

APPENDIX

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Martize James Sevidon-EZ
Petitioner

STATE OF INDIANA)
) SS: IN THE DELAWARE CIRCUIT COURT #5
COUNTY OF DELAWARE) 2017 TERM

MARIZE JAMES SEVION-EL

v.

CAUSE NO. 18C05-1706-PC-000009

STATE OF INDIANA

ORDER SETTING RESPONSE DATE
AND FINDING OF INDIGENCY

The Court having received Petitioner's, Martize James Sevion-El, Verified Petition for Post-Conviction Relief clerk file marked June 12, 2017, notes that said verified petition does not contain a certificate of service on the prosecuting attorney of the 46th judicial circuit and there is no entry by the clerk reflecting that a copy of the verified petition has been delivered to said prosecuting attorney for answer. By this Order, a copy of Petitioner's Verified Petition and all supplemental pleadings are directed to be sent to the prosecuting attorney for the 46th judicial circuit and the time to respond by answer set by Rule PC 1 Section 4(a) is extended thirty (30) days from the date of this order, for purposes of closing the issues.

Further, the Court, having reviewed the Verified Petition for Post-Conviction Relief, determines that by said petition the petitioner is seeking Post-Conviction Relief pursuant to Rule PC1, Section 1(a)(1) and (2), claiming that one: petitioner's convictions and sentences are in violation of the Constitution of the United States or the Constitution or laws of the State of Indiana; and, two, that the Court, Delaware Circuit Court No. 5, was without jurisdiction to impose sentence, and the Court will proceed upon those assumptions.

The Petitioner having filed his Affidavit of Indigency, and the Court having examined the same now finds the Petitioner is indigent and filing fees and Court Costs are waived. Because of

the Petitioner's indigency he qualifies for services of the State Public Defender's Office for the appointment of a public defender. The Petitioner in his Verified Petition chooses to proceed without representation by a Public Defender.

As a pro se litigant, Petitioner is expected to take all steps necessary to pursue and present his case. Petitioner must file all appropriate motions and memoranda of law, and to be prepared to present evidence in support of the Petition and cause subpoenas to be issued to witnesses relevant to the matter.

The Court cannot respond to personal correspondence or give legal advice regarding this Petition. All pleadings should conform to the requirements of the pertinent PC Rule under which it is filed.

ALL OF THE ABOVE IS SO ORDERED this 14th day of July, 2017.



THOMAS A. CANNON, JR. JUDGE
DELAWARE CIRCUIT COURT #5

Distribution:

Martize James Sevion-El, Petitioner-
Pendleton Correctional Facility
4490 W. Reformatory Rd.
Pendleton, IN 46064-9001

Eric Hoffman, Chief Trial Deputy Prosecutor

Mike King, Delaware County Clerk

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

IN THE DELAWARE CIRCUIT COURT #5

2018 Term

MARTIZE JAMES SEVION

VS

CAUSE NO.: 18C05-1706-PC-000009

STATE OF INDIANA

COURT’S RESPONSE TO PRAECIPE FOR
WITHDRAWAL OF SUBMISSION

Comes now the Court, and responds to the Petitioner’s Praecipe for Withdrawal of Submission filed January 10, 2018 as follows:

1. On June 12, 2017, the petitioner, pro-se, filed a Verified Petition for Post Conviction Relief. In addition to said Verified Petition, the petitioner filed separate pleadings, Petition for Discovery Order and Request for Subpoena(s) in Post-Conviction Proceedings.
2. On July 14, 2017, the Court issued its Order Setting Response Date and Finding of Indigency. This order specifically advised the petitioner as follows:

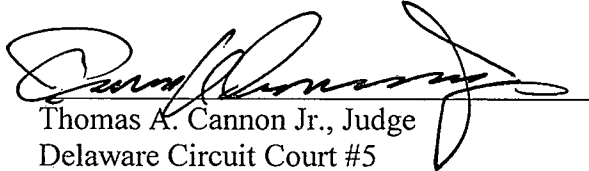
“As a pro se litigant, Petitioner is expected to take all steps necessary to pursue and present his case. Petitioner must file all appropriate motions and memoranda of law, and to be prepared to present evidence in support of the Petition and cause subpoenas to be issued to witnesses relevant to the matter.

