

ORIGINAL

IN THE SUPREME COURT OF OHIO

2014

S. Ct NO. 14-1431

The STATE ex rel  
EDWARD JACKSON  
#213197 1-K-47  
LEBANON CORRECTIONAL  
P.O. BOX 56  
LEBANON, OHIO 45036

ORIGINAL ACTION

RELATOR,  
VS

ANTHONY BRIGANO, WARDEN , etal  
770 WEST BROAD STREET  
ISSUANCE  
COLUMBUS, OHIO 43222  
RESPONDENT.

PETITION FOR THE

OF A WRIT OF MANDAMUS

Comes now the Relator, Mr. Edward Jackson, who respectfully request that this Court issues a Writ Of Mandamus and direct it towards the Respondent, Warden Anthony Brigano of the Ohio Department of Rehabilitation and Correction , who has failed to carry out his clear legal duty to have the Relator conveyed back into the custody of the Franklin County, Ohio Sheriff after the Clerk of Court notified him that the Relator's sentence had been reversed and remanded. The Relator asserts that he has no other legal remedy at law to address this issue and therefore had no other recourse than to file this action.

The Relator asserts that this action is being brought pursuant to the following: R.C. 2731.01, 2953.13, Article I, Sections 16 of the Ohio Constitution as well as the 6<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

The Relator asserts that the reasons for this action is more fully stated in the Memorandum in Support attached hereto.

RESPECTFULLY SUBMITTED

Edward Jackson

RECEIVED  
AUG 14 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
AUG 14 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

## MEMORANDUM IN SUPPORT

Comes now the Relator, Mr. Edward Jackson, Pro Se and Indigen who respectfully request that this Honorable Court issues a Writ Of Mandamus and direct it towards the Respondent, Mr. Anthony Brigano, Warden, Ohio Department Of Rehabilitation and Corrections who has failed to carry out his cleal legal duty of not having the Relator conveyed back into the custody of the Franklin County, Ohio Sheriff after being notified that the Tenth District Court Of Appeals for Franklin County, Ohio had reversed and remanded the Relator's sentence. The Relator having no other recourse legally than to file this action.

### BACKGROUND

The Relator asserts that in August of 1989, he was convicted of 8 felony counts. A timely Appeal was filed to the 10<sup>th</sup> District Court of Appeals for Franklin County, Ohio. In August of 1990, the 10<sup>th</sup> District Court of Appeals reversed and remanded the case back to the Trial Court foe De Novo Sentencing. As of this date, the Relator has not been brought back to the Trial Court for that purpose.

### PROCEDURE POSTURE

R.C. 2953.13 asserts that if a criminal case is reversed or remanded back to the Trial Court for any reason that it is the Warden's responsibility to have the criminal defendant returned "forthwith" to the custody of the Sheriff of the sentencing county.

Criminal Rule 43(A) specifically requires that a defendant be present at every stage of the proceedings against him. This requirement includes both the imposition of a sentence and where one sentence is vacated and a new sentence is imposed! This Statute clearly demonstrates that a defendant must be present during sentencing unless otherwise waived. COLUMBUS V ROWLAND (1981) 2 Ohio APP 3d 144, 440 N.E. 2D 1365.

Under Crim. R. 43(A), criminals defendants are required to be physically present at every stage of the criminal proceedings and Trial, including the imposition of sentence. This right is not merely procedural in nature but implicates Due Process concerns. As a result of the physical presence requirement, the Trial Court errs when it's Judgment Entry of Sentencing "differs" from the sentence that it announced at the sentencing hearing in the defendant's presence!

A defendant thus has a due process right embodied in Crim. R. 43(A), to be present when the court imposes sentence. A Trial Court cannot abrogate a defendant's Due Process Rights by sentencing the defendant in his absence. A Trial Court is prohibited from entering an ex aparte amendment of the sentence when the defendant is not present. STATE V GRIFFIN,, 723 N.E. 2D 606.

The Sixth Amendment as applied through the due process clause of the Fourteenth Amendment is applicable to the States and, accordingly, there is an absolute right to appointed Counsel in felony cases. Appointment of Counsel for an Indigent is required at every stage of a criminal proceeding where substantial rights of the criminal accused may be affected. The time of sentencing is a critical stage in a criminal case and counsel's presence is necessary to insure that the conviction and sentence are not based on misinformation or a misreading of Court Records. TOWNSEND V BURKE, 334 U.S. 335 (1963).

There exist a right to Counsel during sentence in both non-capital and capital cases. Even though sentencing does not concern a defendant's guilt or innocence, ineffective assistance of counsel during the sentencing hearing can result in prejudice because any amount of additional Jail Time has Sixth Amendment significance.

