

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel., REGINALD GIBSON,

Petitioner - Appellant,

v.

BRIGHAM SLOAN Warden,

Respondent - Appellee

S.Ct. CASE NO. 15-1381

On Appeal from the Ashtabula County
Court of Appeals, Eleventh Appellate
District

C.A. No. 2014-CA-00073

Case No. 2013-CR-0120

MERIT BRIEF OF PETITIONER - APPELLANT REGINALD GIBSON

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STATEMENT OF FACTS

This case arises from the dismissal of the appellant's, Reginald "Gibson", habeas corpus petition. §2725.05 The petition was filed in the Eleventh District Court of Appeals, Ashtabula County on December 2, 2014. Gibson is a prisoner in custody at the Lake Erie Correctional Institution. His conviction was procured by the State's violation of his constitutional rights in contravention of the laws of the United States Constitution, therefore the trial court lacked jurisdiction making the judgment in his case void.

In 2013, Gibson was arrested by the Massillon City Police Department. He was charged with felonious assault. The Massillon Municipal Court set his bail at \$50,000 ten percent cash. (Appx. 32). This court recently ruled in *State ex rel. Sylvester v. Neal*, a "cash bail is unconstitutional".

In March 2013, Gibson's trial counsel filed a Motion for A Bond Hearing in the Court of Common Pleas, Stark County, Ohio to have the surety language added to his bond. The Common Pleas Court increased his bail without having a hearing or justification for its reasons, thereby violating his right to due process of federal law under the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Ohio Constitution. Furthermore, the judge in his case stated on the record, **"Don't get your hopes up because I'm not letting you out"**.

Date: May 28, 2013(Transcript p.16-17) Gibson again asked the trial court for the reason for the excessive bail, it was stated by the judge, **"I was right here just faced with the thing"**. Date: May 28, 2013(Transcript p.16-17)

In February 2014, Gibson petitioned the trial court for a Post-conviction Relief pursuant to §2953.21. In May 2014, the court granted the State's MOTION FOR SUMMARY JUDGMENT and MOTION TO DISMISS. (Appx. 21) The trial courts acted in bad faith when it "entertained' the appellants arguments without a proper finding of facts and conclusion of law." The court shall have made and file findings of fact and conclusions of law with respect to such dismissal. R.C. 2953.21(C). Therefore, the order was not a final appealable order. Gibson did appeal the Summary Dismissal to the Fifth District Court of Appeals in February 2014. *State v. Gibson*, Fifth Dist. Stark County, No. 2015CA00039. (Appx. 8). This appeal was denied. (Appx. 18, 19) Gibson filed a Writ of Procendendo to this Supreme Court to compel the trial court to render its Finding of Facts and Conclusion of Law, but this court dismissed the Writ. (Appx. 31). The Eleventh District Court of Appeals incorrectly stated the facts in its Per Curiam regarding the appeal to the Fifth District Court of Appeals. It stated that his appeal was dismissed because it did not meet the successive petition criteria at ¶18. **This was not a successive petition, but an appeal as of right.** The Fifth District Court of Appeals ignored the procedural nature of § 2953.21(C). Where a court files a judgment entry denying a petition for post-conviction relief but does not include findings of fact and conclusions of law, as required by RC § 2953.21, the time for appeal does not begin to run until such findings are filed: (decided under former analogous section) *State v. Mapson*, 1 Ohio St. 3d 217, 438 N.E.2d 910, 1 Ohio B. 240, 1982 Ohio LEXIS 732 (1982).

Gibson filed his Notice of Appeal to the Supreme Court of Ohio on August 21, 2015. (Appx. 1). This is an appeal of right from his habeas corpus petition which was dismissed by the Eleventh District Court of Appeals on August 3, 2015. The appellant has no adequate remedy at law. This court has jurisdiction to hear and decide this case pursuant to the Ohio Constitution Art IV, § 2, and R.C. 2725.02

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

ARGUMENT

PROPOSITION OF LAW NO. 1: The trial court lacked jurisdiction upon its violation of the Due Process and Equal Protection Clause of Fourteenth Amendment, Sixth and Eighth Amendments to the United States Constitution and Article I, Section 9, 10, and 16 of the Ohio Constitution, when it failed to comply with Crim. R. 46(A)(F)(H), increasing appellant's bail without justification or reason, thereby depriving him of the protected liberty interest in the expectancy of non-excessive or reasonable bail or a right to bail

The writ of habeas corpus is an extraordinary remedy in which a prisoner in custody seeks his release from unlawful confinement or restraint. In criminal cases, it is generally available if the petitioner is entitled to immediate release from prison or some other type of physical confinement. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St. 3d 311, 312, 2008-Ohio-6147, 898 N.E.2d 950, quoting *State ex rel. Smirnoff v. Greene*, 84 Ohio St. 3d 165, 167, 702 N.E.2d 423 (1998). The appellant in the case at bar, is collateral attacking his judgment of conviction. He raises the following issues: (a) **Did the court issuing the order of his confinement lack jurisdiction?** (b) **Is his judgment void, because the trial court procured his conviction by violating his constitutional rights in contravention of the laws of the**

United States Constitution? In R.C. Chapter 2725, it prescribes a basic, summary procedure for bringing a habeas action: *Pegan v. Crawmer*, 1995 Ohio 175, 73 Ohio St. 3d 607, 653 N.E.2d 659, 1995 Ohio LEXIS 1870 (Ohio 1995).

On March 13, 2013, the trial court violated the Equal Protection and Due Process Clause of the Fourteenth Amendment and Article I, Section 9, 10, and 16 of the Ohio Constitution by increasing appellant's bail from \$50,000 ten percent cash, (**Appx. 32**), to an excessive amount of \$500,000 surety. (**Appx. 33**) This arbitrary action denied him a statutorily protected liberty interest in the right to bail. Appellant's bail figure was so high it was the equivalent to denying bail. *Kraft v. United States* (1956, CA8 Minn) 238 F.2d 794. "[B]ail set at a figure higher than an amount reasonably calculated [to ensure the defendant's presence at trial] is 'excessive' under the Eighth Amendment." Federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. The holding in *State v. Bevacqua* (1946), 147 Ohio St. 20, 33 O.O. 186, 67 N.E.2d 786, that habeas corpus is the appropriate remedy to raise the claim of excessive bail in pretrial release cases.

The Eighth Amendment to the Constitution of the United States proclaims: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." (Emphasis added.) Section 9, Article I of the Ohio Constitution contains identical language, and the protection provided under the two clauses is essentially the same. See, e.g., *State v. Chaffin* (1972), 30 Ohio St. 2d 13, 59 O.O. 2d 51, 282 N.E.2d 46; *McDougle v. Maxwell* (1964), 1 Ohio St. 2d 68, 30 O.O. 2d 38, 203 N.E.2d 334.

In this case, the appellant was denied the traditional right to freedom before his conviction which permits the unhampered preparation of a defense. He was inflicted with punishment prior to conviction. See *Hudson v Parker*, 156 US 277, 285 [39 L Ed 424, 15 S Ct 450] (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after

centuries of struggle, would lose its meaning." *Stack v Boyle*, 342 US 1, 4, 96 L Ed 3, 72 S Ct 1 (1951). Moreover, the trial court violated the appellant's constitutional right to fair trial and due process as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Section 5 and 10, Article I of the Ohio Constitution by denying him bail. When considering the purpose of bond, the Supreme Court of Ohio stated in the case of *Bland v. Holden* (1970), 21 Ohio St. 2d 238, at 239, that: "The purpose of bail is to secure the attendance of the accused at his trial.

In *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, 835 N.E.2d 5, this court reviewed the history of the right to bail in Ohio, and relied heavily on ¶ 18-51 of that opinion. **It was recognized that the right to bail under Article I, Section 9 of the Ohio Constitution was absolute, except for capital offenses** (other exceptions now apply), and this court concluded that "[t]here is no discretion in the trial court in such matters." *Id.* at 46. *Locke v. Jenkins*, 20 Ohio St.2d 45, 253 N.E.2d 757 (1969). Further, Under both the United States and Ohio Constitutions, "excessive bail shall not be required." If an offense is bailable, the right to reasonable bail is an inviolable one which may not be infringed or denied. Additionally, when the trial court deprived him bail as authorized by the state legislature without providing any supporting reasons to indicate its motivating reasons for its denial, in and of itself was discriminatory. See *Wilborn v. Peyton*, W.D.Va.1968, 287 F. Supp.787. When the trial court violated the appellant's rights under the Federal Constitution, Do it lose jurisdiction of his case? Moreover, **Is there an expectancy and right to a reasonable bail?** *The Fourteenth Amendment states, in relevant part, " *** nor shall any state deprive any person of life, liberty, or property, without due process of law *** ."* When the court set his bail unreasonable, without reason,

and failing to observe the constitutional safeguards required by due process, it thereby deprived itself of jurisdiction. *Merritt v. hunter*, C.A. Kansas 170 F2d 739. See *Trial court Transcripts* May 20, 2013 p.5, 6. The trial judge stated as it reasoning for setting such the excessive, \$500,000 surety bail was; **“I probably did that just simply because I was right there faced with the thing *** Don't get your hopes up because I'm not letting you out”** *Trial Transcripts* - May 28, 2013 (page 10, 16-17)

The outright denial of his bail cannot support Ohio Const. Art. I, § 9. He was deprived of his liberty without due process of law. Therefore, he is entitled to a writ of habeas corpus for the purpose of inquiring into the matter. See 26 Ohio Jurisprudence 2d 568, Habeas Corpus, Section 14, and cases cited thereunder.”(Emphasis added) The Habeas Corpus petition which he filed on December 2, 2014, in the Eleventh District Court of Appeals, was prima facie on its face. The Court of Appeals should have had a hearing on the matter or shall have granted a writ pursuant to R.C. 2705.06. The law provides, once State and Federal Jurisdiction has been challenged, the court must prove on the record, all jurisdiction facts related to the jurisdiction asserted. *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York*, 37 Supp. 150.