The Court cannot respond to personal correspondence or give legal advice regarding this Petition. All pleadings should conform to the requirements of the pertinent PC Rule under which it is filed.”

3. On July 17, 2017 the State of Indiana filed its’ Answer to Petition For Post-Conviction Relief. In addition, the State of Indiana files its Motion for Summary Disposition, to which the petitioner has failed to respond. Said Motion for Summary Disposition remains pending a ruling by the Court.

4. The petitioner's Praecipe For Withdrawal of Submission should be summarily denied for the reason that Trial Rule 53.1(B)(4) of the Indiana Rules of Trial Procedure exempts proceedings for post-conviction relief from the requirements of ruling on motions.
5. The petitioner's Petition for Discovery is governed by the Trial Rule 26 of the Indiana Rules of Trial Procedure governs Depositions of Discovery in civil actions and does not require a Court order for petitioner to conduct discovery in this cause.
6. The petitioner's Request for Subpoena(s) is at this time premature, and will be addressed if an evidentiary hearing is scheduled.

All OF WHICH IS DATED this 19th day of January, 2018.


Thomas A. Cannon Jr., Judge
Delaware Circuit Court #5

DISTRIBUTION:

Martize James Sevion, DOC# 901684
Pendleton Correctional Facility
4490 W. Reformatory Rd.
Pendleton IN 46064-9001

Eric Hoffman, Chief Trial Deputy Prosecutor

Mike King, Delaware County Clerk

STATE OF INDIANA

) IN THE DELAWARE CIRCUIT COURT 2

)

COUNTY OF DELAWARE

) CASE NO: 18C02-0905-JP-000150

ERYN COOL-MARTIZE SEVION

APPOINTMENT OF SPECIAL JUDGE

Due to the parties not selecting a Special Judge, the Court now orders the Clerk of Delaware Circuit Court 2 to appoint a Special Judge pursuant to Trial Rule 79.

The Clerk of the Delaware Circuit Court 2 now appoints the Honorable Linda Ralu Wolf, Judicial Officer of the Delaware Circuit Court 2 to serve as Special Judge in this cause, subject to the person's qualifications herein.

Dated on this the 22nd day of January, 2018.



Clerk of the Delaware Circuit Court 2

Distribution: The Honorable Kimberly S. Dowling
The Honorable Linda Ralu Wolf
Ralph Edward Dowling
Lynn Ellen Liggett
Eryn D. Cool
Martize J. Sevion

In the
Indiana Supreme Court

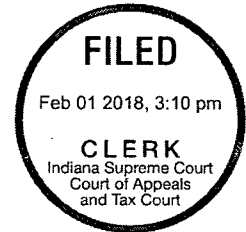
State of Indiana ex rel.
Martize James Sevion-El,
Relator,

v.

Delaware Circuit Court No. 5, et al.,
Respondents.

Supreme Court Case No.
18S-OR-00062

Trial Court Case No.
18C05-1706-PC-000009



Order

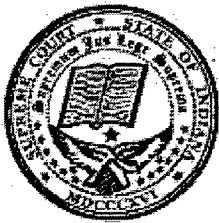
The relator, Martize James Sevion-El, pro se, files a petition for emergency writ of mandamus and prohibition, seeking relief under the Rules of Procedure for Original Actions. While the pleadings are procedurally deficient in many respects, the Court addresses the petition on its merits.

Because Mr. Sevion-El seeks a remedy that is not appropriate under the rules and law governing writs of mandamus and prohibition, this original action is DISMISSED. *See* Ind. Original Action Rule 2(D). Petitions for rehearing or motions to reconsider are not allowed. Orig. Act. R. 5(C).

Done at Indianapolis, Indiana, on 2/1/2018.

A handwritten signature in black ink, appearing to read "Loretta H. Rush". The signature is written in a cursive style with some capital letters.

Loretta H. Rush
Chief Justice of Indiana



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT
STATE OF INDIANA

216 STATE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 FAX: 317-232-8365

Martize James Sevion-El
DOC #901684
4490 W Reformatory Rd
Pendleton, IN 46064

CAUSE NO.: 18S-OR-00062
LOWER COURT CAUSE NO.: 18C051706PC9

IN RE: State of Indiana ex rel. Martize James Sevion-El v. Delaware County Court 5, et al.

