

No. **20-7245** , **ORIGINAL**

IN THE SUPREME COURT OF THE UNITED STATES

FILED

APR 22 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Jeremy Kerr - PETITIONER

VS

State of Ohio - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Jeremy Kerr 686-150  
North Central Correctional  
PO Box 1812  
Marion, OH 43301

**QUESTIONS PRESENTED FOR REVIEW**

Does a State Court violate an individual's right to procedural due process under the 14th Amendment to the United States Constitution, when it issues an Order that affects a substantial right, two minutes after the movant files the request?

Does a States Court violate an individual's right to procedural due process under the 14th Amendment to the United States Constitution, when it orders the appointment of receiver despite any evidence that the individual received notice of the proceeding or an opportunity to present any objections.

Does a State Court violate an individual's right to procedural due process under the 14th Amendment to the United States Constitution, when it orders a receiver to take all personal property, including all cash and cash equivalents, furniture, equipment, computer, and all general intangibles?

## TABLE OF CONTENTS

Cover Page . . . . .	page 1
Questions Presented for Review . . . . .	page 2
Table of Contents . . . . .	page 3
Index of Appendices . . . . .	page 3
Table of Authorities . . . . .	page 4
List of All Parties . . . . .	page 5
List of All Proceedings . . . . .	page 6
Statement of the Basis of Jurisdiction . . . . .	page 7
Constitutional and Statutory Provisions Involved . . . . .	page 7
Statement of the Case . . . . .	page 8
Request for Granting the Writ . . . . .	page 18

## INDEX OF APPENDICES

Appendix A	Decision of the Ohio Supreme Court [case no. 2019-
Appendix B	Decision of the Ohio Supreme Court
Appendix C	Motion for Charging Order
Appendix D	Charging Order
Appendix E	Order Appointing Receiver
Appendix F	Nunc Pro Tunc Charging Order
Appendix G	Amended Orders to Receiver
Appendix H	Judgment Entry of <u>the Ohio Court of Appeals</u>
Appendix I	Judgment Entry of the Ohio Court of Appeals

## TABLE OF AUTHORITIES

### CASES:

Arnett v Kennedy, 416 US 134 . . . . .	14, 16
Boddi v Connecticut, 401 US 371 . . . . .	14, 16
Mathews v Eldridge, 424 US 319 . . . . .	14, 16
Castle Apartments v Allgood, 539 NE 2d 1154 . . . . .	10
Ohio Valley Radiology v Ohio Valley Hosp. 28 Ohio St 3d 118 . . . . .	10

### CONSTITUTIONAL AUTHORITIES:

14th Amendment to the United States Constitution . . . . .	10, 14, 15, 16
--	----------------

### RULES:

Supreme Court Rule 10 . . . . .	7, 18
Ohio Civil Rule 60 . . . . .	17
Ohio Supreme Court Rule 16.07 . . . . .	17

### STATUTES:

Ohio Revised Code 1705.18 . . . . .	8, 11, 13, 17
Ohio Revised Code 1705.19 . . . . .	8, 11, 13, 17
Ohio Revised Code 2329.66 . . . . .	9, 13
Ohio Revised Code 2735.01 . . . . .	9, 12, 17
28 U.S.C. 1257 . . . . .	7, 11

### OTHER AUTHORITIES:

The Consumer Credit Protection Act . . . . .	9, 13, 15, 16
--	---------------

# LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgments are the subject of this petition are as follows:

Governor Mike DeWine  
Vern Riffe Center  
77 S. High St., 30th Floor  
Columbus, OH 43215

Attorney General Dave Yost  
James A. Rhodes State Office Tower  
30 E. Broad St., 14th Floor  
Columbus, OH 43215

Third Appellate District Court  
Court of Appeals Building  
204 N. Main St  
Lima, OH 45801-4457

Judge John Collier  
660 N. Perry St  
Napoleon, OH 43545

Supreme Court of Ohio  
65 S. Front St  
Columbus, OH 43215

LIST OF ALL PROCEEDINGS

In the Court of Common Pleas of Henry County, Ohio

Case No. 2011-CV-0001

Kerr Buildings, Inc. v Scott Bishop v Jeremy Kerr

Dates of Judgments:

