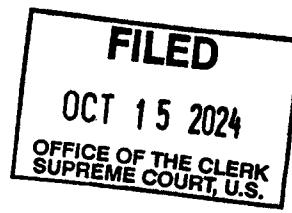


ORIGINAL

No. 24-6931

24-6931

IN THE



SUPREME COURT OF THE UNITED STATES

David E Feathers — PETITIONER
(Your Name)

vs.
ELEVENTH DISTRICT COURT
OF APPEALS OF OHIO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH DISTRICT COURT OF APPEALS OF OHIO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

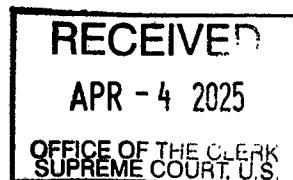
PETITION FOR WRIT OF CERTIORARI

David E Feathers
(Your Name)

2061 (B) Edgewood Dr
(Address)

Hudson OH 44236
(City, State, Zip Code)

330-690-1544
(Phone Number)



QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER THE USE OF A SHAM LEGAL PROCESS TO PROCESS FRAUDULENT APPEALS BY THE ELEVENTH DISTRICT COURT OF APPEALS OF OHIO WARRANTED THE ISSUANCE OF A WRIT OF MANDAMUS, PROHIBITION OR PROCEDENDO TO RELIEVE THE PETITIONER OF THE ADVERSE EFFECTS THEREOF BY THE SUPREME COURT OF OHIO?
- II. WHETHER THE FAILURE TO ISSUE A CORRECTIVE WRIT UPON PROPER APPLICATION THEREFOR, VIOLATES PETITIONER'S RIGHT TO DUE PROCESS AND TO EQUAL PROTECTION OF THE LAW PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?
- III. WHETHER THE CONTINUING CUSTODIAL SUPERVISION OF PETITIONER IN THE ABSENCE OF A SENTENCE AND WITHOUT IN REM, IN PERSONA, OR SUBJECT MATTER JURISDICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION?
- IV. WHETHER THE APPLICATION OF A PRISON TERM AND OF A SUBSEQUENT TERM OF CUSTODIAL SUPERVISION BY THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS VIOLATES THE SEPARATION OF POWERS MANDATES OF THE UNITED STATES CONSTITUTION BY USURPING THE AUTHORITY OF THE JUDICIARY?

LIST OF PARTIES

All parties to this proceeding are listed in the caption of the case.

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OPINIONS BELOW

Feathers v Eleventh District Court of Appeals of Ohio, Ohio Supreme Court No. 2024-0868, granting the respondents' Motion to Dismiss Petition for Writ of Prohibition, Mandamus and Procedendo, August 28, 2024 (Exhibit A).

BASIS FOR JURISDICTION

The Supreme Court of Ohio granted the respondents' Motion to Dismiss the underlying action, in Case No. 2024-0868 on August 28, 2024. This timely Petition for Writ of Certiorari was submitted on October 18, 2024, and is being resubmitted within the sixty (60) day window provided by the Clerk of this Court in which to do, rendering this Petition timely. This Court has original jurisdiction to issue a Writ of Certiorari pursuant to Article III of the United States Constitution, and to issue all writs in aid of its jurisdiction pursuant to 28 U.S.C. §1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eighth Amendment, United States Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fifth Amendment, United States Constitution:

"No person shall [...] be deprived of life, liberty or property without due process of law [...]"

Fourteenth Amendment, United States Constitution:

"[...] nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

On June 12, 2024, Petitioner filed an Original Action in the Ohio Supreme Court seeking the issuance of a Writ of Prohibition, Mandamus and Procedendo, in Case No. 2024-0868, pursuant to and in accordance with the jurisdiction of that court to issue same pursuant to Article IV, Section 2 of the Ohio Constitution. Petitioner sought the issuance of the Writ to correct significant and substantial fraud upon the court which has and continues to result in his continuing and ongoing suffering, including, but not limited to, five years of unlawful confinement and continuing custodial supervision.

On August 28 2024, the Ohio Supreme Court granted the respondents' Motion to Dismiss the Petition. On October 30, 2024, the Ohio Supreme Court denied a timely Motion for Relief from that Judgment in which Petitioner pointed out additional fraud committed upon the Ohio Supreme Court by counsel for the respondent in that action.

The underlying substance of the claims presented in the lower Court revolves around the complete absence of any sentence having been imposed in a criminal case, and the attendant loss of subject matter, in rem and in persona jurisdiction by the Courts, and the Ohio Department of Rehabilitation and Corrections (ODRC) as well as the Ohio Adult Parole Authority to maintain custody and/or control over Petition, during the entirety of his incarceration as well as into his custodial supervision. The actions of the lower courts, including the lower court in this case, violated the Eighth, Fifth and Fourteenth Amendments to the United States Constitution and Certiorari review is warranted herein.

ARGUMENT

FIRST QUESTION PRESENTED FOR REVIEW:

WHETHER THE USE OF A SHAM LEGAL PROCESS TO PROCESS FRAUDULENT APPEALS BY THE ELEVENTH DISTRICT COURT OF APPEALS OF OHIO WARRANTED THE ISSUANCE OF A WRIT OF MANDAMUS, PROHIBITION OR PROCEDENDO TO RELIEVE THE PETITIONER OF THE ADVERSE EFFECTS THEREOF BY THE SUPREME COURT OF OHIO?