You are hereby notified that the Indiana Supreme Court has on this day, Thursday, February 1, 2018, issued the attached order, opinion, or notice.

Transmitted pursuant to the requirements of Indiana Appellate Rule 26.

Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court
Statehouse Rm. 216
200 W. Washington St.
Indianapolis, IN 46204

STATE OF INDIANA) IN THE DELAWARE CIRCUIT COURT NO. 5
) SS:
COUNTY OF DELAWARE) CAUSE NUMBER: 18C05-1706-PC-09

MARTIZE J. SEVION)
)
VS)
)
STATE OF INDIANA)
)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT ON SUMMARY DISPOSITION**

This matter is before the Court upon a certain Motion for Summary Disposition on the Defendant's Petition for Post-Conviction Relief filed by the State of Indiana. The Court, having read said Motion, and the Petitioner having failed to file any written response within a reasonable time, reviewed applicable authorities, and now being duly and sufficiently advised in the premises, finds as follows:

FINDINGS OF FACT

1) On December 1, 2010, the Petitioner was convicted of Count 2, Criminal Confinement a Class B Felony, Count 3, Criminal Confinement a Class B Felony, Count 5, Intimidation, a Class C Felony, Count 6, Intimidation, a Class C Felony, Count 7, Pointing a Firearm as a Class D Felony, in Cause Number 18C05-0908-FB-11. The Petitioner was also adjudicated to be a habitual offender.

2) The Petitioner took a direct appeal of his conviction and sentence. On April 9, 2013, the Indiana Court of Appeals affirmed in part and reversed in part in a memorandum decision. *Sevion v. State*, Memorandum Decision 18A04-1207-CR-384 (Ind. Ct. App. April 9, 2013).

3) On June 12, 2017, the Petitioner, *pro se*, filed a Verified Petition for Post-Conviction Relief. The Petition seems to allege that the trial court did not have jurisdiction over him at the time he was charged, convicted, and sentenced.

CONCLUSIONS OF LAW

4) Criminal defendants who have exhausted the direct appeal process may challenge the correctness of their convictions and sentences by filing a post-conviction relief petition. *Stevens v. State*, 770 N.E.2d 729, 745 (Ind. 2002). Post-conviction relief is a collateral attack on the validity of a criminal conviction. *Timberlake v. State*, 735 N.E.2d 591, 597 (Ind. 2001). This collateral challenge to the conviction is limited to the grounds enumerated in the post-conviction rules. *Id.* (citing Ind. Post-Conviction Rule 1(1)). The post-conviction procedure, however, is not a "super-appeal," and not all issues are available. *Stevens v. State*, 770 N.E.2d at 745. "For the most part, completion of Indiana's direct appellate process closes the door to a criminal defendant's claims of error in conviction or sentencing." *Pruitt v. State*, 903 N.E.2d 899, 905 (Ind. 2009). However, the law allows defendants whose appeals have been rejected to raise a narrow set of claims through a petition for post-conviction relief. *Id.* The scope of the relief available is limited to "issues that were not known at the time of the original trial or that were not available on direct appeal." *Id.* Generally speaking, a petitioner may not raise freestanding claims of error in a post-conviction proceeding. *Sanders v. State*, 765 N.E.2d 591, 592 (Ind. 2002). Uncorrected errors of law that were available to the defendant at the time of direct appeal, but are first raised in a petition for post-conviction relief, are not available in the post-conviction action.

Lowery v. State, 640 N.E.2d 1031, 1036 (Ind. 1994). A waived issue is not available as a freestanding claim in post-conviction relief. *Timberlake v. State*, 753 N.E.2d 591, 598 (Ind. 2001).

5) Post-Conviction Relief proceedings are civil proceedings, and the petitioner bears the burden to establish his claims by a preponderance of the evidence. *Stevens v. State*, 770 N.E.2d 729, 745 (Ind. 2002); *Lowery v. State*, 640 N.E.2d 1031 (Ind. 1994).

SUMMARY DISPOSITION

6) Indiana Post Conviction Relief Rule 1-4 (g) provides:

“The Court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law....”

