In the

FLORIDA SUPREME COURT

Scott Huminski,	)	
Petitioner,	)	Case Number:
v.	)	
State of Florida,	)	Original Jurisdiction
Respondent.	)	

PETITION FOR WRITS of MANDAMUS, ALL WRITS JURISDICTION
COURT ADMINISTRATION/CASE ASSIGNMENT

NOW COMES, Petitioner Scott Huminski ("Huminski") and petitions for a writ of mandamus directing the Lee County Court to vacate a judgment of conviction entered in *State v. Huminski*, 17-MM-815, concerning common law *sui generis* contempt arising in *Huminski v. Gilbert, AZ et al.*, 17-CA-421, **20th Circuit Court** ("Gilbert"). The contempt claim in *Gilbert* was initiated in the Circuit Court and was transferred to the **Lee County Court** without an order from an administrative judge or the Chief Circuit Judge, Hon. Micheal T. McHugh. This petition seeks the intervention from this Court concerning the **transfer** of a contempt case **between the Circuit and County Courts** absent an administrative order pursuant to Fl. Const. Art V. Section 2 (a),

> "The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any

proceeding when the jurisdiction of another court has been improvidently invoked ...". Art 5, Section 2(a).

During the transfer of the Circuit Court contempt claim to the County Court, the clerk/courthouse staff added the State of Florida as a Plaintiff and designated the new County Court case as a misdemeanor with a "MM" docket designation absent the existence of any statutory misdemeanor in the case, absent any ruling from an administrative judge or the Chief Circuit Judge specifying/permitting this manuver. The Plaintiff in *State v. Huminski* filed no document capable of initiating a criminal case and, in fact, authored, filed and served no document at all to commence the case. Courthouse staff or the clerk commenced the criminal case, not the sovereign or law enforcement. This Court should adopt rules prohibiting the instant irregular courthouse staff transfer and criminal case initiation, mandate that the Lee County Court vacate the entire case as *void ab initio* and, after vacatur, prohibit the Lee County Court from further post conviction ruling in *State v. Huminski* and craft Rules preventing this situation in future court proceedings to support the orderly administration of justice and handling of contempt by the Court of proper jurisdiction.

Huminski filed multiple recusal motions in Lee County Court, Judge James Adams (retired) presiding to no avail grounded largely on the fact that the *Gilbert* case, including the contempt allegations therein, was removed to federal court on 6/26/2017, yet in spite of the removal, a misdemeanor criminal arraignment was held on 6/29/2017 for the common law *sui generis* contempt claims in *Gilbert*. One day later on 6/30/2017, the criminal case *State v. Huminski* was docketed as a

contempt misdemeanor in Lee County Court without the participation of an administrative/chief judge, without any filing from Plaintiff (State of Florida) and without a criminal statute while *Gilbert* and the contempt allegations therein had been stayed and subsequently resided in the federal courts. All of this activity in the State Courts occurred after removal and after the case, *Gilbert*, that contained assests and liabilities of the estate in Bankruptcy was stayed in April 2017 via the filing of Huminski's Bankruptcy.

The arraignment and docketing all occurred despite the jurisdiction over *Gilbert* and contempt therein resided in the federal courts. Huminski removed the case after the Circuit Court failed to honor the automatic stay of Bankruptcy, 11 U.S.C. § 362. After transfer, County Court Judge Adams denied every motion to dismiss that argued jurisdictional infirmities and this was central to multiple recusal motions filed and summarily denied by him as legally insufficient. The Court should craft or amend a rule requiring the existance of a statutory crime prior to docketing a misdemeanor or felony by courthouse staff. A requirement that is absent from the Rules of Court Administration.

In addition to crafting/amending a Rule covering the behaviour of State Courts after federal removal, a similar Rule should exist concerning the behaviour of State Courts after the imposition of the automatic stay of Bankruptcy. 11 U.S.C. § 362 Both the automatic stay and federal removal are the "*law of the land*" that State Court have trouble obeying as in the instant matter. The unlawful transfer to the County Court days after removal was simply a scheme to evade federal

jurisdiction, there is no other legitimate reason. The illegal transfer scheme resulting in the recusal of the Circuit Court judge and the Lee County Court acting in excess of its jurisdiction by hearing and trial of Circuit Court contempt.

The State of Florida continues to attempt to collect on the costs, fines and fees related to the judgment in *State v. Huminski* and Huminski continues to be prejudiced in employment, housing, insurance and credit related to the *void ab initio* "criminal" judgment entered in *State v. Huminski*.

