

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

LAURENCE E. STEWART

Defendant-Appellant.

Case No. **12-1586**

On Appeal from the WASHINGTON
County Court of Appeals
FOURTH Appellate District

C.A. Case No. **11-CA-26**

NOTICE OF APPEAL OF APPELLANT LAURENCE E. STEWART

LAURENCE E. STEWART #A328065
NAME AND NUMBER
HOCKING CORRECTIONAL FACILITY
INSTITUTION
16759 SNAKE HOLLOW RD. P.O. Box 59
ADDRESS
NELSONVILLE, OHIO 45764-0059
CITY, STATE & ZIP
(740)-753-1917 FAX (740) 753-4277
PHONE

DEFENDANT-APPELLANT, PRO SE

ALISON L. CAUTHORN, ATT. GEN.
PROSECUTOR NAME
205 Putnam Street
ADDRESS
MARIETTA, OHIO 45750
CITY, STATE & ZIP
Assistant Prosecuting Att. Gen.
PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

FILED
SEP 18 2012
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

LAWRENCE E. STEWART

Defendant-Appellant.

Case No. _____

On Appeal from the WASHINGTON
County Court of Appeals
FOURTH Appellate District

C.A. Case No. 11-CA-26

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LAWRENCE E. STEWART

LAWRENCE E. STEWART #A328065
NAME AND NUMBER
HOCKING CORRECTION FACILITY
INSTITUTION
16759 SNAKE HOLLOW Rd. - P.O. Box 59
ADDRESS
NELSONVILLE, OHIO 45764-0059
CITY, STATE & ZIP
(740) 753-1917 FAX (740) 753-4277
PHONE

DEFENDANT-APPELLANT, PRO SE

ALISON L. CAUTHORN, Attorney
PROSECUTOR NAME
205 PUTNAM STREET
ADDRESS
MARIETTA, OHIO 45750
CITY, STATE & ZIP
ASSISTANT PROSECUTING Attorney
PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

LAWRENCE STEWART

Defendant-Appellant.

: Case No. _____

: C.A. Case No. 11-CA-26

AFFIDAVIT OF INDIGENCY

I, LAWRENCE STEWART, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

I am currently incarcerated at the Hocking Correctional Facility and I have been incarcerated since 1996. I work at the prison but receive only \$19.⁰⁰ dollars per month.

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

Lawrence Stewart
AFFIANT

Sworn to, or affirmed, and subscribed in my presence this 12th day of September

2012
[Signature]
Notary Public

My Commission Expires: 7-25-15

[Note: 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. Affidavits not in compliance with that section will be rejected for filing by the Clerk.]

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.

Appellant was originally sentenced on April 12th 1996, just 3 months prior to S.B. No. 2 - Ohio Felony Sentencing Law. In October 1999 Appellant was returned to Washington County and the Court labeled him as a Sexual Predator using these same S.B. No. 2 Felony Sentencing scheme. The Court assigned me a public defender to file my appeal under this Sexual Predator status and nobody thru the Washington County Public Defenders Offices ever filed any appeal for Stewart, your Appellant, (see - States Response - dated April 1999 2002 - to Defendants "Motion for Resentencing and New Trial" - Attached)

Your Appellant believes that the Great General Interest + Public Interest in this case would be surrounding the total disregard of the Public Defenders Officers pertaining to Appellants Constitutional Rights of Ineffective Assistance of Counsel and Subjecting Appellant to a true violation of the Double Jeopardy Clause to the U.S. Constitution and the Ohio Constitution. Judge Lane ordered your Appellants Prior Public Records sealed before Appellants Jury Trial making any previous events associated with Appellants personal involvements with the Chief Officer of the Washington County Public Defenders Officer impossible to introduce as exculpatory evidence proving probable causes beyond a reasonable doubt that reasonable minds and triers of fact would have reached a different verdict and found Appellant not guilty. Appellants Equal Protection Clause of the U.S. Constitution and the Ohio Constitution is guaranteed by the Fourteenth + Fifteenth Amendments + Ohio Bill of Rights § 2 Ohio Constitution outlined by Judge Abele and Rev. Code § 5745.01 - Duration of sentences. Appellant is a disabled, legally blind litigant who is constantly denied binding Ohio Rules of Criminal and Appellate Procedures by Washington County Ohio Judges, I remain under disability status.

NOTICE OF APPEAL OF APPELLANT LAWRENCE F. STEWART

Appellant LAWRENCE STEWART hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the WASHINGTON County Court of Appeals, FORTH Appellate District, entered in Court of Appeals Case No. 11CA26 on 8-13, 12.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Lawrence F. Stewart #A328065
SIGNATURE
LAWRENCE F. STEWART #A328065
NAME AND NUMBER
HOCKING CORR FACILITY
INSTITUTION
16759 SWAKE HOLLOW Rd - P.O. Box 59
ADDRESS
NEILSONVILLE, OHIO 45264-0059
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

un give it on here

UNDER ADA GUIDELINES
A WRIT UNDER EXTRAORDINARY
CIRCUMSTANCES
Before This Supreme Court of Ohio
AT COLUMBUS
43215

SEPT. 13th, 2012,
THURSDAY

LAWRENCE E. STEWART,
Appellant/Petitioner
✓
STATE of OHIO
Appellee/Respondant

UNDER Appeal From
Case No. 11-CA-26
Decided 8/10/12
WASHINGTON COUNTY, OHIO
FOURTH APPELLATE DIST COURT

Appellant/Petitioner, LAWRENCE E. STEWART,
STATE Prisoner No. A-328-065 is presenting this
Appeal Under Extraordinary Circumstances
Before This Supreme Court of Ohio.

From year 2000 to this present year of 2012
Appellant STEWART has been plagued by a series
of health related STROKES which disqualified
petitioner from contemplating or understand-
ing or being able to apply the Ohio Revised Code
AND the Rules of Criminal AND Appellate Proceed-
ure. YOUR APPELLANT IS LEGALLY BLIND.

After ~~the~~ tedious agonizing incarcerated years
petitioner STEWART is finally returning to his
healthy, rightful train of thought process, BUT
UNABLE TO SEE VISION clearly. Lawrence E. Stewart

STATEMENT OF THE CASE AND THE FACTS

What is NOT BEING MADE PART OF THE SUPREME COURT RECORD IS THE FACTS ON HOW YOUR APPELLANT HAS SUFFERED GREATLY AND INJURIOUSLY AT THE HANDS OF THE OHIO DEPT. OF CORRECTIONS BECAUSE SINCE NOVEMBER OF 1999 APPELLANT STEWART HAS GRIEVOUSLY SUFFERED FROM A SERIES OF STROKES WHICH CAUSED HIS BODY AND HIS MENTAL FACULTIES TO NOT OPERATE IN THE NORM.

