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JURISDICTIONAL STATEMENT

Relator adopts the Jurisdictional Statement set forth in his original brief.

STATEMENT OF FACTS

Relator adopts the Statement of Facts set forth in his original brief.

POINTS RELIED ON

I. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* because Respondent would act in excess of his jurisdiction if he were to allow the State to prosecute Relator under the general law in that, jurisdiction was not transferred from Juvenile Court because Relator received ineffective assistance of counsel in the Juvenile Court proceedings.

Chambers by Abel v. Rice, 858 S.W.2d 230 (Mo. App. S.D. 1993)

Hufford v. State, 201 S.W.3d 533 (Mo. App. S.D. 2006)

In re T.J.H., 479 S.W.2d 433 (Mo. banc 1972)

State ex rel. T.J.H. v. Bills, 504 S.W.2d 76 (Mo. banc 1974)

Missouri Supreme Court Rule 97.01

Missouri Supreme Court Rule 97.02

II. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* in that even if jurisdiction was appropriately transferred, Respondent abused his discretion to such an extent that he lacked the authority to overrule Relator's motion because (1) his ruling that Relator received due process, as required by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966) is refuted by overwhelming and uncontroverted evidence; (2) his ruling that he is not convinced the result in juvenile court would be any different with all of Relator's evidence misapplies the law; and, (3) public policy and fundamental fairness requires remand.

In re T.J.H., 479 S.W.2d 433 (Mo. banc 1972)

State ex rel. T.J.H v. Bills, 504 S.W.2d 76 (Mo. banc 1974)

State v. Simmons, 213 S.W.3d 156 (Mo. App. E.D. 2006)

Missouri Supreme Court Rule 29.15

III. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* in that Relator will be caused irreparable harm not capable of remedy by appeal in that he will: (1) be deprived of the services of the Juvenile Court for two or three years; (2) have limited access to the services of the Juvenile Court due to the fact that he will be 17 or 18 by the time the appeal process runs its course; and, (3) have endured unwarranted delay and expense as he will have already gone through the adult proceedings and been incarcerated in prison.

Missouri Supreme Court Rule 29.15

IV. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that the Respondent, the Honorable David. B. Mouton, take no further action in Count III of the Information, or that he dismiss Count III, due to the fact that he has no jurisdiction over the charge since, regardless of statutory interpretation, Attempted Escape can only be charged as a misdemeanor in these circumstances.

V. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that the Respondent, the Honorable David. B. Mouton, take no further action in Counts IV and V of the Information, or that he dismiss Counts IV and V, due to the fact that he has no jurisdiction over the charge since Relator was not specifically certified on these charges.

ARGUMENT

I. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* because Respondent would act in excess of his jurisdiction if he were to allow the State to prosecute Relator under the general law in that, jurisdiction was not transferred from Juvenile Court because Relator received ineffective assistance of counsel in the Juvenile Court proceedings.

The primary issue in this case is whether or not jurisdiction has been validly transferred from juvenile court to a court of general jurisdiction. The issue of whether Respondent has abused his discretion is entirely separate and distinct.

Respondent, however, has combined as one argument and one point relied on these two distinct issues. For this Court's benefit and to clarify the issues before it, Relator will respond to Respondent's points regarding jurisdiction and ineffective assistance of counsel in Point I and to Respondent's arguments regarding abuse of discretion in Point II.

Respondent has also misstated the applicable standard of review. (Respondent's brief, p. 14) While a writ of prohibition is appropriately issued when the lower court abuses its discretion, Respondent is trying to limit this Court's review to just whether or not he abused his discretion. He ignores that the primary issue in this case is whether he

even has jurisdiction. Further, Respondent ignores that a writ of prohibition is also appropriately issued when there is no adequate remedy by appeal. Nonetheless, since all three circumstances apply in Relator's case, this Court should make its preliminary writ absolute.

RESPONDENT MISAPPLIES § 211.071 RSMO

Respondent first argues that once the Information was filed, he had "lawful jurisdiction over Relator's case. Respondent cites §§211.071.9 and 211.071.10 RSMo., which do state that once a juvenile petition has been dismissed, "jurisdiction of the juvenile court is forever terminated" unless the juvenile is acquitted and then commits a new offense before turning 17. Respondent also cites *State v. Davis*, 988 S.W.2d 68, 71 (Mo. App. W.D. 1999), where the Court stated the statute provides no other way the juvenile court would ever regain jurisdiction. Respondent misapplies the law.

