WENDELL R. LINDSAY, II,	:	
Appellant,	:	On Appeal from the Marion County Court, Third Appellate District
	:	of Ohio; Case No. 9-21-043
v.	:	Judgment Entry Filed 03-10-2022
Department of Rehabilitation & Corrections, Warden, North Central Correctional Complex/(MTC), et al.	:	**SUPREME COURT OF OHIO CASE NO. GEN-2022-0402**
Respondent.	:	APPENDIX; (18) Reconsideration Response; (19) Judgment Entry; Nunc Pro Tunc.

BRIEF OF THE APPELLANT WENDELL R. LINDSAY,II

WENDELL R. LINDSAY,II
North Central Correctional Complex
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Marion, Ohio 43301

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO)
) SS: AFFIDAVIT: STATEMENT OF CLAIMS OF WENDELL R. LINDSAY, II
MARION COUNTY)

I, the Affiant, WENDELL R. LINDSAY, II, also the Appellant in this Appeal to the Supreme Court of Ohio, being duly cautioned and sworn of the penalty of perjury, do hereby make these claims, that these claims are true to the best of my knowledge; as required by Ohio 8th Dist.Ct.App.R. 54(B)(1)(a); also that, I was sentenced to a prison term of 10 years to life, (10 years mandatory), with 5 years (PRC), and to have no contact with the victim or her mother, by the Richland County Common Pleas Court out of Mansfield, Ohio, on October 28, 2010; that the mandatory time was served 12/20/2020, and Affiant became eligible for release on parole 6/17/2021; that the sentence was without a Sexually Violent Predator Specification, falling under (SB2); R.C. § 2971.03(B)(1); that I was paroled/released 6/17/2021, and the release was halted unlawfully as stated in these truths, that:

PROPOSITION OF LAW ONE:

IN REGARDS TO RELEASE OF THE APPELLANT ON 06/17/2021, THE ODRC/OAPA; RESPONDENTS ET AL., VIOLATED APPELLANT'S FOURTEENTH AMENDMENT DUE PROCESS OF LAW RIGHTS, AND ALSO DENIED HIM EQUAL PROTECTION OF THE LAW, WHEN HOLDING APPELLANT AFTER GRANTING HIM A PAROLE, WHEN A "LIBERTY INTEREST WAS ESTABLISHED, AND WHEN THE PAROLE WAS A VIRTUAL CERTAINTY THAT DEMONSTRATES THE ROLE OF NOTICE, AND AS IT INVOLVED VARIOUS SOURCES OF ADVOCATED LIBERTY INTEREST" GIVING ENTITLEMENT OF RELEASE, THAT THE LIBERTY INTEREST IS PROTECTED BY DUE PROCESS:

PROPOSITION OF LAW TWO:

IN APPELLANT'S BEING DENIED RELEASE, THE ODRC/OAPA, AND THE MANAGEMENT AND TRAINING CORPORATION OF UTAH, (MTC)/NORTH CENTRAL CORRECTIONAL COMPLEX, VIOLATED THE "EX POST FACTO CLAUSE" OF THE CONSTITUTION OF THE UNITED STATES, ARTICLE I § SECTION 10, BY ALTERING APPELLANT'S SENTENCE AFTER DENYING THE PAROLE RELEASE, IN WHERE THERE HAD BEEN A "MUTUAL EXPLICIT UNDERSTANDING" THAT RELEASE ON PAROLE HAD BEEN ESTABLISHED, AND THEREFORE, THE "QUANTUM OF PUNISHMENT," INQUIRY AS TO WHETHER THE CHANGE TO THE SENTENCE AFTER THE CIRCUMSTANCES OF NOT RELEASING THE APPELLANT RESULTED IN THE ALTERING OF THE DEFINITION OR THE CRIMINAL CONDUCT ALLEGED, INCREASING THE PENALTY BY WHICH THE OFFENSE IS PUNISHED, "WITHOUT" PRIOR NOTICE OF THE CHANGE;

PROPOSITION OF LAW THREE:

THE SEPARATION OF POWER DOCTRINE PROHIBITS THE EXECUTIVE BRANCH OF GOVERNMENT FROM OVERRIDING A COURT'S JOURNAL/SENTENCING ENTRY ABOUT WHAT THE LAW REQUIRES IN AN OFFENDER'S CASE; NEITHER THE EXECUTIVE BRANCH NOR THE LEGISLATIVE BRANCH OF GOVERNMENT HAS AUTHORITY TO ANNUL, REVERSE, OR MODIFY A JUDGMENT THAT THE TRIAL COURT HAS ALREADY ENTERED ITS ENTRY, AND THE DISTRICT COURT HAS ALREADY AFFIRMED ON APPEAL. IN THIS APPELLANT'S CASE, THE RESPONDENTS VIOLATED APPELLANT'S DUE PROCESS OF LAW RIGHTS, AND DENIED HIM EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, WHEN THEIR ACTIONS WERE GOVERNED BY CHAPTER 5145 OF THE OHIO REVISED CODE, WHICH GOVERNS "ALL OHIO CORRECTIONAL INSTITUTIONS.

WENDELL R. LINDSAY, II
WENDELL R. LINDSAY, II Affiant

NOTARY PUBLIC

Sworn, Affirmed, and Prescribed to, in My presences, this 5 day of April 2022.

MELINDA TAYLOR
Notary Public
State of Ohio
My Commission Expires
5-17-22

NOTARY SIGNATURE

My Commission Expires _____.

STATEMENT OF THE FACTS

On October 26, 2010, the Appellant was convicted of rape of a victim under the age of thirteen, by a Richland County jury, out of Mansfield, Ohio. The conviction resulted from a fifteen count indictment alleging "five counts of first degree rape; three of which stated that the victim was under the age of ten, counts I, II, and III, and the other two counts, IV, and V, stated that the victim was under the age of thirteen; the indictment also contained five counts of second degree felony sexual battery of a victim under the age of thirteen, counts VI-through-X; and five counts of third degree felony gross sexual imposition of a victim under the age of thirteen. The actual conviction from the jury, found the Appellant guilty of three out of the fifteen indicted counts; counts V, X, and XV, while the other twelve indicted counts were found **"NOT GUILTY,"** because there was **"NO EVIDENCE"** to substantiate the allegations, and therefore, the narrative of those twelve offenses are no longer apart of the narrative of Appellant's case.

The three found guilty offenses; first degree rape, of a victim under the age of thirteen; second degree sexual battery, of a victim under the age of thirteen; and third degree gross sexual imposition, of a victim under the age of thirteen, were considered to be the same act, constitution the three offenses, and therefore, the three offenses were merged as **"allied offenses,"** because they had the same **"animus."** R.C. § 2945.75, should have forbid the three convictions; under "allied offenses," there can only be but one conviction, and although the Court sentenced the Appellant to the highest degree felony; rape, R.C. § 2907.02(A)(1)(b), during Appellant's first Appeal of this conviction, his Public Defender Attorney, failed to bring up that a **Pelfrey** issue was present, or that **the sentence was against the "Manifest Weight of the Evidence,"** causing the Appellant to lose appeal issues that would have resulted in the overturning of the conviction; that was decided with misstated facts of DNA conclusions.

The Appellant was sentenced to **"ten years to life, (with the 10 years being mandatory), five years Post-Release Control/(PRC), classifying Appellant as a 'TIER-I Sex Offender,' and that he have no contact with the alleged victim or her mother;** (which was a duty not within the jurisdiction of a felony Trial Judge), also, the Appellant was **not ordered during the conclusion of Trial, to pay restitution or court cost, but 18 months later, it was ordered that Appellant pay $15,000.00; although it does not appear on appellant's Sentencing Entry."** The rape conviction was not of sexual

intercourse, but in the form of **"cunnilingus,"** and while the victim stated that she pretended to be asleep; and while there was no kidnapping or abduction, no physical assault or threats of violence, and the force factor was induced only to what the statute requires pertaining to that of **"a child under the age of thirteen,"** and while Pursuant to R.C. § 2907.02(A)(1)(b), the Appellant would have received a harsher term if the victim was under the age of ten years old; instead, the Appellant was sentenced under **R.C. § 2971.03(B)(1)**, (that is without a Sexually Violent Predator Specification).

The Appellant was received by the Department of Rehabilitation & Corrections, "prior to his conviction on this case, (for a unrelated felony case, August 2010)," and did not start the sentence for this conviction until June 11, 2011. The Appellant was informed that he was sentenced under (SB2), and had a projected Parole Board Hearing date of **"June 17, 2021,"** at which time the Appellant was informed that he would have only a **"meaningful parole consideration hearing,"** that if he, the Appellant, followed the established rules of conduct before his parole hearing; staying out of trouble during his time of incarceration; participated in Community Service, Programs, College, etc., then the likelihood of release on parole would increase, and that, **"only by the victim's request would the Parole Board continue the term; but even then, only two years, at which time the Parole Board would have to also give a 'release date,' that a certainty, unless their is a violation of institution rules that are listed, and only then could the parole release be terminated."**

In Appellant's argument in this Appealing of the Writ of Habeas Corpus to the Third Appellate District of Ohio's decision, the Appellant's claim, is that **"facts"** were presented proving that the Appellant was presented with **a proper notice that he was paroled;** (Appellant became eligible for release after serving the ten year mandatory sentence, ending 12/26/2020), and the hearing for parole scheduled 06/17/2021 became Appellant's **"NEW RELEASE DATE,"** instead of his parole hearing date; Ohio Law requires a **"Presumptive Parole Release date,** and while it was presented to Appellant by **"NOTICE," that Appellant was being released,** then parole became a **"certainty," and while the Appellant "ACCEPTED," signing all the necessary release paper-work.** Pursuant to R.C. § 2967.13(A), the OAPA adopted a "NEW" parole guideline, March 1, 1998, to promote a more consistent exercise of their discretionary power, adding **fairer and more equitable decision-making without removing the opportunity for consideration of parole eligibility... The Appellant was released, then stopped "cold" laterally at the front gate without cause; a created "Liberty Interest" of release was denied.**

STATEMENT OF THE FACTUAL CLAIM

In Appellant's case, the Third Appellate District of Ohio made no mention of the actual claim of release, then the denial thereof, that initiated the filing of the Writ Of Habeas Corpus Release, nor did they mention that the release being stopped, ignored or was disqualified due to mistake, miscalculation, or blunder; in any event, it was not within the guidelines of the ODRC/OAPA, to be able to create a "Liberty Interest," allowing the Appellant a "Mutually Explicit Understanding" that he was being released, then, without cause, denying to release the Appellant. The release was granted, and because of what occurred, their was an "Entitlement for Release on Parole," even if the release was made arbitrarily, it is not irrational to require that the Parole Authorities adhere to its own decision to release the Appellant, and to utilize procedures designed to assure that the decision to release the Appellant, after he became eligible for release, (12/26/2020), that, because "NOTICE OF RELEASE" was presented, and was "ACCEPTED" by the Appellant, that a "Liberty Interest was created that is protected by the Constitution of the United States, and by the Ohio Constitution; that, the signing of said documentation and paper-works, established a mutually explicit understanding between the ODRC/OAPA, and the Appellant, that he would indeed be released 06/17/2021. (Exhibits (B), (1; 1-8), (H), & (I; 1-4).

However, the argument between the State Administrative Body, and the State Legislative Body, would have to interpret the meaning of "RELEASE ON PAROLE/PRC," and the occurrences between 01/18/2021 and through 06/17/2021; associated with the granting of parole, and according to the eligibility of the Appellant, relying on the history of what relevant explanation can be assumed, and while not ignoring that a "Liberty Interest" was created, and cannot be overlooked without violating the rights of the Appellant; and then after denying the release, what law allows the adding of sanctions to the Appellant's sentence that were not applied previously, or during the Sentencing October 28, 2010.

