

IN THE CIRCUIT COURT FOR
LAWRENCE COUNTY, TENNESSEE

STATE OF TENNESSEE,)
)
)
Plaintiff,)
)
) Case No. 32518
v.)
)
Arthur Hirsch,)
)
Accused Petitioner.)

)/)

VERIFIED MOTION TO DISMISS FOR LACK OF JURISDICTION

1 Accused Defendant, Arthur Hirsch, hereinafter “Hirsch”, enters this arena as a “Pro Se”
2 litigant citing several Courts have “*held that a pro se complaint requires a less stringent reading*
3 *than one drafted by a lawyer* citing Justice Black in ***Conley v. Gibson, 355 U.S. 41, 48 (1957),***
4 further, the United States Supreme Court agrees pursuant to ***Haines v. Kerner, 404 U.S. 519 (1972)***
5 citing “*...allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient*
6 *to call for the opportunity to offer supporting evidence. We cannot say with assurance that under*
7 *the allegations of the pro se complaint, which we hold to less stringent standards than formal*
8 *pleadings drafted by lawyers...*”, THEREFORE Hirsch moves this court to enter an ORDER
9 dismissing this case for lack of subject jurisdiction, due in part to General Sessions Court’s lack of
10 jurisdiction involving an invalid indictment and Hirsch states for the record as follows:

11 **ONLY LEGITIMATE PURPOSE OF GOVERNMENT**

12 1. That the sole legitimate purpose of government is to safeguard the God-given, unalienable
13 rights of the People as expressed in the American organic law document, The Declaration of
14 Independence.

“WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

OATHS OF OFFICE

2. That all federal¹ and state² judicial officers are mandated by law to be bound by an Oath of

11 Office to support the United States and Tennessee constitutions with their respective amendments, Bill
12 of Rights and Declaration of Rights (*Tennessee Constitution, Article I*).

13 3. That the courts' judges are duty-bound upon oath to be the guardians of the Peoples'
14 constitutionally secured civil rights.

*It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*"*

4. That General Sessions Court JUDGE PATRICIA McGUIRE (“JUDGE McGUIRE”) is duty-upon Oath of Office (Exhibit A - copy of oath) to support the federal and state constitutions and guard defendant’s constitutionally secured civil rights.

1

“... This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. . .” U.S. Constitution, Article VI (in pertinent part)

2

T.C.A. § 17-1-104. Oath of office. Before entering upon the duties of office, every judge and chancellor in this state is required to take an oath or affirmation to support the constitutions of the United States and that of this state (in pertinent part). *Tennessee Code Annotated*

1 5. That DISTRICT ATTORNEY GENERAL, MIKE BOTTOMS (“GENERAL BOTTOMS”)
2 and his representative staff, JIM WHITE, CHRISTI L. THOMPSON, BRENT COOPER, CALEB
3 BAYLES, and DISTRICT ATTORNEY GENERAL PRO TEM KIM HELPER (“GENERAL
4 HELPER”) are all duty-bound upon Oath of Office (oaths unavailable at this time) to support the
5 federal and state constitutions and to safeguard defendant’s constitutionally secured civil rights.

6 **RIGHT TO IMPARTIAL, NEUTRAL AND DETACHED JUDGE**

7 6. That JUDGE McGuire is constitutionally and statutorily duty-bound to provide defendant,
8 as one of the good People of the State of Tennessee, impartial, neutral and detached justice
9 administration³ in Lawrence County General Sessions Court.

