

IN THE SUPREME COURT OF OHIO

07-0513

Case No. _____

MARK FERRELL,
Petitioner.

v

WARDEN D. BOBBY (TCI)
Respondent.

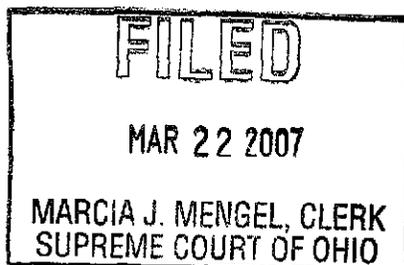
ORIGINAL ACTION WRIT OF HABEAS CORPUS

R.C. §2725.01 R.C. §2725.04

Mark Ferrell #332-108.P.O.
BOX. 901, Leavittsburg, Ohio
44430. PRO, SE, Counsel.
Petitioner.

Warden D. Bobby (TCI)
P.O. BOX. 901, Leavittsburg
Ohio, 44430. Respondent.

VERIFIED PETITION:



PLACE OF CONFINEMENT:

(TCI)Trumbull correctional institution,PO.BOX.901,
Leavittsburg Ohio,44430.

JUDGMENT ENTRY:

From a Judgment entered by the stark county court of
common pleas case No.1996CR0627(A).Also

From a Judgment entered by the stark county court of
appeals fifth appellate district ohio Case No.2006CA00-
236.BOTH APPENDED HERETO.

JURISDICTION:

R.C.§2725.02:COURTS AUTHORIZED TO GRANT WRIT:The writ of
habeas corpus may be granted by the supreme court,court
of appeals,court of common pleas.R.C.§2725.01.Also SEE
OHIO CONSTITUTION ARTICLE IV §2.

R.C. §2725.01: Person's entitled to writ of habeas corpus,

Whoever is unlawfully restrained of his liberty or entitled to the custody of another of which custody such person is unlawfully deprived may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment restraint or deprivation.

1). On July 5th, 1996, petitioner was indicted by the Stark county grand jury in a (21) twenty-one count indictment charging petitioner with regard to counts, 1 Thru. 5, rape in violation of R.C. §2907.02, each count is supported by force specification in violation of R.C. §2907.02(A)(1)(b)(2), and R.C. §2941. counts, 11 Thru. 13, felonious sexual penetration in violation R.C. §2907.12, each count is supported by force specification in violation of R.C. §2941, R.C. §2907.12(B) (Former law).

2). Counts 17 Thru. 19, and (21) gross sexual imposition in violation of R.C. §2907.05 (Former law.)

3).A jury trial was held on Nov.14th,1996,the jury found the petitioner guilty of rape counts,1 Thru.5,with force specification in violation R.C.§2907.02;R.C.§2941;felonious sexual penetration,counts,11 Thru.13,with force specification and gross sexual imposition counts,17 Thru.19,and(21).But not guilty of counts 14,20.

4).Nov.17th,1996,trial court sentence the petitioner to six(6)mandatory life sentences,counts 1 Thru.5;and 11 Thru.13 and four(4) one years sentences on the remaining counts.Sentences are to be serve consecutive to each other.

5).Petitioner filed a motion/petition to dismiss the indictment case No.1996CR0627(A)in the trial arguing,

6).Trial court lack jurisdiction over petitioner criminal case based upon a defected indictment with regard to specific counts raised in the indictment.

7).Indictment fail to state the essential elements of the charge offense for which petitioner was convicted of.

8).Indictment fail to place the petitioner on notice of the charges against him so he may prepare an defense or plead to any judgment of double jeopardy clause inviolation of united states constitution amendments,5,6,and 14.

9).Trial court dismissed the petitioner action with out the respondent filing an answer to the action.

10.).Trial court refused to adjudicate petitioner jurisdictional question raised.

11).petitioner timely appeal the trial court judgment to the fifth appellate district court of appeals stark county ohio.

12).Appellate court fail to adjudicate trial court jurisdictional question.

13).Petitioner timely appeal the appellate court judgment before this supreme court of ohio,still pending.Now comes petitioner ask this supreme court of ohio a long standing jurisdictional question upon the same issue.