The Third Appellant District of Ohio, asserts that, their understanding of the Appellant's claims, "was that the Appellant believes that he is wrongfully being held under a 'Sexually Violent Predator Specification, and that his offense was not indicated with a (SVP) Specification, nor did the Trial Court impose a sentence under the sanctions thereof; also, that the Appellant, must show, to be entitled to a Writ of Habeas Corpus, that He is being held **'unlawfully, and restrained of**

his liberty, that he is entitled to immediate release from confinement; as a Writ of Habeas Corpus Relief is generally available only when a prisoner's maximum sentence has expired and he is being held unlawfully."

The Appellant spoke of the "non-jurisdictional errors" referred to in describing the totality of the situation, depicting what actually occurred; how the appellant was paroled according to all documented evidence, and the release on parole was within the statutory guidelines of the original sentence imposed. Also relevant, the Appellant has never had expectations, from the Parole Hearing procedure that was to be conducted 06/17/2021, only that he would receive a **"Meaningful Parole Consideration Hearing."** The hearing that was scheduled 06/17/2021, was somehow canceled, and because of that, the Appellant was **"paroled;"** (Exhibit (B)). The first conformation came in the presentment of the **"CONDITIONS OF PAROLE;" in where, the ODRC/Annette Chambers-Smith seal was present on the top portion of the paper, and at the bottom portion, it stated clearly that, "[SOS & PII; "No un-supervised contact with minors (supervising adult must be approved by the APA); unless a longer period of supervision is imposed by the Parole Board]." After the Appellant was denied release; on 06/17/2021, just as all the signed paper-works indicated, release was granted, and stoppage of the release was in error.** (Exhibits (H) & (I))

After stopping the scheduled release, the institution had no explanation. Later, Appellant was informed that a (SVP) Specification was the reason; that Appellant fell under the "Sexual Predator Laws." This information requires "Fair Notice" from the Trial Court during sentencing, that did not occur. The (SVP) was added "AFTER the release was stopped," and therefore, a violation of Art. I, II, and III of the United States Constitution, due to "the Separation of Power Doctrine." Also, it is **"Plain Error"** for a Sentencing Court to not give a convicted person **FAIR NOTICE** of sentencing sanctions, or the stipulations associated with his term. The adding to the Appellant's sentence, of a (SVP) Specification, when the sentencing judge specifically stated; (Exhibit (C)), that Appellant would not have a (SVP) Specification, violated **Oh. Const. art. II § 28; the Ex Post Facto Clause,** and while the OAPA conducted a (SVP) Hearing two days before the scheduled release, as a measure to camouflage their inappropriate application of OAC 5120:1-1-10(A)(B), in doing so, overlooked the **"Liberty Interest" of the Appellant,** protected by the **Due Process Clause** of the U.S. Constitution.

PROPOSITION OF LAW ONE:

IN REGARDS TO RELEASE OF THE APPELLANT ON 06/17/2021, THE ODRC/OAPA; RESPONDENTS ET AL., VIOLATED APPELLANT'S FOURTEENTH AMENDMENT DUE PROCESS OF LAW RIGHTS, AND ALSO DENIED HIM EQUAL PROTECTION OF THE LAW, WHEN HOLDING APPELLANT AFTER GRANTING HIM A PAROLE, WHEN A "LIBERTY INTEREST" WAS ESTABLISHED, AND WHEN THE PAROLE WAS A VIRTUAL CERTAINTY THAT DEMONSTRATES THE ROLE OF NOTICE, AND AS IT INVOLVED VARIOUS SOURCES OF ADVOCATED LIBERTY INTEREST GIVING ENTITLEMENT OF RELEASE THAT THE LIBERTY INTEREST IS PROTECTED BY DUE PROCESS.

In the Appellant's documented narrative of the notification and preparation of being paroled by the Ohio Department of Rehabilitation and Corrections/the Ohio Adult Parole Board-Adult Parole Authorities, and while being detained at the North Central Correctional Complex, and the release being within the time-frame of what the Richland County Court of Common Pleas, out of Mansfield, Ohio, had stated to be the approximated time, according to the Journal Entry after sentencing Appellant to a prison term of ten (10) years to life in the date and year of October 28, 2010. The Appellant was serving the mandatory portion of his sentence that ended 12/20/2020, and according to the documented sentencing scheme, according to the Bureau of Sentencing Computation, it was determined that the Appellant was eligible for release on parole on 06/17/2021.

It is explained in the "Statement of the Facts," that the Appellant had received "notice" that he would be released. The Appellant had no expectation of a release, only that he would be considered for release by the ODRC, and that their would only be a "meaningful parole consideration hearing," that, at its conclusion, the Appellant would have an projected release date, or a opportunity to appeal to the Parole Board Panel, and negotiate an opinion to try and persuade the panel that he was rehabilitated and ready for release to the conditions set according to the sanction of his type of case. (Exhibit(A)

The "new" parole structure was implemented according to Ms. Annette Chambers-Smith; the Director of the ODRC, and the Appellant's parole was given and a notice was received, as well as a "Mutually Explicit Understanding" that created a **"Liberty Interest"** protected by the Due Process Clauce. (Ex. (B))

Ohio Law requires that the Ohio Adult Parole Authorities/Adult Parole Board, soon after a prisoner is confined, to establish a "presumptive parole release date," as in this case; (the Appellant's presumptive release date was 6/17/2021). Based on the prior established facts that the Appellant was "suitable for release, thus, **"creating a 'Liberty Interest;' an interest protected by the Due Process Clause of the State and Federal Constitution, that, because of Ohio Law, became a 'Fundamental Right,' a right derived from 'Natural or Fundamental Law,' which is the foundation of Constitutional Law-a significant component of liberty-encroachments of which are rigorously tested by Courts to ascertain the soundness of purported governmental justification."** A fundamental right triggers **"strict"** scrutiny to determine whether the law violates the Due Process Clause or Equal Protection of Law that protects individuals according to the Fourteenth Amendment.

Under **R.C. § 2967.13(A)**, the OAPA adopted a "NEW Parole Guideline," on March 1, 1998; accordingly, the revised guidelines were intended to **"promote a more consistent exercise of discretion and enabling fairer and more equitable decision-making without removing the opportunity for consideration of parole eligibility."** The "NEW" guidelines, before consideration of being released: **"(1) would factor the seriousness of offense, and the risk of recidivism, diminished by the time already served, however, (during an inmate's first Parole Hearing, under these new guidelines, 'the OAPA generally would give the inmate a PROJECTED RELEASE DATE, which presumably falls within the applicable guideline-range for his/her particular offense.' The projected release date becomes the date that the inmate is eligible for** 'RELEASE ON PAROLE." The "Fundamental Fairness Doctrine" applies to the principals of **Due Process**, pertaining to the **"Judicial Proceedings."** **Wolff v. McDonnell**, 418 U.S. 539, 41 L.Ed.2d. 935 94, S.Ct. 2963, also see, **Dotson v. Wilkinson**, 448 F.3d 936 2006 U.S. App. LEXIS 12995 (6th Cir. 2006), citing, **Edwards v. Balisok**, 520 U.S. 641 137 L.3d 2d. 906 117 S.Ct. 1584. In this Appellant's case, **"release was a 'Mutually Explicit Understanding" between the Appellant and, as the signed documents confirm, the ODRC; (Exhibit (B)).**

It is understood that, Ohio Statute allows the Adult Parole Authority to grant parole, and that it does not create a presumption that Parole will be granted and does not create any expectancy or **"Liberty Interest"** upon which a prisoner can base a due process claim. **Hattie v. Anderson**, 68 Ohio St.3d 232, 626 N.E.2d 67 (1994), later proceeding sub nom State ex rel.; **Hattie v. Goldhardt**, 96 Ohio St.3d 123, 630 N.E.2d 696 (1994), and **King v. Dillman**, 85 Ohio App. 3d 43, 619 N.E.2d 66 (12th Dist. Warren County 1993). However, Ohio law does require a presumptive Parole release date; resulting in, either a State or Federal Constitutional "liberty interest" that is protected by the due process clause, since due process procedures are mandated for the granting of parole if various sources of a "liberty interest" have been advocated.

A parity of reasoning suggest that even though there is no constitutionally based entitlement to parole, prisoners still may not be denied parole **"in a way that violates some other constitutional guarantee;"** for example, an inmate cannot be denied because of **race or national origin,** and should not be denied as punishment for exercise of constitutional rights, nor as a means of discouraging other inmates for exercising such rights. The possibility that such a prejudice, suggesting that an inmate was singled out and treated out of the ordinary, might create a liberty interest, especially when there is no explanation for the actions taken towards the individual/inmate. Also, **"mutually explicit understanding"** creates a **liberty interest**, as in this case, **when the Parole Authorities affirmatively indicated, to the Appellant, that parole was granted; because of good behavior, 'a new parole system was being implemented, and the Appellant has examples as evidence, it can then be argued that sufficiently well established practice may exist to give rise to the requisite 'mutual understanding' that release 'shall' be granted, and a liberty interest of this sort is protected by the due process clause.** Appellant **"being"** granted parole was a virtual certainty demonstrating the role of **"NOTICE."**

PROPOSITION OF LAW TWO:

IN APPELLANT'S BEING DENIED RELEASE, THE ODRC/OAPA, AND THE MANAGING AND TRAINING CORPORATION OF UTAH, (MTC)/NORTH CENTRAL CORRECTIONAL COMPLEX, VIOLATED THE "EX POST FACTO CLAUSE" OF THE CONSTITUTION OF THE UNITED STATES, ARTICLE 1 § SECTION 10, BY ALTERING APPELLANT'S SENTENCE AFTER DENYING THE PAROLE RELEASE IN WHERE THERE HAD BEEN A "MUTUALLY EXPLICIT UNDERSTANDING" THAT RELEASE ON PAROLE HAD BEEN ESTABLISHED, AND THEREFORE, THE "QUANTUM OF PUNISHMENT; INQUIRY AS TO WHETHER THE CHANGE TO THE SENTENCE AFTER THE CIRCUMSTANCE OF NOT RELEASING THE APPELLANT RESULTED IN THE ALTERING OF THE DEFINITION OR CRIMINAL CONDUCT ALLEGED INCREASED THE PENALTY BY WHICH THE OFFENSE IS PUNISHED, WITHOUT PRIOR NOTICE OF THE CHANGE.

Retroactive alteration of parole or early release provisions, like retroactive application of provisions that govern initial sentencing, implicates the "Ex Post Facto Clause," because such credits are one determinant of a prisoner's term of imprisonment, and the prisoner's effective sentence is altered once the determinant has been changed; the removal of such provisions can constitute an increase of punishment, because a prisoner's eligibility for "reduced imprisonment" is a significant factor entering into both the defendant's decision to plea-bargan for a more lenient sentence before the Trial, and to avoid the possibility of being found guilty of offenses that he may not be guilty of in exchange for a guilty plea for the offenses that depict what occurred. **Lynce v. Mathis**, 519 U.S. 433 117 S.Ct. 891 137 L.Ed.2d 63 * * * 1997 U.S. LEXIS 1269. The doctrine against retroactive application of "new laws" finds expression in several provisions of the U.S. Constitution; the "Ex Post Facto Clause" flatly prohibits states from passing another type of retroactive legislative law impairing the obligation of "contracts already in place."