May 29, 2013	Charging Order
August 20, 2013	Order Appointing Receiver
April 17, 2014	Denial of 1st Motion to Vacate
November 14, 2017	Denial of 2nd Motion to Vacate
January 25, 2018	Nunc Pro Tunc Charging Order
April 16, 2018	Amended Orders to Receiver
June 21, 2018	Denial of 3rd Motion to Vacate
August 6, 2018	Denial of 4th Motion to Vacate
	Denial of Motion to Modify Orders

In the Ohio Court of Appeals, Third Appellate District

Case No: 7-19-05

State ex rel Jeremy Kerr v Judge John Collier

Date of Judgment, June 21, 2019

Case No. 7-19-06

Kerr Buildings, Inc v Scott Bishop v Jeremy Kerr

Date of Judgment: September 3, 2018

In the Supreme Court of Ohio

Case No. 2019-0888

State ex rel Jeremy Kerr v Judge John Collier

Date of Judgment: February 13, 2020

Case No. 2019-1362

Kerr Buildings, Inc. v Scott Bishop v Jeremy Kerr

Date of Judgment: February 4, 2020

## STATEMENT OF THE BASIS FOR JURISDICTION

Petitioner respectfully prays that a writ of certiorari issue to review the merits of the following Opinions of the Ohio Supreme Court, which appears at Appendix A and B to this petition:

State ex rel Jeremy Kerr vs Judge John Collier  
Decided on February 13, 2020  
Ohio Supreme Court Case No. 2019-0888  
2020-Ohio-457

Kerr Buildings, Inc v Scott Bishop v Jeremy Kerr  
Decided on February 4, 2020  
Ohio Supreme Court Case No. 2019-1362  
2020-Ohio-

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). Further, Supreme Court Rule 10(c) provides that review on a writ of certiorari will be granted only for compelling reasons, such as, when a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. Petitioner is seeking review Rule 12.4.

The facts of this case satisfies Supreme Court Rule 10(c).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

#### United States Constitution Amendment Fourteen

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

## STATEMENT OF THE CASE

### Initial Trial Court Proceeding

In 2011, Kerr Buildings, Inc., of which Petitioner Jeremy Kerr ("Kerr") was the president, sued Scott Bishop ("Bishop") regarding a contract dispute in the Common Pleas Court of Henry County, Ohio, with Judge John Collier ("Judge Collier") presiding.

On October 16, 2012, Judge Collier entered a monetary judgment of almost \$80,000 against Kerr Buildings, Inc. and Kerr.

On May 23, 2013, Bishop conducted a Debtor's Exam in which he discovered (1) that neither Kerr Buildings, Inc. nor Kerr had any assets; and, (2) that Kerr has "membership interests" in two limited liability companies, which owns several pieces of real estate. [Beaver Creek Development Co., LLC and Beaver Creek Properties, LLC].

### Charging Order

On **May 29, 2013, at 2:42 pm**, Bishop filed his Motion for Charging Order under O.R.C. 1705.19 against Kerr's "membership interest" in the two limited liability companies. In the motion, Bishop certified that he served a copy onto Kerr by regular and certified US Mail on the same day, **May 29, 2013**, [It is general knowledge that regular and/or certified US Mail does not become complete the same day]. See Appendix C.

However, also on **May 29, 2013, at 2:44pm**, [two minutes after Bishop filed his motion], Judge Collier entered a Charging Order against kerr's "membership interest" in the limited liability companies. The Charging Order also charged several properties that are solely owned by Beaver Creek Development Co., LLC which is violative of O.R.C. 1705.19 and O.R.C. 1705.18. [See Appendix D].



A review of the time-stamps on the MOTion for Charging Order [Appendix C] and Judge Collier's CHarging Order [Appendix D] establishes that Kerr did not have a reasonable opportunity to present his objections to the CHarging Order.