FRIST CAUSE OF ACTION:

14).Petitioner indictment does not state an offense or essential elements of the charge offense of rape 2907.02(A)(1)(b) (2),

nor gross sexual imposition 2907.05, and felonious sexual penetration 2907.12 under ohio law.

15).Counts 1 Thru.5;11 Thru.13,and 17 Thru.19,(21) raised in the indictment does not state the essential elements of the charge offense pursuant to ohio law.

16).RAPE R.C.§2907.02(A)(b)(2),no person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force. (Emphasis Added.)

17).GROSS SEXUAL IMPOSITION(former law)R.C.§2907.05(A)(3), no person shall have sexual contact with another not the spouse of the offender when any of the following apply,

(3).The other person or one of the other persons is less than thirteen years of age whether or not the offender knows the age of such person. (Emphasis Added.)

18).FELONIOUS SEXUAL PENTRATION(former law)R.C.§2907.12(B),Purposely compell to submit by force or threat of force(Emp hasis Added.)

19).Petitioner indictment only stated as to counts 1 Thru.5;and 11 Thru.13,mark ferrell did engage in sexual conduct with sue lawver not his spouse the said sue lawver being less than thirteen years of age inviolation of section 2907.02.

20).Counts 17 Thru.19,and 21,did have sexual contact with sue lawver not their spouse the said sue lawver being less than thirteen years of age inviolation of section 2907.05,did have sexual contact with kenneth dale lawver not their spouse the said kenneth dale lawver being less than thirteen years of age inviolation of section 2907.05.

21).Counts 11 Thru.13,did without privilege to do so insert a part of his body or an instrument apparatus or other object into the vaginal or anal cavity of sue lawver not his spouse said sue lawver being less than thirteen years of age inviolation of section 2907.12.

22).Not one of the essential elements of the charge charge offense are stated in the counts of the indictment.However,

23).The state of ohio attempted to curve the defect in the indictment by circimventing the essential elements of the charge offense through what they called a force specification raised in the defective counts mainly,counts,1 Thru.5;11 Thru.13.

24).These force specification counts cited in the indictment clearly show the essential elements of rape,felonious sexual penetration.Case on point;

25).FORCE SPECIFICATION TO COUNTS,1 Thru.5,

(A)purposely compelled sue lawver,dale lawver to submit to rape as defined in section 2907 02(A)(1)(b)of the ohio revised code by force or threat of force when sue,dale lawver was less than thirteen years of age pursuant to ohio revised code section 2907.02(b).

26).FORCE SPECIFICATION TO COUNTS,11 Thru.13,

Mark ferrell(A)purposely compelled sue lawver to submit to felonious sexual penetration as defind in section 2907.12,the ohio revised code by force or threat of force when sue, lawver was less than thirteen years of age pursuant to ohio revised code section 2907. 12(B).

27),Pursuant to ohio law R.C.§2941,specification statute the law does not provide for any specification for force or threat of force as stated in counts,1 Thru.5;11 Thru.13.

28).Not even the bill of particulars filed in this case can not curve the defectiveness of this indictment because the bill of particular reflect the counts raised in the indictment.

29).Since the indictment does not state a criminal offense,nor does this force specification exist under ohio law, the indictment is unconstitutional defected inviolation of the petitioner united states constitutional rights.

30).Based upon these facts raised,the trial court has jurisdiction over the petitioner case.ohio const.art.I§10 amend-ment 14 section 1 ohio const. I§16;art.4§4.

31).Petitioner is being unlawfully restrained of his liberty and or unlawfully deprived his right under the law,and on this fact insurance of this writ is warranted.

Submitted By:

Mark Ferrell

Mark Ferrell#332108.PO.BOX.901
Leavittsburg Ohio,44430.

Date:

March 5th, 2007

IN THE SUPREME COURT OF OHIO

MARK FERRELL,
Petitioner.

v

WARDEN D. BOBBY (TCI)
Respondent

Verification of the
Petition:

STATE OF OHIO
COUNTY OF TRUMBULLS

I Mark Ferrell #332108, being the affiant first duly cautioned to the penalty of perjury do solemnly swear and verify that all statements raised in this petition for writ of habeas corpus are true and correct to the best of my knowledge as stated.

Submitted By:

Mark Ferrell

Mark Ferrell #332108, P.O. BOX.
901, Leavittsburg Ohio, 44430.