The Fifth Amendment's "Takings Clause," prevents the legislature **(and other government actors), [* * *],** and singling out **disfavored persons and meting out summary punishment for past conduct.** The Due Process Clause also protects the interest of **"fair notice," and repose that may be compromised by retroactive legislation; U.S Const. Amend. XIV; Edwards v. ALDI, Inc.,** 310F Supp.3d 803; it also discuses the "Quantum of Punishment; the relevant

inquiry as to whether a law violates the "Ex Post Facto Clause," and whether the change occurring after the Sentence Entry alters the definition or the criminal conduct, or does it increase the penalty by which a crime is punished. In evaluating the constitutionality of such an allegation, the Court must determine whether any change creates a sufficient risk of increasing the measure of punishment attached to the covered crime, and if so, then a clear violation of Due Process of Law has occurred, as is the claim in this Appeal.

Appellant's sentence of ten (10) years to life, was with a ten (10) year mandatory incarceration stipulation, and after serving the ten years, the Appellant would be eligible for "release" in the form of Parole, Judicial Release, or any other type of eligible release under the offense for which Appellant was sentenced. The Appellant was given notice that he received a Parole, and the parole was within the stated time-frame corroborating the information - circumstances - relating to all documented and verbalized facts concerning a possible release on parole for the Appellant, and because this information of being released on parole was orchestrated by the (MTC) Marion-Unit staff, and was confirmed as being fact by the North Central Correctional Complexes Adult Parole Board Liaison, Mr. Morrison, during interviewing the Appellant, May of 2010, and because on 06/17/2021, the Appellant was called to the institutions (R&D); Release and Discharge, with information stating that Appellant was being released, and because all paper-works pertaining to release had been signed, it was established, that a release should have occurred. (Exhibits (B) Pg. 1-through-8) (Exhibits (H) & (I) letters from BOSC)

When the Appellant was denied release on 06/17/2021, he was not given any reason; eight (8) days afterwards, Appellant was told, by Unit staff that, it was discovered, by (N.C.C.C. staff), that Appellant was sentenced with a Sexually Violent Predator Specification. The (SVP) Specification was not present on any paper-work, nor on the Sentencing Entry from the Court; not a single iota of information stated that the Appellant was sentenced with a (SVP) Specification; it wasn't until after the botched release did it appear.

In this Appellant's situation, concerning **"suitability Determination of Parole,"** a conference/or hearing was conducted prior to release to determine if the Appellant fit the criteria and was suitable for release; the Appellant's name appeared on a printout sheet for March 2021, as to inform Appellant of his upcoming Parole Hearing, Appellant's name was removed from the list shortly afterward, the stated reason was due to parole had been granted, and that it was determined that 06/17/2021 would be the actual release date. According to O.A.C. § 5120; 1-1-11 determined that the Appellant was suitable for release on parole, after balancing between **"Public Safety," and "Rehabilitation,"** as eligibility reflects "statutes and policy." Thus, Parole involves the determination of a change in an offender regarding **"Rehabilitation"** and the understanding that a release will not unduly place the community at risk, as the Parole Board can only grant parole, pursuant to R.C. § 2967.03; **"if the judgment there is reasonable grounds to believe that... paroling the prisoner would further the interest of justice and be consistent with the welfare and security of society," all went into the consideration in this Appellant's release on parole.**

The O.A.C. § 5120:1-1-07; justice and following information concerning the suitability of an inmate being reasonably available includes the following:

(1) The offender is given the opportunity to speak and respond to any factual information disclosed during the hearing, and to provide any information deemed relevant to the release decision;

(2) Risk related domains, such as; Criminal and Supervision History; the ability to control (negative peers/anger, jealousy, rejection, and anxiety; Substance Abuse History; Threat Perception; Intelligence; Impulsivity; Sexual Deviance; and Callousness);

(3) Programming; (Resonsivity and Dosage), institutional community behavior; offender change, (Acceptance of Responsibility; the ability to explain consequences of behavior; use of cognitive skills to make decisions, and pro-social behavior and participation);

(4) Release Plain-suitable housing/or placement, stable employability; evidence of pro-social support; access to appropriate treatment and support services; and specific plans to manage high risk situations; case specific factors, such as, unique factors of underlying offenses; significant changes in mental or physical condition...

All went into the release consideration, resulting in granting the parole.

None of the prerequisites in Appellant's case indicated that he was sentenced with a Sexually Violent Predator Specification, that was until after the North Central Correctional Complexes staff took it upon their personal knowledge, without investigation, determined that "this Appellant" should not be released; looking into Appellant's case files. The (N.C.C.C.) staff, not being legal professionals or experts in law, interpeted their understanding of Appellant's Sentence Entry, and applied the erroneous mistake of a (SVP) Specification based on the narrative of the case; that the Appellant was indicted on fifteen (15) sexual offenses on a child under the age of thirteen (13) years old; not understanding that the Appellant plead "not guilty," went to Trial, and was found guilty of only one sexual act; that all three found guilty offenses were with the same animus, that constituted one crime; rape, (cunnilingus with a child under the age of 13); sexual battery, (cunnilingus with a child under the age of 13); gross sexual imposition, (cunnilingus with a child under the age of 13), all occurring March 4, 2010, all the same circumstances, with the same victim, and although a **"Pelfrey"** issue, (N.C.C.C.) staff could not have understood, due to their job requirement did not give them the liberty to use personal judgment and apply the (SVP) Specification. (Exhibits (A), (C) & (D))

The touchstone of this inquiry, is whether a given change, adding the (SVP) Specification, then calling the Parole Board Chair, reporting an erroneous release in progress, due to the fraudulent information of a (SVP) Specification, and while the Parole Board Chair person acted on the information **"without investigation," "AFTER THE RELEASE HAD BECOME A MUTUALLY EXPLICIT UNDERSTANDING," and therefore, a "Liberty Interest" was created;** the Parole Board Chair stopped the release, the Appellant was reclassified as being sentenced with a (SVP) Specification, and it was then that the "new" policy or (SB260) became apart of Appellant's files, applying the sanctions **"when the Appellant should have been released."**

The changes that occurred to the Appellant's prison term, although the sentence of ten (10) years to life, could not be attached, due to the scheduled release, that, even though release did not occur, adding sanctions according to (SB260) after 06/17/2021, presented a sufficient risk of increasing the measure of punishment attached to the covered crime, and while the Appellant wasn't informed of the new sentencing scheme until weeks afterwards; a letter was sent to Appellant from Melinda van der Zwan, Hearing Officer-Ohio Parole Board, stating that, on June "15." 2021; (Exhibit (E)), that was not received by the Appellant until July 9, 2021, informing Appellant that he would have a (SVP) Specification Hearing 06/01/2023; and that on June 15, 2021, a first (SVP) Specification Hearing had been held, and determined that, in two years there would be another hearing. On August 24, 2021, a letter was sent from Alicia Handwerk, Parole Board Chair person, (Exhibit (F)), her information should have been known prior to the release; that, the Appellant was sentenced under the Sexually Violent Predator Sentencing Law; (although it should not have been, due to the narrative of Appellant's case changed after the botched release, and while the information was not apart of true facts of the case.)

The adding of sanctions after the release stoppage, demonstrates that a change occurred afterwards, and therefore, it is not an individual's right to less punishment, but the lack of **"fair notice"** and **"governmental restraint"** when legislature increases punishment beyond what was prescribed when the crime was consummated. The Appellant's punishment added extra sanctions that were not apart of the previously noted Sentence Entry, so therefore enhanced, and the new sentencing sanctions did not comport with the principals of **"notice"** or **"fundamental justice"** according to Article 1 § Section 10 of the U.S. Const.; **Peugh v. United States,** 569 U.S. 530 539 133 S.Ct. 2072 186 L.Ed 2d 84 (2013); **Carner v. Jones**, 529 U.S. 244, 250 120 S.Ct. 1362 14 L.Ed 2d 236 (2000); **"no person/state "shall" pass any ... 'Ex Post Facto Law.'"** (Exhibit (B)& (D)

PROPOSITION OF LAW THREE:

THE SEPARATION OF POWER DOCTRINE PROHIBITS THE EXECUTIVE BRANCH OF GOVERNMENT FROM OVERRIDING A COURT'S JOURNAL/SENTENCING ENTRY ABOUT WHAT THE LAW REQUIRES IN AN OFFENDER'S CASE: NEITHER THE EXECUTIVE BRANCH NOR THE LEGISLATIVE BRANCH OF GOVERNMENT HAS THE AUTHORITY TO 'ANNUL, REVERSE, OR MODIFY A JUDGMENT THAT THE TRIAL COURT HAS ALREADY ENTERED ITS ENTRY, AND THE DISTRICT COURT HAS ALREADY AFFIRMED ON APPEAL.' IN THIS APPELLANT'S CASE, THE RESPONDENTS VIOLATED APPELLANT'S DUE PROCESS OF LAW RIGHT, AND DENIED HIM EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION: WHEN THEIR ACTIONS WERE GOVERNED BY CHAPTER 5145 OF THE REVISED CODE, WHICH GOVERNS ALL OHIO CORRECTIONAL INSTITUTIONS.

The statute, **R.C. § Chapter 5145**, which governs the administration of the Ohio Correctional Institutions, states that, **"a statute cannot be read to give correctional Institutions the power as to transform a sentence from what the Sentencing Entry/Journal Entry expressively contains; it is the duty and emphatically the province of the** "Judicial Department" to say what "Law" is, so the **"Separation of Power Doctrine prohibits the 'Executive Branch of government' from overriding a Court's judgment about what the law requires in a particular case." "The legislature cannot annul, reverse, or modify a judgment that the Trial Court has already entered its entry."** In Appellant's case, the release paper-work, as noted, and gave notice of the release that should have taken place; preparation and notification of the release is documented. The Third District Appellate Court mentioned their acknowledgment in their Judgment Entry, (P. 1; 2). The release was within the time-frame consistent to the Appellant's Sentencing Entry from the Richland County Common Pleas Court. (Exhibit (1), & (A-1)) & (D)

Parole Board release process-105-PBD-03, Request for Reconsideration, and Amendments to parole board Actions-105-PBD-04, are measures provided to help the parole board's process of administrating its proper polices, and **"do not have immunity from 'Constitutional Violations of Due Process Of Law," or the signature binding what is known as a "Meeting of the Minds," in corroboration with the U.C.C. pertaining to a contract being honored/or voided**

between the State of Ohio; the ODRC/OAPA, and the agreed upon sentence of the Appellant." (Exhibit-(D); Sentencing Entry of Appellant pursuant to R.C. § 2929.19, R.C. § 2929.11, and R.C. § 2929.12; with the Sex Offender findings classifying Appellant as a 'Tier-I Sex Offender/Child Offender); prerequisites listed do not indicate that the Appellant was sentenced with a Sexually Violent Predator Specification. Pursuant to R.C. § 2967.28(3)(E), establishes standards for imposition by the parole board of Post-Release Control Sanctions, under this section, that are consistent with the overriding purpose and sentencing principles set forth in section 2929,11 of the Revised Code, appropriate to the needs of release, and sanction pertaining to a (SVP) Specification must be determined by a jury and not the Court. (Exhibits (A-1), (1), & (D)) (H)