PROPOSITION OF LAW NO.2: The trial court exceeded its jurisdiction by increasing appellant's bail without having a bond hearing, departing from established requirements of law recognized in *Stack v. Boyle*, 342 U.S.1, 6, 72 S. Ct. 1, 96 L. Ed.3 (1951), R.C. 2937.222 (B)(C)(1)(2)(3)(a)(b)(4), R.C. 2937.23(A)(3) and Crim.R.46, thereby depriving the appellant of Equal Protection and Procedural Due Process of law as guaranteed under the Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution

In Stack v. Boyle it was stated, "Bail of course, is basic to our system of law". "If bail in an amount greater than that usually fixed for serious charges of crimes is required *** that is a matter to which evidence should be directed **in a hearing** so that the constitutional rights of each petitioner may be preserved." (emphasis added). R.C. 2937.222 (B)(C)(1)(2)(3)(a)(b)(4) and Crim.R. 46, determines what is reasonable bail, various factors the court must weigh: the nature and circumstances of the offense charged, the weight of the evidence, the accused's history of flight or failure to appear at court proceedings, his ties to the community, including his family, financial resources and employment, and his character and mental condition. R.C. 2937.23(A)(3) dictates that in all cases, bail shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

In the case sub judice, the appellant was arrested January 13, 2013. The Massillon Municipal Court, set bail at \$50,000 ten percent cash-only pursuant to Crim. R. 46(A)(2). Recently, this court held in, Case No. 2012-1742, *State ex rel. Sylvester v. Neal*, that by permitting a trial court to require a 10 percent cash-only bond was unconstitutional, because it denies a defendant the constitutional right to be "bailable by sufficient sureties" in violation of Ohio Constitution. Art. I, § 9. It also precludes the use of a bond or other surety instruments. The purpose of bail is to ensure that the defendant appears at all stages of the criminal proceedings.

On March 5th, 2013, appellant's trial counsel filed a motion in the trial court for a Bond Hearing to have the surety language added to his bond. The record indicate that there was a bond hearing on this date. In actuality, **there was never a hearing whatsoever on this date.**

The question proposed, “ **If there was never a proceeding for a Bond Hearing on March 3, 2013**”, (1) How and why was his bail increased, (10 times the original amount), to \$500,000 surety without any justification for the decision on record to support its modification? (2) Whether the court in keeping the appellant in jail by excessive bail was a denial of his constitutional right under the Eighth Amendment and Article I, Section 9 of the Ohio Constitution? (3) Was this an outright refusal of to fix the same? See *State v. Bevacqua*, 147 Ohio St. 20. Case law on the bail provisions before 1998 makes clear that under the Constitution, citizens have a right to reasonable bail. *Locke v. Jenkins*, 20 Ohio St.2d 45, 253 N.E.2d 757 (1969). See *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 594, 1994 Ohio 208, 635 N.E.2d 26 (1994) (explaining that a writ of habeas corpus is the proper remedy for a claim of excessive bail).

The General Assembly enacted R.C.2937.222(A) as a procedure that must be followed before a trial court can deny bail or modify bail. The same bail which was set in the Municipal Court shall have continued until the return of the verdict in his case. When the trial court failed to observe this safeguard, this amounted to a denial of due process, thus depriving itself of jurisdiction. Appellant argues the trial court erred in violating his constitutionally protected liberty interest to have a bail bond hearing as a required under Ohio Statute 2937.222 (B)(C)(1)(2)(3)(a)(b)(4) and Crim. R. 46. Ohio R. Crim. P. 46(H).

Since there was no showing of any change circumstances of the appellant or his surrounding, (*in the County Jail where he remained incarcerated until his trial and sentencing*), the original \$50,000 ten percent cash bond should have continued. **“Because the trial court failed to have a bond hearing, yet increased the bond, it departed from recognized and established requirements of law.** This was only an apparent adherence to mere form in method of procedure. In essence, the appellant was deprived of his constitutional right to procedural due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 and 16 of the Ohio Constitution. Furthermore, this stripped the trial court of jurisdiction to render judgment in his case.

In *Utley v. Kohl* (1997), 120 Ohio App. 3d 52, 696 N.E.2d 652, the court held that "[w]here the trial court setting the original bail has considered all the required factors in determining the amount of bail, and there is no showing of any changed circumstances of the accused or his surroundings, the bond as set must continue as a matter of right." Id. at 55, citing Crim.R. 46(J) and *May v. Berkemer* (Mar. 29, 1977), Franklin App. No. 77A-183, 1977 Ohio App. LEXIS 7435.

Presently, the appellant is restrained of his liberty, in the custody of the State, in the Lake Erie Correctional Institution, of which custody such is unlawful. The Ohio Constitution Art IV, §2, and R.C. 2725.02 confers jurisdiction to this Supreme Court to hear and determine the appellant's petition for habeas corpus filed in the Eleventh District Court of Appeals. See *Russell v. Maxwell*, 348 F.2d 908, 5 Ohio Misc. 245, 33 Ohio Op. 2d 306, 1965 U.S. App. LEXIS 4822 (6th Cir. Ohio 1965), cert. denied, 382 U.S. 998, 86 S. Ct. 585, 15 L. Ed. 2d 485, 1966 U.S. LEXIS 2715 (U.S. 1966). His contention is that he has been deprived of his liberty without due process of law in contravention of the Constitution of Ohio and the United States. Therefore, relief prescribed by R.C. 2725.06 must be granted by this court forthwith. (Emphasis added.)

PROPOSITION OF LAW NO.3: The trial court lacked jurisdiction to sentence the appellant because the verdict forms failed to included the charging statute, (*Ohio Revised Code*), specifying the offense(s) in which the he was found in violation nor the degree of the offense in its verdict forms as mandated in *State v. Pelfrey*, (R.C. 2945.75(A)), thereby depriving him of due process under the Fourteenth Amendment to the United States Constitution, Equal Protection, and Article I, Section 16 of the Ohio Constitution

In *Sramek v. Sramek*, the United States Supreme Court (10th Cir.) concluded . . . that a void judgment is an absolute nullity and may be ignored or disregarded, vacated on motion, or attacked on habeas corpus." In *State v. Gibson*, 2013-CR-0120, the appellant was convicted of Felonious Assault and Abduction. In this case, the jury verdict forms did not follow the mandates

of R.C. 2945.75(A) required as a matter of law. It failed to include the charging statute and degree of the offense. The substantial question he now presents for review to this Honorable Court is; (1) **Did the trial court have jurisdiction to sentence him under a void jury verdict form?** and (2) **Can the State uphold its judgment of conviction based on an invalid verdict form?** The appellant challenges this prima facie void judgment in his case. "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court". *Old Wayne Mut. L. Assoc. V. McDonough*, 204 U.S. 8, 27 S. Ct. 236 (1907). The law provides that once State and Federal Jurisdiction has been challenged, it must be proven. *Main v. Thiboutot*, 100 S. Ct. 2502 (1980). "**Jurisdiction can be challenged at any time**", and once challenged, it cannot be assumed, it must be decided. *Basso v. Utah Power & Light Co.* 495 F.2d. 906,910. "There is no discretion to ignore that lack_of jurisdiction." *Joyce v. United States*, 474 F.2d 215 (3rd Cir. 1973). It is well-settled that jurisdiction over the subject matter is an absolute prerequisite to maintaining an action. The proceeding and procedures of a trial must "comply with the mandates of due process.

The appellant contends an invalid verdict form is structural error. This error affected his substantial rights and ""the framework within which the trial proceeds, rather than simply [being] an error in the trial process itself." *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643, ¶ 17, quoting *State v. Fisher*, 99 Ohio St.3d 127, 2003-Ohio-2761, 789 N.E.2d 222, ¶ 9, quoting *Arizona v. Fulminante*, 499 U.S. 279, 309, and 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). **A under Crim.R. 52(A), a structural error will result in an automatic reversal.**

Against this backdrop, this Court must examine the errors in his verdict forms which

makes it void. This will confirm justifying the setting aside his conviction. R.C. 2725.01. In his case, the judgment rendered by the trial court is invalid. [A judgment shown to be void for lack of personal service on the defendant is a nullity.] Sramek v. Sramek, 17 Kan. App. 2d 573, 840 P.2d 553, 556 (Kan. Ct. App. 1994). The appellant contends he is unlawfully confined, in violation of due process under the Fourteenth Amendment to the United States Constitution and Article IV, §3(B)(4) of the Ohio Constitution.

“When the General Assembly has written a clear and complete statute, this court has stated it will not use additional tools to produce an alternative meaning”. Id. at P12 State v. Pelfrey. “The express requirements of the statute cannot be fulfilled by *** **the incorporation of the indictment into the verdict form** and “if the meaning of the statute is clear on its face, then it must be applied as it is written”. R.C. 2945.75 (A)(2) Because the language of R.C. 2945(A) is clear, this court has explicitly expressed, it will not excuse the failure to comply with the statute or uphold [a] conviction based on additional circumstances. The major question is: (a) Since the trial court failed to include a charging statute and degree of the offense(s) as mandated pursuant to R.C. 2945(A) in the verdict forms, **Will this conviction be upheld?** To construe or interpret what is already plain is not interpretation, but legislation. This court also held that a structural error is not waived by the defendant's failure to object at trial or the defendant never raising the inadequacy of the jury verdict form. Id. at p.1 State v. Pelfrey.

On July 31, 2013, the trial court erred when it entered a judgment of conviction as described in the indictment as, *Felonious Assault and Abduction*.

Verdict Forms: *State v. Gibson* 2013-CR-0120

1. We the Jury, being duly impaneled and sworn, do hereby find the Defendant, Reginald Octave Gibson, **Guilty*** of *Felonious Assault* as charged in the indictment. **(here the trial court incorporated the indictment into the verdict form)**

And the same was returned signed by all twelve (12) jurors this 31st day of July 2013.

2. We the Jury, being duly impaneled and sworn, do hereby find the Defendant, Reginald Octave Gibson, **Guilty*** of *Abduction* as charged in the indictment. **(here the trial court incorporated the indictment into the verdict form)**

And the same was returned signed by all twelve (12) jurors this 31st day of July 2013.

Appellant argues a charging statute specifying the violation is not stated on the verdict forms, but **merely states only a general description** of a charge.

§ 2945.75 (A)(2): - (A) When the presence of one or more additional elements makes an offense one of more serious degree: (2) A guilty verdict shall state either the degree of the offense of which the offender is found guilty, **or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged.**

*Simple assault is a lesser-included offense of felonious assault. R.C. 2903.13(A) defines simple assault - provides that no person shall knowingly cause or attempt to cause physical harm to another. Assault is a crime of a lesser degree than felonious assault. Felonious assault is defined in Ohio Rev. Code §2903.11(A)(1) as knowingly causing serious physical harm to another. Simple assault is defined in §2903.13(A) as knowingly causing or attempting to cause physical harm to another. Therefore, felonious assault can never be committed without committing simple assault.