Not until this year of 2012 has your appellant become of sound mind and sound body. Not until this year of 2012 did a medical physician contractor, Doctor Ridgi at Hocking Correctional Remove appellant Stewart from his personal wheelchair. Prior to 2012, Appellant Stewart was bound in a wheelchair since 2002 for mobility purposes.

Former prison physician Dr. Asche (currently in Upper Michigan's prison systems) failed to timely diagnose appellant as an insulin dependant diabetic + appellants eyesite is failing him but even before Dr. Asches failures, Appellant was ruled Legally Blind by his street optometrist Dr. Conrath at appellants jury trial in Washington County, Ohio in 1996, and finally Appellants past involvements with former Chief Public Defender Janet Fogle McKim of the Washington County Ohio Law firms in Marietta, Ohio in 1988 + 1990 way before Appellant was at trial in same Marietta in 1996.

Judge Lawe FORGOT my past involving the Marietta, Ohio public defenders officer AND JUDGE LAWE PURPOSELY SEIZED my public records BEFORE my trial by jury - hiding evidence favorable to the defendant.

6 Lawrence Stewart 398065

Baldwin's Ohio Revised Code Annotated Currentness
Title LI. Public Welfare
Chapter 5145. State Correctional Institutions (Refs & Annos)
Duration of Sentence
5145.01 Duration of sentences

Courts shall impose sentences to a state correctional institution for felonies pursuant to sections 2929.13 and 2929.14 of the Revised Code. All prison terms may be ended in the manner provided by law, but no prison term shall exceed the maximum term provided for the felony of which the prisoner was convicted as extended pursuant to section 2929.141, 2967.11, or 2967.28 of the Revised Code.

If a prisoner is sentenced for two or more separate felonies, the prisoner's term of imprisonment shall run as a concurrent sentence, except if the consecutive sentence provisions of sections 2929.14 and 2929.41 of the Revised Code apply. If sentenced consecutively, for the purposes of sections 5145.01 to 5145.27 of the Revised Code, the prisoner shall be held to be serving one continuous term of imprisonment.

If a court imposes a sentence to a state correctional institution for a felony of the fourth or fifth degree, the department of rehabilitation and correction, notwithstanding the court's designation of a state correctional institution as the place of service of the sentence, may designate that the person sentenced is to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse if authorized pursuant to section 5120.161 of the Revised Code.

If, through oversight or otherwise, a person is sentenced to a state correctional institution under a definite term for an offense for which a definite term of imprisonment is not provided by statute, the sentence shall not thereby become void, but the person shall be subject to the liabilities of such sections and receive the benefits thereof, as if the person had been sentenced in the manner required by this section.

As used in this section, "prison term" has the same meaning as in section 2929.01 of the Revised Code.

CREDIT(S)

(2002 H 327, eff. 7-8-02; 1995 S 2, eff. 7-1-96; 1994 H 571, eff. 10-6-94; 1987 H 455, eff. 7-20-87; 1983 S 210; 1982 H 269, § 4, S 199; 129 v 1193; 1953 H 1; GC 2166)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 114 v 188; 109 v 64; 103 v 29; 87 v 164, § 5

Amendment Note: 1995 S 2 rewrote this section, which previously read:

"Courts imposing sentences to a state correctional institution for felonies shall make the sentences either indefinite or definite in their duration. All terms of imprisonment in a state correctional institution may be ended in the manner provided by law, but no such terms shall exceed the maximum or definite term provided for the felony of which the prisoner was convicted, nor be less than the minimum term provided for such felony, diminished pursuant to section 2967.19 of the Revised Code.

"If a prisoner is sentenced for two or more separate felonies, his term of imprisonment shall run as a concurrent sentence, except if the consecutive sentence provisions of section 2929.41 of the Revised Code apply. If sentenced consecutively, for the purposes of sections 5145.01 to 5145.27 of the Revised Code, the prisoner shall be held to be serving one continuous term of imprisonment.

"If a court imposes a sentence to a state correctional institution for a felony of the third or fourth degree, the department of rehabilitation and correction, notwithstanding the court's designation of a state correctional institution as the place of service of the sentence, may designate that the person sentenced is to be housed in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse if authorized pursuant to section 5120.161 of the Revised Code.

"If, through oversight or otherwise, a sentence to a state correctional institution should be for a definite term for an offense for which a definite term of imprisonment is not provided by statute, the sentence shall not thereby become void, but the person shall be subject to the liabilities of such sections and receive the benefits thereof, as if he had been sentenced in the manner required by this section.

"As used in this section, 'term of imprisonment' means the duration of the state's legal custody and control over a person sentenced as provided in this section."

Amendment Note: 1994 H 571 substituted "state correctional institution" for "penitentiary" throughout.

CROSS REFERENCES

Imposing sentence for felony, 2929.12

LIBRARY REFERENCES

Prisons 14.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners § 155.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Criminal Law § 3274, Prison Terms.

NOTES OF DECISIONS

In general 5

STEWART
328068

STATEMENT OF THIS CASE AND THE APPELLANTS FACTS

The petitioner states that he received two or more consecutive sentences which are contrary to law and therefore must be vacated and made concurrent in conformity with **ORC 5145.01** and **State v Foster**, 109, Oh 3rd, 845 N.E. 2nd 470, 2006 Ohio 856.

The petitioner has an independently created "liberty interest" within **ORC 2945.01**, "duration of sentences," where the language within the statute mandates the sentencing court to impose concurrent sentences. It is contended that the trial court committed plain error and abused its discretion when it imposed consecutive sentences upon the petitioner. It is a statutory mandate that "due process of law" and "equal protection of law" be imposed upon Ohio courts.

In **State v. Foster**, supra, the Ohio Supreme Court declared certain provisions of the Ohio sentencing scheme unconstitutional in that it required a judicial fact finding not proven to a jury beyond a reasonable doubt nor admitted to by the defendant before the imposition of consecutive sentences. The court's determination of those specific sections of **ORC 2929.14** and **ORC 2929.41** as unconstitutional with respect to consecutive sentences, barring any countervailing statute stating otherwise, make **ORC 5145.01** abundantly clear. The above referenced sections, having been deemed unconstitutional and no longer existent, therefore cannot be applied.