The sentence was determined, and the Appellant served the required minimum mandatory ten (10) year sentence for the crime of rape; from 06/11/2011-through--06/17/2021, that was served according to all documented evidential fact and documentation. The Parole Board made its determination of release based on all circumstantial fact, as stated, and it was "mutually understood" by all parties that, the Appellant served the minimum required sentence, and that parole consideration "could" be determined, any time after 12/20/2021; in where, between 01/18/2021, and June 14, 2021, it was a finalized decision to release the Appellant from the stated sentence in (Exhibit-(2)). The release was somehow halted/stopped without notice, and then the Parole Authorities would add to the sentence, that was already understood by the Appellant, and confirmed by the Bureau of Sentencing Computation as being according to the Sentencing Entry before the release was granted 01/18/2021, that afterwards, sometime between 06/10/2021, and 06/15/2021, a secret meeting/hearing would take place, **"without notification to the Appellant,"** that reclassified Appellant as a Sexually Violent Predator, then having a (SVP) Hearing, and under (SB260), on 06/15/2021, determined **"not to release custody of Appellant's prison term to the Richland Common Pleas Court; 'the Court that Appellant was found not**

guilty of the majority of the fifteen (15) count undictment, in where the Richland County Prosecutor hovers a prejudice against the Appellant; and when the sentencing judge was influenced by the prosecution.'" (SB260) allows the Sentencing Court to re-establish control of the Appellant's prison term... Also, when the parole board does release the Appellant's prison term, it will be controlled by the Sentencing Court hovering a "Prejudicial Conflict of Interest," (Exhibit (E), (F), (H), (I), (M), (N), & (K))

The parole release was stopped without proper cause; the staff personal at (N.C.C.C.), alerted the Parole Board Chair Person, that a "Erroneous Release" was in progress base on a personal vendetta or hatred of the individual, causing him to be "singled out of 2500 inmates." The possibility of their actions violating some other form of a constitutional guarantee suggest that, **"the individual staff person could have chosen the Appellant because of his race or national origin, creating a different type of "Liberty Interest" when there was no explanation for the actions taken against the Appellant.** The Parole Board Chair Person, without investigation into the Appellants files, not only halted the release, between the (N.C.C.C.) staff, and the Parole Board Chair Person, after the information in regards to the narrative of the Appellant's case; that he was a **"Tier-I Child Sex Offender,"** "VIOLENCE" was added to the narrative, making the appellant a Sexual Violent Predator, committed on a child, **causing him to be put in a completely different offender category;** the ODRC/OAPA, with the "new" information, that was not apart of the narrative of Appellant's case, and that is known by the fact that the offense convicted was without physical violence of any kind, and the Appellant had his security status lowered to a **"level-(1)"** five (5) years prior because of the mild circumstances associated with the offense convicted. (Exhibits (A-1) & (1))

If (SB260) and the (SVP) Specification, had been determined during the judicial process, 10/28/2010, the Appellant would have had an opportunity to make an "Objection" to the sanctions, that they were prejudicial and bias

against the Appellant. Furthermore, any sanction associated with Appellant's sentence, pertaining to a (SVP) Specification, and implementing (SB260) and the stipulations therein, concerning release from prison after serving the minimum sentence, this information is vital, and the **"Unconstitutional Conflict of Interest"** would have been discussed, and the Appellant would have atleast **"proper notice."**

The imposing of a (SVP) Specification, "after the granting parole release," then halting the release, adding the (SVP) and the sanctions that are associated within the (SVP), undermines the judicial process; Ohio Revised Code Ann. § 2967.28, (Repealed), became unconstitutional, because it allowed the ODRC/OAPA delegates authority to impose sentencing sanctions more time to a individuals sentencing term, "at its own discretion," also, a new term of imprisonment without notice; it was determined that, **"only a Judiciary could impose sanctions during sentencing, and the ODRC/OAPA, in adding sanctions to a sentence term, 'violate the Separation of Power Doctrine,"** when it changes or adds to a term of incarceration for an individuals sentence imposed by a Court, because the **"NEW"** sentence term of imprisonment on the offender is not a part of the offender's original sentence. Also, **"once a defendant's sentence has been carried into execution, it cannot be changed altered, annuled, or modified in any manner, because a defendant, if this occurs, was denied the opportunity to appeal the new term/or sentence."** State v. Haven, 105 Ohio St.3d 418 [* * *], 2005-Ohio-2286 N.E.2d 319. (Exhibit (H), (I), (3), & (5))

The Appellant is subject to one Security Level Review every year; for the past 11 years, the Appellant has not had any Rule Infractions that might suggest that he is, in any way, a threat to staff, inmates, or himself. Also, the circumstances related to the offense; that it was a family/friend situation, and unthreatening. By imposing a (SVP) Specification, the Appellant is now, after eleven (11) years, considered in the category of a kidnap/rape, murder, thus, the appellant was subjected to more time; (2 years added to sentence).

CONCLUSION

The Appellant has appealed the decision of the Third Appellate District Court of Ohio's denial of granting immediate release through the process of an Original Action; Writ of Habeas Corpus, by stating that the Appellant asserts that **He is illegally imprisoned and entitled to immediate release from confinement by writ of habeas corpus; Specificatlly, that the Appellant claims that he is wrongfully being held under a Sexually Violent Predator Specification.** Also, the Appellate asserts that his offenses were not indicted with a Sexually Violent Predator Specification nor did the Trial Court impose a sentence under the specification. On the contrary, the Appellant **"knows"** that he was not sentenced with a (SVP) Specification, and so does the ODRC/OAPA, due to the evidence, (Exhibit (H)&(I) from the Bureau of Sentencing Computation), who calculates all sentences for the ODRC/OAPA, explaining that there was no (SVP) attached to Appellant's sentence). The issue of a (SVP) was not relevant until after the parole was granted; that when it was halted by fraudulent un-investigated information, the (SVP) appeared.

Appellant's Sentence Entry, jury verdict form, (Exhibits (A-1), (D), & (C)), (C); (P. 685; sentencing transcript comments). Therefore, the Appellant "knows" the details of his sentence, that did not include any "NOTICE" of a (SVP), or sanctions in conjunction with R.C. § 2971.04, or R.C. § 2941.148, 2941.14.8, or any other sanction that was a result of a "vindictive" personal review that lead to a stoppage of Appellant's parole release 06/17/2021, especially when R.C. § 2971.03(B)(1) was discussed, and without a (SVP) Specification. The scheduled release of the Appellant presented an **"entitlement" of release on parol**, even if the release was made arbitrarily, it is not irrational to require the ODRC/OAPA to adhere to its own decision to release Appellant. However, the Appellant's scheduled Parole Board Hearing, 06/17/2021, was canceled due the scheduled release on parole. When the release was denied, the scheduled

Parole Hearing that should have followed the statutory protocol of the sentence according to the contract between the ODRC/OAPA, and the State of OHIO, assuring that after ten (10) years, the Appellant would at least have a **"meaningful parole consideration hearing,"** **Dotson v. Wilkinson, 448 F.3d 936 2006 U.S. App. LEXIS 12995 (6th Cir. 2006), Wolf v. McDonnell, 418 U.S. 539 41 L.3d 2d 935 94 S.Ct. 2963; Edwards v. Balisok, 520 U.S. 641 137 L.3d 2d 906 117 S.Ct. 1584.** The Appellant was prepared, and Parole Suitability would have to be determined, except for the fact that, **"Parole had been granted;" Release under the process-105-PBD-03, are measures provided to help the Parole Board's process of administering its policies, and the Parole Board does not have immunity from 'Constitutional Violations of Due Process of Law, nor of the signature binding, or what is known as A MEETING OF THE MINDS; AN ESTABLISHED PRACTICE EXISTING TO GIVE RISE TO THE MUTUAL UNDERSTANDING THAT IS PROTECTED BY THE DUE PROCESS CLAUSE, AND A RELEASE ON PAROLE WAS A VIRTUAL CERTAINTY BECAUSE A LIBERTY INTEREST WAS THEN ATTACHED.**

Thus, the Appellant's first Proposition of Law; in were a "Liberty Interest protected by the due process clause" was violated; Proposition of Law Two: **a "Violation of the Ex Post Facto Clause"** occurred, when the ODRC/OAPA on there own accord, added sanctions to Appellant's sentence, as a measure of camouflaging or hiding the fact that Appellant's release should have been carried out, and to add extra punishment; raising the narrative to that of a crime of violence, when there was no Kidnappin, physical assault, threat of harm, and only that one offense occurred that constituted two lower crimes with the same animus, and therefor not a different circumstance; and, in adding to the sentence term, violated the Separation of Power Doctrine; all violations of Constitutional proportion, and result in an immediate release should occur.

Lastly, the "Separation of Power Doctrine" is implicitly embedded in the entire framework of the Ohio Constitution that defines the substance and scope of power granted to the three branched

of government, [* * *], designed to secure "**LIBERTY**," they vested the legislative power of the State in the General Assembly; **Ohio Const., art. II § I**, the executive power in the Governor, **Ohio Const., art III § 5,** and the judicial power in the Court, **Ohio Const. art IV § I**, non of which include the ODRC/or the OAPA. Also, the **"Ex Post Facto Clause,"** was violated because the statutory change in Appellant's case, after the release created a "liberty interest," violated the United States Constitution because, the statutory change in applying or changing something, in this case, before the release on parole there was no mention of a Sexually Violent Predator Specification, until there was a notice of an erroneous release possibly in affect. The ODRC/OAPA was alerted, and took extreme measures to stop the release at once; adding the (SVP) Specification without investigation to the facts of the Appellant's case, forever changing the narrative of the facts surrounding the conviction, adding not only the (SVP), but also the sanctions associated; (SB260), R.C. § 2971.01(H)(1), R.C. § 2971.04, R.C. § 2941.148, all changing the totality of the sentencing and Parole structure, that were not applied when the crime was prosecuted and sentenced; **U.S. Const., art I § 10**, **State v. Townsend**, 163 Ohio St.3d 36; **State v. Daniel**, 2020-Ohio-1963 173 N.E.3d 184 2021 Ohio App. LEXIS 1920; while the fundamental element of due process required a "liberty interest," and didn't provided the Appellant with **"NOTICE" of a (SVP) Hearing scheduled after the parole release had been determined.** (Exhibit (H), (I), (E), & (F))

The Ohio Supreme Court has held that, "when determining whether a law is factually invalid, a Court must be careful not to exceed the statute's actual language and speculate about hypothetical or imaginary cases. Furthermore, reference to extrinsic facts is not required to resolve a facial challenge." Facial Challenge; **Fourteenth Amendment of the United States Constitution states that;** "The State SHALL NOT deprive any person of life "LIBERTY," [* * *], without due process of law. The Fifth Amendment to the United States Constitution; **Ohio Const., art I § 16,** the Ohio Supreme Court has recognized that the **convicted felon does not forfeit all Constitutional Protection by reason of his conviction and confinement in prison. He retains a verity of important rights that the Courts "MUST" be on alert to protect. Inmates retain ,(for example), the right to be free from racial discrimination, and the right to due process of law, and certain First Amendment rights.** This Appellant's case demonstrates violations of Constitutional proportion of rights guaranteed.

To summarize Appellant's claims, why immediate release should have been granted through Habeas Corpus: The Appellant was convicted then sentenced to the appropriate term, according to statute, to ten years to life, (10 Mandatory), 5 years (PRC), **(no (SVP) Specification),** sentenced pursuant to (SB2), for the crime of rape of a victim under the age of 13; in the form of cunnilingus; no sexual intercourse, no digital penetration, no kidnapping or violence, and no indecent exposure or subjecting the victim to harmful materials or substances; upon entering into ODRC, it would be determined that Appellant's first eligible parole hearing date would be 06/17/2022; becoming eligible for release after 12/26/2020, Appellant filed for Executive Clemency to commute his sentence. On 01/18/2021, Appellant was given **"Notice"** that he was being released on parole 06/17/2021. A N.C.C.C. staff person notified the APA-Chair, that a potential "erroneous release" was in progress, and the release was stopped; to justify the stoppage, the (SVP) Specification was added, and what is called an **"Acquiesces"** developed; **a "Tacit Agreement formed by non-explicit communication that enables two or more entities to conspirators with constructive knowledge of one another's intent, to agree and participate in a conscious parallel preceded by suggestion or suggestive communication; in this case, a 'Civil Conspiracy,' which, for the ODRC, is a 'Customary Practice' of the judiciary system.**

Wherefore, the Appellant prays that the Supreme Court of Ohio will remand this case back to the Third Appellate District Court of Ohio, instructing an immediate release, or make its own **"sua sponte" review, granting Appellant's release according to the laws and statutes pursuant to Ohio Revised Code and the United States Constitution, and Ohio Constitution.**

WENDELL R. LINDSAY, II

WENDELL R. LINDSAY, II, Appellant,
North Central Correctional Complex
670 Marion-Williamsport Road East
Marion, Ohio 43301

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing, Appellant's Brief, was sent, by regular U.S. Mail, to the Respondent(s); Senior Assistant Attorney General's Office, Criminal Justice Section, at 30 East Broad Street, (23rd Floor), Columbus, Ohio 43215, this 5th day of May 2022.

