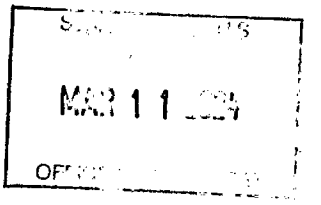
No. 23-7044

IN THE

SUPREME COURT OF THE UNITED STATES



Melanie A. Ogle – PETITIONER

vs.

Hocking County Common Pleas Court, et al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

Melanie A. Ogle

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Rockbridge, Ohio 43149

740-385-5959

QUESTION(S) PRESENTED

QUESTION 1. In absence of counsel and a waiver of right to counsel during a sentencing hearing, does a state trial court possess "constitutional authority" to sentence a criminal defendant to a term of imprisonment, and order commencement of a term of imprisonment?

QUESTION 2. If, a state trial court does not possess "constitutional authority" to sentence a criminal defendant to a term of imprisonment, and order commencement of a term of imprisonment, is such a sentence and/or conviction "void"?.

QUESTION 3. In absence of counsel and a waiver of right to counsel during a sentencing hearing, is a state trial court prohibited by the Sixth Amendment to the United States Constitution from sentencing a criminal defendant to a term of imprisonment, and ordering commencement of a term of imprisonment?

QUESTION 4. In absence of counsel and a waiver of right to counsel during a sentencing hearing, does a state trial court's state statutory "subject matter jurisdiction" to sentence a criminal defendant to a term of imprisonment and order commencement of a term of imprisonment, override, negate, defeat, or abrogate the prohibition of the Sixth Amendment to the United States Constitution against a state trial court sentencing a criminal defendant to a term of imprisonment, and ordering commencement of a term of imprisonment?

QUESTION 5. If, in absence of counsel and a waiver of right to counsel during a sentencing hearing, a state trial court is prohibited by the Sixth Amendment to the United States Constitution from sentencing a criminal defendant to a term of imprisonment, and ordering commencement of a term of imprisonment, is such a sentence and/or conviction "void"?

QUESTION 6. Does a state trial court possess "personal jurisdiction" over a criminal defendant to sentence a criminal defendant to a term of imprisonment, and order commencement of a term of imprisonment, when

the criminal defendant has objected to the involuntary waiver of her right to counsel and the constitutional unlawfulness of the proceedings, and/or when a sentencing proceeding that includes imprisonment, commences in absolute absence of counsel after the criminal defendant repeatedly declared they had an inability to obtain counsel, that they did not waive their right counsel, and when they did not relinquish, abandon, reject, or refuse to be represented by counsel, or court-appointed counsel?

QUESTION 7. If, a state trial court does not possess "personal jurisdiction" over a criminal defendant to sentence a criminal defendant to a term of imprisonment, and order commencement of a term of imprisonment, when the criminal defendant has objected to the involuntary waiver of her right to counsel and the constitutional unlawfulness of the proceedings, and/or when a sentencing proceeding commenced in absolute absence of counsel after the criminal defendant repeatedly declared they had an inability to obtain counsel, that they did not waive their right counsel, and when they did not relinquish, abandon, reject, or refuse to be represented by counsel or court-appointed counsel, is such a sentence and/or conviction "void"?

LIST OF PARTIES

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

[✓] 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 judgment is the subject of this petition is as follows:

Hocking County Common Pleas Court

Judge Dale A. Crawford

RELATED CASES

Hocking County Common Pleas Court, Case No. 09CR0125

Fourth District Court of Appeals, Hocking County, Case No. 11CA29 – appeal/ 09CR0125

Fourth District Court of Appeals, Hocking County, Case No. 11CA32 – appeal/ 09CR0125

Fourth District Court of Appeals, Hocking County, Case No. 20CA9 – mandamus/prohibition petition

Fourth District Court of Appeals, Athens County, Case No. 12CA0004 – habeas petition

Fifth District Court of Appeals, Franklin County, Case No. 12AP000162 – habeas petition

USDC, SD OH, Case No. 2:15CV0776 – habeas petition

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[✓] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the 4th District Appellate court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

