

IN THE SUPREME COURT OF OHIO

**SEAN K** ,  
Tri County Regional Jail  
4099 State Route 559  
Mechanicsburg, Ohio 43044

Petitioner,

Case No. \_\_\_\_\_

-Vs-

**RICHARD PARROTT, JUDGE**  
Union County Court of Common Pleas,  
215 West Fifth Street  
Marysville, Ohio 43040

AND

**ROCKY NELSON, SHERIFF**  
Union County, Ohio  
21 West 5<sup>th</sup> Street  
Marysville, Ohio 43040

AND

**ROBERT BEIGHTLER,**  
Executive Director  
Tri County Regional Jail  
4099 State Route 559  
Mechanicsburg, Ohio 43044  
Respondents.

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**SEAN K**

**PETITION FOR A WRIT OF HABEAS CORPUS**

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**RESPONDENT.**

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**ROCKY NELSON, SHERIFF**

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(937) 645-4102  
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**RESPONDENT.**

**ROBERT BEIGHTLER**

Executive Director  
Tri-County Regional Jail  
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**RESPONDENT.**

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**IN THE SUPREME COURT OF OHIO**

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**SEAN K**  
Tri County Regional Jail  
4099 State Route 559  
Mechanicsburg, Ohio 43044

Petitioner,

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**RICHARD PARROTT, JUDGE**  
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215 West Fifth Street  
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**ROCKY NELSON, SHERIFF**  
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Executive Director  
Tri County Regional Jail  
4099 State Route 559  
Mechanicsburg, Ohio 43044

Respondents.

**PETITION FOR A WRIT OF HABEAS CORPUS**

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**I. PARTIES.**

1. Jurisdiction is invoked under Ohio Revised Code Section 2725.02 *et seq.* and/or Ohio Const. art. 1, Section 9, and or art. IV, Section 2 and/or the inherent power of this Court in equity.

2. This instant petition is filed on behalf of Petitioner by undersigned Counsel, Elizabeth N. Gaba (0063152), 1231 E. Broad Street, Columbus, Ohio 43205.

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3. Petitioner's Recognizance Bond was revoked, absent cause, and then Petitioner was verbally ordered into unlawful confinement by The Honorable Richard Parrott, Judge, Union County Court of Common Pleas, 215 West Fifth Street Marysville, Ohio 43040, Phone 937-645-3015, Fax - 937-645-3149.

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4. Petitioner was illegally conveyed into confinement, without a written court order, by and through Deputies of the Union County Sheriff's Department, whose training and policy thereof is directed by Rocky Nelson, Sheriff, Union County, Ohio, 21 West 5<sup>th</sup> Street, Marysville, Ohio 43040, Phone (937) 645-4102, Fax (937) 645-4170.

5. Petitioner is held unlawfully, absent written court order, by Robert Beightler, Executive Director, Tri-County Regional Jail, 4099 State Route 559 Mechanicsburg, Ohio 43044, Phone 937-834-5000, Fax (937) 834-0084.

6. Petitioner SEAN \_\_\_\_\_, is unlawfully held against his will in the Tri County Regional Jail, 4099 State Route 559 Mechanicsburg, Ohio 43044 for no legitimate reason, in regard to Union County Court of Common Pleas, State v. Sean K. \_\_\_\_\_ Case No. 2006 CR 0047.

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## II. VERIFICATION OF FACTS.

STATE OF OHIO  
COUNTY OF FRANKLIN; SS:

### AFFIDAVIT

7. Petitioner on March 17, 2006, was severely depressed.

8. Petitioner, was then taken by a Deputy of the Union County Sheriff's  
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Office to Memorial Hospital located in Union County, Ohio.

9. Petitioner voluntarily admitted himself to Lifeworks, an inpatient

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psychiatric unit located at said Memorial Hospital. At Lifeworks he was prescribed, Zyprexa, Haldol, Vistaril, Cogentin and Ativen<sup>1</sup> to treat his depression.

10. Petitioner remained in said psychiatric unit until discharge on March 20, 2006.

11. Petitioner, Sean K \_\_\_\_\_, thereafter was indicted, on April 7, 2006 in case no. 2006 CR 0047, *State of Ohio v. Sean K* \_\_\_\_\_, alleging one count of Weapons Under Disability, Revised Code Section 2923.13(A)(2) a third degree felony.

12. Petitioner personally and voluntarily appeared on April 14, 2006 with undersigned counsel in the Union County Court of Common Pleas, and waived service of the indictment and summons.

