In the Supreme Court of Ohio

ORIGINAL

STATE OF OHIO ex rel. DOUGLAS PRADE,
Inmate No. A365399
Allen Correctional Institution
2238 North West Street
Lima, Ohio 45801

Relator,

v.

NINTH DISTRICT COURT OF APPEALS,
161 South High Street, Suite 504
Akron, Ohio 44308

and

HON. JUDGE CHRISTINE CROCE
Summit County Court of Common Pleas
209 South High Street
Akron, Ohio 44308

Respondents.

Case No. 16-0686

Original action for Writ of Prohibition

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COMPLAINT FOR WRIT OF PROHIBITION

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PRELIMINARY STATEMENT

1. Summit County Court of Common Pleas Judge Judy Hunter entered an order exonerating Relator Douglas Prade and finding him actually innocent of his ex-wife's murder. (Order On Defendant's Petition For Post-Conviction Relief Or Motion For New Trial, *State v. Prade*, Summit County Common Pleas No. CR 1998-02-0463 (Jan. 29, 2013) (Ex. A) (the "Exoneration Order")). The State appealed from the Exoneration Order to the Respondent Ninth District Court of Appeals, and the Ninth District heard that appeal and reversed. *State v. Prade*, 2014-Ohio-1035, 9 N.E.3d 1072, ¶ 131 (9th Dist.), *appeal not accepted*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229.

2. The Ninth District was without subject matter jurisdiction to review Mr. Prade's acquittal in the Exoneration Order because a trial judge made a factual determination of innocence grounded upon insufficiency of the evidence, and R.C. 2945.67(A) bars the State from appealing any such determinations in criminal cases. Accordingly, Mr. Prade brings this original action for a writ of prohibition to correct the Ninth District's prior exercise of authority without jurisdiction over the State's appeal from the Exoneration Order.

3. As a result of the Ninth District's *ultra vires* review and reversal of the Exoneration Order, there has been additional improper judicial activity. On July 25, 2014, Respondent Honorable Judge Christine Croce, who replaced Judge Hunter upon Judge Hunter's retirement, ordered that Mr. Prade be reincarcerated. On March 11, 2016, Judge Croce reconsidered and denied Mr. Prade's motion for a new trial that Judge Hunter had granted, and an appeal from that order now is pending before the Ninth District. Judge Croce's orders and the pending appeal in the Ninth District are improper because each was or is the consequence of the Ninth District acting without subject matter jurisdiction in allowing the State to appeal from the Exoneration Order.

PARTIES

4. Relator Douglas Prade is an individual currently incarcerated in the Oakwood Facility of the Allen Correctional Institution in Lima, Ohio.

5. Respondent Ninth District Court of Appeals is the appellate court charged with reviewing final judgments rendered by the Summit County Court of Common Pleas.

6. Respondent Honorable Judge Christine Croce is a judge on the Summit County Court of Common Pleas. Judge Croce replaced Judge Hunter when Judge Hunter retired in 2013.

JURISDICTION AND THE STANDARD FOR ISSUING A WRIT OF PROHIBITION

7. This Court has original jurisdiction over this matter pursuant to Article IV, § 2(B)(1)(d) of the Ohio Constitution.

8. A relator seeking a writ of prohibition directed to one or more lower courts "must establish that (1) [the respondent courts are] about to exercise judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law." *State ex rel. Smith v. Hall*, ___ Ohio St.3d ___, 2016-Ohio-1052, ___ N.E.3d ___, ¶ 7 (citing *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18).

9. The second and third elements of the showing required for a writ of prohibition "can be met by a showing that the [respondent courts] 'patently and unambiguously' lacked jurisdiction." *Id.* (citing *Chesapeake Expl., L.L.C. v. Oil & Gas Comm'n*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11).

