

In The Supreme Court Of Ohio

Russell E. Appenzeller,  
Petitioner,

Vs.

Charmaine Bracy, Warden,  
Trumbull Correctional Inst.,  
Respondent.

Case No. 22-0481

Petition For A Writ  
OF Habeas Corpus.

FILED

APR 28 2022

CLERK OF COURT  
SUPREME COURT OF OHIO

Petition For A Writ of Habeas Corpus of Russell E. Appenzeller

Russell E. Appenzeller - prisoner #A514991 (Formerly #A431837)  
c/o Trumbull Correctional Institution (T.C.I.)

5701 Burnett Road

Leavittsburg, Ohio 44430-0901 Ph. (330) 898-0820

Petitioner/Relator/Prisoner

For Petitioner, Russell E. Appenzeller, pro se.

RECEIVED

APR 28 2022

CLERK OF COURT  
SUPREME COURT OF OHIO

Charmaine Bracy - Warden  
Trumbull Correctional Institution (T.C.I.)

5701 Burnett Road

Leavittsburg, Ohio 44430

Ph. (330) 898-0820

Respondent.

# In The Supreme Court Of Ohio

Russell E. Appenzeller,  
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Case No. \_\_\_\_\_

Vs.

Charmaine Bracy, Warden,  
Trumbull Correctional Inst.,  
Respondent.

Petition For A Writ  
OF Habeas Corpus.

## Petition For A Writ Of Habeas Corpus Of Russell E. Appenzeller

1. The relator in this matter is the Petitioner, prisoner Russell E. Appenzeller, appearing pro se. I, Russell E. Appenzeller, am the relator, petitioner, and prisoner herein and hereinafter. I am of sound body and mind to the best of my knowledge, info, and belief. What I write hereinafter I believe is true, accurate & reliable.
2. On November 1<sup>st</sup>, 2006, the Ohio Department of Rehabilitation and Correction (ODRC) "recommitted" me into the Department pursuant to an alleged Order of the Court of common pleas of Mahoning County, Ohio, entered on April 26, 2005; and pursuant to an Order of the Court of common pleas of Lake County, Ohio, entered on November 9, 2006; and again on February 5, 2009.  
A copy of these (3) three Orders are annexed hereto.
3. I am still confined to the ODRC. I am at the Department's

Trumbull Correctional Institution in Leavittsburg, Ohio. It should be noted that "Leavittsburg", is in Ohio's Eleventh Appellate District. The warden's name at the Institution is: Warden Charmaine Bracy.

4. I am entitled to my Freedom immediately For the reason that the common pleas court in Lake County, Ohio, patently & unambiguously lacked jurisdiction to try me, convict me, and sentence me for Felonies committed by unknown person(s) in Lake County, Ohio, because I was not indicted by a Lake County grand jury of committing Felonies in Lake County, Ohio! Ohio Const. art. I, § 10 mandates an indictment on Felony charges - Vitulo v. Overburg, 1978 Ohio App. LEXIS 8848. "There having been no indictment the criminal division, Common Pleas Court of Hamilton County, lacked jurisdiction to commit the petitioner to the Lima State Hospital and he is entitled to be released therefrom," Burton v. Reshetylo 35 Ohio App. 2d 113.

5. "A trial court speaks through its journal entry," State v. Henderson 2020 Ohio 4784. Without waiving my right to an Indictment nor pleading guilty to a charge, I was "arraigned," on a Bill of "Information" - not an Indictment - a day after being served with the "Complaint," on February 23, 2006!

A copy of the relevant portion of the docketed Record disclosing the Arraignment and service of the Complaint occurring as described is annexed hereto. It is true, accurate, relevant, and reliable to the very best of my knowledge, information, and belief. You can rely on it one hundred percent I believe.

6. Ohio's Eleventh Appellate District Court has deceived me into thinking I was indicted beginning in December of 2008 when it falsely Opined I was "indicted on a total of 18 counts". (See: State v. Appenzeller, case no. 2006-L-258 at paragraph 15.) In Lake County, Ohio, regarding common pleas court case no. "06CR000108", I was arraigned on an Information not an Indictment according to the Record of the case. Thusly, I do not know the basis of the Appellate Court's Opinion saying I was "indicted", when in fact I was not according to the Record at the time of its review. As a result, I can't reasonably trust Ohio's Eleventh Appellate District Court with matters of mine. Hence I petition now the Supreme Court of Ohio for its involvement.

