

IN THE STATE SUPREME COURT OF APPEALS
CHARLESTON

JAMES W. BERRY Sr.,
Petitioner

v

ALFRED FERGUSON, HONORABLE JUDGE
Respondent,

Civil Action No. _____

FEB 18 2009

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WRIT OF PROHIBITION

Comes now Petitioner James W. Berry Sr, Petitioner with his Writ of Prohibition under Rule 60 All Writs Act, to an Extraordinary Writ.

Petitioner (hereinafter Mr. Berry) has an inherent right to his Writ of Prohibition as given to the West Virginia State Constitution an the United States Constitution as a matter of inerrant right of law. Mr. Berry asserts his inherent right to the Equal Protection Clauses of Both the State and United States Constitution, U. S. C. Construcional Amendment 14, enforceable under §3 and §5. Jurisdiction lies to the State Supreme Court of the State under the Extraordinary Writs Act, in the first instance.

Mr Berry will clearly show that he has an inherent right to this writ as per the sole document attached to this, and the facts of state law.

Judge Ferguson resigned from office October 2008, as Judge of Cabell County,. Upon his retirement Judge Ferguson was no longer a sitting Judge in the State of West Virginia, where his resignation was accepted.

Judge Ferguson was Specially Appointed by the State Supreme Court , to Mr. Berry's Wayne County Case Number 5-Civ - 170 , habeas corpus, in 2005,. Upon his resignation Judge Ferguson has lost jurisdiction of this special appointment as well as his Cabell County authority and

Jurisdiction, by his retirement.

Judge Ferguson has effectively suspended Mr. Berry's habeas, by his retirement and Mr. Berry has been informed it will have no action until after Mr Ferguson is re-elected as a judge in January 2009, This is a Judge for want and personal gain effectively suspending habeas corpus actions in violation of constitutional laws.

Stein v Disciplinary Board, U S App Lexis 69 15 April 1 , 2008

The United States Supreme Court has held that Judges are generally immune from suits for money damages, There are two exceptions to that rule : (1) when th act is not taken in the Judges judicial capacity,; and (2) when the act, though judicial in nature , is taken in the complete absence of all jurisdiction: [Where there is clearly no jurisdiction over the subject-matter, and any authority exercised is a usurped authority, See 129 U S App D. C. 354 Powell v McCormic, Feb. 28, 1968 to referral of Pierson v Ray, 386 U S 547.

The attached Documents clearly shows that Judge Chafin Did not have jurisdiction of the March 1997 trial and sentencing, he participated in for want, nor did he or Judge Robinson , who was from another county and never appointed to any of Mr Berry's cases, have jurisdiction or authority to sign any Court Orders in 1997 against Mr. Berry. See Exhibit.of State Suprem Court Memorandum of March 3, 1997 attached herein.

Judge Holliday had nothing tin Mr. Berry's case except to sign one Court Order that was also in violation of double Jeopardy laws, as well as to something he had no knowledge of, where he did not participate in any of Mr. Berry's cases.

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Clearly NUMBER TWO of the above statutes apply in Mr. Berry's cases, and though they pertain to a lawful right to § 1983 actions an monetary relief, they further show the criminal usurpation where this has caused Mr. Berry over **12 illegal incarceration, and known to the Judges in question**

Judge Ferguson further has information that Mr. Berry has filed five Complaints and Numenius State Supreme Court actions over his abuses of Mr. Berry's Habeas since 1999, where under Equal Protection clause of the 14th Amendment of the United States Constitution gives him an inherent right to his relief.

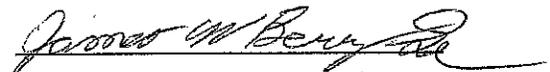
Fact both cases 96-F-026 and 97-F-001 are the same cases with separate punishments enforced for years has been known also to the Judges, who overstep their bounds of authority to usurp laws and enforce illegal sentencing that had no jurisdiction form the start

RELIEF

Wherefore; Mr. Berry is entitled to his Writ of Prohibition as a matter of right and inherent right, where the document attached itself is absolute proof of claim.