FACTS

A. Mr. Prade's Trial And Conviction.

10. On November 26, 1997, Dr. Margo Prade was fatally shot while parked in her van outside her Akron medical offices. *State v. Prade*, 126 Ohio St.3d 27, 2010-Ohio-1842, 930 N.E.2d 287, ¶ 2 ("*Prade I*"). Dr. Prade's ex-husband, Relator Akron Police Captain Douglas Prade, was charged with Dr. Prade's murder. *Id.* at ¶ 2.

11. Dr. Prade attempted to defend herself by using her arm to push the killer away. Her killer bit her arm so hard that, through two layers of clothing—Dr. Prade's lab coat and blouse—the killer's teeth left an impression on her skin. *Id.* at ¶ 3.

12. "The key physical evidence at trial was the bite mark that the killer made on Dr. Prade's arm through her lab coat and blouse." *Id.* at ¶ 3. One of the State's bite mark identification experts at the trial said the bite mark on Dr. Prade's skin "was made by Captain Prade." *Id.* The State's other bite mark identification expert said the mark on her skin was "consistent with" Mr. Prade's teeth, but thought "there's just not enough [evidence] to say one way or the other" that it was Mr. Prade's. *Id.* A defense expert said that Mr. Prade's loose denture meant "the act of biting for Mr. Prade, [wa]s a virtual impossibility." *Id.*

13. The State's DNA testing expert who testified at trial agreed that the lab coat over the bite mark on Dr. Prade's arm was "the best possible source of DNA evidence as to [Dr. Prade's] killer's identity." *Id.* at ¶ 17. But the best available DNA testing technology in 1998 could not identify trace amounts of one person's DNA within large quantities of another person's DNA. "[D]ue to the amount of Dr. Prade's blood on her lab coat, the DNA from Dr. Prade's blood overwhelmed or diluted the DNA from the biter's skin cells," and "the bite mark showed only Dr. Prade's DNA." *Id.* at ¶ 18.

14. A jury convicted Mr. Prade of aggravated murder, and the trial court sentenced him to life in prison. *Id.* at ¶ 2. On appeal, the Ninth District affirmed. *State v. Prade*, 139 Ohio App.3d 676, 745 N.E.2d 475 (9th Dist. 2000), *appeal not accepted*, 90 Ohio St.3d 1490, 739 N.E.2d 816 (2000).

B. Post-Trial DNA Testing Results In Judge Hunter's January 29, 2013, Order Finding Mr. Prade To Be Actually Innocent And Exonerating Him.

15. Since Mr. Prade's 1998 trial, there have been major advances in DNA testing. One of those advances is Y-chromosome STR or "Y-STR" testing, which detects only the male Y-chromosome and, thus, can provide information about small amounts of male DNA within large quantities of female DNA, such as the area of Dr. Prade's lab coat where her killer bit her. *Prade I* at ¶¶ 21-22.

16. DNA evidence now has an "unparalleled ability . . . to exonerate the wrongly convicted." *Maryland v. King*, ___ U.S. ___, 133 S.Ct. 1958, 1966, 186 L.Ed.2d 1 (2013) (citation omitted). It "has become the 'smoking gun' in criminal trials" and "can be a powerful tool for conviction or exoneration." *State v. Crager*, 116 Ohio St.3d 369, 2007-Ohio-6840, 879 N.E.2d 745, ¶ 89 (Pfeifer, J., dissenting), *vacated and remanded*, 557 U.S. 930, 129 S.Ct. 2856, 174 L.Ed.2d 598 (2009). DNA testing has exonerated over 250 wrongfully convicted persons, including seventeen who had been sentenced to death. *See* Brandon L. Garrett, *Convicting The Innocent: Where Criminal Prosecutions Go Wrong* at 5 (Harv. Univ. Press 2011). Thirteen Ohioans who were wrongfully convicted have been exonerated by DNA testing. *See id.*

17. In light of these advances in DNA testing, Mr. Prade filed an application in February 2008 to have new DNA testing performed on the section of Dr. Prade's lab coat where her killer bit her during the murder. (Exoneration Order at 2 (Ex. A).) Finding the DNA testing at the time of trial in 1998 that identified only the victim's DNA to be a "prior definitive DNA

test" that, under R.C. 2953.74, barred new DNA testing, the trial court denied the application, and the Ninth District affirmed. *State v. Prade*, 9th Dist. No. 24296, 2009-Ohio-704. This Court accepted jurisdiction and then reversed and remanded. *Prade I*, 126 Ohio St.3d 27, 2010-Ohio-1842, 930 N.E.2d 287.