Sworn to me notary public in
the state of Ohio, in county
of Trumbull subscribed before
me on this 5th day of March 07.

Mark Steven Burson

NOTARY



MARK STEVEN BURSON
Notary Public, State of Ohio
My Commission Expires 09-25-08

COURT'S JUDGMENT ENTRIES

IN THE SUPREME COURT OF OHIO

Case No. _____

STATE OF OHIO

Plaintiff-Appellee.

v

MARK FERRELL,

Defendant-Appellant.

On Appeal From The Stark
County Court Of Appeals
Fifth Appellate District
Ohio. Case No. 2006CA00236.

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT

MARK FERRELL

Mark Ferrell #332-108. P.O. BOX. 901,
Leavittsburg Ohio, 44430. Pro, Se,
Counsel.

John D. Ferrero, Prosecuting Attorney
For Stark County Ohio. 110 Central
Plaza, South Suite. 510. Canton Ohio
44702-1413. Counsel For Appellee.

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<u>Proposition of law one:</u>	
Does the trial court have exclusive Jurisdiction over an defected in - dictment under case No.1996CR0627(A) mainly,counts,1 Thru.5;11 Thru.13;and 17 Thru.19,(21)in violation of the appellant united states constitutional rights amendments,5,6,and 14,	10-14.
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APPENDIX~S

Judgment entry of the court of appeals fifth appellate district stark county ohio case No.2006CA00236.Also Judgment entry of the common pleas court stark county ohio,Case No.1996CR0627(A).

EXPLANATION OF WHY THIS CASE IS A CASE
PUBLIC GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves critical issues under the united states constitution amendments,5,6,and 14.Question;Whether the common pleas court have Jurisdiction over a defected criminal indictment,and or specific counts raised in the indictment.

Appellant indictment fail to state an criminal offense or the essential elements of the charge offense that would place appellant on notice of the charges against him,or give appellant an opportunity to prepare a defense,or prepare against a second prosecution upon the same offense.UNITED STATES v GIRONDA,758 F2d 1201,1209-10(7th cir.1995),

A court interpret an indictment is to determine if it fulfills three functions,it should state all of the elements of the offense charge;It should inform the defendant of the nature of the charge so that he may prepare a defense;It must enable the defendant to plead the Judgment as a bar to any later prosecution for the same offense.UNITED STATES v CALDWELL,176 F 3d.898,903(6th cir.1999.)UNITED STATES v JAMES,923 F2d.1261,1265 (7th cir.1991.)Also,

UNITED STATES v GATEWOOD,173 F3d.983,986-87(6th cir.1991),

Indictment fails to allege an offense under 18 USC§ 1001.does not include one of the elements of the offense a false statement the elements required to establish a violation of 18 USC§1001;

We conclude that the indictment is premised on a statement which on its face is not false,an indictment must include all of the elements of the offense because,a false statement is element of 18 USC§1001,the indictment is fatally defective.UNITED STATES v GIBSON,409 F3d.325,331-32(6th cir.2005)

In the case at bar,appellant indictment fail to state an criminal offense under ohio law R.C.§2907.02;R.C.§2907.05,and R.C.§2907.12.

State of ohio attempted to curve the defectiveness in the indictment by circimventing the essential elements of the offense through and what the state's call a FORCE SPECIFICATION pursuant to R.C.§2941.Each argued counts raised in the indictment is supported by this specification,a FORCE SPECIFICATION does not exist under ohio law R.C.§2941.

State of Ohio Just invented this force specification law to insert the essential elements of the offense to cure the defectiveness in the indictment.

On this fact alone the trial court has no Jurisdiction over the subject matters and or defected indictment for which the appellant is convicted of, in violation of his United States constitutional rights amendments, 5, 6, and 14. In Re: LOCKHART, 105 NE2d.35,

Habeas corpus is a recognized and approved remedy where Judgment or order which accused is sentence and imprisoned is void because, court imposing penalty was wholly without Jurisdiction or power to proceed in such manner. In Re: MALLORY, 476 NE2d. 1045, and STATE v NEGUSE, 594 NE2d. 1116, 1120 (OHIO App. 10. Dist. 1991),

In criminal cases in common pleas court, court Jurisdiction must be proved beyond reasonable doubt as element of offense since validity of any Judgment depends upon court having obtained Jurisdiction, If a defendant properly asserts the defense of lack of Jurisdiction, plaintiff has the burden of establishing the court Jurisdiction

Appellant has properly asserted the trial court lack Jurisdiction over the subject matters, and or criminal indictment to convict the appellant. However, state of ohio has not establish the trial court Jurisdiction over the argued case.