7) The well-established summary judgment standard of Trial Rule 56(c) is applicable in assessing the merits of the Petition. *State v. Daniels*, 680 N.E.2d 829, 831-32 (Ind. 1997). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The burden is on the moving party to prove there are no genuine issues of material fact and he is entitled to judgment as a matter of law. *Id.* Once the movant has sustained this burden, the opponent must respond by setting forth specific facts showing a genuine issue for trial; the opponent may not simply rest on the allegations of his pleadings. *Id.* See also *Tyson v. State*, 626 N.E.2d 482 (Ind. App. 1993).

8) "When [a] petitioner has already been afforded the benefit of a direct appeal, post-conviction relief contemplates a rather small window for further review". *Emerson v. State*, 812 N.E.2d 1090, 1095 (Ind. Ct. App. 2004). "For the most part, completion of Indiana's direct appellate process closes the door to a criminal defendant's claims of error in conviction or sentencing." *Pruitt v. State*, 903 N.E.2d at 905.

Waiver

9) The scope of the relief available is limited to "issues that were not known at the time of the original trial or that were not available on direct appeal." *Pruitt v. State*, 903 N.E.2d 899, (Ind. 2009). If an issue was known and available, but not raised on direct appeal, it is waived. *Timberlake v. State*, 753 N.E.2d at 597; *Rouster v. State*, 705 N.E.2d 999, 1003 (Ind. 1999). The issue of whether or not the trial court had jurisdiction over the Petitioner was an issue that was known and available at the time of the Petitioner's direct appeal. He did not raise the issue. See State's Exhibit B; *Sevion v. State*, Memorandum Decision 18A04-1207-CR-384 (Ind. Ct. App. April 9, 2013). Thus, the Petitioner's claim has been waived. Consequently, there is no genuine issue of material fact and the State is entitled to judgment as a matter of law.

Jurisdiction

10). Waiver notwithstanding, the Petitioner is not entitled to relief. The Petitioner contends that the trial court lacked jurisdiction. Indiana courts must possess two kinds of jurisdiction to adjudicate a case: subject matter and personal. *Taylor-Bey v. State*, 53 N.E.3d 1230, 1231 (Ind. Ct. App. 2016). Subject matter

jurisdiction is the power of a court to hear and determine cases of the general class to which a particular proceeding belongs. *Id.* Personal jurisdiction is the power of a court to bring a person into its adjudicative process and render a valid judgment over that person, and it requires effective service of process over the parties. *Johnson v. State*, 957 N.E.2d 660, 662 (Ind. Ct. App. 2011).

11) As to subject matter jurisdiction, Indiana courts obtain this jurisdiction through the Indiana Constitution or a statute. See *Taylor-Bey v. State*, 53 N.E.3d at 1231. Indiana Code § 33-28-1-2 provides that all circuit courts in the state have original jurisdiction in criminal cases. Furthermore I.C. § 33-33-18-2 provides that the Delaware Circuit Court No. 5 shall maintain a criminal docket. In addition, criminal proceedings are, generally, to be tried in the county where the offense was committed. See Ind. Code § 35-32-2-1(a). The offenses involved in this case occurred in Delaware County, and the Petitioner was charged, tried, convicted, and sentenced in the Delaware County Circuit Court No. 5. Accordingly, the trial court had subject matter jurisdiction over the Petitioner's case.

12) With regard to personal jurisdiction, the Petitioner argues that the trial court did not have jurisdiction over him solely on the ground that he is an African American. However, the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. CONST. art. XIV, § 1. Moreover, personal jurisdiction does not require the defendant to be a United States citizen. *Taylor-Bey v. State*, 53 N.E.3d at 1232. (determining that county superior court had personal jurisdiction over defendant

