Supreme Court of Ohio Clerk of Court - Filed April 25, 2016 - Case No. 2016-0436

IN THE SUPREME COURT OF OHIO

STATE EX REL.	)	
DOUGLAS E. ODOLECKI	)	CASE NO. 2016-0436
	)	
Relator	)	
	)	
vs.	)	
	)	
FRANK D. CELEBREZZE, JR., et al.	)	
	)	
Respondents	)	

BRIEF IN OPPOSITION TO AMENDED MOTION TO DISMISS OF RESPONDENTS FRANK D. CELEBREZZE, JR., AND EIGHTH DISTRICT COURT OF APPEALS

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MEMORANDUM

The Motion to Dismiss of Respondents Judge Frank D. Celebrezze Jr., and Eighth District Court of Appeals must be denied because it relies upon factual and legal fiction. Specifically, it asks this court to presume regularity of proceedings in an instance where the proceedings at issue, i.e. the grant or denial of bond, is irregular on its face due to the Eighth District's failure to follow mandatory requirements articulate its reasoning for denying bond. Regularity cannot be presumed where the court of appeals remains silent and ignores this Court's clear and specific mandate that it articulate its reasoning. It is impossible here, just as it was impossible in *State ex rel. Hunter v. Cunningham*, 141 Ohio St.3d 1423 (2014), for this Court to know whether the Eighth District Court of Appeals abused its discretion in denying Mr. Odolecki's motion for bond because it gave no reason for doing so.

Secondly, Respondent's contention that the conclusions reached in Mr. Odolecki's Amended Complaint are "unsupported" ignores the affidavit of counsel attached to and incorporated into the Amended Complaint. That affidavit was made by Mr. Odolecki's counsel, who is the only party to this discussion who was actually in the courtroom when Judge Deanna O'Donnell sentenced Mr. Odolecki to consecutive sentences without making the statutorily mandated findings necessary to support consecutive sentences. Ideally, it would be better to have an actual transcript to corroborate counsel's sworn affidavit, but that's not available because the Parma Municipal Court refuses to prepare and transmit the record.[1] Nevertheless, the undersigned stands behind his affidavit and maintains that the record, if and when it is finally

[1] See Brief in Opposition to Motion to Dismiss of Parma Municipal Court, Judge Deanna O'Donnell and Marty Viitardi, Clerk of Court, April 22, 2016.

prepared by the Parma Municipal Court, will fail to reveal any statutorily mandated findings in support of consecutive sentencing by Judge Deanna O'Donnell.

Next, Respondents suggest, without offering any authority in support, that a showing of remorse is a necessary element in making a post-conviction bond determination and that unsubstantiated accusations of misconduct are relevant considerations in ruling on a motion for post-conviction bond. In *State ex rel. Hunter*, the special prosecutor argued, with no evidentiary support, that Judge Hunter's actions during trial evinced a lack remorse and were a threat to the judicial process.[2] Here, the City of Parma made the same baseless, unsubstantiated arguments in opposition to bond in the Eighth District Court of Appeals, alleging that Mr. Odolecki showed no remorse, and that he had issued a vague suggestion to a third party to publicly expose Judge Deanna O'Donnell's conduct at his trial, which the prosecution characterized as threatening and harassing without providing any evidence in support thereof. This court disregarded the First District Court of Appeals' reference to such allegations in *State ex. rel. Hunter* and should disregard the Eighth District's similarly unpersuasive argument here.

Finally, Respondents argument that a disgraced judge convicted of felony corruption, presumably with greater financial means to flee than the indigent Mr. Odolecki, and who was facing a certain six-month incarceration if her conviction were affirmed, is actually *less* of a flight risk than a private citizen whose maximum possible sentence, even if his convictions are affirmed, is ninety days (and less than three weeks from the date of this filing) must be disregarded. Respondents are asking this court to find that a convicted felon judge has a greater right to post-conviction release than an indigent, private citizen, misdemeanor offender.

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[2] See Relator's Response to First District Court of Appeals' Motion to Dismiss, Case No. 14-2223, December 26, 2014 Exhibit 1.

In conclusion, Respondents' motion must be denied because the facts alleged therein are unestablished. To the contrary, this Court has been presented with the undersigned's uncontroverted affidavit as well as all filings and judgment entries relevant to this matter. There is no factually substantiated dispute as to whether Judge Deanna O'Donnell imposed consecutive sentences upon Mr. Odolecki without making the statutorily mandated findings in support thereof as required by R.C. § 2929.14(C)(4).