Appellate court refused to answer the united states constitutional question raised in this case. The court adjudicated appellant fail to object to the indictment at trial constitutes a waiver of the issue and motion to dismiss the indictment is barred under doctrine of res-Judicata, issue could have been raised on appeal [19]. DAVIS v WOLFE (ohio 2001) 751 NE2d. 1051, 1054-55;

The issue of subject matter Jurisdiction cannot be waived and can be raised at any time, when a court Judgment is VOID because the court lacked subject matter Jurisdiction, habeas corpus is generally an appropriate remedy despite the availability of appeal UNITED STATES v GATEWOOD, 173 F3d. 983, 986-87 (6th cir. 1999),

A defendant who contends that the indictment fails to establish Jurisdiction or charge an offense may raise that challenge at any time unless the defendant can show prejudice, a conviction will not be reversed where the indictment is challenged only after conviction; Unless the indictment can not with

in reason be construed to charge a crime. STATE v CARLEY (ohio App. 8. Dist. 2000) 745 NE2d. 1122, 1126; and UNITED STATES v HARROD, 168 F3d. 887, 890 (6th cir. 1999)

Harrod could file a motion to dismiss indictment for failure to state an offense, failure to state an offense falls with in the class of indictment defects that need not be brought before trial. UNITED STATES v FOLEY, 73 F3d. 484, 488 (2nd cir. 1996).

Appellate court failure to fairly adjudicate the appellant constitutional claims is just another way for the appellate court to assist the state of ohio in covering up the state criminal acts against the appellant.

This supreme court of ohio must accept subject matter jurisdiction over this case and order the appellant discharge of charges for which he is convicted of.

STATEMENT OF THE CASE:

On July 5th, 1996, defendant-appellant was indicted by the stark county grand jury in a (21) twenty-one count indictment charging the defendant with regard to counts, 1 Thru. 5 Rape in violation of R.C. §2907.02, each count is supported by a force specification in violation of R.C. §2907.02(A)(1)(b)(2), R.C. §2941.

Counts, 11 Thru. 13, Felonious sexual penetration in violation R.C. §2907.12, each count is supported by force specification in violation of R.C. §2907.12(B) (Former law) and R.C. §2941.

Counts, 17 Thru. 19, and (21) Gross sexual imposition in violation of R.C. §2907.05 (Former law).

A Jury trial was held on NOV. 14th, 1996, the Jury found the appellant guilty of rape counts, 1 Thru. 5; with force specification in violation of R.C. §2907.02; R.C. §2907.02(A)(1)(b)(2), R.C. §2941. Counts, 11 Thru. 13, felonious sexual penetration in violation of R.C. §2907.12, with a force specification in violation of R.C. §2941; R.C. §2907.12(B)

Counts, 17 Thru. 19, and (21) Gross sexual imposition in violation of R.C. § 2907.05. Counts, 14, and 20, appellant was found not guilty.

On NOV. 17th, 1996, trial court sentence the appellant to six (6) mandatory life sentences counts, 1 Thru. 5, and 11 Thru. 13, and four (4) one year sentences on the remaining counts. All sentences was order to be serve consecutive to each other.

On MAR. 31st, 2006, appellant filed a motion/petition to dismiss the indictment in the trial court in the entitled case STATE v FERRELL Case No. 1996CR0627(A).

State of Ohio fail to file an response to the appellant movement to establish the trial court Jurisdiction. MAY 10th, 2006, appellant filed a motion in the trial court for oral arguments of motion Loc. R. 10.01; 02, and to move for Judgment on the proceeding CrimR. 12(c) Civ. R. 12, 8. order for a hearing.

State of ohio fail to respond to that motion. On July 21st, 2006, trial court over ruled all proceedings and appellant timely appeal the trial court judgment to the court of appeals fifth appellate district stark county ohio.