WENDELL R. LINDSAY, II

WENDELL R. LINDSAY, II, Appellant, Pro se

APPENDIX

(1) Judgment Entry being Appealed; Dated March 10, 2022; Case No. 09-21-043;

(2) Exhibit (1); Bill of Particulars describing the charged offenses, and modifications pertaining to counts V, X, and XV, altering the narrative and descriptive content of the conviction;

(3) Exhibit (A); The Department of Rehabilitation and Corrections "Notice" of Transformation of the Parole Board review; from Annette Chambers-Smith, Director;

(4) Exhibit (B); 8 pages of release signed documentation from the Department of Rehabilitation and Corrections; that Appellant signed concerning his release;

(5) Exhibit (C); Page 685 of Appellant's sentencing transcript, noting that he was being sentenced under R.C. § 2971.03(B)(1), "without a Sexually Violent Predator Specification;

(6) Exhibit (D); Sentencing Entry for Sex Offender, Date 10/28/2010 for Appellant's case; describing all the sentencing stipulations and sanctions;

(7) Exhibit (E); letter from Melinda van der Zwan; Hearing Officer-Ohio Parole Board, for the hearing of a (SVP) held "after' the scheduled release had bee botched, and without notice;

(8) Exhibit (F); letter from Alicia Handwerk from the Parole Board;

(9) Exhibit (H); kiosk inmate letter from Bureau of Sentencing Computation/BOSC, Brandon Johnston, 7/13/2021, confirming that Appellant does not have a (SVP) Specification, being a Tier-I Sexual Sexual Offender;

(10) Exhibit (I), 2 pages; a second response from BOSC, Stacy Blankenburg, stating, Appellant is not listed as having a (SVP) Specification, on 7/20/2021;

(11) Exhibit (K); 2010 ORC Ann. 2971.03-Sentencing of sexually violent offenders with predator specification;

(12) Exhibit (M); 2020 Ohio (SB260); ORC ANN. 2929.14;

(13) Exhibit (N); R.C. § 2941.148, Specification when Offender is a Sexually Violent Predator;

(14) Exhibit (2); Computor data-base stating Appellant's Parole Hearing Information;

(15) Exhibit (3); Judgment Entry Amending indicted Count IV after the trial had ended, Case No. 2010-CR-0419 D, out of Richland County, Mansfield, Ohio, 10/28/2010; the trial ended 10/26/10; said amendment was different than what was asked according to Exhibit (5);

(16) Exhibit (5); Motion to Amend Indictment; the court did not amend to what the request asked according to exhibit (3), resulting in an illegal changing of information.

(17) Jury Verdict form; Exhibit (A-1)

(18) Judgment Entry Case 9-21-43; Response to Appellant's "RECONSIDERATION" of the Court's March 10, 2022 judgment dismissing petition for writ of habeas corpus relief;

(19) Judgment Entry; "nunc pro tunc," Case No. 9-21-43, correcting a clerical error; stating the wrong TIER, that Appellant was a Tier-III, when they should of said "TIER-I.

Exhibit (redacted)

Atty. J. Brown

Exhibit-B

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

STATE OF OHIO,	:	Case No. 10-CR-419D
Plaintiff,	:	
vs.	:	
WENDELL LINDSAY, II.,	:	**BILL OF PARTICULARS**
Defendant.	:	

Now comes the Prosecuting Attorney on behalf of the State of Ohio and pursuant to Ohio Criminal Rule 7(E), hereby furnishes the defendant with a Bill of Particulars setting up specifically the nature of the offense(s) and the conduct of the defendant alleged to constitute the offense(s); this Bill of Particulars supplements the full open file discovery previously provided the defendant.

At the trial of the within matter, the State of Ohio will prove the following:

COUNT I: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, or who is the spouse of the offender

~~bds~~

but is living separate and apart from the offender, the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, in violation of section 2907.02(A)(1)(b) of the Ohio Revised Code, a felony of the first degree.

To wit: between on or about October 1, 2009, and October 18, 2009 at 1130 Monterey, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT II: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, or who is the spouse of the offender but is living separate and apart from the offender, the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, in violation of section 2907.02(A)(1)(b) of the Ohio Revised Code, a felony of the first degree.

To wit: between on or about October 18, 2009, and March 3, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT III: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, or who is the spouse of the offender but is living separate and apart from the offender, the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, in violation of

section 2907.02(A)(1)(b) of the Ohio Revised Code, a felony of the first degree.

To wit: between on or about October 1, 2009 and March 3, 2010 at 442 Springmill Street and/or 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT IV: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, on or about the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, or who is the spouse of the offender but is living separate and apart from the offender, the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, in violation of section 2907.02(A)(1)(b) of the Ohio Revised Code, a felony of the first degree.

To wit: between on or about October 18, 2009 and March 3, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT V: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, on or about the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, or who is the spouse of the offender but is living separate and apart from the offender, the other person is less than thirteen years of age, whether or not the offender knows the age of the other person, in violation of section 2907.02(A)(1)(b) of the Ohio Revised Code, a felony of the first degree.

To wit: on March 4, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the

defendant engaged in cunnilingus with Nseya James, DOB: 11/10/1999.

COUNT VI: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, the offender being the natural or adoptive parent, or a step-parent, or guardian, custodian, or a person in loco parentis to the other person, the other person being less than thirteen (13) years of age, in violation of section 2907.03(A)(5) of the Ohio Revised Code, a felony of the second degree.

To wit: between on or about October 1, 2009, and October 18, 2009 at 1130 Monterey, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT VII: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, the offender being the natural or adoptive parent, or a step-parent, or guardian, custodian, or a person in loco parentis to the other person, the other person being less than thirteen (13) years of age, in violation of section 2907.03(A)(5) of the Ohio Revised Code, a felony of the second degree.

To wit: between on or about October 18, 2009, and March 3, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

~~bds~~

COUNT VIII: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, the offender being the natural or adoptive parent, or a step-parent, or guardian, custodian, or a person in loco parentis to the other person, the other person being less than thirteen (13) years of age, in violation of section 2907.03(A)(5) of the Ohio Revised Code, a felony of the second degree.

To wit: between on or about October 1, 2009 and March 3, 2010 at 442 Springmill Street and/or 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT IX: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, the offender being the natural or adoptive parent, or a step-parent, or guardian, custodian, or a person in loco parentis to the other person, the other person being less than thirteen (13) years of age, in violation of section 2907.03(A)(5) of the Ohio Revised Code, a felony of the second degree.

To wit: between on or about October 18, 2009 and March 3, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT X: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA)**

WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did engage in sexual conduct with another, not the spouse of the offender, the offender being the natural or adoptive parent, or a step-parent, or guardian, custodian, or a person in loco parentis to the other person, the other person being less than thirteen (13) years of age, in violation of section 2907.03(A)(5) of the Ohio Revised Code, a felony of the second degree.

To wit: on March 4, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus with Nseya James, DOB: 11/10/1999.

COUNT XI: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did have sexual contact with another, not the spouse of the offender, the other person being less than thirteen (13) years of age, whether or not the offender knows the age of that person, in violation of section 2907.05(A)(4) of the Ohio Revised Code, a felony of the third degree.

To wit: between on or about October 1, 2009, and October 18, 2009 at 1130 Monterey, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

COUNT XII: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did have sexual contact with another, not the spouse of the offender, the other person being less than thirteen (13) years of age, whether or not the offender knows

the age of that person, in violation of section 2907.05(A)(4) of the Ohio Revised Code, a felony of the third degree.

To wit: between on or about October 18, 2009, and March 3, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus and/or vaginal intercourse with Nseya James, DOB: 11/10/1999.

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COUNT XIV: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, between on or about the 1st day of October, 2009 and the 4th day of March, 2010, at the County of Richland, did have sexual contact with another, not the spouse of the offender, the other person being less than thirteen (13) years of age, whether or not the offender knows the age of that person, in violation of section 2907.05(A)(4) of the Ohio Revised Code, a felony of the third degree.

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COUNT XV: **WENDELL RENARD LINDSAY, III (AKA) WENDALL R. LINSDAY (AKA) WENDELL RENARD LINDSEY (AKA) WENDALL RENARD LINDSAY, III (AKA) WENDELL RENARD LINDSAY, II (AKA) WENDEL RENARD LINDSAY**, DOB: **05/28/1962**, SSN: **273/74/1322**, on 4th of March, 2010, at the County of Richland, did have sexual contact with another, not the spouse of the offender, the other person being less than thirteen (13) years of age, whether or not the offender knows the age of that person, in violation of section 2907.05(A)(4) of the Ohio Revised Code, a felony of the third degree.

To wit: on March 4, 2010 at 425 Beryl Avenue, City of Mansfield, County of Richland, State of Ohio, the defendant engaged in cunnilingus with Nseya James, DOB: 11/10/1999.

Respectfully submitted,

CHRISTOPHER R. TUNNELL
Assistant Prosecuting Attorney
Reg. No. 0072036

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Bill of Particulars was sent to the office of Attorney JOSHUA BROWN, 32 Lutz Avenue, Lexington, OH 44904, by faxing of said document to counsel's office, this 20th day of October, 2010.

CHRISTOPHER R. TUNNELL
Assistant Prosecuting Attorney
Reg. No. 0072036

~~bds~~

Ohio | Department of Rehabilitation & Correction

Mike DeWine, Governor
Annette Chambers-Smith, Director

To: ODRC inmate population

From: Annette Chambers-Smith, Director

Date: June 13th, 2019

Re: Parole Board Transformation

Since my arrival as the Ohio Department of Rehabilitation and Corrections Director, I have worked with Prison Rights organizations, Legislators, Parolees, former Parole Board members and focus groups of people waiting to see the board, as well as Parole Board members to transform the Ohio Parole Board.

The following actions have either taken place or are currently in progress:

- Three new Parole Board members have been appointed from outside of ODRC, who represent diverse backgrounds to include prosecution, defense, mental health or recovery services. One additional Parole Board member will be added from a mental health or recovery background.

- Upon the expiration of a Board Member's current term, a careful and considered analysis of that Member's service will be made to determine if he or she is appropriate to serve an additional term.

- The Parole Board has met with the National Parole Resource Center to review statutes, administrative rules, policies and practices governing the Parole Board to ensure that risk assessment and other evidence based practices are incorporated into the parole decision making framework in Ohio. We are currently waiting on a report for recommendations from NPRC.

- The Ohio Criminal Sentencing Commission has agreed to provide assistance and recommendations in addressing options for rectifying any sentencing disparity between Pre-SB2 and SB2 offenders, including a review of the sentences of those pre-SB2 offenders who have not yet become parole eligible.

- We ceased the use of Projected Release Dates beyond 60 days unless there are compelling reasons, such as lack of appropriate placement to establish a release date beyond 60 days.

- The Ohio Parole Board Chair no longer automatically petitions every case for a Full Board hearing where parole is provisionally recommended at the institution. The backlog of cases awaiting full board hearing has quickly diminished and will be completed in the near future.