18. After remand, the case was assigned to Judge Judy Hunter of the Summit County Court of Common Pleas. She directed a private DNA testing laboratory, DNA Diagnostics Center ("DDC"), and then the Ohio Bureau of Criminal Identification & Investigation ("BCII") to conduct Y-STR DNA testing of extracts taken from samples from Dr. Prade's lab coat. (*See* Exoneration Order at 7-8 (Ex. A).)

19. In an extract from a sample taken from the center of the lab coat section where Dr. Prade's killer violently bit her during the murder—DDC Sample 19.A.1—DDC found a single partial male DNA profile—in other words, DNA from one male—and definitively excluded Mr. Prade from being the source of that single partial male DNA profile. (*Id.*)

20. In a second sample that mixed the remaining extract from the first test with extract from three other locations within the bite mark section—DDC Sample 19.A.2—DDC found two partial male DNA profiles and again definitively excluded Mr. Prade, this time from being the source of either partial male DNA profile. (*Id.*).

21. To assess whether the lab coat may have been contaminated with stray male DNA, Judge Hunter then directed BCII to test extracts from samples taken from four areas of the lab coat outside the bite mark section. BCII's testing found no male DNA whatsoever in any of the four samples taken from areas of the lab coat outside the bite mark. (*Id.* at 8, 9.)

22. In October 2012, Judge Hunter conducted a four-day evidentiary hearing and heard testimony from four DNA testing experts (two called by the defense and two by the State),

two bite mark identification experts (one called by the defense and another by the State), and a defense eyewitness testimony expert. (*Id.* at 7.)

23. On January 29, 2013, based on the new DNA test results, the testimony presented at the October 2012 hearing, and her review of the evidence and testimony from the 1998 trial, Judge Hunter exonerated Mr. Prade of his ex-wife's murder because she found him to be "actually innocent." (*Id.* at 9, 21.) Judge Hunter then "overturn[ed]" Mr. Prade's conviction and ordered that he "be discharged from prison forthwith." (*Id.* at 21.) Further, Judge Hunter granted Mr. Prade a new trial in the event that her exoneration order was reversed. (*Id.* at 25.)

C. Under R.C. 2945.67(A), The State Cannot Appeal From A Trial Judge's Factual Determination Of Innocence In An Order Granting Postconviction Relief.

24. "The weight of authority in this county generally opposes the right of the government to bring error in a criminal case unless permitted by statute."[1] *State v. Hughes*, 41 Ohio St.2d 208, 210, 324 N.E.2d 731 (1975); *see also State v. Simmons*, 49 Ohio St. 305, 307, 31 N.E.34 (1892). Thus, "'the State has no absolute right of appeal in a criminal matter unless specifically granted such right by statute.'" *State ex rel. Steffen v. Judges Ct. App. First App. Dist.*, 126 Ohio St.3d 405, 2010-Ohio-2430, 934 N.E.2d 906, ¶ 18 (citation omitted).