In the action before the Court, The Relator Warden Anthony Brigano, chose to ignore the Statute, R.C. 2953.13, the criminal rule 43(A), the Sixth Amendment and the notification from the clerk Court. Wherefore, he clearly failed to carry out his clear legal duty. As a representative of the Department of Rehabilitation and Corrections he knew or should have known that the Executive Branch does not have the power to re-impose sentence. That power is only vested to the Judicial Branch. The Respondent's action or inaction violated the Relator's rights which are guaranteed by both the Ohio and Federal Constitutions.

Lastly, the Relator asserts that sentencing is a pivotal point in a criminal process. It is an opportunity for the Trial Court to correct the sentencing errors in a re-sentencing. Further, it gives the Court a chance to impose sentence as mandated by the Legislator, with the defendant's Constitutional and Statutory Rights intact. It is not to be treated as a pro forma rubber stamping of the original sentence. Instead, it is a process by which the defendant is to be sentenced anew, with the Trial Court following the instructions provided by a reviewing Court.

The Relator asserts that although an extra ordinary amount of time has elapsed, the Warden's duties are still valid. Wherefore, he prays that this Court will issue the requested Writ.

RESPECTFULLY SUBMITTED

Edward Jackson

CERTIFICATE OF SERVICE

I, Edward Jackson, Relator, do hereby certify that a copy of the foregoing PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS was mailed by regular U. S. Mail to the office of the Franklin County, Ohio Prosecutor and the Staff Counsel for the Ohio Department of Rehabilitation and Corrections on this the 17<sup>th</sup> day of July 2014.

Edward Jackson

STATE OF OHIO )

S. S. AFFIDAVIT OF VERITY

COUNTY OF WARREN )

I, Edward Jackson, Relator, do hereby solemnly swear under the penalty for perjury that the information submitted in this Affidavit is to the best of my knowledge and belief true and correct and that I am of sound mind to attest to this fact.

The Relator asserts that this action submitted to the Court clearly demonstrates the complete breakdown of the criminal justice system. The Prosecutor, the Sentencing Court nor the Respondent carried out their duties. This breakdown has caused the Relator to suffer prejudice and to unjustly lose his Constitutional rights. He asserts that he has no ordinary course of law to address the issue. Wherefore, he prays that the Original Action submitted will be deemed to have merit and that this Court will grant the request Writ because of the Respondent's failure to have him conveyed back into the custody of the Franklin County, Ohio Sheriff.

*Edward Jackson*

#213-197 1-K-47

P.O. BOX 56

Lebanon, Ohio 45036

sworn to, or affirmed, and subscribed in my presence this 9th day of August 2014.

*Billy Dee Bailey*  
\_\_\_\_\_  
Notary Public

BILLY DEE BAILEY  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Butler County  
My commission expires Mar. 27, 2015



State OF OHIO )

S.S. AFFIDAVIT

COUNTY OF WARREN )

I, Edward Jackson, Relator, do hereby solemnly swear that the information submitted pursuant to R.C. 2969.25 is true and correct. I further assert that I have filed 5 other Civil Actions in the last five years.

Edward Jackson

I, Edward Jackson, Relator, assert that the above sworn to Civil Actions consist of the following: MOTION TO IMPOSE A VALID SENTENCE, case number 88CR-09-3371, FILED January 11<sup>th</sup>, 2013 in the Franklin County, Ohio Court of Common Pleas and is still pending. (2) I filed a PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS, case number 13-0086 in the Ohio Supreme Court. The Petition was voluntarily dismissed by the Relator. (3) I filed a PETITION FOR THE ISSUANCE OF A WRIT OF PROCEDENDO, case number 13-0352 in the Ohio Supreme Court. The Petition was dismissed per request of the Respondent due to filing errors. (4) I filed a PETITION FOR THE ISSUANCE OF A HABEAS CORPUS, case number 2013-0988 in the Ohio Supreme Court. The Petition was dismissed without opinion. The Relator had a remedy at law available to resolve the case. (5) I filed a PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS, case number 2014-1043 in the Ohio Supreme Court and is still pending.

BEFORE ME, A NOTARY PUBLIC IN AND FOR WARREN COUNTY, OHIO CAME THE RELATOR, MR. EDWARD JACKSON, WHO ACKNOWLEDGED THAT HE DID SIGN THE ABOVE LEGAL DOCUMENT AND THAT IT IS TRUE AND CORRECT. I ATTEST TO THIS FACT WITH MY SIGNATURE AND OFFICIAL SEAL.

Billy Dee Bailey 8-9-14  
NOTARY PUBLIC