First, before §§211.071.9 and 211.071.10 can apply, jurisdiction has to actually be transferred. As argued in Relator's original brief, jurisdiction in this case has not been transferred. Second, while the *statute* does not provide any other way for the juvenile court to regain jurisdiction, the case law does. *In re T.J.H.*, 479 S.W.2d 433, 435 (Mo. banc 1972), for example, as well as several cases enumerated in Relator's original brief, (Exhibit H, pp. A387 to A407) state that filing a motion to dismiss or an objection to the information is a way a case can be remanded to juvenile court.

RESPONDENT MISREADS STATE ex rel. T.J.H. v. BILLS

Respondent next argues that because the certification order is not facially flawed and because Relator did not challenge the certification order, jurisdiction has been transferred. (Respondent’s brief, p. 16) In support, Respondent relies on *State ex rel. T.J.H. v. Bills*, 504 S.W.2d 76, 79 (Mo. banc 1974). (Respondent’s brief, p. 16) Respondent argues that *Bills* stands for the premise that to challenge the validity of the transfer of jurisdiction from juvenile court to one of general jurisdiction, one must challenge the order. (Respondent’s brief, p. 16, 22, & 23) Relator respectfully submits that Respondent has misread *Bills*. The *Bills* Court focused on the order because that is where the defect was. *State ex rel. T.J.H. v. Bills*, 504 S.W.2d at 79. The order was fatally defective because it lacked a statement of reasons. *Id.* (citing to *Kent v. United States*, 383 U.S. 541, 557 (1966) and *In re Gault*, 387 U.S. 1, 30 (1967)). Contrary to Respondent’s suggestion, the *Bills* court neither held nor suggested that a certification can only be challenged by attacking the order. If this Court were to adopt Respondent’s reasoning, a juvenile could be certified without a proper hearing and effective representation so long as the order complied with the statutory requirements and had a statement of reasons for the certification. This Court’s holding that all three are constitutionally required refutes this argument.

Relator wishes to emphasize that, just as in *Bills*, granting the requested relief in this case will neither result in *In re T.J.H.* being overruled, nor result in making a writ of

prohibition a remedy regularly available.¹ An attorney with basic knowledge of the law and willingness to do even a minimal amount of research will be able to provide constitutionally-effective representation such that jurisdiction can be validly transferred from Juvenile Court to a court of general jurisdiction. Additionally, by discussing the allegations of ineffective assistance of counsel, this Court's opinion in this case will provide an attorney with the requisite knowledge to provide effective representation to a juvenile facing certification.

**RESPONDENT PROVIDES VIRTUALLY NO ANALYSIS AS TO REFUTE
RELATOR'S CLAIM THAT JURISDICTION HAS NOT BEEN TRANSFERRED**

In his original brief, Relator presents several examples of Attorney Lonardo's ineffective assistance. (Relator's brief, pp. 33-60). Respondent's sole response was that Lonardo's decision to let Relator talk to the police was a strategic decision. (Respondent's brief, pp. 18-19). Respondent not only fails to address the vast majority of instances in which Lonardo's performance was constitutionally inadequate but also ignores controlling law. In the second respect, Respondent's argument falls short because it fails to recognize that a so-called strategic decision will not save inaction when counsel has not first adequately investigated both the law and the facts. *Hufford v. State*,

¹ *State ex rel. T.J.H. v. Bills*, 504 S.W.2d at 79. The *Bills* Court stated that the circumstances in that case were not likely to recur after its ruling since all a judge had to do was to put a statement of reasons for certifying the juvenile on the order. *Id.*

201 S.W.3d 533, 537-538 (Mo. App. S.D. 2006); *Wiggins v. Smith*, 539 U.S. 510, 521-522 (2003).

Assuming *arguendo* that Respondent's argument that allowing Relator to talk to the police constitutes trial strategy sufficiently refutes Relator's argument, the fact remains that Respondent has not even acknowledged Relator's allegations that Lonardo did not know the law, did little, if any research of the facts or law, devised a flawed strategy based on his ignorance of the law, allowed inadmissible testimony, failed to elicit helpful testimony, failed to investigate alternatives, and failed to call a witness from DYS. (Relator's brief, pp. 38-53) Moreover, Respondent does not even acknowledge Relator's argument that prejudice can be presumed. (Relator's brief, p. 40)