25. The statute governing appeals by the State in criminal matters, R.C. 2945.67(A), provides that the State "may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to

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[1] Because the jury in his 1998 trial returned a guilty verdict—albeit a verdict rendered without the jury being aware of the critical new DNA evidence—Mr. Prade does not contend that the Double Jeopardy Clause is implicated in these circumstances. *See Smith v. Massachusetts*, 543 U.S. 462, 467, 125 S.Ct. 1129, 160 L.Ed.2d 914 (2005). But that does not change the analysis because "[t]he issue under Ohio law is not one of double jeopardy but rather whether" the judgment in question "is a final verdict" under R.C. 2945.67(A). *State ex rel. Yates v. Ct. App. for Montgomery Cty.*, 32 Ohio St.3d 30, 32, 512 N.E.2d 343 (1987).

dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or *grants post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code*, and may appeal by leave of the court . . . any other decision, *except the final verdict*, of the trial court in a criminal case or of the juvenile court in a delinquency case." (Emphasis added).

26. While the postconviction relief statute provides that an order granting a petition for postconviction relief is a "final judgment and may be appealed," R.C. 2953.23(B), that provision is "expressly designed to allow *defendants*," not the State, "to appeal from convictions that are defective," *State v. Fisher*, 35 Ohio St.3d 22, 25, 517 N.E.2d 911 (1988) (emphasis added).

27. Instead, R.C. 2945.67(A) governs an appeal by the State from a decision granting postconviction relief. This result is required not only by R.C. 2945.67(A)'s express language, *see id.* (applying to "post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code"), but is also consistent with this Court's acknowledgment that, even though another statute may on its face appear to permit appeals without limitation, "[t]he state's right to appeal in criminal cases is governed by R.C. 2945.67(A)." *State ex rel. Steffen v. Judges Ct. App. First App. Dist.*, 126 Ohio St.3d 405, 2010-Ohio-2430, 934 N.E.2d 906, ¶¶ 19-20; *see also State v. Matthews*, 81 Ohio St.3d 375, 691 N.E.2d 1041 (1998) (same); *Fisher*, 35 Ohio St.3d at 24 (former R.C. 2953.05's general grant of a right to appeal "did not grant a right of appeal to the state," which was required to appeal under R.C. 2945.67(A)).

28. In paragraph two of the syllabus in *State v. Keeton*, 18 Ohio St.3d 379, 481 N.E.2d 629 (1985), this Court found that "[a] directed verdict of acquittal by the trial judge in a criminal case" entered under Crim. R. 29(A) before the jury's verdict "is a 'final verdict' within

the meaning of R.C. 2945.67(A) which is not appealable by the state as a matter of right or by leave to appeal pursuant to that statute."

29. Similarly, this Court found in *State ex rel. Yates v. Court of Appeals for Montgomery County*, 32 Ohio St.3d 30, 512 N.E.2d 343 (1987), that a trial judge's order granting a directed verdict of acquittal entered under Crim. R. 29(C) after a jury's guilty verdict, was a "final verdict" that cannot be reviewed on appeal under R.C. 2945.67(A). *Yates* observed that a post-verdict directed judgment of acquittal under Crim. R. 29(C), like the pre-verdict directed judgment of acquittal under Crim. R. 29(A) at issue in *Keeton*, is "grounded on a determination by the trial judge that the state produced insufficient evidence to convict." *Id.* at 32. Because "[t]he judgment of acquittal in" *Yates* "was grounded upon insufficiency of [the] evidence," it was "a factual determination of innocence and as much a final verdict as any judgment of acquittal granted pursuant to Crim R. 29(A)." *Id.* at 32-33 (footnote omitted). Thus, the State could not appeal under R.C. 2945.67(A). *Id.*

30. Relying on *Keeton* and *Yates*, this Court found in *State v. Bistricky*, 51 Ohio St.3d 157, 555 N.E.644 (1990), and *State v. Hampton*, 134 Ohio St.3d 447, 2012-Ohio-5688, 983 N.E.2d 324, that trial judges' orders granting directed judgments of acquittal that were based, not upon the insufficiency of the evidence that the defendant committed the crime, but on allegedly erroneous interpretations of law (*Bistricky*) or improper venue (*Hampton*) also are "final verdicts" under R.C. 2945.67(A) that may not be reviewed on appeal. Moreover, this Court observed in *Hampton* that "[t]here is no reason to overrule the clear pronouncement in *Yates* that a judgment of acquittal is not appealable by the state as a mater or right or by leave to appeal pursuant to R.C. 2945.67(A)." *Hampton*, 2012-Ohio-5688, ¶ 17.

