

UNITED STATES DISTRICT COURT

NORTHERN

District of

OHIO

Anthony Ciuffi Jr.

SUMMONS IN A CIVIL CASE

v.

David Bobby (warden TCJ)

CASE NUMBER: 4:04 CV 01836

JUDGE ECONOHUS

~~JUDGE GALLAGHER~~

TO: (Name and address of Defendant)

DAVID BOBBY
5701 BURNETT RD.
LEAVITTSVILLE OH 44430

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

ATTY JIM GOODMAN
252 SENECA AVE
WARREN OHIO
44481

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

GERI M. SMITH

CLERK

DATE

9/10/04

[Signature]

(DO NOT WRITE IN THESE SPACES)

UNITED STATES DISTRICT COURT
Northern District of Ohio

Plaintiff

v.

Defendant

CONSENT TO EXERCISE OF JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE
AND ORDER OF REFERENCE

Case Number: **4:04 CV 01836**

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

<u>Signatures</u>	<u>Party Represented</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be transferred to **MAG. JUDGE GALLAS**
United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28
U.S. C. § 636(c), Fed.R.Civ.P. 73 and the foregoing consent of the parties.

Date _____
United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT **ONLY IF** ALL PARTIES
HAVE CONSENTED **ON THIS FORM** TO THE EXERCISE OF JURISDICTION BY
A UNITED STATES MAGISTRATE JUDGE.

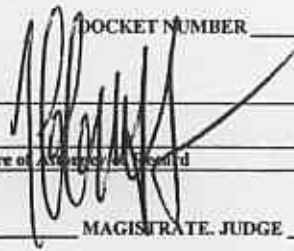
VII. RELATED CASE(S)
IF ANY (See Instructions)

JUDGE _____

DOCKET NUMBER _____

9/9/04

Signature of Attorney at Law



FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

JUDGE _____

MAGISTRATE, JUDGE _____

CIVIL COVER SHEET

This JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the law, except as provided by the local rules of court. This form, by the Judicial Conference of the United States in September 1974, is required to be used by the Clerk of Court for reports of initiating the civil docket sheet. Please refer to the instructions on page 2.

4:04 PM
CV 1836
JUDGE ECONOMUS

I. (a) PLAINTIFFS

Boony Cliff, Jr. (Inmate #332-078)
Trumbull Correctional Institution
5701 Barnett Road
Leavittsburg, Ohio 44430-0901

2004 SEP 10 AM 10:26
CLEVELAND DISTRICT COURT
SOUTHWEST DISTRICT OF OHIO
COLUMBUS

DEFENDANTS

David Bobby, Warden
Trumbull Correctional Institution
5701 Barnett Road
Leavittsburg, Ohio 44430-0901

JUDGE GALLAGHER

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: Trumbull (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: Trumbull (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Jeffrey V. Goodman (0055566)
252 Seneca Avenue, N.E.
Warren, Ohio 44481
330-393-3400

ATTORNEYS (IF KNOWN)

Jim Petro, Ohio Attorney General
Corrections Litigation Section
150 E. Gay Street - 16th Floor
Columbus, Ohio 43215

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF DEF
- Incorporated or Principal Place of Business in This State 4 4
- Citizen of Another State 2 1
- Incorporated and Principal Place of Business in Another State 5 5
- Citizen or Subject of a Foreign Country 3 3
- Foreign Nation 6 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & Sender <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 361 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property (21 USC 881) <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 427 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 841 BIA (13950) <input type="checkbox"/> 842 Black Lung (923) <input type="checkbox"/> 843 DIWC/DIWW (405(g)) <input type="checkbox"/> 844 ESID Title XVI <input type="checkbox"/> 845 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 410 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 410 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions	

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTE UNLESS THIS IS A DIVERSITY ACTION)

28 U.S.C. 1254 Habeas Corpus Petition for a prisoner in state custody

VII. REQUESTED IN COMPLAINT:

Check if this is a Fed.R. Civ.P. 23 Class Action

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANTHONY CIOFFI, JR.
Inmate #332-078
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430-0901

Petitioner

vs.

