

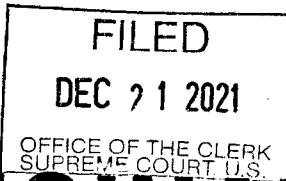
21-6845

No. 21-

In The  
SUPREME COURT OF THE UNITED STATES

In re Willie S. Smith., Petitioner

PETITION FOR WRIT OF MANDAMUS



ORIGINAL

Willie S. Smith #312-990  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

Pro se Litigant

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## QUESTION(S) PRESENTED

Smith's case presents an extremely extraordinary criminal rule & appellate rule posture of first impression, and it is nothing more than a direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty's actions in the **October 6, 1995** order, sentencing Mr. Smith for kidnapping and aggravated murder pursuant to **ORC. 2929.04(A)(7) & O.R.C.**

**§2903.01. Also a reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Steven E. Gall Denial of Smith's Common Law Motion which was entered on October 16, 2017, amounting to a judicial "usurpation of power", or "clear abuse of discretion".**

**(1) Is it clear and indisputable that, respondent Judges have a duty to enter a judgement of acquittal pursuant to "Ball" and Crim.**

**Rule 29?**

**(2) Is it clear and indisputable that, at this point "appeal is clearly inadequate remedy" to address Smith's constitutional injury, because *there is not a right to an appeal* to rectify Smith's constitutional injury. Please see Smith's procedural history in the index to the appendixes, he has *tried to get review in every appropriate court.***

**(3) Is it clear and indisputable that, the issuance of the writ is appropriate in this case because exceptional circumstances have amounted to a judicial "usurpation of power," or a "clear abuse of discretion," justifying the invocation of this extraordinary remedy?**

## LIST OF PARTIES

[X] All parties appear in the caption of the cover page.

Just to be clear, the respondent(s) are Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty, and Cuyahoga County Common Pleas Court Judge Steven E. Gall. Ohio's Attorney General is Dave Yost, and Petitioner Prison inmate is Willie S. Smith.

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## PETITION FOR WRIT OF MANDAMUS

Petitioner Willie S. Smith invokes this Court's broad and discretionary power pursuant to 28 U.S.C. §§ 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution, to remand this case to the Trial court to vacate Smith's sentence(s) and enter a judgement of acquittal pursuant to federal policy pursuant to Evans v. Michigan, 568 U.S.313, at 318, 319 (2013) and United States v. Ball, 163 U.S. 662, 671, at HN4.

### OPINION BELOW

The Journal Entry from Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty was entered on October 6, 1995 and attached at Appendix-A, and The Denial of Smith's Common Law Motion was entered on October 16, 2017 by Cuyahoga County Common Pleas Court Judge Steven E. Gall and attached at Appendix- B.

### STATEMENT OF JURISDICTION

The Journal Entry from Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty was entered on October 6, 1995, and The Denial of Smith's Common Law Motion was entered on October 16, 2017 by Cuyahoga County Common Pleas Court Judge Steven E. Gall. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254(a) 1651(a), and Article III of the U.S. Constitution.

### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

THE FIRST AMENDMENT OF THE UNITED STATES CONST: STATES IN RELEVANT PART: Right to petition the Government for a redress of grievances.

THE FIFTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

THE SIXTH AMENDMENT OF THE UNITED STATES CONST STATES IN RELEVANT PART: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

THE EIGHTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: **Nor cruel and unusual punishment inflicted.**

THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: **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 any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.**

28 U.S.C.§ 2241

28 U.S.C.§ 2242

28 U.S.C.§ 2254

OHIO REVISED CODES

§2903.01 (A)(7)

§2929.04 (A)(7)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Castro V. United States, 540 U.S. 374, (U.S. 2003)

Cheney v. United States Dist. Court, 542 U.S. 367, (2004)

Evans V. Michigan, 568 U.S. 313, (U.S. 2013)

Ex parte Fahey, 332 U.S. 258, (U.S. 1947)

Ex parte Milligan, 71 U.S. 2, (U.S. 1866)

Imbler v. Pachtman, 424 U.S. 409, (U.S. 1976)

Kendall v. United States, 37 U.S. 524, (U.S. 1838)

Marbury v. Madison, 5 U.S. 137, (U.S. 1803)

Norton v. Shelby County, 118 U.S. 425, (U.S. 1886)