I DONT KNOW

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[√] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[√] A timely petition for rehearing was thereafter denied on the following date: December 12, 2023 and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth and Fourteenth Amendments

right to counsel

unconstitutional imposition and execution of imprisonment pursuant to:

Argersinger v. Hamlin (1972), 407 U.S. 25

Carnley v. *Cochran,* 369 U. S. 506, 516 (1962)

Gideon v. Wainwright (1963), 372 U.S. 335

Johnson v. Zerbst (1938), 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461

STATEMENT OF THE CASE

Petitioner Melanie A. Ogle, filed a verified complaint for a writ of mandamus and/or prohibition against Respondents Hocking County Common Pleas Court and Judge Dale A. Crawford, in Ohio's Fourth District Court of Appeals for imposing punishment against her for a felony crime in Hocking County Common Pleas Court Case No. 090CR125, including "180 days" imprisonment, as being patently and unambiguously, actions unauthorized by law, and therefore, unlawful and void, requesting the appellate court issue a writ of mandamus and/or prohibition which serves to vacate of record, the September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE against her, and all other subsequent entries and orders filed pursuant to the same, and any and all other relief for which she is entitled.

The September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE against Petitioner, was in addition to the evidence of record, that 11 days prior to the September 27, 2011 "sentencing hearing" held against her, Respondent Judge Dale A. Crawford ordered that as of September 16, 2011, Melanie A. Ogle be imprisoned and was to "have no contact, direct or indirect,

with any juror, witness, lawyer or the Court while on bond", and that, on September 21, 2011, Petitioner filed a pro se motion to rescind the unlawful September 16, 2011 Bond Order/Amended Bond Order, which he denied by entry on September 27, 2011.

On January 7, 2021, the Fourth District Appellate Court dismissed Petitioner's mandamus/prohibition complaint, then on December 21, 2021, the Supreme Court of Ohio reversed the district court's dismissal of Petitioner's prohibition and mandamus claims and remanded the case for further proceedings (Case No. 2021 – 0234).

Citing *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) in its 2021 decision, the Supreme Court of Ohio stated:

> {¶ 19} In sum, Ogle has stated a colorable claim that Judge Crawford violated her Sixth Amendment rights when he ordered her to communicate with any lawyer and then sentenced her and that this error rendered the sentencing entry void.

In its most recent July 14, 2022 decision, the state appellate court concluded that Petitioner's claims in her complaint for writs of mandamus and prohibition "are barred by res judicata, she is not entitled to relief in mandamus or prohibition", by relying upon a non-existent fact of record in

order to establish that, "the first element of res judicata has been met", "Because there was a prior valid judgment on the merits concerning these issues", which absolutely contradicts the appellate court's July 26, 2013 Decision and Judgment Entry, which explicitly stated that, "we decline to reach the merits."

On direct appeal to the Supreme Court of Ohio, the Supreme Court of Ohio did not make a decision regarding the appellate court's reliance on a non-existent fact of record, or note the fact that the district court did not make any determination as to the unlawful sentence and/or conviction against Petitioner being "void" or "voidable", instead, determining that *Zerbst*, 304 U.S. at 468, 58 S.Ct. 1019, 82 L.Ed. 1461 is no longer applicable law, and that the Supreme Court of the United States "openly discarded" *Zerbst* in 1942 in *Waley v. Johnston*, 316 U.S. 101, 104-105, 62 S.Ct. 964, 86 L.Ed. 1302 (1942).

Petitioner was not afforded a proper review, as her appeal addressed only what the appellate court had decided – it had not decided that the unlawful sentence of imprisonment was not void.

Petitioner filed a timely motion for reconsideration, which was denied without reason on December 12, 2023.

Petitioner has timely filed her Petition for writ of certiorari in this Court.

Petitioner objects to this Court's "facts and procedural history" as being both inaccurate and lacking, so as to convince the reader to a parsed, rather than a complete view, while misrepresenting the actual language content of the transcripts of the September 27, 2011 and November 22, 2011 hearings.

Petitioner's pleadings of record in the original action, including her Affidavit and Notice of Pro Se Appearance to file a Motion for Recission of the unlawful bond order that was filed days prior to the unlawful sentencing hearing (and was denied by the trial court) a copy of which was attached to her Opposition to Respondents' Motion for Summary Judgment, refer to the actual facts of record.