Therefore, the verdict forms in *State v. Gibson* is void. **Can his conviction be upheld?** **and Are the verdict forms valid in this case?** Moreover, **“Is he being held in custody in violation of the Constitution or laws or treaties of the United States.”?** This structural error is so fundamentally unfair, that it deprived him of a liberty protected interest in a right to a fair

trial under the Sixth Amendment and Equal Protection Clause. This deprivation of his protected liberty interest warrants relief. § 2725.01. When a petition for a writ of habeas corpus is presented, if it appears that the writ ought to issue, a court or judge authorized to grant the writ must grant it forthwith. §2725.06.

PROPOSITION OF LAW NO.4: The trial court lacked jurisdiction when it failed to excuse Juror # 137, (A CONVICTED FELON), during the Voir Dire, thus violating the Equal Protection Due Process Clause of the Fourteenth Amendment, Article I, Section 10 and 16 of the Ohio Constitution, Local Rule 5(A)(5) and R.C. 2961.01, depriving him of his protected liberty interest to the right to have an impartial jury guaranteed under the Sixth Amendment to the United States Constitution

The United States Constitution provides: The Trial of all Crimes shall be by Jury. United States Const., Art. III, § 2; See *Duncan v. Louisiana*, 392 U.S. 947, 88 S. Ct. 2270 (1968). In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. United States Const., Amend. VI; See also *Leach v. Kolb*, 911 F.2d 1249 (7th Cir. 1990).

Crim. R. 24 (*provides the procedure for impaneling a jury*)

Crim. R. 24.- (B) Examination of prospective jurors. Any person called as a prospective juror for the trial of any cause shall be examined under oath or upon affirmation as to the prospective jurors qualifications. **The court *** conduct may itself conduct the examination of the the prospective jurors.** (C) Challenge for cause - A person called as a juror may be challenged for the following causes: **(1) That the juror has been convicted of a crime which by law renders the juror disqualified to serve on a jury.**

*** The validity of each challenge listed in division (B) of this rule shall be determined by the court.**

Appellant contends improper procedures were followed during the impaneling of his jury. The trial court court failed to follow the mandates of **Crim. R. 24 (B),(C),and (1)**,

thereby rendering his conviction unconstitutional. Moreover, he argues when the trial court failed to excuse Juror # 137 sua sponte, *a convicted felon*, during the voir dire proceeding, this rendered the trial court without jurisdiction. Furthermore, the guilty verdict in his case void. An impartial jury violates the United States and Ohio Constitution's equal protection provision. During voir dire Juror #137 openly admitted to a "prior felony conviction". He stated, "**I have a prior felony conviction, got convicted.**" See July 23, 2013 Transcript page _____. Ohio Revised Code §2961.01 concerns the civil rights of convicted felons, specifically including the right to serve as a juror. It also provides that a person who either pleads guilty to **or is found guilty of a felony is incompetent to be an** elector **or juror** or to hold an office of honor, trust, or profit.

In the instant matter, the trial court should have sua sponte, conducted a further examination, inquiring regarding this particular juror felony conviction on the record. (*regarding the concerns if his civil rights had been restored by a full pardon*). The Revised Code and the Rules of Criminal Procedure, both include, catchall provisions allowing prospective jurors to be challenged for cause, if they are unsuitable for any other cause to serve as a juror. R.C. 2945.25(O); Crim. R. 24(C)(14). The trial court abused its discretion in allowing this convicted felon to serve as a juror in his case. *Note: (Juror #137 was never excused for cause on record).* See R.C. 2967.16(C)(1)

In interpreting a statute, courts are bound by the language enacted by the General Assembly, and it is their duty to give effect to the words used in a statute. *State v. White*, 103 Ohio St.3d 580, 2004 Ohio 5989, 817 N.E.2d 393. Thus, this constitutional concern was the

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responsibility of his trial judge to challenge the prospective juror. See *Butler v. City of Camden*, 352 F.3d 811 (3d Cir. 2003) (purposes of voir dire are to enable court to select impartial jury and to assist counsel in exercising peremptory challenges).

The appellant has been denied Due Process, Equal Protection, and right to an impartial jury under the Sixth Amendment to the United States Constitution, Article I, Section 10 and 16 of the Ohio Constitution, Local Rule 5(A)(5) and R.C. 2961.01, due to a convicted felon rendering his verdict. Additionally, the final judgment is void. **“The trial court acted in a manner inconsistent with Due Process of law.”** *Eckel v. MacNeal* 256 Ill. App. 3d 292, 628 N.E.2d 741, 195 Ill. Dec. 277 (M. App Dist. 1993). Presently, this Honorable Court must determine whether the trial court substantially complied has with **Crim. Rule 24 (B)(C)(1)**, by considering the circumstances and determining whether the found departure offends the standards of due process, and if his Sixth Amendment right to a fair and impartial jury was violated, and thus depriving him of his fundamental rights. In sum, the trial court lacked jurisdiction. His conviction resulted from violations of his constitutional rights imposed by the State under the United States Constitution. He has no adequate remedy under Ohio law. See *Klugh v. U.S.*, 620 F. Supp. 892 (D.S.C. 1985). Habeas corpus "is proper in the criminal context only if the petitioner is entitled to immediate release from prison or some other physical confinement." *Scanlon v. Brunsman*, 112 Ohio St.3d 151, 2006 Ohio 6522, 858 N.E.2d 411, ¶ 4. §2725.01

PROPOSITION OF LAW NO.5: The appellant's conviction violates the Sixth Amendment, *Jackson v. Virginia*, 443 U.S. 307, 321, 99 S. Ct. 2781, 61 L. Ed. 2D 560 (1979), the Due Process Clause under the Fourteenth Amendment to the United States Constitution, and Article I, Section 16 of the Ohio Constitution, thereby rendering its judgment void for want of jurisdiction

The Sixth Amendment, in conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Every criminal prosecution requires proof that the person accused of the crime is the person who committed the crime. This truism is reflected in the state's constitutional burden to prove the guilt of "the accused" beyond a reasonable doubt. In re *Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Like any fact, the state can prove the identity of the accused by {140 Ohio St. 3d 445} "circumstantial or direct" evidence. *State v. Jenks*, 61 Ohio St.3d 259, 272-273, 574 N.E.2d 492 (1991). The relevant question in a sufficiency-of-the-evidence review is whether, "after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." Id., at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

In this case, Gibson was convicted by a jury. The jury were never instructed on the elements of the offense. The final verdict states; he is guilty of "Felony Assault, and Abduction". The verdict forms do not contain a charging statute or any elements of the offenses.

ELEMENTS OF THE OFFENSE:

No person shall knowingly do either of the following: (1) Cause serious physical harm to another, (2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear.

The appellant's conviction was procured by the State solely on deception, conflicting testimonies, and cumulative constitutional violations . The trial court failed to instruct the jury on the necessity of proof of the elements of the offenses in the indictment. The court on its own motion after the evidence was presented on both sides was closed, should have entered an order of acquittal. The evidence was insufficient to sustain his conviction.

Furthermore, he contends that he was denied the right to a fair trial due to the fact, the trial court in this case granted his Motion for Additional Discovery, the additional records with duces tecum was to be obtained from; (1) Google Inc., (2) Safe-link Wireless, and (3) Reach-out Wireless to aid in his defense. The trial court erred as a matter of law and fact and abused its discretion to the prejudice of the appellant in refusing to grant a reasonable continuance to prepare for trial. This was necessitated when the trial court subpoenaed these records to determine whether they were material and favorable to his defense. See *Love v. Johnson*, 57 F.3d 1305 (4th Cir. 1995). The question now is one of sufficiency of the evidence and jurisdiction: (a) “Whether the Court of Common Pleas application of the *Jackson v. Virginia* standards was objectively reasonable? and **(b)** Is the judgment in this case void for lack of jurisdiction due to insufficient evidence?

Gibson argues that is entitled to immediate release from prison because trial the court which issued the order of his confinement lacked jurisdiction, violated Equal Protection, and Due Process under the United States and Ohio Constitution. Since he has no adequate remedy under Ohio law. The Ohio Constitution art IV, § 2, and R.C. 2725.02 confer jurisdiction on the Supreme Court to hear and determine petitions for habeas corpus: *Russell v. Maxwell*, 348 F.2d 908, 5 Ohio Misc. 245, 33 Ohio Op. 2d 306, 1965 U.S. App. LEXIS 4822 (6th Cir. Ohio 1965).

PROPOSITION OF LAW NO.6: Whether the trial court dismissal of the appellant's Postconviction Relief Petition without issuing its Finding of Facts and Conclusion of Law as mandated by §2953.21(C), was an abuse of discretion, and violates the Equal Protection Clause and due process of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution, thereby depriving him of his protected liberty interest to appeal the claims of denial of his federal rights.

The postconviction statute, §2953.21, written by legislature, provide a collateral remedy to allow a prisoner to file a petition in the trial court claiming “denial or infringement of his rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States...”. Pursuant to R.C.2953.21(E), the court shall have proceeded to an evidentiary hearing on the constitutional claims presented in the appellant's case because there were substantive grounds for relief. The appellant submitted in support of his post-conviction relief petition; affidavits, documentary evidence, files and records pertaining to the proceedings

against him, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript.

Gibson asserts that Judge Heath's ruling on his May 23, 2014 Post-conviction Motion, **was an abuse of discretion**, and not a proper ruling, as it did not include a journalized **FINDINGS OF FACT AND CONCLUSIONS OF LAW** as required for judgments dismissing postconviction relief under R.C. 2953.21. **The order of dismissal in his case was not a final appealable without the FINDINGS OF FACT AND CONCLUSIONS OF LAW pursuant to R.C. 2953.21(C).** See *State v. Mapson*. The rationale for requiring findings of fact and conclusions of law is to apprise the petitioner of the reasons for the trial court's judgment and to permit meaningful appellate review. *State v. Mapson* (1982), 1 Ohio St. 3d 217, 219, 1 Ohio B. Rep. 240, 242, 438 N.E.2d 910, 912. Additionally, the trial court did not sufficiently apprise the appellant-petitioner of the reasons for its judgment of dismissal, thereby permitting him to a meaningful appellate review.