13. Petitioner was on the same day arraigned in the Union County Court of Common Pleas, by the Honorable Richard E. Parrott, Respondent herein.

14. Petitioner, was then released by Respondent Judge Parrott upon his own recognizance (OR). Under conditions that "... Petitioner appear before the court at the call of the court ... and abide by the order and judgment of the court ... and appear from day to day and not depart without leave until the case is finally disposed of ... "

See *Recognizance of Accused*, filed April 14, 2006, incorporated herein and attached as

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Exhibit A, App. pp. 1 - 2 Additionally, upon a Journal Entry filed April 14, 2006 there is a purported condition that he have "no contact with the victim." See *Journal Entry*, filed

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<sup>1</sup> These drugs are used in the treatment of bipolar disorder, schizophrenia, extreme anxiety and the side effects thereof.

April 14, 2006, incorporated herein and attached as Exhibit B, App. pp. 3 – 4 (rubber stamp). However, there is no victim in this case.

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15. A “scheduling conference” was set for May 5, 2006, exactly three weeks after the arraignment.<sup>2</sup> Petitioner personally appeared, and undersigned counsel set forth an oral motion for leave to plead “Not Guilty by Reason of Insanity” (“NGRI”) at the time of the offense, expressly and clearly not challenging Petitioner’s competency thereafter.

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16. Within one-second after the NGRI at the time of the offense plea was announced on the record, the Honorable Richard Parrott, Respondent, smiled at the undersigned counsel and then stated that he was “immediately revoking the Petitioner’s bond.” Respondent Judge Parrott then stated that he wanted to have the Petitioner assessed, and that he wanted to insure that he would show up to that assessment. He then looked at the undersigned counsel and stated “get the NGRI in writing.”

17. Subsequent to the Respondent Parrott “revoking” Petitioner’s bond, the agent for the State of Ohio, Terry Hord Esq., Prosecutor, Union County, Ohio stated that he wanted the petitioner’s bond revoked. Prosecutor Hord then verbally alleged that petitioner had had contact with the “victim.” The Prosecutor’s statement came as the petitioner was being maneuvered out of the courtroom by Sheriff’s deputies.

18. Petitioner’s undersigned counsel and Petitioner almost simultaneously indicated to Respondent Parrott that - “there is no victim.”

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19. Respondent Judge Parrott then indicated, that he would deal with that issue at another time.

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<sup>2</sup> Petitioner asserts that it is a well-known fact, Respondent Parrott’s scheduling conferences are in reality the one and only opportunity for a criminal defendant to accept an offer by the State, thereafter the plea can only be to the indictment.

20. Petitioner states that at no time during the scheduling hearing, was there any evidence offered by anyone in regard to the recognizance bond which in any way showed that the Petitioner's circumstances had changed since the bond had initially issued.

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21. Petitioner, was then verbally remanded, by Respondent Judge Parrott, to the custody of Respondent Rocky Nelson, Sheriff of Union County by and through two Deputies of said Union County Sheriff's Office. Said Deputies transported and then handed the petitioner into the custody of Respondent Robert Beightler, Executive Director, Tri County Regional Jail, 4099 State Route 559 Mechanicsburg, Ohio 43044.

22. On May 5, 2006 counsel by facsimile transmission submitted the requested written plea to the Clerk of Court for filing. Counsel joined the NGRI at the time of the offense plea, with the previous plea of not guilty. Further, Petitioner "did not request an examination of his present mental condition." See Plea of NGRI, filed May 8, 2006, incorporated herein and attached as Exhibit C, App. pp. 5 - 8 Said plea, was filed on May 8, 2006 in said Union County Court of Common Pleas.

23. Petitioner states that he has appeared at every hearing, there has been no additional, or other charges filed against the Petitioner and Petitioner has therefore complied with the conditions of his OR bond.

24. Petitioner states that it is evident that upon the oral statement of counsel as to the intent to file the NGRI at the time of the offense, The Honorable Richard Parrott, Respondent herein, immediately revoked the previously set OR bond and remanded Petitioner to the custody of Respondent Rocky Nelson, who in turn handed Petitioner to Respondent Robert Beightler.

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25. Petitioner further states that since the scheduling hearing, calls have been made to Respondent Judge Parrott's Bailiff and to the Clerk of Court by Petitioner's counsel's office inquiring as to whether a Journal Entry concerning the revocation of bond had been filed – the answer has always been “no.”