Petitioner filed motions for stay of execution of the unlawful imprisonment sentence in violation of her Sixth Amendment right to counsel with both the trial and appellate courts, which were denied without any reasons given.

Petitioner filed a habeas petition against Southeast Ohio Regional Jail warden on February 13, 2012, in the Fourth District Court of Appeals,

Athens County, Case No. 12CA0004; a habeas petition against the Franklin County sheriff on February 27, 2012, in the Fifth District Court of Appeals, Franklin County, Case No. 12AP000162; and a habeas petition on March 4, 2015, in USDC, SD OH, Case No. 2:15CV0776. Petitioner's first habeas was dismissed after the warden and Hocking County sheriff colluded to illegally (without documentation or authorization) to remove her from the SEORJ and to the Franklin County FCCCII. Petitioner's second habeas was dismissed after the FCCCII deputies ignored her repeated written requests to provide her with a required notary. Her federal habeas was dismissed for procedural default.

Collateral disability for Petitioner exists from the unlawful September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE for assessed "costs" against her in the amount of $6,308.40 outstanding in Case No. 09CR0125.

REASONS FOR GRANTING THE PETITION

By its October 3, 2023 decision in Case No. 2022-1052, *State ex rel. Ogle v. Hocking County Common Pleas Court, et al.*, 2023 Ohio 3534, the Supreme Court of Ohio has determined that a state trial court is not prohibited by the Sixth Amendment from sentencing a criminal defendant to a term of imprisonment, and ordering commencement of a term of imprisonment, in absence of counsel and a waiver of right to counsel, during a sentencing hearing.

This case should be unnecessary, but because the Supreme Court of Ohio's decision is in contravention to the Supreme Court of the United State's decisions in *Johnson v. Zerbst* (1938), 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461; *Carnley* v. *Cochran,* 369 U. S. 506, 516 (1962); *Gideon v. Wainwright* (1963), 372 U.S. 335; *Argersinger v. Hamlin* (1972), 407 U.S. 25, and others, it is.

The Supreme Court of Ohio has reasoned that a state trial court's "subject-matter jurisdiction over felony cases" is its "authority" to impose

upon and execute a sentence sentence of imprisonment, against a criminal defendant in absence of counsel and a waiver of right to counsel, during a sentencing hearing. They have, and in light of this decision, state trial courts can be expected to continue to do so.

The Supreme Court of Ohio has determined that such unconstitutional sentences of imprisonment can never be considered "void". So, in Ohio, the Sixth Amendment is not applicable during a proceeding, until an appellate court only in a direct appeal determines if such a constitutional violation occurred, and only if, the criminal defendant's appellate attorney files a direct appeal regarding the unconstitutional act and unlawful imprisonment – at which time it will only be declared "voidable", after the criminal defendant has been unlawfully imprisoned.

> It is beyond dispute that "[t]he Sixth Amendment safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process." *Iowa v. Tovar,* 541 U.S. 77, 80-81, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004); see *United States v. Cronic,* 466 U.S. 648, 653-654, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); *Gideon v. Wainwright,* 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).
>
> *Marshall v. Rodgers*, 133 S. Ct. 1446 - Supreme Court 2013
>
> Indeed, "state courts have the solemn responsibility equally with

the federal courts to safeguard constitutional rights,"
Burt v. Titlow, 134 S. Ct. 10 - Supreme Court 2013

The State of Ohio has not, does not, and will continue to not provide any practical safeguard(s) to prevent a trial court from imposing and executing a sentence of imprisonment against criminal defendants, in the absence of a waiver of counsel and who are without counsel, as the unlawful imprisonment against Petitioner and the Supreme Court of Ohio's decision in this case shows.

The Supreme Court of Ohio's decision rests entirely upon "subject-matter jurisdiction", as its justification for a state trial court to disregard the Sixth Amendment's mandate, and serve up a sentence of imprisonment against a criminal defendant who has not waived their right to counsel, and is without counsel, during a critical stage of proceedings against them, including during a sentencing hearing, then later define it as an "error". equivalent to its own cases it cited regarding "sentencing errors".