The only adminstrative order from the Chief 20th Circuit Judge concerning the transfer of Circuit Court contempt claims to the County Court came 8 months after commencement of the County case.

The only order from the Chief Circuit Court Judge that could be construed as an administrative order regarding the transfer of common law *sui generis* contempt claims in the Circuit Court to the County Court in June, 2017, was eight months after commencement/docketing of the Circuit contempt claims in Lee County Court on 6/30/2017. The order below of 2/26/2018 only casually mentions the existence of the comon law *sui generis* contempt claims in the County Court. A Rule should be crafted specifying that contempt is private to the allegedly offended Court and prohibiting transfers to lower courts as well as specifying that *sui generis* common law offenses should not be docketed as cases involving the violation of statutory misdemeanors/felonies. The Chief Circuit Judge mentions a "*criminal case … before Judge Adams – No. 17-MM-815*" without the existance of a criminal statute.

<Next page for order of the Chief 20th Circuit Judge in pertinent part>

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2/26/2018 11:58 AM Filed Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

SCOTT HUMINSKI, for himself and for those similarly situated,

Plaintiffs,

v. **Case No.: 17-CA-000421**

TOWN OF GILBERT, AZ;

<... unrelated content omitted "2017"[sic] below...>

This Order shall have no effect on the criminal case currently proceeding against Plaintiff before Judge Adams – No. 17-MM-815 – and any orders entered therein.

DONE AND ORDERED in Chambers in Lee County this 27th day of February, 2017.

Judge Michael T. McHugh

Circuit Court Contempt Jurisdiction Exclusively in the Circuit Court – Lee County Court acted in excess of its jurisdiction

Contempt is a *sui generis* common law offense inherent in the court and is not, therefore, a crime. See *State ex rel. Beck v. Lush*, 1959, 168 Neb. 367, 95 N.W.2d 695, 72 A.L.R.2d 426; *Osborne v. Owsley*, 1954, 364 Mo. 544, 264 S.W.2d 332, 38 A.L.R.2d 1128; and *Niemeyer v. McCarty*, 1943, 221 Ind. 688, 51 N.E.2d 365, 154 A.L.R. 115.

The hearing and trial of contempt is private to the allegedly offended court. See generally, *South Dade Farms v. Peters*, 88 So. 2D 891 (Florida Supreme Court 1956) (approvingly citing "*There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it without*

referring the issues of fact or law to another tribunal or to a jury in the same tribunal. … Bessette v. W.B. Conkey Co., 194 U.S. 324 337, 24 S.Ct. 665, 48 L.Ed. [997] 1005.") and *Huminski v. State*, 2d19-1247 (Fl 2nd DCA, 2019)(adding emphasis to the statutory language "against it" concerning F.S. § 38.22).

Court administration and staff docketed *State v. Huminski* in the absence of any and all jurisdiction absent a; criminal statute, pleading, information or indictment authored by the Plaintiff the State of Florida. Also absent is an administrative order specifying the *Gilbert* transfer to County Court and addition of Plaintiff, State of Florida, to the contempt claims which courthouse staff added without the direction of a Judge and without a statute supplied by law enforcement or the executive branch. The Rules should specify procedures concerning the transfer of cases between Circuit and County courts and that *sui generis* common law contempt stays in the allegedly offended Court and is non-transferrable.

The plaintiff/law enforcement, not Court administration nor the clerk should commence criminal cases

The filing of no pleadings/charging information by the State renders *State v. Huminski* *void ab intio*. Court administration or the clerk can not stand-in for the true plaintiff in a criminal case. Trial courts "lack jurisdiction" until proper pleadings are filed. *Lovett v. Lovett*, 112 So. 768, 776 (Fla. 1927) accord *Lewis v. Lewis*, 78 So.2d 711, 712. A trial court's lack of subject-matter jurisdiction makes its judgment void. *NWT v. LHD (In re DNHW)*, 955 So.2d 1236, 1238 (Fla. 2d DCA

2007). A judgment of conviction that is entered against a defendant without service of a charging instrument is absent personal jurisdiction over the defendant and is regarded as a void judgment. *Great Am. Ins. Co. v. Bevis*, 652 So.2d 382, 383 (Fla. 2d DCA 1995). As there was no pleading for the State to serve and indeed the State served no commencement paper, the County Court lacked personal jurisdiction. The Circuit Court judge did author and serve a show cause order in *Gilbert* and the Circuit Court had both subject-matter and personal jurisdiction over the contempt matter. Circuit Court was the lawful venue for hearing and trial of the alleged common law contempt.