State v Bates, 118 Oh 3rd 174, Oh 1983, 887, N.E. 2nd 328 states, to wit: "We also referred to the severed statutes as 'former,' thus indicating that those statutes have no force of effect." In absence of the application of the unconstitutional sections noted above, **ORC 5145.01** required the pronouncement by the State Legislature and the Ohio General Assembly of its intention for multiple sentences to run concurrent unless exceptional circumstances require consecutive sentences, such as a specification. In **Bates**, supra, the Ohio Supreme Court stated that Senate Bill #2 provides that sentences for imprisonment were to be served concurrently, unless circumstances consistent with other statutory directives make consecutive sentences

appropriate.

ORC 5145.01 was not affected by the Foster decision. The intent for concurrent sentences by the State Legislature and the Ohio General Assembly has been recognized by **Foster** and its progeny. **ORC 5145.01** states the following: “if a prisoner is sentenced for two or more felonies, the term of imprisonment shall run as a concurrent sentence, except if the consecutive sentence provisions of **ORC 2929.14** and **2929.41** apply.” Therefore, “multiple sentences” having been deemed unconstitutional and no longer existent for enforcement purposes, **ORC 5145.01** clearly is the controlling statute as a matter of “equal protection” under Article I, Section 2 of the Ohio Constitution. The “equal protection” clause is extended to every person under the state's jurisdiction, within the meaning of the constitutional requirement “when its courts are open to them on the same conduct as to others, with like rules of evidence and modes of procedure, for the security of redress of wrongs, and the enforcement of contracts, when they are subjected to any restrictions in the acquisition of happiness which do not generally affect others, when they are not liable to no others or greater burdens and charges than are laid upon others and when no different or greater punishment is enforced against them for a violation of the law.”

The “due process” clause in the case at bar would be of a “procedural” nature since the petitioner is referring to **ORC 5145.01** with respect to the “duration of sentences.” Procedural due process under Article I, Section 16 of the Ohio Constitution and the Bill Of Rights guarantees procedural fairness which flows from both the Fifth and Fourteenth Amendments of the United States Constitution and the due course or process of law. For the guarantees of “procedural due process” of law to apply, it must be shown that a deprivation of a significant liberty interest has occurred. In the case at bar, the petitioner has shown a deprivation of **ORC**

5145.01; “duration of sentence” was determined by the sentencing court. The court must determine what procedures must at a minimum require a balancing analysis based upon the specific factual content within **ORC 5145.01**. This would reduce the petitioner's term of incarceration significantly. Therefore, the petitioner in this action would have an independently created “liberty interest” within **ORC 5145.01**. As applied, this section secures for all accused of a crime the right of due process of law under the Fourteenth Amendment of the United States Constitution, Ohio Bill Of Rights, Article I, Section 16 of the Ohio Constitution, and **State v Miller**, (1980) 61 Oh St 2nd 6399 N.E. 66 and **Peebles v Clement** (1980) 63 Oh St 2nd 314, 408 N.E. 689. A denial of state procedural and substantive protection to a state prisoner by a state court constitutes a violation of federal, as well as state, due process rights, where protection is sufficient that the deprivation thereof will condemn the accused to suffer grievous loss, **State Facists Refugee Committee v McGrafth** (1951) 341 U.S. 12123, 168, 71, S.Ct. 624, 646 and **Vitek v Jones** (1980) 445, U.S. 480, 100 S.Ct. 1253.

“MUGSHOTS”

The government will sometimes use defendant’s “mugshots” at trial, but this practice may prejudice the defendant and courts have reversed because of this. When the government lets the jury know that the defendant has a “mugshot”, the jury may assume that the defendant has been arrested, and possibly convicted, of a crime. This violates the defendant’s right not to take the stand, this having his record brought out. The following are cases that have been reversed because of prejudicial use of “mugshots” at trial:

READ AND SHEPARDIZE:

Mathews v. Abramajtys, 92 F.Supp.2d 615 (E.D.Mich.2000);

U.S. v. Harman, 349 F.2d 316 (4th Cir.1965);

U.S. v. Harrington, 490 F.2d 487 (2nd Cir.1973);

U.S. v. Foshier, 568 F.2d 207 (1st Cir.1978);

Ralls v. Manson, 375 F.2d 1271 (2nd Cir.1974) (Reversed) (Prejudicial use of “mugshot” and fingerprint card before jury is violation of due process)

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Wednesday, June 13, 2012 12:44:05 PM EDT

STATE OF OHIO, Plaintiff-Appellee, vs. WENDELL McPHERSON, Defendant-Appellant

CASE NO. CA 8622

COURT OF APPEALS OF OHIO, MONTGOMERY COUNTY, SECOND APPELLATE DISTRICT

1984 Ohio App. LEXIS 10527

July 16, 1984

*Gross sexual
Imposition
2907.05 is not
listed as an offense
of violence in 2901.01
ID 144 vs 144 FR 8-8-91*

*Last page(s)
missing*

*At *7
list & makes
use of RC
2929.11
list specific
use of 2929.61(c)
correlated to
all known
facts/factors
in 1984
At *7 to *14*

THE EX POST FACTO CLAUSE OF THE OHIO CONSTITUTION

“The ex post facto prohibition also upholds the separation of powers by confining the legislature to penal decisions with prospective effect and the judiciary and executive to applications of existing penal law. . . . “Critical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and government restraint” Weaver v. Graham, 450 U.S. 24, 29-30, 101 S.Ct. 960, 964-965. “When a court engages in ex post facto analysis, which is concerned solely with whether a statute is assigns more disadvantageous criminal or penal consequences to an act than did the law in place when the act occurred, it is irrelevant whether the statutory change touches any vested rights. . . . “The Constitution deals with substance, not shadows, Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizens should be secured against deprivation for past conduct by legislative enactment, under any form, however disguised.” Weaver v. Graham, 450 U.S. at 31, 101 S.Ct. At 965. “Gain-time in fact is one determinant of petitioner's prison term-and that his effective sentence is altered once this determinant is changed. See Lindsey v. Washington, 301 U.S. at 401-402, 57 S.Ct. at 799 . . . “A prisoner's eligibility for reduced imprisonment is a significant factor entering into both the defendant's decision to plea bargain and the judge's calculation of the sentence to be imposed. Wolff v. McDonnell, 418 U.S. 539, 557, 94 S.Ct. 2963, 2975.” “In Lindsey v. Washington, supra, 301 U.S. at 401-402, 57 S.Ct. at 799 we reasoned that 'It is plainly to the substantial disadvantage of petitioners to be deprived of all opportunity to receive a sentence which would give them freedom from custody” Weaver, Supra, 450 U.S. 24, 32, 33, 101 S.Ct. 960, 966, 967.