In *State v. Lester* (1975), 41 Ohio St. 2d 51, 70 O.O. 2d 150, 322 N.E.2d 656, paragraph two of the syllabus, **this court held that findings of fact and conclusions of law are mandatory** under R.C. 2953.21, if the trial court dismisses a post-conviction relief petition. In *Mapson* it was stated:

"* * * The obvious reasons for requiring findings are '* * * to apprise petitioner of the grounds for the judgment of the trial court and to enable the appellate {530 N.E.2d 1331} courts to properly determine appeals in such a cause.' *Jones v. State* (1966), 8 Ohio St. 2d 21, 22 [37 O.O. 2d 357]. The exercise of findings and conclusions are essential in order to prosecute an appeal. Without them, a petitioner knows no more than [that] he lost and hence is effectively precluded from making a reasoned appeal. In addition, the failure of a trial judge to make the requisite findings prevents any meaningful judicial review, for it is the findings and the conclusions which an appellate court reviews for error."

This court has restated the familiar rule of statutory construction: In *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004 Ohio 4960, 815 N.E.2d 1107. A court's paramount concern in construing a statute is legislative intent. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005 Ohio 4384, 833 N.E.2d 274, ¶ 21, citing *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004 Ohio 4960, 815 N.E.2d 1107, ¶ 21. To discern legislative intent, this court first consider the statutory language, reading the words and phrases in context, according to rules of grammar and common usage. R.C. 1.42; *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005 Ohio 5362, 840 N.E.2d 582, ¶ 40. The court may not delete or insert words, but must give effect to the words the General Assembly has chosen. *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 39-40, 2001 Ohio 236, 741 N.E.2d 121 (2001). When a statute is unambiguous, a court must apply it as written. *Id.* at 40. *In reference to 2953.21(C)*.

In the case at bar, the trial court departed from the established requirements of law. This amounted to a denial of due process and Equal Protection. "When due process is violated a court is deprived of juris[diction]". Additionally, because the court failed to follow the **mandates of §2953.21(C)**, it was deprived of juris. This Honorable Court can adjudicated the federal claims now presented in this petition.

In 1949 the United States Supreme Court specifically held that persons in custody under conviction in a state court must be afforded some clearly defined method by which they can raise claims of denial of federal rights. *Young v. Ragen*, 337 U.S. 235, 238 (1949). R.C. 2953.21 Appellant has exhausted remedies available to him in the state courts prior to the filing of this brief. Under Ohio Revised Code § 2725.02, he has a right to perfect an appeal to this Supreme

Court of Ohio from the August 3, 2015 decision of the Eleventh District Court of from the August 3, 2015 decision of the Eleventh District Court of Appeals in his original petition for a writ of habeas corpus. Thus far his constitutional claims have yet to be ruled upon the merits of his contentions. He has perfected an appeal of right as defined by S.Ct. Prac.R. 5.01(A)(3). Therefore, this court has jurisdiction to hear and determine his petition for habeas corpus. Ohio Const. Art. 4, § 2. Jurisdiction is likewise conferred on this Supreme Court by statute, Ohio Rev. Code Ann. §2725.02.

The appellant is unlawfully restrained of his liberty. He is requesting this court to conduct an oral hearing, and order his immediate release as a result of the unlawful imprisonment. His conviction resulted from the deprivation of his constitutional rights. Moreover, when a petition for a writ of habeas corpus is presented, if it appears that the writ ought to issue, a court or judge authorized to grant the writ must grant it forthwith. § 2725.06

PROPOSITION OF LAW NO.7: Whether a bias judge, as such in appellant's case, is structural error? Does it deprive the trial court of jurisdiction? Does it violate the Equal Protection and Due process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 and 16 of the Ohio Constitution?

Judicial bias is described as a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contra-distinguished from an open state of mind which will be governed by the law and the facts. *State ex rel. Pratt v. Weygandt* (1956), 164 Ohio St. 463, 58 O.O. 315, 132 N.E. 2d 191, paragraph four of the syllabus; see, also, *Cleveland Bar Assn. v. Cleary* (2001), 93 Ohio St. 3d 191, 201, 754 N.E.2d 235.

The Fourteenth Amendment's Due Process Clause requires a fair trial in a fair tribunal under the federal constitution. The appellant contends that the judge in his trial proceedings should not have presided over his case because he was bias. *Harrison v. McBride*, 428 F.3d 652 (7th Cir. 2005) (petitioner was deprived of due process right to trial by a judge free from actual bias). Moreover, he has been deprived of his liberty without the safeguards of common-law procedure because the judge's conduct indicated a bias against the petitioner. It is elementary that "a fair trial in a fair tribunal is a basic requirement of due process." In re *Murchison*, 349 US 133, 136, 99 L Ed 942, 75 S Ct 623 (1955). A necessary component of a fair trial is an impartial <*pg. 16> judge. See *ibid.* The appellant has been unconstitutionally deprived of due process of law because his liberty was subjected to the judgment of a court in which the judge had a direct and substantial pecuniary interest in reaching a conclusion against him. His trial judge is guilty of "provocation", "hostility", "bias" and "lack of impartiality". See July 23, 2013 Trial transcripts page(s)_____.

In the instant matter, the judge in his case should have disqualified himself because he had prejudged his case and made a predisposition. This cannot be said within the meaning of the **constitutional guarantees to be a fair and impartial tribunal**. *Jordan v. Massachusetts*, 225 US 167, 56 L ed 1038, 32 S Ct 651; *Adams v. United States*, 317 US 269, 87 L ed 268, 63 S Ct 236, 143 ALR 435; *Cooke v. United States*, 267 US 517, 69 L ed 767, 45 S Ct 390; *Re Dingley*, 182 Mich 44, 148 NW 218. See also *Re Richardson*, 247 NY 401, 160 NE 655; *Re Oliver*, 333 US 257, 92 L ed 682, 68 S Ct 499. " In general, the standard for evaluating whether a habeas petition alleges

judicial bias amounting to a denial of due process is whether the judge was 'actually biased or prejudiced against the petitioner.' *Nichols v. Sullivan*, 867 F.2d 1250, 1254 (10th Cir. 1989) (citation omitted).

Furthermore, he asserts there has been a violation of a core constitutional privilege critical to the reliability of the criminal process. He has a strong claim that fairness favors review. *In re Murchison*, his conviction is the product of judicial bias based on improper extrajudicial motives so extreme as to display clear inability to render fair judgment. *Liteky*, 510 U.S. at 545, 551, 114 S. Ct. at 1152, 1155, 127 L. Ed. 2d at 484-485, 488. A judge has a duty under Ohio Code Prof. Resp. DR 1-102(A)(5), to deal fairly with attorneys **and litigants** who come before the court. Accordingly, Gibson's judge acted in a manner prejudicial to the administration of justice within the meaning of Ohio Code Prof. Resp. DR 1-102(A)(5), when he engaged in conduct appearing to an objective observer to be unjudicial and prejudicial to the public esteem for the judicial office. The presence of a biased judge on the bench is, of course, a paradigmatic example of **structural constitutional error**, which if shown requires reversal without resort to harmless-error analysis. Gibson main argument is his trial judge was unconstitutionally biased and his removal should have been sought by the his trial counsel. Even more, his appellate counsel should have accused trial counsel of ineffectiveness for not doing so. In essence, this court must consider the underlying issue of whether the trial court was indeed biased. Judicial bias is a deep-seated favoritism or antagonism that makes fair judgment impossible. See *Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66, 91 S. Ct. 499, 27 L. Ed. 2d

532 (1971). A biased decision-maker is constitutionally unacceptable. *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). "[T]he Due Process Clause clearly requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-05, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (internal quotation marks and citation omitted); *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio Law Abs. 159, 5 Ohio Law Abs. 185, 25 Ohio L. Rep. 236 (1927).

The core of this pivotal claim is based upon a denial of his Sixth, Eighth, and Fourteenth Amendment rights guaranteed under the United States Constitution and Article I, Section 9, 10, and 16 of the Ohio Constitution. The United States Supreme Court has specifically allowed the use of the writ of habeas corpus to enforce such rights. *Fay v. Noia* (1963), 372 U.S. 391. Therefore, his writ shall be granted in the case at bar. § 2725.02.

CONCLUSION

The writ of habeas corpus is one of the protections of individual liberties enshrined in our Constitution. On the record in this case, despite the Attorney General's failure to address the constitutional claims of the appellant. It is clear that Gibson's asserted denial of Due Process and Equal Protection is properly before this court. He has without a doubt, been denied the "fundamental fairness guaranteed by the Sixth, Eighth, and Fourteenth Amendment to the United States Constitution and Article I, Section 9, 10, and 16 of the Ohio Constitution". **His conviction was procured by the State's infringement of his rights in contravention of the laws of the United States Constitution** as to render the judgment void or voidable under the State and

Federal Constitution. It was a abuse of discretion when the Eleventh District Court of Appeals dismissed his habeas petition. His, claims, the substance of which contained sufficient factual matters that, if accepted as true, stated claims for relief that was plausible upon its face. All prior court rulings, thus far, has frustrated his efforts to get relief. The Eleventh District decision undermines the structure and purpose of the Great Writ of habeas corpus. Such a ruling as rendered by the Court of Appeals in his case, in the future, will allow the courts to disregard the constitutional rights of defendants in order to obtain a conviction.

The writ of habeas corpus exists to allow those in the custody of the state to challenge in court the fact, duration and lawfulness of that custody. As the United States Court of Appeals for the Third Circuit has aptly noted: "The underlying purpose of proceedings under the 'Great Writ' of habeas corpus has traditionally been to 'inquire into the legality of the detention, and the only judicial relief authorized was the discharge of the prisoner and that only if his detention were found to be unlawful.' " *Powers of Congress and the Court Regarding the Availability and Scope of Review*, 114 Harv. L.Rev. 1551, 1553 (2001)." *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002).

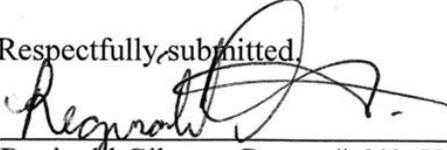
Habeas corpus relief is premised on violations of constitutional proportion. One major factor which exist here, is that, the Judge's reason for denying Gibson bail was, as stated; **“I was right here just faced with the thing”**, and **“Don't get your hopes up because I'm not letting you out”**. (Hearing date): May 28, 2013 (Transcript p.16-17). The state court violated his due process rights by denying the appellant bail, in violation of Article I, Section 9, of the Ohio Constitution and the Eighth and Fourteenth Amendments to the United States Constitution.

