

**IN THE CRIMINAL COURT OF HAMILTON COUNTY
STATE OF TENNESSEE**

STATE OF TENNESSEE)	
)	
)	
V.)	
)	DOCKET NO.: 304518
)	
CORTEZ SIMS)	DIVISION II
)	

**DEFENDANT CORTEZ SIMS'S MOTION NO. 8:
MOTION TO DISMISS OR IN THE ALTERNATIVE
TO TRANSFER TO THE JUVENILE COURT**

Comes now the Defendant Cortez Sims, by and through counsel, pursuant to Rule 12(b)(2)(A) and *Sawyers v. State*, 814 S.W.2d 725 (Tenn. 1991), and moves this court to dismiss Count III of the above-captioned presentment and any predicate act alleged in the RICO offense or RICO conspiracy offense that occurred when the Defendant was a juvenile. If the Defendant was a child at the time of any of the offenses or predicate acts alleged in the Presentment, then the Hamilton County Juvenile Court has original and exclusive jurisdiction. In the alternative, the Defendant moves this Court transfer this matter to the juvenile court to conduct a transfer hearing to determine whether the Defendant should be tried as an adult in the criminal court. In support of Defendant's motion, he would show as follows:

The Defendant Cortez Sims was born on May 2, 1997. Count III of the Presentment alleges that on January 20, 2014, the Defendant committed first degree murder against Deontray Southers. The Defendant's age was sixteen years and eight months at the time of the alleged murder; therefore, he was a child at the time of the offense and subject to the jurisdiction of the juvenile court. *See* Tenn. Code Ann. § 37-1-102(5)(A) (Lexis Advance 2018). The State of

Tennessee incorrectly indicted the Defendant as an adult instead of properly filing these allegations in the Juvenile Court of Hamilton County as required by law.

Pursuant to T.C.A. § 37-1-103(a)(1), the juvenile court has exclusive original jurisdiction in proceeding where a juvenile is alleged to have been delinquent. *Id.* Any proceeding involving a juvenile must originate in the juvenile court. *Id.* After conducting a transfer hearing on the merits, the juvenile court may transfer a juvenile charged with first degree murder that is more than fourteen years of age to the criminal court to be tried as an adult. Tenn. Code Ann. § 37-1-134. The Tennessee Supreme Court holds that the denial of a transfer hearing in the juvenile court does not thereby deny the criminal court subject-matter jurisdiction. *Sawyers*, 814 S.W.2d at 729. However, even though the criminal court had subject matter jurisdiction, the Court found the right to a transfer hearing “although created by statute, is sufficiently fundamental to be considered a matter of due process, in the context of juvenile justice.” *Id.*; *State v. Hale*, 833 S.W.2d 65, 67 (Tenn. 1992). In *Sawyers*, the defendant was indicted in criminal court and convicted without ever having had a juvenile transfer hearing due to a miscommunication regarding his age. *See id.* Additionally, the defendant in *Sawyers* involved an appeal from a petition for post-conviction relief. *Id.* at 727. Ultimately, the Supreme Court remanded the case to the trial court for a hearing *de novo* to determine “whether or not [the defendant] would have been transferred from juvenile to criminal court, based on the facts existing at the time of his indictment and trial.” *Id.* at 727. Here, the Defendant has neither been tried nor convicted. The proper venue for this matter to have originated is in the Hamilton County Juvenile Court.

This Honorable Court essentially has three options. First, the Court may dismiss Count III of the Presentment and exclude any predicate act alleged that occurred prior to May 2, 2015¹. Second, the Court may transfer this matter to the Hamilton County Juvenile Court to allow it to

¹ The date the Defendant turned eighteen (18) years of age.

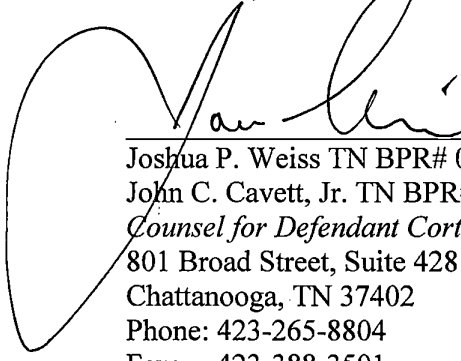
conduct a transfer hearing to determine whether the Defendant should be tried as an adult in this Court. Or third, this Court could conduct a *de novo* hearing to determine whether the juvenile court would have transferred this matter to this Court based on the facts and evidence currently existing. Because a transfer hearing is fundamental to due process, this Court cannot continue without addressing this defect in the institution of these proceedings. To ignore it would result in a voidable judgment due to violations of due process. *See Jones v. State*, C.C.A. NO. 01C01-9708-CR-00317, 1999 Tenn. Crim. App. LEXIS 689, at *8 (Tenn. Crim. App. July 9, 1999); *Depriest v. Meyers*, No. M2000-02312-CCA-R3-PC, 2001 Tenn. Crim. App. LEXIS 494, at *7 (Tenn. Crim. App. July 6, 2001); *Potter v. State*, No. E2005-01183-CCA-R3-HC, 2006 Tenn. Crim. App. LEXIS 649, at *14 (Tenn. Crim. App. Aug. 22, 2006).

The Defendant urges this Court to adopt either options one or two as described above. The third option, while it may be more expedient in this matter, condones the State's unlawful activity. When juveniles are accused of crimes, why would the state choose to pursue serious felony matters in the juvenile court rather than directly present them to the grand jury if the only consequence is that the criminal court will have to conduct its own *de novo* hearing? It would allow the state, at their own unfettered discretion, to decide whether to initiate criminal proceedings in the juvenile court or bypass it and present the charges to a grand jury despite the juvenile court having original and exclusive jurisdiction. The Defendant is charged with the violation of the law and is being made accountable, the Defendant simply asks that the State be held to the same standard.

WHEREFORE, the Defendant respectfully requests this matter be dismissed in its entirety, or in the alternative, to transfer this matter to the Hamilton County Juvenile Court to conduct a transfer hearing to determine whether the Defendant should be tried as an adult.

Respectfully submitted,

CAVETT, ABBOTT & WEISS, PLLC



Joshua P. Weiss TN BPR# 030560
John C. Cavett, Jr. TN BPR# 09388
Counsel for Defendant Cortez Sims
801 Broad Street, Suite 428
Chattanooga, TN 37402
Phone: 423-265-8804
Fax: 423-388-3501
josh@cawpllc.com
john@cawpllc.com

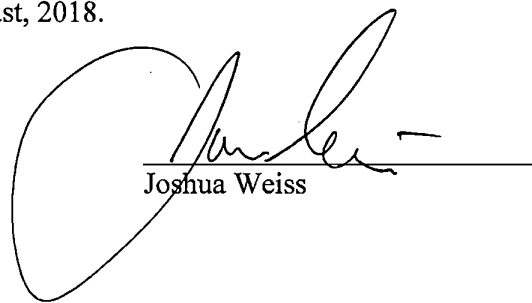
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document has been duly served upon:

Hamilton County District Attorney's Office
600 Market Street
Suite 310
Chattanooga, TN 37402

by placing a copy of same in the mailbox designated for the service of motions upon the District Attorney in the Hamilton County Criminal Court Clerk's Office.

This 3 day of August, 2018.



Joshua Weiss