“Under the constitutional prohibition the general assembly has no power to pass retroactive laws. Article 2, § 28. Every statute which takes away or impairs vested rights acquired under existing

laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective or retroactive. *Society v. Wheeler*, 2 Gall. 105. Puffendorf says: 'A law can be repealed by the law-giver; but the rights which have been acquired under it while it was in force do not thereby cease. It would be an act of absolute injustice to abolish with a law the effects which it had produced. **City of Cincinnati v. Seansongood, (1889), 46 Ohio St. 296, 303, 21 N.E. 630, 633.**

“The question turns upon the force and effect to be given to that provision of the constitution which says, 'The general assembly shall have no power to pass retroactive laws. **Article 2, § 28.** This provision is in the nature of an estoppel. The general assembly having the power to enact laws, and, on the one hand, having failed to do so, and permitted persons to conduct their affairs with reference thereto, or, on the other, having enacted laws with certain limitations, and persons having conformed their conduct and affairs to such state of the law, the general assembly is prohibited-estopped-from passing new laws to reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time.” **Miller v. Hixson, 64 Ohio St. 39, 50-51, 59 N.E. 749, 752.**

“When will be the end of strife if not when a judgment is rendered which is final by the laws then existing? A judgment final when rendered is representative of property in its highest form, for there remains no condition or contingency to affect the vested right of the prevailing party . . . right which are so determined and established that it is not within the function of legislation to disturb them. . . . there can be no higher title to any right or interest whatever than that which arises from a regular judgment of law. . . . That the conclusions are uniform upon the proposition that a judgment which is final by the statutes existing when it is rendered is an end to the controversy will occasion no surprise to those who have reflected upon the distribution of powers in such governments as ours, and have observed the uniform requirement that legislation to affect remedies by which rights are enforced must precede their final adjudication.” **Gompf v. Wolfinger, (1902), 67 Ohio St. 144, 151, 152-153** cited and followed in **State v. Bodyke, 2010-Ohio-2424, 126 Ohio St.3d 266, 933 N.E.2d 753.**

“Section 28, Article II of the Ohio Constitution states that the general assembly shall have no power to pass retroactive laws.” **State v. Williams, 2011-Ohio-3374, 129 Ohio St.3d 344, 952 N.E.2d 1108 at ¶¶ 8, 9, 14, 19, 21.** “Every statute which Takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed retrospective or retroactive.” **State v. Cook, 1998-Ohio-291, 83 Ohio St.3d at 410, 700 N.E.2d at 577** following **Van Fossen, 36 Ohio St.3d at 106, 522 N.E.2d at 496.**

“Ordinarily, laws are enacted to regulate future conduct and are, in that respect, reasonable

legislative acts. The difficulty arises when such legislation attempts to regulate or prohibit that which has already occurred, since the General Assembly may not constitutionally impose a new standard upon past conduct. . . . Retroactive laws and retrospective application of laws have received the near universal distrust of civilizations. "The laws of all the states and the federal government have reflected this same attitude." . . . "The possibility of the unjustness of retroactive legislation led to the development of two rules: one of statutory construction, and the other of construction limitation. . . . "The second rule, that of constitutional limitation, was developed first in this country and was based upon the same principle of justice underlying the role of statutory construction. This principle of justice was expanded logically from the rule of statutory construction, to include a prohibition against laws which commenced on the date of enactment and which operated in future, but which, in doing so, divested rights, particularly property rights, which had been vested anterior to the time of enactment of the laws. . . . "By its Constitution of 1851, Ohio has quite clearly adopted the above prohibition against retroactive legislation. **Section 28, Article II** states that: 'The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts . . . This was a much stronger prohibition than the more narrowly constructed provision in Ohio's Constitution of 1802. Accordingly, it must be concluded that Ohio has adopted both of the forgoing safeguards against retrospective legislation." **Van Fossen v. Babcock, (1988), 36 Ohio St.3d 100, 104-105, 522 N.E.2d 489, 494-495.**

Bills of attainder, and the related "bill of pains and penalties," were evils well-known to the founders of our government. Common penalties were banishment, disenfranchisement, or exclusion of heirs from serving in Parliament. These bills, expanded to include readily-identifiable groups. The bills were the end result of "trial by the legislature." They required no action or approval by any court. Enforcement could be had by the executive. While bills of attainder are specifically mentioned in the United States Constitution, and the related bills of pains and penalties are not, the former long ago was recognized as including the latter. "This means of course, that what was known at common law as bills of pains and penalties were outlawed by the Bill of Attainder Clause" Fletcher v. Peck, (1810), 6 Cranch 87, 138 (Marshall, C.J.). Though not obvious at first, the prohibition against bills of attainder is one of the best forms of insurance to maintain a separation of powers among the coordinate branches of government. The Founders understood this well, whether federalist or not.

Alexander Hamilton wrote: "Nothing is more common that for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves; of this kind is the doctrine of disqualification, disenfranchisement, and banishment by acts of the legislature. The dangerous consequences of this power are manifest. If they can disenfranchise any number of citizens at pleasure by general

descriptions, . . . if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty name of liberty applied to such a government, would be a mockery of common sense.” III (John C.) Hamilton, History of the Republic of the United States, p.34 (1859), quoting Alexander Hamilton.

James Madison wrote in The Federalist No. 44, “Bills of Attainder, ex post facto, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited, by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the conventional added this constitutional bulwark in favor of personal security and private rights.” The above quotations are contained as well in United States v. Brown, (1965), 381 U.S. 437, 85 S.Ct. 1707, which provides an excellent history of bills of Attainder. The Court stated, “The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply – trial by legislature. Id. at 422, 85 S.Ct. at 1711-1712.

