

IN THE SUPREME COURT OF OHIO  
CASE NO. 06-1888

STATE OF OHIO,	)	Appeal from Columbiana County Court
	)	of Appeals, Seventh Appellate District
PLAINTIFF-APPELLEE,	)	Case No. 2006-CO-40
	)	
VS.	)	Columbiana County Common Pleas
	)	Court Case No. 2003-CR-227
JAMES M. PARKS,	)	
	)	
DEFENDANT-APPELLANT.	)	
	)	

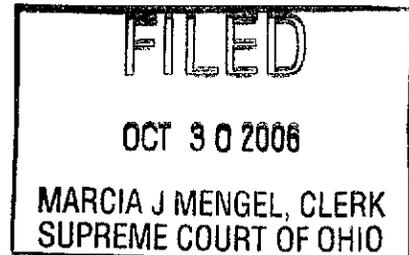
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**MEMORANDUM IN OPPOSITION TO JURISDICTION**

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Columbiana County  
105 S. Market Street  
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(330) 420-0140

Attorney for Appellee



James M. Parks  
Inmate #463-038  
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Appellant, Pro Se

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION

The trial court's denial of the Appellant's Pro Se Motion for Excerpts of Grand Jury Testimony involves no substantial constitutional question and is not of any public or great general interest. Pursuant to Criminal Rule 6(E), Grand Jury testimony may only be released prior to or during trial. In this case, the Defendant has had his trial and was convicted on all charges on February 6, 2004. It is evident that the Appellant's request for excerpts of Grand Jury testimony constitutes nothing more than an attempted fishing expedition without just cause. Clearly the Columbiana County Court of Common Pleas and the Seventh District of Appeals properly found no merit to grant this Appellant's request.

STATEMENT OF THE CASE AND FACTS

On August 1, 2003, Appellant was secretly indicted on the charge of Rape, in violation of Ohio Revised Code Section 2907.02(A)(1)(b), a felony of the first degree. The Indictment also contained specifications of force and age. On February 2, 2004, a jury found the Defendant guilty of all charges. The Appellant was sentenced to life imprisonment on March 4, 2004. Appellant's appeal for a new trial was denied by the Seventh District Court of Appeals in State v. Parks, 2005-Ohio-6926.

On May 8, 2006 the Appellant filed a Pro Se Motion for Excerpts of Grand Jury Testimony pursuant to Criminal Rule 6(E). On June 6, 2006, the trial court denied Appellant's motion. On August 30, 2006, the Seventh District Court of Appeals dismissed Appellant's appeal of that decision for lack of a final appealable order.

## PROPOSITION OF LAW NUMBER ONE

The trial court's post-trial decision to deny Appellant's Motion for Grand Jury Testimony is not a final appealable order as defined by R.C. 2505.02, and thus was properly dismissed by the Appellate Court

In this case, the Seventh District Court of Appeals properly found that the denial by the trial court of the Defendant's Motion for Excerpts of Grand Jury Testimony did not constitute a final and appealable order. The Court properly found that the denial of the Appellant's motion did not affect a substantial right in any action, nor determine the action or prevent a judgment.

Criminal Rule 6(E) provides:

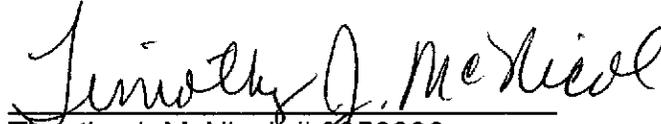
"A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist to transcribe recorded testimony, may disclose matters occurring before the Grand Jury, other than the deliberations of a Grand Jury or the vote of a Grand Jury, but may disclose such matter only when so directed by the court preliminary to in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the Indictment because of matters occurring before the Grand Jury."

The Ohio Supreme Court has held that Grand Jury testimony may only be released at the discretion of a trial court for use prior to or during trial. See State v. Greer (1981), 66 Ohio St 2d 139. In this case, there exists no pending action wherein Grand Jury testimony is needed. The Defendant's trial ended more than two and a half years ago. Therefore, this Appellant has no substantial right to the Grand Jury testimony and the Appellate Court properly found that the trial court's denial of his motion is not a final appealable order subject to review.

CONCLUSION

Based upon the foregoing analysis, Appellan'ts request for jurisdiction in this matter should be denied.

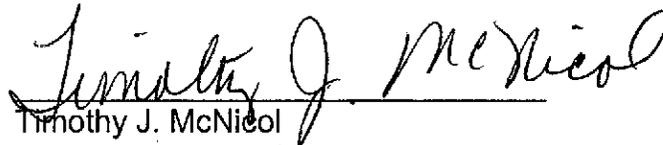
Respectfully submitted,



Timothy J. McNicol, # 0056036  
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PROOF OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction was served upon James M. Parks, Inmate #463-38, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, Ohio 44430 by regular U.S. Mail service on the 25<sup>th</sup> day of October, 2006.