A judgment entered without due service of process is void. *See Gelkop v. Gelkop*, 384 So.2d 195 (Fla. 3d DCA 1980); *McAlice v. Kirsch*, 368 So.2d 401 (Fla. 3d DCA 1979); *Grahn v. Dade Home Services, Inc*. 277 So.2d 544 (Fla. 3d DCA 1973). On motion, a court may, at any time, relieve a party from a void final judgment of conviction. See *Sams Food Store, Inc. v. Alvarez*, 443 So.2d 211 (Fla. 3d DCA 1983); *Tucker v. Dianne Electric, Inc*. 389 So.2d 683 (Fla. 5th DCA 1980). See also *Ramagli Realty Co. v. Craver*, 121 So.2d 648 (Fla. 1960) (the passage of time cannot make valid that which has been void).

Prior to federal removal, jurisdiction was quite proper concerning the Circuit Court contempt being heard in the Circuit Court. The actions of courthouse staff were solely responsible for the existence of *State v. Huminski*, 17-MM-815, Lee County Court. The State did not participate in the initiation of the case. Courthouse staff should not *sua sponte* initiate criminal cases without the

participation of the Plaintiff/sovereign/police or any other law enforcement official. Criminal prosecution with liberty interests at stake must be taken seriously and initiated by the Plaintiff or law enforcement, not unknown courthouse employees.

This element of mystery as to how a criminal case was initiated is not consistent with the solemn undertaking of a criminal prosecution or Due Process, especially when vast constitutional infirmities exist such as no charging document, no statute and no service. A *per se* manifest injustice worthy of *coram nobis* relief.

This Court has explained that "*jurisdiction to try an accused does not exist under article I, section 15 of the Florida Constitution unless there is an extant information, indictment, or presentment filed by the state.*" State v. Anderson, 537 So.2d 1373, 1374 (Fla.1989). Zero information, indictment or presentment was filed by the State to commence *State v. Huminski*. *State v. Huminski* was litigated for over two years until a conviction was achieved in the complete absence of any and all jurisdiction seemingly on a hunch by anonymous courthouse staff that a criminal case should exist.

At hearing on 6/29/2017 (after federal removal), the Assistant State's Attorney, Anthony Kunasek (deceased – suicide 2022) opined that generally no new docket numbers are required for contempt cases. The late Mr. Kunasek was likely referring to contempt related to violations of protective orders in family law/domestic relations cases which are statutory misdemeanors and not applicable here. The sovereign does not participate as a plaintiff in instances of *sui generis* common law contempt. It is a controversy between the Court and contemnor.

Anointing the State of Florida as a plaintiff was solely an invention of courthouse staff with no basis in law and absent an administrative order and statute. A Rule or amendment to adminstrative Rule may prevent this situation.

Conflicts with the Rules of Judicial Administration 2.555(a)(c), 2.515(a), 2.516 (a)(b)(d)(e)(f)

Court administrator's/clerk's docketing and initiation of *State v. Huminski* conflict with the rules set forth by this Court. It remains a mystery as to why or how Circuit Court contempt claims were transferred to Lee County Court and docketed with nothing in the case records shining light on this mystery. Rule 2.555 (a), (c) were violated concerning the initiation of *State v. Huminski.*

RULE 2.555. INITIATION OF CRIMINAL PROCEEDINGS

> (a) Major Statutory Offense. Law enforcement officers, at the time of the filing of a complaint with the clerk of court, shall designate whether the most serious charge on the complaint is a felony or a misdemeanor. The state attorney or the state attorney's designee, at the time of the filing of an original information or an original indictment with the clerk of court, shall designate whether the most serious offense on the information or the indictment is a felony or misdemeanor. Complaints, original informations, and original indictments on which the most serious charge is a felony shall be filed with the clerk of the circuit court.
>
> (c) Information or Indictment after County Court Proceedings Begun. When action in a criminal case has been initiated in county court, and subsequently the state attorney files a direct information or the grand jury indicts the defendant, the state attorney or the state attorney's designee shall notify the clerk without delay.

No informations, presentment, pleadings or indictments exist in the instant misdemeanor case, *State v. Huminski,* in violation of Rule 2.555(a)(c). The Rule

infers that a criminal statute must exist. Also the Rule anticipates a "charge" and the court record specifically states "no charge". Perhaps amendment to this Rule may solve this confusion in the courthouse concerning case initiation.

