

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-0085

Corey Williams,

:

Appellant,

:

Case No. 09-11-056

-VS-

:

Leann Walker-Williams,

:

On Appeal from the
Marion County Court
of Appeals, Third
Appellate District

Appellee,

:

APPELLANT COREY WILLIAMS MERIT BRIEF

Corey Williams (591730)
North Central Correctional
Complex,
670, Marion Williamsport Rd.,
East,
Marion, Ohio. 43302

Appellant, Pro se

Morgan A. Linn (0084622)
Assistant Attorney General
Criminal Justice Section, Habeas
Unit,
150 E. Gay Street, 16th Floor,
Columbus, Ohio. 43215,
Phone: (614) 644-7233,

Counsel for Appellee, Leann Walker-Williams

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT.....	2
<u>Proposition of Law No. I:</u>	
The Court of Appeals erred resulting in prejudice to the Appellant where the Court granted Appellee motion to dismiss for failure to state a claim upon which relief can be granted.....	2
<u>Proposition of Law No. II:</u>	
Did the Court of Appeals erred in dismissing the Appellant's Habeas Corpus Petition by overruling Flynt v. Dinkelacker, 156 Ohio App.3d 595, 2004-Ohio-1695, ¶26 (parties cannot agree to alter the law).....	3
CONCLUSION.....	4
PROOF OF SERVICE.....	4
APPENDIX	
	<u>Page</u>
Notice of Appeal to the Supreme Court (January 17, 2012).....	1
Judgment Entry of the Marion County Court of Appeals (January 5, 2012).....	2
<u>STATUTES AND RULES:</u>	
Civ.R.8(A).....	3
Crim.R.7(D).....	4

TABLE OF AUTHORITIES

CASES:

	<u>Page</u>
Flynt v. Dinkelacker, 156 Ohio App.3d 595.....	3 & 4
Hanson v. Guernsey Cty. Bd. of Commis. 65 Ohio St.3d 545..	2
Seikbert v. Wilkinson, 69 Ohio St.3d 489.....	2

RULES OF LAW:

Civ.R.8(A).....	2 & 3
Crim.R.7(D).....	3

STATEMENT OF THE FACTS

Appellant, Corey Williams was indicted by the Erie County Grand Jury on two counts of Rape a violation of R.C.2907.02(A)(1)(b) as to Counts one and two; One count of Disseminating Matter Harmful to Juveniles, a violation of R.C.2907.31(A)(1) as to Count three; two Counts of Illegal Use of a Minor in a Nudity-Oriented Material or Performance a violation of R.C.2907.323(A)(1) as to Counts four and five; and one Count of Kidnapping a violation of R.C.2905.01(A)(4), all involving one alleged victim under the age of thirteen. Case No. 2009-CR-291.

Pursuant to a plea agreement negotiated by appellant's attorney and the State prosecutor (assistant), appellant was advised to plead guilty to a lesser charge on Count one, Attempted Gross Sexual Imposition, a violation of R.C.2907.05 and R.C.2923.02, and a lesser charge on Count Six, Endangering Children, a violation of R.C.2919.22(A); the prosecution dismissed the remaining Counts in the indictment. Also, appellant stipulated to classification as a Tier I sex offender. See Respondent's Motion to Dismiss, at 2.

On September 1, 2010, appellant was sentence to a total of two years for both Counts. The Counts were to be served concurrently to one another, but to run consecutively to his sentence in Case No. 2007-CR-442, for a total prison sentence of two years and ten months. Id. at 2.

According to law, the grand jury never found cause to charge the Attempted Rape or the Endangering Children, in order to negotiate such charges, and there is no indication appellant was re-indicted, nor ever charged by information or complaint. Id. at 2.

CONTINUED FROM PAGE ONE

Specifically, Crim.R.7(D), does not provide for negotiated pleas to amend charges that changes the name or identity of the crime.

Rather, Crim.R.7(D) prohibits amendments that changes the name or identity of the of the crime charged. See Crim.R.7(D) annexed hereto.

As a proposition of Law, Parties cannot agree to alter the law. State Ex Rel. Flynt v. Dinkelacker, 156 Ohio App.3d 595, 2004-Ohio-1695, ¶26.