State v. Anderson, 158 Conn. App. 315, (State App. Court 2015)

United States v. Appawoo, 553 F.2d 1242, (10<sup>th</sup> Cir. 1977)

United States v. Ball, 163 U.S. 662, (U.S. 1896)

United States v. Gaudin, 515 U.S. 506, (U.S. 1995)

United States v. Lucarelli, 476 F.Supp.2d 163, (U.S. Dist. Of Conn. 2007)

United States v. Martin Linen Supply Co., 430 U.S. 564, (U.S. 1977)

United States v. Randolph, 794 F.3d 602, (6<sup>th</sup> Cir. 2015)

Will v. United States, 389 U.S. 90, (U.S. 1967)

EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE RIGHT TO  
 ISSUANCE OF THE WRIT IS CLEAR AND INDISPUTABLE.  
 (Statement of the Case)

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is clearly inadequate remedy". *See Ex parte Fahey, 332 U.S. 258, at 260 (1947)* See Appendixes O and P, 28 U.S.C. §2241 Power to grant writ and § 2254 State Custody Federal Remedies.

With due regard, not merely for the reviewing functions of this Court, but for the "drastic and extraordinary" nature of the mandamus remedy. *See Ex parte Fahey, 332 U.S. 258, at 259.* "These should be resorted to only where appeal is clearly an inadequate remedy. We are unwilling to utilize them as substitutes for appeals." *Id at [\*260].*

"Although courts have not confined themselves to an arbitrary and technical definition of "jurisdiction", only exceptional circumstance amounting to a judicial "usurpation of power", or a "clear abuse of discretion", will justify the invocation of this extraordinary remedy". *See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, HN7 (2004)*<sup>1</sup>

Smith's case has an extremely extraordinary criminal rule & appellate rule posture, and it is nothing more than a direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty's actions in the *October 6, 1995* order, sentencing Mr. Smith for kidnapping and aggravated murder pursuant to ORC. 2929.04(A)(7) & O.R.C. §2903.01. See appendix A & E & F. In doing so an unauthorized abuse of

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<sup>1</sup> As the writ of mandamus is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue. First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires, -- a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is "clear and indisputable". Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. These hurdles, however demanding, are not insuperable. The United States Supreme Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by embarrassing the executive arm of the Government or result in the intrusion by federal judiciary on a delicate area of federal-state relations.

authority, amounting to a judicial “**usurpation of power**,” or a “**clear abuse of discretion**” has taken place.<sup>2</sup>

Moreover, this continued, and is nothing more than a **direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Steven E. Gall Denial of Smith’s Common Law Motion to Correct a void judgment which was entered on October 16, 2017, amounting to a continued judicial “**usurpation of power**”, or “**clear abuse of discretion**”.**

Effectively violating Smith’s rights to file a grievance against the government to get redress for his constitutional claims, under our constitutional law. This has had a negative effect on Smith’s interest to have a proper review of his constitutional claims within the jurisdiction of the Federal District Court under **§2254**, because **acquittals are unreviewable** and to review such is **tantamount** to putting Smith in **double jeopardy**, and an **unlawful use** of the Cuyahoga County Common Pleas Court’s jurisdiction, by adopting a deliberate policy in open defiance of the federal rules in matters of **Fed. Rule Crim. Proc. Rule 29. Acquittal (See appendix C and D)**, pursuant to **Evans v. Michigan, 568 U.S.313, at 318, 319 (2013) and United States v. Ball, 163 U.S. 662, 671, at HN4, and federal appellate Rules.**

Since both common pleas court judges have adopted a deliberate policy in defiance of federal rules and policy handed down by this court pursuant **Crim. Rule 29 Acquittal-(See appendix C and D)**, pursuant to **Evans v. Michigan, 568 U.S.313, at 318, 319 (2013) and United States v. Ball, 163 U.S. 662, 671, at HN4, and federal appellate Rules.** Mandamus is appropriate here to compel either Cuyahoga County Common Pleas Court Judge to vacate Smith’s sentence(s) and enter a judgement for an acquittal pursuant to federal policy, and order his immediate discharge from custody.