As no pleadings, information, presentment or indictment exist the signature requirement of Rule 2.515(a) has been violated along with Due Process. The Court should craft a Rule requiring a commencement document filed by the Plaintiff. The State of Florida did not even author a notice of appearance prior to attaending the arraignment hearing on 6/29/2017 accompanied by a Rule 2.515 signature. The State showed up at arraignment empty handed and without a pleading or statute justifying standing as a Plaintiff, yet, the arraignment continued and Huminski was placed on pretrial supervision in a sui generis common law case.

As no service of any commencement document occurred in the County Court, Rules 2.516 (a)(b)(d)(e)(f) were violated as well as Due Process.

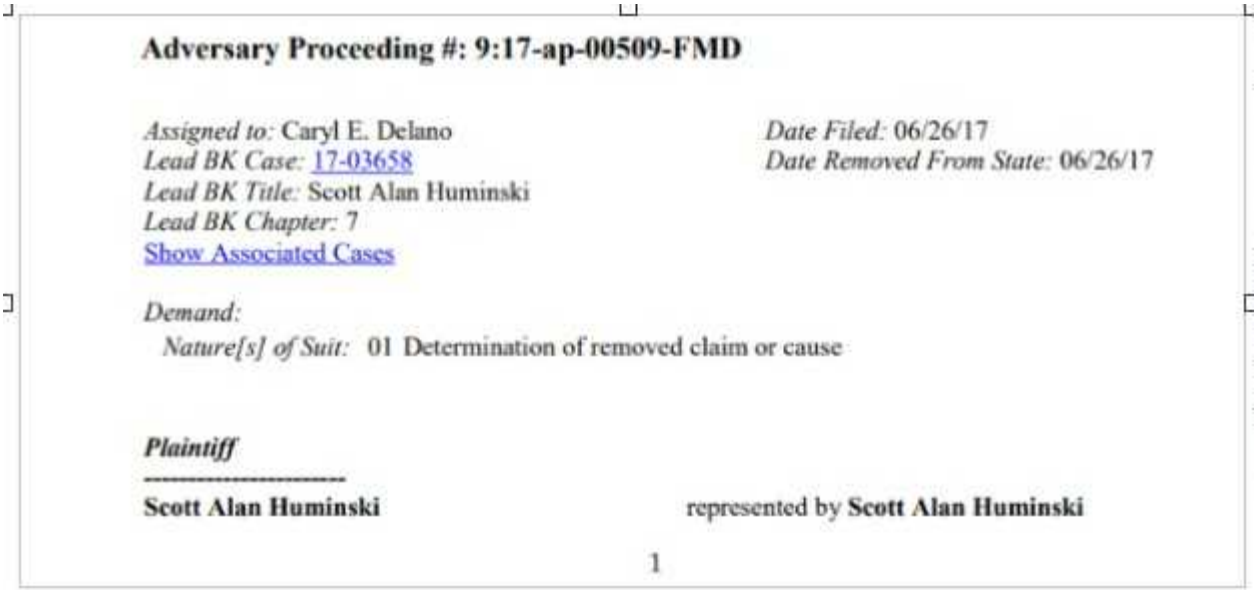
The Rules of administration should govern conduct of the Courts after federal stay/removal and the requirement that a criminal statute "charge" must exist in a criminal prosecution.

The concept may be rudimentary, however, this case exemplifies that a Rule must be drafted concerning federal removal and stay. All State Court proceedings must cease immediately upon federal court removal and stop until the case is remanded. As indicated below in the Federal docket, the date of removal of *Gilbert* and the contempt claims therein was 6/26/2017. At the 6/29/2017 "arraignment"

hearing in *Gilbert*, Huminski verbally argued that the case no longer existed in the State Courts to no avail and was placed on criminal pretrial supervision.

At hearing, three days after removal on 6/29/2017, the Circuit Court judge novelly argued Circuit Court cases can never be removed to Federal Court responding in part,

> THE COURT: No, sir, you're misinformed. Nothing gets removed from this court to bankruptcy court. That doesn't happen ever.



Adversary Proceeding #: 9:17-ap-00509-FMD

Assigned to: Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski
Lead BK Chapter: 7
Show Associated Cases

Date Filed: 06/26/17
Date Removed From State: 06/26/17

Demand:
Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

Scott Alan Huminski

represented by **Scott Alan Huminski**

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See printed case *State v. Huminski* at pages 2230-2254 (the "Arraignment").

https://edca.2dca.org/DcaDocs/2019/1914/2019-1914_Brief_530010_RC09.pdf

Removal of State civil cases to Bankruptcy Court is common. *Gilbert* is not listed among the category of cases that are non-removable. 28 U.S. Code § 1445.