LAW AND ARGUMENT

The subject matter of fraud concerning using a sham legal process is codified under Ohio Revised Code § 2921.52 (A)(1)(1)(2)(3)(4)(i). In 2020, the Eleventh District Court of Appeals of Ohio processed a sham appeal without jurisdiction to entertain the cause for want of final and appealable judgments, resulting in the affirmation of the lower trial courts judgments which were, in turn, procured by fraud, egregious misconduct and misrepresentations, upon the Petitioner and the State and federal judiciary.

The records set forth below patently and unambiguously demonstrate fraud and the unethical actions of the judges for the Ohio Court of Appeals for the Eleventh District, while acting on behalf of the judge of the Court of Common Pleas for Portage County, arising from the previous judgments rendered by the Court's Clerk subsequent to the petitioner's consolidated revocation probation proceedings, after the trial court judge failed to orally pronounce the petitioner's two consecutive probation violations and sentences from the bench, on October 21, 2019, as required by Due Process requirements that a defendant be present in open court for all proceedings, including the pronouncement of sentence. Instead, the sentence was alternatively issued by the Court's Clerk who issued two different fraudulent and mischaracterized judgments that are also non-compliant with the mandated statutory requirements for each predicate offense

or of the description of the petitioner's consecutive prison sentences, that were subsequently extra-judicially imposed by the Ohio Department of Rehabilitation and Corrections, after the clerk's two false judgments were severed in their entries and unlawfully memorialized without legal authority to do so, in two different commitment papers, that were unlawfully journalized on October 23, 2019, and on two different fraudulent and mischaracterized dockets, issued in State v Feathers, Case No. 2004 CR 0424, and State v Feathers, Case No. 2016 CR 0695. The Clerk of Courts improperly presented these false and fraudulent Entries appearing as though separate sentences had been imposed, when in fact, they had not, , therefore effectively omitting the trial court's original two unauthorized imposition of the Petitioners' concurrent six-month jail terms and 36-month prison term, which were improperly imposed as split probation sanctions, that never went into effect due to the trial court's invalid generic "memorandum paper", issued on May 17, 2017, in State v Feathers, Case No. 2004 CR 0424, purporting to order unspecified and uncodified concurrent sanctions, issued in Case No. 2004 CR 0424 and 2016 CR 0695 (Exhibit ?).

These two different cases leading to the underlying action in the lower court have a lengthy history beginning, with the original 2004 CR 0424 Case, State v Feathers, 2007-Ohio-3024, Court of Appeals of Ohio, Eleventh Appellate District, Portage County, Case No. 2005-P-0039. See Overview: The Court held among other things, that the domestic violence offense was nonexistent because it should have been charged as a fourth degree felony. On remand, Feathers was sentenced to a 13-year aggregate prison term on the "same non-existent fifth degree DV offense in the entry," see docket, State v. Feathers, Case No. 2004 CR 0424, July, 9, 2008, finding that Defendant entered a written plea of guilty, to Count One of the indictment, charging Aggravated Burglary a felony of the first degree, and in violation of R.C. 2911. (A)(2)(B), Count Two, Felonious Assault a felony

of the second degree, in violation of R.C. 2903.11 (A)(1)(2)(B) and count Three, Domestic Violence a felony of the fifth degree, in violation of R.C. 2919.25.¹ incorporated in the entry from the original indictment charging a none-existent fifth degree felony domestic violence offence, thus, does not describe a valid offense or the facts of the offence under Ohio Statutes, thus, the remand entry fails to comply with Ohio Crim. R. 32 (C), in which a final judgment is requirement.

B. On February 9, 2015, in State v Feathers, Case No. 2004 CR 0424, after serving over Ten years, the trial court granted Feathers motion to have his prison sentence modified by virtue of contacted order for early judicial release (JR), probation, that was ordered un-invoked by Ohio Revised Code 2929.20, provided for the court's subject matter jurisdiction over his term of supervision. Said sentence modification was issued after Mr. Feathers served over ten years of a thirteen aggregated consecutive term of imprisonment ordered on remand.

C. The trial courts first prison modification (JR), order and journal entry: docket, (State v. Feathers, Case no. 2004 CR 0424, issued, Feb 9, 2015). (Early judicial release).

THE COURT: It is therefore ordered defendant shall be placed on the general control of the Portage County Adult Probation Department, in the intensive supervision program for a period of twelve months and forty-eight additional months, under the general probation, or until this court has been notified by Adult probation that the defendant has satisfied all conditions of said community control. The Defendant shall abide by all the standard rules and shall have the following special terms and conditions.

1. Defendant shall have no contact with the victim in this matter
2. Defendant shall become full time employed within six months and maintain said employment throughout probation". (Entry).

The trial court judge did not invoke the codified statutes, R.C. 2929.20, provided for the courts authority and the entry is absent of criminal rule of law, in David E. Feathers, Case Nos. 2004 CR 0424, thus, is void ab initio thus, for the lack of adequate and lawful subject matter jurisdiction. no court any longer has following jurisdiction of the subject matter.

D. State v. Feathers, Case No. 2016 CR 0695. (while on judicial release, Feathers was indicted with a new offense, "failure to comply with an order and signal of a police officer" R.C. 2921.331, being a misdemeanor, incorrectly charged as a third degree felony offense. (Docket, State v. Feathers, Case No. 2016 CR 0695, September 22, 2016).

