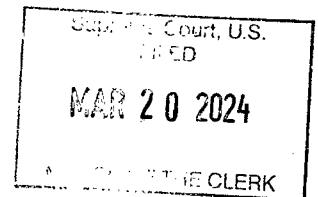


No. 23-7494 *App. filed*

IN THE
SUPREME COURT OF THE UNITED STATES



Soleiman Mobarak, -- Petitioner,

Vs.

Jeffrey M. Brown, Judge -- Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

Soleiman Mobarak
Petitioner, Pro se
Noble Corr. Inst., No. 706934
15708 McConnelsville Road
Caldwell, Ohio 43724

Questions Presented for Review

1. Is it repugnant to the Constitution, treaties, or laws of the United States to convict and incarcerate a United States citizen, and deprive him of property, for innocent acts not criminalized and/or proscribed by any statute in that State at the time the citizen is indicted?
2. Is it repugnant to the Constitution, treaties, or laws of the United States to convict and incarcerate a United States citizen, and deprive him of property, for acts that no statute within the state where he was tried, convicted, sentenced, and imprisoned, criminalized or proscribed the acts for which he was tried, convicted, sentenced, and imprisoned, until after he committed the otherwise innocent acts?
3. Where the Petitioner was indicted for and convicted of acts that were not prohibited or proscribed by any Ohio statute defining offenses at the time the Petitioner was indicted, does the failure of any statute to criminalize or proscribe the acts deprive the Ohio trial court of criminal subject matter jurisdiction over the acts?
4. Where Article IV, §4, of the Constitution of Ohio states that “the courts of common pleas ... shall have such original jurisdiction over all justiciable matters ... as may be provided by law”, and Ohio Revised Code § 2901.03 states that “No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code”, is it repugnant to the Constitution, treaties, or laws of the United States for an Ohio trial court to take subject matter jurisdiction that is not provided by law, of “offenses” not defined by one or more State statute as a criminal offense?
5. Where the Petitioner was indicted for and convicted of acts that were not prohibited or proscribed by any Ohio statute defining offenses at the time the Petitioner was indicted, is it repugnant to the Constitution, treaties, or laws of the United States, for the Ohio Supreme Court to retrospectively “create” subject matter jurisdiction by holding that because the non-offense was charged under the label of “felonies”, the trial court had jurisdiction merely because the trial court had statutory jurisdiction over felonies in general?

6. Where the Ohio trial court lacked subject matter jurisdiction, is the conviction, sentence, and deprivation of property resulting from the judgment repugnant to the Constitution, treaties, or laws of the United States, and void ab initio?

7. Where substances possessed and sold by the petitioner were neither named in any Ohio statute, nor defined as offenses at the time alleged in the petitioner's indictment, and were not added to such statutes or otherwise defined as offenses in Ohio until after the indictment was issued, does the Ohio supreme court's retrospective inclusion of previously unnamed, and thus non-criminalized substances, into the statutes as they existed at the time the petitioner was indicted have the effect of retrospective criminal legislation, and is such a decision void as being repugnant to the Constitution, treaties, or laws of the United States?

8. Where substances possessed and sold by the petitioner were neither named in any Ohio statute, nor defined as offenses at the time alleged in the petitioner's indictment, and were not added to such statutes or otherwise defined as offenses in Ohio until after the Petitioner was indicted, is the Ohio Supreme Court's retrospective inclusion, by interpretation, of previously unnamed, and thus non-criminalized substances, into the statutes as they existed at the time the petitioner was indicted repugnant to the Constitution, treaties, or laws of the United States, and void, as impermissibly expanding the subject matter jurisdiction of Ohio's courts of common pleas?

List of Parties

All parties are named in the Caption.

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Related Cases

1. Judgment Below in the Ohio Supreme Court (Appeal of Right):

State ex rel. Mobarak v. Brown, Supreme Court of Ohio, No. 2023-0369; Decided January 25, 2024; citations at ____ Ohio St.3d ____; 2024-Ohio-221; 2024-Ohio-221; 2024 Ohio LEXIS 219; 2024 WL 268894.

2. Original Action in Mandamus in the State Court of Appeals:

State ex rel. Soleiman Mobarak, Relator, v. Jeffrey M. Brown, Judge et al., Respondents, Franklin County Court of Appeals of Ohio, Tenth Appellate District, No. 22AP-482, Reported at 2023-Ohio-436; 2023 Ohio App. LEXIS 416; 2023 WL 1992074; decided February 14, 2023.

3. Decision of the Ohio Supreme Court Reinstating the Conviction:

4. State Court of Appeals Decision vacating the Conviction:

Related State Criminal Proceedings

A. “Mobarak I”: *State v. Mobarak*, Court of Appeals of Ohio, Tenth Appellate District, Franklin County, No. 14AP-517, decided July 28, 2015. Citations: 2015-Ohio-3007; 2015 Ohio App. LEXIS 2916; 2015 WL 4554370. (First Direct Appeal; Reversed the conviction and released the Petitioner).

B. “Mobarak II”: *State v. Mobarak*, Supreme Court of Ohio, No. 2015-1259, Decided December 27, 2016. Citations: 150 Ohio St. 3d 26; 2016-Ohio-8372; 78 N.E.3d 832; 2016 Ohio LEXIS 3179 (State appealed; reinstated the Petitioner’s conviction and returned him to prison).

C. “Mobarak III”: *State v. Mobarak*, Court of Appeals of Ohio, Tenth Appellate District, Franklin County, No. 14AP-517 September 29, 2017. Citations: 2017-Ohio-7999; 98 N.E.3d 1023; 2017 Ohio App. LEXIS 4330; 2017 WL 4334156 (on Remand, affirmed the conviction and sentence).

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner Soleiman Mobarak respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the Petition and is reported at *State ex rel. Mobarak v. Brown*, Supreme Court of Ohio, No. 2023-0369; Decided January 25, 2024; citations at ____ Ohio St.3d ____; 2024-Ohio-221.

The opinion of the State Court of Appeals appears at Appendix B to the Petition and is reported at *State ex rel. Soleiman Mobarak, Relator, v. Jeffrey M. Brown, Judge et al., Respondents*, Franklin County Court of Appeals of Ohio, 2023-Ohio-436.

JURISDICTION

On January 25, 2024, in *State ex rel. Mobarak v. Brown*, 2024-Ohio-221, the Supreme Court of Ohio, entered the judgment or order sought herein to be reviewed; The United States Supreme Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 1257, as it seeks review of a final judgment rendered by the highest court of Ohio, and where the Ohio Supreme Court's judgment violates the Petitioner's rights, privileges, and/or immunity, and is otherwise repugnant to the Constitution, treaties, or laws of the United States.

Further, this case is reviewable on Certiorari as it involves claims that the State and state courts unconstitutionally exercised of authority under constitutional laws, as in *Zucht v. King*, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194, 1922 U.S. LEXIS 2356 (1922) (Question of unconstitutional exercise of authority under a constitutional law could be reviewed only by certiorari), and that Ohio Statutes under which the Petitioner was charged and convicted were unconstitutionally vague if, and to the extent that they intended to, criminalize possession and sale of "Spice" and "Bath Salts", at the times alleged in the Indictment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Because the provisions involved are lengthy, their citation are set out at this point, and their pertinent text shall be set out in the appendix. The provisions involved in this case include Ohio Revised Code Sections R.C. 1.42; R.C. 2505.02; R.C. 2901.03; R.C. 2901.04; R.C. 2901.11; R.C. 2925.01; R.C. 2925.03; R.C. 2925.11; R.C. 2931.03; R.C. 2953.02; R.C. 3719.01; R.C. 3719.013; Article IV, Section 4, Ohio Constitution; Article IV, Section 4, Ohio Constitution.

STATEMENT OF THE CASE

As review of an Ohio Supreme Court judgment is sought herein, the Petitioner specifies that the Ohio Supreme Court's judgment in the case below was rendered on January 25, 2024, in a decision that is repugnant to the Constitution, treaties, or laws of the United States (citation at *State ex rel. Mobarak v. Brown*, 2024-Ohio-221 (Ohio January 25, 2024)); the stage in the proceedings when the federal questions sought to be reviewed were raised both in the court of first instance and in the Court of Appeals in the Complaint and pleadings in an Original Action in Mandamus, and on, Appeal of Right to the Ohio Supreme Court in the Petitioner's Merit and Reply Briefs. Although the Petitioner's Substantial constitutional claims alleged and proved that the state trial court lacked subject matter jurisdiction over the Petitioner's non-criminalized acts, as hereinafter more fully appears, the Franklin County Court of Appeals, in the Original action, and the Ohio Supreme Court, disposed of the Petitioner's claims by concluded the mandamus action and relief were barred by the fact that the issues were supposedly (but not really) resolved in the direct appeal process, which itself is "not voidable, but simply void; and form(s) no bar to a recovery sought, even prior to a reversal, in opposition to (it)", for the reasons more fully set out below, as shown in *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340-341 (U.S. February 16, 1828); *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353-354 (U.S. December 13, 1920). See also, *Old Wayne Mut. Life Asso. v. McDonough*, 204 U.S. 8 (U.S. January 7, 1907).

It is important for context and clarity to point out that, at the times and dates of the non-offenses set out in the Indictment that the Petitioner was alleged to have committed, and which

netted him 35 years in prison and a significant loss of property, no Ohio statute defined “controlled substance analog”; no Ohio Statute named either of the substances at issue here (“spice” and “Bath Salts”) by either generic, trade, or chemical names; nor did any Ohio law redefine the term “analog” so as to include substances not derived from any “controlled substance”. Thus, no Ohio statute gave any clue, let alone constitutionally sufficient notice, that possession or sale of these substances would be considered an offense and subject them to criminal prosecution, imprisonment, and/or loss of property, in order to forewarn them to allow them to modify their behavior. Thus, there was no statute providing Ohio’s Courts of Common Pleas with criminal jurisdiction over these substances.