Double Jeopardy

“The Double Jeopardy Clause does more than prevent the sentencing court from prescribing greater punishment than the legislature intended. Missouri v. Hunter, (1983), 459 U.S. 359, 336, 103 S.Ct. 673, 678. An Administrative License Suspension, if continued beyond a subsequent conviction of D.U.I. For the same offense, constituted multiple unconstitutional increase in punishment, violation of double jeopardy. State v. Gustafson, (1996), 668 N.E.2d 435, 76 Ohio St.3d 425. “Double Jeopardy protections afforded by the federal and State constitutions guard citizens against both successive prosecutions and cumulative punishments for the same offense.” State v. Moss, (1982), 69 Ohio St.2d 515, 518, 433 N.E.2d 181, 182, followed in State v. Rance, (1999), 85 Ohio St.3d 632, 634, 710 N.E.2d 699, 702.

Under the former indefinite sentencing scheme prior to 1996, pursuant to Ohio Revised Code Section 2967.02 it was the Parole Boards duty and responsibility to administer parole at the expiration of a minimum indefinite prison term as diminished pursuant to § 2967.19(A)(D)(E) and § 2967.193(A)(1)(2)(C). The only provision of authority for the parole board to exercise discretion in an old law indefinite sentencing, was under to R.C. § 2967.03, to reduce disparities by granting pardon,

commutation, or reprieve, see 143 Ohio Laws, Part I, 1433; 145 Ohio Laws, Part II, 2088-2089 and Part IV, 6428, 6437. Woods v. Telb, 89 Ohio St.3d at 507-508, 733 N.E.2d at 1106-1107; State v. Rush, 1998-Ohio-423, 83 Ohio St.3d 53, 55, 56, 697 N.E.2d 634, 636 at [1]; Hernandez v. Kelly, 2006-Ohio-126, 108 Ohio St.3d 395, 844 N.E.2d 301 at ¶¶ 20, 22, 30, 31 and 32; Hernandez v. Wilkinson, 2006 U.S. Dist. LEXIS 85506 at [*4 and 5].

“Parole's purpose is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence. Parole properly supervised permits flexibility and individualization of treatment, while the prisoner is outside prison walls. . . . “The importance of this aspect of parole is well-stated in a report of the U.S. Attorney General on parole, 4 Attorney General's Survey of Release Procedures (1939), Chapter 2, at page 33. No rehabilitation is possible without individualization. The difficulty is that the possibilities of individualization within the prison are extremely limited. Even in the best penitentiaries the very necessities of penal administration under present day conditions are such that a really individual treatment of offenders is to a large extent impossible. Prison overcrowding, lack of facilities, lack of funds, lack of personnel – all these factors prevent an individualized treatment and to the same extent prevent a real rehabilitation of the prisoners. Mckee v. Cooper, 40 Ohio St.2d 65, 320 N.E.2d 286.

“Not only are the possibilities of individualization limited by the very character of our prisons, but the actual condition of the offender is, unfortunately, often degraded rather than improved by time spent in many institutions. Sometimes the offender comes out worse than he was when he entered the prison. Instead of being rehabilitated he has been subjected to 'cross-infection' by hardened criminals, and when he is released he is potentially more dangerous than he was before he was incarcerated. “While this unfortunate situation increases the importance of parole as a means of rehabilitation, it also makes its functioning very difficult, since parole is given the job of counteracting all the bad influences the offender has been exposed to while in prison. . . An alternative to parole is more time behind prison walls followed by release, which is of little aid in the reintegration of the prisoner into the community. In fact, long sentences can often be self-defeating and produce hostility and increased potential for further crime after release, and it is increasingly recognized that community based alternatives to institutionalization are the most effective, fruitful, and realistic solutions to the proper handling of offenders. Final Report of the Ohio Citizens' Task Force on Corrections A8 (1971). . . “Parole, used properly, is an integral part of a correctional system, and as the final exercise of control over prisoners, is a crucial part of the process by which prisoners are sought to be rehabilitated. Former R.C. 2967.19 provided: “a person confined in a state penal institution is entitled to certain diminutions of sentence for

good behavior. "Term of imprisonment," a phrase which is defined in an analogous statute, R.C. 5145.01, as "the duration of the state's legal custody and control over a person sentenced. Parole is recognized as a type of legal custody, and, therefore, constitutes a part of a person's 'term of imprisonment' "The need for such an approach was pointed out by the President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Corrections 63 (1967), which criticized requirements of minimum terms prior to parole eligibility, stating that "such requirements ignore the facts of the individual case and can require unnecessary and damaging stays in institutions. Id. Mckee, supra, 40 Ohio St.2d 65, 320 N.E.2d 286, citing and following Morrissey v. Brewer, (1972) 408 U.S. 471, 477-482 and Jones v. Cunningham, [1963], 371 U.S. 236.

Revised Code Section 1.42 states: In enacting a statute, it is presumed that: Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. R.C. § 2901.04 (prior to 1996), states: (A) Sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused. R.C. § 2967.13 (prior to 1996), states: (A) A prisoner serving a sentence of imprisonment for a felony for which an indefinite term of imprisonment is imposed becomes eligible for parole at the expiration of his minimum term, diminished as provided in sections 2967.19, 2967.193 [2967.19.3], and 5145.11 of the revised Code.

A prisoners parole eligibility is defined by the words and phrases used in sections 2967.19 which explicitly states: (A) "a person confined in a state correctional institution is entitled to a deduction from his minimum or definite sentence". . . (E) "it shall not be reduced or forfeited for any reason." and section 2967.193 which likewise, states: (A) "any person confined in a state correctional institution is entitled to earn days of credit as a deduction from his minimum ar definite sentence". . . (C) "after those days have been awarded, they shall not be reduced or forfeited for any reason." Wherefore, a definite sentence was substantially reduce with restoration of rights forfeited by the conviction pursuant to R.C. § 2967.16(B) at the expiration of their sentence as diminished by R.C. §§ 2967.19 and 2967.193, and a guideline III prisoner serving an indefinite sentence was administered a paroled release at his earliest parole eligibility date, pursuant to the 1987 Ohio Parole Board Guidelines.

Ohio Revised Code Section 1.01 states: "The enactment of the Revised Code shall not be construed to affect a right or liability accrued or incurred under any section of the General Code prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. . . . "For such purposes, any such section of the General Code shall continue in full force

notwithstanding its repeal for the purpose of revision.” And § 1.58 states: (A) “The reenactment, amendment, or repeal of a statute does not . . . : (1) Affect the prior operation of the statute or any action taken thereunder; (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder.”