On May 15, 2017, The sentencing minutes, set forth below, in this 2016 case and the 2004 case, clearly indicate that unauthorized prison modification and sentence merger, In State v. Feathers, 2004 CR 0424, upon a (JR), a probation violation, resulting from a newly indicted offense. See, docket, State v Feathers, 2016 CR 0695, the 2004 sentence was merged with a new sentence.

See the sentencing transcripts below also located at: Case No. 5:22 cv 00540, Doc #: 3-1. Page ID #: 1324):

STAGE ONE PACAKAGED PROBATION TERMS ANS MERGED SENTENCES

"Page 7

**THE COURT: Mr. Feathers, I'm going
to give you one more opportunity, but I'm going
to make you jump through every hoop there is.
And if you screw up once, I'm done with you.
You got it?**

THE DEFENDANT: (Indicating)

THE COURT: In case Number 04 CR

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1 424, I'm going to acknowledge that the Defendant
2 admits to violating the terms and conditions of
3 his probation; therefor, more restrictive
4 sanctions are necessary.

5 I will run all these probations
6 conditions concurrent with 16 CR 695. Sentence
7 -- sentences, if you violate, will be
8 consecutive, but I'm running the probation
9 concurrent.

10 On Case Number 16 CR 695, I am going to
11 find that you are amenable to community control
12 sanctions and I'm going to sentence you in the
13 following manner:

14 I will sentence you to 180 days' in
15 jail, that 180 days is starting from today. I
16 will grant you work privileges.

17 You will be placed on 12 months
18 intensive supervised probation, 36 months' basic
19 probation.

20 I want you to have a mental health
21 evaluation performed, follow all recommendations
22 of that evaluation. That will be overseen by
23 the adult probation department.

24 I want you also to - to complete the
25 Repeat Offender Program through the adult

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1 probation department.

2 You will pay a fine of \$500.00 and
3 court costs, as well as any assessment
4 recoupment fee. I'm going to allow you 36

5 months to pay. If you cannot pay, I will allow
6 you to do community work service of up to 40
7 hours a week at \$10.00 per hour until paid in
8 full. Your court costs are currently \$222.00,
9 so to work this off you have to do 72.2
10 community work service hours.

11 You will also receive a 20-year license
12 suspension. At some juncture, I may grant you
13 driving privileges, but at this juncture I'm not
14 going to.

15 Lastly, I want you to become full-time
16 employed within nine months, maintain full-time
17 employment throughout your probation.

18 Sir, if you violate any of these terms
19 or conditions, I may give you a longer period
20 under court control, greater restrictions, or a
21 prison term of 36 months on this felony of the
22 third degree, as well as all the time left on
23 the 04 CR 424 case to run consecutive to one
24 another. Do you understand that?

25 THE DEFENDANT: Yes, I do.

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26 THE COURT: Sir, as a convicted
27 felon you may not own or possess any firearms.

28 Do you have any questions?

29 THE DEFENDANT: No, I don't

30 THE COURT: Mr. Keith?

31 MR. KEITH: Thank you, Your Honor.

32 If I may?

33 Mr. Feathers is currently sled-employed
34 doing remodeling things. He has certain

35 projects going now. Would his work release
36 extend to allow him to be released to finish
37 those projects, and then any other credible
38 projects?

39 THE COURT: They're going to have
40 to check from the jail and see whether or not
41 they're credible, and then I will sign off if
42 they're credible.

43 But you will go with the officers now.
44 You're lucky you're not going back to prison
45 right now.

46 MR. GIULITTO: Thank you, Your
47 Honor.

48 THE COURT: Thank you.

49 (Concluded)

50 "

In State v. Feathers, Case No. 2004 CR 0424, and State v Feathers, Case No. 2016 CR 0695, on May 15, 2017. The Trial Court judge did not orally pronounce any known two specified convictions or sentences, and the sentence transcripts is absent of codified statutes and carnal rule of law, thus, the courts announcement is void ab initio thus, for the lack of adequate and lawful subject matter jurisdiction. no court any longer has Jurisdiction of the subject matter.

E. The Trial Court's subsequent commitment paper, ordering unauthorized concurrent sanctions, in Case Nos. 2004 CR 0424, and 2016 CR 0695, see Docket, State of Ohio v David E. Feathers, Case No. 2004 CR 0424, journalized May 17, 2017.

Caption (sic). Issued in State v Feathers, Case No. 2004 CR 0424.

May 17. 2017, Judgment Order in State v. Feathers, Case No. 2004 CR 0424. (Case: 5:22-cv-00541, Doc #: 13-1 Page ID #: 407).

"IT IS THEREFORE ORDERED the sanctions imposed in Case No. 2016 CR 0695 shall be mirrored in this case.

IT IS SO ORDERED"

The court's above subsequent entry is absent of case descriptions, and the specific sentences and absent of codified statutes and criminal rule of law issued, see docket, David E. Feathers, Case Nos. 2004 CR 0424, journalized on May 17, 2017, showing this memorialized sanction on the trial court invalid generic memorandum paper, is thus, void, ab initio, for the lack of adequate and lawful subject matter jurisdiction. no court any longer has Jurisdiction of the subject matter. In **State v Paige**, (2018) 153 Ohio St. 3d 214, the Court noted that this type of sentences is unauthorized on many Constitutional levels, probation sentence "packages" are prohibited in Ohio.