The procedural facts relevant to this case are set out in the decision below:

In 2012, Mobarak was indicted on charges of engaging in a pattern of corrupt activity, aggravated trafficking in drugs, and aggravated possession of drugs. The charges alleged that Mobarak had possessed and sold a controlled-substance analog commonly known as bath salts. Following a jury trial, Mobarak was found guilty and the trial court sentenced him to 35 years in prison. On direct appeal, the Tenth District reversed Mobarak’s convictions, concluding that “possession and trafficking of controlled substance analogs had not yet been criminalized as of the time of [Mobarak’s] offenses.” *State v. Mobarak*, 10th Dist. Franklin No. 14AP-517, 2015-Ohio-3007, ¶ 9 (“*Mobarak I*”). This court reversed the court of appeals’ judgment based on *State v. Shalash*, 148 Ohio St.3d 611, 2016-Ohio-8358, 71 N.E.3d 1089. *State v. Mobarak*, 150 Ohio St.3d 26, 2016-Ohio-8372, 78 N.E.3d 832, ¶ 1 (“*Mobarak II*”). In *Shalash*, this court held that “[a]lthough controlled-substance analogs were not specifically proscribed by R.C. Title 29 [in October 2011], other provisions of the Revised Code incorporated controlled-substance analogs into R.C. Title 29.” *Id.* at ¶ 13, citing R.C. 3719.013. This court remanded Mobarak’s case to the Tenth District for further proceedings consistent with *Shalash*. *Mobarak II* at ¶ 1. On remand, the court of appeals affirmed Mobarak’s convictions. *State v. Mobarak*, 2017-Ohio-7999, 98 N.E.3d 1023, ¶ 37 (10th Dist.) (“*Mobarak III*”).

In August 2022, Mobarak petitioned the Tenth District for a writ of mandamus. His petition asserted that the trial court had lacked subject-matter jurisdiction over his criminal case because (1) there was no statute prohibiting the possession or sale of bath salts at the time his offenses were alleged to have occurred, (2) bath salts were not controlled-substance analogs under Ohio law prior to October 2011, (3) his indictment failed to set out all the elements of the charges of possession or trafficking, and (4) the controlled-

substance-analogs law was unconstitutionally vague. Mobarak asked the court of appeals to order Judge Brown to vacate his convictions.

Judge Brown filed a Civ.R. 12(B)(6) motion to dismiss. The motion argued several reasons for dismissal, including that Mobarak had a plain and adequate remedy in the ordinary course of the law. A magistrate recommended dismissing Mobarak's petition because he had an adequate legal remedy. The court of appeals adopted the magistrate's decision and dismissed the petition. The court found that Mobarak's allegation that the trial court had lacked subject-matter jurisdiction was an unsupported legal conclusion. Mobarak appealed to (the Ohio Supreme Court) as of right.

State ex rel. Mobarak v. Brown, 2024-Ohio-221 ¶¶ 2-4 (Ohio January 25, 2024).

On January 25, 2024, the Ohio Supreme Court affirmed the Franklin County Court of Appeals decision in *Mobarak v. Brown, supra*, holding, in different words, that the trial court had essentially omnipotent jurisdiction because no statute deprived it of such (which is absolutely incorrect and in abject opposition to Ohio's constitutional and statutory jurisdictional law, as shown hereinafter) contrary to Article IV, § 4, of the Constitution of Ohio, which provides that "Courts of Common Pleas ... shall have jurisdiction as may be provided by law", and essentially holding that even though no statute criminalized the Petitioner's conduct at the time he committed the acts for which he was indicted, the State trial court still had subject matter jurisdiction because the non-criminalized acts were charged as felonies and R.C. 2931.03 gives Ohio's Courts of Common subject matter jurisdiction over felonies; which is patently and unambiguously absurd because R.C. 2901.03 holds that no conduct is an offense unless defined as an offense by one or more statutes, and since such conduct as not defined as offenses at the time, they were not "felonies", and thus, not under the grant of subject matter jurisdiction provided by R.C. 2931.03.

Ohio Supreme Court Justice Donnelly's separately written opinion, concurring in judgment only, is extremely helpful the United States Supreme Court in this matter, and only wrong in concurring with the judgment denying relief, as the "law", aka "procedural bars", cited by the Ohio Supreme Court in support of its decision is an unreasonable application of Federal Law, United States Constitutional law, and the law of the land as exposed by the United States Supreme Court.

Donnelly, J., concurring in judgment only:

This case is disturbing. Soleiman Mobarak filed an original action in mandamus in the Tenth District Court of Appeals, alleging that the Franklin County Court of Common Pleas had lacked subject-matter jurisdiction over his criminal case. In support of his claim, he asserted that the conduct for which he was convicted—the sale of controlled-substance analogs—was not criminalized when he allegedly committed the conduct, thereby depriving the trial court of jurisdiction. The Tenth District dismissed Mobarak's mandamus petition, finding that Mobarak possessed an adequate remedy in the ordinary course of the law and that he had presented unsupported legal conclusions in the petition relating to the trial court's purported lack of jurisdiction. 2023-Ohio-436, ¶ 10-11, 13-15. This court now affirms that conclusion. Because there are procedural bars to Mobarak's seeking equitable relief here, I am compelled to accept this court's judgment. But my conscience compels me to express my concerns about the issues raised in Mobarak's appeal.

To prevail on his mandamus claim, Mobarak must demonstrate by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide the relief, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3. But Mobarak need not show the lack of an adequate remedy in the ordinary course of the law if the respondent's lack of jurisdiction is patent and unambiguous. *State ex rel. Ford v. Ruehleman*, 149 Ohio St.3d 34, 2016-Ohio-3529, 73 N.E.3d 396, ¶ 62. The crux of Mobarak's claim is that the trial court lacked subject-matter jurisdiction because the conduct for which he was convicted was not criminalized when he allegedly committed it. And I believe there is merit to that claim.

Under Ohio's Constitution, the courts of common pleas are courts of general jurisdiction, possessing original jurisdiction over all justiciable matters as may be provided by law. Ohio Constitution, Article IV, Section 4(B). This includes having "original jurisdiction of all crimes and offenses" that are not otherwise entrusted to another tribunal. R.C. 2931.03. According to the majority opinion, these provisions support the conclusion that the trial court possessed subject-matter jurisdiction over Mobarak's criminal case. The majority reasons that because courts of common pleas have subject-matter jurisdiction over felony cases and Mobarak was charged with multiple felonies, the Franklin County Court of Common Pleas had jurisdiction over Mobarak's criminal case. Majority opinion, ¶ 7. But this conclusion elides the operative question that Mobarak raises: Was the conduct for which he was charged and convicted a felony? Answering that question requires more analysis than the majority opinion provides.

Criminal laws should inform the public of which conduct is prohibited and which is not. Ohio achieves this end by making its criminal law a creation of

statute: "No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code." R.C. 2901.03(A). A criminal offense is defined "when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty." R.C. 2901.03(B). Because criminal offenses are statutory in nature, the elements for determining criminal liability must be drawn wholly from the statutory text. *State v. Ford*, 128 Ohio St.3d 398, 2011-Ohio-765, 945 N.E.2d 498, ¶ 10. Thus, for the trial court to have had jurisdiction over Mobarak's criminal case, the Revised Code must set out a prohibited act, with a corresponding penalty, that Mobarak was accused of committing. Moreover, the elements of the alleged criminal act can come only from the statutory text.

Mobarak was charged with and convicted of engaging in a pattern of corrupt activity, aggravated trafficking in drugs, and aggravated possession of drugs, all stemming from his alleged sale and possession of a controlled-substance analog known as bath salts. But at the time of Mobarak's alleged conduct, the statutes that criminalized the sale or possession of drugs referred only to "a controlled substance." The General Assembly's amendments to R.C. 2925.03 and 2925.11 criminalizing the sale or possession of "a controlled substance analog" did not become effective until December 20, 2012. 2012 Sub.H.B. No. 334. Mobarak's alleged conduct occurred from March through July 2012; during that time, nothing in R.C. 2925.03 or 2925.11 suggested that the sale or possession of a controlled-substance analog was a criminal offense, nor did either statute lay out a penalty for engaging in that conduct. In short, while R.C. 2925.03 and 2925.11 prescribed a crime for the sale or possession of controlled substances, these statutes did not prescribe a crime for Mobarak's conduct—the sale or possession of controlled-substance analogs. Absent a crime having been committed, I am not convinced that there was a justiciable matter over which the trial court possessed subject-matter jurisdiction in Mobarak's criminal case.

Mobarak's argument on this point originally carried the day, resulting in the unanimous reversal of his criminal convictions in the court of appeals on direct appeal. *State v. Mobarak*, 10th Dist. Franklin No. 14AP-517, 2015-Ohio-3007, ¶ 6-9 ("Mobarak I"). That decision was then overturned, however, based on our decision in *State v. Shalash*, 148 Ohio St.3d 611, 2016-Ohio-8358, 71 N.E.3d 1089. *State v. Mobarak*, 150 Ohio St.3d 26, 2016-Ohio-8372, 78 N.E.3d 832, ¶ 1 ("Mobarak II"). In *Shalash*, this court acknowledged that controlled-substance analogs were not covered under the elements of R.C. 2925.03 at the time of Shalash's alleged criminal conduct. *Shalash* at ¶ 7. Even so, the court concluded that the Revised Code had criminalized the sale of controlled-substance analogs because R.C. 3719.013—a statute in R.C. Chapter 3719, which generally relates to the civil regulation of controlled substances—stated that controlled-substance analogs "'shall be treated'" the same as controlled substances for "'any provision of

the Revised Code." *Shalash* at ¶ 11, quoting R.C. 3719.013. While *Shalash* might be dispositive, I don't find it persuasive.

First, the majority opinion in *Shalash* ignored persuasive arguments that undermine its reasoning. One need only look at the Tenth District Court of Appeals' opinion explaining its judgment reversing Mobarak's conviction to see how paper thin this court's reasoning in *Shalash* is. In its opinion, the Tenth District identified several reasons that weighed against incorporating the civil-regulation definition of controlled substances (which includes controlled-substance analogs) into the statutes criminalizing the sale or possession of controlled substances. *Mobarak I* at ¶ 7, citing *State v. Smith*, 10th Dist. Franklin Nos. 14AP-154 and 14AP-155, 2014-Ohio-5303. These reasons included the General Assembly's decision to incorporate only some of the definitions of terms in the civil controlled-substances laws into R.C. 2925.01, which defines terms applicable to drug offenses under R.C. Chapter 2925; the express statement in R.C. 3719.01 limiting the use of the definitions contained in that statute to R.C. Chapter 3719; and the lack of cross-references or any other indication in R.C. Chapter 2925 that the definitions relating to the classification of controlled substances for civil-regulation purposes apply to drug offenses set forth in R.C. Chapter 2925. *Mobarak I* at ¶ 7.