Mr Berry humbly pray this honorable Court grant this writ as molded by Mr. Berry to the extent of Equal protection be given to Mr. Berry as all citizens .

Respectfully submitted



James W. Berry Sr, pro se

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ABSOLUTE PROOF
EXHIBIT

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Exhibit

Civil No. 03,09-cir-000

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: RECALL OF THE HONORABLE JAMES O. HOLLIDAY TO ACTIVE SERVICE TO PROVIDE ASSISTANCE IN HEARING CERTAIN CASES IN THE CIRCUIT COURT OF WAYNE COUNTY, TWENTY-FOURTH JUDICIAL CIRCUIT, DURING THE PERIOD APRIL 3, 1997 THROUGH DECEMBER 31, 1997

WHEREAS, the Honorable Darrell Pratt was recently appointed as Judge of the Twenty-Fourth Judicial Circuit, to fill the vacancy created by the resignation of the Honorable Robert Chafin; and

WHEREAS, prior to his appointment as Circuit Judge, Judge Pratt served as Prosecuting Attorney of Wayne County for a number of years, and therefore, is disqualified from hearing certain criminal cases, as well as certain juvenile delinquency and abuse and neglect proceedings; and

WHEREAS, as a result of his previous position as Prosecuting Attorney of Wayne County, Judge Pratt has requested assistance in hearing cases in which he deems himself disqualified; and

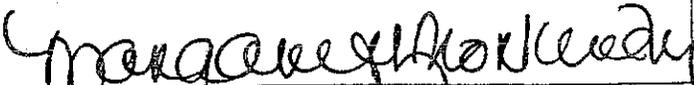
WHEREAS, the Chief Justice, upon review thereof, deems such request to be warranted;

IT IS THEREFORE ORDERED that the Honorable James O. Holliday, Senior Status Judge, be, and he hereby is, recalled for temporary assignment to the Circuit Court of Wayne County, in the Twenty-Fourth Judicial Circuit, under the provisions of Article VIII, Sections 3 and 8, of the Constitution of West Virginia, and W. Va. Code, 51-9-10, for the purpose of presiding in all criminal, juvenile delinquency, and abuse and neglect proceedings in which the Honorable Darrell Pratt deems himself to be disqualified; and

IT IS FURTHER ORDERED that Judge Holliday be, and he hereby is, authorized to enter orders and otherwise conclude matters considered or heard by him during the period of assignment referenced above; and

IT IS FURTHER ORDERED that the Circuit Clerk of Wayne County record this order in the office of said Clerk and that proceedings be held in the manner provided by law.

ENTER: APRIL 3, 1997


MARGARET L. WORKMAN
Chief Justice

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Petitioner also sends with this the fact Mount Olive and its new warden along with Cathy Dillon acting as a lawyer are further devising ways to hinder inmates and committing further theft of inmate monies, to Obstruct Court actions as given in Bounds v Smith , United States Supreme Court application of newly executed Mt. Olive Operational Procedure of State prisoners rights. See attached copy of O. P. Number 5.07, that was implemented without due process of law or within the confines of law. See Prisons and Convicts § 1 -Indigent requirement state expenditures 5c2 LED 2d 72 430 US 817 Bounds v Smith Headnotes at State expense, to[IV Rights Cognizable : applicability to Particular Situations , B Prison conditions and proceedings, 2 Court access, 803 Restrictions on law study and preparation of documents] Morgan v Nevada Bd of State Sprisons Commrs. 593 F Supp 621 (ND Nev 1984) upheld by United states Supreme Court.

Fact ever since Warden Ballard has been at Mt. Olive , all he has done is take and take to Obstruct Inmate access to the Courts.

I am only sending one copy of the voucher to copy , in that Mt. Olive has stolen every cent I get for years.

James W. Berry Sr.
P. W. Berry