DAVID BOBBY, Warden
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430-0901

Respondent

2004 SEP 10 AM 10:29
CASE NO: 4:04 CV 01836
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

JUDGE: **JUDGE ECONOMUS**

~~JUDGE GILLES~~

PETITION FOR WRIT OF
HABEAS CORPUS
28 U.S.C. 2254
State Custody

Now comes petitioner, Anthony Cioffi, Jr., who for his Petition against

Respondent says:

JURISDICTION

1. All events set forth in this Petition occurred in, or are substantially related to, the Northern District of Ohio.
2. This case involves and arises directly from a question of Federal law; and this court has jurisdiction pursuant to 28 U.S.C. 2254.
3. Exhaustion of Petitioner's State Court remedies occurred on September 10, 2003, pursuant to an Order of the Ohio Supreme Court. Petitioner does

not have the right, under Ohio law, to raise, by any available procedure, the questions presented in this petition.

THE PARTIES

4. Petitioner is an inmate confined by the Ohio Department of Corrections at Trumbull Correctional Institution, pursuant to an order issued by the Trumbull County Court of Common Pleas, Trumbull County, Ohio, on December 11, 1996.
5. Respondent David Bobby is the Warden of Trumbull Correctional Institution and has the power to give defendant his unconditional freedom.

CONVICTION/SENTENCE UNDER ATTACK

6. On December 4, 1996, in the Trumbull County Court of Common Pleas, Trumbull County, Ohio, Petitioner was found guilty, upon *Plea to Amended Indictment*, of one count of Gross Sexual Imposition in violation of Ohio Revised Code Sec. 2907.05(A)(4) and one count of Kidnapping in violation of Ohio Revised Code Sec. 2905.01(A)(2).

7. Petitioner was ordered confined to the Ohio Department of Corrections, pursuant to an *Entry on Sentence* order issued by the Trumbull County Court of Common Pleas, Trumbull County, Ohio, on December 11, 1996.
8. The case number assigned to Petitioner's state court case was 95-CR-696, assigned to the docket of the Trumbull County, Ohio, Court of Common Pleas.
9. Petitioner was sentenced to 1 year on the Gross Sexual Imposition count and 3-15 years on the Kidnapping count, all to run concurrent with each other.
10. The conditions of petitioner's plea agreement with the State of Ohio were that in exchange for petitioner's plea of "guilty" to the counts referenced above, the State of Ohio dismissed an additional count of the indictment and recommended a sentence in conformity with the sentence referenced above.
11. Petitioner is currently in state custody serving a concurrent sentence to the sentence at issue in this action, said concurrent sentence being imposed by the Court of Common Pleas, Trumbull County, Ohio, in case number 96-CR-599 as 10-25 years each on three counts of Rape and 1 year each on three counts of Gross Sexual Imposition, pursuant to an *Entry On Sentence* issued on December 11, 1996.

CLAIMS

12. **Federal Grounds:** Federal law and the Sixth Amendment to the United States Constitution provide a defendant with the right to effective counsel. Petitioner was denied his constitutional right to effective counsel.
13. **Supporting Facts:**
 - a. Petitioner is a mentally challenged individual who relied upon the insight and advice of his attorney in the state trial court to determine whether to accept the State of Ohio's plea offer. The offer was presented to petitioner at the last moment before trial, with a jury panel literally waiting in the hall. Petitioner can barely read, and did not understand the effect of the agreement or the waivers of constitutional rights contained therein. Petitioner's trial counsel did not read the plea agreement to him or review it with petitioner. As a result, petitioner did not knowingly, voluntarily and intelligently waive his constitutional rights and enter valid guilty pleas.
 - b. Prior to entering his guilty pleas, petitioner's counsel did not evaluate the strengths and weaknesses of petitioner's case and/or the State of Ohio's case in order to effectively counsel petitioner on acceptance or rejection of the State of Ohio's plea offer. For example, petitioner's trial counsel did not examine or evaluate the psychological records of the alleged victims which were in existence at the time and which

chronicled extensive, dramatic psychological, behavioral and emotional problems of the alleged victim(s) along with denials that the petitioner was involved in sexually abusive activities. Significantly, petitioner's trial counsel did not disclose to petitioner, prior to his plea, that the State of Ohio had disclosed exculpatory material in the form of recantations by two of the three victims involved the charges against petitioner.