None of these concerns were addressed, let alone resolved, by this court in *Shalash*. Instead, this court relied on R.C. 3719.013, *Shalash* at ¶ 11, even though that civil-regulation statute did not provide any definition that applied to the elements of the criminal offenses at issue in that case or in this case. This court also reasoned that R.C. 3719.013 provided adequate notice of prohibited conduct, because it was "not a secret provision of the Revised Code" and was found in a chapter titled "Controlled Substances." *Shalash* at ¶ 11.

I simply don't buy it. In my view, the Tenth District's reasoning is more thorough and compelling than that of this court in *Shalash*. Further, if the General Assembly's incorporation of R.C. 3719.013 into R.C. Chapter 2925 was as obvious as the court in *Shalash* believed, I am left wondering why the General Assembly found it necessary to amend R.C. 2925.03(A)(1) and (2) so that the sale of controlled-substance analogs satisfied the elements of trafficking in drugs. 2012 Sub.H.B. No. 334.

Second, this court in *Shalash* disregarded our long-standing principles of statutory construction. Under R.C. 2901.04(A), sections of the Revised Code that define criminal offenses or penalties must be strictly construed against the state. This rule of construction has been part of this court's precedent for over 170 years. See *Hall v. State*, 20 Ohio 7, 15 (1851) (referencing the long-settled principle that penal laws are to be strictly construed and not extended by implication). As acknowledged by the court in *Shalash*, controlled-

substance analogs were not "specifically proscribed" in R.C. Title 29 at the time of *Shalash*'s arrest and indictment. *Shalash*, 148 Ohio St.3d 611, 2016-Ohio-8358, 71 N.E.3d 1089, at ¶ 13. (And so too for Mobarak. See *Mobarak I*, 2015-Ohio-3007, at ¶ 9.) Yet, despite the clear absence of proscription within R.C. Chapter 2925 and the requirements of both R.C. 2901.04(A) and our caselaw for the strict construction of penal statutes, the court in *Shalash* went searching for a statutory justification to criminalize the conduct that was at issue. And in doing so, this court, not the General Assembly, created the elements of the crime for which Mobarak was convicted.

No person, however reprehensible his or her conduct is, should be subjected to criminal liability for committing an act that the law does not criminalize. Despite that principle, Soleiman Mobarak is serving 35 years in prison for acts that were not criminalized when he committed them. Ultimately, the issues that he raises here were resolved during his direct appeal. See *Mobarak II*, 150 Ohio St.3d 26, 2016-Ohio-8372, 78 N.E.3d 832, at ¶ 1. And that resolution limits the relief that this court may provide when reviewing the court of appeals' dismissal of Mobarak's petition for mandamus relief. See *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 249, 1992-Ohio-20, 594 N.E.2d 616 (1992) ("[E]xtraordinary writs may not be used as a substitute for an otherwise barred second appeal or to gain successive appellate reviews of the same issue"). While I am not convinced by this court's reasoning supporting its determination that the trial court had jurisdiction over Mobarak's criminal case, I accept that this court has resolved the question Mobarak raises and that that resolution is dispositive here. The law is the law, even if it leads to repugnant results. As a result, I concur in judgment only.

Id., *Mobarak v. Brown*, at ¶¶ 11-21 (emphasis not added because the entire quote would then be emphasized, neutralizing its effect as emphasis). (Note that Justice Donnelly specifically stated that "it leads to repugnant results".)

It is impossible to conceive that the Petitioner, who is not trained in the law, could somehow trick Justice Donnelly, who has years of legal education, and even more years of legal experience, into taking his side on the trial court's lack of subject matter jurisdiction, and to render an opinion that so utterly and completely destroys the Ohio Supreme Court's *Mobarak* Majority's reasoning in support of its obvious evasion of the real law, facts, and issues. In fact, the Petitioner commends Justice Donnelly for having the courage to stand so starkly in opposition to the rest of the Ohio Supreme Court in this case, and in so many others, where the Ohio Supreme Court so willingly validates lower courts' violations of individual rights and deprivations/evasions of Due Process.

However, the last paragraph of Justice Donnelly's opinion is incorrect insofar as his agreement that the issue that the acts were not offenses were resolved in the direct appeal, precluding relief in the case below: First, this case directly attacks and challenges the trial court's subject matter jurisdiction, and per the Constitution, treaties, and/or laws of the United States, and decisions of the United States Supreme Court, relief is available in the proceeding below, because:

Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. **But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.**

This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.

It is well known that the jurisdiction and authority of the County Courts of Kentucky are derived wholly, from the statute law of the state. In argument, we were referred to no statute which was supposed, either in terms, or by fair construction, to confer upon the County Court any supervising or controlling power over the acts of the clerk, in taking, in his office, the acknowledgment of a deed, or in recording it, upon an acknowledgment there taken by him. **We have sought in vain for such a provision, and it is believed none such exists.** No such supervising and controlling power can result to the Court, from the general relations which exist between a Court and its clerk; for in this case, the statutes confer upon the clerk, in his office, a distinct, independent, personal authority, to be exercised by him upon his own judgment and responsibility. We think, therefore, with the Circuit Court that the County Court had no jurisdiction or authority to order the after certificate of Mrs. Elliott's privy examination to be made and recorded.

Elliott v. Lessee of Peirsol, 26 U.S. 328, 340-341 (U.S. February 16, 1828).

Courts are constituted by authority and they can not go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal. *Elliott v.*

Peirsol, 1 Pet. 328, 344; *Old Wayne Mutual Life Association v. McDonough*, 204 U.S. 8.

Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 353-354 (U.S. December 13, 1920).

See also, *Old Wayne Mut. Life Asso. v. McDonough*, 204 U.S. 8 (U.S. January 7, 1907).

The law of the land is that because there was no statute defining the Petitioner's acts as criminal offenses at the time he "committed" them, the trial court lacked criminal subject matter jurisdiction over the acts since Ohio's Constitution, Article IV, §4, provides the trial court with only such "jurisdiction as may be provided by law", and none was; the lack of jurisdiction precluded the trial court from rendering a valid or final judgment; the trial court's judgment is void ab initio, and may be attacked at any time, in any court having jurisdiction over the proceeding in which the attack is made and relevant to those proceedings; and the Ohio Supreme Court's refusal to grant relief is repugnant to the Constitution, treaties, or laws of the United States.

Second, per well settled Ohio law, where a trial court's judgment that is void, or otherwise is not final, which is a violation of an individual's "substantia rights" that is enforceable under the Due Process Clause of the United States Constitution, Ohio's Courts of Appeals lack subject matter jurisdiction over any appeal attempted from the void and/or non-final judgment: Article IV, § 3(B)(2), of Ohio's Constitution provides that "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district"; R.C. 2505.02 and R.C. 2953.02 both incorporate the same "judgment or final order" language, and void judgment is considered a legal nullity, and is not a judgment or final order. See, e.g., *State v. Fischer*, 128 Ohio St. 3d 92, ¶ 40 (Ohio December 23, 2010); and *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268, 39 O.O.2d 414, 227.

Ohio Appellate courts lack jurisdiction over the subject matter of appeals where the judgment is not a final appealable order. *Green v. Bell*, 2023-Ohio-2601 (Ohio Ct. App., Mahoning County 2023); *Murray v. Ace Painting of Akron*, 2022-Ohio-1045 (Ohio Ct. App., Summit County

2022); *Cook v. Metro. Sewer Dist. of Greater Cin.*, 2022-Ohio-3245 (Ohio Ct. App., Hamilton County 2022); *City of Girard v. Youngstown Belt Ry. Co.*, 2019-Ohio-5417 (Ohio Ct. App., Trumbull County 2019); *Madfan, Inc. v. Makris*, 2015-Ohio-1316 (Ohio Ct. App., Cuyahoga County 2015).

The trial court's judgment entry fails to comply with Crim.R. 32(C). We therefore, dismiss this appeal for lack of subject matter jurisdiction on the grounds that the trial court has not rendered a final appealable order. As we indicated in *Miller*,

"We encourage the trial court to enter a judgment entry as soon as possible that complies with Crim.R. 32(C). After the trial court files that entry, if Defendant desires to appeal, he must file a new notice of appeal. The parties may then move this Court to transfer the record from this appeal to the new appeal and to submit the matter on the same briefs as were filed in this case and we will consider the appeal in an expedited fashion. See, e.g., *Sandlin*¹, n.4." *Miller*² at P20.

State v. Nevedale, 2007-Ohio-2042, ¶ 21 (Ohio Ct. App., Lorain County April 30, 2007).

These Ohio Court of Appeals decisions rely on Article IV, §3(B)(2), Ohio Statutory law, as well as Ohio Supreme Court decisions:

We are obligated to raise *sua sponte* questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co.* (1972), 29 Ohio St. 2d 184, 186, 280 N.E.2d 922. We find that the trial court's judgment entry fails to satisfy the requirements of Crim.R. 32(C), and that the trial court has therefore not issued a final appealable order. See, e.g., *State v. Earley*, 9th Dist.No. 23055, 2006 Ohio 4466. Therefore, we find that we do not have jurisdiction over this appeal. Section 3(B)(2), Article IV, Ohio Constitution; *State v. Tripodo* (1977), 50 Ohio St.2d 124, 127, 363 N.E.2d 719.

Id. Miller, ¶ 3.

Ohio's criminal jurisdiction statute, R.C. 2901.11 provides in (A)(1) that a person is subject to criminal prosecution and punishment in this state if "the person commits an offense under the laws of this state, any element of which takes place in this state."

...

¹ *State v. Sandlin*, 2006-Ohio-5021 (Ohio Ct. App., Highland County September 25, 2006)

² *State v. Miller*, 2007-Ohio-1353 (Ohio Ct. App., Medina County March 26, 2007)

Because no element of R.C. 2925.03(A)(2) was committed in the State of Ohio, we conclude that the trial court improperly exercised jurisdiction over that crime and that Appellant's conviction and sentence for that crime must be vacated.

State v. Literal, 2009-Ohio-199 ¶¶11 and 14 (Ohio Ct. App., Scioto County January 12, 2009).