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<sup>2</sup> This is the **single most important clue**, that implicates all State officials, by knowingly willful Deprivation of Rights Under Color of Law pursuant to **18 U.S.C. §242** See **appendix W**. The Trial court denied Smith’s right to a verdict of acquittal pursuant to **Crim. Rule 29** See **appendixes C & D** in violation **United States v. Ball, 163 U.S. 662, 671, at HN4, and federal appellate Rules**, also see **Imbler v. Pachtman, 424 U.S. 409, at 429,441,443, (1976)**

Furthermore, acquittals are unreviewable thus, both respondent(s) have effectively robbed Smith of his constitutionally protected rights to file grievance against the government within the Sixth Circuit and Federal District Courts jurisdictions.

It is clear and indisputable that, Mr. Smith has no other legal recourse agreeable to law to address his clear constitutional injury. It is clear and indisputable that, mandamus is appropriate here to rectify this judicial **“usurpation of power”**, or a **“clear abuse of discretion”**, and will justify the invocation of this extraordinary remedy”.

The exceptional circumstances that warrant the right to issuance of the writ is clear and indisputable here because, the respondent(s) have adopted a deliberate policy in open defiance of the federal rules and have become the **judge, jury, and executioner of Smith’s protected constitutional rights to get redress in Federal Court.**

Smith asks this Court to **compel** either Cuyahoga County Common Pleas Court Judge to vacate Smith’s sentence(s) and enter a judgement of acquittal pursuant to federal policy, and order his immediate discharge from custody, because the current orders from that court **violates clearly established federal law.**

With that being said, Smith maintains a writ of mandamus can be filed on anyone. “The writ of prohibition appears to have been used more than the writ of mandamus to control inferior courts mandamus could issue to **any person in respect of anything** that pertained to his office and was in the nature of a public duty.” *See 1 Halsbury’s laws of England para, 81 (4<sup>th</sup> ed. 1973).*

“The legal proposition that mandamus will lie in appropriate cases to correct **willful disobedience** of the rules laid down by this Court is not controverted.” *See Will v. United States, 389 U.S. 90, at 100 (1967) (added emphasis)*

“The peremptory writ of mandamus has traditionally been used in the federal courts only to confine an inferior court to a **lawful exercise** of its prescribed jurisdiction or to compel it to **exercise its authority when it is, its duty to do so...**” *See Will v. United States, 389 U.S. 90, at HN1(1967)*

'For the overriding rule of judicial intervention must be "first, do no harm". *See Castro v. United States, 540 U.S. 375, at 386 (added emphasis)*

Smith declares, because of the willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this Court, has allowed respondent(s) to become the **judge, jury, and executioner** of Smith's protected constitutional rights to get redress in federal court pursuant to §§ 2254(B)(i)(ii)(d)(1) and 2241(c)(3) *See appendixes P& O.*

On **June 5, 1995** Mr. Smith was indicted on count one of kidnapping, **Case No. CR-323987** and on **June 28, 1995** Smith was issued a separated three count **indictment Case No. CR-325283** in which he was charged as follows: count one -aggravated murder count two -aggravated murder count three -having a weapon while under disability. Both aggravated murder charges contained firearm specifications and also felony murder specifications.

On **August 21, 1995** the trial court **consolidated the two indictments and renumbered the** charges as follows: Count one-Kidnapping; Count two- Aggravated Murder; Count three- Aggravated Murder; and count four- Having a weapon while under disability.

On **October 6, 1995** the jury returned the verdict as follows: Guilty on count one- Kidnapping; **Not Guilty** on Count two- Aggravated Murder; Guilty on Count Three- Aggravated Murder; and **Not Guilty** of Count four- Having a weapon while under disability.

**Significantly, in count three** the jury also stated the following: "**We find and specify** that the **defendant did not** have a firearm on or about his person, or under his control while committing the offense charged in the indictment.

In addition, the jury determined: In regards to **specification One, specification Two:** We the jury find defendant "**Not Guilty**" of committing this offense while he was committing, **attempting to commit or fleeing immediately after committing or attempting to commit kidnapping** and defendant was the principal offender in the aggravated murder, or if not the principal offender, committed the aggravated murder with prior calculation or design". *See appendix A.*

The elements required to substantiate the charge of aggravated murder under **O.R.C. §2903.01**, were not contained in the body of the initial charge, but were listed in the felony murder specifications which specifically states:

- And the offense presented above was committed while the offender was committing, attempting to commit or fleeing immediately after committing or attempting to commit kidnapping, and either was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

***State v. Smith, 2018-Ohio-2938, at ¶11***

***Ohio Revised Code §2903.01, specifically states at (A)&(B):***

- **(A)** No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.
- **(B)** No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, aggravated burglary, burglary, trespass in habitation when a person is present or likely to be present, terrorism, or escape.