26. On May 10, 2006, Petitioner's counsel's office phoned the Tri County Regional Jail to inquire as to the existence of an entry signifying why the petitioner was being held. Counsel's office spoke first with, Robert Beightler, Executive Director of the jail, who transferred the call to a Lieutenant Maria McNicol. The Lieutenant when questioned concerning the entry, pointed to an Inmate Intake Form as the document that held Petitioner. The Lieutenant upon request faxed that document to counsel's office. That document is attached as Exhibit D, App. pp. 9.

27. Exhibit D, states that Petitioner is under “no bond” and further states that apparently a deputy had “re-arrested” the Petitioner on the original charge of weapons under disability. This document also indicates that the Petitioner was to be held until the arresting officer “could file charges in the proper court...” There is absent any mention that Petitioner's original bond was revoked and furthermore there is absent any indication on what authority the arrest of Petitioner occurred, see App. pp. 9.

28. On May 10, 2006, as this instant petition was in its final stages, this office was made aware that Respondent Parrott had caused to be filed, on said date a Journal Entry<sup>3</sup>, that Entry, App. pp. 10 - 12 filed May 10, 2006 is incorporated herein and attached

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<sup>3</sup> Petitioner had received Exhibit D, Inmate Intake Form at 1:34 pm, Respondent Parrott apparently then filed his Entry at 2:41 pm a little over an hour later.

hereto as Exhibit E, Appendix. Said Exhibit E addresses the NGRI plea that was filed by  
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Petitioner – but is silent as to the revocation of Petitioner’s recognizance, see Exhibit E. <sup>4</sup>

29. Petitioner also states, that he is gainfully employed. He is currently at risk of losing that position due to the actions of Respondents.

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30. Petitioner states that he has not filed any civil actions or otherwise against any government agency or employee thereof in the last five years.

31. Lastly Petitioner states that he is not seeking a waiver of any prepayment of this Court’s filing fees or costs associated with this action.

After being duly cautioned and sworn Petitioner SEAN K. [REDACTED] states that the information set forth in the foregoing FACTS to which this Affidavit is affixed, are true and accurate to the best of his knowledge and belief.

.....  
SEAN K

Sworn to and subscribed in my presence this ..... day of May, 2006.

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.....  
Notary Public

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<sup>4</sup> Exhibit E is a misrepresentation of the facts of the petitioner’s NGRI written plea. Compare Exhibit E with Exhibit C, specifically Petitioner never put into issue his competency to stand trial and did not request an examination and/or evaluation of his present mental condition, written or orally.

### III. JURISDICTION

The Ohio Constitution specifically grants this Court original jurisdiction in habeas corpus. This court has jurisdiction to grant a writ of habeas corpus under R.C. 2725.02 if it concludes that Petitioner is being "unlawfully restrained of his liberty" under R.C. 2725.01. See Smith v. Leis, (2-3-2006) Court of Appeals of Ohio, First District, Hamilton County, CA No. 2006. In this matter, where excessive bail is not the issue but rather a revocation of bail, habeas corpus will lie, see In Re Mason, (1996) 116 Ohio App.3d 451, 453, and should be granted, see Utley v. Kohl (1997) 120 Ohio App.3d 52 (excessive bail, arbitrary act in violation of sound discretion, bond increased without a change of circumstances, Writ issued).

In this case the Respondent Judge Parrott, has either refused, failed or is indifferent to the premise which requires that all judgments be reduced to writing and filed with the court (State v. Herder, (1979) 65 Ohio App.2d 70 "[i]t is axiomatic in this State that an order of a court becomes effective only when reduced to writing, signed by the judge, and filed with the clerk for journalizing."), as shown by his failure to set forth an entry that addresses the revocation of Petitioner's recognizance. Under 2725.04(D) which states in part:

"A copy of the commitment or cause of detention of such person shall be exhibited, if it can be produced without impairing the efficiency of the remedy, or if the imprisonment or detention is without legal authority, such facts must appear."

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Under normal circumstances such a defect would be fatal to this petition. See Smith v. Mitchell (1998), 80 Ohio St.3d 624, 687 N.E.2d 749; State ex rel. Ranzy v. Coyle (1998), 81 Ohio St.3d 109, 689 N.E.2d 563; Johnson v. Mitchell (1999), 85 Ohio St.3d 123, 707

N.E.2d 471; also See Bloss v. Rogers (1992), 65 Ohio St.3d 145 (The commitment papers are necessary for a complete understanding of the petition and without these papers, the petition is fatally defective.). However, when the entry that constitutes the cause for detention has not been filed, the statute makes an exception. See Goins v. Wellington (12-18-2001) Court of Appeals, Seventh District CA. No. 01 CA 210 and 01 CA 208 (entry not filed and therefore not attached to petition) Appendix p. 16. In this case, the entry has not been filed but the cause or lack thereof for the confinement can be assessed from the initial entry granting the OR bond (Exhibit A) and Journal Entry, (Exhibit B), Plea of NGRI, (Exhibit C) the Tri-County Regional Jail, "Inmate Intake Form" (Exhibit D) and Journal Entry (Exhibit E) for a complete understanding of the petition. Accordingly, jurisdiction should be exercised by this court.