FEB. 5th, 2007, appellate court affirmed the trial court judgment asserted, appellant makes no effort to provide legal authority for seeking dismissal of indictment via motion in the trial court ten years after conviction, appellant fail to object constitutes waiver and appellant is barred under doctrine of res judicata;

Appellant fail to demonstrate the requirements of R.C. 2953.23(A)(1).

Now comes the appellant appeal to this supreme court of ohio from the judgment render by the court of appeal.

STATEMENT OF THE FACTS:

Appellant asked one united states constitutional question, does the trial court have subject matter Jurisdiction over the entitled case STATE v FERRELL Case No.1996CR0627(A)base upon an defected indictment,whereas,trial court lack Jurisdiction to consider each and every count raised in the indictment inviolation of the appellant united states constitutional right amendments 5,6,and 14.

In the instant case,specific counts raised in the appellant indictment fail to state an criminal offense,or essential elements of the charge offense.Mainly counts;1 Thru.5,11 Thru.13,and 17 Thru.19,and(21)does not state the essential elements of the charge for which the appellant is convicted of.rape R.C.§2907.02;R.C.§2907.02 (A)(1)(b)(2),R.C.§2941.and R.C.§2907.12,felonious sexual penetration R.C.§2907.12(B)R.C.§2941.Also gross sexual imposition R.C.§2907.05.

Ohio law provides,

Rape R.C.§2907.02(A)(b)(2),(Emphasis Added.)

(2).No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

Gross sexual imposition(Former law R.C.§2907.05(A)(3))

(A).No person shall have sexual contact with another not the spouse of the offender when any of the following apply;

(3).The other person or one of the other person is less than thirteen years of age whether or not the offender knows the age of such person

Felonious sexual penetration(Former law R.C.§2907.12(B),

(B).Purposely compell to submit by force or threat of force.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW:

PROPOSITION OF LAW ONE:

Does the trial court have exclusive Jurisdiction over an defected indictment under case No.1996GR0627(A) Mainly,counts,1 Thru.5;11 Thru.13;and 17 Thru.19,(21) inviolation of the defendant-appellant united states constitutional rights amendments,5,6,and 14.

Appellant indictment fail to state any criminal offense whatsoever that would place him on notice of the charges against him, or to plea the judgment to second prosecution upon the same charges, nor prepare a defense to said charges.

Mainly, counts, 1 Thru. 5 which only states, Mark Ferrell did engage in sexual conduct with sue lawver not his spouse the said sue lawver being less than thirteen(13)years of age inviolation of section 2907.02.

Counts, 17 Thru. 19, and (21) states, did have sexual contact with sue lawver not their spouse the said sue lawver being less than thirteen years of age inviolation of section 2907.05.

Counts, 11 Thru. 13, did without privilege to so do insert a part of his body or an instrument apparatus or other object into the vaginal or anal cavity of sue lawver not his spouse said sue lawver being less than thirteen(13)years of age inviolation section 2907.12. (See App. Indictment)

This language in these counts are only definitions of R.C. §2907.01, in-part, but not the essential elements of the charge offenses. The element of rape, and felonious sexual penetration R.C. § 2907.02(b)(2), and R.C. §2907.12(B), is force or threat of force, counts 1 Thru. 5; 11 Thru. 13. Also,

Essential elements of gross sexual imposition is gratification or arousing R.C.§2907.05(A), STATE v SCHAIN(ohio.1992) 600 NE2d.661,665;Counts,17 Thru.19,(21).and UNITED STATES v GATEWOOD 173 F3d.983,986-87(6th cir.1991),

Indictment fails to allege an offense under 18 USC§ 1001,specifically,the indictment does not include one of the elements of the offense a false statement,element required to establish a violation of 18 USC§1001;

The indictment is fatally defective.UNITED STATES v GIBSON,409 F3d.325,331-32(6th cir.2005).

The state of ohio attempted to curve this defect by inventing a new law,or criminal code R.C.§2941,Force specification and circumventing the essential element of the offense into the indictment.

Counts,1 Thru.5;and 11 Thru.13,clearly states,force specification;

(A).purposely compelled sue lawver,dale lawver to submit to rape as defined in section 2907.02(A)(1)(b)(2)of the ohio revised code by force or threat of force, when sue,dale lawver was less than thirteen years of age pursuant to ohio revised code section 2907.02(b).