Proposition of Law No.1:

The Court of Appeals erred resulting in prejudice to the Appellant where the Court granted Appellee motion to dismiss for failure to state a claim upon which relief can be granted.

In order to dismiss a complaint for failure to state a claim upon which relief can be granted, the court must find beyond doubt that plaintiff can prove no sets of facts warranting relief after it presumes all factual allegations in the complaint are true, and construes all reasonable inferences in plaintiff's favor. State ex rel. Seikbert v. Wilkinson (1994), 69 Ohio St.3d 489, 490, 633 N.E. 2d 1128.

State a claim upon which relief can be granted is a procedural motion that tests the sufficiency of the complaint. State ex rel. Hanson v. Guernsey Cty. Bd. of Commis. (1993), 65 Ohio St.3d 545, 548, 605 N.E.2d 378.

Therefore, the applicable rule in this case is Civ.R.8(A) that provides in pertinent part:

"A pleading that sets forth a claim for relief whether an original claim, counterclaim, crossclaim, or third partyclaim, shall contain (1) A short and plain statement of the claim showing that the party is entitled to relief, and (2) A demand for judgment for the relief to which the party claims to be entitled."

In reviewing the facts of the habeas corpus petition, however, disclosed that appellant in essence asserted a cause of action, at ¶3, which provides:

"The cause of petitioner's imprisonment is an act for which the court lack jurisdiction."

This short and plain statement is sufficient to state a claim upon which relief can be granted under Civ.R.8(A). therefore, having established the first prong, the second prong is demonstrated at ¶11, of the habeas corpus petition, which provides:

"¶11. Wherefore, petitioner prays a writ in habeas corpus be issued to said Respondent and that he may be discharged from said unlawful imprisonment and restraint."

After having presumed all factual allegations in the complaint are true, and having construed all inferences in appellant's favor and reviewing both prongs of Civ.R.8(A) were present, it does not appear beyond doubt that appellant can prove no sets of facts warranting relief. Thus, the judgment of the Court of Appeals must be reversed.

Proposition of Law No.2:

Did the Court of Appeals erred in dismissing the Appellant's Habeas Corpus Petition by overruling Flynt v. Dinkelacker, 156 Ohio App.3d 595, 2004-Ohio-1695, ¶26 (parties cannot agree to alter the law).

In this present case, appellant asserted that the court lacks jurisdiction over the attempted gross sexual imposition, and the endangering children offenses, explaining that he was not charged with such offenses and Crim.R.7(D) , does not provide for amending charges that changes the name or identity of the offense, citing Flynt v.Dinkelacker, 156 Ohio App.3d 595, 2004-Ohio-1695, ¶26, for the proposition of law that "parties cannot agree to alter the law." See the habeas corpus petition at paragraphs 5, 6, and 7.

However, the Third District Court of Appeals disagreed with the First District in *Flynt v. Dinkelacker*, 156 Ohio App.3d 595, 2004-Ohio-1695, at ¶26, for the proposition of law that parties cannot agree to alter the law, and ruled "Petitioner agreed to an amendment of the charges as part of his negotiated plea of guilty." See the Court of Appeals judgment entry, at page 2.

Now the question arises, Did the Court of Appeals erred in dismissing the appellant's habeas corpus petition by overruling *Flynt v. Dinkelacker*, 156 Ohio App.3d 595, 2004-Ohio-1695, ¶26 (parties cannot agree to alter the law)?

CONCLUSION

Based upon the foregoing this Honorable Supreme Court of Ohio should rule in favor of *Flynt v. Dinkelacker*, 156 Ohio App.3d 595, for the proposition of law that parties cannot agree to alter the law and reverse the Court of Appeals judgment and allow the writ of habeas corpus relief asserted in the habeas corpus petition.

Respectfully submitted,

Corey A. Williams 591-730
Appellant, Corey Williams,
Inmate No. 591-730,
North Central Correctional
Complex, P.O. Box 1812,
Marion, Ohio. 43302.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLANT'S MERIT BRIEF was sent by regular U.S. Mail to Morgan A. Linn, at 150 East Gay Street, 16th Floor, Columbus, Ohio. 43215, this __, day of February, 2012.