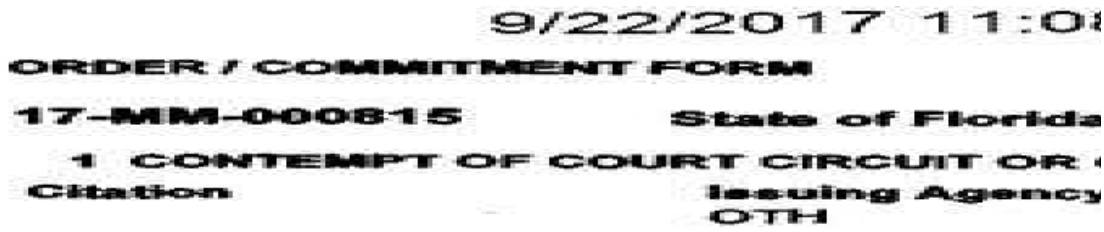
Even State murder cases can be removed, although, immediate remand back to State Court would be likely. Federal law governs removal, not State Courts. The State Court must patiently wait for when or if a remand issues or when the case is disposed of in the Federal Court. The State Attorney should also wait to hear from the Federal Courts instead of plowing ahead in a removed State case months after the claim was stayed by 11 U.S.C. § 362.

The Court should craft a rule concerning arraignments, that should be held only in cases involving a violation of a statutory crime and pre-trial supervision should only apply to cases involving the violation of a statutory crime. The conduct of both the Circuit and County courts set forth herein arose from an animus, bias or other impermisable scheme/motive revealed by the recusal of the original Circuit Court judge a month after arraignment, regardless, the County Court judge picked up the cause with zeal after an unlawful transfer.

F.S. 900.04 does not create a separate cause of action for plaintiff State of Florida and can not suffice as a statute supporting a misdemeanor prosecution or standing of the State of Florida in *State v. Huminski*.

The docket in *State v. Huminski*, 17-MM-815, Lee County Court reveals that Huminski faced "**No Charge**", yet, the criminal case proceeded to conviction and included every fine, cost and fee possible associated with a conviction of a statutory crime and pre-trial supervision. The below court document excerpt specifies "**No Charge**" and the statutory basis of the prosecution as **F.S. 900.04** which does not

define a misdemeanor nor felony. These designations were consistent throughout the pendency of the case and at the "criminal" arraignment, conviction and trial.


9/22/2017 11:0
ORDER / COMMITMENT FORM
17-MM-000815 State of Florida
1 CONTEMPT OF COURT CIRCUIT OR
Citation Issuing Agency
OTH

State Circuit Courts and administrators require guidance via new Rules from this Court addressing the situation of Federal staying and removal of State cases and the requirement of a statutory criminal violation, a charge, must exist prior to docketing a criminal misdemeanor or felony case. No allegation of a statutory crime exists in the instant matter, yet, *State v. Huminski* proceeded to criminal conviction with Huminski pointing out infirmities during the entire duration of the case.

FL. R.Crim. Proc. 3.160 states in pertinent part,

> [the arraignment] " … *shall consist of the judge or clerk or prosecuting attorney reading the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto.* …".

With "**No Charge**" designation and only a **F.S. 900.04** existing in the record, Huminski had no charge or statute to plead to, only a vague concept that a criminal case was proceeding listing "**no charge**" in the record. A Rule requiring a statutory criminal charge prior to arraignment and docketing should be crafted, even though it seems obvious, this case exemplifies the dire need for criminal docketing and

arraignment guidance to avoid the misuse of the criminal justice system and to safeguard constitutional rights, Due Process and liberty interests.

WHEREFORE, Petitioner prays for the following relief:

1. Mandate that Lee County Court vacate *State v. Huminski* as *void ab initio* and, after vacatur, prohibit the County Court from future ruling in the case.

2. Enjoin the State of Florida from continuing collection of costs, fines, fees foisted upon Huminski at conviction in *State v. Huminski*.

3. Enjoin the State of Florida from publishing the debt arising in *State v. Huminski* to credit bureaus retroactively and prospectively.

4. The Court should amend existing Rules or craft new Rules that would eliminate the confusion in the Florida Courts concerning criminal case initiation, federal removal/stay and the other aforementioned infirmities that implicate Due Process.

Dated February 09, 2025.

Respectfully Submitted,
-/s/- Scott Huminski

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