There is no dispute that the Eighth District Court of Appeals failed to articulate its reasoning in support of denying Mr, Odolecki's motion for bond pending appeal, nor is there any dispute that an identical failure served as the basis for this court's alternative writ releasing Judge Hunter, a former judge convicted of a fourth degree felony and facing a jail term of six months, on bail pending appeal.

Finally, there is no genuine dispute that the lack of a record in this matter is solely caused by Respondent Parma Municipal Court's failure to prepare a trial transcript at the City of Parma's expense. Mr. Odolecki's petition for an extraordinary writ seeking release on bail should not be impaired by a subsequent failure of the Parma Municipal Court to perform its duties as required by law.

In conclusion, Mr. Odolecki respectfully requests that this court extend the same protections under law to him as it did to Judge Hunter in *State ex rel. Hunter v. Cunningham*, 141 Ohio St.3d 1423 (2014) by denying respondents' motion to dismiss and issuing an order releasing him on personal bond pending his appeal in this matter. , the Ohio Supreme Court should satiate the respondents' desire for clear direction from a superior court by denying their motion to dismiss and compelling them to prepare a trial transcript at the City's expense forthwith.

Respectfully submitted,

JOHN W. GOLD, LLC

/s/ John W. Gold

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Attorney for Relator Douglas E. Odolecki

CERTIFICATE OF SERVICE

A copy of the foregoing was sent via Electronic Mail on the 25th day of April, 2016, to the following:

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Parma, OH 44129
Counsel for Respondents
Timothy J. DeGeeter, Lou Galizio, Parma Municipal Court,
Judge Deanna O'Donnel & Marty Vittardi, Clerk of Court

Jordan S. Berman
Assistant Attorney General
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Counsel for Respondents Judge Frank D. Celebrezze
& Eighth District Court of Appeals

/s/ John W. Gold

JOHN W. GOLD (#0078414)

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. TRACIE M. HUNTER Relator, vs. PENELOPE CUNNINGHAM, et al., Respondents.	: : : : : : : : : : :	Case No. 14-2223 **ORIGINAL ACTION IN HABEAS, MANDAMUS, AND PROHIBITION**

RELATOR'S RESPONSE TO FIRST DISTRICT COURT OF APPEALS' MOTION TO DISMISS

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Counsel for Respondents, First District Court of appeals and Judge Penelope Cunningham

FILED
DEC 26 2014
CLERK OF COURT
SUPREME COURT OF OHIO

EXHIBIT 1

RESPONSE TO RESPONDENTS CUNNINGHAM AND FIRST DISTRICT COURT OF APPEALS' MOTION TO DISMISS

Pursuant to S.Ct.Prac.R. 12.04(B)(2), Relator Tracie M. Hunter hereby responds to the motion to dismiss filed by Respondents Penelope Cunningham and First District Court of Appeals (hereinafter collectively referred to as the "First District Court of Appeals" or the "First District").

I. RESPONDENTS' VERIFICATION ARGUMENT FAILS.

Relying on this Court's decision in *Chari v. Vore,* 91 Ohio St.3d 323, 744 N.E.2d 763 (2001), the First District claims that the petition is improperly verified because undersigned counsel did not "expressly swear to the truth of the facts contained within the petition." (Mot. to Dismiss at 5). But undersigned counsel complied with the verification requirement by alleging the essential facts of Judge Hunter's habeas claim in his affidavit and by attaching true and accurate copies of the relevant documents which established the gravamen of Judge Hunter's habeas claim.

In any event, assuming for the sake of argument that the First District's lack-of-verification contention has merit, undersigned counsel has corrected the deficiency through the filing of a supplemental affidavit. That affidavit, which is attached hereto as Exhibit A, states that undersigned counsel has "read the allegations made in the Emergency Complaint" and that "[a]ll of the allegations contained therein are true, accurate and complete to the best of [his] knowledge." (Supplemental Affidavit of David A. Singleton at ¶2). .