10 *“It is a fundamental right of a party to have a neutral and detached judge preside over the*
11 *judicial proceedings.” “Petitioner is entitled to a neutral and detached judge in the first*
12 *instance.” Ward v. Village of Monroevill, 409 U.S. 57, 61-62*

13 **GROUND FOR LOST JURISDICTION**

14 7. That accused alleges that the grounds for the lack/loss of subject matter jurisdiction by the
15 General Sessions Court appears on or is absent from the face of the record as follows:

16
17

3

T.C.A. § 17-1-104. Oath of office. Before entering upon the duties of office, every judge and chancellor in this state is required to take an oath or affirmation to support the constitutions of the United States and that of this state, and to administer justice without respect of persons, and impartially to discharge all the duties incumbent on a judge or chancellor, to the best of the judge's or chancellor's skill and ability. (In pertinent part)

● “*Petitioner is entitled to a neutral and detached judge in the first instance.” Ward v. Village of Monroevill, 409 U.S. 57, 61-62*

● “[A]n impartial decision maker is essential.” Cf. *In re Murchison*, 349 U.S. 133 (1955); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 45-46 (1950)

GROUND 1

NO ARREST WARRANT ISSUED OR RETURN MADE

NO PROBABLE CAUSE LAWFULLY ESTABLISHED

8. That the record reveals that NO ARREST WARRANT was issued by JUDGE McGuire
register following accused's warrantless arrest on December 10, 2013 per mandatory statute
see Rule of Criminal Procedure, Rule 4, i.e., there is no record in a docket book or on the Court
s computer showing the issuance of a warrant for accused's arrest per Rule 4(a)(3)⁴ or showing
warrant for accused was returned per Rule 4(e)(4)(A).

9. That T.C.A. § 40-2-104 does not list an affidavit of complaint as a stand alone formal notice used's charges.⁵ (Note: See Attorney General Opinion No. 00-124, August 7, 2000, Paul G. Evers, Attorney General and Reporter, which clearly states that a warrant is a separate document from the affidavit of complaint and is a charging instrument, whereas the affidavit of complaint is not.)

10. That “*wherever the words “magistrate” and “clerk” appear in Rule 4, they are to be understood as being qualified by the words “who is neutral and detached and who is capable of the sole cause determination required by this rule.”* (See *Shadwick v. City of Tampa*, 407 U.S. 345 (1972).) Advisory Commission Comments.

11. That accused alleges that JUDGE McGuire conspired with GENERAL BOTTOMS members of his representative staff of assistant district attorneys general, and willfully,

4

RULE 4(a)(3) RECORD OF ISSUANCE. – “*Rigid compliance with this rule is very important to the proper administration of criminal justice, and thus the rule is meant to be mandatory in nature.*” (In pertinent part) *Advisory Commission Comments*

5

See *State v. McCloud*, 310 S.W.3d 851, 2009 Tenn. Crim. App. LEXIS 437 (Tenn. Crim. App. June 12, 2009).

1 knowingly, intentionally, in bad faith acted outside the rule of law without authority and breached their
2 duty to obey the law by not following mandatory statutory TRCrP Rule 4 and by prosecuting accused
3 WITHOUT AN ARREST WARRANT under color of law without jurisdiction for nearly nine months.

4 12. That without an arrest warrant issued for accused probable cause was not lawfully
5 established and all of accused's case proceedings were void and a sham. (See *State v. Raspberry*, 640
6 S.W.2d 227, 1982 Tenn. Crim. App.)

GROUND 2

MANDATORY STATUTORY RULES OF CRIMINAL PROCEDURE VIOLATED

9 13. That JUDGE McGuire conspired with GENERAL BOTTOMS and/or members of his
10 representative staff of assistant district attorneys general and willfully, knowingly, and intentionally
11 acted outside the law in bad faith without authority and breached their duty to obey the law by not
12 following mandatory statutory rules of criminal procedure Rules 4, 5(a)(1)(B), 5c)(2)(A), and Rule
13 10(a), (b)(1)-3, c) during accused's criminal proceedings, to wit

14 a) accused was denied an initial appearance hearing before a (neutral and detached) magistrate
15 for probable cause determination upon accused's warrantless arrest per Rule 5(a)(1)(B) which JUDGE
16 McGUIRE held privately *ex parte* with arresting trooper, JEFF REED.