D. The Exoneration Order Was A "Final Verdict" From Which The State Could Not Appeal And, Thus, The Ninth District Lacked Subject Matter Jurisdiction In Ninth District Case No. 26775 And Improperly Heard That Appeal And Reversed, Which Caused Mr. Prade To Be Reincarcerated.

31. In the Exoneration Order, Judge Hunter, after considering the new DNA and bite mark identification evidence, hearing days of expert testimony, and reviewing the trial record, found that the new DNA test results "undisputedly exclude [Mr. Prade] as the contributor of the male DNA found in the bite-mark section of the lab coat." (Exoneration Order at 20 (Ex. A).) She was "firmly convinced that no reasonable juror would convict [Mr. Prade] for the crime of aggravated murder with a firearm" and "conclude[d] as a matter of law that [Mr. Prade] is actually innocent of aggravated murder." (*Id.* at 21.) Accordingly, she "overturn[ed Mr. Prade]'s convictions for aggravated murder with a firearms specification, and" ordered that he "be discharged from prison forthwith." (*Id.*)

32. As detailed above, orders granting postconviction relief are expressly referenced in and, thus, subject to R.C. 2945.67(A), including R.C. 2945.67(A)'s bar on appeals by the State from a "final verdict."

33. The Exoneration Order, like the trial judge's directed judgment of acquittal in *Yates*, was "a determination by the trial judge that the state produced insufficient evidence to convict." *Yates*, 32 Ohio St.3d at 32, 512 N.E.2d 343. And like the directed judgment of acquittal in *Yates*, the Exoneration Order was "entered after a jury verdict" and "grounded upon insufficiency of [the] evidence. It [wa]s a factual determination of innocence and as much a final verdict as any judgment of acquittal granted pursuant to Crim R. 29(A)." *Id.* at 32-33 (footnote omitted). Thus, like the trial judges' directed judgments of acquittal in *Hampton*, *Bistricky*, *Yates*, and *Keeton*, the Exoneration Order was a "final verdict" that could not be appealed under R.C. 2945.67(A).

34. Although the Exoneration Order was a "final verdict" from which R.C. 2945.67(A) barred an appeal by the State, the State appealed to the Respondent Ninth District Court of Appeals, and the Ninth District Court heard that appeal and reversed and remanded. *State v. Prade*, 2014-Ohio-1035, 9 N.E.3d 1072, ¶ 131 (9th Dist.), *appeal not accepted*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229.[2]

E. The Proceedings On Remand After The Ninth District's *Ultra Vires* Reversal Of The Exoneration Order, As Well As The Appeal Now Pending In The Ninth District, Would Be Unnecessary If The Ninth District Had Not Improperly Heard An Appeal From And Reversed The Exoneration Order.

35. While Mr. Prade's request for discretionary review of the Ninth District's decision reversing the Exoneration Order was pending before this Court, the State filed a notice of appeal and accompanying motion for leave to appeal from the alternative ruling in the Exoneration Order that granted Mr. Prade a new trial, which was Ninth District Case No. 27323.

36. After this Court denied discretionary review of the Exoneration Order on July 23, 2014, *State v. Prade*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229, the case returned to the Summit County Court of Common Pleas. There, following Judge Hunter's retirement, the case was assigned to Respondent Honorable Judge Christine Croce. On July 25, 2014, Judge Croce ordered that Mr. Prade be reincarcerated, and he has remained incarcerated to this day.