7. I, Russell E. Appenzeller, am being unlawfully deprived of my Freedom and I am entitled to be released from prison immediately.

WHEREFORE, I, the relator/petitioner, prays for a writ of habeas Corpus that directs Warden Bracy of the Trumbull Correctional Institution in Leavittsburg, Ohio, to bring and produce Russell E. Appenzeller, inmate no. A514991, before this court for a hearing and determination on his detention, and for an Order of discharge from such detention and restraint of his liberty.

Attachments.  
"A thru D"

Russell E. Appenzeller date: 4/19/22

Russell E. Appenzeller - pro se

T.C.I. #A514991 (Formerly #A431837)

5701 Burnett Rd.; Leavittsburg, Ohio 44430-0901.

STATE OF OHIO  
COUNTY OF TRUMBULL

- VERIFICATION CLAUSE -

Undersigned Relator/Petitioner, Russell E. Appenzeller,  
hereby verifies herein the truth and accuracy of the  
allegations made in this Petition which includes attachments.

Russell E. Appenzeller date: 4/19/22  
Signature of Relator/Petitioner,  
Russell E. Appenzeller - pro se.

SWORN TO BEFORE ME AND SUBSCRIBED IN MY  
PRESENCE THIS 19<sup>TH</sup> DAY OF April 2022.

Diane R. Filkorn  
Notary Public

DIANE R. FILKORN  
NOTARY PUBLIC • STATE OF OHIO  
My commission expires Sept. 2, 2025

My Commission Expires: 02 SEP 2025



IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

Case # 02 CR 210

STATE OF OHIO )

Plaintiff )

vs. )

RUSSELL E. APPENZELLER )

Defendant )

JUDGE JAMES C. EVANS

JUDGMENT ENTRY

CLERK OF COURTS  
MAHONING COUNTY, OHIO

APR 26 2005

*CDB*

FILED  
ANTHONY VIVO, CLERK

This matter came before the Court for hearing on a violation of a community control sanction. Defendant, defense counsel, Attorney Robert Rohrbaugh, and Assistant Prosecutor Jay Macejko were present.

On this date Defendant stipulates to a violation of a community control sanction and waived hearing on same, entering a plea of Guilty.

WHEREFORE, the Court re- imposes the original sentence of four (4) years to be served at Lorain Correctional Institution, Grafton, Ohio. Credit for time already served of 876 days shall be applied plus any additional time awaiting transportation. This sentence shall be served consecutively to any sentence imposed in a Lake County case and any and all other cases now pending.

Defendant was informed that he is subject to post release control pursuant to ORC § 2967.28

Defendant has been given notice under ORC § 2929.19(B)(3) and of his appellate rights under ORC § 2953.087

Costs to Defendant.

IT IS SO ORDERED.

April 22, 2005

*James C. Evans*  
JAMES C. EVANS, JUDGE

91860  
008124

Attachment A

IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

FILED

2006 NOV -9 A 10:22

STATE OF OHIO

CASE NO. 06-CR-000108

Plaintiff

vs.

RUSSELL E. APPENZELLER

Defendant

JUDGMENT ENTRY OF SENTENCE

JUDGE PAUL H. MITROVICH

This day, to-wit: October 31, 2006, this matter came on for Defendant's sentencing hearing pursuant to R.C. 2929.19 with the Lake County Prosecuting Attorney, Charles E. Coulson, by and through Patrick J. Condon, Assistant Prosecuting Attorney, on behalf of the State of Ohio, and the Defendant, Russell E. Appenzeller, represented by Paul E. Miller, Esquire, being present in court.

The Defendant previously was found "Guilty" by a Jury of Count 1, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 2, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 3, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 4, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 5, Theft, a felony of the fifth degree, in violation of Section 2913.02(A)(1) of the Ohio Revised Code; Count 6, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 7, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 8, Theft, a felony of the fifth degree, in violation of Section 2913.02(A)(1) of the Ohio Revised Code; Count 9, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 10, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the

Ohio Revised Code; Count 11, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 12, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 13, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 14, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 15, Attempted Burglary, a felony of the third degree, in violation of Sections 2923.02 and 2911.12(A)(2) of the Ohio Revised Code; Count 16, Attempted Burglary, a felony of the fourth degree, in violation of Sections 2923.02 and 2911.12(A)(3) of the Ohio Revised Code; Count 17, Attempted Burglary, a felony of the third degree, in violation of Sections 2923.02 and 2911.12(A)(2) of the Ohio Revised Code and Count 18, Attempted Burglary, a felony of the fourth degree, in violation of Sections 2923.02 and 2911.12(A)(3) of the Ohio Revised Code.