***O.R.C. §2903.01 (A)&(B) (See appendix F)***

In addition, ***R.C. §2903.01 specifically states in significant part at (A):***

- **(A)** Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined Pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code...

***O.R.C. §2903.01 (A) (emphasis added)***

To that point **R.C. §2929.04 (See appendix E)** at section (A) is of particular importance where it states the criteria for imposing death or imprisonment for a capital offense as follows:

- (A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section **2941.14(See appendix G)** of the Revised Code and proved beyond a reasonable doubt:

**O.R.C. §2929.04(A)(7) States: (emphasis added)**

- (7) The offense was committed while the offender was committing, attempting to commit, ***or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.***

The State record shows that Smith was charged with a capital offence. Even more significant is the fact that it is undisputed that the jury found Smith ***not guilty of each and every element*** listed in the felony murder specifications attached to ***renumbered count three of the indictment in question.***

Furthermore, in ***State v. Smith, 2018-Ohio-2938, at ¶11*** the Eighth Appellate District of Ohio ***admitted on the record*** that **"This requirement of contemporaneous commission was an essential element of aggravated murder".** See appendix I.

***Similarly, in State v. Anderson, 158 Conn. App. 315, 118 A.3d 728, 2015 Conn. App. LEXIS 243, the court held:***

- **HN13** If a jury in an ***answer to an interrogatory*** or a special finding makes a unanimous factual finding beyond a reasonable doubt ***and that finding negates one or more of the essential elements of the underlying offense***, such a finding constitutes an acquittal ***regardless of a general***

**verdict** by the jury finding a defendant guilty of that offense. *Id.*, at 118 A.3d 728, 747.<sup>3</sup>

More troubling, is the **court admitted** this but proved false to adhere to the power of that important finding, and proved false to adhere to the power of the **court's duty** to enter a judgement of acquittal and discharge Mr. Smith from State custody.

Smith highlights here, *in United States v. Randolph*, 794 F.3d 602, (6<sup>th</sup> Cir. 2015) Although case authority on this matter is limited, the Sixth Circuit addressed a similar situation in *United States v. Randolph*, 794 F.3d 602.

In *Randolph*, the issue of law, for the sake of this case, is related to the charge of drug trafficking conspiracy in count one of his indictment. In determining whether *Randolph* was guilty of the drug trafficking conspiracy charge, the jury was first asked to find whether he was “**guilty**” or “**not guilty**” of the conspiracy.

Next, the jury was required to determine, in three separate sub-questions, (1) the amount of cocaine, (2) crack cocaine and (3) marijuana- the drugs that were charged in the conspiracy- “*involved in the conspiracy*”.

One of the options available for the jury to choose was “**none**” on *Randolph's verdict form*, the jury checked “**guilty**” but as to the amount of cocaine, crack cocaine and marijuana involved in the conspiracy, checked “**none**” as it relates to each drug. *Randolph*, 794 F.3d at 607.

As a result, the Sixth Circuit stated that: “*Randolph cannot be guilty of the charged conspiracy. He is entitled to a judgment of acquittal*”. *Randolph*, 794 F.3d at 612.

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<sup>3</sup> See *United States v. Gaudin*, 515 U.S. 506, 511, 115 S. Ct. 2310, 132 L. ed. 2d 444 (1995); *Randolph*, 794 F.3d 602; 2015 U.S. App. LEXIS 12818; 2015 FED APP. 0163p (6<sup>th</sup> Cir.) citing *United State v. Lucarelli*, 476 F. Supp. 2d 163, 167 (D. Conn. 2007) (acquitting defendant of securities fraud charges where jury, in special interrogatories, found that defendant did not act with specific intent, despite finding defendant guilty in general verdict); See also *State v. Goins*, 151 Wn.2d 728, 92 P.3d 181, 189-90 (Wash. 2004) (en banc) (Sander, J., dissenting).

So how much more so did the trial Judge Timothy J. Mc Ginty **have a duty to enter** the same Judgment in Smith's case?