The Supreme Court of Ohio, in **State v Brooks** (2014), 103, Ohio St. 3d 134, further held that, where the trial court failed to inform a defendant of the specific prison term that could be imposed if he violated the conditions of his community control sanctions, a prison sentence could not be imposed for a subsequent violation thereof. The Court found that where, as here, the imposition of sentence did not include the specific prison term, imposed under O.R.C. §§2929.19(B)(5) and 2929.19(B)(5), due to the failure of the trial court to properly impose original and subsequent community control sentences pursuant to O.R.C. §2929.15, et seq., any resultant attempt to confine the defendant is unconstitutional. In the instant case, the judge did not invoke or comply with the General Assembly's strict compliance probation statutes. Thus created its own Community Control sentence issued in **State v Feathers**, Case No. 20016 CR 0695, that unlawfully purported to merge the petitioner's new 2017, "unauthorized failure to comply" offenses with the

three previous 2008 offenses, charged in the petitioners earlier judicial prison release sentence modification, ordered concurrent with petitioner's 13-year prison term, in State v Feathers, Case No. 2004 CR 0424, previously granted on February 15, 2015.

As the result of a guilty plea for the new failure to comply, a judicial release violation was filed, in State v. Feathers, Case No. 2004 CR 0424, the above improper sentence was pronounced indicating that the trial court judge legislated the courts own version of two concurrent probation terms and sentences, in State v Feathers, Case Nos. 2004 CR 0424 and 2016 CR 0695, The subsequent entry was recoded, and removed from Petitioner's Notice of Appeal, on appeal, and replaced with a bogus altering court instrument as discussed above.

F. The trial courts other different invalid and altered entry, memorialized a different falsified conviction and sentence, memorialized on a separate paper. Issued on May 17, 2017.

The 2016, sentencing entry was removed from the record when unlawfully entered on a separate commitment paper, and docket, inconsistent to Crim.R.32(C), absent of the above "mirrored concurrent 2004 CR 0424 sanctions," time stamped, May 17, 2017, entry in Case No. 2016 CR 0695. (Order and Journal Entry, time stamped, May 17, 2017):

The Courts Caption (sic). See, docket, State of Ohio v David E. Feathers, Case No. 2016 CR 0695, journalized on May 17, 2017. See, 2016 CR 0695 judgment entry, (Case:5:22-cv-00541, Doc #:13-1, Page ID #: 404).

"THE COURT: On Monday, May 15, 2017 Defendant's sentencing hearing was held pursuant Ohio Revised Code Section 2929.19.

Defense Attorneys George Keith and Michael Giulitto, Assistant Prosecuting Attorney the Adult Probation Department were present as was the Defendant who was afforded all rights pursuant to Crim. R. 32.

The Court considered the purpose of felony sentencing which is to protect the public from future crime by the defendant and to punish the defendant using the minimum sanctions that the Court determines to accomplish those purposes without unnecessary burden on state or local government resources.

The Court also considered the need for incapacitating the defendant, deterring the defendant and others from future crimes, rehabilitating the defendant, making restitution to the victim of the offenses, the public or both.

The Court also considered the evidence presented by counsel, oral statements, any victim impact statement, the Pre-Sentence Report and the defendant's statement. The Court finds that the Defendant has entered a Written Plea of Guilty pursuant to Ohio Crim. R. 11(F) Peal Negotiations to Count One of the Indictment, charging the Defendant with the offense of "Failure to Comply" a felony of the third degree, and in violation of R.C. §2921.331.

The Court finds that either a community control sanction or a combination of community control sanctions is consistent with the purpose and principles of sentencing set forth in R.C. §2929.11

IT IS THEREFORE ORDERED Defendant shall serve 180 days in jail with work release. Further, Defendant is placed on the general control of the Portage County Adult Probation Department in the Intensive Supervision for a period of 12 months and 36 additional months under the General Division of Adult probation, or until the Court has been notified by Portage County Adult Probation Department that the Defendant has satisfied all conditions of said community control. The Defendant shall abide by all standard rules and shall have the following terms:

1. Defendant shall undergo a mental health evaluation and follow all recommendations.
2. Defendant shall become full time employed within 9 months and maintain said employment throughout probation.
3. Defendant shall complete the ROCIP program.

IT IS FURTHER ORDERED Defendant's right to drive in the State of Ohio is suspended for 20 years.

The Court notified the Defendant if the Defendant violates the terms of said community control sanctions the Defendant may receive more restrictive community control sanctions or the Defendant will serve a specific prison term of three years.

The Court further notified Defendant under federal law persons convicted of felonies can never lawfully possess a firearm and that if you are ever found with a firearm, even one belonging to someone else, you may be prosecuted by federal authorities and subject to imprisonment.

IT IS FURTHER ORDERED the bond previously fixed herein is discharged.