Literally speaking (pun intended), since no Ohio statute in effect at the time defined the Petitioner acts as criminal offenses, it is impossible for the Petitioner to have, by those acts, committed an element of the non-existent offenses; and it is impossible for Petitioner to have been charged with an offense that did not exist; and is was impossible for the Petitioner to have been validly charged with an “offense” that did not exist under the law at the time he was indicted.

This begs the multi-layered question: Since no Statute criminalized the Petitioner’s acts at the time he performed them, and thus, the trial court lacked subject matter jurisdiction over the acts as criminal offenses, resulting in a judgment that is void ab initio; Since a void judgment is a legal nullity that is not a “judgment or final order”; since Ohio’s Courts of Appeals are deprived of subject matter jurisdiction over an appeal from a void judgment for want of a judgment or final order; and since Ohio’s Courts of Appeals must dismiss any appeal taken from a void judgment, how, then, does the result of a void direct appeal, that was required to have been dismissed for want of subject matter jurisdiction, create a procedural bar and relief preclusion in the Mandamus action, and the resulting appeal of right in the Ohio Supreme Court below, where Ohio law, i.e., the process that exists and that which is “due”, where Ohio law specifically allows for such action and relief?

The answer is that the Franklin County Court of Appeals was wrong in its judgment in the case below (due only to being constrained by unconstitutional decisions of the Ohio Supreme Court); the Ohio Supreme Court’s affirmance of the Court of Appeals’ decision, and reasons therefore, are repugnant to the Constitution, treaties, or laws of the United States, and Justice Donnelly erred in concurring with the Court in this regard.

It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made. *De Jonge v. Oregon*, 299 U.S. 353, 362; *Cole v. Arkansas*, 333 U.S. 196, 201(1948); *Shuttlesworth v. Birmingham*, 382 U.S. 87; *Ashton v. Kentucky*, 384 U.S. 195; *Turner v. New York*, 386 U.S. 773 (1967)

The decision of the Ohio Supreme Court, below, which manufactures a bar to relief from a judgment entered without subject matter jurisdiction, which can never be or become valid or final, in order to enforce the void and illegal judgment and continue the Petitioner's void and illegal 35-year sentence and deprivation of property, is repugnant to the Constitution, treaties, or laws of the United States, and the Supreme Court of the United States should GRANT certiorari to review this grievous case, reverse the Ohio Supreme Court's repugnant Decision Below and vacate, or order the trial court to vacate, the Petitioner's void and illegal sentence, and issue a decision that reverses the Ohio Supreme Court dangerous line of decisions that retrospectively and otherwise validate void judgments and deprive citizens of life, liberty, and property not only without, but in direct contravention of Due Process and other major Constitutional protections, as the decision below, and the decisions that support it, are repugnant to the Constitution, treaties, and/or laws of the United States.

REASONS FOR GRANTING THE PETITION

As an initial matter, to avoid excessive redundancy, the Petitioner included in this argument, all of the foregoing facts and argument, even if not expressly repeated hereinafter.

Substantive Due Process, at a minimum, relevant to statutory criminal jurisdiction of state trial courts, such as Ohio's, requires that before a Court of Common Pleas, acting as a criminal trial court, has subject matter jurisdiction over an offense, the act or acts for which the State seeks to charge, convict, and incarcerate, an individual, or deprive him of property, must be defined by one or more statutes that proscribe the act or acts, and define it/them as offenses. The concepts of

“law and order” include the concept that a citizen cannot be charged, convicted, incarcerated, or deprived of property, without a law proscribing his conduct and defining it as an offense.

The State is required to prove every element essential to an offense. *Sandstrom v. Montana*, 442 U.S. 510 (U.S. June 18, 1979). But how can a State prove every element essential to an offense beyond a reasonable doubt where there is no offense defined by statute, and thus, no elements to prove?

Further, the presumption of innocence extends to every element of an offense. *Morissette v. United States*, 342 U.S. 246 (U.S. January 7, 1952). How is that presumption rebutted and overcome where there is no offense defined by statute, and thus, no elements upon which to apply this presumption?

Additionally, although the Indictment clause of the Fifth Amendment has not been extended to states, the holding in *Russell v. United States*, 369 U.S. 749 (U.S. May 21, 1962), specifically refers to “charging documents” and does apply to states, in holding the charging document must contain every elements of the offense intended to be charged, which cannot be done where there is no statutory offense defined by statute, and thus, the Indictment did not invoke the trial court’s jurisdiction since “A Common Pleas Court has original jurisdiction in felony cases, and its jurisdiction is invoked by the return of an indictment”. *Click v. Eckle* (1962), 174 Ohio St. 88, 89, 186 N.E.2d 731. “It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void ab initio. *Bradley v. Fisher*, 80 U.S. 335 (U.S. April 8, 1872) (Footnote 7: *Mitchell v. Foster*, 12 Adolphus & Ellis, 472; *United States v. Arredondo*, 6 Peters, 709; *Walden v. Craig's Heirs*, 14 Id. 154.)

Cf., *Sexton v. California*, 189 U.S. 319 (U.S. April 6, 1903), showing the existence of a state statute defining an offense provides subject matter jurisdiction, while an Indictment filed in the court invokes that jurisdiction.

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

Bouie v. Columbia, 378 U.S. 347 (U.S. June 22, 1964).

Bouie contemplates an existing statute that fails to provide fair notice, but this "underlying principle ... that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed" obvious also applies to situations where no statute exists at all to provide constitutionally required "fair notice".

Yet, in the Petitioner's case, **there was no such statute proscribing his acts or defining them acts as offenses until after the Petitioner was already indicted** and in jail awaiting trial; and while other courts were dismissing identical charges for lack of any statute defining the acts as offenses, the Petitioner's trial court insisted upon continuing, allowed a jury to find the Petitioner guilty, then sentenced him to 35 years and forfeited millions in cash and private property; all without a statute proscribing the Petitioner's acts, or defining them as offenses.

The Franklin County Court of Appeals reversed the Petitioner's conviction and released the Petitioner from prison; the State appealed, and the Ohio Supreme Court accepted jurisdiction over his case while refusing jurisdiction over his supplier's case, re-imposed the Petitioner's conviction on the basis of *State v. Shalash*, 148 Ohio St.3d 611, on stretch of logic that threatens to break the confined of reason, and is repugnant to the Constitution, treaties, and/or laws of the United States, in order to reinstate the petitioner's void conviction and returned him to prison.

Pursuant to Ohio law, and decades of Ohio Supreme Court precedent regarding judgments that are void for want of subject matter jurisdiction, the Petitioner filed the action below, using a well settled and established Ohio curative process seeking a writ of mandamus compelling the Respondent to vacate the void judgment for want of subject matter jurisdiction. In that action, the Petitioner pointed out that law regarding judgments that are void for want of subject matter jurisdiction, and the laws regarding subject matter jurisdiction itself, have been long-established

by the United States Supreme Court and are thus the law of the land that is binding on every state and every court in the country. The Ohio Supreme Court ignored those citations as if they were meaningless dribble.

In the case below, *State ex rel. Mobarak v. Brown*, 2024-Ohio-221 (Ohio January 25, 2024), the Ohio Supreme Court engaged in an unreasonable application of well-identified United States law, and in fact, avoided it altogether in order to invert the manner in which Ohio's trial courts receive subject matter jurisdiction, and to preserve the Relator's void conviction, sentence, and forfeiture, and, just like Justice Donnelly pointed out in his Dissent, the Ohio Supreme Court majority ignored the actual facts and law of the case, and supplemented its own, finding that:

This court recently affirmed the dismissal of a similar action. In *State ex rel. Boler v. McCarthy*, 170 Ohio St.3d 392, 2023-Ohio-500, 213 N.E.3d 690, ¶ 3, the relator sought writs of mandamus and prohibition to vacate his criminal convictions. **Boler argued that the "trial court [had] lacked jurisdiction to * * * misconstrue and misapply Ohio's aggravated-robery statute."** *Id.* In rejecting this argument, this court stated, "[T]he trial court plainly had subject-matter jurisdiction over Boler's criminal case under R.C. 2931.03, which gives common pleas courts subject-matter jurisdiction over felony cases. **Boler has not identified any statute that removed the trial court's jurisdiction.**" *Id.* at ¶ 9, citing *Ohio High School Athletic Assn. v. Ruehlmam*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶ 9 ("when we have found that a court of common pleas patently and unambiguously lacks jurisdiction, it is almost always because a statute explicitly removed that jurisdiction"). **Like Boler, Mobarak attempts to challenge his convictions in jurisdictional terms but fails to point to any authority supporting his claim that the trial court had lacked jurisdiction over his criminal case.**

Id., *Mobarak*, at ¶ 8 (emphasis added).

Several problems exist with this inverted reasoning:

(1) The Petitioner's claim **was not** similar to the claim in *Boler*, and in fact was not even close: **Boler argued that the "trial court [had] lacked jurisdiction to * * * misconstrue and misapply Ohio's aggravated-robery statute**, whereas the Petitioner's claim is that **no Ohio statute defined the Petitioner's acts as offenses until months after the Petitioner was indicted**, regardless of construction or application of laws that existed at the time. The Petitioner did not

claim mere misconstruction or misapplication of existing statutes; he claimed no statute existed that criminalized, or even mentioned, the then-widely-available products he possessed and sold;

2. Although the Petitioner **did** point to statutes that deprives the trial court, Court of Common Pleas, of jurisdiction over non-statutory offenses, i.e., R.C. 2901.03, - which deprives the trial court of subject matter jurisdiction over non-statutory offenses by holding that no conduct is an offense in Ohio unless specifically defined as an offense by one or more statutes, - the Petitioner does not need to point to any statute depriving the trial court of subject matter jurisdiction because Ohio's Courts of Common Pleas are not the omnipotent, all-jurisdiction-having entities suggested by the Ohio Supreme Court, as Article IV, Section 4, Ohio Constitution, states that "The courts of common pleas ... shall have such original jurisdiction over all justiciable matters ... as may be provided by law", not "shall have jurisdiction unless deprived thereof by law";

3. The Ohio Supreme Court's decisions, including *Mobarak* (the case below), holding that Ohio's Courts of Common Pleas have jurisdiction unless specifically deprived of it by statute, are in **stark opposition to what Ohio's Constitution and statutes provide and require**, constitute judicial legislation, and constitute judicial expansion of jurisdiction repugnant to the Constitution, treaties, and/or laws of the United States: Because Article IV, Section 4, Ohio Constitution, states that the Courts of Common Pleas shall have jurisdiction "as may be provided by law"; because R.C. 2931.03 provides criminal subject matter jurisdiction **only** over offenses, and R.C. 2901.03 specifically precludes the Petitioner's acts from being offenses because, at the times alleged in the indictment, no Ohio statutes defined offenses involving possession and/or selling of, or even mentioned, the substances at issue here by any name or description, the trial court lacked subject matter jurisdiction by (a) Article IV, Section 4, Ohio Constitution's failure to provide it; (b) the failure of any Ohio statute to define the acts as offenses in order to provide "jurisdiction as may be provided by law"; (c) and by R.C. 2931.03's grant of subject matter jurisdiction only over

“offenses”, - to the exclusion of non-offenses, - which the Petitioner’s actions were not absent any statute defining them as such; and

4. No matter how the Ohio Supreme Court misinterprets and misapplies the law, United States Substantive Due Process protections precludes the Ohio Supreme Court from legislating from the bench in order to retrospectively create subject matter jurisdiction in a criminal case where the innocent acts cannot be charged as offenses since they were not defined by one or more statutes as offenses; and cannot be brought into the trial court’s subject matter jurisdiction over offenses merely because the acts were not defined as offenses and are not within the subject matter of R.C. 2931.03; and thus, were not within the trial court’s statutory jurisdiction, regardless of the fact that the non-offenses were misidentified as felonies and offenses in the indictment.