#### IV. CONVERSATION REGARDING EXHAUSTION OF REMEDIES.

Petitioner is cognizant that when an issue of a revocation of bail arises, habeas corpus will lie, see In Re Mason, (1996) 116 Ohio App.3d 451, 453, and should be granted, see Utley v. Kohl (1997) 120 Ohio App.3d 52 (excessive bail, arbitrary act in violation of sound discretion, bond increased without a change of circumstances, Writ issued); also State v. Bevacqua, (1946) 147 Ohio St. 20 (Habeas Corpus remedy for excessive bail)

Petitioner states that there is no adequate remedy at the Common Pleas Court level. In this case *sub judice*, the facts present a classic "Catch 22" situation. Petitioner has already been afforded bail under Crim. R. 46. A motion to provide bail under Rule 46 has already been decided on April 14, 2006 and as such the issue is moot. A motion

to reinstate the bond is futile, because the bond has never been revoked through a written order. This Court exercising its jurisdiction in habeas corpus is a court of equity Miller v. Walton (2005) 163 Ohio App.3d 703, 707, paragraph 12. Moreover as a court of equity it "does not require idle acts." Murphy v. Porter (1952), 114 N.E. 2d 89, 96.

In short there are no adequate legal remedies available to the Petitioner at the Common Pleas Court level.

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## V. LAW AND ARGUMENT.

### A.

**PETITIONER SEAN \_\_\_\_\_ HAS BEEN AND CONTINUES TO BE HELD UNLAWFULLY, SINCE MAY 5, 2006, IN THE TRI-COUNTY REGIONAL JAIL. PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN HIS RECOGNIZANCE BOND, THROUGH AN ABUSE OF DISCRETION, WAS WITHOUT A WRITTEN ORDER ORALLY "REVOKED" WITHOUT ANY EVIDENCE THAT THE CIRCUMSTANCES OF THE PETITIONER HAD CHANGED SINCE THE INITIAL BOND WAS SET.**

Section 9, Article I of the Ohio Constitution provides that all persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident, or the presumption great. \*\*\* ...” The "right to bail under [Section 9, Article I of the Ohio Constitution] is absolute, the only exception being for capital offenses" and that "[t]here is no discretion in the trial court in such matters." Locke v. Jenkins (1969), 20 Ohio St.2d 45, 46, 49 O.O.2d 304, 253 N.E.2d 757.

This case appears to be one of first impression in this State. Counsel has found no other case under the same exact fact pattern and cause of action as this case *sub judice*.

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In this instant case, Petitioner appeared voluntarily before the court on April 14, 2006, and waived service of summons and of indictment including the twenty-four hour period required after service. The trial court considered all factors under Crim. R. 46(C) and then gave Petitioner an "own recognizance" ("OR") bond pursuant to Ohio Revised

Code 2937.29. The bond amount was zero dollars under the “OR” bond. Petitioner appeared for the second time for the scheduling conference held on May 5, 2006.

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Upon counsel suggesting a plea of not guilty by reason of insanity at the time of the offense at the scheduling conference, the trial court smiled at counsel and then immediately revoked the petitioner’s bond and ordered him to jail.<sup>5</sup> At no time was there presented any evidence that any circumstance of the petitioner had changed from the initial granting of recognizance in this matter. One can only draw a conclusion that in fact the revocation was the result of the NGRI<sup>6</sup> at the time of the offense plea.<sup>7</sup>

Petitioner states that Respondent Parrott, violated Petitioner’s Right to Due Process of Law, under the Ohio and Federal Constitutions, because the petitioner was exercising his right to enter an NGRI at the time of the offense, and thereon exercising that right, Respondent Parrott **punished the petitioner by revoking bond**. See State v. Tenace, 121 Ohio App.3d 702 (1997) (right to enter a plea of NGRI). That punishment violated Petitioner’s right to due process of law. State v. Cain, ( 2006-Ohio-1779) (Third Appellate District Ohio, CA NO. 14-05-40) (choice to either offer mitigation evidence in allocution or be silent and receive a lesser sentence, violates due process).