IT IS FURTHER ORDERED that the Defendant is assessed a \$300.00 fine, the indigent assessment and recoupment fee and the approximate \$220,00 cost (as of today's date) of these proceedings, to be paid within thirty-six months. If you are unable to pay the judgment for the fines or court costs or are unable to follow your payment schedule the court orders you to perform 72.2 hours of community service in an amount of \$10.00 per hour, not more than forty hours per week until the judgments is paid or until the court is satisfied that you are in compliance with the approved payment schedule". (Entry, Exhibit)

This purported Entry both unlawfully increased the sentence imposed on the four different

predicate offenses to two times beyond the scope of the statutes, and four times beyond what could be provided by statutes, when the petitioner was released on November, 17, 2014, he was restricted again by the Ohio Adult Parole Authority, on “Post-Release Control” which never went into effect originally or subsequently ordered by the court by virtue of a prejudgments, as required by law, See, e.g. **State v Brooks** (2004) 103 Ohio St. 3d 134. However, the court’s void memorandum judgment was removed from the record, on appeal.

As pointed out by Petitioner in the Federal District Court:

“The only way to determine the concurrent sentence is to review the trial courts other unlawfully altered journal entry, in State v. Feathers, Case No. 2016 CR 0695, also journalized on May 17, 2017, described another different judgment order on another commitment paper. However, there is no description of the 2004 CR 0424 concurrent probation sentence, unconstitutional court created an Ex Post facto law, when the court imposed its court created probation sanction, that unlawfully modified and enhanced Feathers original prison sentence, See, 2016 CR 0695 judgment entry, (Case:5:22-cv-00541, Doc #:13-1, Page ID #: 404)”.

The court’s subsequent above entry is fraudulent and mischaracterized and entered in violation Crim. R. 32 (C), one document rule, and falsified and mischaracterized as being a separate Court proceedings and individual sentence, because it is absent of both 2004 CR 0424 and 2016 CR 0695, concurrent case descriptions and the specific probation concurrent sentence[s] and absent of codified probation statutes and criminal rule of law issued, and omitted Case No. 2004 CR 0424, journalized on another document, May 17, 2017, showing the concurrent sanction was memorialized on the trial court’s invalid generic “memorandum” paper and the falsified and mischaracterized 2006 CR 0695 “entry”, is thus, in totality the entire first stage court proceeding and judicially legislated packaged probation sentences which are invalid, and thus, void ab initio, for the lack of adequate and lawful subject matter jurisdiction. no court any longer as following jurisdiction of the subject matter, and, moreover, there is no finality of the judgments.

On appeal in 2020, the judges allowed the invalid generic memorandum paper to be removed from the petitioners Notice of Appeal, and replaced with a bogus entry, entitled “Instructions to the Clerk”, on the docket in State v Feathers, Case No. 2004 CR 0424 (Exhibit). This unauthorized appellant procedure separated the court proceedings and emitted the original concurrent axillary probation judgments regarding the status quo of reviews required for the subsequent jurisdiction of 2019, probation sentences, arising from the Petitioner’s original imposition of the trial courts unauthorized sanctions, were omitted form the record.

The Appellate Court judges’ actions of fraud, and sham process, was compounded and becomes unequivocally evident because they also applied res judicata a bar to review the original sentences that they allowed to remain removed from the notice of appeal (Exhibit), subverted the judicial machinery from its’ normal way of function, and corrupted the entire course of the State and federal habeas corpus court’s decision making process, because the two unlawfully severed case dockets and entries improperly ended up being incorrectly assigned to two different habeas corpus judges, as referenced on the dockets and the appendix as set forth herein forth below, incorrectly, after the bogus entry was set in place on appeal, appear as two original separate convictions and sentences, arising in 2017 and from the 2019 different fraudulent and mischaracterized probation judgments which were never orally pronounced from the bench.

Fraud is not just discovered on one hidden obscured page of the State and Federal court record, rather it pulsates from page to page in every subsequent court proceeding in passim. Fraud originally pulsates from the Ohio Court of Common Pleas, for Portage County, judges consolidated probation revocation proceeding conducted on October 21, 2019, In State v Feathers, Case No. 2004 CR 0424, prison sentence modification by virtue of the purported “judicial release probation

revocation" (Exhibit), and in State v Feathers, Case No. 2016 CR 0695, prison community control sentence, was never decreed from the bench, on October 23, 2019 (id).

The State Trial Court records herein further demonstrated fraud and the processing of a sham appeal after Petitioner moved to vacate. The lower court records collectively show fraudulent mischaracterized judgments, and altered and fabricated case files, inasmuch as the original and subsequent mitigating sentence factors required for Petitioner and resultant two probation sentences were omitted from the record in case number 2004 CR 0424, that was unlawfully severed from Case No. 2016 CR 0695, currently both judgments on one document are nonexistent on the face of all collateral judgments, absent in their decision-making.

In purportedly sentencing Petitioner after the 2019 violation of Judicial Release restrictions, (themselves unlawfully applied), the transcript of the hearing is as follows:

1. **IN THE COURT OF COMMON PLEAS**
PORTAGE COUNTY, OHIO
STATE OF OHIO,) CASE NO. 2004 CR 0424
Plaintiff) CASE NO. 2016 CR 0695
-v-) JUDGE LAURIE J. PITTMAN
DAVID E. FEATHERS) MOTION TO REVOKE
Defendant.)
- - - - -

**BE IT REMEMBERED that on the 21st day
of October, 2019, in the Portage County Common
Pleas Court, Ravenna, Ohio, before the Honorable
Judge Laurie J. Pittman, the appearances listed
Having been made, the following proceedings were
Had:**

THE COURT: I'm Going to find that the Defendant is no longer amendable to community control sanctions and I'm Going to terminate his probation, impose the balance of the prison term. That will run consecutive to anything from Ashland County that has not been fulfilled.