In rendering its “all things labelled, even improperly, as felonies are within the trial court’s felony subject matter jurisdiction” decision, the Ohio Supreme Court deprived the Petitioner of, *inter alia*, access to courts, also protected by the United States Constitution, by depriving the Petitioner of his right to remedy in a well-established procedure. Like the law of the land exposed by the United States Supreme Court, actual Ohio law holds that a void judgment is a legal nullity, that may be attacked at any time, directly or collaterally. See, e.g., *Romito v. Maxwell*, 10 Ohio St. 2d 266 (Ohio June 7, 1967); *State v. Fischer*, 128 Ohio St. 3d 92 (Ohio December 23, 2010); and is not subject to ordinary rules of pleading, as in *Patton v. Diemer*, 35 Ohio St. 3d 68 (Ohio February 3, 1988); *Lincoln Tavern v. Snader* [1956], 165 Ohio St. 61, 59 O.O. 74, 133 N.E. 2d 606, paragraph one of the syllabus, and *Westmoreland v. Valley Homes Corp.* [1975], 42 Ohio St. 2d 291, 294, 71 O.O. 2d 262, 264, 328 N.E. 2d 406, 409.

While the remedy below was mandamus, rather than Habeas Corpus, the claims are the same in Ohio: lack of jurisdiction to render the judgment; and the outcomes are similar: vacate the void judgment in mandamus, -vs- immediately release the Petitioner in habeas corpus; and the outcome was that the Ohio Supreme Court, in the course of eliminating void judgments in Ohio criminal cases by their own acts of legislating from the bench by judicial fiat (see *State v.*

Henderson, 161 Ohio St. 3d 285 (Ohio October 7, 2020)), the Ohio Supreme Court has rendered decisions in the Petitioner's cases, including direct appeal and the collateral attack below, that fail and refuse to guard and enforce every right secured by that Constitution, and denied to its courts jurisdiction that Ohio Court have as a matter of law to redress the prohibited wrong upon a proper showing and in an appropriate proceeding for that purpose. *Cf. Mooney v. Holohan*, 294 U.S. 103, 113 (U.S. January 21, 1935).

We are not satisfied, however, that the State of California has failed to provide such corrective judicial process. The prerogative writ of habeas corpus is available in that State. Constitution of California, Art. I, § 5; Art. VI, § 4. No decision of the Supreme Court of California has been brought to our attention holding that the state court is without power to issue this historic remedial process when it appears that one is deprived of his liberty without due process of law in violation of the Constitution of the United States. **Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. *Robb v. Connolly*, 111 U.S. 624, 637. In view of the dominant requirement of the Fourteenth Amendment, we are not at liberty to assume that the State has denied to its court jurisdiction to redress the prohibited wrong upon a proper showing and in an appropriate proceeding for that purpose.**

See also, *Thompson v. Whitman*, 85 U.S. 457 (U.S. March 2, 1874) (The jurisdiction of the court under which a judgment was rendered may be questioned in a collateral proceeding in another state, notwithstanding the full faith and credit clause and the first court's averments of jurisdiction.).

While *Mooney* relates more specifically to a state habeas corpus proceeding, where the action below was in mandamus, the action below is permitted by Ohio law as a corrective process that the Ohio Supreme Court has specifically stated may be used to attack a void judgment. See, e.g., *Lingo v. State*, 138 Ohio St. 3d 427 (Ohio March 25, 2014):

The statement that void judgments are not open to collateral attack and that attacks on void judgments can be defeated by the doctrine of res judicata is mistake. A void judgment is a nullity and open to collateral attack at any time. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 40; *Tari v. State*, 117 Ohio St. 481, 494, 5 Ohio Law Abs. 830, 159 N.E. 594 (1927). Any court in any jurisdiction certainly has the right to decline to recognize the validity of a void judgment of any other court. But

whether a void judgment has come before a court through a proper vehicle and whether a court has the authority to provide the relief requested against the void judgment are different matters.

There are various scenarios in which a court might have jurisdiction over an issue that provides the court with the opportunity to declare the judgment of any other court to be void. For instance, in a proper case, a court may refuse to enforce the void judgment of another court or prevent a party from executing upon the judgment. See, e.g., *In re Lockhart*, 157 Ohio St. 192, 193, 105 N.E.2d 35 (1952) (ordering prisoner's release under void sentence in habeas corpus proceedings); *Thiessen v. Moore*, 105 Ohio St. 401, 422, 1 Ohio Law Abs. 245, 137 N.E. 906 (1922) (in action to quiet title over property, prior order conveying the property was disregarded as void); *Fifth Third Bank, N.A. v. Maple Leaf Expansion, Inc.*, 188 Ohio App.3d 27, 2010-Ohio-1537, 934 N.E.2d 366, ¶ 10 (7th Dist.) (noting that although void foreign judgments cannot be vacated, an Ohio court may refuse to enforce them). But a void judgment does not by itself create a justiciable controversy that a court may seize upon and resolve. **To be subject to collateral attack, the judgment must be relevant to the relief sought or to the enforcement of some right in a controversy properly before the court.** See *Kingsborough v. Tousley*, 56 Ohio St. 450, 458, 47 N.E. 541 (1897)

Id., 439-440 (emphasis added).

The last phrase of the foregoing quote lines up with United States Supreme Court precedent, which states "...it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings." See *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340-341 (U.S. February 16, 1828). See also, *Thompson v. Whitman*, 85 U.S. 457 (U.S. March 2, 1874).

If the jurisdiction of the court under which a judgment was rendered may be questioned in a collateral proceeding in another state, notwithstanding the full faith and credit clause and the first court's averments of jurisdiction, as held in *Elliott and Thompson*, surely it can be challenged in the state where the void judgment was rendered. But no one need guess, because Ohio law, and United States law, allow such a challenge.

However, while Ohio's "corrective" processes are sometimes used by the State courts to grant relief, they are by and large ineffective because of the Ohio Supreme Court's willingness to

apply the law in an uneven manner, as in this case; as well as the Ohio Supreme Court's willingness to render decisions that implicitly grant or expand the courts' jurisdiction by rendering "formerly" void judgments merely voidable, such as *State v. Henderson* (2020), 161 Ohio St. 3d 285.

Indeed, despite the fact that Ohio law specifically requires all criminal offenses to be plainly defined as criminal offenses by one or more statutory provision(s), rather than adhere to the real law of Ohio, and the law of the land, the Ohio Supreme Court absurdly created its own law and stated, essentially, that although no statute specifically criminalized possession and selling "Spice" or "Bath Salts" either by trade or chemical name, because these non-statutory "offenses", that were otherwise innocent acts, were charged as felonies, the trial court had subject matter jurisdiction over them because they have subject matter jurisdiction over felonies. However, not only is this bootstrapping not the law, and a direct violation of substantive due process, but it is patently and unambiguously absurd: While R.C. 2931.03 does provide subject matter jurisdiction over felonies, they do not have the same criminal subject matter jurisdiction over non-offenses, and no matter what label the State applies, an innocent act is not made a felony simply by calling it a felony, unless, per R.C. 2901.03, it is defined as a felony by one or more Ohio statutes. The United States Supreme Court has called boggie on this type of prejudicial mislabeling in *Apprendi v New Jersey* (2000) 530 U.S. 466, where the United States Supreme Court stated that the effect, not the label, is what matters. At least, in *Apprendi*, New Jersey's misidentified elements had a statutory label of "sentencing factors", whereas, in this case, no Ohio statute labeled the Petitioner's innocent acts as felonies.

A good example of the Ohio Supreme Court's willingness to "change" or adapt the "law" by their own decisions to tailor a result is *State v. Henderson*³ (2020), 161 Ohio St. 3d 285, where

³ Despite eons of United States Supreme Court holdings otherwise regarding "excess of jurisdiction", *Henderson* holds there are no longer void judgments in Ohio criminal cases unless the trial court lacked subject matter jurisdiction, which exceeds the Court's authority by implicitly granting trial courts jurisdiction by rendering judgments merely "voidable" and validating sentences not set by law, granting subject matter jurisdiction, by implication, over sentences not defined or prescribed by law, and retrospectively rendering void judgments merely "voidable", and thus valid, which requires jurisdiction and allows the trial courts to exercise "jurisdiction" not provided by law, which would also

the Ohio Supreme Court declared that there were no longer any void judgments in criminal cases⁴, only voidable judgments, essentially no matter what the trial court did or decided, and despite the fact that the void judgment doctrine in all types of cases, whether civil, equitable, or criminal, has been repeatedly declared by the United States Supreme Court. Essentially, the Ohio Supreme Court expanded Ohio trial court jurisdiction as jurisdiction is essential to rendering a judgment that is merely voidable; and, at the same time, retrospectively validated all judgments that were, up to that point, void under the law of the land, for having been rendered without or in excess of jurisdiction.