The Supreme Court of Ohio provides no explanation as to how a state trial court's above the constitution "subject-matter jurisdiction" "authority"

protects a criminal defendant's constitutional guaranty that, "absent a knowing and intelligent waiver, no person may be imprisoned for any offense,***, unless he was represented by counsel at his trial." *Argersinger v. Hamlin* (1972), 407 U.S. 25. The Supreme Court of Ohio makes it clear that it does not.

The Supreme Court of Ohio's justification that "adjudicatory authority" is why trial courts are not constitutionally mandated to refrain from sentencing a criminal defendant in absence of waiver of counsel, and who is without counsel at a critical stage of a proceeding, and is exactly the act the Sixth Amendment prohibits, but here the Supreme Court of Ohio states that they can do so, regardless. The Supreme Court of Ohio holds that "subject-matter jurisdiction" controls over this Sixth Amendment prohibition.

The Supreme Court of Ohio in its decision, states that *Zerbst*, 304 U.S. at 468, 58 S.Ct. 1019, 82 L.Ed. 1461, is no longer applicable, and therefore, when a state trial court sentences a criminal defendant to a term of imprisonment, and orders commencement of a term of imprisonment, in absence of counsel and a waiver of right to counsel, during a sentencing

hearing, it has inherent and controlling authority under state law to do so, so that the Sixth Amendment can not bar it from doing so, determining that in 1977, that this Court had "openly discarded" *Zerbst* in 1942, the Supreme Court of Ohio stating:

> {¶ 18} [] However, the United States Supreme Court no longer treats a violation of the right to counsel—either entirely or during a critical phase of the proceeding—as an error divesting the trial court of jurisdiction.

The Supreme Court of Ohio also makes the following statement, it's interpretation of *Cronic,* in support of its decision, and as if its 2006 case follows *Cronic*:

> {¶ 21} A violation of the defendant's right to counsel does not deprive the sentencing court of subject-matter jurisdiction any more than any other constitutional or trial error does. Although a sentence imposed in violation of the Sixth Amendment right to counsel is a structural error that is reversible on appeal, *see United States v. Cronic*, 466 U.S. 648, 658-659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), fn. 25, such a sentence is not void ab initio for lack of subject-matter jurisdiction, *see Bozsik v. Hudson*, 110 Ohio St.3d 245, 2006-Ohio-4356, 852 N.E.2d 1200, ¶ 9 (explaining that an invalid waiver of counsel does not deprive the trial court of jurisdiction).

Yet, the Supreme Court of Ohio's citation of "fn. 25" from *Cronic*, reflects presumptive prejudice, when there is "complete denial of counsel" at

a "critical stage" of a criminal proceedings, and nothing about not being a "void" judgment, or criminal defendant's only redress being reversible "structural error" on direct appeal, after an unconstitutional sentence of imprisonment has commenced.

Additionally, the Supreme Court of Ohio does not claim that Ohio's "subject-matter jurisdiction" authority lends to encompass "personal jurisdiction", nor that "personal jurisdiction" cannot be "lost", pursuant to *Zerbst*.

The Sixth Amendment guarantees rights of the "person" – "absent a knowing and intelligent waiver, no person may be imprisoned for any offense,***, unless he was represented by counsel [ ]." *Argersinger v. Hamlin* (1972), 407 U.S. 25 – which is exactly what *Zerbst* and other constitutional right to counsel law protects.

It is clear that this Court holds that a state trial court is forbidden by the Sixth Amendment, to exercise its "authority" to sentence a person to imprisonment, if the "person" has not waived their right to counsel and is not

represented by counsel to impose and/or execute a sentence of imprisonment for the proceeding the stands trial court desires to hold against them.

Zerbst stands for exactly that, and the Supreme Court of Ohio has not cited any case overturning that prohibition.