- Full Board hearings have historically been conducted without the participation of the offender. Offender participation in the Full Board Hearing will be facilitated through video-conferencing. The offender will be given an opportunity to make a statement and respond to questions by the Parole Board Members. This inclusion will provide all Board Members the opportunity to hear from the offender.

- The Parole Board Decision sheet will be modified to include the aggregate vote of the participating Parole Board Members. The offender will continue to receive a copy of the decision sheet, which will now include the number of votes cast per each recommendation considered.

- The Parole Board will establish "Staff conference days" at all institutions, similar to victim and offender conference days that are currently conducted. This will allow prison staff to meet with a Parole Board staff member to provide input regarding institutional adjustment and rehabilitative efforts of individual offenders who will soon be considered for parole. The Parole Board staff will document the additional rehabilitative input and include it in the information routinely reviewed by the Parole Board Members during hearings.

he Ohio Parole Board transformation will encourage you to stay focused on doing the right things, so that our reentry can be successful. Phase two will of the transformation will begin in the near future.

A. C. Smith

Annette Chambers-Smith
Director

From : JPay Representative
To : WENDELL LINDSAY II, ID: A591512
Date : 9/13/2019 2:15:15 PM EST, Letter ID: 649946529
Location : NCCI
Housing : HAB0080

To: DRC Incarcerated Adults

From: Annette-Chambers-Smith, Director

RE: Ohio Parole Board Transformation Updates

Date: September 13, 2019

A few months ago, I announced several changes that were underway in an effort to transform the Ohio Parole Board, make the process more modern and transparent and maximize opportunities for all parties involved. I am pleased to be able to share with you some of the progress that is being made:

The backlog of cases awaiting Full Board Hearings has been eliminated. Eighty-five (85) cases were processed by either a release onto parole, or a petition for a Full Board Hearing received through the Office of Victim Services and a hearing subsequently conducted. Full Board Hearings are currently being conducted within 60 days after a petition is filed.

Since June 1, 2019, 117 cases have been granted parole release dates, inclusive of those cases previously awaiting a Full Board Hearing.

The process for allowing inmate participation in Full Board hearings has been implemented. No inmates have elected to fully participate in the hearings. Some have elected to observe.

Full Board Hearings have been livestreamed through the Ohio Channel starting in July. Victims are advised of the livestreaming beforehand and elect whether to have their testimonies and/or images included in the broadcast.

The cumulative vote of the Parole Board Members at both institution hearings and Full Board hearings are being provided to the inmates.

Changes to the process for DRC staff to provide written input to the Parole Board prior to an inmate's parole hearing, as well as the scheduling of Staff Conference Days at institutions were established. Staff input has doubled since these changes were implemented.

Several projects are being pursued to continue the transformation of the Parole Board, including the following.

Exhibit (A) Pg. #4

From : JPay Representative
To : WENDELL LINDSAY II, ID: A591512
Date : 9/13/2019 2:15:15 PM EST, Letter ID: 649946529
Location : NCCI
Housing : HAB0080

We understand parole hearings are a stressful and emotional time for incarcerated adults. In collaboration with the Office of Holistic Services, we are in the process of developing "navigators" for inmates during the parole process who will serve as a support system.• The process will be piloted at Marion Correctional Institution and the Ohio reformatory for Women within the next 90 days. ••

The Office of Re-Entry is developing a pre-release program for inmates who have been granted a release date. Individuals will be referred to the program during the period of time between the hearing and the actual release date.• The Office of Re-Entry will have the program completed and ready for implementation within the next 90 days. Information about this program will be shared with the inmate population.•

•

Training has been made available to institutional staff regarding Parole Board processes to enhance transparency and staff's ability to respond to questions from inmates.
•

The Parole Board Chair began holding focus groups with inmates at DRC institutions in July. Explaining the parole process, transformation plan, answering questions and receiving additional input for future phases are topics being discussed.•
•

In response to feedback received from the focus group discussions and inmate advocacy groups, information will be developed for parole-eligible inmates to help them understand and prepare for their parole hearings.• The information will be provided at the beginning of an inmate's incarceration, so that the inmate understands the suitability factors the Board considers, including those relative to institutional adjustment, as he/she begins service of his/her sentence. Understanding the suitability factors from onset should inform decisions on institutional adjustment, such as choosing programming and complying with institutional rules.

•

A working file consisting of specific documents is being created that will be provided to inmates prior to their release consideration hearings to help them better prepare for their hearings. This file will not include confidential information received by the Parole Board.• In the event an inmate is recommended for parole and that decision is petitioned for a Full Board Hearing, the working file will be automatically provided to defense counsel, prosecutors and victims prior to the hearing.•

•

The reconsideration policy will be revised to include a process by which inmates and/or counsel may submit requests for reconsideration based on claims that information previously considered by the Board was incorrect or inaccurate.• The process will include requirements that the inmate and/or counsel establish that the information was both incorrect or inaccurate and substantive.• The process will include information considered at both institution and Full Board hearings.••

STATE OF OHIO (EXHIBIT (B)) 8 Pg.
Department of Rehabilitation and Correction
Adult Parole Authority

CONDITIONS OF SUPERVISION

In consideration of having been granted supervision on Jun 17, 2021

1. I will obey federal, state and local laws and ordinances, including those related to illegal drug use and registration with authorities. I will have no contact with the victim of my current offense(s) or any person who has an active protection order against me.
2. I will follow all orders given to me by my supervising officer or other authorized representatives of the Court or the Department of Rehabilitation and Correction, including, but not limited to obtaining permission from my supervising officer before changing my residence and submitting to drug testing. Failure to report for drug testing or impeding the collection process will be treated as a positive test result.
3. I will obtain a written travel permit from the Adult Parole Authority before leaving the State of Ohio.
4. I will not purchase, possess, own, use or have under my control, any firearms, ammunition, dangerous ordnance, devices used to immobilize or deadly weapons, or any device that fires or launches a projectile of any kind. I will obtain written permission from the Adult Parole Authority prior to residing in a residence where these items are securely located.
5. I will not enter the grounds of any correctional facility nor attempt to visit any prisoner without the prior written permission of my supervising officer. I will not communicate with any prisoner in any manner without first obtaining written permission from my supervising officer.
6. I will report any arrest, conviction, citation issued to me for violating any law, or any other contact with law enforcement to my supervising officer no later than the next business day following the day on which the contact occurred or, if I am taken into custody as a result of the law enforcement contact, no later than the next business day following my release from custody. I will not enter into any agreement or other arrangement with any law enforcement agency that might place me in the position of violating any law or condition of my supervision without first obtaining written permission to enter into the agreement or other arrangement from the Adult Parole Authority or a court of law.
7. I agree to the warrantless search of my person, motor vehicle, place of residence, personal property, or property that I have been given permission to use, by my supervising officer or other authorized personnel of the Ohio Department of Rehabilitation and Correction at any time.
8. I agree to fully participate in, and comply with, Special Conditions that will include programming/intervention to address high and moderate domains if indicated by a validated risk tool selected by DRC and any other special conditions imposed by the Parole Board, Court, or Interstate Compact:

SOS & PII; No unsupervised contact with minors (supervising adult must be approved by the APA); Unless a longer period of supervision is imposed by the Parole Board

NOTICE

1. I understand that if I am arrested outside the State of Ohio, my signature as witnessed at the end of the page will be deemed to be a waiver of extradition and that no other formalities will be required for an authorized agent of the State of Ohio to bring about my return. In addition I understand I will be required to reimburse the State of Ohio for any costs associated with my extradition.
2. I understand that I may be required to pay a fee of up to eighty-five dollars ($85.00) in connection with any application I file for transfer of my supervision to another state pursuant to the Interstate Compact for Adult Offender Supervision.
3. If I am a Parole/PRC/Interstate Compact offender, I will be required to pay supervision fees in the amount of $20.00 per month unless waived by the Adult Parole Authority. If I am a Community Control/Judicial Release/Treatment in Lieu offender, I will be required to pay financial obligations as determined by the Court and/or as specified in the journal entry(ies).

I have read or had read to me the conditions of my PRC. I fully understand these conditions and I agree to follow them. I understand that violation of any of these conditions may result in the revocation of my PRC which may result in additional imposed sanctions, including imprisonment. In addition, I understand that I must follow these conditions until notified by my supervising officer. By my signature I acknowledge that I have received a copy of these conditions of supervision.

Print Witness Name:		Print Offender Name: Wendell Lindsay II	Inmate #:
Witness Signature:	Date:	Offender Signature: Wendell R. Lindsay II	Date: 03/02/21

Staff Assistance Required: ☐ Yes ☒ No

Language: English

Literacy: _____

ADA Accommodations--Type: _____

Other: _____

Staff Providing Assistance: Date:

State of Ohio

WAIVER OF EXTRADITION
Parole/Post Release Control

I, Lindsay II (Last Name) Wendell (First Name) (Middle Initial) A-591512 (Institution No.), an Ohio offender confined in the North Central Correctional Complex (Name of Correctional Institution) of the State of Ohio, in consideration of having been granted a Parole and/or Post Release Control imposed effective Jun 21, 2021 (PRC Date) agree to reside and remain in the State of Ohio unless granted written permission by the Adult Parole Authority to reside in another state. Having accepted such requirement and having agreed to abide by all of the other lawful conditions of my Supervision, I further agree and understand that should I leave the State of Ohio without such written permission, I will be considered to be a fugitive from justice as that term is defined in the Uniform Extradition Act. Should I be found in another state, I hereby waive extradition and do hereby waive all of my rights to demand the issuance and service of a warrant of extradition and to apply for writ of habeas corpus and waive the issuance and service of all extradition proceedings and I will freely and voluntarily return to the State of Ohio accompanied by any authorized agent of the Department of Rehabilitation and Correction for the purpose of serving the remainder of my sentence or such portion of my sentence as the Ohio Parole Board may decide upon or to answer any pending criminal charge against me in any county of this state. I further understand that upon my return to the State of Ohio, the Ohio Parole Board may require that I reimburse the Department of Rehabilitation and Correction for the transportation costs associated with said return.

Signature of Offender: Wendell K. Lindsay II	Date: 03/02/2021
Witnessed By:	Date:

DRC 3095 E (Rev. 7/02)

Department of Rehabilitation and Correction
ADULT PAROLE AUTHORITY
Grievance Procedures

All offenders under the supervision of the Adult Parole Authority (APA) are afforded the opportunity to voice complaints or grievances in certain situations. The grievance procedure is a method of formally presenting complaints to the APA when a offender has been unsuccessful in attempting to resolve a complaint through normal channels.

A grievance is a complaint about any policy, rule, practice or act by the Adult Parole Authority or its employees which directly affects the offender making the complaint and which is presented for resolution through the process outlined below.

What is grievable? Grievances may involve any aspect of community supervision which affects a grievant personally, including:

1. Special conditions of supervision other than those imposed by the court or parole board.
2. Complaints regarding failure on the part of the APA, or any of its staff to follow policies, procedures, and/or administrative rules and regulations.
3. Complaints regarding the actions of a staff member(s) that have resulted in direct or indirect injury to the offender.
4. Payment of supervision fee where the offender has an ongoing permanent injury or condition.
5. Complaints regarding a Parole Final Release or PRC reduction recommendation that was not submitted at the earliest applicable date.

What is NOT grievable?

1. Parole Board ordered Special Conditions and/or Sanctions and Parole Final Release or PRC reduction decisions.
2. Court ordered Special Conditions and/or Sanctions.
3. Arrest for Supervision violations.
4. Failure to follow the directions/instructions of the APA staff.
5. Final decision of previous grievances.
6. Complaints unrelated to supervision, e.g. prison complaints, legislative action, judicial proceedings and sentencing.
7. Any subject matter exclusively within the jurisdiction of the Courts or other agencies, e.g. Human Services.