When the jury have rendered their verdict, the court has to pronounce the proper judgment upon such verdict -- and the law, in prescribing the punishment, either as to the extent, or the mode, or the place of it, should be followed. If the court is authorized to impose imprisonment, and it exceeds the time prescribed by law, the judgment is void for the excess.

In re Bonner, 151 U.S. 242, 255-258 (1898).

In *Bonner*, the issue wasn't a complete lack of jurisdiction, but "only" that the lower court lacked jurisdiction to impose the particular sentence, where the United States Supreme Court held, as was not only the law of the land, but was the express law of Ohio until *Henderson* decided it away, was that even where a court otherwise had jurisdiction, a sentence (or any other judgment) that was rendered that the court did not have jurisdiction to rendered, is void for "transcending" the courts' powers; i.e., void for being in excess of jurisdiction:

There is consequently no escape from the conclusion that the judgment of the court sentencing the petitioner to imprisonment in a penitentiary, in one case for a year and in the other for six months, was in violation of the statutes of the United States. The court below was without jurisdiction to pass any such sentences, and the orders directing the sentences of imprisonment to be executed in a penitentiary are void." The court added: "This is not a case of mere error, but one in which the court below transcended its powers," citing *Ex parte Lange*, 18 Wall. 163, 176; *Ex parte Parks*, 93 U.S. 18, 23; *Ex parte*

"validate" and cause to become enforceable, all judgments not appealed, or appealed and affirmed, even if draconian, cruel and unusual or obscene.

Virginia, 100 U.S. 339, 343; *Ex parte Rowland*, 104 U.S. 604, 612; *In re Coy*, 127 U.S. 731, 738; and *Hans Nielsen, Petitioner*, 131 U.S. 176, 182.

Id., *Bonner*.

More serious yet is the issue in this case: at the time the Indictment alleges the Petitioner possessed and trafficked in drugs, no Ohio statute either named or criminalized “Bath Salts” or “spice” either by trade or chemical names, nor did any Ohio statute redefine “analog” to bring the substances within the definition thereof, as they were not derived from any controlled substance; there was no statute in Ohio criminalizing the Petitioner’s innocent acts; the trial court lacked subject matter jurisdiction over the Petitioner’s innocent acts of possessing and selling “Bath Salts” and “spice”; and the Petitioner’s conviction and sentences are repugnant to the Constitution, treaties, or laws of the United States, and is void for want of subject matter jurisdiction. Obviously, if no statute defined the Petitioner’s innocent acts as offenses, then the trial court lacked jurisdiction to impose a sentence, and thus, like *Bonner*, exceeded its authority in imposing the sentence.

Even without any legal knowledge, one would tend to understand that anytime someone, whether a natural man or an incorporeal being such as a court, “transcends” his power or authority, he is then operating without power or authority, his decisions are made without power or authority, and thus, the decisions have no power or authority; yet the Ohio Supreme Court continues, as in the Petitioner’s case below, and in his direct appeal, to render decision that “validate” trial court judgments that are void for want of jurisdiction.

In 2012, Mobarak was indicted on charges of engaging in a pattern of corrupt activity, aggravated trafficking in drugs, and aggravated possession of drugs. **The charges alleged that Mobarak had possessed and sold a controlled-substance analog commonly known as bath salts.** Following a jury trial, Mobarak was found guilty and the trial court sentenced him to 35 years in prison. On direct appeal, the **Tenth District reversed Mobarak's convictions, concluding that "possession and trafficking of controlled substance analogs had not yet been criminalized as of the time of [Mobarak's] offenses."** *State v. Mobarak*, 10th Dist. Franklin No. 14AP-517, 2015-Ohio-3007, ¶ 9 (“Mobarak I”). **This court reversed the court of appeals' judgment based on *State v. Shalash***, 148 Ohio St.3d 611, 2016-

Ohio-8358, 71 N.E.3d 1089. *State v. Mobarak*, 150 Ohio St.3d 26, 2016-Ohio-8372, 78 N.E.3d 832, ¶ 1 ("Mobarak II"). In *Shalash*, this court held that "[a]lthough controlled-substance analogs were not specifically proscribed by R.C. Title 29 [in October 2011], other provisions of the Revised Code incorporated controlled-substance analogs into R.C. Title 29." *Id.* at ¶ 13, citing R.C. 3719.013. This court remanded Mobarak's case to the Tenth District for further proceedings consistent with *Shalash*. *Mobarak II* at ¶ 1. On remand, the court of appeals affirmed Mobarak's convictions. *State v. Mobarak*, 2017-Ohio-7999, 98 N.E.3d 1023, ¶ 37 (10th Dist.) ("Mobarak III").

State ex rel. Mobarak v. Brown, 2024-Ohio-221 (Ohio January 25, 2024).

The fact that the Ohio Supreme Court had to reach to R.C. Title 29 to re-impose the Petitioner's conviction based on their holding in *State v. Shalash*, 148 Ohio St.3d 611 (that "[a]lthough controlled-substance analogs were not specifically proscribed by R.C. Title 29 [in October 2011], other provisions of the Revised Code incorporated controlled-substance analogs into R.C. Title 29"), is a stretch at best: While R.C. 3719.013 states "a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I", notwithstanding that all of the products sold by the Petitioner were clearly and plainly marked in bold letters "NOT FOR HUMAN CONSUMPTION", no statute either mentioned either of the substances relevant to this matter by trade or chemical name; declared the statutorily unnamed substances to be "controlled substance analogs"; defined "controlled substance analogs"; or redefined "analog" so as to include any substance, such as the substances relevant to this matter, as "controlled substance analogs" as the substances relevant hereto were not derived from any "controlled substance(s)". Thus, even under *Shalash*'s super-stretch, no statute existed at the time the Petitioner was indicted that either directly, or by reasonable construction, proscribed possessing and/or selling either "Spice" or "Bath Salts", defined such as offenses, or included either in any existing statute defining offenses.

The relevant portion of *Shalash* states:

For resolution, we return to H.B. 64. H.B. 64 also enacted R.C. 3719.013, which says that with some explicit exceptions, "a controlled substance analog, to the extent intended for human consumption, shall be treated for

purposes of any provision of the Revised Code as a controlled substance in schedule I." R.C. 3719.013 is dispositive, as it states that a controlled-substance analog shall be treated as a controlled substance in schedule I "for purposes of any provision." Trafficking in controlled substances is clearly prohibited. R.C. 2925.03. Moreover, use of "shall" shows that R.C. 3719.013 is mandatory and not advisory. As R.C. Chapter 3719 is titled "Controlled Substances" and contains numerous provisions, it is not a secret provision of the Revised Code designed to snare the unwary.

But what was a "controlled substance analog" prior to the change in Ohio law that defined it? "Trafficking in controlled substances (was) clearly prohibited" at the time, but the products possessed and sold by the Petitioner were "clearly" not "controlled substances". Nor were they "controlled substance analogs" under the plain and ordinary meanings of the phrase or separated terms. Nor does R.C. 3719.013's statement that "a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I", bootstrap these substances into the "controlled substances" statutes that existed at the time, simply because no statute specifically named either "Spice" or "Bath Salts" by trade or chemical names, defined "controlled substance analogs", or redefined "analog" so as to include any substance, such as the substances relevant to this matter, as "controlled substance analogs" which were not derived from any "controlled substance(s)"

In retrospectively "creating" and "granting" subject matter jurisdiction to the trial court, the Ohio Supreme Court further stated, contrary to, and in direct contravention of, Article IV, § 4, of Ohio's Constitution, that:

This court has held that "the court of common pleas is a court of general jurisdiction, with subject-matter jurisdiction that extends to 'all matters at law and in equity that are not denied to it.'" *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20, quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891).

Id. Mobarak, paragraph 7.

This omnipotent "the common Pleas have jurisdiction over everything unless specifically deprived of it by law" holding is one of many judicial expansions of jurisdiction that is in direct

opposition to Article IV, § 4, Ohio Constitution, which states that the Courts of Common Pleas shall have jurisdiction “as may be provided by law”.

Contrary to the Ohio Supreme Court’s holding in *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20, quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891), and in the case below, rather than granting omnipotent jurisdiction to later be restricted by law, as claimed by the Ohio Supreme Court, Division (B) of Article IV, Section 4, Ohio Constitution, - which states “The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies **as may be provided by law**” (emphasis added), - does exactly the opposite, and provides nothing in the way of jurisdiction, inherently restricts Court of Common Pleas jurisdiction to that which is later “provided by law”, and inherently deprives the Courts of Common Pleas of all potential jurisdiction not “provided by law”.

Further, this decision claiming omnipotent jurisdiction unless restricted by law is exposed as impossible, or at least duplicity, when compared to decisions invalidating legislative attempt to statutorily restrict or modify the constitutional jurisdiction of courts. See *Cincinnati Polyclinic v. Balch*, 92 Ohio St. 415 (Ohio July 2, 1915); *In re Hawke*, 107 Ohio St. 341 (Ohio March 27, 1923); *State v. Edwards*, 157 Ohio St. 175 (Ohio March 19, 1952); *Wells v. Wells*, 105 Ohio St. 471 (Ohio July 5, 1922).

If the jurisdiction provided to Ohio’s courts by the Constitution of Ohio cannot be limited, modified, or controlled by the General Assembly, decisions claiming the Ohio Constitution grants the Common Pleas jurisdiction over all things *not specifically prohibited* by law is *non sequitur*; Likewise, the Ohio Supreme Court’s holding in this case “granting” jurisdiction over acts not proscribed by law simply because they were charged as a criminal offense or felony, and R.C. 2931.03 grants Common Pleas Courts jurisdiction over felonies is *non sequitur*.

It is a legal manipulation, absurdity, blatant violation to the Petitioner’s substantive constitutional rights, and repugnant to the Constitution, treaties, and/or laws of the United States,

for the Ohio Supreme Court to admit “controlled-substance analogs were not specifically proscribed by R.C. Title 29 [in October 2011]” when the Petitioner was alleged to have committed the “not yet offenses”, then re-impose his conviction (that had been properly overturned) on the basis of a distant statutory reference to “controlled substance analogs”, R.C. 3719.013, which itself neither named the specific substances (“spice” or “Bath Salts”) as “controlled substance analogs”, nor re-defined “analog” so as to convert the statutorily unnamed substance into the definition of “analog” without being derived from any controlled substance; not defined possession or sale of these statutorily unnamed substances as offenses.