The Supreme Court of Ohio cites its own decisions in support of its decision. Within those decisions it acknowledges the necessity of "personal jurisdiction", a person being "properly before the court" and "a court having jurisdiction over the person of the defendant", in addition to "subject-matter jurisdiction", but does not explain how or why, a state trial court may continue to assert "personal jurisdiction" over a criminal defendant, when it has failed to "complete the court", pursuant to *Zerbst* at 468:

> A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court — as the Sixth Amendment requires — by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake.[22] If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void***

Therefore, the "person" for sure, has not submitted to the trial court their "personal jurisdiction" to be sentenced to imprisonment, when the court has not been "completed", pursuant to *Zerbst*, or other constitutional case law, or "properly before the court".

Criminal defendants appear before the courts under threat of arrest and physical harm in the process, which is not voluntarily.

Aside from the fact, that the Supreme Court of Ohio asserts that the State of Ohio has and will otherwise, continue to rely on "subject-matter jurisdiction" to get around the Sixth Amendment prohibition, it does not make any argument as to how or why, when a trial court fails to "complete the court" in the process of imposing and executing a sentence of imprisonment against a criminal defendant, it has "personal jurisdiction" over them to do so, or issue a warrant for their arrest and imprison them for the "term" of the unlawful sentence, like was done to Petitioner and has been done to others, particularly notable in Ohio municipal courts.

The Supreme Court of Ohio in fact, acknowledges that when a trial court does not possess " jurisdiction over the person of the defendant", a

judgment of conviction is "void" as it determined in *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), which it cited in support of its "subject-matter jurisdiction" explanation:

> Within the meaning of the statute, a judgment of conviction is void if rendered by a court having either no jurisdiction over the person of the defendant or no jurisdiction of the subject matter, *i.e.*, jurisdiction to try the defendant for the crime for which he was convicted.

The Supreme Court of Ohio provides no explanation as to how a state trial court's imprisonment sentence is not "void" when it "fail[s] to complete the court — as the Sixth Amendment requires — by providing counsel for an accused who is unable to obtain counsel", pursuant to *Zerbst*, or any other well-established right to counsel law.

In the case against Petitioner, the unconstitutional sentencing hearing began after Respondents instructed the bailiff to have Petitioner sign a waiver of counsel document outside of the courtroom before the "sentencing hearing" commenced:

> THE COURT: Mrs. Ogle, I know that I had the bailiff hand you a waiver of counsel and it's my understanding you do not want to sign that?
> DEFENDANT: I do not waive the right to counsel.

Respondent Judge Crawford solicited a "waiver of counsel" document for Petitioner to sign away her right to counsel, outside the courtroom. At the time, he had in his possession Petitioner's pro se motion to rescind the unlawful September 16, 2011 bond order, along with a notice of pro se appearance for the purpose of dealing with the unlawful bond order, which she filed on September 21, 2011, and he denied. Her motion that he denied, stated:

> "The Court filed a Bond Order on September 16, 2011 that 1(1) the Defendant is to have no contact, direct or indirect, with any juror, witness, lawyer or the Court while on bond; (2) the Defendant shall be placed on house arrest with electronic monitoring; (3) the Defendant shall not leave her property without prior order of the Court.
> "And, Defendant is now unlawfully banned by this Court from contact with a lawyer or the Court***"

After stating that she did not waive her right to counsel, Judge Crawford stated, "I don't understand why you don't want to sign the written waiver of counsel."

Petitioner once again stated that she did not waive her right to counsel.

Petitioner would go on to state 15 times that she did not waive her

right to counsel, and 7 times that she had an inability to obtain counsel, yet Judge Crawford was undeterred from sentencing Petitioner to imprisonment.

As the Supreme Court of Ohio has decided, he had statutory "authority" under Ohio law to do so.

Petitioner did not request court-appointed counsel, she did not refuse court-appointed counsel, and there was no inquiry regarding Petitioner's "inability to obtain counsel", and no time did she state that she could not "afford" counsel, or that she had the "inability to pay" for counsel.