Corey J. Williams .

APPENDIX

	<u>Page</u>
Notice of Appeal to the Supreme Court (January 17, 2012).....	1
Judgment Entry of the Marion County Court of Appeals (January 5, 2012).....	2
<u>Rules of Law:</u>	
Civ.R.8(A).....	3
Crim.R.7(D).....	4

IN THE SUPREME COURT OF OHIO

Corey Williams,

Appellant,

-VS-

Leann Walker-Williams,

Appellee.

12-0085

On Appeal from the Marion
County Court of Appeals,
Third Appellate District

Court of Appeals
Case No.9-11-56

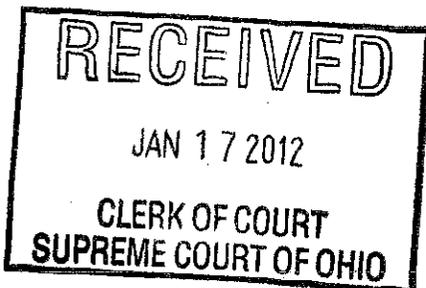
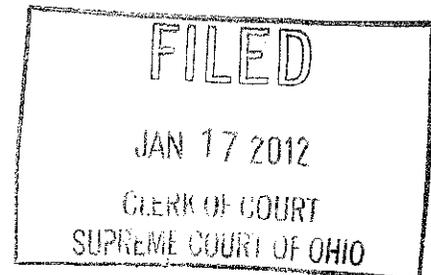
NOTICE OF APPEAL OF APPELLANT COREY WILLIAMS

Corey Williams (591-730)
N.C.C.I.
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Marion, Ohio. 43302

Appellant, Pro se.

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Assistant Attorney General
Criminal Justice Section, Habeas Unit
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Columbus, Ohio. 43215
Phone: (614) 644-7233

Counsel for Appellee, Leann Walker-Williams.



NOTICE OF APPEAL OF APPELLANT COREY WILLIAMS

Appellant Corey Williams hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Marion County Court of Appeals, Third Appellate District, entered in Court of Appeals case No. 9-11-56 on January 5, 2012.

This case originated in the Court of Appeals invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. S.Ct., Prac.R.2.1(A)(1).

Respectfully submitted,

Corey J. Williams 591-730
Appellant, Corey Williams,
Pro se.

CERTIFICATE OF SERVICE

I certify that a true copy of this Notice of Appeal was sent by ordinary U.S. Mail to counsel for appellee, Morgan A. Linn, at Criminal Justice Section, Habeas Unit, 150 E. Gay St., 16th Fl., Columbus, Ohio. 43215, this 12 day of January, 2012.

Respectfully submitted,

Corey J. Williams 591-730

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

STATE OF OHIO EX REL.,
COREY J. WILLIAMS,

PETITIONER,

v.

LEANN WALKER-WILLIAMS,
ACTING WARDEN, NORTH CENTRAL
CORRECTIONAL INSTITUTION,

RESPONDENT.

FILED
COURT OF APPEALS

JAN 05 2012

MARION COUNTY OHIO
JULIE M. NASEL, CLERK

CASE NO. 9-11-56

J U D G M E N T
E N T R Y

This cause comes before the Court for determination of the petition for writ of habeas corpus and Respondent's Motion to Dismiss.

Petitioner asserts that he is unlawfully detained by Respondent and entitled to immediate release from confinement because the trial court lacked jurisdiction to enter a judgment of conviction on charges that do not appear in the indictment. The judgment of conviction and sentence reflects that Petitioner entered negotiated pleas of guilty to two amended charges in exchange for the prosecution dismissing numerous other charges. The plea agreement reflects that Petitioner agreed to the amendments, sentence, and sexual offender classification.