A writ of prohibition is a civil action which follows the rule of civil procedure. Missouri Supreme Court Rules 97.01 & 97.02. Any fact alleged in a petition that is not denied is considered to be admitted. *Chambers v. Abel v. Rice*, 858 S.W.2d 230, 232 (Mo. App. S.D. 1993). Thus, all of the allegations not answered are deemed admitted by Respondent and at the very least Relator does not need to prove the first prong of the test for ineffective assistance of counsel. Further, in his original brief, Relator argued that Respondent misapplied the law when ruling he did not think the result would be any different. (Relator's brief, p. 62) Respondent, however, has chosen not only to ignore this argument, but also to again misapply the law. Moreover, Respondent provides no analysis for his decision.

II. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* in that, even if jurisdiction was appropriately transferred, Respondent abused his discretion to such an extent that he lacked the authority to overrule Relator's motion because (1) his ruling that Relator received due process, as required by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966) is refuted by overwhelming and uncontroverted evidence; (2) his ruling that he is not convinced the result in juvenile court would be any different with all of Relator's evidence misapplies the law; and, (3) public policy and fundamental fairness require remand.

Relator's argument regarding abuse of discretion assumes *arguendo* that he did have jurisdiction. (Relator's brief, p. 60) Respondent, however, in his first point relied on, argues that he did not abuse his discretion because he had jurisdiction of this case. (Respondent's brief, p. 15) He offers no argument to refute Relator's argument that he misapplied the law and only presents a cursory argument to address Relator's allegation that the evidence was both overwhelming and uncontroverted. Instead, he simply states that he gave careful consideration to the evidence presented by Relator. (Respondent's brief, p. 19) This reasoning is circular and self serving. Finally, Respondent also ignores Relator's argument regarding public policy requiring remand.

Respondent's first argument in Point II of his brief concerns Relator's not challenging the certification *order*. This has been discussed *supra* so there is no need to

address it here. Additionally, however, he argues that this challenge should have been made *instead* of filing a motion in circuit court since that method is inappropriate.

(Respondent's brief, pp. 23-24) Respondent argues that it is improper to make one circuit court judge overrule another circuit court's decision. (Respondent's brief, p. 23) Instead, "sound public policy" requires Relator to pursue a writ of prohibition directly. ²

(Respondent's brief, p. 24) Since Relator did not do this, his only option is to a 29.15 hearing. (Respondent's brief, p. 24) This argument fails for four reasons.

First, besides not citing any legal authority for his argument, Respondent ignores Rule 29.15 is a post-conviction rule and applies to mistakes made by the sentencing court. Further, one of the claims a person can raise in a 29.15 motion is that the court is without jurisdiction. The issue of jurisdiction, however, can be addressed in a writ and lack of jurisdiction is Relator's primary argument. *See State v. Simmons*, 213 S.W.3d 156, 158 (Mo. App. E.D. 2006)("[j]urisdiction may be raised at any stage in the proceedings...")

Second, Exhibit H of Relator's brief lists several cases which stand for the premise that filing the motion in circuit court is the proper method and the circuit court can

² While Respondent is certainly entitled to his opinion on court procedures and is also entitled to argue they be changed, the fact remains that this procedure is what this Court has held must be followed. *In re T.J.H.*, 479 S.W.2d at 434-435 (Mo. banc 1972).

Relator respectfully submits that he cannot be penalized for following what the law is currently.

remand a case to juvenile court. (Exhibit H, pp. A387-A407) Nothing in *Bills* suggests that the remedy prescribed in *In re T.J.H.* was no longer valid or that a juvenile contesting his certification *must* immediately seek review from an appellate court. Indeed, the Court in *Bills* specifically states that nothing in its decision “will nullify [it’s] decision in *In re T.J.H...*” *State ex rel. T.J.H. v. Bills*, 504 S.W.2d at 79.