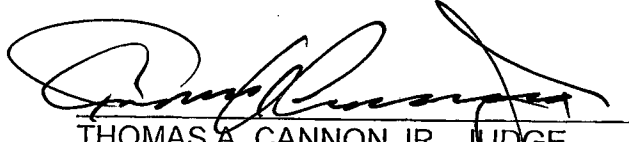
despite his contention that he was not United States citizen but was Moorish American National). See also *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir.2011) ("Regardless of an individual's claimed status of descent, be it as a 'sovereign citizen,' a 'secured-party creditor,' or a 'flesh-and-blood human being,' that person is not beyond the jurisdiction of the courts. These theories should be rejected summarily, however they are presented."); *United States v. Burke*, 425 F.3d 400, 408 (7th Cir.2005) ("Personal jurisdiction is supplied by the fact that Burke is within the territory of the United States. Whether he came to this nation in a regular manner does not affect the court's authority to resolve the criminal charges against him."). Indiana Courts have rejected this sort of "sovereign citizen" argument. See *Taylor-Bey v. State*, 53 N.E.3d at 1232 (rejecting claim of self-described "Moorish American Sovereign National" that trial court lacked subject matter and personal jurisdiction). A "person" may be convicted under Indiana law if the conduct or result occurred in Indiana. *Id.* See also *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011) (collecting cases that have rejected the sovereign citizen argument). Consequently, there is no genuine issue of material fact and the State is entitled to judgment as a matter of law.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that State of Indiana's Motion for Summary Disposition is hereby GRANTED.

Judgment on the Petition for Post-Conviction Relief is hereby entered in favor of the State of Indiana and against the Petitioner.

SO ORDERED this 2ND day of FEBRUARY, 2018.



THOMAS A. CANNON JR., JUDGE
DELAWARE CIRCUIT COURT NO. 5

Distribution:

Eric Hoffman

Martize Sevon

MAR 16 2017

U.S. COURT OF
FEDERAL CLAIMS

In the United States Court of Federal Claims

In re: COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-17-90133

OPINION AND MEMORANDUM

The court received a complaint alleging that a judge engaged in judicial misconduct.¹

The Judicial Conduct and Disability Act, codified as 28 U.S.C. §§ 351-64, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Rules” or “RJCP”) (Sept. 17, 2015) allow for any individual to complain about a federal judge who the individual believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” RJCP 1. Under the Rules, the chief judge reviews complaints of judicial misconduct that are filed with the court and determines whether they should be dismissed or referred for further proceedings. RJCP 11(a). The Rules also state that complaints against federal judges must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office. RJCP 7(a).

Here, the complaint is lodged against a state court judge presiding in Indiana. The complaint does not name a judge who serves on the United States Court of Federal Claims. Therefore, the Chief Judge concludes that the complaint is not appropriate for consideration under the Judicial Conduct and Disability Act, *see* RJCP 4, which is grounds for dismissal under RJCP 11(c)(1)(G). Therefore:

IT IS ORDERED that the complaint is DISMISSED because the allegations are against individuals who are outside the scope of the RJCP, *see* RJCP 4, 11(c)(1)(G); and

IT IS FURTHER ORDERED that the complainant has the right to file a petition for review of this decision by the entire court. The deadline for filing such a petition is within forty-two (42) days after the date of the Chief Judge’s order. RJCP 11(g)(3), 18(a), 18(b).



SUSAN G. BRADEN
Chief Judge

¹ The Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Rules” or “RJCP”) require the court to issue a public opinion that describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the judge is protected if the complaint is finally dismissed under Rule 11(c). RJCP 24(a)(1). The identity of the complainant is also protected. RJCP 24(a)(5). Accordingly, the court will not identify the parties in this matter, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

United States Court of Federal Claims

717 MADISON PLACE, NW
WASHINGTON, DC 20439

OFFICE OF THE CLERK OF COURT
(202) 357-6406

VIA CERTIFIED MAIL NO. 7011 0470 0002 5084 1354

Martize James Sevion-El, #901684
Pendleton Correction Facility
4490 West Reformatory Road
Pendleton, IN 46064

Re: Complaint of Judicial Misconduct or Disability CL-17-90133

Dear Mr. Sevion-El,

Enclosed, please find the Opinion and Memorandum issued by Chief Judge Susan G. Braden dismissing your complaint.

You have the right to petition for review of this decision by the entire court. The deadline for filing such a petition is within forty-two (42) days after the date of the Chief Judge's order.

Sincerely,



Lisa Reyes
Acting Clerk of Court

Dated: 3.16.17

Enclosure

In the United States Court of Federal Claims

Nos. 17-639 C

MARTIZE JAMES SEVION-EL,

Plaintiff,

JUDGMENT

v.

THE UNITED STATES,

Defendant.

Pursuant to the court's Order, filed November 29, 2017, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed.

Lisa L. Reyes
Clerk of Court

November 30, 2017

By:



Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$505.00.