In 1962, six years before Judge Crawford was admitted to the Bar in Ohio, this Court stated in *Carnley v. Cochran*, 369 U. S. 506, 516 (1962) at 513:

> But it is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request.[8] *** We held that when the Constitution grants protection against criminal proceedings without the assistance of counsel, counsel must be furnished "whether or not the accused requested the appointment of counsel. *Uveges* v. *Pennsylvania,* 335 U. S. 437, 441." 365 U. S., at 111, n. 1. See *Rice* v. *Olson, supra,* at 788; *Gibbs* v. *Burke, supra,* at 780.

at 516:

> Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.

and, at 517:

> But no such burden can be imposed upon an accused unless the record—or a hearing, where required—reveals his affirmative acquiescence. Where, as in this case, the constitutional infirmity of trial without counsel is manifest, and there is not even an allegation, much less a showing, of affirmative waiver, the accused is entitled to relief from his unconstitutional conviction.

The Supreme Court of Ohio suggests that a retired judge of 20 years in Franklin County County Common Pleas Court, assigned to a common pleas court in Hocking County, did not know what he was supposed to do and did nothing more than make an "error", when the transcripts show otherwise. In 2011, Sixth Amendment law stated in *Carnley*, was well-established.

Petitioner's notice of pro se appearance for the purpose of dealing with the unlawful bond order by way of her motion to rescind, which was denied, stated that she could not pay legal fees the counsel of record her family intended to retain for the sentencing hearing required after receiving the

unlawful bond order, and who informed her on September 19, 2011, that it would be $2,000.00 in addition to the original quote for the sentencing hearing, to deal with the bond order, which he read to her over the phone, and said that it was "a problem that you're talking to me right now". (*See* Petitioner's affidavit / Opposition to Respondents' summary judgment motion filed in 20CA9.)

Judge Crawford declared that, "because you have not requested the Court appoint counsel on your behalf", he was waiving Petitioner's right to counsel.

It was well-established law on September 27, 2011, that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request:

> "But it is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request." *Carnley v. Cochran*, 369 U.S. 506, 513 (1962).

The prosecutor aided in the imposition of the unconstitutional imprisonment sentence, when he prepared the September 28, 2011 Entry of Conviction and Sentence, which Judge Crawford signed, falsely stating that,

"She refused the Court's offer of appointed counsel.", and that "Defendant knowingly and voluntarily waved her right to counsel."

The transcripts reflect that there is no semblance of compliance with any of the numerous cases of constitutional law regarding right to counsel, absence of counsel, or waiver of counsel.

Yet, the Supreme Court of Ohio states that the conviction and/or sentencing entry against Petitioner cannot be "void", because the trial court had "authority" under an Ohio statute, to order a sentence of imprisonment against her, and that *Zerbst* is inapplicable, and justifies Respondents' unconstitutional actions as being equivalent to a "sentencing error" in citing its own cases.

Petitioner was deprived of her liberty for "180 days", there were no constitutional safeguards to prevent Petitioner's unlawful imprisonment, because according to the Supreme Court of Ohio, the state trial court had authority, regardless of *Zerbst*, and apparently, of any other decision of this Court.

And on the 94th day of her unlawful imprisonment, Respondents ordered a "holder" on her unlawful imprisonment, while the state readied its motion to commence an additional 12 months imprisonment of the unlawful sentence for an accusation of "vandalism", which the state falsely submitted to a grand jury that she had committed "on or about November 25, 2011 to an "ankle monitor" owned by a private company for which a civil contract controlled for "any damages" – malicious charges created by the sheriff, who was a defendant along with his deputy in *Ogles v. North*, et al. 2:10CV806, USDC, SDOH, as a means to prevent Petitioner from participating as a plaintiff and intimidating Charles R. Ogle. The "ankle monitor" owner later testified in a breach of contract civil case deposition, that he knew nothing about the criminal charges against Petitioner, that he had not first billed Petitioner for "any damages", and that it was his understanding that the county was simply acting as his collection agent. Respondents stated in the November 22, 2011, hearing against Petitioner, that, "THE COURT: Well, I can assure you that if you are in jail you are not going to be released from the jail to go to the federal court." The sheriff reacted to fabricate a new criminal

charge against Petitioner to interfere with the Ogles' federal civil rights case. It would not be the sheriff's last act of interference in the Ogles' federal civil rights case.

To be certain, this is not a case that involves a claim of ineffective assistance of counsel, a dispute over whether a waiver of right to counsel is invalid, or whether the criminal defendant refused court-appointed counsel. And the Supreme Court of Ohio does not claim it involves any of those elements.