Further, a review of the Certification of Service in the Motion for Charging Order [Appendix C] establishes that Kerr never had knowledge of the Charging Order Proceeding. [It is common knowledge that service by US Mail is not complete the same day]. Clearly, Judge Collier entered his CHarging Order before service of process could have been completed.

There is no question, Kerr's right to procedural due process was violated.

#### Order Appointing Receiver

On June 19, 2013, Bishop filed his Motion for the Appointment of Receiver under O.R.C. 2735.01(C), to carry the judgment into effect. On August 20, 2013, Judge Collier entered an Order Appointing Receiver over Kerr, Kerr Buildings, Inc., and the limited liability companies, who are not parties to the action. The Order consists of twelve pages of "additional orders" outside of the scope of the monetary judgment. [Appendix E].

The Order Appointing Receiver also contains an order to the Receiver to take all assets, equity and income of Kerr, including all cash and cash equivalent, furniture, equipment, computers, and all general intangibles. Such order is a clear violation of O.R.C. 2329.66 and The Consumer Credit Protection Act.

A review of the Order Appointing Receiver [Appendix E] demonstrates this clear and obvious violation.

### Motion to Vacate Order Appointing Receiver

On March 10, 2014, Kerr filed a MOTion to Set Aside the Appointment of Receiver for Lack of Service. Kerr attached to the motion an Affidavit stating that due to the nature of his [redacted] incarceration, service at his last known address [his home address] simply does not comport with procedural due process.

Bishop did not challenge Kerr's Affidavit or present any evidence proving that Kerr had received Bishop's Motion for the Appointment of Receiver. However, Judge Collier denied Kerr's motion by finding that Kerr did not satisfy the prerequisites of Ohio Civil Rule 60(B).

Under Ohio Law, when service of notice is incomplete, the judgment is void ab initio and is not subject to the prerequisites of Ohio Civil Rule 60(B). See Castle Apartments v Allgood, 539 N.E 2d 1154; Ohio Valley Radiology Ass'n v Ohio Valley Hosp. Ass'n, 28 Ohio St 3d 118. In fact, this legal concept is very well established law.

### First Direct Appeal

Kerr filed a direct appeal to the Third District Court of Appeals of Ohio [case no. 7-14-07] in which he argued that because service of notice was incomplete, the Order Appointing Receiver violates the 14th Amendment to the United States Constitution rendering the Order null and void, thus, not subject to the prerequisites of Ohio Civil Rule 60(B).

The Appellate Court affirmed Judge Collier's application of Ohio Civil Rule 60(B) by finding that Kerr had a duty to inform the clerk his new address. In support, the Appellate Court cited

three Ohio cases where during an on-going proceeding in which the complaining parties had made an appearance, the clers sent notices to their last known addresses. [These cases had no relance to the facts of Kerr's appeal].

#### Second Motion to Vacate

In late 2017, Kerr filed a challenge to Judge Collier's authority to charge the properties of Beaver Creek Development Co., LLC., as well as, his authority to appoint a receiver over the limited liability company. In the motion, Kerr argued that because Judge Collier lacks legal authority to exercise such judicial power, according to Ohio Jurisprudence and American Jurisprudence, the Orders in their entirety, are null and void.

In his Judgment Entry, Judge Collier reframed Kerr's argument as Kerr is attempting to vacate the Orders as they imply to Beaver Creek Development Co., LLC. He then denied the motion based on the fact that because Kerr is not an attorney, he cannot present a motion on behalf of a limited liability company.

Kerr did not appeal because Bishop immediatly filed a motion to correct Judge Collier's error.

#### Nunc Pro Tunc Charging Order and Amended Order to Receiver

Immediatly after Judge Collier denied Kerr's second motion to vacate, Bishop filed a Motion for Nunc Pro Tunc Charging Order in which Bishop requested a Nunc Pro Tunc CHarging Order that precisely follows Ohio Law, specifically R.C. 1705.19, by deleting the permissible order to sell the properties.