The decision of the Eleventh Appellate District Court of Appeals, dismissing his habeas

petition is fundamentally wrong in its reasoning. In the interest of justice, habeas relief by this Honorable Supreme Court will promote the basic principle of the Great Writ of Habeas Corpus, in a civilized society in which the government must always be accountable to the judiciary for a man's imprisonment: **if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.** *Fay v. Noia*, 372 U.S. 391 (1963).

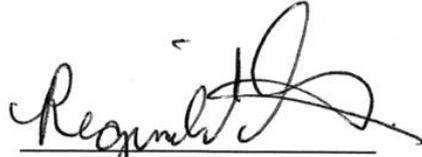
A \$ 500,000 surety bond was clearly excessive under our constitutional limitations and the circumstances of his case. The amount of the bond ordered in this case appears unprecedented. The constitutional right to bail is applied by considering the state's interest in compelling the accused's presence at trial. Section 9, Article I of the Ohio Constitution prohibits excessive bail; that is, any amount of bail that goes beyond that necessary to secure the presence of the accused at trial. See Crim.R. 46(A). When the state, as here, admits that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more. *United States v. Salerno* (1987) 481 U.S. 739, 754, 95 L. Ed. 2d 697, 107 S. Ct. 2095; *State ex rel. Baker v. Troutman* (1990), 50 Ohio St. 3d 270, 272, 553 N.E.2d 1053.

Pursuant to Ohio Rev. Code Ann. §2725.01, a writ of habeas corpus will lie to compel the release of an individual whose present incarceration in a penitentiary is unlawful. "The writ of habeas corpus shall not extend to a prisoner unless * * * **“He is in custody in violation of the Constitution or laws or treaties of the United States.”**

Respectfully submitted,

Reginald Gibson, Pro se # 643-525
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030-8000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Breif of Petitioner-Appellant Reginald Gibson has been sent by U.S. Mail, first-class postage prepaid to Mike DeWine, Ohio Attorney General, State Office Tower,30 East Broad Street 25th Floor, Columbus, Ohio 43215, on this 18th day of September, 2015.


Reginald Gibson, *pro se*

APPENDIX

IN THE SUPREME COURT OF OHIO

STATE ex rel., REGINALD GIBSON,

CASE NO. 2013-CR-0120

Petitioner - Appellant,

On Appeal from the Ashtabula County
Court of Appeals, Eleventh Appellate
District

v.

C.A. No. 2014-CA-00073

15-1381

BRIGHAM SLOAN Warden,

Respondent -Appellee

NOTICE OF APPEAL OF PETITIONER - APPELLANT REGINALD GIBSON

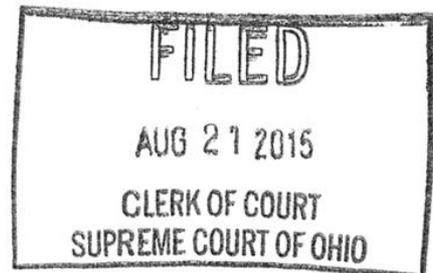
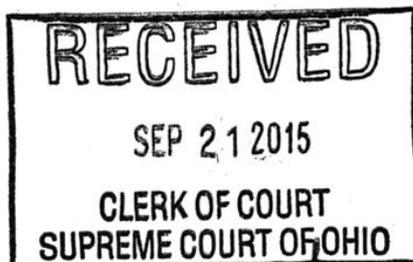
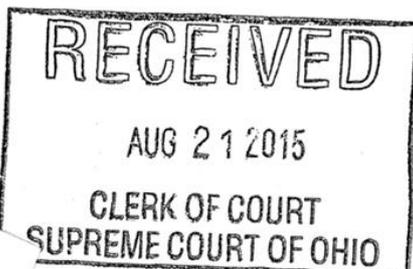
STATE ex rel., REGINALD GIBSON - #643-525
LAKE ERIE CORRECTIONAL INSTITUTION
501 THOMPSON ROAD
P.O. BOX 8000
CONNEAUT, OH 44030-8000

DEFENDANT-APPELLANT, *Pro Se*

BRIGHAM SLOAN Warden
501 THOMPSON RD
P.O. BOX 8000
CONNEAUT, OHIO 44030

MIKE DeWINE, OHIO ATTORNEY GENERAL
STATE OFFICE TOWER
30 EAST BROAD STREET 25TH FLOOR
COLUMBUS, OH 43215

COUNSEL FOR APPELLEE: STATE OF OHIO



IN THE SUPREME COURT OF OHIO

STATE ex rel., REGINALD GIBSON,

CASE NO. 2013-CR-0120

Petitioner - Appellant,

On Appeal from the Ashtabula County
Court of Appeals, Eleventh Appellate
District

v.

C.A. No. 2014-CA-00073

BRIGHAM SLOAN Warden,

Respondent -Appellee

NOTICE OF APPEAL OF PETITIONER - APPELLANT REGINALD GIBSON

STATE ex rel., REGINALD GIBSON - #643-525
LAKE ERIE CORRECTIONAL INSTITUTION
501 THOMPSON ROAD
P.O. BOX 8000
CONNEAUT, OH 44030-8000

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BRIGHAM SLOAN Warden
501 THOMPSON RD
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CONNEAUT, OHIO 44030

MIKE DeWINE, OHIO ATTORNEY GENERAL
STATE OFFICE TOWER
30 EAST BROAD STREET 25TH FLOOR
COLUMBUS, OH 43215

COUNSEL FOR APPELLEE: STATE OF OHIO

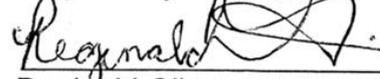
IN THE THE SUPREME COURT OF OHIO

NOTICE OF APPEAL OF PETITIONER- APPELLANT, REGINALD GIBSON

Now comes the Petitioner-Appellant, STATE ex rel., Reginald Gibson, acting *pro se*, and hereby gives notice of appeal to the Supreme Court of Ohio from a judgment of the Ashtabula County Court of Appeals, Eleventh Appellate District, dismissal of his Petition for Writ of Habeas Corpus pursuant to 2725.01, in Court of Appeals case No. CA-2014-00073, entered this 8th day of August, 2015.

This cause originated in the Eleventh District Court of Appeals, Ashtabula County and this is an appeal as of right.

Respectfully submitted,



Reginald Gibson - #643-525
Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been sent by U.S. Mail, first-class postage prepaid, to the Clerk of the Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215.

this 10th day of August, 2015.


Petitioner-Appellant, *pro se*

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO



STATE OF OHIO ex rel. REGINALD GIBSON,	:	PER CURIAM OPINION
	:	
Petitioner,	:	
	:	CASE NO. 2014-A-0073
- vs -	:	
	:	
BRIGHAM SLOAN,	:	
	:	
Respondent.	:	

FILED
COURT OF APPEALS

AUG 03 2015

JIM PENTIK, CLERK OF COURTS
ASHTABULA COUNTY, OHIO

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Reginald Gibson, pro se, PID A643-525, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Petitioner).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, 25th floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} Reginald Gibson petitions this court to issue its writ of habeas corpus to Brigham Sloan, Warden of the Lake Erie Correctional Institution. Mr. Gibson contends Warden Sloan is confining him in contravention of law. We dismiss the petition.

{¶2} In August 2013, Mr. Gibson was convicted of felonious assault and abduction in the Stark County Court of Common Pleas, and sentenced to a total term of eight years imprisonment. *State v. Gibson*, 5th Dist. Stark No. 2013CA00175, 2014-

Ohio-1169, ¶1, 12, 14 (“*Gibson I*”). The Supreme Court of Ohio declined a discretionary appeal. *State v. Gibson*, 140 Ohio St.3d 1418, 2014-Ohio-3785. In February 2014, Mr. Gibson petitioned the trial court for post-conviction relief, which that court denied on the basis that all claims were barred by res judicata, since they could have been raised on direct appeal. *State v. Gibson*, 5th Dist. Stark No. 2015CA00039, 2015-Ohio-2055, ¶6 (“*Gibson II*”). Mr. Gibson further applied to the Fifth District to reopen his appeal, pursuant to App.R. 26(B), which application was denied. *Id.* at ¶7. In June 2014, Mr. Gibson then filed a second petition for post-conviction relief with the Fifth District itself, to which the state responded. *Id.* at ¶8. The Fifth District dismissed for lack of jurisdiction; and the trial court, too, dismissed the petition, finding Mr. Gibson had not met the prerequisites for filing a successive petition for post-conviction relief, and that his claims were barred by res judicata. *Id.* Mr. Gibson appealed the trial court’s dismissal to the Fifth District, which affirmed. *Id.* at ¶45.

{¶3} December 2, 2014, Mr. Gibson filed the instant petition. March 26, 2015, he moved for judgment on the pleadings, since Warden Sloan had not answered.

{¶4} In *Keith v. Kelley*, 11th Dist. Trumbull No. 2009-T-0056, 2009-Ohio-6711, ¶17, this court stated: “In regard to the elements of a habeas corpus claim, this court has stated on numerous occasions that such a writ will lie only when the prisoner can establish: (1) an unlawful restraint of his liberty; and (2) the absence of any alternative remedy at law. *State ex rel. Waites v. Gansheimer*, 11th Dist. No. 2006-A-0003, 2006-Ohio-1702, at ¶4.” In *State v. Sands*, 11th Dist. Lake No. 2012-L-096, 2013-Ohio-2822, ¶19, this court observed: “The court further notes the Supreme Court of Ohio recently held that ‘(r)es judicata bars (appellant) from using habeas corpus to obtain a

STATE OF OHIO)
)SS.
COUNTY OF ASHTABULA)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO ex rel.
REGINALD GIBSON

JUDGMENT ENTRY

Petitioner,

CASE NO. 2014-A-0073

- vs -

BRIGHAM SLOAN, WARDEN,

Respondent.

FILED
COURT OF APPEALS

AUG 03 2015

TAMI BENTLEY, CLERK OF COURTS
ASHTABULA COUNTY, OHIO

For the reasons stated in the Per Curiam Opinion of this court, the petition for a writ of habeas corpus is dismissed. All pending motions are hereby overruled.

Costs to be taxed against petitioner.