Furthermore, Respondent Parrott violated Petitioner’s Fourteenth Amendment right to Due Process of Law through a denial of a reason for the revocation and a hearing

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<sup>5</sup> Respondent Parrott’s actions may be viewed as a false arrest O’Donnell v. Brown (W.D. Mich. 2004) 335 F. Supp.2d 787, 809 (cases cited therein). (no probable cause to arrest).

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<sup>6</sup> The Judge may not confine a person due to mental illness, without more See O’Connor v. Donaldson, 422 U.S. 563, 575 (1975) (mental illness does not alone justify confinement); Jackson v. Indiana, 406 U.S. 715, 738 (1972) (pendency of a charge that cannot be tried because of mental illness does not, by itself, justify confinement).

<sup>7</sup> Respondent Parrott is known for his “rocket docket,” referring to how very quickly cases are completed. Petitioner believes that Respondent Parrott realized that there was to be no plea only defense, and therefore revoked the bond.

to challenge such reason. Petitioner had a liberty interest in the right to bail. “There can

be little argument that one's interest in remaining free on bail is within the contemplation  
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of the liberty or property language of the Fourteenth Amendment. The deprivation of liberty that follows bail revocation condemns one to ‘suffer grievous loss’ because it ‘may imperil the suspect's job, interrupt his source of income, and impair his family relationships.’ Although both bail and parole are conditional liberties, a bailee has a greater liberty interest because, unlike a parolee, a bailee has not been convicted and the presumption of innocence is still attached. Further, state and federal courts within Pennsylvania have specifically affirmed the right to a bail revocation hearing, albeit in different contexts. See King v. Zimmerman, 632 F. Supp. 271, 276 (E.D. Pa. 1986) (holding that revocation of bail pending appeal without notice, hearing, and statements of reasons was a violation of procedural due process rights); Court of Common Pleas of Blair County v. Ramsey, No. 31-1981, 1981 WL 628, at \*2 (Pa.Comm. Ct. June 5, 1981) (“safeguards should be afforded a defendant who is in jeopardy of revocation of his bail similar to those provided a parolee facing potential parole revocation”)...” Wall v. Dauphin County, (M.D.Pa. 2006) Civil Action No. 1:04-CV-0238 p. 8-9 (cases cited therein).

Moreover, Respondent Parrott violated Petitioner’s substantive Due Process  
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rights under the Fourteenth Amendment by extinguishing Petitioner’s right to continue on bail without cause, and without written notice. See United States v. Perry (3<sup>rd</sup> Cir. 1986) 788 F.2d 100 (criminal defendant denied opportunity to obtain bail. “While the Eighth Amendment does not grant an absolute right to bail, there is substantive liberty interest in freedom from confinement”) Id. at 112.

The decisions of a trial court regarding a change in recognizance, must be accompanied by some relevant evidence to sustain such a change. Utley v. Kohl, 120 Ohio App.3d 52, 55. Under circumstances where a recognizance is excessive, the standard for review is an abuse of discretion. Kohl, supra, at 55. When a trial court, absent any evidence that there has been a change of circumstances, increases the amount of the bond, it is an “arbitrary act in violation of its sound discretion.” Id.

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When a court uses a “variety of coercive tactics to expedite dispositions in criminal cases, usually as a means to manage [its] docket. ... by forc[ing] pleas from defendants by threatening to revoke or actually revoking their bonds —not for acceptable reasons such as that the defendants posed flight risks or safety concerns or had failed to appear — but because the defendants wanted to exercise their rights to refuse an offered plea and go to trial... judicial discretion does not extend to these strong-arm measures that [was]used to compromise defendants' right to trial. Thus, rather than classifying [the judge's] actions as an abuse of legitimate discretion, we agree that [the judge's] repeated use of the bond process and jail as leverage fell "outside any permissible discretion" and was "totally improper..." Disciplinary Counsel v. O'Neill, (2004) 103 Ohio St.3d 204, 205, 206. Admittedly in this case, there is not an issue as to the “right to trial” but rather a right to a defense. Petitioner contends that in a case such as this at bar, the proper standard is “an abuse of discretion.” O'Neill, Kohl, supra.