The Court finds that Counts 1, 3, 6, 9, 11 and 13 are subject to a presumption in favor of prison under division (D) of section 2929.13 of the Ohio Revised Code.

The Court has also considered the record, oral statements, any victim impact statement, pre-sentence report and/or drug and alcohol evaluation submitted by the Lake County Adult Probation Department of the Court of Common Pleas, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

In considering the foregoing, and for the reasons stated in the record, this Court finds that a prison sentence is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11 and that Defendant is not amenable to an available community control sanction.

The Court finds that Defendant was afforded all rights pursuant to Crim.R. 32 and was given the opportunity to speak before judgment and sentence was pronounced against him.

**IT IS HEREBY ORDERED:**

That the Defendant serve a stated prison term of four (4) years in prison on

Count 1 and three (3) years in prison on Count 2, to run concurrent with each other; four (4) years in prison on Count 3; three (3) years in prison on Count 4 and one (1) year in prison on Count 5, to run concurrent with each other but consecutive to ~~Counts 1 and 2; four (4) years in prison on Count 6; three (3) years in prison on Count~~ 7 and one (1) year in prison on Count 8, to run concurrent with each other but consecutive to Counts 3, 4 and 5; four (4) years in prison on Count 9 and three (3) years in prison on Count 10, to run concurrent with each other but consecutive to Counts 6, 7 and 8; four (4) years in prison on Count 11 and three (3) years in prison on Count 12, to run concurrent with each other but consecutive to Counts 9 and 10; four (4) years in prison on Count 13 and three (3) years in prison on Count 14, to run concurrent with each other but consecutive to Counts 11 and 12; two (2) years in prison on Count 15 and one (1) year in prison on Count 16, to run concurrent with each other but consecutive to Counts 13 and 14; and two (2) years in prison on Count 17 and one (1) year in prison on Count 18, to run concurrent with each other but consecutive to Counts 15 and 16 for a total of twenty-eight (28) years in prison. Said sentence is to run concurrent to the defendant's current prison sentence in Mahoning County Case No. 02CR210 and No. 02CR483. Said prison term shall be served at the Lorain Correctional Institution, Grafton, Ohio with zero (0) days of credit for time already served.

The Court does not recommend that the Defendant be placed in a Shock Incarceration or an Intensive Program Prison (IPP).

The Court has further notified the Defendant, that post release control is mandatory in this case up to a maximum of 3 years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code section 2967.28. The Defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

That the Clerk of Courts issue a warrant directed to Daniel A. Dunlap, Sheriff of Lake County, Ohio, to convey the said Defendant to the custody of the Lorain Correctional Institution, Grafton, Ohio forthwith.

~~Defendant is ordered to pay all court costs and all costs of prosecution in an~~  
amount certified by the Lake County Clerk of Courts. Defendant is further ordered to pay any supervision fees as permitted pursuant to R.C. 2929.18(A)(4).

Defendant made an oral motion to have this sentence stayed during appeal.  
Said motion is denied.


Bond is hereby released.

IT IS SO ORDERED.

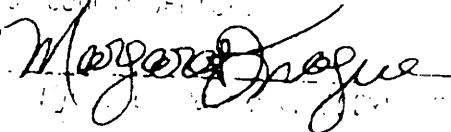
  
JUDGE PAUL H. MITROVICH

PREPARED ON NOVEMBER 3, 2006  
AT THE DIRECTION OF THE TRIAL COURT:

CHARLES E. COULSON (0008687)  
PROSECUTING ATTORNEY

  
Patrick J. Condon (0071068)  
ASSISTANT PROSECUTING ATTORNEY

PJC/sd

I HEREBY INTO TO A TRUE COPY OF THE  
RETURN OF THE CLERK OF COURT  
IN COURT OF COMMON PLEAS  
  
CLERK OF COURT

cc  
514991  
BJ

✓  
IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

FILED

2009 FEB -5 A 11:21

STATE OF OHIO

- Plaintiff

vs.

