # 12 Filed 03/19/12 Pg 10 of 19 Pg ID 187x i

Morgan v. Church’s Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987). In *Conley v. Gibson*, the Supreme Court states that the 12(b)(6) motion must not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Yoichiro Hamabe, *Functions of Rule 12(b)(6) in the Federal Rules of civil Procedure: A categorization Approach* 15 *Campbell L. Rev.* 119, 130 (1993)

The court should not use dismissal sua sponte without allowing a plaintiff an opportunity to be heard. In *Tingler v. Marshall*, the Sixth Circuit ruled that before a complaint

may be dismissed sua sponte, the court must require: (1) service of the complaint on defendants, (2) notice of the court's intent to dismiss the complaint, (3) an opportunity for plaintiff to amend his complaint or respond to the reasons state by the district court in its notice of intended sua sponte dismissal, (4) an opportunity for defendant to respond or file an answer or motions, and (5) a statement of the reasons for dismissal.

Argument And Grounds

THIS COURT HAS BOTH SUBJECT MATTER AND PERSONAL JURISDICTION TO HEAR THIS MATTER. Despite failing to argue same anywhere in their brief, Defendants seek dismissal pursuant to both Fed. R. Civ. P. 12(b)(1) and (2), which request should be denied as Defendants' unexplained basis for same is incorrect. In order to provide jurisdiction to this Court, all that must be alleged in a 1983 claim is that the City is acting under the color of law to deprive Plaintiffs of certain rights, which is essentially the basis for Plaintiff's entire Complaint. *Brzowski v. Brzowski*, 2007 U.S. Dist. LEXIS 55025 (N.D. Ill. July 26, 2007).

Accordingly, Relator request this Court deny Respondents' Motion on the basis of Fed. R. Civ. P. 12(B)(6). And deny all Respondents' request to be dismissed as a matter of law. All parties involved need to be held accountable for their gregarious acts which they have subjected this Relator too for almost a year. The law is clear that when a Judge or attorney act outside the law. (48A Corpus Juris Secundum §86) A minority of decisions have held that if an

inferior judge acts maliciously or corruptly he may incur liability. *Kalb v. Luce*, 291 N.W. 841, 234, WISC 509.

. Writ jurisdiction is exercised by the Supreme Court and the High courts only. This power is conferred to Supreme Court by article 32 and to high courts by article 226.

Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution.

Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights.

Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the **enforcement of fundamental rights** and for 'any other purpose'. i.e., High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'.

The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence the need for a control of the discretionary powers is essential to ensure

that '**rule of law**' exist in all governmental actions. The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable.

The writ jurisdictions exercised by the Supreme Court under article 32 and by the high courts under article 226, for the enforcement of fundamental rights are mandatory and not discretionary. But the writ jurisdiction of high courts for 'any other purpose' is discretionary. In that sense the writ jurisdiction of high courts are of a very intrinsic nature. Hence high courts have the great responsibility of exercising this jurisdiction strictly in accordance with judicial considerations and well established principles.

Conclusion

In order to preserve Relators' rights, Relator' request this Court deny the instant Motion, or in the alternative grant Plaintiffs leave to file an amended pleading more to the Court's liking. This response is to show this Court that I have more than enough Due Process Rights, and other Constitutional violations caused by this court and all Respondents involved. I will have more time to prepare all of them in my brief in this Honorable Court allows. I pray this Court grant this Relator action, myself and family have been through more than I could ever explain to this Court. I beg you to look at this case in the best eyes for this Relator. "A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering whether the

complaint is sufficient to state a claim, the court must accept as true all of the factual allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). While a complaint need not allege detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949.”

The writ of Prohibition prohibits an authority (Montgomery County Common Pleas Court) from exercising a jurisdiction not vested on it. When there is absence of jurisdiction or total lack of jurisdiction an authority cannot act. When an authority acts (Montgomery County Common Pleas Court) in violation or infringement of the fundamental rights of a person, a writ of prohibition can be invoked. All authorities are to observe the principles of natural justice while exercising their powers. When an authority, (Montgomery County Common Pleas Courts) is trying to act under a statute or a law which is unconstitutional, the writ of prohibition can be applied. Issuing against any authority having judicial, quasi judicial or administrative jurisdiction.

Wherefore plaintiff prays this Court issue equitable relief as follows:

1. Issue injunctive relief commanding defendant to . . .
2. Issue declaratory relief as this Court deems appropriate just.
3. Issue other relief as this Court deems appropriate and just.

Acknowledged before ME ON APRIL 16, 2015
IN FAIRFIELD COUNTY, OHIO.



Respectfully submitted,

Samantha Johns
75 Woods Dr. Apt. 1
West Milton, Ohio 45383

JUDICIAL NOTICE

All officers of the court for <insert> County, < state> are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *Haines v Kerner*, 404 U.S. 519, *Platsky v. C.I.A.* 953 F.2d. 25, and *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). In re *Haines*: pro se litigants (Defendant is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.

In re *Platsky*: court errs if court dismisses the pro se litigant (Defendant is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings.

In re *Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent.

See *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). Statements of counsel, in their briefs or their arguments are not sufficient for a motion to

dismiss or for summary judgment, Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Petition for Writ Of Prohibition and Motion for Stay of Proceedings has been served upon said Judge and Counsel of record listed below. By way of mail or by personal service. Filing with the United States Supreme Court of Ohio on this Friday, March 13, 2015.

 03/11/2015
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