PRESIDING JUDGE TIMOTHY P. CANNON



JUDGE THOMAS R. WRIGHT



JUDGE COLLEEN MARY O'TOOLE

APPEAL 2ND TRIAL COURT
PCN

NANCY S. REINBOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

15 MAY 26 PM 2:34

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO :
 :
 Plaintiff - Appellee :
 :
 -vs- :
 :
 REGINALD OCTAVE GIBSON :
 :
 Defendant - Appellant :

JUDGES:
 Hon. W. Scott Gwin, P.J.
 Hon. John W. Wise, J.
 Hon. Craig R. Baldwin, J.

Case No. 2015CA00039

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court
of Common Pleas, Case No.
2013CR0120

Heath

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
Prosecuting Attorney

REGINALD OCTAVE GIBSON, pro se
Inmate # 643-525
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, OH 44030

By: RENEE M. WATSON
Assistant Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, OH 44702

P 5

ATRUE COPY TESTE
NANCY S. REINBOLD, CLERK
Date 5/26/15

Baldwin, J.

{¶1} Appellant Reginald Octave Gibson appeals a judgment of the Stark County Common Pleas Court dismissing his petition for postconviction relief. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} In January of 2013, appellant assaulted his girlfriend during a stay at a motel, causing broken bones and lacerations to her face. She attempted to flee to a neighboring room, but appellant dragged her back to the room by her hair. After appellant fell asleep, she escaped and called the police. When police arrived, they found appellant with his girlfriend's blood on his hands and face. Appellant was charged with felonious assault and abduction.

{¶3} Appellant hired two attorneys who both withdrew before trial. Appellant desired to proceed pro se. After a hearing, appellant insisted on representing himself, and the court appointed standby counsel.

{¶4} The matter proceeded to jury trial. Appellant was convicted as charged and sentenced to eight years incarceration for felonious assault and 36 months incarceration for abduction, to be served concurrently.

{¶5} Appellant filed a timely appeal and was represented by counsel on appeal. This Court affirmed his conviction and sentence on March 17, 2014. *State v. Gibson*, 5th Dist. Stark No. 2013CA00175, 2014-Ohio-1169.

{¶6} Appellant filed a petition for postconviction relief on February 5, 2014. The trial court dismissed his petition as res judicata on May 23, 2014, as all of his claims

could have been raised on direct appeal. Appellant did not file an appeal from this decision.

{¶7} While his motion for postconviction relief was pending in the trial court, appellant filed a pro se motion on April 15, 2014, with this Court to reopen his direct appeal pursuant to App. R. 26(B), which was denied.

{¶8} On June 19, 2014, appellant filed a second pro se motion for postconviction relief, presenting 33 claims, which he improperly filed with this Court. We dismissed the petition for want of jurisdiction on July 30, 2014. Appellant did not re-file the petition in the Common Pleas Court, but the State nevertheless responded to the petition and appellant filed a reply. Appellant also filed a writ of procedendo in the Ohio Supreme Court, seeking an order for the trial court to rule on his petition. While the writ was pending, the trial court dismissed appellant's petition. The trial court found that appellant had not demonstrated or argued the prerequisites for filing a second or successive postconviction petition pursuant to R.C. 2953.23, and the court was therefore without jurisdiction to rule on his petition. The court further found that his claims were barred by res judicata.

{¶9} Appellant assigns thirty-three errors to this Court on appeal from this judgment:

{¶10} 1. APPELLATE (SIC) WAS DENIED HIS DUE PROCESS RIGHT DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶11} 2. THE TRIAL COURT ERRED BY SETTING THE APPELLATE (SIC) BOND SO EXCESSIVE.

{¶12} 3. THE TRIAL COURT ERRED BY NOT COMPELLING THE STATE TO PRODUCE ALL EXCULPATORY EVIDENCE.

{¶13} 4. THE TRIAL COURT ERRED DENYING APPELLATE (SIC) THE RIGHT TO A FAIR TRIAL.

{¶14} 5. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) REQUEST FOR A CONTINUANCE TO PREPARE FOR TRIAL BECAUSE THE STATE FAILED TO PROVE APPELLATE (SIC) GUILT BEYOND A REASONABLE DOUBT.

{¶15} 6. PROSECUTOR INFLAMMATORY STATEMENT DENIED APPELLATE (SIC) A FAIR TRIAL.

{¶16} 7. THE TRIAL COURT ERRED DENYING APPELLATE (SIC) EXPERT ASSISTANCE.

{¶17} 8. THE TRIAL COURT ERRED BY NOT PROVIDING APPELLATE (SIC) WITH A COPY OF THE TRANSCRIPTS OF HIS PROCEEDINGS.

{¶18} 9. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) POST-CONVICTION RELIEF APPEAL UNDER THE DOCTRINE OF RES JUDICATA.

{¶19} 10. THE TRIAL COURT ERRED IN HOLDING A PRO SE LITIGANT TO THE SAME STANDARDS AS A LICENSED ATTORNEY, WHILE DENYING HIM EFFECTIVE ACCESS TO LAW MATERIALS.

{¶20} 11. DUE TO BRADY VIOLATIONS THE APPELLATE (SIC) WAS DENIED HIS DUE PROCESS RIGHTS.

{¶21} 12. APPELLATE (SIC) WAS DEPRIVED HIS SIXTH AMENDMENT RIGHT TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL.

{¶22} 13. WHEN THE TRIAL JUDGE FAILED TO DO HIS/HER DUTY, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶23} 14. DUE TO MISCONDUCT OF APPELLATE (SIC) HIRED COUNSEL, APPELLATE (SIC) WAS DENIED INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶24} 15. THE TRIAL COURT VIOLATED DUE PROCESS AND COMMITTED PLAIN ERROR, BY FINDING APPELLATE (SIC)-DEFENDANTBGUILTY (SIC) WITHOUT OFFERING HIM AN OPPORTUNITY TO PRESENT A FULL DEFENSE.

{¶25} 16. APPELLATE (SIC) CONVICTIONS WAS OBTAINED UNCONSTITUTIONALLY DUE TO UNFAIR CONDUCT BY THE PROSECUTOR.

{¶26} 17. THE PROSECUTION FAILED TO COMPLY WITH OHIO RULE OF CRIMINAL PROCEDURE, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶27} 18. DUE TO THE PROSECUTION CONCEALMENT OF INFORMATION AND EVIDENCE, APPELLATE (SIC) CONVICTIONS WAS OBTAINED UNCONSTITUTIONALLY.

{¶28} 19. THE TRIAL COURT ERRED BY NOT ALLOWINGTHE (SIC) JURY TO DETERMINE ALL MATERIAL FACTS IN THE CASE.

{¶29} 20. DUE TO INEFFECTIVE PRETRIAL COUNSEL, APPELLATE (SIC) WAS DENIED A FAIR TRIAL.

{¶30} 21. APPELLATE (SIC) WAS DENIED DUE PROCESS BECAUSE THE PROSECUTOR WAS WORKING UNDER THE COLOR OF LAW.

{¶31} 22. THE TRIAL COURT ERRED BY FORCING THE APPELLATE (SIC) TO TESTIFY VIOLATING HIS FIFTH AMENDMENT RIGHT.

{¶32} 23. APPELLATE (SIC) COUNSEL FAILED TO OBTAIN A COMPLETE RECORD OF ALL TRANSCRIPT PROCEEDINGS FOR APPEAL COURT REVIEW, DENYING HIM DUE PROCESS RIGHTS.

{¶33} 24. WHEN STANDBY COUNSEL FAILED TO SUBPOENA MATERIAL WITNESSES, APPELLATE (SIC) WAS DENIED DUE PROCESS AND A RIGHT TO A FAIR TRIAL.

{¶34} 25. WHEN THE TRIAL COURT ERRED BY NOT HOLDING ANY PRETRIAL HEARINGS, APPELLATE (SIC) WAS DENIED DUE PROCESS.

{¶35} 26. DUE TO PROSECUTORIAL MISCONDUCT AND VINDICTIVENESS, APPELLATE (SIC) WAS DEPRIVED HIS SIXTH AND FOURTEENTH RIGHTS TO THE U.S. CONSTITUTION.

{¶36} 27. DUE TO COMULATIVE CONSTITUTIONAL ERRORS, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHTS.

{¶37} 28. THE TRIAL COURT ERRED BY NOT ALLOWING APPELLATE (SIC) TO BE PRESENT AT HIS BOND HEARING, APPELLATE (SIC) WAS DEPRIVED HIS DUE PROCESS RIGHT WHEN.

{¶38} 29. THE TRIAL COURT ERRED BY PERMITTING THE PROSECUTOR TO SPEAK ON EVIDENCE IN THE PRESENCE OF THE JUDGE.

{¶39} 30. THE TRIAL COURT ERRED BY NOT PRESERVING THE WRITTEN STATEMENT OF THE STATE'S WITNESS.

{¶40} 31. APPELLATE (SIC) WAS DENIED EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶41} 32. WHEN APPELLATE (SIC) HIRED COUNSEL(S) FAILED TO MOTION FOR AN EVIDENTIARY AND SUPPRESSION HEARING, APPELLATE (SIC) WAS DEPRIVED OF HIS DUE PROCESS RIGHTS.

{¶42} 33. THE TRIAL COURT ERRED WHEN IT DENIED APPELLATE (SIC) REQUEST TO RETAIL (SIC) COUNSEL AT SENTENCING.

{¶43} The trial court found that it did not have jurisdiction to entertain appellant's second petition for postconviction relief pursuant to R.C. 2953.23, which provides:

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an

earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual

innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, "actual innocence" has the same meaning as in division (A)(1)(b) of section 2953.21 of the Revised Code, and "former section 2953.82 of the Revised Code" has the same meaning as in division (A)(1)(c) of section 2953.21 of the Revised Code.

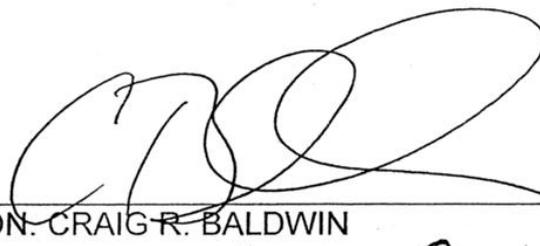
{¶44} Appellant did not argue or demonstrate the statutory grounds for entertaining a second petition for postconviction relief pursuant to these statutory requirements. The trial court therefore did not err in dismissing the petition.

{¶45} Appellant's thirty-three assignments of error are overruled, and the judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.



