

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Respondent	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
WENDELL R. LINDSAY	:	Case No. 13-CA-8
	:	
Petitioner	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Procedendo

JUDGMENT: Dismissed

DATE OF JUDGMENT: July 9, 2013

APPEARANCES:

For Plaintiff-Appellee

JAMES J. MAYER  
Richland County Prosecutor

By: JILL M. COCHRAN  
Assistant Prosecuting Attorney  
38 South Park Street, 2nd Floor  
Mansfield, OH 44902

For Defendant-Appellee

WENDELL R. LINDSAY, Pro Se  
A59-512  
Mansfield Correctional Institution  
1150 North Main Street  
Mansfield, OH 44901

*Farmer, J.*

{¶1} Petitioner, Wendell R. Lindsay, has filed a pleading titled, “Procedendo to the Entered Motion, Acquittal Amendment Filed; Criminal Rule 29, Motion for Acquittal, Citing Plain Errors, and also Violating Due Process, Equal Protection, also Objections to the Trial Proceedings, and in the Sentencing in the above Captioned Case, as well as Other Mitigating Factors Occurring.” The Richland County Prosecutor has filed a motion to dismiss.

{¶2} Following the jury trial, Petitioner was convicted of one count of rape, one count of sexual battery and one count of gross sexual imposition. The jury returned verdicts of not guilty on the remaining charges.<sup>1</sup>

{¶3} A sentencing hearing was held on October 27, 2010. The trial court merged the offenses for sentencing purposes and sentenced appellant to a term of ten years to life.

{¶4} According to his Petition, Lindsay made an oral motion for acquittal prior to sentencing. The State contends the written version of Lindsay’s motion was read by the trial court prior to sentencing and orally denied. Petitioner avers a written “motion of acquittal” was filed on October 28, 2010 and remains pending in the trial court. He further argues the trial court did not orally address each issue raised in the motion.

{¶5} Prior to reaching the merits of the motion for writ and motion to dismiss, we find Petitioner has not properly brought this action.

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<sup>1</sup> The facts cited herein were obtained from our opinion in *State v. Lindsay* 2011 WL 4361632, 1 (Ohio App. 5 Dist.).

{¶6} Petitioner has failed to name a proper respondent in his petition. He has named the State of Ohio which has no duty or even authority to rule on Petitioner's motion.

{¶7} Petitioner has further failed to comply with R.C. 2969.25 by failing to file an affidavit detailing his prior civil filings. The Supreme Court has held, "The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Noncompliance with R.C. 2969.25 warrants dismissal. *State ex rel. Graham v. Niemeyer* (2005), 106 Ohio St.3d 466, 106-467, 835 N.E.2d 1250, 1251.

{¶8} For these reasons, the petition for writ of procedendo is dismissed.

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

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JUDGES

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

STATE OF OHIO

Respondent

-vs-

WENDELL R. LINDSAY

Petitioner

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JUDGMENT ENTRY

CASE NO. 13-CA-8

For the reasons stated in our accompanying Memorandum-Opinion, the petition for writ of procedendo is dismissed. Costs to Petitioner.

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JUDGES