37. Although the only condition to Judge Hunter's alternative grant of a new trial order in the Exoneration Order—the reversal of the portion of the Exoneration Order that had exonerated Mr. Prade—had been satisfied and, thus, the new trial ruling no longer was conditional or contingent, the Ninth District dismissed the State's appeal from the new trial order

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[2] Although Mr. Prade did not raise the jurisdictional issue presented in this complaint in the State's appeal to the Ninth District Court of Appeals from the exoneration order, "objections to subject-matter jurisdiction cannot be waived." *State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199, ¶ 8 (citing *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10).

on August 14, 2014, finding that Judge Hunter's then-unconditional new trial order was a contingent, interlocutory order that the trial court—now Judge Croce who had replaced Judge Hunter—could reconsider. (Journal Entry, *State v. Prade*, 9th Dist. Case No. 27323 (Aug. 14, 2014) (Ex. B).)

38. On March 11, 2016, Judge Croce—largely relying on and quoting from the Ninth District Court of Appeals' *ultra vires* opinion in *Prade II*—departed from Judge Hunter's ruling granting Mr. Prade a new trial in the Exoneration Order and denied Mr. Prade's motion for a new trial. (Order on Defendant's Motion for New Trial, *State v. Prade*, Summit County Common Pleas Case No. CR 1998-02-0463 (Mar. 11, 2016) (Ex. C).)

39. Mr. Prade's appeal from Judge Croce's denial of his motion for a new trial currently is pending before the Ninth District as Ninth District Case No. 28193. (Notice of Appeal, *State v. Prade*, Ninth District Case No. 28193 (filed Apr. 7, 2016) (Ex. D).)

40. If the Ninth District had not exceeded its subject matter jurisdiction by considering the State's improper appeal from the Exoneration Order's acquittal of Mr. Prade in Ninth District Case No. 26775, (a) neither Judge Croce (in ruling on the motion for a new trial) nor the Ninth District (in considering the pending appeal of Judge Croce's motion) would have had jurisdiction to take further action, and (b) Mr. Prade would not have been returned to prison and incarcerated from July 25, 2014, to the present date for a crime as to which there had been "a determination by the trial judge that the state produced insufficient evidence to convict." *Yates*, 32 Ohio St.3d at 32.

COUNT I
WRIT OF PROHIBITION RELATING TO NINTH DISTRICT CASE NO. 26775
(Respondent Ninth District Court of Appeals)

41. Mr. Prade incorporates by reference the foregoing paragraphs, as if fully rewritten and set forth herein.

42. Section 3(B)(2), Article IV of the Ohio Constitution establishes that courts of appeals "shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the courts of appeals within the district." "[T]he state has no absolute right of appeal in a criminal matter unless specifically granted such right by statute." *State v. Fisher*, 35 Ohio St.3d 22, 24, 517 N.E.2d 911 (1988).

43. R.C. 2945.67(A)—the statute governing appeals by the State from adverse rulings in criminal and juvenile matters, including appeals from orders granting petitions for postconviction relief—bars the State from appealing any "final verdict." A "final verdict" under R.C. 2945.67(A) includes a trial judge's order "grounded upon insufficiency of evidence" where there has been "a factual determination of innocence." *Yates*, 32 Ohio St.3d at 32-33 (footnote omitted).

44. After reviewing the trial record, holding a four-day hearing, and receiving DNA evidence proving that Mr. Prade was definitively excluded from all male DNA found on Dr. Prade's lab coat where her killer bit her, Judge Hunter found in the Exoneration Order that Mr. Prade was "actually innocent." (Exoneration Order at 21 (Ex. A).) She was "firmly convinced that no reasonable juror would convict [Mr. Prade] for the crime of aggravated murder with a firearm" and "conclude[d] as a matter of law that [Mr. Prade] is actually innocent of aggravated murder." (*Id.*) Thus, she "overturn[ed Mr. Prade]'s convictions for aggravated murder with a firearms specification." (*Id.*)

45. Judge Hunter's Exoneration Order granting Mr. Prade's petition for postconviction relief, finding him actually innocent, and exonerating him, was a "final verdict" under R.C. 2945.67(A), and therefore could not be appealed by the State.