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Accordingly, this Court should find that Respondent The Honorable Richard Parrott, violated the Due Process protection afforded under the United States and/or Ohio Constitutions by revoking the recognizance as a punishment for invoking an affirmative defense and/or violated the due process rights of the Petitioner absent notification and the

right to be heard before he took the liberty of the Petitioner. Further in light of the fact that there was no evidence, testimony or otherwise to sustain the revocation of recognizance and a remand to detention, Respondent Parrott's action was an "arbitrary act in violation of his sound discretion" and the Writ of Habeas Corpus should issue forthwith. Kohl supra at 56.

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Moreover, in State v. Bevacqua, (1946) 147 Ohio St. 20, a petitioner may sue out a writ of habeas corpus in a court of competent jurisdiction where bail may be given pending hearing and a final adjudication is made. Id. at 23. In this case, in light of Bevacqua, and the underlying facts of how the petitioner's bail was revoked along with that the Petitioner may lose his employment, the recognizance bond (OR) at zero dollars should be reinstated by this court forthwith pending a final determination of this matter.

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Id.

**B.**  
**PETITIONER SEAN K \_\_\_\_\_ HAS BEEN AND CONTINUES TO BE HELD UNLAWFULLY, SINCE MAY 5, 2006, IN THE TRI-COUNTY REGIONAL JAIL. SHERIFF ROCKY NELSON VIOLATED PETITIONER'S FOURTH AMENDMENT RIGHT AGAINST ILLEGAL SEIZURE WHEN DEPUTIES OF THE UNION COUNTY SHERIFF'S DEPARTMENT TRANSPORTED PETITIONER INTO CONFINEMENT ABSENT A WRITTEN ORDER TO DO SO.**

No doubt when a Judge of a Court verbally orders a Deputy to "take him away" that Deputy follows that order. The Deputy is perhaps thinking that at some point the Judge will set forth an order confining that person. In this case, there is no written order. Apparently the deputies are accustomed to following any verbal order of the court to "take him away", in the absence of a written order, signifying a policy or procedure of the Union County Sheriff's Department. In Lingenfelter v. Board of County Commissioners of Reno County, (Kan. 2005) 359 F. Supp.2d 1163, where a person was

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arrested and then was not afforded a probable cause hearing, the Court found that "... A law enforcement officer may thus violate the Fourth Amendment by continuing to detain

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an arrestee as to whom no probable cause has been found. Moreover, this is true

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regardless of whether the officer's intentions are good or bad, because the officer's

subjective intentions play no role in assessing the reasonableness of a seizure under the

Fourth Amendment. Cf. *Graham v. Connor*, 490 U.S. 386, 397-99 (1989). ..." *Id.* at 9

"[T]he Fourth Amendment requires a judicial determination of probable cause *as a*

*prerequisite to extended restraint of liberty following arrest.*" *Id.* (case cited). Petitioner

asserts that this case is actually no different than a "probable cause" situation. In this

case, there has never been a written order that revoked the Petitioner's bond. Petitioner

asserts that in the absence of that order the Deputies of the Union County Sheriff's

Department did make a seizure in violation of the Fourth Amendment of the United

States Constitution. That seizure shows an inadequate training program under the

direction of the Sheriff, in this case Respondent Rockv Nelson.

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Accordingly, the seizure of Petitioner was in violation of the Fourth

Amendment. The Deputies transported Petitioner unlawfully into the hands of

Respondent Beightler. In this case, since that restraint was predicated upon various

violations of Petitioner's Constitutional rights, the Writ of Habeas Corpus must issue.

C.  
**PETITIONER SEAN K. BEIGHTLER WITHOUT A WRITTEN ORDER IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AND UPON BEIGHTLER'S FAILURE TO ADHERE TO OHIO ADMIN. CODE SECTION 5120:1-8-01.**

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In this instant case on May 5, 2006 the petitioner appeared before Respondent Richard Parrott for a scheduling conference. Petitioner made a move to set forth an affirmative defense, the defense of insanity at the time of the offense. Respondent Parrott, without hearing and without cause "revoked" the petitioner's recognizance and verbally told the deputies to "take him to jail." The deputies seized the petitioner and marched him to jail. Once at the jail, the deputies filled out the "Inmate Intake Form." See Exhibit C, Appendix p. At that point Respondent Robert Beightler ("Beightler") became involved.

Respondent Beightler is in charge of the administration of the Tri-County Regional Jail. Such facility as a "regional jail" is identified as a "full service jail" under Ohio Admin. Code 5120:1-7-02. Under that designation that facility must adhere to certain standards. One such standard is clearly outlined in Ohio Administrative Code Section 5120:1-8-01, titled "Reception and release," which states in pertinent part:

(A) Each full-service jail, as defined in sections 5120:1-7-02 (A)(1) of the Administrative Code, shall adhere to following standards regarding the reception and release of prisoners. Each full-service jail **shall implement policies and procedures, and produce documentation that evidences compliance with the following standards:**

(1) All prisoners are legally committed to the jail.