II. THE FIRST DISTRICT MISCONSTRUES JUDGE HUNTER'S ARGUMENT FOR HABEAS RELIEF.

The First District Court of Appeals contends that Judge Hunter's "claim must be dismissed because Relator cannot show that the First District abused its discretion in denying

Relator's request for stay." (Mot. to Dismiss at 5). The First District then quotes *Coleman v. McGettrick,* 2 Ohio St.2d 177, 179, 207 N.E.2d 552 (1965), for the proposition that the "granting of bail is strictly within the discretion of the courts. There is no bail appeal as a matter of right." *Id.* However, in so arguing, the First District misconstrues Judge Hunter's argument about why she is entitled to habeas relief. Judge Hunter does not dispute that App. R. 8 bail determinations are discretionary. Rather, she contends that she was entitled to have the First District make her bail determination without abusing its discretion, and that it is impossible to know whether the First District did so because it gave no reasons for denying her motion.

Here, the special prosecutors, in opposing Judge Hunter's motion for bail, made a host of irrelevant and factually inaccurate arguments. Specifically, the special prosecutors argued that bail should be denied because Ms. Hunter "arrived late for court on a daily basis,"[1] did not show remorse "as evidenced by her attacks on a juror in this case,"[2] and "through her supporters, staged a protest on the courthouse steps impliedly threatening some sort of retribution if she was incarcerated on December 29, 2014."[3] (Appellee's Response at 1-2, attached to Singleton

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[1] Although false, this allegation has been widely reported by the media as if it were the gospel. To the contrary, as indicated by the affidavit of Clyde Bennett, attached as Exhibit B. Judge Hunter was on time each day but waited in the jury room until Judge Nadel completed his morning docket.

[2] Here, the special prosecutors were referring to the defense motion for a new trial based on a juror's failure to disclose that she was the victim of a sexual abuse committed by a minister, information that was relevant to whether the juror was biased in light of Judge Hunter's status as a pastor. It is unfair for the special prosecutors to claim that defense counsel's good faith filing of a potentially meritorious motion constitutes an "attack" by Judge Hunter on a juror, especially where the juror in question talked freely about her sexual abuse on the internet. Regardless of how one characterizes the motion, the fact of its filing is hardly relevant to whether the First District should have stayed Judge Hunter's sentence pending appeal.

[3] This statement contains false, inflammatory and irrelevant information. The rally the special prosecutors are referring to was organized not by Judge Hunter but by clergy acting on their own initiative. Additionally, no threats were made at what was, by all credible accounts, a peaceful

Affidavit of Dec. 24, 2014, as Ex. 6). The special prosecutors even went so far as to argue that Judge Hunter should be locked up on December 29th because the case has become a circus and "the only way to end it is for Tracie Hunter to immediately serve the sentence imposed by Judge Nadel."[4] (*Id.* at 2).

In the absence of a written explanation of its reasoning, it is impossible for this Court to know whether the First District considered factors relevant to the bail determination in Judge Hunter's case – specifically that she (1) has deep and substantial community ties; (2) never missed a court appearance in the case and was in fact allowed to remain free on her own recognizance even for three weeks after she was convicted; (3) does not pose a danger to the community; and (4) has a strong likelihood of success on the merits – or whether the First District based its decision to deny bail on one or more of the irrelevant and/or factually inaccurate argument against bail offered by the special prosecutors, such as the contention that the case has become a "circus" and "the only way to end it is for Tracie Hunter to immediately serve the sentence imposed by Judge Nadel." (Appellee's Resp. at 2).

Because the First District gave no explanation for denying Judge Hunter's motion, this Court, under *In re Liles*, 35 Ohio St.3d 610, 520 N.E.2d 183 (1988), should stay Judge Hunter's sentence and remand the case back to the First District Court of Appeals so that it can re-evaluate Judge Hunter's motion and explain its reasoning should it decide to deny the motion.

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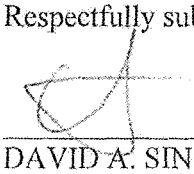
gathering. Moreover, it is inflammatory, not to mention unfair, for the State to criticize Judge Hunter's supporters for engaging in constitutionally protected free expression. Finally, the fact that a segment of the community disagrees with the verdict in this case, as evidenced by a peaceful rally supporting Judge Hunter, provides no legally relevant basis to deny her motion for a stay.

[4] In addition to being beyond Judge Hunter's control, the media's interest in the case is wholly irrelevant to whether a stay should be granted.

CONCLUSION

For the reasons stated in the Complaint and in this Response, the Court should grant Judge Hunter's requested writs. Specifically, this Court should immediately stay Judge Hunter's sentence and remand the case to the First District Court of Appeals for reconsideration of Judge Hunter's motion with the instruction that the First District explain its reasoning should it decide to deny the motion upon reconsideration.