The Supreme Court of Ohio has not cited one single constitutional case in support of such acts or its decision that the state trial court had "authority" over and above the Sixth Amendment, to order a sentence of imprisonment against Petitioner, commence the sentence of imprisonment against her, or order a "holder" against her while unlawfully imprisoned.

The Supreme Court of Ohio has not cited a single case law where "R.C. § 2931.03" grants a court or a judge any "authority" to disregard the Sixth Amendment, or to sentence a criminal defendant to imprisonment in absolute absence of counsel, without waiving their right to counsel.

The Supreme Court of Ohio's decision is in contravention of well-established constitutional law.

Respondents did not have any authority to disregard either state or federal law regarding the Sixth Amendment constitutional mandate prohibiting the imprisonment of any person absent a knowing and intelligent waiver, who is without counsel, and such judgments are therefore, "void".

Particularly on point, is a recent United States District Court decision in *Arocha v. Blackfeet Tribe,* Dist. Court, D. Montana 2023:

> The presence of legal counsel during sentencing proceedings long has been recognized as essential to the preservation of constitutional rights. *See Wilfong v. Johnston,* 156 F.2d 507, 510 (9th Cir. 1946) ("We conclude that because of the failure of petitioner to be represented by counsel at the time of the pronouncement of judgment and sentence he was deprived of a constitutional right and, therefore, the judgment and sentence is void."); *see also Boggess v. Boles,* 251 F. Supp. 689, 692 (N.D.W. Va. 1966) ("[I]t appears that federal courts, . . . have disfavored the imposition of sentence in the absence of counsel, both by federal and by state tribunals.") Arocha's right to counsel was violated when he was sentenced, in 2017, *in absentia* and without counsel present. *Wilfong,* 156 F.2d at 510.

Other courts referring to *Zerbst* as to its "void" holding include *Solina v. United States*, 709 F. 2d 160 - Court of Appeals, 2nd Circuit 1983, and *State of Nebraska v. Stott*, 586 N.W.2d 436 (1998) 255 Neb. 438.

The Supreme Court of Ohio's decision would seem to also impact cases where prior unconstitutional convictions and/or sentences could be used in allegations by the state in a later case against a criminal defendant, since the Supreme Court of Ohio insists that such a conviction and/or sentence is not void and cannot be collaterally attacked, which is untenable.

> "To permit a conviction obtained in violation of *Gideon* v. *Wainwright* to be used against a person either to support guilt or enhance punishment for another offense . . . is to erode the principle of that case. Worse yet, since the defect in the prior conviction was denial of the right to counsel, the accused in effect suffers anew from the deprivation of that . . . right." *Burgett* v. *Texas,* 389 U. S. 109

Collateral disability for Petitioner exists from the unlawful September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE for assessed "costs" against her in the amount of $6,308.40 outstanding in Case No. 09CR0125.

This Court should grant a writ so that Ohio's trial courts are be put on notice that they may not go around the right to counsel mandate of the Sixth Amendment to imprison any person without "completing the court" at a critical stage, including sentencing, pursuant to *Zerbst* and other abundant constitutional law, and that the resulting judgments when they do, are wholly unauthorized under the Constitution of the United States, constitutionally unlawful, and constitutionally "void".

Petitioner also refers to the content of her Motion for Reconsideration argument, denied without reason given, by the Supreme Court of Ohio, in support of her reasons for granting her petition herein.

Petitioner is entitled to relief from the manifest miscarriage of justice of the unconstitutional, unlawful, and wholly unauthorized conviction and/or sentence of imprisonment imposed and executed against her, which the State of Ohio enabled by its failure to safeguard her Sixth Amendment right to counsel, continuing now in holding her collaterally liable into the future, and the same, and all subsequent orders against her pursuant to the September 27, 2011 "sentencing hearing", and September 28, 2011 JUDGMENT ENTRY

OF CONVICTION AND SENTENCE, therefore, must be declared constitutionally "void", as always having been constitutionally unlawful from its inception, and vacated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Melanie A Dyke

Date: March 11, 2024