\*\*\*\*

(3) A booking and identification record shall be made of every commitment that includes the following information:

\*\*\*\*

(d) Authority for commitment;

(Emphasis added).

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Respondent Beightler, under Ohio Admin Code Section 5120:1-8-01 "...**shall** adhere to following standards regarding the reception and release of prisoners. ... **shall** implement policies and procedures, and produce documentation that evidences compliance with the following standards: (1) All prisoners are legally committed to the jail." (O.A.C. 5120:1-7-01, see App. pp. 44-49 & 5120:1-8-01, see App. pp. 50-52).

Respondent Beightler, has no discretion under Section 5120:1-8-01. He is under an affirmative duty to assure that prisoners are committed "legally" to his facility. Respondent Beightler, is without so much as a written order of the court from Respondent Parrott. A verbal order is not valid. *State v. Herder*, (1979) 65 Ohio App.2d 70 ("[i]t is axiomatic in this State that an order of a court becomes effective only when reduced to writing, signed by the judge, and filed with the clerk for journalizing.") Paragraph 1 syllabus; also *State ex rel. Geauga Cty. Bd. Of Commrs. v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608 "[a] court of record speaks only through its journal entries."

In fact all that Respondent Beightler, has is an "Inmate Intake Form" that detains the petitioner. See Exhibit D, App. p. 9.

That form, at even a cursory glance, reveals that the "arresting officers" here indicated that "I undersigned .... And did then and there confine said inmate in the Tri-County Regional Jail, **to be held until I can file papers in the proper Court or bond can be secured.** See Exhibit D (emphasis added). Petitioner states that there is

absolutely no evidence that "papers" have ever been filed in any court by these deputies

subsequent to the Petitioner's confinement in the Tri County Regional Jail. Petitioner further asserts that this document is nothing more than a standard intake form and does not constitute an order to detain nor does it show on what authority Petitioner

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It can be stated here, that what falls from the facts is that there is a policy at the Tri-County Regional Jail that when a judge, i.e. Respondent Parrott verbally orders the detention of a person, that person is detained absent a written order justifying such detention.

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In this instant case Respondent Beightler, being the jailer who holds the key, was under an affirmative duty pursuant to Section 5120:1-8-01 of the Ohio Administrative Code to inquire as to the detention of Petitioner. See also Coleman v. Frantz (7<sup>th</sup> Cir. 1985) 754 F.2d 719. (jailer is under a duty to inquire as to probable cause for detention)

In short, when a jailer holds a person without a valid court order it is a violation of due process of law. See Douthit v. Jones, (5th Cir. 1980) 619 F.2d 527, 532 (finding claim based on continued confinement without valid judicial order was cognizable under § 1983 as a deprivation of due process).

In this case, Petitioner is held absent a court order, he has been deprived of due process of law and is unlawfully restrained of his liberty. This Court under its power of Ohio Revised Code Section 2705.02, in the face of the facts and evidence presented should issue said writ forthwith.

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**VI. THE WRIT OF HABEAS CORPUS SHOULD ISSUE IN THIS INSTANT CASE AND THE EQUITABLE POWERS OF THIS COURT SHOULD BE USED.**

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When the Petitioner set forth an affirmative defense, said Respondent, without a hearing, in the face of no evidence that would justify revoking bond, *verbally* revoked the Petitioner's bond after the bond had been previously issued. Respondent Parrott has never set forth a written order revoking that bond. This act by Respondent Parrott was an abuse of discretion. Further this act was in violation of Petitioner's procedural and substantive Due Process rights.

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As a proximate result of Respondent Parrott's act, the Sheriff of Union County, Respondent Rocky Nelson became responsible for the apparent unlawful detention of Petitioner and the subsequent transport of Petitioner to the Tri-County Regional Jail absent a written order for that detention and/or transport. That detention and transport was in violation of at the very least Petitioner's rights under the Fourth Amendment against illegal seizure.

Moreover, as a proximate result of the Respondent Parrott's act and the subsequent act of Respondent Rocky Nelson's Office, Respondent Beightler, Executive Director of the Tri-County Regional Jail was involved. Respondent Beightler received Petitioner into his jail on a mere "inmate intake form". There has never been a written order from Respondent Parrott. This all occurred on May 5, 2006. Now some fourteen days have passed, and still no order from Respondent Parrott to Respondent Beightler.