Substantive benefit and effect must be given to satisfy the reasonable expectation (*of a person of common intelligence*) created by the explicit plain language of the words and phrases of the law. To pervert and deny the intent and purpose expressed and implied by the letter and spirit of the law unreasonably and effectively deprives an individual of his inalienable civil (*equal protection and opportunity*) rights and Due Process of Laws. **Sections 1 and 2, Article I, Ohio Constitution**; See **State v. Williams, 2000-Ohio-428, 88 Ohio St.3d 513, 524, 728 N.E.2d 342, 354, Perez v. Cleveland, 1997-Ohio-33, 78 Ohio St.3d 376, 378, 678 N.E.2d 537, 540.**

“To determine whether a punishment is cruel and unusual, in violation of the Eight Amendment, courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society. . . Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense. . . . The clearest and most reliable objective evidence of contemporary values, for purposes of Eight Amendment challenge, is the legislation enacted by the country's legislatures, but there are measures of consensus other than legislation, and actual sentencing practices are an important part of the Court's inquiry into consensus. . . . “Community consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual, in violation of the Eight Amendment. **Graham v. Florida, (2010), 130 S.Ct. 2011, 176 L.Ed.2d 825 at [1][7][11][12]**, see also **Brown v. Plata, 131 S.Ct. 1910, 179 L.Ed.2d 969, 2011 U.S. LEXIS 4012.**

“The rule of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), is clear: any fact-other than that of a prior conviction-that increases the maximum punishment to which a defendant may be sentenced must be admitted by the defendant or proved beyond a reasonable doubt to a jury. . . There can thus be no doubt that the judge's factual finding was “essential to” the punishment he imposed. *United States v. Booker*, 543 U.S. 220, 232, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). That 'should be the end of the matter'.” *Blakely v. Washington*, 542 U.S. 296, 313, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). **Id. Oregon v. Ice, (2009), 555 U.S. 160, 129 S.Ct. 711 at 720.**

Ohio has a presumptive minimum prison term for a person who has never been to prison before, unless a court finds that the shortest term will “demean the seriousness” of the crime or will in adequately protect the public. Aspects of the Senate Bill 2 “Truth in Sentencing” laws that allowed enhancement of a sentence beyond that allowed simply as a result of a conviction or plea were

unconstitutional violations of the Sixth Amendment of the United States Constitution and Article I. Sections 5 and 10 of the Ohio Constitution. See State v. Foster, 2006-Ohio-856, 109 Ohio St.3d 1, at 28, 29, 845 N.E.2d 470, at 497, 498, following Apprendi v. New Jersey, (2000), 530 U.S. 466, 120 S.Ct. 2348, and Blakely v. Washington, (2004), 542 U.S. 296, 313, 124 S.Ct. 2531.

Denial of the minimum sentence by Parole Board for seriousness of the offense is a violation of Separation of powers, Ex Post Facto Attainder Cruel and Unusual Punishment, violations of DeNoma's Sixth Amendment right to a jury trial.

It was unconstitutional for the Iowa Department of Corrections to deprive sex offenders of their liberty interests in sentence reduction, see State v. Iowa District Court for Henry County, (2009), 759 N.W.2d 793 citing and following Weaver v. Graham, (1981), 450 U.S. 24, 101 S.Ct. 960, and Reilly v. Iowa Dist. Court for Henry County, (2010), 783 N.W.2d 490, citing and following Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 and Greenholtz v. Inmates of Neb. Penal & Corr. Complex, (1979), 442 U.S. 1, 99 S.Ct. 2100.

In California denial of a prisoners reduction of sentence was determined to be false imprisonment and the State's immunity defense failed. See Gallegos v. State of California, Cal. App. 1st Dist. Unpublished 2008 LEXIS 3230.

"Forty stripes may be given, but no more; lest if he were beaten with more stripes than these, your kinsman should be looked upon as disgraced because of the severity of the beating. You shall not distort justice;" Deuteronomy 25: 3. "You shall not side with the many in perverting justice. . . . you shall not deny one of your fellowmen his rights in his law suite." Exodus 23: 1, 2, 6. "You shall not act dishonestly in rendering judgment. . . . Though you may have to reprove your fellowman, do not incur sin because of him. . . . You shall love your neighbor as yourself." Leviticus 19: 15-18. "If anyone has caused pain, he has caused it . . . in some measure to all of you. This punishment by the majority is enough for such a person, so that on the contrary you should forgive and encourage him instead, or else the person may be overwhelmed by excessive pain. Therefore, I urge you to reaffirm your love for him. . . . so that we might not be taken advantage of by Satan, for we are not unaware of his purposes." 2 Corinthians 2: 5-11.

"He who knows the truth, and bellows not the truth makes himself the accomplice of lies and forgers." Judge Billings Learned Hand, U.S. Federal Judge 1909-1961.

"There is no crueller tyranny than that which is exercised under color of law, and with the colors of justice" Montesquieu, De l'Esprit des Lois (1748). United States v. Jannoti, (1982), 673 F.2d 578, 614-615. Dissenting in Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928) Justice Brandeis stated: If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself, it invites anarchy. Id. At 485, 485 Ct. At 575.

PROPOSITION OF LAW

STATE-V-MILLER (1980) 61 Oh St. 2nd 6399 N.E. 66

PEEBLES-V-Clement (1980) 63 Oh 2nd 314, 408 N.E. 689

STATE FACISTS REFUGEE COMM.-V-McGRAFF (1951) 341 U.S. 12123, 168, 71, S.Ct. 624, 646

Vitek-V-Jones (1980) 445, U.S. 480, 100 S.Ct. 1253,

STATE-V-FOSTER, 109, Oh 3rd, 845 N.E. 2nd 470, 2006 Ohio 856

STATE-V-BATES, 118 Oh 3rd 174, Oh 1983, 887, N.E. 2nd (see BATES, SUPRA)

Geiger, # 45 Ohio St. 2d At 242, 74 O.O. 2d 380, 344 N.E. 2d 133

Botta, 27 Ohio St. 2d At 203, 56 O.O. 2d 119, 271 N.E. 2d. 726

Agee-V-Russell, 92 Ohio St. 3d 540, 543, 751 N.E. 2d 1043 (2001)

WALTERS-U-Sheets, Case No. 2:09-CV-446 on Sept. 29th, 2011.

THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT, EASTERN DIV.

When the Supreme Court of OHIO OVERTURNS ITS INTERPRETATION OF A STATE STATUTE, THE CORRECTION HAS RETROACTIVE APPLICATION.

CONCLUSION

Lawrence E Stewart #A328065
SIGNATURE

LAWRENCE E. STEWART #A328065
NAME AND NUMBER

Hocking Correctional Facility
INSTITUTION

16759 Snake Hollow Rd - P.O. Box 59
ADDRESS

Nelsonville, Ohio 45764-0059
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

PRAYER OF APPELLANT STEWART

REVERSE the decision of the FOURTH
APPELLATE DISTRICT COURT of APPEALS
AND GRANT APPELLANT STEWART'S APPEAL
PERMITTING APPELLANT to be sentenced
Accordingly under Ohio Revised Code
§5145.01 AND PROCEDURAL DUE PROCESS
UNDER Article 1, Section 16 of the Ohio
Constitution AND The BILL of RIGHTS from
both the FIFTH & FOURTEENTH Amendments of
The United States CONSTITUTION. AND REMOVE
My SEXUAL PREDATOR STATUS TAXED OUT OF ME from Judge Lake.
It is so prayed.

Dated: Sept. 9th, 2012.

Lawrence E Stewart
Hocking CORR FAC. #A328065
16759 Snake Hollow Rd P.O. Box 59
• Nelsonville, OH 45764-0059

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to ALISON L. GUTHORN, Prosecuting Attorney, WASHINGTON County, 205 POTNAM STREET, MARIETTA, Ohio 45750, this _____ day of SEPTEMBER, 2012

Lawrence E Stewart #A328065
SIGNATURE

LAWRENCE E. STEWART #A328065
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

IN THE COURT OF APPEALS
4TH APPELLATE DISTRICT
205 PUTNAM STREET
MARIETTA, OH 45750

OHIO, STATE OF vs. LAWRENCE E STEWART

TO : LAWRENCE E STEWART
#A328065 HOCKING CORR. FACILITY
16759 SNAKE HOLLOW RD
PO BOX 59 A-DORM
NELSONVILLE OH 45764

CASE NO. 11CA 26

PURSUANT TO APPELLATE RULE 22-B, YOU ARE
HEREBY NOTIFIED THAT A DECISION AND
JUDGMENT ENTRY, COPY HERETO ATTACHED,
HAS BEEN FILED IN SAID COURT OF APPEALS IN
THE ABOVE STYLED ACTION ON **8/10/12**

NOTICE OF FILING

RULE 22-B

PAPERS ATTACHED:

DECISION AND JUDGMENT
ENTRY DATED: **8/10/12**

BRENDA L WOLFE
CLERK OF COURTS



DEPUTY

DATED 8/13/12

ORIGINAL NOTICE TO:

ATTY ALISON L CAUTHORN

IN THE COURT OF APPEALS OF OHIO 2012 AUG 10 PM 1:08
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY WASHINGTON CO. OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 11CA26
 :
 vs. :
 :
 LAWRENCE E. STEWART, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

COUNSEL FOR APPELLANT: Lawrence E. Stewart #A328-065, Hocking
County Correctional Facility, 16759
Snake Hollow Road, P.O. Box 59,
Nelsonville, Ohio 45764-0059, Pro Se

COUNSEL FOR APPELLEE: James E. Schneider, Washington County
Prosecuting Attorney, and Alison L.
Cauthorn, Washington County Assistant
Prosecuting Attorney, 205 Putnam Street,
Marietta, Ohio 45750

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:
ABELE, P.J.

This is an appeal from a Washington County Common Pleas
Court judgment that overruled a motion to terminate void
sentences filed by Lawrence E. Stewart, defendant below and
appellant herein.

Appellant assigns the following error for review:

"THE DEFENDANT/APPELLANT, LAWRENCE E. STEWART
WAS DENIED HIS CONSTITUTIONAL PROTECTION OF
'EQUAL PROTECTION' OF LAWS AS GUARANTEED BY
THE FOURTEENTH AMENDMENT OF THE UNITED STATES
CONSTITUTION, OHIO BILL OF RIGHTS: ARTICLE I,
§§2 OHIO CONSTITUTION. THE HONORABLE JUDGE

WASHINGTON, 11CA26

EDWARD LANE (ED LANE) WASHINGTON COUNTY COMMON PLEAS COURT DENIED THE APPELLANT IN THIS APPLICATION THE EQUAL PROTECTION OF OHIO REVISED CODE §5145.01 DURATION OF SENTENCE MANDATING APPELLANT'S CONSECUTIVE SENTENCES BE IMPOSED AS CONCURRENT TERMS OF INCARCERATION, AND NOT THE CONSECUTIVE SENTENCES THAT HAS [sic] BEEN IMPOSED."
(Emphasis omitted.)

In 1996 appellant was convicted of: (1) kidnapping in violation of R.C. 2905.01(A)(4); (2) gross sexual imposition in violation of R.C. 2907.05(A)(i); and (3) attempted rape in violation of R.C. 2923.02(A) & R.C. 2907.02(A)(2). Appellant received a ten to twenty-five year sentence for kidnapping, with ten years actual prison time; three to five years for gross sexual imposition; and four to fifteen years for attempted rape. The two sentences for gross sexual imposition and attempted rape were ordered to be served concurrently with each other, but consecutive to the kidnapping sentence. Thus, in aggregate, appellant was ordered to be imprisoned for fourteen to forty years, with ten years actual incarceration.

We affirmed appellant's conviction in State v. Stewart (Dec. 15, 1997), Washington App. No. 96CA18 (Stewart I). The Ohio Supreme Court denied further review. State v. Stewart (1999), 87 Ohio St.3d 1430, 718 N.E.2d 447. In 2002, appellant filed a motion for re-sentencing and new trial. The trial court overruled the motions and we affirmed that decision. State v. Stewart, Washington App. No. 02CA29, 2003- Ohio-4850 (Stewart II).

Appellant commenced the instant case on September 22, 2011 with a motion to terminate a "void and/or voidable sentence." The gist of appellant's motion appears to be that recent statutory changes and judicial rulings have rendered unconstitutional his consecutive sentences. On September 14, 2011, the trial court overruled appellant's motion and pointed out that appellant's sentences were valid at the time of imposition. This appeal followed.