FIELDS v. HENRY COUNTY, TENN., 701 F.3d 180, 186 (6th Cir. 12-10-2012)
Criminal Rule 5(a), guarantees "*a neutral determination of probable cause . . . taken promptly before a magistrate*"

20 b) accused was denied at said hearing his constitutionally secured rights to due process, to
21 know the nature and cause of the accusations, to receive a copy of the ARREST WARRANT, and to
22 present accused's side of the incident and argue in accused's defense,
23 c) accused was also denied due process and fundamental fairness and impartiality from JUDGE

1 McGuire who falsified the mittimus writ of confinement (Exhibit B - copy of mittimus) by certifying
2 that accused had appeared before her which accused had not,
3 d) accused was denied due process by JUDGE McGuire scheduling a second (sham) "initial
4 appearance" for probable cause determination on January 24, 2014 which was around 45 days past the
5 statutory deadline of 72 hours per Rule 5(a)(1)(B),⁶
6 e) accused was denied due process and equal protection of the law by JUDGE McGuire
7 denying his motion to dismiss without allowing him to speak and with no hearing (Exhibit C -
8 affidavit), by presuming jurisdiction⁷ without proof of facts or law, by humiliating accused with
9 ridicule before the courtroom full of litigants (see Exhibit C), by violating all of Rule 10 re. mandatory
10 arraignment procedures (i.e., NO ARREST WARRANT ISSUED, no indictment, presentment or
11 information, no copy of a charging instrument given to accused, no reading the charges/accusations,
12 no asking how accused wanted to plead, refused to inform accused of the nature and cause of his
13 accusation, entered "not-guilty" plea over accused's objection), by not holding a probable cause hearing
14 as scheduled, by not having trooper JEFF REED present to give evidence, by conducting the hearing
15 proceedings in the absence of GENERAL BOTTOMS or any of his representative staff members, by

6

Rule 5(a)(1) APPEARANCE UPON AN ARREST. – Any person arrested – except upon a capias pursuant to an indictment or presentment – shall be taken without unnecessary delay before the nearest appropriate magistrate of: (A) the county from which the arrest warrant issued; or (B) the county in which the alleged offense occurred if the arrest was made without a warrant, unless a citation is issued pursuant to Rule 3.5.

● **STATE v. CARTER, 16 S.W.3d 762, 768 (Tenn. 2000)**

Tenn. R. Crim. P. 5(a) "This Court has held that if an individual is not brought before a magistrate within 72 hours, there has been "unnecessary delay."

7

HENDRIX v. UNITED STATES, 219 U.S. 79, 80 (1911)

"Jurisdiction in a criminal case is never presumed, but must always be shown, is never waived."

1 creating fraudulent schedule documents and orders for a sham preliminary hearing under color of law
2 for April 11, 2014 (approx. 77 day past the statutory deadline of 30 days per Rule 5c)(2)(A)) and for
3 April 28, 2014 over 100 days past the statutory deadline.)

GROUND 3

FRAUD ON THE COURT VITIATES JURISDICTION

6 14. That JUDGE McGuire conspired with GENERAL BOTTOMS and/or members of his
7 representative staff of assistant district attorneys general by willfully, knowingly and intentionally and
8 in bad faith perpetrated fraud on the court⁸ by impairing the judicial machinery through concealing
9 numerous jurisdictional defects (e.g. NO ARREST WARRANT ISSUED) from accused and
10 continuing to perpetuate sham hearings and proceedings on April 11 and April 28, 2014 under color
11 of law to accused's injury and prejudice.

12 15. That the courts have held that fraud vitiates jurisdiction.

GROUND 4

TENNESSEE CODE OF JUDICIAL CONDUCT VIOLATED

16. That JUDGE McGuire willfully and knowingly breached her duty to abide by the law-

8

• *H.K. PORTER CO. v. GOODYEAR TIRE & RUBBER*, 536 F.2d 1115, 1119 (6th Cir. 1976)

"Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."
Kupferman v. Consolidated Research & Mfg. Corp., 459 F.2d 1072, 1078 (2d Cir. 1972); see Restatement, Judgments § 126 comment (Supp. 1948).