- c. The fact that petitioner's trial counsel was unprepared on the date of trial is underscored by the fact that, the day *prior* to trial, petitioner's trial counsel quashed the subpoenas of all defense witnesses – evidencing trial counsel's intent to coerce petitioner into a plea, rather than litigating his very defensible case.
- d. Had petitioner's trial counsel performed effectively, petitioner would not have plead guilty to the charges in the amended indictment because petitioner would have:
 - e. Understood the language of the plea agreement and the ramifications of a guilty plea;
 - f. Been informed of the exculpatory evidence that existed, including but not limited to statements from two of the three victims recanting their prior allegations;
 - g. Been in a position to proceed with trial if necessary; which option was foreclosed to petitioner because of trial counsel's lack of preparation (no investigation, no witnesses, no review of discovery materials, no disclosure of exculpatory evidence).

CASE HISTORY

14. Subsequent to his sentencing, petitioner filed a *Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty* with the trial court seeking to vacate his prior plea based upon the post-plea investigation which revealed that evidence of petitioner's actual innocence existed, but was never disclosed, and upon the well-supported assertion that petitioner's trial counsel was ineffective.
15. On January 31, 2002, the Trumbull County, Ohio, Court of Common Pleas held an evidentiary hearing upon petitioner's *Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty*.
16. On March 11, 2002, the Trumbull County, Ohio, Court of Common Pleas issued its order overruling petitioner's Motion.
17. Petitioner filed a timely *Notice of Appeal* with the Court of Appeals for the Eleventh Appellate District of Ohio. The appellate court affirmed the trial court's ruling in case(s) 2002-TR-00037 and 2002-TR-00039 in an opinion dated May 9, 2003.
18. Throughout this process, petitioner's cases are referenced by two case numbers because, as with this Habeas Corpus petition, two cases were litigated simultaneously and, although not consolidated in the trial court, the issues are virtually identical. Petitioner's cases were consolidated in

the opinions issued by the state appellate and supreme courts. As noted above, the sentences imposed upon petitioner in both cases by the State of Ohio run concurrent to each other.

19. Petitioner filed a timely *Notice of Appeal* to the Ohio Supreme Court, and appropriate jurisdictional memoranda. On September 10, 2003, the Ohio Supreme Court declined review in petitioner's case, designated on the Ohio Supreme Court's docket as case number 2003-1097.
20. The facts underlying petitioner's claim establish, by clear and convincing evidence, that but for the constitutional error cited above, no reasonable factfinder would have found petitioner guilty of the underlying offense.

PREVIOUS OR PENDING ACTIONS

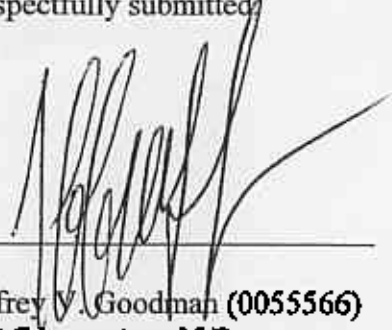
21. Petitioner has not previously filed any type of petition, application or motion in a federal court regarding the conviction challenged herein.
22. Petitioner does not presently have any petition, motion or appeal pending in any state court regarding the conviction or sentence challenged in this petition; nor does petitioner harbor any present plans to file any such actions in the future.

DEMAND FOR RELIEF

WHEREFORE, petitioner prays that this court grant him all relief to which he is entitled in law or equity, including but not limited to:

- a. An order granting petitioner's requested Writ of Habeas Corpus.
- b. An order that full discovery be had in this action and that the power of compulsory process be afforded petitioner in pursuit of his claims of actual innocence.
- c. An order directing the state of Ohio, by its appropriate official, to produce and file with this court the entire record of all state court proceedings in petitioner's case.
- d. An evidentiary hearing upon petitioner's claims.
- e. An order vacating petitioner's state court convictions.
- f. An order vacating and holding for naught petitioner's prior pleas to the state court charges.
- g. An order that petitioner be immediately released from state custody and enjoining Respondent and/or State of Ohio from restraining, inhibiting or impairing petitioner's liberty or personal freedom, now or in the future, based upon the unconstitutionally obtained state court convictions.
- h. For all other relief to which petitioner is entitled.

Respectfully submitted,



Jeffrey V. Goodman (0055566)
252 Seneca Ave. N.E.
Warren, Ohio 44481
Telephone: (330)-393-3400
Facsimile: (330)-393-3090

e-mail: sevenfold@aol.com

VERIFICATION

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT AS I VERILY BELIEVE.

9-9-04

Date

Anthony Cioffi, Jr.

Anthony Cioffi, Jr.