IN THE SUPREME COURT OF OHIO

IN RE		
SAMANTHA JOHNS (HARRISON)	*	**CASE NO. 15-0447**
	*	
Relator,	*	
	*	**MOTION TO STRIKE PREVIOUSLY**
vs.	*	**FILED MOTION TO DISMISS AND REPLACE**
	*	**WITH THIS MOTION TO DISMISS**
JUDGE MARY L. WISEMAN, ET. AL.	*	**RELATOR'S WRIT OF PROHIBITION**
	*	
Respondent.	*	

MOTION TO DISMISS OF RESPONDENTS, JUDGE MARY L. WISEMAN, WARD BARRENTINE, KARINA KOROSTYSHEVSKY, HEATHER JANS, MATTHEW T. CRAWFORD AND ALYSIA GOSS

Pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure, the Respondents respectfully move this Court to dismiss the "Petition for Alternative Writ of Prohibition or other Appropriate Relief" filed by the Relator herein for the reasons set forth in the accompanying memorandum. The Petition fails to state a claim upon which relief in prohibition can be granted.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

/s/ Mary E. Montgomery

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MEMORANDUM

I. HISTORY

On April 30, 2014, Samantha Harrison was indicted on one count of Theft (>$1000), a felony of the fifth degree and in violation of R.C. 2913.02(A)(3). The indictment was signed by Assistant Prosecuting Attorney Matt Crawford. The assigned docket attorney initially was Heather Jans. A jury trial commenced in this matter on Monday, March 16, 2015 before the Honorable Mary L. Wiseman. Assistant Prosecuting Attorneys Ward Barrentine and Karina Korostyshevsky represented the State of Ohio at this trial. Attorney Al Wilmes represented the defendant. At some point in time, the Relator was represented by Assistant Public Defender Alysia Goss, who is also named as a Respondent in this Writ of Prohibition.

A jury was selected and testimony began on Monday, March 16, 2015. On Tuesday, March 17, 2015, Samantha Harrison appeared for trial, but complained of a medical issue and was eventually transported by medic to Miami Valley Hospital for treatment of this alleged condition. As a result, no testimony was heard on this date and the jury was sent home at noon the same day.

On Wednesday, March 18, 2015, Harrison failed to appear for trial, did not contact the Court and had had no contact with her attorney since the previous day. Thus, pursuant to Criminal Rule 43, the trial proceeded forward in Harrison's absence. The State presented additional testimony and rested. Defense attorney Al Wilmes presented no testimony. The

case was submitted to the jury and the jury returned a verdict of guilty to one count of Theft, a felony of the fifth degree.

Additionally, on March 18, 2015, Judge Mary L. Wiseman issued an Entry and Order for a Capias for Harrison and set bond at $150,000. To date, Harrison has failed to appear or have any contact with the Court, turn herself in on the outstanding capias, or be found and arrested on this outstanding capias. 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 attorneys 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. The remaining arguments outlined in her complaint are in regard to her perceived mistreatment during the pendency of her criminal case.

II. <u>LAW AND ARGUMENT</u>

A Writ of Prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70 at ¶ [2], [3] (1998), citing *State ex rel. Burtzlaff v. Vickery*, 121 Ohio St.49, 50, 166 N.E. 894, 895 (1929). "…[T]he purpose of a writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction." *Id.* , citing *State ex rel. Barton v. Butler Cty. Bd. Of Elections*, 39 Ohio st. 3d, 291, 530 N.e.2d 871 (1988). "As such, a writ of prohibition is an "extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising

from the inadequacy of other remedies." *Id.*, citing *State ex rel. Henry v. Britt*, 97 Ohio St.2d 71, 73 (1981), 21 O.O.3d 45, 47, 424 N.E.2d 297, 298-299; *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St. 3d 536, 540 (1996), 660 N.E.2d 458, 461. A writ of prohibition "tests and determines solely and only the subject matter jurisdiction of the lower court." *Id.* at ¶ [4], citing *State ex rel. Eaton Corp. v. Lancaster* , 40 Ohio St.3d 404, 409 (1988),, 534 N.E.2d 46, 52; *State ex rel. Staton v. Franklin Cty. Common Pleas Court*, 5 Ohio St.2d 17, 21 (1965), 34 O.O. 2d 10, 13, 213 N.E.2d 164, 167.

Dismissal of a complaint in prohibition for failure to state a claim upon which relief can be granted is appropriate if, after presuming the truth of all factual allegations of the complaint and making all inferences in relator's favor, it appears beyond doubt that relator can prove no set of facts entitling him to the requested extraordinary writ of prohibition. *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 8. In general, to be entitled to a writ of prohibition, the relator must establish that (1) the lower court is about to exercise judicial authority, (2) the exercise of authority is not authorized by law, and (3) the relator possesses no other adequate remedy in the ordinary court of law if the writ of prohibition is denied. *Id. at* ¶ [5], citing *State ex rel. Keenan v.* Calabrese, 69 Ohio St.3d 176, 178 (1994), 631 N.E.2d 119, 121, see also, *State ex rel. Doe v. Capper*, 132 Ohio St. 3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 10, citing *State ex rel. Bell v. Pfeiffer,* 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18.

A. **ASSISTANT PROSECUTING ATTORNEYS BARRENTINE, KOROSTYSHEVSKY, JANS AND CRAWFORD AND ASSISTANT PUBLIC DEFENDER GOSS MUST BE DISMISSED AS A MATTER OF LAW.**

The above-named respondents, Ward Barrentine, Karina Korostyshevky, Heather Jans and Matthew Crawford, are Montgomery County Assistant Prosecuting Attorneys. Alysia Goss

is a Montgomery County Assistant Public Defender. A writ of prohibition is used to limit judicial authority. *Black v. Ashland Cty. Prosecutor's Office*, 5th Dist. Ashland No. 2011-CA-054, 2012-Ohio-1306 at ¶3 (emphasis added). Since these respondents do not have judicial authority, prohibition cannot lie to prevent them from acting. *Id.* Thus, these named respondents should be dismissed as a matter of law.

B. **RESPONDENT JUDGE MARY L. WISEMAN MUST BE DISMISSED AS A MATTER OF LAW**

The law of Ohio permits the filing of an affidavit of disqualification with the Clerk of the Ohio Supreme Court when bias of a judge is asserted. R.C. 2701.03. R.C. 2701.03 is the exclusive means to challenge a judge for bias. As such, an action in prohibition is not a substitute remedy. *Hoppel v. Pike*, 7th Dist., Columbiana No. 2002-CO-43, 2002-Ohio-5236, ¶ 11.

The relator's claim does not state a claim for which relief in prohibition can be granted. 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. Additionally, Harrison has not alleged that Judge Wiseman has taken or is about to take action unauthorized by law. Even if that would be the case, her remedy is to appeal and seek an immediate stay of Judge Wiseman's judgment. *See, Hoppel*, supra at ¶13.

CONCLUSION

For all the reasons stated herein, Respondents Judge Mary L. Wiseman, Ward Barrentine, Karina Korostyshevsky, Heather Jans, Matthew Crawford, and Alysia Goss respectfully request this Court to dismiss Relator's complaint for a writ of prohibition, with prejudice.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

/s/ Mary E. Montgomery

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was sent by first class on April 20, 2015, to Relator, Samantha Johns, 75 Wood Drive, Apt. 1, West Milton, Ohio 45383.

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

/s/ Mary E. Montgomery

MARY E. MONTGOMERY (#0069694)
Assistant Prosecuting Attorney