I will credit the defendant with all the time served to date of these cases.

Sir, you may be subject to post-release control Pursuant to Ohio Revised Code 2967.28. If you violate the terms of your post-release control, you could receive an additional prison term, not to Exceed fifty percent of your original term.

Post-release control period is a mandatory period of five years. Your potential penalty could be up to five-and-half years.

Do You Understand That?

The judge, in David E. Feathers, Case Nos. 2004 CR 0424 and 2016, CR 0695, did not pronounce two different specified probation convictions and sentences, and the sentencing transcript is invalid inasmuch as it is absent of codified statutes and criminal rules of law, and thus, is void ab initio, for the lack of adequate and lawful subject matter jurisdiction. no court any longer has Jurisdiction of the subject matter.

H. Caption (Sic), State of Ohio v David E. Feathers, Case No. 2004 CR 0424, journalized October

THE COURT: this matter before the court on Monday, October 21, 2019, for a hearing on Motion to Modify Sanctions.

Present in court were the assistant prosecuting attorney appearing on behalf of the state of Ohio and the Defendant represented by attorney George Keith, also present was adult probation.

The warrant is recalled.

The court finds the defendant was originally sentenced in this matter on April 5, 2005, defendant was credited with 152 days served in jail.

The court further finds on Monday, July 7, 2008 defendant was again sentenced in this matter to the Ohio department of rehabilitation and corrections for a definite period of eight (8) years, to be served for the offense of "aggravated burglary", four (4) years to be served for the offense of "felonious assault" and One (1) year to be served for the offense of "domestic violence", or until legally released. It was ordered that the Defendant receive credit for all the days he served in jail and in prison previously. Defendant was also credited with 214 days served from December 6, 2007 to the date of sentence in this matter July 7, 2008.

The court further finds on February 13, 2015 (date released from the jail) defendant was granted judicial release in this matter and placed on probation. The court further finds defendant has violated terms of probation and local sanctions are no longer appropriate.

IT IS THEREFORE ORDERED Defendant's probation is revoked and Defendant shall serve the balance of his prison term, Defendant shall receive credit for all the time served in the Portage county jail and in prison in this matter. That time shall be calculated by the reception facility.

[defendant served five days in jail after judicial release up to the date of this hearing].

The Court thereupon notified the Defendant that after release from prison, the Defendant will be supervised under mandatory post release control R.C. 2967.28 for five years and that if the Defendant could receive an additional prison term not to exceed 50 percent of his original term.

IT IS FURTHER ORDERED the Clerk of Courts shall prepare an Order for the Portage County Sheriff's Department to convey the Defendant to the aforementioned facility.

JUDGE LAURIE J. PITTMAN

After reading the above subsequent commitment paper, when measured against the sentence transcripts, issued in Case No. 2004 CR 0424, consequently, there can be no escape from the conclusion that the judge did not pronounce any sentence during the hearing or in the entry, inasmuch the hearing and the entry it is absent of the prison sentence, and of the statutory degree of each of the three felony offenses, showing to different fraudulent misrepresented and mischaracterized, nonexistent by codified probation statute entry, the sentence transcripts discover that only ordered mandatory post release control R.C. 2967.28 for five years

After reading the Trial Court's original May 15, 2017, unlawfully merged probation sentences, unconstitutionally issued as concurrent jail sentences and consecutive prison sentences (Exhibit), and the subsequent unauthorized consecutive reimprisonments issued On October 23, 2019 (Exhibit), consequently, there can be no escape from the conclusion that the totality of the entire adjudications and case files are patently and unambiguously fraudulent, and the original sentences were removed and are now nonexistent of the face of the Court of Appeals judgments.

The following history, establishes a *prima facie* case of fraud required under Federal Rules of Civil Procedure 9(C). Fraud is unequivocally found in four branches of the judiciary: I. In the

Ohio Court of Common Pleas, (Portage County). II. The Court of Appeals for the Eleventh District. III. The Supreme Court of Ohio, and IV. Consequently, because the cases flies are unlawfully separated, in two different United States Northern District of Ohio Courts on Habeas Corpus review. The aforesaid referenced records and as described herein below, in question can be consulted on the Federal docket. (See the Civ.R.9 (C), particulars of fraud upon the court asserted in Feathers v. Spatny, Renewed Application for Certificate Appealability, On Appeal U.S. Ct. App. Case: 24-3466, Originating Case Nos, 5:22-cv-00540: 5:22-cv-00541, taken from judgment order, (EFC No. 23), also referenced herein below, asked to be incorporated by reference under Civil Rule 10 (C).

As the entirety of the appellate process was a sham legal process, by definition, due to the fact that it was effected in the absence of in rem, in persona and subject matter jurisdiction, the refusal by the Supreme Court of Ohio to issue a corrective Writ upon proper application therefor violated Due Process and Equal protection of the law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and moreover, is a regular practice by the Ohio Supreme Court, warranting the grant of Certiorari review and corrective action by this Court.

