

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

ANTHONY CIOFFI, JR

Inmate #332-078

Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030-8000

Petitioner

vs.

RICH GANSHEIMER, WARDEN

Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030-8000

Respondent

) **CASE NO:**

) Cases of Record: 95-CR-696, 96-CR-599
) (Consolidated)

) **JUDGE:**

) **PETITION FOR:**

) **WRIT OF HABEAS CORPUS (PRO SE)**
) 28 U.S.C. 2254
) State Custody

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

JURISDICTION

All events set forth in this petition occurred in, or are substantially related to, the Northern District of Ohio.

This case involves and arises directly from a question of Federal law; and the court in which this Petition is filed has jurisdiction pursuant to 28 U.S.C. 2254.

Petitioner's State Court remedies were exhausted on September 10, 2003, pursuant to an order of the Ohio Supreme Court.

THE PARTIES

Petitioner Anthony Cioffi, Jr. is an inmate confined by the Ohio Department of Corrections at the Lake Erie Correctional Institution, pursuant to an order issued by the Trumbull County Court of Common Pleas, Trumbull County, Ohio.

Respondent Rich Gansheimer is the Warden of the Lake Erie Correctional Institution and has the power to give appellant his unconditional freedom.

TRIAL COUNSEL

Thomas E. Zena

CONVICTION/SENTENCE UNDER ATTACK

Preamble

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.

These words of Thomas Jefferson form the basis of this appeal; a Habeas Corpus Petition.

Rule of Law Concerning Habeas Corpus

In *Brown v. Vasquez*, 952 F.2d 1164, 1166 (9th Cir.1991), cert. denied, 112 S.Ct. 1778 (1992), the court observed that the Supreme Court has "recognized the fact that [t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). Therefore, the writ must be "administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris*, 394 U.S. at 291.

Be it known by these presents:

That Anthony Cioffi, Jr., the Petitioner herein, is a citizen of the United States,

That, on the 11th of December, 1996, the Petitioner was deprived of rights that are guaranteed under Article V and Article VI of the Constitution of the United States,

That said deprivation was due to violations of said Articles by a State court, and

That the Petitioner demands relief and will not rest until relief is granted.

CLAIMS

Violation of Constitutional Rights

I. Article V - 5th Amendment to the U.S. Constitution

The 5th Amendment to the U.S. Constitution holds, inter alia:

That no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury

That no person accused of crime shall be compelled to be a witness against himself, and

That no person accused of crime shall be deprived of life, liberty or property without due process of law.

The Petitioner asserts that, in the conduct of his trial, his 5th Amendment rights were violated in each of the above-mentioned particulars, and thereby makes the following claims:

Claim 1: His indictment was deficient on its face, because:

(a) The specified time frame rendered the alleged acts impossible.

In the second case of record, the Indictment alleges the acts complained of were committed on or about the summer of 1992. Under penalty of perjury, the Petitioner asserts he did not have contact with his sons, the alleged victims, from 1992 until 1995, which would make the alleged acts impossible. (Ann. Ref. 14 at p. 1; See also Exhibit A)

(b) The Bill of Particulars did not coincide with the Indictment.

The Bill of Particulars for this Case alleges the acts complained of occurred on or about the summer of 1991, which does not coincide with the time alleged in the Indictment. (Ann. Ref. 13 at p. 1)

(c) The specified time frame was indeterminate.

No specific date or dates are given as to when the alleged acts were supposed to have occurred.

(d) There was no constructive notice.

The Bill of Particulars was not date-stamped; and, thus, presented no proof of recording. This failure to give constructive notice shows, incontrovertibly, that the Petitioner was not legally indicted; to wit, he was not indicted in such a way as to meet the 5th Amendment requirement of due process.

It cannot be countered that the Indictment itself was date-stamped, since this was a secret document; and, thus, could not have served to give constructive notice.

(e) An error by a U.S. District Judge revealed the trial court's failure to comprehend the content of its own indictment.

In resolving a document pertaining to the Petitioner's first case of record, Jame S. Gwin, a United States District Judge wrote:

In denying Cioffi's petition for a writ of habeas corpus on March 3, 2005, the Court detailed the factual background of this suit. [Doc. 16]. To recap, in December 1996 the petitioner pled guilty before the Trumbull County Court of Common Pleas to two counts of gross sexual imposition and one count of kidnapping as to his girlfriend's nine year old daughter... (Ann. Ref. 33 at p. 1)

In the indictment; which, apparently, was not recorded, the petitioner was charged with kidnapping the mother; NOT the daughter!