HON. CRAIG R. BALDWIN



HON. W. SCOTT GWIN



HON. JOHN W. WISE

CRB/rad

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

15 MAY 26 PM 2:31
NANCY S. REIBOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

STATE OF OHIO

Plaintiff - Appellee

-vs-

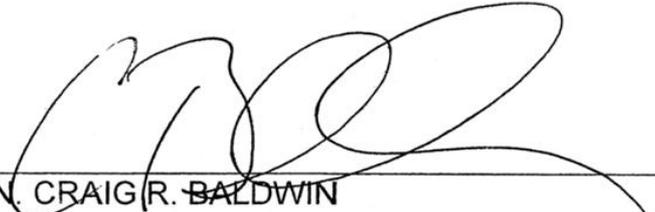
REGINALD OCTAVE GIBSON

Defendant - Appellant

JUDGMENT ENTRY

CASE NO. 2015CA00039

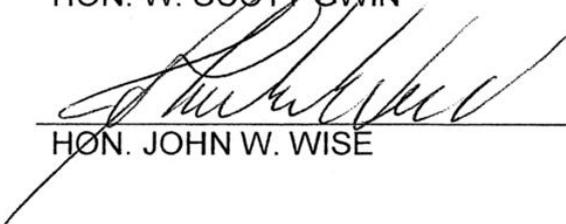
For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs are assessed to appellant.



HON. CRAIG R. BALDWIN



HON. W. SCOTT GWIN

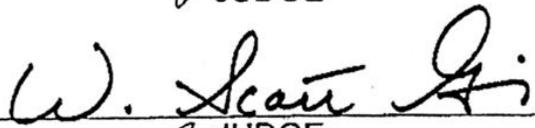


HON. JOHN W. WISE

MOTION DENIED.
CAUSE DISMISSED.
COSTS TO APPELLANT.
IT IS SO ORDERED.



JUDGE



JUDGE



JUDGE

FILED
MAY 23 2014
NANCY S. REINGOLD
STARK COUNTY OHIO
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO)	CASE NO. 2013CR0120
)	
Plaintiff-Respondent)	JUDGE TARYN L. HEATH,
)	
vs.)	
)	JUDGMENT ENTRY
)	(Granting State's Motion to
)	Dismiss and Motion for
)	Summary Judgment and
)	Dismissing Defendant-
)	Petitioner's Petition for Post-
)	Conviction Relief)
)	
)	
REGINALD GIBSON)	
)	
)	
Defendant-Petitioner)	

This matter came before the Court upon the defendant-petitioner, Reginald Gibson's ("Defendant-Petitioner") Petition to Vacate or Set Aside Judgment of Conviction or Sentence. This Court shall treat said Petition as a Petition for Post-Conviction Relief pursuant to R.C. § 2953.21. The State of Ohio filed a response and Motion to Dismiss and for Summary Judgment. The defendant-petitioner did not file a reply but did file a Request for Findings of Fact and Conclusions of Law¹.

I. Background

In January, 2013, the defendant-petitioner was at a motel with his girlfriend, Darlene Quarterman. During their stay, he viciously assaulted her, causing broken bones and lacerations to her face. Quarterman attempted to flee at one point, making it as far as

¹ Upon review of Defendant-Petitioner's Request for Findings of Fact and Conclusions of Law it appears that the State's Response and Motion to Dismiss and Summary Judgment, filed February 10, 2014 was believed by the Defendant-Petitioner to be this Court's ruling dismissing his Petition. This Court was without jurisdiction to rule on Defendant-Petitioner's Petition until the Fifth District Court of Appeals issued its decision.

a neighboring room, but defendant-petitioner dragged her back into the room by her hair. As a result of these actions, defendant-petitioner was later charged with felonious assault, a felony of the second degree and abduction, a felony of the third degree.

Defendant-Petitioner hired two attorneys who both withdrew from the case before trial. In July 2013, the trial court held a hearing on Defendant-Petitioner's second attorney's motion to withdraw and Defendant-Petitioner's desire to proceed pro se. Although this Court spent a significant amount of time urging him to the contrary, Defendant-Petitioner insisted on representing himself. In an abundance of caution, however, this Court appointed stand-by counsel for both trial and sentencing.

The matter proceeded to a jury trial in July 2013. The state presented 6 witnesses and Defendant-Petitioner presented 3, including his own testimony. After hearing all the evidence and deliberating, the jury found Defendant-Petitioner guilty as charged. He was later sentenced to 8 years for felonious assault and 36 months for abduction to be served concurrently.

Defendant-Petitioner then filed a Notice of Appeal on August 28, 2013. Defendant-Petitioner was represented during the course of his appeal to the Fifth District by Attorney Eugene O'Byrne. Defendant-Petitioner raised three assignments of error on appeal. The Court of Appeals overruled the defendant-petitioner's three assignments of error and upheld his conviction and sentence on March 17, 2014. Thereafter, Defendant-Petitioner filed a Motion to Reopen with the Fifth District Court of Appeals on April 15, 2014 which was subsequently denied on May 14, 2014. Based upon the Fifth District Court of Appeals decision on May 14, 2014 this Court now has jurisdiction to rule on Defendant-Petitioner's Petition for Post-Conviction Relief.

Defendant-Petitioner has asserted in his Petition for Post-Conviction Relief four claims which include: 1) that this Court set excessive pre-trial bond; 2) that he was denied a fair trial because a) he was denied sufficient time to prepare for trial, b) the state produced insufficient evidence to support a conviction, c) alleged *Brady* violations by the state, d) alleged perjured testimony by witnesses, e) prosecutorial misconduct, and f) this court permitted a juror to sit who was not a Stark County resident; 3) that he was not provided with a transcript of the July 23, 2013 motions hearing before trial; and 4) although he fired two attorneys and represented himself, Defendant-Petitioner nonetheless now accuses both of his previously retained attorneys of providing ineffective assistance.

II. Law and Analysis

Pursuant to R.C. §2953.21(A)(2), a Petition for Post-Conviction relief must be filed “no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication”. R.C. §2953.21(A)(2) (Anderson 2013). In the present case, the defendant-petitioner’s Petition for Post-Conviction Relief is timely.

Although Defendant-Petitioner’s Petition for Post-Conviction Relief is timely, *res judicata* bars the defendant-petitioner’s claims. The preclusive doctrine of *res judicata* is applicable to post-conviction relief proceedings and precludes a defendant from raising legal claims in his petition that either were raised or could have been raised at trial or on direct appeal. *See State v. Perry*, 10 Ohio St. 2d 175, paragraph eight of syllabus (1967); *see also State v. Szefcyk*, 77 Ohio St. 3d 93 (1996). In the present action Defendant-Petitioner raised some of his Post-Conviction relief claims on direct appeal. Specifically,

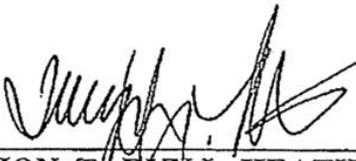
he challenged this Court's decision to permit him to proceed pro se as well as the sufficiency of the evidence. As stated herein the Fifth District Court of Appeals has overruled all the defendant-petitioner's assignments of error. Defendant-Petitioner's remaining Post-Conviction relief claims could have been raised in his direct appeal, but were not.

Upon review of Ohio law as well as the pleadings herein the Court finds that the defendant-petitioner's Petition for Post-Conviction Relief contains claims that could have been brought by the defendant-petitioner at trial or on direct appeal. Therefore, the defendant-petitioner's claims in the present action are barred from collateral review in this proceeding under the doctrine of res judicata. *See State v. Washington*, 2011-Ohio-6600 (Ohio Ct. App. 9th Dist., Dec. 21, 2011).

III. Conclusion

Based upon the aforementioned reasons as well as those set forth in the State of Ohio's Response, the State's Motion to Dismiss and Motion for Summary Judgment are hereby **GRANTED**. The defendant-petitioner's Petition for Post-Conviction Relief is hereby **DISMISSED**.

IT IS SO ORDERED.



HON. TARYN L. HEATH

c: Atty. Prosecutor's Office/Atty. Renee M. Watson- via facsimile (330) 451-7965
Reginald Gibson, Inmate No. 643-525, Lake Erie Correctional Institution, P.O. Box
8000, Conneaut, Ohio 44030-8000

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

NANCY S. BEINBOLD
CLERK OF COURTS
STARK COUNTY, OHIO
2015 FEB 24 AM 10:21

STATE OF OHIO

Plaintiff-Respondent

vs.

REGINALD GIBSON

Defendant-Petitioner

CASE NO. 2013CR0120

JUDGE TARYN L. HEATH,

JUDGMENT ENTRY
(Granting State's Motion to
Dismiss and Motion for
Summary Judgment and
Dismissing Defendant-
Petitioner's Successive Petition
for Post-Conviction Relief)

This matter came before the Court upon the defendant-petitioner, Reginald Gibson's ("Defendant-Petitioner") "Appeal to Vacate or Set Aside Judgment of Conviction or Sentence". This Court shall treat said pleading as a Successive Petition for Post-Conviction Relief pursuant to R.C. § 2953.21

I. Background

In January, 2013, the defendant-petitioner was at a motel with his girlfriend, Darlene Quarterman. During their stay, he viciously assaulted her, causing broken bones and lacerations to her face. Quarterman attempted to flee at one point, making it as far as a neighboring room, but defendant-petitioner dragged her back into the room by her hair. As a result of these actions, defendant-petitioner was later charged with felonious assault, a felony of the second degree and abduction, a felony of the third degree.

EXHIBIT

A

Defendant-Petitioner hired two attorneys who both withdrew from the case before trial. In July 2013, the trial court held a hearing on Defendant-Petitioner's second attorney's motion to withdraw and Defendant-Petitioner's desire to proceed pro se. Although this Court spent a significant amount of time urging him to the contrary, Defendant-Petitioner insisted on representing himself. In an abundance of caution, however, this Court appointed stand-by counsel for both trial and sentencing.

The matter proceeded to a jury trial in July 2013. The state presented 6 witnesses and Defendant-Petitioner presented 3, including his own testimony. After hearing all the evidence and deliberating, the jury found Defendant-Petitioner guilty as charged. He was later sentenced to 8 years for felonious assault and 36 months for abduction to be served concurrently.

Defendant-Petitioner then filed a Notice of Appeal on August 28, 2013. Defendant-Petitioner was represented during the course of his appeal to the Fifth District by Attorney Eugene O'Byrne. Defendant-Petitioner raised three assignments of error on appeal. On February 5, 2014, while the Fifth District Appeal was still pending, Defendant-Petitioner filed a Petition for Post-Conviction Relief. This Court did not have jurisdiction to rule on the Petition. On March 11, 2014, still while the Fifth District Appeal was pending and still while this Court had no jurisdiction, Defendant-Petitioner filed a Request for Findings of Fact and Conclusions of Law.