SECOND QUESTION PRESENTED FOR REVIEW:

WHETHER THE FAILURE TO ISSUE A CORRECTIVE WRIT UPON PROPER APPLICATION THEREFOR, VIOLATES PETITIONER'S RIGHT TO DUE PROCESS AND TO EQUAL PROTECTION OF THE LAW PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

LAW AND ARGUMENT

As noted above, as the entirety of the appellate process was a sham legal process, by definition, due to the fact that it was effected in the absence of in rem, in persona and subject matter

jurisdiction, the refusal by the Supreme Court of Ohio to issue a corrective Writ upon proper application therefor violated Due Process and Equal protection of the law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and moreover, is a regular practice by the Court, warranting the grant of Certiorari review and corrective action by this Court.

It is well-settled that a showing of fraud upon the court mandates a corrective process upon judicial review. The United States Court of Appeals for the Sixth Circuit has described the requisite "fraud on the court" as "'egregious conduct involving a corruption of the judicial process itself.'"

Gen. Medicine, P.C. v. Horizon/CMS Health Care Corp. (6th Cir. 2012) 475 F. App'x 65, 71, (quoting 11 Charles Alan Wright et al., Federal Practice & Procedure § 2870). The rule addresses only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct). A movant seeking to establish fraud sufficient to warrant relief must present clear and convincing evidence of the elements of fraud. The elements of a fraud claim under Ohio law entail:

- a. A representation or, where there is a duty to disclose, concealment;
- b. Of a material fact;
- c. Made falsely, knowing it to be false, or with reckless disregard sufficient to establish that it was made knowingly,
- d. With the intent to mislead another,
- e. With justifiable reliance on the falsity; and
- f. A resulting injury.

See, e.g. **Burr v Stark County Bd. of Commissioners** (1986) 23 Ohio St. 3d 369; **Cohen v Larko** (1984) 10 Ohio St. 3d. 117; cited in **Gaines v Preterm Cleveland, Inc.** (1987) 33 Ohio St. 3d 54. See also **Chambers v NASCO** (1991) 5012 U.S. 32.

When presented with proof that a fraud has been committed upon the court, a court has inherent power that is necessarily vested in the courts to control and manage its affairs, even if not by rule, (**Chambers**, *supra*), including to vacate a judgment upon proof that a fraud has been perpetrated. (*id.*), citing, e.g. **Hazel-Atlas Glass Co. v Hartford Empire Co.** (1944) 331 U.S. 238 238; **Universal Oil Prod. Co. v Root Refining Co.** (1946) 328 U.S. 575.

For example, Under Rule 60(d)(3) of the Federal Rules of Civil Procedure, a court may set aside a final judgment for fraud on the court. "Relief under Rule 60(d)(3), is usually "reserved for circumstances in which, for example, a judge or a juror has been bribed, a bogus document is inserted in the record, or improper influence has been exerted upon the court or an attorney so that the integrity of the court and its ability to function is directly impinged." **McKenna v. Nestle Purina Petcare Co.** (S.D. Ohio Jan. 3, 2011) 2011 U.S. Dist. LEXIS 2579, (citing **Morawski v. United States Dep't of Agriculture**, (E.D. Mich. July 2, 2002) 2010 U.S. Dist. LEXIS 65895. In **Demjanjuk v. Petrovsky**, (6th Cir. 1993) 10 F.3d 338, 352-53, the Court vacated an extradition order in light of a Brady violation by government attorneys adhering to the requirements of the court to address and correct prior orders obtained through fraud upon the court. Likewise, in this case, the power court had an obligation under the law to address the repeated fraud that has been continually and repeatedly been perpetrated upon the courts by the lower court, by the prosecutor, and by the Clerk of the lower court, that has and continues to result in ongoing unwarranted and illegal custodial supervision over Petitioner. The failure to address and correct the fraud, established by proof beyond a reasonable doubt through court records, violates petitioner's right to Due Process and to Equal Protection of the Law pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, and this Court should grant Certiorari review to

regularize the practice of lower courts and to correct the failures in this case.

THIRD QUESTION PRESENTED FOR REVIEW:

WHETHER THE CONTINUING CUSTODIAL SUPERVISION OF PETITIONER IN THE ABSENCE OF A SENTENCE AND WITHOUT IN REM, IN PERSONA, OR SUBJECT MATTER JURISDICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

LAW AND ARGUMENT

This Court has held that “lawful imprisonment deprives citizens of freedom and other rights” **Hudson v Palmer** (1984) 468 U.S. 517, 524. The key to this doctrine is that imprisonment must be lawful. Where, as here, there has been no pronouncement of guilt or proper adjudication in a lower court of competent jurisdiction, the state is prohibited from administering punishment lest such punishment violate the Eighth Amendment. See, e.g. **Gulett v Haines** (S.D. Ohio, 2002). 229 F. Supp. 2d 806. This Court has long held that Eighth Amendment safeguards protect citizens from cruel and unusual punishment by the states. See, e.g. **Cooper Industries, Inc. v Leatherman Tool Group, Inc.** (2991) 532 U.S. 42. States may only punish citizens properly convicted of a crime. See, e.g. **Pressley v Brown** (W.D. Mich., 1990) 754 F. Supp. 112.

The trial Court’s original May 15, 2017, unlawfully merged probation sentences, which were unconstitutionally issued as concurrent jail sentences and as consecutive prison sentences, and the subsequent unauthorized consecutive reimprisonments issued On October 23, 2019, are patently and unambiguously fraudulent, and the original sentences were removed and are now nonexistent of the face of the Court of Appeals judgments.