*In 2017*, Mr. Smith through counsel Jazmine Greer (0083706) filed a common law motion to correct a void judgment, which was then denied by trial Judge Steven E. Gall on **October 16, 2017**. The same question can be asked here as well. **"How much more so did** the trial Judge Steven E. Gall **have a duty to** vacate the erroneous judgment of guilty and enter **a new proper judgment of acquittal** and ordering Mr. Smith to be discharge from State custody? See appendix B

*Then in 2018*, Smith appealed that judgment from Judge Steven E. Gall to the Eighth District Court of Appeals for Ohio in **State v. Smith, 2018-Ohio-2938, at ¶11** the Eighth Appellate District of Ohio **admitted on the record that** "This requirement of contemporaneous commission was an essential element of aggravated murder". See appendix I. Then also erroneously denied Smith's appeal using Ohio's favorite procedural bar to any relief "**res judicata**". The same question can be asked here as well. See appendix I

*Then in 2018*, Mr. Smith filed a timely appeal to the Supreme Court of Ohio and the Court stated in it's order: "**Appeal not accepted for review**". After the State representative waived any argument in opposition in support of the memorandum of jurisdiction on **September 26, 2018**. See Supreme Court's order at appendix H. The same question can be asked here as well.

*On February 2, 2019*, Smith filed a habeas corpus pursuant to **28 U.S.C. 2254- See Case No. 1:19-cv-246** with the North Eastern District Court of Ohio. Where the appeal was then transferred to the United States Sixth Circuit of Appeal Court for permission to file a second successive habeas corpus. The Sixth Circuit **denied Smith permission** to file a second successive petition with the Federal District Court on **October 17, 2019**, See *In re Smith 2019 U.S. App LEXIS 31062 at appendix L*.

Furthermore, on **December 20, 2019** Smith filed under appellate rule **60(b)(4)** motion, and a motion to recall the mandate for fraud upon the court. See **Case No. 1:02-cv-0105** in the North Eastern District Court of Ohio. Which was transferred on **August 31, 2020** to the Sixth Circuit. Then the Sixth Circuit denied it on **February 3, 2021**. See appendix M.

Now in 2021, the United States Supreme Court denied Smith habeas relief of October 4, 2021. See *Case No. 21-5138* and then denied a petition for rehearing on December 6, 2021 also without a merits determination. See appendix J & K.

This begs the question, “*why wasn’t Smith claims of acquittal reviewed by any subsequent court, from the court who had original jurisdiction on his case?*”

Because “*an acquittal is unreviewable*”. See *Evans v. Michigan*, 568 U.S. 313, at 318. Also, see *United States v. Ball*, 163 U.S. 662, 671, at HN4- “As to the defendant who had been acquitted by the verdict duly returned and received, **the court could take no other action than to order his discharge**. The verdict of **acquittal was final, and could not be reviewed, on error or otherwise**, without putting him twice in jeopardy, and thereby violating the Constitution.”<sup>4</sup> (added emphasis)

Smith affirms, that whenever there is a constitutional **injury that is unreviewable by this Court**, “the Court ought to assist by **mandamus**, upon reasons of justice, as the writ express, **and upon reasons of public policy to preserve, order and good government**. This writ ought to be used upon all occasions where in justice and good government there ought to be one”. See *Marbury v. Madison*, 5 U.S. 137, at HN8 and HN9 (1803)

#### REASON FOR GRANTING THE WRIT

This Court’s power to grant an extraordinary writ is very broad but reserved for exceptional cases in which “**appeal is clearly inadequate remedy**”. See *Ex parte Fahey*, 332 U.S. 258, at 260 (1947) See Appendixes I and J 28 U.S.C. §§2241 Power to grant writ and 2254 State Custody Federal Remedies.