On Januray 25, 2018, Judge Collier granted Bishop's motion and entered his Nunc Pro Tunc Charging Order [Appendix F]. On April 16, 2018, Judge Collier entered his Amended Order to Receiver [Appendix G]. which contained all of the same powers granted to the Receiver in the original Order Appointing Receiver, except the powers over the limited liability companies are absent.

A review of the Nunc Pro Tunc Charging Order [Appendix F] and the Amended Order to Receiver [Appendix G] demonstrates that the new Charging Order was absent any language charging the properties held by Beaver Creek, and the new Order to Receiver was also absent of any language granting the Receiver any powers over the limited liability companies.

However, the Receiver refused to return the limited liability companies back to Kerr. [This is because without the limited liability companies, the Receivership would become insolvent]. Judge Collier has refused to do anything about this issue.

#### Third Motion to Vacate Appointment of Receiver

Because Judge Collier refused to order the Receiver to return the limited liability companies to Kerr, Kerr filed his third Motion to Vacate Order Appointing Receiver on June 21, 2018.

Kerr argued that the twelve pages of "additional powers" granted to the Receiver are outside of the scope of the monetary judgment and violates O.R.C. 2735.01(C). Judge Collier applied the Doctrine of Res Judicata and denied the motion.

Kerr filed a Direct Appeal to the Third Appellate District of Ohio [case no. 7-18-26] who sua sponte dismissed the appeal by finding Kerr's motion to vacate a reconsideration of his first

and second motions to vacate. [Each motion was based on different grounds and different facts, the Court of Appeals is mistaken].

#### Fourth Motion to Vacate Appointment of Receiver

Kerr filed a fourth MOTION to Vacate in which he argued that Judge Collier has committed several unauthorized acts of judicial power. One of those acts was his order to the receiver to take all assets, equity and income of Kerr, including all cash and cash equivalents, furniture, equipment, computers, and all general intangibles. Kerr argued that such order violates O.R.C. 2329.66 and The Consumer Credit Protection Act.

Judge Collier applied res judicata and denied the motion. Kerr then appealed to the Third Appellate District of Ohio, who sua sponte dismissed the appeal by finding Kerr's motion a reconsideration of his first, second, and third motions. [Case no. 7-18-28].

#### Motion to Modify Orders

Because the Receiver still maintained control of the limited liability companies; Judge Collier refused to do anything; and, the Appellate Court refused to hold Judge Collier accountable; Kerr sought another remedy for relief.

On March 18, 2019, Kerr filed his Motion to Modify Charging Order and Orders to Receiver in which Kerr asked Judge Collier for an order revising the Nunc Pro Tunc Charging Order [which still did not wholly comply with O.R.C. 1705.19] and an order limiting the Receiver's authority over the limited liability companies.

Again, Judge Collier applied Ohio Civil Rule 60(B) and denied the motion.

#### Direct Appeal

Kerr filed a direct appeal to the Third Appellate District of Ohio [case no. 7-19-06] in which he argued the application of the prerequisites of Ohio Civil Rule 60(B) are prohibited in a challenge to a void judgment.

Kerr also argued, for the first time, that Judge Collier lacked Constitutional authority under the 14th Amendment to the United States Constitution to issue a CHarging Order against Kerr before it could be reasonably calculated that Kerr had an opportunity to gain knowledge of the Charging Order proceeding and an opportunity to present his objections. In support, Kerr relied on this Court's Decisions and stated the following:

The United States Constitution gaurantees procedural due process. Although the concept is flexible at it's core, procedural due process under the United States Constitution requires, at minimum, an opportunity to be heard when the State seeks to infringe a protected right. Boddi v Connecticut, 401 US 371. Further, the opportunity to be heard must occur at a meaningful time and in a meaningful manner. Mathews v Eldridge, 424 US 319. The right to procedural due process is confered not by legislative grace, but by constitutional gaurantee. Thus, while the legislature may elect not to confer a particular property right, it may not constituionally authorize the deprivation of a property interest, once confered without appropriate procedural safeguards. Arnett v Kennedy, 416 US 134.