It is just as inconceivable, a blatant violation to the Petitioner’s substantive constitutional rights, and repugnant to the Constitution, treaties, and/or laws of the United States, for the Ohio Supreme Court to admit that “controlled-substance analogs were not specifically proscribed by R.C. Title 29 [in October 2011]”, when the Petitioner was alleged to have committed the “not yet offenses”, then hold that the trial court still had subject matter jurisdiction over the not-yet-criminalized acts simply because the trial court had statutory jurisdiction over felonies, and the non-offenses were charged (i.e., mislabeled) as felonies. Yet this is exactly what the Ohio Supreme Court did in this case; likely because the Ohio Supreme Court knows their decisions are, except in rare circumstances, allowed to go unchecked. But this is an **extremely dangerous** decision that, while at first glance seeming affects only the Petitioner, extends Ohio Courts’ jurisdiction over criminal offenses to non-offenses, so long as they identify as offenses in the Indictment, potentially subjects all of Ohio’s citizens, and persons traveling through Ohio, to criminal prosecution, imprisonment, and loss of property, for non-offenses charged as crimes; and is binding on all Ohio Courts until overturned by the United States Supreme Court.

It is patently and unambiguously absurd, and repugnant to the Constitution, treaties, and/or laws of the United States, that the Ohio Supreme Court stated:

The “provided by law” qualification of Article IV means that there must be a statutory basis for jurisdiction. R.C. 2931.03 provides that basis, granting the courts of common pleas “original jurisdiction [over] all crimes and offenses,

except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas." **Mobarak was charged with multiple felonies.** *Mobarak I*, 2015-Ohio-3007, at ¶ 1 (listing charges). **By virtue of the Ohio Constitution and R.C. 2931.03, the trial court had jurisdiction over Mobarak's criminal case.**

Id., *Mobarak v. Brown*, (emphasis added).

The phrase that utterly destroys this unreasonable "reasoning" is "[over] all crimes and offenses", because R.C. 2901.03 precludes the Petitioner acts from qualifying as "offenses" because they were not defined by any Ohio statute as "offenses" until after the Petitioner was already indicted, and the Petitioner's acts were not "offenses" within this jurisdictional grant.

Judges have no inherent power to create sentences. Griffin & Katz, Ohio Felony Sentencing Law (2008) 4, Section 1:3, fn. 1. See also *Woods v. Telb*, 89 Ohio St.3d at 507-509, 733 N.E.2d 1103 (describing the legislative intent behind a new, comprehensive sentencing structure, including postrelease control). Rather, judges are duty-bound to apply sentencing laws as they are written. See *State v. Thomas* (1996), 111 Ohio App.3d 510, 512, 676 N.E.2d 903. "[T]he only sentence which a trial court may impose is that provided for by statute. A court has no power to substitute a different sentence for that provided for by statute or one that is either greater or lesser than that provided for by law." *Colegrove*, 175 Ohio St. at 438, 25 O.O.2d 447, 195 N.E.2d 811. The failure to impose a **statutorily mandated** period of postrelease control is more than administrative or clerical error. It is an act that **lacks both statutory and constitutional authority**.

No court has the authority to impose a sentence that is contrary to law. *Colegrove*, 175 Ohio St. at 438, 25 O.O.2d 447, 195 N.E.2d 811. We reaffirm that vital principle today and reiterate that **a judge must conform to the General Assembly's mandate** in imposing postrelease-control sanctions as part of a criminal sentence. Although the interests in finality of a sentence are important, they cannot trump the interests of justice, **which require a judge follow the letter of the law in sentencing a defendant.**

Other states' courts hold similarly, using the voidness doctrine as well as a related theory, the illegal-sentence doctrine. See, e.g., *Summers v. State* (Tenn.2007), 212 S.W.3d 251, 256 (describing a **sentence imposed in direct contravention of a statute as illegal and subject to correction at any time**); *State v. Gayden* (2006), 281 Kan. 290, 292-293, 130 P.3d 108 ("A sentence for which no statutory authority exists does not conform to statutory provisions and is, therefore, within the definition of an illegal sentence"); *Sullivan v. State* (2006), 366 Ark. 183, 234 S.W.3d 285 ("Where the law does not authorize the particular sentence pronounced by a trial court, the sentence is unauthorized and illegal"); *Mizell v. State* (Tex.Crim.App.2003), 119 S.W.3d 804, 806 ("A sentence

that is outside the maximum or minimum range of punishment is unauthorized by law and therefore illegal"); *United States v. Greatwalker* (C.A.8, 2002), 285 F.3d 727, 729 ("A sentence is illegal when it is not authorized by the judgment of conviction or when it is greater or less than the permissible statutory penalty for the crime").

State v. Fischer, 128 Ohio St. 3d 92, 98-99 (2010) (Emphasis added).

While the Petitioner cannot find any Ohio decision directly holding a Judge has no power to create or define criminal offenses R.C. 2901.03 specifically hold that "An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty", and only the General Assembly has the power to define offenses, it necessarily follows that the lack of power of judges to create offenses not defined by law includes a lack of power to define offenses, both by the statutory inclusion of penalties in the defining of offenses, and Ohio's version of separation of powers.

The Law of Ohio as Expressed in the Ohio Constitution, Statutes, and Valid Decisions of the Ohio Supreme Court Exposes the Decision Below as Being repugnant to the Constitution, treaties, and/or laws of the United States:

The idea, inherent in the decision of the Ohio Supreme Court, below, that because the non-offense, for which no statutory provision defined as an offense at the time alleged in the Indictment, was charged as a felony, the State trial court had jurisdiction because they generally have jurisdiction over felony offenses is a legal absurdity that would, by decision, grant Ohio trial courts jurisdiction over any and all innocent acts simply by charging them as a felonies, despite the fact that no statute exists to criminalize the innocent acts.

This dangerous and absurd decision is absolutely precluded by Ohio law, is a direct and blatant violation Due Process, the law of the land as exposed by the United States Supreme Court which absolutely holds that no conduct constitutes a criminal offense, and no individual may be punished therefor, unless it is defined as an offense by a state or federal statute; and is a decision that is repugnant to the Constitution, treaties, or laws of the United States.

While Due Process, and other rights and constitutional protections raised herein are based upon federal law and the United States Constitution, it is necessary to examine the law of Ohio to determine the process that is due, and what rights have been violated by the State.

Ohio Constitution, Article IV, § 4, Common Pleas Court:

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the district, **as may be provided by law.** Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

(Emphasis added.)

A plain reading of Ohio Constitution, Article IV, § 4, demonstrates that it only constitutes Ohio's Courts of Common Pleas, and authorizes Ohio's Courts of Common Pleas to receive jurisdiction "as may be provided by law", but it provides no jurisdiction, *per se*.

It is absurd that the Ohio Supreme Court would decide that the mere fact that Ohio's Courts of Common Pleas are granted jurisdiction over the subject matter of many specific offenses

classified as "felonies" would extend to grant the Courts of Common Pleas jurisdiction over the subject matter of innocent acts as long as they are charged as felonies even when not defined by statute as offenses. While subject matter jurisdiction is indeed granted and perfected by the enactment of legislation pertaining to subject matters specified in that legislation, the general grant of jurisdiction of felony offenses in general does not grant jurisdiction over the subject matter of acts not specifically defined by law as an offense. But this is the new Ohio Supreme Court, and contrary to Ohio Supreme Court precedent:

"The jurisdiction of the Court of Common Pleas is, by virtue of Section 4, Article IV of the Constitution of Ohio, fixed by statute." *State ex rel. Miller v. Keefe*, 168 Ohio St. 234, 6 Ohio Op. 2d 18, 152 N.E.2d 113, 1958 Ohio LEXIS 405 (Ohio 1958) (decided under former analogous section).

The basis for the jurisdiction of the Court of Common Pleas, as, in fact, of all the courts in Ohio, is found in Section 1, Article IV of the Constitution. In regard to the Court of Common Pleas, specifically, Section 4, Article IV of the Constitution, provides:

"The jurisdiction of the Courts of Common Pleas, and of the judges thereof, shall be fixed by law."

As was said by Ranney, J., more than a century ago:

"The Constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, but it can exercise none, until 'fixed by law.'" *Stevens v. State*, 3 Ohio St., 453.

That this has generally been considered the law is evidenced by the following statement found in 14 Ohio Jurisprudence (2d), 584, Section 166:

"The Courts of Common Pleas are the constitutional courts of general original jurisdiction in Ohio, but **they are capable of exercising only such jurisdiction as is conferred by the Legislature.** The Constitution itself confers no jurisdiction whatever upon the Common Pleas Court, either in civil or criminal cases, but merely gives that court capacity to receive jurisdiction which shall be fixed by law. The Constitution declares that the jurisdiction of the Courts of Common Pleas, and of the judges

thereof shall be fixed by law. This constitutional provision is not self-executing, but must be enforced by appropriate legislation, and in this sense, **therefore, the jurisdiction of the Common Pleas Court can be said to be statutory.**"

State ex rel. Miller v. Keefe, 168 Ohio St. 234, 236-237 (Ohio July 16, 1958) (Emphasis added).

The courts of common pleas were established by the Ohio Constitution as courts of general jurisdiction in Ohio, but **the Constitution itself limits their jurisdiction to that which is expressly conferred by the General Assembly**, including jurisdiction to limit consideration of noneconomic damages. The Ohio Constitution, Article IV, Section 4(B) provides: 'The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.' In addition, Section 18 of Article IV provides: 'The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.' **The Supreme Court of Ohio has uniformly held that the provisions of Article IV are not self-executing. Rather, the jurisdiction of the common pleas courts is limited to whatever the legislature may choose to bestow.** *Central Ohio Transit Auth. v. Transport Workers Union of America* (1988), 37 Ohio St. 3d 56 [524 N.E.2d 151]; *Seventh Urban, Inc. v. University Circle* (1981), 67 Ohio St. 2d 19 [21 Ohio Op. 3d 12, 423 N.E.2d 1070]; *State ex rel. Miller v. Keefe* (1958), 168 Ohio St. 234 [6 Ohio Op. 2d 18, 152 N.E.2d 113]." 146 Ohio Laws, Part II, 4027-4028.

State ex rel. Ohio Acad. of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451 489 (Ohio August 16, 1999) (Emphasis added).