RUSSELL E. APPENZELLER

- Defendant

CASE NO. 06-CR-000108  
MAURICE G. KELLY  
LAKE CO. CLERK OF COURT

JUDGMENT ENTRY OF SENTENCE

JUDGE JOSEPH GIBSON

2009 FEB 5 11:28 AM

This day, to-wit: January 28, 2009, this matter came on for Defendant's re-sentencing hearing pursuant to R.C. 2929.19 with the Lake County Prosecuting Attorney, Charles E. Coulson, by and through Patrick J. Condon, Assistant Prosecuting Attorney, on behalf of the State of Ohio, and the Defendant, Russell E. Appenzeller, represented by James C. Mathews, Esquire, being present in court, this case having been reversed in part and remanded by the Court of Appeals for the Eleventh Appellate District, Case No. 2006-L-258, 2008-Ohio-7005, decided on December 31, 2008, in order to merge the appropriate counts and for resentencing.

The Defendant previously was found "Guilty" by a Jury of Count 1, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 2, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 3, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 4, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 5, Theft, a felony of the fifth degree, in violation of Section 2913.02(A)(1) of the Ohio Revised Code; Count 6, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 7, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the

Attachment C

Ohio Revised Code; Count 8, Theft, a felony of the fifth degree, in violation of Section 2913.02(A)(1) of the Ohio Revised Code; Count 9, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 10, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 11, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 12, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 13, Burglary, a felony of the second degree, in violation of Section 2911.12(A)(2) of the Ohio Revised Code; Count 14, Burglary, a felony of the third degree, in violation of Section 2911.12(A)(3) of the Ohio Revised Code; Count 15, Attempted Burglary, a felony of the third degree, in violation of Sections 2923.02 and 2911.12(A)(2) of the Ohio Revised Code; Count 16, Attempted Burglary, a felony of the fourth degree, in violation of Sections 2923.02 and 2911.12(A)(3) of the Ohio Revised Code; Count 17, Attempted Burglary, a felony of the third degree, in violation of Sections 2923.02 and 2911.12(A)(2) of the Ohio Revised Code and Count 18, Attempted Burglary, a felony of the fourth degree, in violation of Sections 2923.02 and 2911.12(A)(3) of the Ohio Revised Code.

The Court finds that Counts 1, 3, 6, 9, 11 and 13 are subject to a presumption in favor of prison under division (D) of section 2929.13 of the Ohio Revised Code.

The Court has also considered the record, oral statements, any victim impact statement, pre-sentence report and/or drug and alcohol evaluation submitted by the Lake County Adult Probation Department of the Court of Common Pleas, as well as the principles and purposes of sentencing under R.C. 2929.11, and has balanced the seriousness and recidivism factors under R.C. 2929.12.

In considering the foregoing, and for the reasons stated in the record, this Court finds that a prison sentence is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11 and that Defendant is not amenable to an available community control sanction.

The Court finds that Defendant was afforded all rights pursuant to Crim.R. 32 and was given the opportunity to speak before judgment and sentence was pronounced against him.

**IT IS HEREBY ORDERED:**

That for sentencing purposes Count 2 merges with Count 1; Count 4 merges with Count 3; Count 7 merges with Count 6; Count 10 merges with Count 9; Count 12 merges with Count 11; Count 14 merges with Count 13; Count 16 merges with Count 15 and Count 18 merges with Count 17. That the Defendant serve a stated prison term of four (4) years in prison on Count 1; four (4) years in prison on Count 3, to run consecutive to Count 1; one (1) year in prison on Count 5, to run concurrent with Counts 1 and 3; four (4) years in prison on Count 6, to run consecutive to Counts 1 and 3; one (1) year in prison on Count 8, to run concurrent with Counts 1, 3 and 6; four (4) years in prison on Count 9, to run consecutive to Counts 1, 3 and 6; four(4) years in prison on Count 11, to run consecutive to Counts 1, 3, 6 and 9; four (4) years in prison on Count 13, to run consecutive to Counts 1, 3, 6, 9 and 11; two (2) years in prison on Count 15, to run consecutive to Counts 1, 3, 6, 9, 11 and 13 and two (2) years in prison on Count 17, to run consecutive to Counts 1, 3, 6, 9, 11, 13 and 15, for a total of twenty-eight (28) years in prison. Said sentence is to run concurrent to the defendant's current prison sentence in Mahoning County Case No. 02CR210 and No. 02CR483. Said prison term shall be served at the Lorain Correctional Institution, Grafton, Ohio with zero (0) days of credit for time already served. Any additional credit for time already served on this case is to be determined by the Ohio Department of Corrections. If the Defendant is returned to prison for a violation of post-release control by the Ohio Adult Parole Authority, the sentence of this Court shall be served consecutive to the parole violation, pursuant to Ohio Revised Code Section 2929.14.1(B).

