

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, :
-vs- : Case No. 2006-2213
JOSEPH BENNETT, :
Appellant. :

APPEAL FROM THE COURT OF APPEALS,
FIFTH APPELLATE DISTRICT, DELAWARE COUNTY, OHIO
CASE NO. 05 CAA 110069

STATE OF OHIO'S MEMORANDUM IN OPPOSITION OF JURISDICTION

David A. Yost (0056290)
Delaware County Prosecuting Attorney

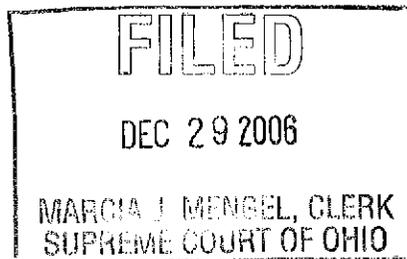
William J. Owen (0034637)
First Assistant Prosecuting Attorney

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Counsel for Appellee

Joseph E. Bennett, Jr.
Institution No. A-506-676
North Central Correctional Institution
P.O. Box 1812
Marion, Ohio 43301-1812

Pro Se Appellant



**STATEMENT OF WHY THIS CASE IS NOT APPROPRIATE FOR JURISDICTION
AND ARGUMENT**

Appellant's claim is not appropriate for review by this Court. Leave to appeal should not be granted because this is the first instance in which Appellant's claim has been raised. Essentially, Appellant argues ineffective assistance of appellate counsel for failure to raise a *Foster* challenge. *State v. Foster* (2006), 109 Ohio St.3d 1, 845 N.E.2d 470, 2006-Ohio-856. Such a claim should be addressed by an Application for Reopening under Ohio App. R. 26(B). Additionally, this claim does not involve a substantial constitutional question. Although ineffective assistance claims are constitutional claims, the law is well settled in this arena and does not require review by this Court. Appellant's claim also fails to raise an issue of public or great general interest. Notwithstanding the truth of the allegations in Appellant's memorandum, Appellant's predicament is unique and does not rise to the level of public or great general interest. For the reasons stated above, the State of Ohio respectfully requests that this Court decline jurisdiction in this case.

DAVID A. YOST
Delaware County Prosecuting Attorney

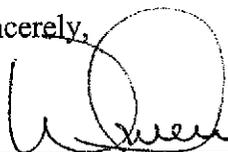


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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing has been served upon Joseph E. Bennett, Jr. (Institution No. A-506-676), Pro Se Appellant, by U.S. Mail, postage prepaid, North Central Correctional Institution, P.O. Box 1812, Marion, Ohio 43301-1812, by U.S. Mail, postage prepaid, on this 18th day of December, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Owen", written over a horizontal line.

William J. Owen (0034637)
Assistant Prosecuting Attorney