Appellant's assignment of error appears to argue that the trial court's ruling on his motion constitutes error and a violation of his constitutional rights. We disagree with appellant.

Our analysis begins with the observation that appellant's arguments appear to be premised on events that occurred subsequent to the changes that Am.Sub.S.B. No. 2, 146 Ohio Laws, Part IV, 7136 (S.B. No. 2) made in Ohio Felony Sentencing Law. Thus, neither S.B. No. 2, nor any subsequent judicial decisions or statutory changes that relate to S.B. No. 2, are applicable to appellant. Appellant was originally sentenced on April 12, 1996. S.B. No. 2 became effective on July 1, 1996. State v. Stevens, Butler App. No. CA2010-08-211, 2011-Ohio-2595, at ¶10; State v. Gibson, Washington App. No. 01CA19, 2002-Ohio-5232, at ¶30. As many courts held soon after the passage of S.B. No. 2, those new provisions applied prospectively and did not apply to the sentencing of defendants that occurred before the statute's

WASHINGTON, 11CA26

effective date. See, e.g., State v. Dukes (Dec. 9, 1998), Cuyahoga App. No. 71397; State v. Elder (May 11, 1998), Butler App. No. CA97-07-142; State v. Jenkins (Feb. 11, 1997), Lawrence App. No. No. 96CA40. On this basis alone, we find no merit to appellant's argument.

Appellant also argues that the trial court failed to apply R.C. 5145.01 which, he contends, requires concurrent sentences. First, as we note above, if appellant cites legislative changes enacted as part of S.B. No. 2, those changes do not apply to him. Second, if appellant is arguing that the trial court failed to comply with the statute in existence at the time he was sentenced, this is an issue that should have been raised on appeal in Stewart I. To the extent that it was not, the doctrine of res judicata is dispositive of the issue. See State v. Pickett, Summit App. No. 25931, 2012-Ohio-1821. at ¶10; State v. Yates, Montgomery App. No. 24823, 2012-Ohio-1781, at ¶24; State v. Beach, Gallia App. No. 11CA4, 2012-Ohio-1630, at ¶5. Either way, appellant's arguments under R.C. 5145.01 have no merit.

Appellant also argues that he has "a claim that has not been addressed by this Court and is a claim under un-charted territory therefore" - that the trial court violated his Equal Protection rights under the Ohio and United States Constitutions by failing to sufficiently explain that R.C. 5145.01 did not apply to him.

First, as we note above, subsequent changes in R.C. 5145.01 are not applicable to appellant. Second, any violation of a

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provision that existed at the time of his sentencing should have been raised in appellant's direct appeal (Stewart I), but were not. Thus, the doctrine of res judicata again applies and resolves the issue. Third, and more important, criminal defendants are not a "suspect class" for purposes of the Fourteenth Amendment. See e.g. United States v. Rosales-Garay (U.S.C.A. 10 2002), 283 F.3d 1200, 1203, at fn. 4; United States v. Carroll (U.S.C.A.7 1997), 110 F.3d 457, 461; United States v. Smith (U.S.C.A.9 1987), 818 F.2d 687, 691. Appellant also cites no case law to support the view that re-sentencing conducted under later versions of a statute is a fundamental right.

Laws that burden neither a suspect class, nor impinge a fundamental right, will be upheld if the law bears a rational relation to a legitimate end. See e.g. United States v. Castillo (U.S.C.A.10 1998), 140 F.3d 874,883; Carroll, supra at 461. Here, appellant has not persuaded us that any Fourteenth Amendment "equal protection" violation has occurred.

Accordingly, based on the foregoing reasons we hereby overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

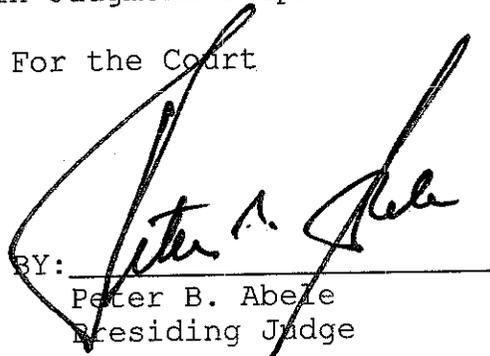
The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Kline, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: 
Peter B. Abele
Residing Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

5145.01; “duration of sentence” was determined by the sentencing court. The court must determine what procedures must at a minimum require a balancing analysis based upon the specific factual content within **ORC 5145.01**. This would reduce the petitioner's term of incarceration significantly. Therefore, the petitioner in this action would have an independently created “liberty interest” within **ORC 5145.01**. As applied, this section secures for all accused of a crime the right of due process of law under the Fourteenth Amendment of the United States Constitution, Ohio Bill Of Rights, Article I, Section 16 of the Ohio Constitution, and **State v Miller**, (1980) 61 Oh St 2nd 6399 N.E. 66 and **Peebles v Clement** (1980) 63 Oh St 2nd 314, 408 N.E. 689. A denial of state procedural and substantive protection to a state prisoner by a state court constitutes a violation of federal, as well as state, due process rights, where protection is sufficient that the deprivation thereof will condemn the accused to suffer grievous loss, **State Facists Refugee Committee v McGrafth** (1951) 341 U.S. 12123, 168, 71, S.Ct. 624, 646 and **Vitek v Jones** (1980) 445, U.S. 480, 100 S.Ct. 1253.

“MUGSHOTS”

The government will sometimes use defendant’s “mugshots” at trial, but this practice may prejudice the defendant and courts have reversed because of this. When the government lets the jury know that the defendant has a “mugshot”, the jury may assume that the defendant has been arrested, and possibly convicted, of a crime. This violates the defendant’s right not to take the stand, this having his record brought out. The following are cases that have been reversed because of prejudicial use of “mugshots” at trial:

READ AND SHEPARDIZE:

Mathews v. Abramajtyts, 92 F.Supp.2d 615 (E.D.Mich.2000);

U.S. v. Harman, 349 F.2d 316 (4th Cir.1965);

U.S. v. Harrington, 490 F.2d 487 (2nd Cir.1973);

U.S. v. Foshier, 568 F.2d 207 (1st Cir.1978);

Ralls v. Manson, 375 F.2d 1271 (2nd Cir.1974) (Reversed) (Prejudicial use of “mugshot” and fingerprint card before jury is violation of due process)

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