'Jurisdiction has been defined as: The power to hear and determine a cause; * * * the authority by which judicial officers take cognizance of and decide them; * * * the power of a court or a judge to entertain an action, petition, or other proceeding; * * * a power constitutionally conferred upon a judge or magistrate to take cognizance of and determine causes according to law, and to carry his sentence into execution.'" (Citation omitted.) *Mahoning Valley Ry. v. Santoro* (1915), 93 Ohio St. 53, at 56. "'Jurisdiction * * * means the authority to hear and determine a cause. Concurrent * * * means that which is joint and equal in authority.'" *State v. King* (1957), 166 Ohio St. 293, at 296.

In Ohio, the judicial power of authority flows, generally, from Section 1, Article IV of the Ohio Constitution. (*Fn5*) to the text of the note The jurisdictional foundation for courts of common pleas, however, is set forth specifically in Section 4(B) of Article IV, as follows:

"The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law."

Thus, it can appropriately be said that courts of common pleas are "the constitutional courts of general original jurisdiction in Ohio." 22 Ohio Jurisprudence 3d, 46-47, Courts, Section 16; *State, ex rel. Heimann, v.. George* (1976), 45 Ohio St. 2d 231. So stating, however, does not answer the question herein presented. **"The constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, but it can exercise none, until 'fixed by law.'"** (Emphasis added.) *Stevens v.. State* (1854), 3 Ohio St. 453, at 455; *State, ex rel. Miller, v.. Keefe* (1958), 168 Ohio St. 234.

It is clear, therefore, that the power to define the jurisdiction of the courts of common pleas rests in the General Assembly and that such courts may exercise only such jurisdiction as is expressly granted to them by the legislature. *Cincinnati v.. Bossert Machine Co.* (1968), 16 Ohio St. 2d 76, certiorari denied, 394 U.S. 998; *Wolfrum v.. Wolfrum* (1965), 2 Ohio St. 2d 237; *Jacobsen v.. Jacobsen* (1956), 164 Ohio St. 413; *State, ex rel. Black, v.. White* (1936), 132 Ohio St. 58; *Ellis v.. Urner* (1932), 125 Ohio St. 246; *Hess v.. Devou* (1925), 112 Ohio St. 1; and *Miller v.. Eagle* (1917), 96 Ohio St. 106.

(**Fn5**; "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Section 1, Article IV of the Ohio Constitution.)

Seventh Urban, Inc. v. University Circle Property Dev., Inc., 67 Ohio St. 2d 19, 21-23 (Ohio July 1, 1981)

An act not specifically defined as an offense in Ohio is not a felony, and thus, not within the felony subject matter jurisdiction of Ohio's Courts of Common Pleas:

§ 2901.03 Common law offenses abrogated.

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(C) This section does not affect any power of the general assembly under section 8 of Article II, Ohio Constitution, nor does it affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment, or decree.

Because Ohio is a code law state, only those acts for which there is a positive prohibition and specific penalty are considered to be criminal offenses. This is even recognized by Ohio's Courts of Appeals. See, e.g., *Charles Gruenspan Co. v. Thompson*, 2003-Ohio-3641, 2003 Ohio App. LEXIS 3287 (Ohio Ct. App., Cuyahoga County 2003).

For example, no statute specifically criminalized an adult video storeowner's failure to take affirmative steps to keep juveniles from entering the store and purchasing videos. *State v. Tomaino*, 135 Ohio App. 3d 309 (Ohio Ct. App., Butler County), dismissed, 87 Ohio St. 3d 1475, 721 N.E.2d 120, 1999 Ohio LEXIS 3859 (Ohio 1999).

"Offense" must be construed, under R.C. 1.42, according to common usage: it means conduct violating a criminal statute, **and no more**. *Clinton v. Leis*, 56 Ohio App. 2d 30, 10 Ohio Op. 3d 49 (Ohio Ct. App., Hamilton County 1977).

Since the Petitioner's acts were not yet defined as offenses at the time alleged in the Indictment, and, in fact, until months after he was already in jail awaiting trial, the trial court lacked jurisdiction over the innocence acts, regardless of the "felony" label affixed to them, because Ohio's Courts of Common Pleas only have criminal jurisdiction over "crimes and offenses", not innocent acts:

R.C. § 2931.03 Jurisdiction of court of common pleas.

The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.

A judge of a court of common pleas does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney or other chief legal officer who is responsible for the prosecution of the case.

R.C. § 2901.04 Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

R.C. § 2901.11 Criminal law jurisdiction.

(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

(2) ...

(Emphasis added).

Mere common sense, without even considering law or decisions, makes it obvious that if an act is not defined as an offense, a “person (cannot) commit() an offense under the laws of (Ohio), any element of which takes place in (Ohio)”, simply because there are no “elements” to innocent acts that are not defined as offenses. See, e.g., *State v. Literal*, 2009-Ohio-199, 2009 Ohio App. LEXIS 172 (Ohio Ct. App., Scioto County 2009) (Trial court improperly exercised jurisdiction

over the offense of drug trafficking because no element of R.C. 2925.03(A)(2) was committed in Ohio).

A court of competent jurisdiction is a court with the power to adjudicate the case before it, Black's Law Dictionary 431, and a court's subject-matter jurisdiction defines its power to hear cases, see *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 89, 118 S. Ct. 1003, 140 L. Ed. 2d 210. It follows that a court of competent jurisdiction is a court with a grant of subject-matter jurisdiction covering the case before it. This Court has understood that phrase as a reference to a court with an existing source of subject-matter jurisdiction. See, e.g., *Ex parte Phenix Ins. Co.*, 118 U. S. 610, 7 S. Ct. 25, 30 L. Ed. 274. (Syllabus.)

...

A court of competent jurisdiction is a court with the power to adjudicate the case before it. See Black's Law Dictionary 431 (10th ed. 2014) ("[a] court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy"). And a court's subject-matter jurisdiction defines its power to hear cases. See *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 89, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (Subject-matter jurisdiction is "the courts' statutory or constitutional power to adjudicate the case" (emphasis deleted)); *Wachovia Bank, N. A. v. Schmidt*, 546 U. S. 303, 316, 126 S. Ct. 941, 163 L. Ed. 2d 797 (2006) ("Subject-matter jurisdiction . . . concerns a court's competence to adjudicate a particular category of cases"). It follows that a court of competent jurisdiction is a court with a grant of subject-matter jurisdiction covering the case before it. *Cf. Pennoyer v. Neff*, 95 U. S. 714, 733, 24 L. Ed. 565 (1878) ("[T]here must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit").

As a result, this Court has understood the phrase "court of competent jurisdiction" as a reference to a court with an existing source of subject-matter jurisdiction. *Ex parte Phenix Ins. Co.*, 118 U. S. 610, 7 S. Ct. 25, 30 L. Ed. 274 (1886), provides an example. There, the Court explained that a statute "providing for the transfer to a trustee of the interest of the owner in the vessel and freight, provides only that the trustee may 'be appointed by any court of competent jurisdiction,' leaving the question of such competency to depend on other provisions of law." *Id.*, at 617, 7 S. Ct. 25, 30 L. Ed. 274. See also *Shoshone Mining Co. v. Rutter*, 177 U. S. 505, 506-507, 20 S. Ct. 726, 44 L. Ed. 864 (1900) (statute authorizing suit "in a court of competent jurisdiction" . . . unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts"). *Califano v. Sanders*, 430 U. S. 99, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977), provides another. It held that §10 of the Administrative Procedure Act, codified in 5 U. S. C. §§701-704, did not contain "an implied

grant of subject-matter jurisdiction to review agency actions.” 430 U. S., at 105, 97 S. Ct. 980, 51 L. Ed. 2d 192. In noting that “the actual text . . . nowhere contains an explicit grant of jurisdiction,” the Court pointed to two clauses requiring “judicial review . . . to proceed ‘in a court specified by statute’ or ‘in a court of competent jurisdiction’” and stated that both “seem to look to outside sources of jurisdictional authority.” Id., at 105-106, and n. 6, 97 S. Ct. 980, 51 L. Ed. 2d 192.

Lightfoot v. Cendant Mortg. Corp., 580 U.S. 82, 91-93 (U.S. January 18, 2017).

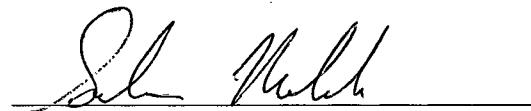
The Ohio State Supreme Court, in “*Mobarak II*” specifically reinstated the Petitioner’s conviction and sentences pursuant to the “authority of *Shalash*”; and in *Shalash*, expressly admitted “controlled substance analogs were not specifically proscribed when defendant was arrested and indicted for selling them”, before stretching the boundaries of constitutional law to judicially redefine Ohio’s criminal statutes to “create” subject matter jurisdiction by judicial expansion of the criminal statutes. This statement that “controlled substance analogs were not specifically proscribed when defendant was arrested and indicted for selling them” is a direct confession by the Ohio Supreme Court that there was no statute criminalizing the Petitioner’s conduct at the time his innocent acts were “committed”; and, per the supreme law of the land, as exposed by the United States Supreme Court, this statement is also a confession by the Ohio Supreme Court, that the State trial court lacked subject matter jurisdiction over the Petitioner’s innocent acts, that the judgment and sentence are void ab initio, that all state criminal proceedings and appeals thereafter are void ab initio for want of subject matter jurisdiction; that the Petitioner is entitled to the relief requested as a matter of the law of the land; and that the Petitioner’s conviction and illegal incarceration are repugnant to the Constitution, treaties, or laws of the United States.

CONCLUSION

Wherefore, for the forgoing reasons, the Supreme court of the United States should Grant Certiorari and accept jurisdiction over this case; declare the Petitioner’s conviction and sentences, and *State v. Shalash*, 148 Ohio St.3d 611, void ab initio for want of subject matter jurisdiction; issue an Order compelling the Respondent to vacate the Petitioner’s void judgment and sentence;

overrule *State v. Henderson*, 161 Ohio St. 3d 285 (Ohio October 7, 2020), on the grounds that it is the law of the land that any judgment that exceeds a courts constitutional and/or statutory jurisdiction is void for being in excess of that court's jurisdiction; and issue an Opinion that declares the law of the land as it relates to the very important Questions and Issues presented herein.

Respectfully submitted,



Soleiman Mobarak
Petitioner