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Respondent Beightler was under a duty to inquire as to the legality of Petitioner's confinement pursuant to the Ohio Administrative Code – he did nothing. Respondent Beightler upon his failure to at least inquire has also violated Petitioner's right to due process.

Meanwhile Petitioner, who was at least on May 5, 2006 gainfully employed, has languished in jail, no written order, no hearing to revoke, no cause to revoke – nothing except a verbal command. A verbal command that apparently everyone named herein has followed regardless of duty, regardless of their oaths to “uphold” the Constitutions of this State and of the United States.

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Petitioner has argued that the Writ of Habeas Corpus should be invoked so as to provide the adequate remedy necessary. Petitioner has also argued that beyond the issuance of the Writ that he should be immediately released from the confinement that Respondent Parrott has caused. Petitioner is his prayer for relief has requested just that remedy. This court in State v. Bevacqua, (1946) 147 Ohio St. 20 made it distinctly plain, that a person charged with a bailable offense, but who languishes in jail, should be given immediate relief. In accord with Bevacqua, and in the face that Respondent Parrott has already determined the mode of recognizance required under Crim. R. 46(C) and R.C. 2937.29, this Court should grant the relief requested and release Petitioner upon the same terms and conditions that Petitioner previously was afforded.

Petitioner herein has also invoked the equitable jurisdiction of this Court, paragraph 1, supra. In this case it has been shown that Respondent Parrott has dispossessed the sacred underpinnings of the recognizance bond system of this State. The Petitioner can only guess the rationale for that dispossession. Nevertheless, these actions and inactions, on the part of Respondents, have inflicted harm on Petitioner, forcing him to come into this court in an effort to enforce his rights in regard to bond. That necessity has cost money. This Court with its inherent equitable powers can draft the appropriate relief. Petitioner has requested within his prayer that he be awarded

attorney fees and costs directly from the respective Respondents. Accordingly, equity should attach and the requested relief in form and substance should be granted.

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Furthermore, within Petitioner's prayer he has requested that all of the Respondents personally appear before this Court and give cause for the restraint of the Petitioner. In other words the Respondents herein should not be allowed to respond by U.S. Mail or facsimile transmission to the allegations contained herein. The Respondents collectively have violated a multitude of rights as guaranteed by the Constitutions of this State and/or of the United States, have violated the law in regard to the Ohio Administrative Code, and have violated a Rule promulgated by this Court. The allegations herein are not of a "parking ticket" variety, but are of a serious nature. Accordingly, the respect due in regard to this instant situation should be afforded in person, to give the Respondents an opportunity to show cause, if any they have, for the actions that brought rise to this astounding deprivation of Petitioner's right to be free.

In summation, this Court of last resort has the authority vested in it by the Ohio General Assembly to act. This Court has an inherent authority in equity to repair at least part of the damage that the Respondents have inflicted.

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**VII. RELIEF.**

**WHEREFORE**, Petitioner requests the following relief:

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- A. That a Writ of Habeas Corpus be issued forthwith; and
- B. An immediate order issue from this court, pursuant to *Bevacqua, supra*, that Petitioner be forthwith released from the Tri County Regional Jail under the original recognizance bond until a final disposition of the criminal proceedings in *State v. K. \_\_\_\_\_*, Union County Court of Common Pleas case no. 2006 CR 0047; and
- C. Respondent **THE HONORABLE RICHARD PARROTT**  
Union County Court of Common Pleas, 215 West Fifth Street  
Marysville, Ohio 43040 be afforded forty-eight (48) hours to show cause personally before this Court, if any he has, for the restraint of Petitioner; and
- D. Respondent **SHERIFF ROCKY NELSON**, Union County, Ohio  
21 West 5<sup>th</sup> Street Marysville, Ohio 43040 be afforded forty-eight (48) hours to show cause personally before this Court, if any he has, for the restraint of Petitioner; and
- E. Respondent **JAMES P. BEIGHTLER, Executive Director**, Tri County Regional Jail, 4099 State Route 559, Mechanicsburg, Ohio 43044 be afforded forty-eight (48) hours to show cause personally before this Court, if any he has, for the restraint of Petitioner; and
- F. Reasonable attorney fees and all costs associated with the filing of this action BE ORDERED directly from Respondent Richard Parrott and/or Respondent Robert Beightler and/or Respondent Rocky Nelson and/or in the alternative their responsible representatives; and,
- G. Any and all such relief that this Court may find equitable and just in this instant case.

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Respectfully submitted,

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