Procedure:

The offender should first attempt to resolve the complaint or problem at the unit level through meetings with the supervising officer or unit supervisor. If this is not productive or possible within seven (7) business days after a conference to resolve the issue, the offender must inform the Regional Administrator of the grievance in writing, on the grievance form (DRC3219) which is available at the District Office. Attempts will be made to resolve the grievance at this level. If the problem is not resolved at this level, an appeal process to the Chief of the APA or designee is available. Appeals must be filed within fifteen (15) business days of the receipt of the Regional Administrator's decision.

The above grievance procedure has been read and thoroughly explained to me.
I am indicating by my signature that I understand this process.

Offender Signature:	Number:	Date:
Officer Signature:		Date:

DRC 3218 E (REV. 07/14) DISTRIBUTION: WHITE - File CANARY - Parole Probationer

APA REGIONS CONTACT LIST

Akron	Theresa Keho
Columbus	Melissa Hunt
Cincinnati	Tammy Lamb
Cleveland	Gerald Grammes
Dayton	Benita Brown
Lima	Margie Reindel-Basinger
Compacts	drc.compactplacement@odrc.state.oh.us

Please provide offenders with this number to call for any questions or if they don't hear from their parole officer: 614-387-0809

Lindsey II 591-512
MA-D-23

Ohio Benefit Bank - SNAP Food Assistance

For Ohio residents only.

Complete application by 6/10/2021 and return to your Case manager.

Step 1. Complete application while incarcerated. This is step one and does not guarantee assistance.

Step 2: Follow up with Job & Family Services in the County you return to upon release. If you fail to follow up, your application will not be processed by Job & Family Services.

** You are ***not eligible*** to apply if any of the following apply to you: You are returning home to your spouse (married); Going to a Halfway House for PRC; Transitional Control (TC); Treatment Transfer (TT); Have a detainer in which you will be going to another penal institution or will NOT reside in Ohio. ** Write OPT OUT on the application. **

Instructions for completing the application:

Important - Print your name and number on the top of each page.

Page 1: Enter your Name, Number, Address and sign. (*See below if Homeless)

Page 2 & 3: Complete each line of the application. **Leave no lines blank.**

* Write homeless in the Home Address line. List the Ohio County you are returning to. ***If you are homeless you must provide a mailing address where you can receive mail. If you do not have a mailing address the OBB representative cannot submit the application for you and you must apply in person at JFS.***

Applications received after 6/10/2021 or incomplete applications will not be accepted.

Keep this page

Exhibit (B) Pg. #7 Lindsay 11. 591512

MA/A/43

MEDICAID (Only if you are remaining in OHIO)

Application instructions

Please read and complete the attached forms and return to YOUR Case Manager, UM or Sgt.

It is your responsibility to complete and return the application. by 1-18-2021

Failure to return to your application will result in you being OPT OUT.

Please write legibly and complete all pages of the application. Once the application is retuned to me, I will enter the application into the Medicaid application system on your behalf.

Only *sign the **OPT OUT** if you **are not** applying for Medicaid. This means you will not be considered for Medicaid coverage.*

Choose the Managed Care Plan Company (MCP = Insurance Provider) that best suits you. Included is a Report Card that compares the providers. A book for each company is also available with your Case Manager. ***See the next page for information regarding Paramount.***

If you are approved, your Medicaid card will be with your release packet that you will receive on the day of your release. You will NOT receive the card before your release. Medicaid will NOT notify staff of your status. Medicaid will correspond directly with you. While incarcerated all mail will be sent to Fisher Rd to ODRC and they will forward to the institution. After your release, Medicaid will send your mail to the address that you provide.

If you are HOMELESS or do not know your address, You MUST indicate the Ohio County that you are returning to.

If you receive a letter from Medicaid that approves you, your Medicaid benefit will start on the day of your release, it will not be effective prior to your release.

** After your release, you are required to contact Job & Family Services in your county to update your information within 10 days after release, failure to do so may result in loss of coverage. **

Keep the forms that have KEEP written on them.

Keep

Exhibit (B) Pg. #8

OHIO DEPARTMENT OF PUBLIC SAFETY
BUREAU OF MOTOR VEHICLES

59152
MA-D-23

NOTIFICATION/REINSTATEMENT REQUIREMENT

05/20/2021

WENDELL R LINDSAY II

LICENSE STATUS: FAILURE TO REINSTATE

Your driver license expiration date is: May 28 2011

You are required to pay a total of $25.00 in reinstatement/processing fees.
Please submit your check or money order, made payable to OHIO TREASURER OF STATE, with the enclosed Reinstatement Fee Payment Receipt, BMV-2005. Please DO NOT SEND CASH.

THIS LETTER MAY INCLUDE CASES THAT HAVE NOT TAKEN EFFECT. THE REINSTATEMENT/PROCESSING FEE IS INCLUDED IN THE ABOVE TOTAL. PLEASE REFER TO THE NOTICE OF SUSPENSION FOR SPECIFIC CASE INFORMATION.

BMV CASE NUMBER: KS10009428 CHILD SUPPORT SUSPENSION
$25.00 REINSTATEMENT FEE REQUIRED

You have no driving privileges.

In order to reinstate your Ohio driving privileges, you are required to comply with any warrant blocks in addition to any other reinstatement requirements.

Direct all other inquiries to:
Bureau of Motor Vehicles
P O Box 16520, Columbus, OH 43216-6520, or call 844-644-6268.
Full reinstatement services are available at all Deputy Registrars.

For locations visit our website at: WWW.BMV.OHIO.GOV

REGISTRAR
BUREAU OF MOTOR VEHICLES

doubt, it was the point of the State of Ohio and this prosecution to put him in prison.

We believe that the statute is clear, 2971.03(B)(1), mandates a sentence of ten years to life for this offense. There is five years mandatory Post Release Control, and he's a Tier 3 sex offender, and we would ask the Court to so impose that sentence.

THE COURT: I understood that I had a choice between a sentence up to ten years and a life sentence.

MR. TUNNELL: Judge, that's not the way 2971.03 reads. 2907.03(A) is the sexually violent predator specification. The B subsection indicates when the child is under the age of thirteen, but without such specification, or the factors included in 2907.02 being force or child under ten, that the Court must impose ten years to life.

THE COURT: Well, a life term is ten years to life.

MR. TUNNELL: Yes, well, it used to just to say life, which was ten to life, but now it says an indefinite term of imprisonment, not less than ten years not to exceed life.

THE COURT: I understand that's what Mr. Brown understands as well.

(Exhibit ( ) Exhibit (D)

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

State of Ohio,	:	Case No. 2010 CR 0419 D
Plaintiff,	:	**SENTENCING ENTRY FOR SEX OFFENDER**
v.	:	
WENDELL R LINDSAY II,	:	
Defendant.	:	

On October 27, 2010, the defendant and attorney R JOSHUA BROWN came before the court for sentencing pursuant to R. C. 2929.19. The court considered their statements, the presentence investigation, any victim impact statement, the principles and purposes of sentencing in R. C. 2929.11, and the seriousness and recidivism factors in R. C. 2929.12.

I. CONVICTION & FINDINGS

The court finds:

That the defendant has been convicted of Rape, a violation of R. C. 2907.02(A)(1)(b), a first degree felony; Sexual Battery, a violation of R.C. 2907.03(A)(5), a second degree felony; and Gross Sexual Imposition, a violation to R.C. 2907.05(A)(4), a third degree felony.

( ) by admitting guilt.
( ) by a finding of guilty on a "no contest" plea
( ) by this Court after a bench trial
(X) by a jury.

( ) The court further finds (only necessary to override presumption in favor of prison and to impose community control): that a non-prison sanction does not demean the seriousness of the offense; and that a non-prison sanction will adequately punish defendant and protect the public; and that factors decreasing seriousness outweigh those increasing seriousness; and that there is less likelihood of recidivism. (This paragraph goes with F1/F2)

SEX OFFENDER Finding:

(✓) You have been convicted of or pleaded guilty to a sexually oriented offense and/or child victim offense as defined in ORC 2950.01 and you are classified as follows:

☑ TIER I Sex Offender/Child Victim Offender
☐ TIER II Sex Offender/Child Victim Offender
☐ TIER III Sex Offender/Child Victim Offender

The court advised the defendant of his registration duties. The court orders the sheriff and/or O.D.R.C. to photograph, fingerprint and register the defendant as required by R.C. Chapter 2950 and to undertake the DNA collection for a sexual predator, if required by R.C. 2901.07.

II. SENTENCE

The court orders (each item applies only if marked):

(✓) The defendant is fined $_____ and shall pay restitution for any counseling expenses of the victim and shall forfeit _____.

(✓) The defendant is sentenced to the Ohio State PRISON system for the following terms: Defendant was acquitted on counts 1 to 4 and corresponding counts 6 to 9 and 11 to 14.

Count 5: 10 years to life ~~mos~~/yrs mandatory incarceration

Count 6: merged in ct. 5 _____ mos/yrs

Count ~~15~~: merged in ct. 5 _____ mos/yrs

The defendant shall have no contact with: Khianti James or Nseya James.

This sentence includes 5 years mandatory post release control (PRC) with a condition to complete Richland County ReEntry Court if the defendant resides in Richland County. Violation of PRC could result in additional prison time up to 50% of this sentence. If the violation is a new felony, the defendant could receive a new prison term in this case of the greater of one year or the time remaining on the post-release control.

(✓) If there is more than one count, or if there are other cases, the sentences will be served
(✓) consecutively _____
( ) concurrently _____

( ) This is an agreed sentence recommended jointly by the defendant and the prosecution pursuant to R.C. 2953.08(D).

( ) For the FIREARM SPECIFICATION, the defendant shall serve an additional _ ____ years of mandatory and consecutive imprisonment pursuant to R. C. 2929.14(D)(1).

( ) The defendant's DRIVERS LICENSE IS SUSPENDED for a period of _____ months.

( ) The defendant is a ( ) REPEAT VIOLENT OFFENDER OR ( ) a MAJOR DRUG OFFENDER, and is therefore sentenced to an additional term of _____ ____ years beyond the basic prison term listed above.

( ) The court has considered the factors in R. C. 2929.13 and sentences the defendant to ____ years of COMMUNITY CONTROL to include the conditions and sanctions listed on the attached sheet. Violation of community control will lead to a prison term of _____ months/years and 5 years of post release control. Defendant is ordered to report forthwith to:

( ) the Richland County Probation Department on the 3rd Floor of the Courthouse, 50 Park Avenue East, Mansfield, Ohio.

( ) the State Probation Department at 38 South Park Street, Mansfield, Ohio, but there may be no basic low or monitored time supervision without the Court's express permission.

The defendant shall pay any restitution, all costs of prosecution, court appointed counsel costs and any fees permitted pursuant to R. C. 2929.18.

JUDGE JUDGE JAMES DEWEESE

cc: Prosecutor
Attorney R JOSHUA BROWN
~~Probation~~ BCSO

SERVED BY Deputy Clerk DK
On the _____ day of 10-28-10

CRSENTSO

Exhibit (E)

Ohio | Department of Rehabilitation & Correction

Mike DeWine, Governor
Annette Chambers-Smith, Director

(Exhibit-(E))

Date: June 15, 2021

To: Wendell Lindsay #A591512

From: Melinda van der Zwan
Hearing Officer-Ohio Parole Board

Re: Result of Sexually Violent Predator Review

This notice is to inform you that the Parole Board conducted a Sexually Violent Predator review on JUNE 15, 2021 due to the fact that you have been sentenced under the terms of the Sexually Violent Predator Sentencing Law.