Counts, 11 Thru. 13, clearly states, force specification:
mark ferrell(A) purposely compelled sue lawver to submit
to felonious sexual penetration as defined in section
2907.12, the ohio revised code by force or threat of
force when sue lawver was less than thirteen years of age
pursuant to ohio revised code section 2907.12(B).

Ohio law R.C. §2941. specification does not have an
section or criminal statute which provide for such an criminal
specification. (See App. Indictment.) Also the bill of partclars in
this case can not curve the unconstitutional defectiveness in the
indictment. UNITED STATES v CRAYTON, 357 F3d. 560, 568-69 (6th cir. 2004)

The function of a bill of partculars is to minmze
surprise and assist the defendant in obtaining the
information need to prepare a defense and to preclude
a second prosecution for the same crimes. UNITED STATES
v SALISBURY, 983 F2d, 1369, 1374-76 (6th cir. 1993),

The problem is not that the prosecution failed to set out
a sufficiently detailed factual basis to support its charge
but the statute proscribing multiple voting fails to provide
sufficient guidance to notify defendant her activities were
included in its prohibition against multiple voting,

The indictment constitutionally invalid,additional information provided by bill of particulars could not cured the constitutional infirmity of indictment because,failure of 47 USC§1973,to establish what Salisbury did constituted voting more than one could not have been remedied,a bill of particulars cannot be used to other wise invalid indictment.

The bill of particulars filed in this case MIRROR the counts raised in the indictment.and there can not be any doubt the appellant indictment is invalid inviolation of his united states constitutional rights.

CONCLUSION:

Thereby,this court must accept Jurisdiction over the united states constitutional violation raised in this case,because the record clearly show the trial court LACK Jurisdiction over the entitled case.

Submitted By:

Mark Ferrell

Mark Ferrell#332-108.PO.BOX.901
Leavittsburg Ohio,44430.

CERTIFICATE OF SERVICE:

I certify that I have sent a true copy of this foregoing to appellee counsel of record, John D. Ferrero, prosecuting attorney for stark county ohio. 110 central plaza, south suite 510. canton ohio 44702-1413. on this _____ day of _____ 07. By first class u.s. mail postage prepaid.

Submitted By:

Mark Ferrell

Mark Ferrell #332108. P.O. BOX. 901,
Leavittsburg ohio, 44430.

APPENDIX-S

PHIL G. GIAVASIS
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

07 FEB -5 PM 3: 02

STATE OF OHIO

Plaintiff-Appellee

-vs-

MARK FERRELL

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. John F. Boggins, J.

Case No. 2006 CA 00236

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 1996 CR 0627(A)

JUDGMENT:

Affirmed

(H)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

KATHLEEN O. TATARSKY
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, Ohio 44702-1413

For Defendant-Appellant

MARK FERRELL, PRO SE
INMATE NO. 332-108
Post Office Box 901
Leavittsburg, Ohio 44430

ENTERED BY 19

A TRUE COPY TESTED:
PHIL G. GIAVASIS, CLERK
By J. Edickinger Deput
1/12/07

Wise, J.

{11} Appellant Mark Ferrell appeals from the denial of his post-conviction motion to dismiss indictment in the Stark County Court of Common Pleas. The appellee is the State of Ohio. The relevant procedural facts leading to this appeal are as follows.

{12} In 1996, appellant was convicted on three counts of rape with force specifications, three counts of felonious sexual penetration with force specifications, and four counts of gross sexual imposition. The victims were his two step-children, both under the age of thirteen at the time of the offenses. Appellant was sentenced to six mandatory life sentences and four one year sentences. The trial court ordered the sentences to be served consecutively. On direct appeal, this Court affirmed the convictions and sentences. See *State v. Ferrell* (March 9, 1998), Stark App.No.1997-CA-00005.

{13} In May 1998, appellant filed a petition for post-conviction relief, which the trial court dismissed without a hearing. See *State v. Ferrell* (August 21, 1998), Stark County Common Pleas No.1998-MI-000045. Appellant did not appeal this judgment.

{14} In May 2002, appellant filed a motion for a new trial, pursuant to R.C. 2945.79(B) and R.C. 2945.80. The trial court overruled the motion for new trial, and this Court affirmed on delayed appeal. See *State v. Ferrell*, Stark App.No. 2002CA00272, 2003-Ohio-3134.