46. Because R.C. 2945.67(A) prohibited the State from appealing from the Exoneration Order, the Ninth District Court patently and unambiguously lacked subject matter jurisdiction over the State's appeal in Ninth District Case No. 26775.

47. "[J]urisdiction is a condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void." *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St. 3d 70, 75, 701 N.E.2d 1002 (1998). When a proclamation is void, "[i]t is as though such proceedings had never occurred . . . and the parties are in the same position as if there had been no" such proclamation. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 27 (citations omitted).

48. "If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition . . . will issue . . . to correct the results of prior jurisdictionally unauthorized actions." *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12 (per curiam).

49. Because the Ninth District patently and unambiguously lacked subject matter jurisdiction over the State's appeal, the availability of an alternative remedy at law is immaterial. *Hall*, 2016-Ohio-1052, ¶ 7 (citing *Chesapeake Expl.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11).

50. For the foregoing reasons, the Ninth District lacked subject matter jurisdiction to consider the appeal from the Exoneration Order in Ninth District Case No. 26775 and, as a result, Mr. Prade is entitled to writ of prohibition voiding the Respondent Ninth District's ruling and mandate in Ninth District Case No. 26775 to correct its jurisdictionally unauthorized actions.

COUNT II
WRIT OF PROHIBITION RELATING TO SUMMIT COUNTY COMMON PLEAS CASE NO. CR 98-02-0463
(Respondent Hon. Judge Christine Croce)

51. Mr. Prade incorporates by reference the foregoing paragraphs, as if fully rewritten and set forth herein.

52. As noted above, "jurisdiction is a condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void." *Tubbs Jones*, 84 Ohio St. 3d at 75. When a proclamation is void, "[i]t is as though such proceedings had never occurred . . . and the parties are in the same position as if there had been no" such proclamation. *Bloomer*, 2009-Ohio-2462, ¶ 27 (citations omitted).

53. Because R.C. 2945.67(A) prohibited the State from appealing from the Exoneration Order, the Ninth District patently and unambiguously lacked subject matter jurisdiction over the State's appeal from that order in Ninth District Case No. 26775.

54. Because the Ninth District patently and unambiguously lacked subject matter jurisdiction over the State's appeal in Ninth District Case No. 26775, the Ninth District's decision reversing Judge Hunter's exoneration order in Ninth District Case No. 26775 was void, and it is as though the Ninth District's decision "had never occurred . . . and the parties are in the same position as if there had been no" Ninth District appeal. *Bloomer*, 2009-Ohio-2462, ¶ 27 (citations omitted).

55. Because the Ninth District patently and unambiguously lacked subject matter jurisdiction over the State's appeal in Ninth District Case No. 26775, Judge Croce had no basis upon which to order that Mr. Prade be reincarcerated on July 25, 2014, or to reconsider and deny Mr. Prade's motion for a new trial on March 11, 2016.

56. If the Ninth District's decision in Ninth District Case No. 26775 had never occurred, Mr. Prade would have remained free based on the Exoneration Order, and Judge Croce would have patently and unambiguously lacked jurisdiction to reconsider and reverse Judge Hunter's alternative grant of Mr. Prade's request for a new trial in the Exoneration Order. Thus, the availability of an alternative remedy at law is immaterial. *Hall*, 2016-Ohio-1052, ¶ 7 (citing *Chesapeake Expl.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11).

57. For the foregoing reasons, Judge Croce lacked subject matter jurisdiction to order that Mr. Prade be reincarcerated on July 25, 2014, or to enter her March 11, 2016, order denying Mr. Prade's motion for a new trial in Summit County Common Pleas Case No. CR 98-02-0463 and, thus, a writ of prohibition is necessary to void those rulings and correct the jurisdictionally unauthorized actions.