In this case, the failure to pronounce separate punishments or sentences for the crimes and

asserted probation violations by the trial court in Portage County Common Pleas Court Case Numbers, or even to prescribe a penalty that is authorized by law, in a mode or manner authorized by law, establishes that Petitioner was never properly convicted or sentenced sufficiently to vest jurisdiction in the State of Ohio to punish him, thus rendering all punishment inflicted upon him to be violative of the Eighth Amendment as cruel and unusual. Moreover, the failure to address and refusal to correct the continuing and ongoing Constitutional deprivation by the lower court continues and perpetuates the Eighth Amendment violation, warranting the grant of Certiorari by this Court to regularize the practices of all Courts and in aid of this Court's appellate and supervisory jurisdiction.

FOURTH QUESTION PRESENTED FOR REVIEW:

WHETHER THE APPLICATION OF A PRISON TERM AND OF A SUBSEQUENT TERM OF CUSTODIAL SUPERVISION BY THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS VIOLATES THE SEPARATION OF POWERS MANDATES OF THE UNITED STATES CONSTITUTION BY USURPING THE AUTHORITY OF THE JUDICIARY?

LAW AND ARGUMENT

As noted above, the Clerk of Courts for the Trial Court, acting on behalf of the lower trial court judge of the court of common pleas for Portage County, consolidated revocation probation proceedings, after the Trial Court judge failed to orally pronounce the petitioner's two consecutive probation convictions and sentences from the bench, on October 21, 2019, required by Ohio Crim. R.(A). Instead, the sentence was fraudulently issued by the court's clerk who issued two different fraudulent judgments, that were not only not pronounced by the Court, but that are also nonexistent by any codified statutes required for each predicate offense or of the description of the petitioner's

consecutive prison sentences, that were subsequently extra-judicially imposed by the Ohio Department of Rehabilitation and Corrections, after the clerk's two false judgments were severed in their entries and unlawfully memorialized in violation of Crim. R. 32 (C), in two different commitment papers, that were unlawfully journalized on October 23, 2019, in two different fraudulently modified dockets, issued in State v Feathers, Case No. 2004 CR 0424, and State v Feathers, Case No. 2016 CR 0695. The clerk's fraudulent "entries" present the fraudulent sentences improperly appearing as separate sentences, therefore effectively omitting the trial court's original unauthorized imposition of the Petitioner's two concurrent six-month jail terms and 36-month prison terms, purportedly ordered as "split probation sanctions", that never went into effect on the basis of the trial court's invalid generic "memorandum" paper, issued on May 17, 2017, in State v Feathers, Case No. 2004 CR 0424, ordering unspecified and uncodified concurrent sanctions, issued in Case No. 2004 CR 0424 and 2016 CR 0695. Simply put, Petitioner was never sentenced and no judgment of conviction or sentence exists that is not fraudulently produced by either the Clerk of Courts or belatedly and after the fact by the trial court, that does not reflect what actually occurred in open court.

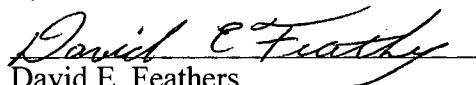
This Court has long maintained that the Separation of Powers doctrine is "a bulwark against one branch of the government aggrandizing its' power at the expense of another branch". **Ryder v U.S.** (1995) 515 U.S. 177. Thus, it is axiomatic that the executive branch cannot create or carry into effect a sentence in a criminal case that was never imposed by the judiciary. See, e.g. **Weaver v Graham** (1980) 450 U.S. 24, citing, e.g. **Lindsey v Washington** (1937) 301 U.S. 397. In this case, there is no Judgment Entry of Sentence, only a "memorandum" and a fraudulent subsequent entry created extra-judicially by the Clerk of Courts, as established herein. In the absence of a valid

Judicial Order issued by a Court of competent jurisdiction, the Ohio Department of Rehabilitation (ODRC) and Corrections had zero authority to hold Petitioner; moreover, the Ohio Adult Parole Authority (OAPA) also has zero authority to maintain custodial supervision over Petitioner under the guise of "Post-Release Control" where, as here, such "Post-Release Control" is not attached to a valid sentence. As the trial court completely failed to issue any valid sentencing entry to commit Petitioner to custody, the acts by the ODRC and OAPA in attempting to interpret a nonexistent Entry to confine and supervise Petitioner constitute a violation of the Separation of Powers and must be discontinued immediately. This Court should grant Certiorari to regularize the practices of all courts, as well as in aid of its appellate and supervisory jurisdiction to ensure that citizens confined in prisons are properly sentenced thereto and not through the usurpation of authority as occurred in this case.

CONCLUSION

For the foregoing reasons, this Court should grant Certiorari to regularize the practices of all courts, as well as in aid of its appellate and supervisory jurisdiction to ensure that citizens confined in prisons are properly sentenced thereto and not through the usurpation of authority as occurred in this case and to ensure that citizens are not being subjected to cruel and unusual punishment by way of unauthorized incarceration and supervision and that Due Process and Equal Protection of the laws are being afforded to citizens seeking redress of grievances in this Nation.

Respectfully submitted,


David E. Feathers
2061 (B) Edgeview Dr.
Hudson, Ohio 44236
Petitioner, in pro se