Respectfully submitted,



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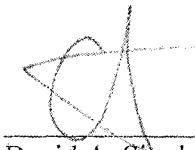
CERTIFICATE OF SERVICE

I certify that on this 26th day of December, 2014, I served a copy of this Response on Brodi Conover and Tiffany Carwile, counsel for Respondents Judge Penelope Cunningham and the First District Court of Appeals, by email (Brodi.Conover@ohioattorneygeneral.gov and Tiffany.Carwile@ohioattorneygeneral.gov), and James.Harper@hcpros.org and Christian.Schaefer@hcpros.org.



David A. Singleton

EXHIBIT
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IN THE SUPREME COURT OF OHIO

STATE EX REL. TRACIE M. HUNTER Relator, vs. PENELOPE CUNNINGHAM, et al., Respondents.	: : : : : : : : : : :	Case No. 14-2223 **ORIGINAL ACTION IN HABEAS, MANDAMUS, AND PROHIBITION**

AFFIDAVIT OF DAVID A. SINGLETON
Pursuant to S.Ct.Prac.R. 12.02(B)

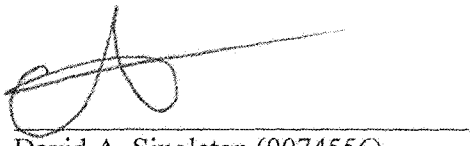
STATE OF OHIO: :
SS
COUNTY OF HAMILTON :

I, David A. Singleton, in accordance with S.Ct.Prac.R. 12.02(B), being first duly cautioned and sworn, and having personal knowledge of each of the following, deposes and states as follows:

1. I am an attorney admitted to practice in Ohio. I represent Relator Tracie M. Hunter in the above-captioned matter.

2. I have read the allegations made in the Emergency Complaint in the above-captioned case. All of the allegations contained therein are true, accurate and complete to the best of my knowledge.

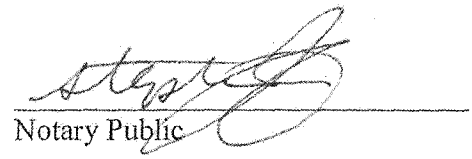
FURTHER AFFIANT SAYETH NAUGHT.



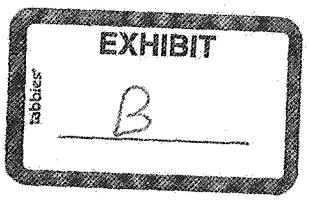
David A. Singleton (0074556)

Sworn to before me and subscribed in my presence this 26th day of December, 2014.

STEPHEN JOHNSON GROVE
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.



Notary Public



STATE OF OHIO: :

SS

COUNTY OF HAMILTON :

I, Clyde Bennett II, being first duly cautioned and sworn, and having personal knowledge of each of the following, deposes and states as follows:

1. I am an attorney admitted to practice in Ohio. I represented Relator Tracie M. Hunter in Case No. B 14001100 in the Hamilton County Court of Common Pleas where she was convicted of one count of Having an Unlawful Interest in a Public Contract after a jury trial. The jury trial was in Judge Norbert Nadel's courtroom and lasted approximately five weeks.

2. While the trial was in progress, Judge Nadel completed a morning docket before the trial resumed. Ordinarily, the court requested that all parties be prepared to resume trial at 10:00 AM.

3. Every morning, Judge Tracie Hunter arrived to the court house in a timely fashion and waited in a jury room next to Judge Nadel's court room until the trial resumed.

4. When the court was ready to proceed with the trial, ordinarily I would be notified by the court, the bailiff, or one of the court room personnel, and I would personally notify Judge Hunter that it was time to resume, and she would proceed to Judge Nadel's court room.

5. During the trial, there were times when Judge Nadel's docket was not completed by 10:00 AM, and the trial did not resume at 10:00 AM. There were other times when the special prosecutors or I were late to court due to court appearances in other courts on behalf of other clients. When I was late, Judge Hunter did not appear in court until I arrived and was ready to proceed.

6. Judge Hunter was always in the court house and waiting in the jury room when the court and all counsel were ready to proceed. She was never, as has been widely reported and repeated, late for trial.

FURTHER AFFIANT SAYETH NAUGHT.

Clyde Bennett II (0059910)

Sworn to before me and subscribed in my presence this 26th day of December, 2014.

Notary Public

NOTARIAL SEAL STATE OF OHIO

Marguerite Slagle, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.