The Appellate Court issued it's Judgment Entry on September 3, 2019. [Appendix H]. In it's Entry, the Appellate Court affirmed Judge Collier's application of Ohio Civil Rule 60(B) and also found that Kerr should have raised his procedural due

process claim in his first appeal. [Basically, the Appellate Court applied res judicata].

#### Discretionary Appeal

Kerr filed a Discretionary Appeal in the Ohio Supreme Court. [case no. 2019-1362]. Kerr reargued that his right to procedural due process is guaranteed under the 14th Amendment to the United States Constitution and that a violation of that sacred right can never be subject to the doctrine of res judicata.

Kerr also argued that Judge Collier's order to the Receiver violates the 14th Amendment to the United States Constitution because it exceeds the limits prescribed in The Consumer Credit Act.

On February 4, 2020, the Ohio Supreme Court declined jurisdiction. [Appendix A]. This Decision is one of the subjects of this Petition for Writ of Certiorari.

#### Writ of Prohibition

In the Third Appellate District of Ohio [case no. 7-19-05], Kerr filed a Complaint for Writ of Prohibition against Judge Collier, in which Kerr alleged that Judge Collier lacked legal authority, under Ohio Law and Federal Law, to issue several orders.

Under Count One, Kerr alleged facts and law, in support of his claim, that Judge Collier violated Kerr's right to procedural due process, which is guaranteed by the 14th Amendment to the United States Constitution, by issuing a Charging Order against Kerr before it could be reasonably calculated that Kerr had an opportunity to gain knowledge of the Charging Order proceeding,

and an opportunity to appear and raise his objection. In support, Kerr cited Decisions from this Court. Boddi v Connecticut, 401 US 371; Mathews v Eldridge, 424 US 319; Arnett v Kennedy, 416 US 134.

Under Count Two, Kerr alleged facts and law, in support of his claim, that Judge Collier violated Kerr's right to procedural due process, which is gauranteed by the 14th Amendment to the United States Constitution, by issueing an Order Appointing Receiver in the absence of any proof that Kerr received notice of the proceeding.

Under Count Six, Kerr alleged facts and law, in support of his claim, that Judge Collier lacked authority under The Consumer Credit Protection Act to issue an order to the Receiver to take all assets, equity, and income of Kerr, including all cash and cash equivalents, furniture, equipment, computers, and all general intangibles.

Judge Collier filed a Motion to Dismiss for failure to state a claim under Ohio Civil Rule 12(B)(6).

On June 21, 2019, the Appellate Court granted the motion. [Appendix I ].

Kerr then filed a direct appeal to the Ohio Supreme Court [case no. 2019-0888]. Kerr reargued that the 14th Amendment to the United States Constitution gaurantees procedural due process before a state divests a property interest. Kerr also argued that The Consumer Credit Protection Act prohibits Judge Collier from issueing an order to the Receiver to take all assets, equity, and income of Kerr, including all cash and cash equivelents, furniture,



equipment, computers, and all general intangibles.

Judge Collier did not file a Merit Brief. Thus, according to Ohio Supreme Court Rule 16.07(B), Kerr was entitled to an order in his favor as long as his merits "reasonably appears to sustain reversal."

On February 13, 2020, the Ohio Supreme Court issued its Judgment Entry and Opinion [Appendix A] which found that Judge Collier had jurisdiction to issue the Charging Order under O.R.C. 1705.19, and jurisdiction to issue the Order Appointing Receiver under O.R.C. 2735.01.

This Decision is one of the subjects of this Petition for Writ of Certiorari..

**REQUEST FOR GRANTING THE WRIT**

Supreme Court Rule 10 prescribes that a petition for writ of certiorari will not be granted only for compelling reasons, such as, when a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The facts of this case, and the documents attached in the Appendix, on it's face, demonstrates a clear violation of Kerr's right to procedural due process, and when presented this question of federal law, each level of the Ohio Courts settled the issue in a way that conflicts with this Court's decisions.

WHEREFORE, Petitioner requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



Jeremy Kerr 686-150  
North Central Correctional  
PO Box 1812  
Marion, OH 43301