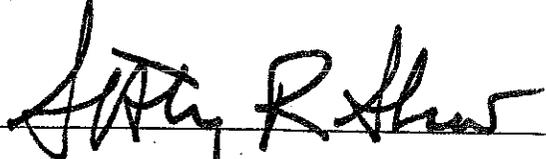
Upon consideration of same, the Court finds that the petition fails to state any claim for relief in habeas corpus. See *Ellis v. McMackin* (1992), 65 Ohio St.3d 161; *Chapman v. Jago* (1976), 48 Ohio St.2d 51; *Burch v. Morris* (1986), 25

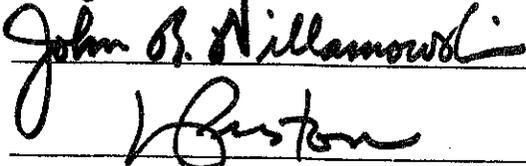
Case No. 9-11-56

Ohio St.3d 18. Alleged errors in sentencing are not cognizable in a habeas corpus proceeding. *Dean v. Maxwell* (1963), 174 Ohio St. 193. Moreover, habeas corpus is not the proper remedy to challenge either the validity or the sufficiency of an indictment. *Luna v. Russell* (1994), 70 Ohio St.3d 561; see, also, *Wooten v. Brunsman*, 112 Ohio St.3d 153, 2006-Ohio-6524; *Bozsik v. Hudson*, 110 Ohio St.3d 245, 2006-Ohio-4356; and *Turner v. Ishee*, 98 Ohio St.3d 411, 2003-Ohio-1671. Habeas corpus is an extraordinary writ, not a substitute for direct appeal or post conviction relief. *Walker v. Maxwell* (1965), 1 Ohio St.2d 136.

Petitioner agreed to an amendment of the charges as part of his negotiated plea of guilty. Petitioner is clearly restrained by virtue of a judgment of a court of record that had jurisdiction to issue the judgment, and a writ of habeas corpus will not issue. R.C. 2725.05.

It is therefore **ORDERED, ADJUDGED and DECREED** that the petition for writ of habeas corpus be, and hereby is, dismissed at the costs of Petitioner for which judgment is hereby rendered.





JUDGES

DATED: JANUARY 4, 2012
/hlo

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JAN 17 2012
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SUPREME COURT OF OHIO

APPENDIX E. AFFIDAVIT OF INDIGENCY

IN THE SUPREME COURT OF OHIO

Affidavit of Indigency

12-0085

I, Corey Williams, do hereby state that I am without the necessary funds to pay the costs of this action for the following reason(s)*:

I am incarcerated at the North Central Correctional Complex
and I only receive \$18 a month for state pay.

If you require additional space for your statement of reasons, you may continue on the back side of this form.

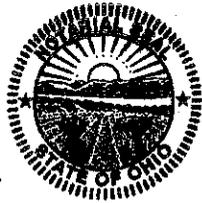
Pursuant to Rule 15.3, of the Rules of Practice of the Supreme Court of Ohio, and for the reasons stated above, I am requesting that the filing fee and security deposit, if applicable, be waived.

RECEIVED
JAN 17 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Corey J. Williams
Affiant

and subscribed in my presence this 17th day of January, 2011.**

Shelley L. Curry
Notary Public



Shelley L. Curry
Notary Public
State of Ohio
My Commission Expires April 4, 2016

My Commission Expires: _____

* S.Ct. Prac. R. 15.3(A) requires your affidavit of indigency to state the reason(s) you are unable to pay the docket fees and/or security deposit. Failure to state specific reasons that you are unable to pay will result in your affidavit being rejected for filing by the Clerk.
**This affidavit must be executed not more than six months prior to being filed in the Supreme Court in order to comply with S.Ct. Prac. R. 15.3(A). Affidavits not in compliance with that section will be rejected for filing by the Clerk.

(4) All motions shall be signed in accordance with Rule 11.

(C) Demurrers abolished

Demurrers shall not be used.

(Adopted eff. 7-1-70; amended eff. 7-1-84)

Civ R 8 General rules of pleading

(A) Claims for relief

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled. If the party seeks more than twenty-five thousand dollars, the party shall so state in the pleading but shall not specify in the demand for judgment the amount of recovery sought, unless the claim is based upon an instrument required to be attached pursuant to Civ. R. 10. At any time after the pleading is filed and served, any party from whom monetary recovery is sought may request in writing that the party seeking recovery provide the requesting party a written statement of the amount of recovery sought. Upon motion, the court shall require the party to respond to the request. Relief in the alternative or of several different types may be demanded.