[•] *OWEN v. INDEPENDENCE*, 100 S.C.T. 1398, 445 U.S. 622

“Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law.”

- **7 Moore's Federal Practice and Procedure** ¶ 60.33. As an officer of the court, every attorney has a duty to be completely honest in conducting litigation. Professor Moore emphasizes this element of fraud in his treatise: [with respect to an attorney] his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates fraud upon a court.

1 binding rules of Tennessee Code of Judicial Conduct to the injury and prejudice of accused⁹ by
2 a) refusing to let accused have a hearing and to speak with respect to accused's motion to
3 dismiss on January 24, 2014 hearing,
4 b) showing hostility and rudeness to accused by making snide, ridiculing remarks to the
5 courtroom full of litigants at the January 24, 2014 hearing,
6 c) refusing to recuse herself when it was obvious she was prejudiced and non-neutral,
7 d) many other acts and/or omissions referenced herein.

GROUND 5

INVALID INDICTMENT

17. That accused alleges that accused's case was void when it was bound over to the grand jury

9

TENNESSEE CODE OF JUDICIAL CONDUCT

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

RULE 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(D) Upon the making of a motion seeking disqualification, recusal, or a determination of constitutional or statutory incompetence, a judge shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion.

1 from the General Sessions Court which lacked/lost subject matter jurisdiction because of NO ARREST
2 WARRANT WAS ISSUED and because of other act(s) and/or omission(s) mentioned above, thus
3 making the indictment invalid.

4 18. That accused alleges that this Circuit Court's jurisdiction cannot be invoked to hear this case
5 coming from the lower court which lacked/lost subject matter jurisdiction, the same as an appellate
6 court cannot review a void judgment from a court that lacked or lost subject matter jurisdiction.

7 *"A judgment of a court without jurisdiction is void. An appeal will not lie from a void
8 judgment."* ***Harvey v. City of Oneonta*** 715 So. 2d 779, 781 (Ala. 1998)

9 19. That JUDGE McGuire conspired with GENERAL BOTTOMS and/or members of his
10 representative staff of assistant district attorneys general and willfully, knowingly and intentionally
11 acted in bad faith outside the law without authority and breached their oath-bound duty by violating
12 accused's clearly established statutory and constitutionally secured rights (of which a reasonable
13 person would have known), namely, accused's rights to have an ARREST WARRANT issued upon
14 accused's arrest,¹⁰ to due process,¹¹ to equal protection of the law¹², to be informed of the nature and

10

U.S. Constitution, Amendment IV

11

Subject matter jurisdiction lost from violation of rights to due process and/or to equal protection of the laws.

● ***Johnson v Zerbst***, 304 U.S. 458, 58 S.Ct. 1019 (1938); ***Pure Oil Co. v City of Northlake***, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); ***Hallberg v Goldblatt Bros.***, 363 Ill 25 (1936); ***Jaffe and Asher v. Van Brunt***, S.D.N.Y.1994. 158 F.R.D. 278; ***Hays v. Louisiana Dock Co.***, 452 n.e.2D 1383 (Ill. App. 5 Dist. 1983); ***Klugh v. U.S.***, 620 F.Supp. 892 (D.S.C. 1985); ***Matter of Marriage of Hampshire***, 869 P.2d 58 (Kan. 1997); ***In re Estate of Wells***, 983 P.2d 279, (Kan. App. 1999)

12

U.S. Constitution, Amendment XIV

1 cause of the accusation,¹³ to receive a copy of the charging instrument,¹⁴ which invalidates the
2 indictment.

GROUND 6

REFUSAL TO RECUSE WHEN PREJUDICE SHOWN

5 20. That JUDGE McGuire has shown prejudice and non-neutrality throughout accused's
6 proceedings and accused's right to due process and to a neutral and detached judge was denied.

7 21. That accused filed a verified criminal complaint and a verified notice of fraud on the court
8 with Sheriff JIMMY BROWN and served copies of the same on JUDGE McGUIRE, GENERAL
9 BOTTOMS and his representative staff of assistant district attorneys general.