The Court of Appeals overruled the defendant-petitioner's three assignments of error and upheld his conviction and sentence on March 17, 2014. Thereafter, Defendant-Petitioner filed a Motion to Reopen with the Fifth District Court of Appeals on April 15, 2014 which was subsequently denied on May 14, 2014. Following the Fifth District

Court of Appeals decision, this Court had jurisdiction to issue a ruling on Defendant-Petitioner's Petition for Post-Conviction Relief. On May 23, 2014 this Court issued a four page decision which included factual findings, legal conclusions and which ultimately granted the State's Motion to Dismiss and for Summary Judgment and Denied the Petition for Post-Conviction Relief.

On June 19, 2014, Defendant filed with the Fifth District Court of Appeals, in his previous appellate case (2013CA00175) an "Appeal to Vacate or Set Aside Judgment of Conviction or Sentence". Also, on June 19, 2014, Defendant filed in this Court a copy of the "Appeal to Vacate or Set Aside Judgment of Conviction or Sentence". On June 30, 2014, Defendant filed an appeal with the Ohio Supreme Court. On July 30, 2014 the Fifth District Court of Appeals issued a decision wherein they stated that Defendant "has not properly appealed from the trial court's denial of postconviction relief..." *State v. Gibson*, 2013CA00175, (Ohio Court App. 5th Dist., July 30, 2014 Judgment Entry). The Fifth District also stated "[w]e are therefore without jurisdiction to consider this 'Appeal to Vacate or Set Aside Judgment of Conviction or Sentence' and the 'appeal' is dismissed." *Id.*

On September 3, 2014 the Ohio Supreme Court declined to accept jurisdiction of Defendant's appeal. On September 16, 2014 the State of Ohio filed with this Court a Response to Defendant's "Appeal to Vacate or Set Aside Judgment of Conviction or Sentence". On October 7, 2014 the defendant filed a Reply to State's Response.

Less than 180 days after Defendant filed his Reply, he filed a Petition for Writ of Procedendo with the Ohio Supreme Court. Upon review of the Writ it is unclear on what

motion the defendant is requesting this Court rule¹, however this Court shall herein issue a ruling on the defendant's Successive Petition for Post-Conviction Relief despite the Fifth District Court of Appeals having already dismissed said pleading.

Initially this Court finds that Defendant-Petitioner has asserted in his Petition for Post-Conviction Relief 33 claims, all but two of which were properly addressed in his direct appeal and are thus barred in this proceeding by the doctrine of *res judicata*.

II. Law and Analysis

Pursuant to R.C. §2953.21(A)(2), a Petition for Post-Conviction relief must be filed "no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication". R.C. §2953.21(A)(2) (Anderson 2014). Defendant-Petitioner's current Petition is his second and subsequent Petition for Post-Conviction Relief and therefore it is governed by R.C. §2953.23, which states:

- (A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petition for similar relief on behalf of a petitioner unless both of the following apply:
 - (1) Either of the following applies:
 - (a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief; or
 - (b) Subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an

¹ Defendant initially asserts that he wishes to compel this Court to render a judgment on his "successive Motion for Post-Conviction Relief pursuant to §2953.21 filed on June 19, 2014" but indicates several pages later that he wishes this Court to rule on his initial Motion for Post-Conviction Relief filed February 5, 2014. This Court rendered a decision on the February 5, 2014 Motion on May 23, 2014. Further in the pleading, Defendant asserts that he wishes to compel this Court to render judgment on his "successive Motion for Post-Conviction Relief" filed on March 11, 2014. Again, this Court rendered a decision on May 23, 2014 which ruled on the March 11, 2014 filing. Finally, Defendant again asserts that he wishes to compel this Court to render judgment on his "successive Post-Conviction Relief petition filed on June 19, 2014."

earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

- (2) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable fact finder would have found the petitioner guilty of the offense of which the petitioner was convicted.

This Court hereby finds that Defendant-Petitioner fails to argue or demonstrate the prerequisites mandated by R.C. §2953.23 have been satisfied. This Court is therefore without jurisdiction to entertain his successive petition.

Even if Defendant-Petitioner had demonstrated the prerequisites mandated by R.C. §2953.23, *res judicata* bars the defendant-petitioner's claims. The preclusive doctrine of *res judicata* is applicable to post-conviction relief proceedings and precludes a defendant from raising legal claims in his petition that either were raised or could have been raised at trial or on direct appeal. See *State v. Perry*, 10 Ohio St. 2d 175, paragraph eight of syllabus (1967); see also *State v. Szeftcyk*, 77 Ohio St. 3d 93 (1996). In the present action 31 of Defendant-Petitioner's 33 Post-Conviction relief claims could have been raised on direct appeal and are therefore barred under the doctrine of *res judicata*.

Defendant-Petitioner's remaining two claims before this Court: 1) That this court erred in denying his first motion for post-conviction relief, assignment of error 9; and 2) Ineffective assistance of appellate counsel, assignment of error 23, are not properly before this Court as they are matters for the Fifth District Court of Appeals.

Upon review of Ohio law as well as the pleadings herein the Court finds that the defendant-petitioner's Successive Petition for Post-Conviction Relief contains claims that could have been brought by the defendant-petitioner at trial or on direct appeal and are barred under the doctrine of *res judicata* or are not properly before this Court.

III. Conclusion

Based upon the aforementioned reasons as well as those set forth in the State of Ohio's Response, the State's Motion to Dismiss and Motion for Summary Judgment are hereby **GRANTED**. The defendant-petitioner's Successive Petition for Post-Conviction Relief is hereby **DISMISSED**.

IT IS SO ORDERED.



HON. TARYN L. HEATH

c: Atty. Prosecutor's Office/Atty. Renee M. Watson- via facsimile (330) 451-7965
Reginald Gibson, Inmate No. 643-525, Lake Erie Correctional Institution, P.O. Box
8000, Conneaut, Ohio 44030-8000

The Supreme Court of Ohio

FILED

APR 29 2015

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio ex rel. Reginald Gibson

v.

Honorable Taryn L. Heath

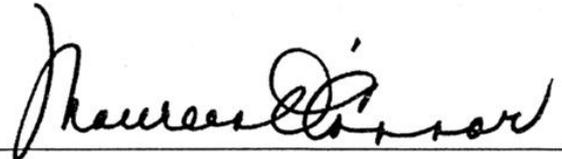
Case No. 2015-0271

IN PROCEDENDO

ENTRY

This cause originated in this court on the filing of a complaint for a writ of procedendo.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.



Maureen O'Connor
Chief Justice

31

Massillon Municipal Court, Stark County, Massillon Ohio. Johnnie A. Maier, Jr., Clerk
Bindover or Direct Indictment Information Sheet
2013CRA00102

State of Ohio
vs.

120

GIBSON, REGINALD OCTAVE [SS #] [REDACTED] [DOB] 08-17-64 [SEX] M [RACE] B
[Address] 1385 ROSLYN SW CANTON, OH 44710 [PHONE] (330) 451-6263
[ITN#] 165730IP [FBI#] 134444AB2 [BCI#] B742982
[Photo id] 0000094308

Arrest Date: 01-13-2013
Prosecutor: -
Attorney for Def. 78482 - BETH LIGGETT

Preliminary Hearing Waived.
Municipal Court costs \$108.00
Sheriff Rec Dis fee \$10.00
Other Sheriff fees \$0.00
25.00 Ind Fee Assessed \$0 Collected

ON 01/14/2013, TEN PERCENT BOND WAS SET AT \$50,000.00 BOND ENTRY FILED. BOND SET \$50,000.00 TEN PERCENT WITH PRETRIAL RELEASE PROGRAM COMPLIANCE - NO CONTACT WITH VICTIM(S) - BY JUDGE C. ROLAND CENTRONE.

BOND WAS NOT POSTED; DEFENDANT STILL IN CUSTODY.

Charges

Finding

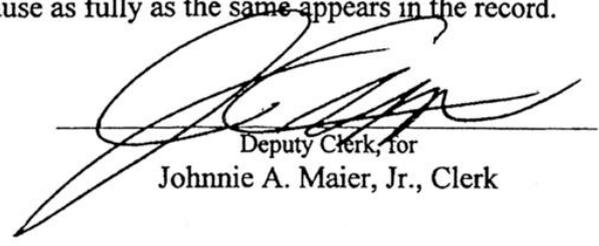
2903.11A1 (F2) FELONIOUS ASSAULT

Preliminary hearing waived. Bound to grand jury.

FILED
1/18/2013
Massillon Municipal Court
Johnnie A. Maier, Jr., Clerk
Massillon, Ohio

I, J Cross, Deputy Clerk of the Massillon Municipal Court of the City of Massillon do hereby certify that the foregoing is a true transcript of the proceedings had before said Court in said cause as fully as the same appears in the record.

Given under my hand and seal of said Court on January 18, 2013.


Deputy Clerk, for
Johnnie A. Maier, Jr., Clerk

MAIER, JOHNIE A.
CLERK OF COURT
STARK COUNTY, OHIO

2013 JAN 22 PM 2:29

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO

PLAINTIFF

JUDGMENT ENTRY
BOND FIXED

VS.

Reginald Gibson

CASE NO. 2013CR0120

DEFENDANT

SSN [REDACTED] DOB 8-16-64
CHARGE(S): Fel Asst / Abducts bx

THE BOND FOR THE APPEARANCE OF THE ABOVE DEFENDANT IS FIXED AT THE SUM TOTAL OF \$500,000
 COSTS WAIVED

- APPEARANCE 10% _____
- SURETY _____
- OWN / RECOGNIZANCE _____
- PROPERTY _____
- UNSECURED / APPEARANCE _____
- SECURED / APPEARANCE _____
- BOND PREVIOUSLY SET IS REINSTATED, CAPIAS CANCELLED AND FORFEITURE SET ASIDE
- ADDITIONAL CONDITIONS:
 - PRETRIAL RELEASE SUPERVISION

No Contact w/ victim

2013 MAR 13 AM 10:42
CLERK OF COURTS
STARK COUNTY, OHIO

DATE 3/13/13

JUDGE [Signature]

ENTERED BY 1