COUNT III
WRIT OF PROHIBITION RELATING TO NINTH DISTRICT CASE NO. 28193
(Respondent Ninth District Court of Appeals)

58. Mr. Prade incorporates by reference the foregoing paragraphs, as if fully rewritten and set forth herein.

59. The Ninth District has exercised, or is about to exercise, jurisdiction over an appeal from Judge Croce's denial of Mr. Prade's motion for a new trial in Ninth District Case No. 28193.

60. Because the Ninth District patently and unambiguously lacked subject matter jurisdiction over the State's appeal from the Exoneration Order in Ninth District Case No. 26775, the Ninth District's decision reversing the Exoneration Order was void and it is as though the Ninth District's decision "had never occurred . . . and the parties are in the same position as if there had been no" Ninth District appeal in Ninth District Case No. 26775. *Bloomer*, 2009-Ohio-2462, ¶ 27 (citations omitted).

61. If the Ninth District's decision in Ninth District Case No. 26775 had never occurred, the Ninth District would not be able to exercise jurisdiction over Judge Croce's denial of Mr. Prade's motion for a new trial in Ninth District Case No. 28193, because Judge Croce would never have reconsidered Mr. Prade's motion. Thus, the availability of an alternative remedy at law is immaterial. *Hall*, 2016-Ohio-1052, ¶ 7 (citing *Chesapeake Expl.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11).

62. For the foregoing reasons, the Ninth District lacks subject matter jurisdiction in Ninth District Case No. 21893 and, thus, Mr. Prade is entitled to a writ of prohibition relating to the Ninth District's further consideration of the appeal in Ninth District Case No. 21893 to prevent additional jurisdictionally unauthorized actions.

PRAYER FOR RELIEF

Relator, Douglas Prade, asks the Court to grant the extraordinary writ relief requested in Counts One, Two, and Three, and any such other and further relief to which he is entitled to, as well as costs and fees. Specifically, Mr. Prade requests that this Court issue a writ of prohibition setting aside, voiding, and vacating Ninth District's ruling and mandate in Ninth District Case No. 26775 because, under R.C. 2945.67(A), the Ninth District lacked subject matter jurisdiction to hear an appeal from the acquittal underlying the Exoneration Order. Further, Mr. Prade requests that this Court issue writs of prohibition to (1) Judge Croce in Summit County Common Pleas Case No. CR 98-02-0463 because she lacked subject matter jurisdiction to order that Mr. Prade be reincarcerated on July 25, 2014, and to enter her March 11, 2016, order reconsidering and denying Mr. Prade's motion for a new trial, and (2) the Ninth District in Ninth District Case No. 21893 because that court lacks subject matter jurisdiction to hear that pending appeal.

Dated May 4, 2016

Respectfully submitted,

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AFFIDAVIT

STATE OF OHIO)
: ss.
COUNTY OF CUYAHOGA)

I, David Booth Alden, after first being duly sworn and upon personal knowledge and belief, state the following:

1. I am counsel for Relator Douglas Prade in the referenced cases, and I am responsible for preparing the Complaint for Writ of Prohibition.

2. The facts referred to herein, and the records incorporated herein by reference, are true and accurate as known to me and as reflected in the cases captioned *State v. Prade*, Summit County Common Pleas Case No. CR 1998-02-0463; *State v. Prade*, Ninth District Case No. 26775; *State v. Prade*, Ninth District Case. No. 27323; and *State v. Prade*, Ninth District Case No. 28193.

3. The materials that are included in the attached Appendix are true and correct copies of orders or other materials generated and issued in connection with the aforementioned litigation and subsequent appeals.

FURTHER THE AFFIANT SAYETH NAUGHT.

David Booth Alden (Ohio Bar #6,143)

SWORN TO BEFORE ME and subscribed in
my presence this 2nd day of May, 2016.

Kim Elaine Walkos

NOTARY PUBLIC

KIM ELAINE WALKOS
NOTARY PUBLIC • STATE OF OHIO
My commission expires Mar. 15, 2019