The kidnapping charge was unsubstantiated, as the court failed to show the mother was removed from the place she then was or confined against her will. The state's evidence, an uncorroborated statement made by the alleged victim, showed only that there was a heated argument, lasting approximately one hour.

Thus, the alleged Indictment is deficient on its face and, in any event, would fail due to contradictions and lack of specificity.

Rules of Law:

5th Amendment, U.S. Constitution

- (1) No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, and
- (2) No person shall be held to answer for a capital or otherwise infamous crime and deprived of life, liberty or property without due process of law.

Claim 2: His guilty plea was in fact coerced; and, as there were no witnesses, the plea itself amounted to self-incrimination; to wit, he was compelled to testify against himself.

Supporting Facts:

As proof of coercion, the Petitioner asserts that:

- (1) The prosecution, in collusion with the trial court, racked up numerous, staggering claims in drafting indictments against the Petitioner; utilizing documents containing no more than hearsay evidence and speculation in support of said indictments.

(Ann. Ref. 31 at p. 2 [charges], Ann. Ref. 15 at pp. 1 and 2 [no corroboration], Ann. Ref. Ann. Ref. 4 at p. 1 [results of examination conducted 4 days after alleged incident were admitted into evidence], Ann. Ref. 5 at p.2 [negative test results served as basis for speculative finding].

(2) The trial court failed to enter documents into evidence which contained exculpatory statements, although these documents had been subpoenaed by the Petitioner prior to the day of his trial. (Ann. Ref. 11 at p. 1 [claims unsubstantiated], Ann. Ref. 26 at p. 1 [exculpatory documents were not reviewed prior to the Petitioner's plea], Ann. Ref. 20 at p. 27 [subject of exculpatory records never revisited], See Exhibits B & C).

(3) On the day prior to the Petitioner's trial, his trial counsel quashed his subpoenas of witnesses favorable to the Petitioner. Rather than defend the Petitioner's case, which was described as highly defensible, the Petitioner's trial attorney elected to coerce the Petitioner into a plea bargain agreement, which required the Petitioner to enter a plea of guilty to all of the charges. (Ann. Ref. 30 at p. 5)

(4) The Petitioner's trial counsel suggested to the Petitioner that, in all probability, he would receive a life sentence if his cases went to trial. (Ann. Ref. 37 at p. 3)

(5) In response to a question by the Petitioner, the Petitioner's trial counsel instructed the Petitioner that an indeterminate trial sentence of from 10 to 25 years would, with programs, amount to no more than 4 years of incarceration; and, further, the Petitioner relied on this instruction in making his decision to enter a plea of guilty to all charges. (Ann. Ref. 37 at p. 4)

Rules of Law: 5th Amendment, U.S. Constitution

- (1) No person accused of crime shall be compelled to be a witness against himself.
- (2) No person accused of crime shall be deprived of life, liberty or property without due process of law.

The Petitioner asserts:

That the Due Process Clause of the 5th Amendment requires proof of guilt beyond a reasonable doubt, without the aid of the defendant's testimony; since, with no independent proof of guilt, such testimony amounts to compelling the accused to testify against himself, and

That there was no corroboration for any of the claims made against the Petitioner sufficient to sustain an independent finding of guilt in either of the cases of record.

In the instant appeal, he thereby presents the following facts:

In the first case, the complaining party (mother of the alleged victim) was not an eye-witness and her claims were unsubstantiated. In fact, there was evidence that this plaintiff had formerly made similar claims against a third party. (Ann. Ref. 15 at p. 2 [claims unsubstantiated], Ann. Ref. 16 at p. 4 [complaining party was not an eye witness], Ann. Ref. 20 at pp. 37 & 39 [no physical evidence])

In the second case, the State produced no proof of any of the crimes the Petitioner was alleged to have committed. The State's primary evidence consisted of statements prepared by a third party reporter, statements that were allegedly made by the two alleged victims, the Petitioner's minor sons. This reporter did not witness any of the alleged acts. Moreover, in times past, the Petitioner's sons had repeatedly denied that they had, at any time, been sexually abused by the Petitioner, their natural father.