(B) Defenses; form of denials

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the denials as specific denials or designated averments or paragraphs, or the pleader may generally deny all the averments except the designated averments or paragraphs as the pleader expressly admits; but, when the pleader does intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Civ. R. 11.

(C) Affirmative defenses

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, want of consideration for a

negotiable instrument, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(D) Effect of failure to deny

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(E) Pleading to be concise and direct; consistency

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(F) Construction of pleadings

All pleadings shall be so construed as to do substantial justice.

(G) Pleadings shall not be read or submitted

Pleadings shall not be read or submitted to the jury, except insofar as a pleading or portion thereof is used in evidence.

(H) Disclosure of minority or incompetency

Every pleading or motion made by or on behalf of a minor or an incompetent shall set forth such fact unless the fact of minority or incompetency has been disclosed in a prior pleading or motion in the same action or proceeding.

(Adopted eff. 7-1-70; amended eff. 7-1-94)

Civ R 9 Pleading special matters

(A) Capacity

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue

shall have the same functions, powers, facilities and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

RULE 7. THE INDICTMENT AND THE INFORMATION

(A) Use of Indictment or Information. A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

Where an indictment is waived, the offense may be prosecuted by information, unless an indictment is filed within fourteen days after the date of waiver. If an information or indictment is not filed within fourteen days after the date of waiver, the defendant shall be discharged and the complaint dismissed. This division shall not prevent subsequent prosecution by information or indictment for the same offense.

A misdemeanor may be prosecuted by indictment or information in the court of common pleas, or by complaint in courts inferior to the court of common pleas. An information may be filed without leave of court.

(B) Nature and Contents. The indictment shall be signed in accordance with Crim. R. 6(C) and (F) and contain a statement that the defendant has committed a public offense specified in the indictment. The information shall be signed by the prosecuting attorney or in the name of the prosecuting attorney by an assistant prosecuting attorney and shall contain a statement that the defendant has committed a public offense specified in the information. The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. Each count of the indictment or information shall state the numerical designation of the statute that the defendant is alleged to have violated. Error in the numerical designation or omission of the numerical designation shall not be ground for dismissal of the indictment or information, or for reversal of a conviction, if the error or omission did not prejudicially mislead the defendant.

(C) Surplusage. The court on motion of the defendant or the prosecuting attorney may strike surplusage from the indictment or information.

(D) Amendment of Indictment, Information, or Complaint. The court may at any time before, during, or after a trial amend the indictment, information, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. If any amendment is made to the substance of the indictment, information, or complaint, or to cure a variance between the indictment, information, or complaint and the proof, the defendant is entitled to discharge of the jury on the defendant's motion, if a jury has been impanelled, and to a reasonable continuance, unless it clearly appears from the whole proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which the amendment is made, or that the defendant's rights will be fully protected by proceeding with the trial, or by a postponement thereof to a later day with the same or another jury. Where a jury is discharged under this division, jeopardy shall not attach to the offense charged in the amended indictment, information, or complaint. No action of the court in refusing a continuance or postponement under this division is reviewable except after motion to grant a new trial therefor is refused by the trial court, and no appeal based upon such action of the court shall be sustained nor reversal had unless, from consideration of the whole proceedings, the reviewing court finds that a failure of justice resulted.

(E) Bill of Particulars. When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charged and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

[Amended effective July 1, 1993.]

Staff Note (July 1, 1993 Amendment)

Rule 7(A) Use of indictment or information.

The only changes to this division are the substitution of gender neutral language; no substantive change is intended.

Rule 7(B) The indictment and the information.

Criminal Rule 7(B) deals with the nature and contents of the indictment or information.

With respect to indictments, there are two amendments to the language of division (B). First, the indictment, the charging instrument nearly always used, no longer requires the signature of the prosecuting attorney or an assistant prosecuting attorney. R.C. 2941.06, which suggests the form of an indictment and provides for signature by the prosecutor, says that the suggested form "may" be used. Moreover, there is case authority that the failure of the prosecuting