With due regard, not merely for the reviewing functions of this Court, but for the “**drastic and extraordinary**” nature of the **mandamus** remedy. See *Ex parte Fahey*, 332 U.S. 258, at 259. “These should be resorted to only where appeal is clearly

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<sup>4</sup> *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571, 51 L. Ed. 2d 642, 97 S. Ct. 1349 (1977). Instead, “court must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.” Id.; See also *Scott*, 437 U.S. at 97 (stating the same principle); *United States v. Appawoo*, 553 F.2d 1242, 1244 (10<sup>th</sup> Cir. 1977) (same).

inadequate remedy. We are unwilling to utilize them as substitutes for appeals.” *Id at [\*260].*

“Although courts have not confined themselves to an arbitrary and technical definition of “jurisdiction”, only exceptional circumstance amounting to a judicial “usurpation of power”, or a “clear abuse of discretion”, will justify the invocation of this extraordinary remedy”. *See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, HN7 (2004)*

Smith’s case has an extremely extraordinary criminal rule & appellate posture rule, and it is nothing more than a direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty’s actions in the *October 6, 1995* order, sentencing Mr. Smith for kidnapping and aggravated murder pursuant to ORC. 2929.04(A)(7) & O.R.C. §2903.01. See appendix E & F. In doing an unauthorized abuse of authority, amounting to a judicial “usurpation of power”, or “clear abuse of discretion”.

**Effectively violating Smith’s rights to file a grievance against the government to get redress for his constitutional claims, under our constitutional law. This has had a negative effect on Smith’s interest to have a proper review of his constitutional claims within the jurisdiction on the Federal District Court under §2254, because of the unlawful use of the trial court’s jurisdiction by adopting a deliberate policy in open defiance of the federal rules in matters of Crim. Rule 29 Acquittal and federal appellate Rules.**

The exceptional circumstances that warrant the right to issuance of the writ is clear and indisputable here because, Judge Timothy J. Mc Ginty and Judge Steven E. Gall have adopted a deliberate policy in open defiance of the federal rules and have become the judge, jury, and executioner of Smith’s protected constitutional rights to get redress in Federal Court.

Rule 20 (See appendix N) of this court requires a petitioner seeking a writ of Mandamus demonstrate that (1) “exceptional circumstances warrant the exercise of this power”, (2) “adequate relief cannot be obtained in any other form or from any other court, and (3) the writ will be in aid of the Court’s appellate jurisdiction”. Further, this Court’s authority to grant relief is limited by 28 U.S.C. §§2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendixes P and O.

Mr. Smith's last hope for a lawful outcome to have his righteous day in court lies with this court. His case presents exceptional circumstances that warrant exercise of this Court's discretionary power.

#### I. STATEMENT OF REASON FOR NOT FILING IN THE DISTRICT COURT

As required by this Court's **Rule 20.1, 20.4, and 28 U.S.C. §§2241 and 2242**. Mr. Smith states that he has not applied to the District Court because the Sixth Circuit Court prohibited such an application. **See appendix L (In re Smith 2019 U.S. App LEXIS 31062)**. Mr. Smith exhausted his state remedies for his "Ball" Crim. Rule 29 claim, because acquittals are unreviewable there is an *absence of available state corrective process*; or circumstances exist that render such process ineffective to protect the rights of the applicant, pursuant to 28 U.S.C. §§2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendixes P and O.

Smith affirms, "*adequate relief cannot be obtained in any other form or from any other court.*

#### II. THE EXCEPTIONAL CIRCUMSTANCES OF THIS CASE WARRANT THE EXERCISE OF THIS COURT'S JURISDICTION

Smith's case has an extremely extraordinary criminal rule & appellate rule posture, and it is nothing more than a **direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty's actions in the October 6, 1995 order, sentencing Mr. Smith for kidnapping and aggravated murder pursuant to ORC. 2929.04(A)(7) & O.R.C. §2903.01. See appendix E & F**. In doing an unauthorized abuse of authority, amounting to a judicial "usurpation of power", or "clear abuse of discretion".

Moreover, and it is nothing more than a **direct reflection of respondent(s) Cuyahoga County Common Pleas Court Judge Steven E. Gall's denial of Smith's Common Law Motion which was entered on October 16, 2017, amounting to a judicial "usurpation of power", or "clear abuse of discretion".** **§2254(B)(i)(ii)(D)(1) and 2241(c)(3). See appendixes O and P**, which has had a **detrimental effect** on Smith's protected constitutional rights to file grievance against the government to get redress, the right to issuance for ***mandamus is clear and indisputable.***

**Also (1) See *Ex parte Milligan*, 71 U.S. 2, 4 wall. 2, 110-113, 18 L. Ed. 281, (1866),** Which reasoned that a petition for habeas corpus is a suit because the petitioner seeks “**that remedy which the law affords him**” to recover his liberty.