{15} Appellant filed a second petition for post-conviction relief on August 15, 2002. The trial court also dismissed this petition, and appellant filed an appeal therefrom. On June 16, 2003, this Court affirmed the dismissal. See *State v. Ferrell*, Stark App.No. 2002CA00423, 2003-Ohio-3137.

{¶6} On March 31, 2006, appellant filed a motion to dismiss his 1996 indictment. On July 21, 2006, the trial court overruled appellant's motion and request for hearing. On August 15, 2006, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶7} "I. TRIAL COURT ERROR (SIC) WHEN THE COURT OBTAIN (SIC) EXCLUSIVE JURISDICTION OVER AN DEFECTED (SIC) CRIMINAL INDICTMENT UNDER CASE NO. 1996-CR-0627(A) THAT IS IN CLEAR VIOLATION OF THE DEFENDANT (SIC) UNITED STATES CONSTITUTIONAL RIGHTS[,] AMENDMENTS 5, 6, 14."

I.

{¶8} In his sole Assignment of Error, appellant contends the trial court erred in denying his claim that his 1996 indictment was defective. We disagree.

{¶9} Appellant herein makes no effort to provide legal authority for seeking dismissal of an indictment, via a motion in the trial court, nearly ten years after conviction. The Ohio Supreme Court has recognized that the failure to object to an indictment at trial constitutes waiver of the issue. See *State v. Barton*, 80 Ohio St.3d 402, 2006-Ohio-1324. Because appellant failed to raise this issue at trial or on direct appeal, we hold he would be barred from raising it at this stage in his "motion to dismiss indictment" under the doctrine of res judicata. Cf. *State v. Jennings* (Nov. 5, 2001), Richland App.No. 01CA62, 2001-Ohio-1742. Furthermore, assuming appellant intended his motion to be formally treated as a successive post-conviction petition, we find appellant fails to demonstrate compliance with the requirements of R.C. 2953.23(A)(1).

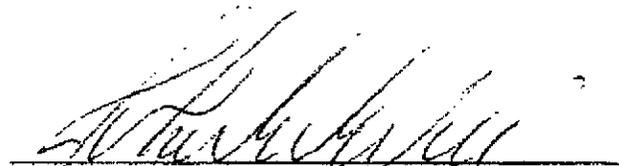
{¶10} Appellant's sole Assignment of Error is therefore overruled.

{¶11} For the foregoing reasons, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

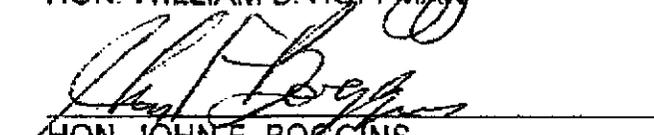
Boggins, J., concur.



HON. JOHN W. WISE



HON. WILLIAM B. HOFFMAN



HON. JOHN F. BOGGINS

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

MARK FERRELL

Defendant-Appellant

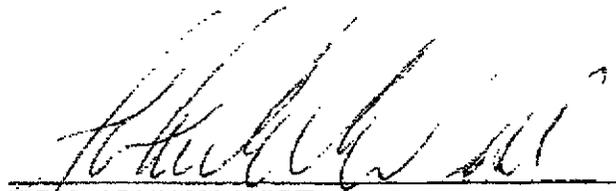
JUDGMENT ENTRY

Case No. 2006 CA 00236

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CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs to appellant.


HON. JOHN W. WISE


HON. WILLIAM B. HOFFMAN


HON. JOHN F. BOGGINS

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

JUL 21 1996
CLERK

STATE OF OHIO,) Case No. 1996CR0627A
)
Plaintiff)
)
vs.) JUDGE HAAS
)
MARK FERRELL,) JUDGMENT ENTRY
)
Defendant)

This matter came on for consideration on the defendant's motion for Judgment on Proceedings and Motion to Dismiss the Indictment. Upon full review, the Court finds said motion not well taken and hereby overrules the same.

It is therefore Ordered that defendant's motion and request for hearing be and hereby is overruled.



JOHN G. HAAS, JUDGE

Copies to:
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