The Court does not recommend that the Defendant be placed in a Shock Incarceration or an Intensive Program Prison (IPP). The Court disapproves of transfer to a transitional control program.

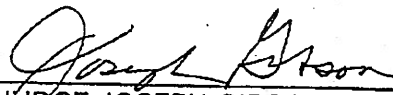
The Court has further notified the Defendant, that post release control is mandatory in this case up to a maximum of 3 years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code section 2967.28. The Defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

That the Clerk of Courts issue a warrant directed to Daniel A. Dunlap, Sheriff of Lake County, Ohio, to convey the said Defendant to the custody of the Lorain Correctional Institution, Grafton; Ohio forthwith.

Defendant is ordered to pay all court costs and all costs of prosecution in an amount certified by the Lake County Clerk of Courts. Defendant is further ordered to pay any supervision fees as permitted pursuant to R.C. 2929.18(A)(4).

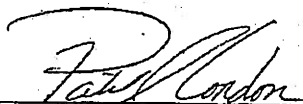
Bond is hereby released.

**IT IS SO ORDERED.**

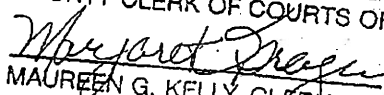
  
JUDGE JOSEPH GIBSON

PREPARED ON JANUARY 29, 2009  
AT THE DIRECTION OF THE TRIAL COURT:

CHARLES E. COULSON (0008667)  
PROSECUTING ATTORNEY

  
Patrick J. Condon (0071068)  
ASSISTANT PROSECUTING ATTORNEY

PJC/sd

I CERTIFY THIS TO BE A TRUE COPY OF  
THE RECORDS ON FILE IN THE LAKE  
COUNTY CLERK OF COURTS OFFICE.  
 DEPUTY  
MAUREEN G. KELLY, CLERK OF COURTS

# Lake County, Ohio

Date: 12/04/2007 12:31:16

Docket Sheet

Page: 5

CRTR5925

Detail

06CR000108 STATE OF OHIO vs. APPENZELLER, RUSSELL E

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
9	02/21/06	Warrant on indictment issued to the Sheriff of Lake County.	3.00	3.00
10	02/21/06	Warrant for removal & certified copies of required papers issued to Sheriff of Lake County.	3.00	3.00
11	02/24/06	JUDGMENT ENTRY FILED: The defendant entered a waiver of right to be present at arraignment/information. Waiver is accepted and ordered filed. The court enters pleas of "not guilty" to all charges. Bond is set at \$25,000 cash/surety. See Journal. vol. 1604 pg 477	2.00	2.00
12	02/24/06	Conditions of bond signed by defendant and attorney, filed.	0.00	0.00
13	02/24/06	Notice of discovery by State of Ohio and request for reciprocal discovery, filed.	0.00	0.00
14	02/24/06	Return of service form, filed.	10.00	10.00
15	02/27/06	Warrant on indictment returned: Execution by arrest. I received this warrant on February 22, 2006 at 11:36 o'clock am. On February 23, 2006 I arrested Russell Appenzeller and gave him/her a copy of this warrant with complaint attached and brought him/her to Lake County Jail. Sheriff, Daniel A. Dunlap Fees \$10.00 /s/ Dep Russell Tuttle	10.00	10.00
16	03/01/06	JUDGMENT ENTRY FILED: Order of Procedure. VOL 1606 PG 329-331	6.00	6.00
17	03/01/06	Court notice mailed by judge's office on 3/1/06 to the following: (Condon, prosecutor; Kucharski, defense atty) Jury trial set for 4/17/06 at 9:00 a.m.	0.00	0.00
18	03/02/06	Copy of request for discovery, filed.	0.00	0.00

Attachment D