10 22. That JUDGE McGuire denied accused's motion to recuse herself despite accused's
11 affidavit (Exhibit D - copy of affidavit) in support of accused's motion to recuse documenting her many
12 proofs of prejudice and non-neutrality, e.g. case in point is JUDGE McGuire's refusal to grant
13 accused a continuance for the April 11, 2014 hearing due to accused's mother's recent death, but
14 JUDGE McGuire shows partiality by liberally granting continuance requests to people so they can
15 attend soccer games.

"Where the judge acts illegally, outside the limits of his jurisdiction, he becomes a trespasser, and is liable in damages as such." Some courts have held that where courts of special or limited jurisdiction exceed their rightful powers, the whole proceeding is coram non judice, and the judge is liable to an action by the party injured." 46 Am.Jur.2d Judges § 77. [fn4] **IN RE TIP-PA-HANS ENTERPRISES, INC., (1983) 27 B.R. 780**

21 23. That following a (sham) preliminary hearing on April 28, 2014 JUDGE McGuire ruled

13

U.S. Constitution, Amendment VI

14

Tennessee Constitution, Article I § 9

1 that probable cause existed (WITHOUT AN ARREST WARRANT ISSUED) and bound over
2 accused's case to the grand jury without subject matter jurisdiction.

3 24. That District Attorney General Pro Tem KIM HELPER (“PRO TEM HELPER”) from
4 Judicial District 21 conspired with GENERAL BOTTOMS and his representative staff of assistant
5 district attorneys general against accused’s constitutionally secured rights and fraudulently presented
6 accused’s case information, without jurisdiction, to the grand jury asking that they indict accused.

7 25. That the grand jury was misled by PRO TEM HELPER and indicted accused on June 26,
8 2014.

9 25. That accused hereby incorporates by reference Exhibits A, B, C, and D.

CONCLUSION

11 26. That the record shows that the General Sessions Court lacked or lost jurisdiction by not
12 issuing and returning accused an ARREST WARRANT, for fraud on the court, and for numerous other
13 willful violations of accused's above-mentioned statutory and constitutionally secured rights.

14 27. That the indictment is invalid since the General Sessions Court had no subject matter
15 jurisdiction to bind accused's case over to the grand jury making the indictment void.

16 WHEREFORE, for the foregoing reasons Accused, Arthur Hirsch, allege that the General
17 Sessions Court had no subject matter jurisdiction to bind over accused's case to the grand jury making
18 the indictment void; and further, Accused moves this Court to enter an ORDER dismissing this case
19 with prejudice.

20
21 Date _____ By _____
22
23
24 Arthur Hirsch
1029 W. Gaines St.
Lawrenceburg, TN 38464

VERIFICATION

State of Tennessee }
 } to-wit:
County/city of _____ }

7 Before me, the undersigned duly commission notary public, personally appeared a man, Arthur Hirsch,
8 known or identified to me to be the party described in and who executed the above foregoing
9 document, and being by me first duly sworn, did acknowledge to me that the facts alleged are true to
10 the best of his knowledge, information and belief.

12 Subscribed, sworn to and acknowledged before me on this _____ day of August, 2014

14 Witness my hand and official seal:

16 _____(Seal)

17 Signature of Notary Public

18 My commission expires _____

CERTIFICATE OF SERVICE

22 I hereby certify that a copy of the foregoing document was sent by USPS certified mail prepaid on
23 August , 2014 as follows:

25 Judge PATRICIA McGUIRE,
26 District Attorney General MIKE BOTTOMS,
27 Assistant District Attorney Generals,

JIM WHITE,
CHRISTI L. THOMPSON,
CALEB BAYLES,
BRENT COOPER, and

31 BRENT COOPER, and
32 District Attorney General Pro Tem KIM HELPER

34 Lawrence County Courthouse
35 240 W. Gaines Street,
36 Lawrenceburg, TN 38464

Arthur Hirsch