Third, Respondent wants to have it both ways. He wants the Court to rule that one circuit judge should not be put in the position of reviewing another circuit judge’s decision, but then argues his decision should stand.

The biggest reason Respondent’s argument fails, however, is that Relator has not asked him to “overrule” Judge Crawford. Relator has never asserted that Judge Crawford abused his discretion. The argument has always been about Relator’s ineffective Juvenile Court counsel and the importance that all evidence be considered by the Juvenile Court before the Court certifies Relator. Remanding Relator’s case to Juvenile Court for these two reasons would have made no commentary on Judge Crawford or his decision.

III. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that Respondent, the Honorable David B. Mouton, take no

further action in Jasper County Case No. 06AO-CR02770-01 or that he sustain Relator's *Second Amended Objection to the Information* in that Relator will be caused irreparable harm not capable of remedy by appeal in that he will: (1) be deprived of the services of the Juvenile Court for two or three years; (2) have limited access to the services of the Juvenile Court due to the fact that he will be 17 or 18 by the time the appeal process runs its course; and, (3) have endured unwarranted delay and expense as he will have already gone through the adult proceedings and been incarcerated in prison.

Respondent ignores the Relator's arguments of why an appeal or relief under Rule 29.15 is not an *adequate* remedy and offers no arguments to support his claim that it is adequate. Respondent discusses the importance of judicial economy. (Respondent's brief, p. 26) This Court has issued a preliminary writ. It has decided to consider Relator's arguments on the merits. If, after considering Relator's arguments on the merits, this Court agrees that Relator received ineffective assistance of counsel, then it would be a complete waste of judicial resources to quash the writ, make Relator go through a trial and the appeals process, only to have it all vacated by a 29.15 ruling. Further, going back to Juvenile Court at that point would be a waste since Relator's age by this time will be 17 or 18 and the issue of him remaining in the juvenile system will be moot. Moreover, any confusion in how a juvenile can seek review of his certification can be answered in this Court's opinion. (See Respondent's brief, p. 26)

IV. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that the Respondent, the Honorable David. B. Mouton, take no further action in Count III of the Information, or that he dismiss Count III, due to

the fact that he has no jurisdiction over the charge since, regardless of statutory interpretation, Attempted Escape can only be charged as a misdemeanor in these circumstances.

Relator has no reply to Respondent's argument. Relator respectfully submits Respondent does not refute his original argument.

V. Relator is entitled to a writ of prohibition or, alternatively, a writ of mandamus, ordering that the Respondent, the Honorable David. B. Mouton, take no further action in Counts IV and V of the Information, or that he dismiss Counts IV

and V, due to the fact that he has no jurisdiction over the charge since Relator was not specifically certified on these charges.

Relator has no reply to Respondent's argument. Relator respectfully submits Respondent does not refute his original argument.

CONCLUSION

Respondent fails to acknowledge most of Relator's original arguments and does not sufficiently argue the points he chooses to address.

WHEREFORE, for the reasons set forth in Points I, II, III, IV, and V of his Brief and Reply Brief, both cumulatively and individually, Relator, prays this Honorable Court make absolute its preliminary writ of prohibition.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of Relator's Brief, the Appendix (all six volumes), and a virus-free CD with a true copy of the brief, was mailed to the office of the Honorable David B. Mouton at the Jasper County Courthouse in Joplin at 601 S. Pearl in Joplin, Missouri 64801 (telephone number 417-625-4325; Fax - 417-625-4326) and the office of John Nicholas, Assistant Prosecutor for Jasper County at the Jasper County Courthouse at 601 S. Pearl, Joplin, Missouri 64801 (telephone number 417-625-4314; Fax - 417-625-4315) this 18th day of February, 2008.

James Egan

CERTIFICATE OF COMPLIANCE

I, James Egan, hereby certify as follows:

The attached brief complies with the limitations contained in this Court's Rule 84.06. The brief was completed using Microsoft Word, Office 2007, in Times New Roman size 13 point font. Excluding the cover page, signature block, this certification and the certificate of service, this brief contains 3,184 words, which does not exceed the 31,000 words allowed for a Relator's brief.

The CD filed with this brief contains a copy of this brief saved in Microsoft Word Format. The disk has been scanned for viruses using a McAfee VirusScan Program. According to that program, the disk is virus-free.

James C. Egan