**(2) See *Cheney v. United States Dist. Court*, 542 U.S. 367, at HN6. (2004)** “The common-law writ of mandamus against a lower court is codified at 28 U.S.C. §1651(a): The United States Supreme and all courts established by Act of Congress may issue all writ necessary or appropriate of their respective jurisdiction, and agreeable to the usages and principles of law”.

“**Any unconstitutional act is null and void of law, it confers no rights, it imposes no duties, it affords no protections, it creates no office**”. **See *Norton v. Shelby County*, 118 U.S. 425, at HN1 (1886)**

#### WHAT IS CLEAR AND INDISPUTABLE

- The respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty’s actions in the ***October 6, 1995*** order, sentencing Mr. Smith for kidnapping and aggravated murder pursuant to **ORC. 2929.04(A)(7) & O.R.C. §2903.01**.
- The respondent(s) Cuyahoga County Common Pleas Court Judge Steven E. Gall’s ***denial*** of Smith’s Common Law Motion was entered on ***October 16, 2017***.
- At this point “**appeal is clearly inadequate remedy**” to address Smith’s constitutional injury, because ***there is not a right to an appeal*** to rectify Smith’s constitutional injury. Please see Smith’s procedural history in the index to the appendixes, he has ***tried to get review in every appropriate court***.
- “The authority to issue the **writ of mandamus** to an officer of the United States, ***commanding him to perform a specific act required by law of the United States***, is within the scope of the judicial powers of the United States, under the constitution.”<sup>5</sup>

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<sup>5</sup>**HN5** Under the constitution, the power to issue a mandamus to an executive officer of the United States, may be vested in the inferior court of the United States; and it is the appropriate writ, and proper to be employed, agreeably to principles and usages of law, to compel the performance of a ministerial act,

- **HN8** “The **very essence** of civil liberty certainly consists in the right of every individual **to claim** the protection of the laws, whenever he receives an injury. One of the **first duties of government** is to afford that protection”.
- **HN9** “Where there is a legal right, **there is also a legal remedy by suit or action at law**, whenever that right is invaded”.
- **HN14** “The Court **ought to assist** by mandamus, upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve, order and good government. This **writ ought to be used** upon all occasions where the law has **established no specific remedy**, and where in justice and good government there **ought to be one**”.
- **HN15** “To **render** the mandamus **a proper remedy**, the officer to whom it is directed, must be to whom, on legal principles, such writ may be directed; **and the person applying for it must be without any other specific remedy**”.<sup>6</sup>
- Smith affirms, the right to issuance of the writ is clear and indisputable with exceptional circumstances **amounting to a judicial “usurpation of power,” or a “clear abuse of discretion,”** will justify the invocation of this extraordinary remedy.

In a system that affords due process, where everyone has been sworn to uphold the constitution, any willful contrary act, is the exception.

Smith points out here, that one **could only speculate** what could be the **motivating factor** for such an embarrassing break down of the actual and perceived integrity of the judicial process, or is this **normal policy** put in place for financially vulnerable, minorities like Smith?

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necessary to the completion of an individual right arising under the laws of the United States. See *Kendall v. United States*, 37 U.S. 524, at HN5, HN6. (1838)

<sup>6</sup> See *Marbury v. Madison*, 5 U.S. 137, at HN8, HN9, HN14, and HN15. (1803)

The **reprehensibility** of trial Judge Timothy J. Mc Ginty's actions should give this tribunal pause for the **sanctity of due process and life**. In essence, Judge Timothy J. Mc Ginty has kidnapped, and aggravate murdered **not just** Mr. Willie S. Smith's early years of manhood development at 20-years-old, by being carted away to prison **after a jury clearly acquitted** him of said crimes, but the effects of that act **did not just** have an effect on then 20-year-old Willie S. Smith's case, It had a **very egregious and debilitating effect** on then 16-years-old Mr. Ashunte Smith's (Willie's co-defendant-little-brother) **ability and rights to defend** himself in his trial **at Case No. CR-95-327616-ZA**, by the trial court's **deadly game of masquerade** with the verdict in a capital case.

## CONCLUSION

Smith prays ***that this Court issues the writ of mandamus*** because he has shown that it ***is appropriate, agreeable to principles and usages of law, and he has no other legal recourse.*** Smith affirms although this standard is ***demanding it is not insuperable.*** The right to issuance of the writ is clear and indisputable.

Respectful Submitted,



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