Timothy J. McNicol  
Assistant Prosecuting Attorney  
Columbiana County

**APPENDIX**

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	CASE NO. 06-CO-40
	)	
JAMES M. PARKS,	)	OPINION AND
	)	JOURNAL ENTRY
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court Case No. 2003-CR-227

JUDGMENT: Appeal dismissed.

APPEARANCES:

For Plaintiff-Appellee: Robert L. Herron  
Prosecuting Attorney  
Tammie Riley Jones  
Assistant Prosecutor  
Columbiana County Courthouse  
105 South Market Street  
Lisbon, Ohio 44432

For Defendant-Appellant: James M. Parks, pro se  
#463-038  
P.O. Box 901  
Leavittsburg, Ohio 44430

JUDGES:

Hon. Gene Donofrio  
Hon. Joseph J. Vukovich  
Hon. Cheryl L. Waite

Dated: August 30, 2006

PER CURIAM:

Defendant-appellant, James M. Parks, appeals from a Columbiana County Common Pleas Court decision denying his motion requesting excerpts of grand jury testimony.

A brief history of this case is instructive.

On August 1, 2003, appellant was secretly indicted on charges of rape with a force specification and rape with an age specification in violation of R.C. 2907.02(A)(1)(b). The jury returned a verdict of guilty on all charges on February 6, 2004. On March 4, 2004, the court sentenced appellant to life imprisonment. Appellant's appeal for a new trial was denied by this court. *State v. Parks*, 7th Dist. No. 04 CO 19, 04 CA 803, 2005-Ohio-6926, at ¶115.

Appellant subsequently filed a pro se motion for excerpts of grand jury testimony pursuant to Crim.R 6(E). On June 6, 2006, the trial court denied appellant's motion. Appellant filed a timely notice of appeal on July 5, 2006.

This court must first address whether the order appealed from constitutes a final and appealable order. Pursuant to R.C. 2505.02(B), "[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it \* \* \* affects a substantial right in an action that in effect determines the action and prevents a judgment." A substantial right means "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). Thus, this court must determine whether the trial court's order denying appellant's motion for excerpts of grand jury testimony

affects a substantial right in the action and, in fact, determines the action and prevents a judgment.

Crim.R. 6(E) provides:

"A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court *preliminary to or in connection with a judicial proceeding*, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." (Emphasis added).

The Supreme Court of Ohio has interpreted this rule to mean that the release of grand jury testimony "for use *prior to or during trial* is within the discretion of the trial court." (Emphasis added). *State v. Greer* (1981), 66 Ohio St.2d 139, 420 N.E.2d 982, paragraph one of the syllabus. The Court goes on to state that "[g]rand jury proceedings are secret, and an accused is not entitled to inspect grand jury transcripts either *before or during trial* unless the ends of justice require it and there is a showing by the defense that a particularized need for disclosure exists which outweighs the need for secrecy." *Id.* at paragraph two of the syllabus, citing *State v. Patterson* (1971), 28 Ohio St.2d 181, 277 N.E.2d 201, paragraph three of the syllabus.

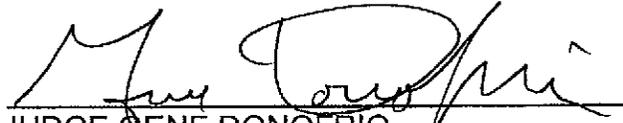
It is clear from this language that grand jury testimony may only be released at the discretion of the court for use *prior to or during trial*. In the case at bar, appellant is requesting that grand jury testimony be released *after* the trial has ended. There is no pending action wherein the grand jury testimony is needed to preserve a right

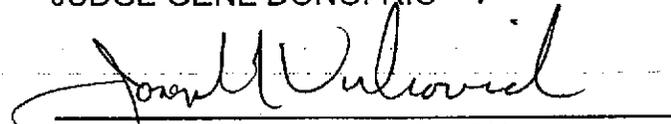
guaranteed to the appellant by law. Therefore, appellant does not have a substantial right to the grand jury testimony. Thus, the trial court's post-trial decision to deny appellant's motion for excerpts of grand jury testimony is not a final appealable order as defined by R.C. 2505.02.

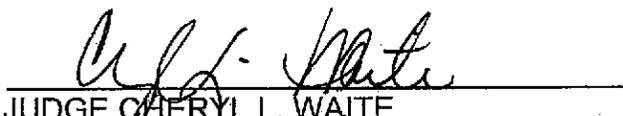
Accordingly, under the specific facts of this case this court does not have jurisdiction to review the judgment appealed.

Appeal is dismissed for lack of a final appealable order. Costs taxed against appellant.

Final order. Clerk to serve copies of this order on counsel or unrepresented party.

  
JUDGE GENE DONOFRIO

  
JUDGE JOSEPH J. VUKOVICH

  
JUDGE CHERYL L. WAITE