It was determined by a majority vote not to recommend that the Parole Board conduct a hearing to consider terminating control over the service of your prison term. As such, the Parole Board will maintain control over the service of your prison term and has scheduled your next Sexually Violent Predator review for JUNE 2023.

Exhibit (F) (EXHIBIT-5)

Ohio | Department of Rehabilitation & Correction

Exhibit (F)

Mike DeWine, Governor
Annette Chambers-Smith, Director

August 24, 2021

Wendell R. Lindsay A591512
North Central Correctional Complex
P. O. Box 1812
670 Marion Williamsport Road East
Marion, OH 43301

Dear Mr. Lindsay,

I am writing to respond to your letter of August 2, 2021 regarding the nature of your conviction. You were convicted under a statute, SB 260, which, based upon the age of the victim at the time of the offense, sentences you to the terms of the Sexually Violent Predator Sentencing Law. As such, you will be subject to biennial review by the parole board to determine your suitability to have a hearing conducted whether to relinquish control of your case back to the sentencing court. The Bureau of Sentence Computation has confirmed that you were sentenced under this statute. At this point, if you believe you were incorrectly sentenced, your recourse would be to the courts to make a correction.

I am sorry that there was confusion at the institution regarding your release. That is best addressed with the institution itself as the parole board did not issue you a parole.

Unless you are successful with the courts in being resentenced or having your conviction overturned, you will be reviewed by the parole board again in June 2023. In the interim, you may wish to engage in such programming as Thinking for a Change, Decision Points or Victim Awareness, and consult with your case manager regarding any programming they may recommend.

Sincerely,

Alicia Handwerk

Alicia Handwerk
Parole Board

Exhibit (H)

Ref# NCCI0721001308	Housing:MAC0080	Date Created:07/11/2021
ID#: A591512	Name:LINDSAY II,WENDELL	
Form:Kite	Subject:(BOSC) Bureau of Sentence Computation	Description:Sentence Calculation
Urgent:No	Time left:n/a	Status:Closed

Original Form

7/11/2021 6:22:36 PM : (a591512) wrote

Mr. B. Johnston: I didn't understand what you meant when you said, "I do not have a SVP attached to my sentence, but 'if I have ti register as a SVP,' ... what does that mean? I am a Tier I, and not a SVP. I did not see the parole board like I was suppose to, and i am just trying to find out why; someone had me as a SVP, and they held a SVP hearing and said they will hold another SVP hearing in 6/23. I was suppose to see the parole board between ~~April~~ 2021-and-June 2021. It is making no sense to me why nobody can tell me why I didn't see them. If you have the answer, then please inform me. If you don't have the answer, please find out for me. Thank you.

Communications / Case Actions

7/11/2021 6:22:36 PM : (a591512) wrote

Form has been submitted

7/13/2021 7:44:33 AM : (Brandon Johnston) wrote

Your parole board questions have been addressed by a supervisor and will no longer be discussed further as they have been answered in full. I see you are a Tier I. Nothing shows that you have an SVP in our registration screens, but to talk further about your sex offender registration, you will need to direct all of those questions to BORM as I have discussed with you before

7/13/2021 7:44:37 AM : (Brandon Johnston) wrote

Closed incarcerated individual form

Exhibit (I) Pg. #1

Ref# NCCI0721002848	Housing:MAC0080	Date Created:07/20/2021
ID#: A591512	Name:LINDSAY II,WENDELL	
Form:Kite	Subject:(BOSC) Bureau of Sentence Computation	Description:Sentence Calculation
Urgent:No	Time left:n/a	Status:Closed

Original Form

7/20/2021 6:04:58 PM : (a591512) wrote

Mr. Johnston: Understand me when I say to you, that, YOU HAVE NOT ANSWERED ANY QUESTION REGARDS TO THE MISTAKE MADE IN MY SITUATION! I have been very transparent in regards to what has happened; I was suppose to see the parole board, it was BOSC that said a (SVP) Hearing determined that I would be scheduled for another (SVP) hearing on 6/2023, (so far, is this correct?) If so, then please explain to me how; when I do not have a (SVP) Specification? And, how come Mr. Barre, the liaison for the (APA), and your Bureau cannot translate information in cases like this?? I was paroled, then a hearing was held two days before I was to be released. and NO ONE HAS TOLD ME ANYTHING THAT SOUNDS AS IF ANYONE CAN CARE LESS! You stating that my questions have been answered, well, I will get to the bottom of who is lying to me, and who is not doing their job. This kiosk should have directed me to the right "Bureau," but I have been misdirected, lied to, and the situation has been pushed under the rug. i have served 10 years, only to not go to the parole board, as I was told that I would, and the 10 year minimum is up; so the contract with the State has been breached. Thank you for what ever it was that you thought you told me, because the situation is not fixed. You have done nothing for me.

Communications / Case Actions

7/20/2021 6:04:58 PM : (a591512) wrote

Form has been submitted

7/22/2021 7:29:43 AM : (Stacy Blankenburg) wrote

Mr. Lindsay,

I understand your frustration over not being able to get this situation resolved. I assure you that it is our intention to take every kite seriously and to answer them to the best of our ability. I have reviewed your case and unfortunately there is nothing that the Bureau of Sentence Computation can do to help you as there are no errors on our end of the process. The one thing I can do is to provide the information that I gathered while reviewing your case in hopes that it at least gives you an clear explanation of the situation.

Yes, we do show that there was a SVP Review and that the decision from the Parole Board was that they would conduct another review in June of 2023. I am not sure what lead them to hold a SVP Review on your case, you would need to contact them for that information. We (BOSC) do not have you flagged or entered anywhere in our part of the computer system as a SVP individual. Your Judgment Entry does designates you as a Tier I sex offender and that is what we have you entered as. I have shared this information with staff from the Adult Parole Authority and they have indicated that through their process, they have classified you correctly; therefore, they are the ones you would have to deal with in order to get any changes made in this situation.

I hope you find this information helpful.

Stacy Blankenburg/Team Supervisor/BOSC

7/22/2021 7:29:51 AM : (Stacy Blankenburg) wrote

Closed incarcerated individual form

Exhibit (I) Pg. #2

Ref# NCCI0621004814	Housing:MAC0080	Date Created:06/29/2021
ID#: A591512	Name:LINDSAY II,WENDELL	
Form:Kite	Subject:(BOSC) Bureau of Sentence Computation	Description:Sentence Calculation
Urgent:No	Time left:n/a	Status:Closed

Original Form

6/29/2021 6:06:39 AM : (a591512) wrote

Mr. B. Johnston: This situation is being misunderstood; I have written you to explain that a mistake has been made in your inturpeting my case, and you referred me to (BORM) who deals with sex offender registry. That is not the problem. The problem , is that you guys have attached a (SVP) to my sentence, and I do not have a (SVP). I have no paperwork that explains how I was mistakenkly catagorized with the wrong sentence specification, when I have NO SPECIFICATION AT ALL! Where is this coming from, and who alerted or brought false attention to these false facts; please name names. According to my judge, from the Richland County Court of Common Pleas, case Number 2010-CR-0419D, under the name, Wendell R. Lindsay, inmate number A591-512, I was sentenced to a 10 years to life. I should not have anything else attached to my case. Even the 1.25 sentence attached, that should have been seperate from this case, due to that case ended 6/2011. A mistake has been made, and I have been told nothing correct. Please help me. thank you.

Communications / Case Actions

6/29/2021 6:06:39 AM : (a591512) wrote

Form has been submitted

6/30/2021 8:54:54 AM : (Brandon Johnston) wrote

There is no SVP attached to your sentence. As I said before, if you are registered as an SVP for the Ohio Sex Offender Registry, then that is a BORM question as they deal with all registration. This also has nothing to do with the parole questions you have also inquired about.

6/30/2021 8:54:59 AM : (Brandon Johnston) wrote

Closed incarcerated individual form

2010 ORC Ann. 2971.03

§ 2971.03. Sentencing of sexually violent offender with predator specification

(A) Notwithstanding divisions (A) and (D) of section 2929.14, section 2929.02, 2929.03, 2929.06, 2929.13, or another section of the Revised Code, other than divisions (B) and (C) of section 2929.14 of the Revised Code, that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, the court shall impose a sentence upon a person who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, and upon a person who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, as follows:

(1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose upon the offender a sentence of death, it shall impose upon the offender a term of life imprisonment without parole. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court shall impose upon the offender a term of life imprisonment without parole.

(2) If the offense for which the sentence is being imposed is murder; or if the offense is rape committed in violation of division (A)(1)(b) of section 2907.02 of the Revised Code when the offender purposely compelled the victim to submit by force or threat of force, when the victim was less than ten years of age, when the offender previously has been convicted of or pleaded guilty to either rape committed in violation of that division or a violation of an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of section 2907.02 of the Revised Code, or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim; or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it shall impose upon the offender a term of life imprisonment without parole.

(3) (a) Except as otherwise provided in division (A)(3)(b), (c), (d), or (e) or (A)(4) of this section, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or rape and other than an offense for which a term of life imprisonment may be imposed, it shall impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.

(b) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the first degree, it shall impose an indefinite prison term as follows:

(i) If the kidnapping is committed on or after January 1, 2008, and the victim of the offense is less than thirteen years of age, except as otherwise provided in this division, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment. If the kidnapping is committed on or after January 1, 2008, the victim of the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(ii) If the kidnapping is committed prior to January 1, 2008, or division (A)(3)(b)(i) of this section does not apply, it shall impose an indefinite term consisting of a minimum term fixed by the court that is not less than ten years and a maximum term of life imprisonment.

(c) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the second degree, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment.

(d) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is rape for which a term of life imprisonment is not imposed under division (A)(2) of this section or division (B) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term as follows:

(i) If the rape is committed on or after January 2, 2007, in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of twenty-five years and a maximum term of life imprisonment.

(ii) If the rape is committed prior to January 2, 2007, or the rape is committed on or after January 2, 2007, other than in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(e) Except as otherwise provided in division (A)(4) of this section, if the offense for which sentence is being imposed is attempted rape, it shall impose an indefinite prison term as follows:

(i) Except as otherwise provided in division (A)(3)(e)(ii), (iii), or (iv) of this section, it shall impose an indefinite prison term pursuant to division (A)(3)(a) of this section.

(ii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of five years and a maximum term of twenty-five years.

(iii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1419 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum of life imprisonment.

(iv) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum of life imprisonment.

(4) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, it shall impose upon the offender a term of life imprisonment without parole.

(B) (1) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than division (B) of section 2907.02 or divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, if division (A) of this section does not apply regarding the person, and if the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of one of the following:

2010 ORC Ann. 2971.03

§ 2971.03. Sentencing of sexually violent offender with predator specification

(A) Notwithstanding divisions (A) and (D) of section 2929.14, section 2929.02, 2929.03, 2929.06, 2929.13, or another section of the Revised Code, other than divisions (B) and (C) of section 2929.14 of the Revised Code, that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, the court shall impose a sentence upon a person who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, and upon a person who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, as follows:

(1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose upon the offender a sentence of death, it shall impose upon the offender a term of life imprisonment without parole. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court shall impose upon the offender a term of life imprisonment without parole.

(2) If the offense for which the sentence is being imposed is murder; or if the offense is rape committed in violation of division (A)(1)(b) of section 2907.02 of the Revised Code when the offender purposely compelled the victim to submit by force or threat of force, when the victim was less than ten years of age, when the offender previously has been convicted of or pleaded guilty to either rape committed in violation of that division or a violation of an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of section 2907.02 of the Revised Code, or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim; or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it shall impose upon the offender a term of life imprisonment without parole.

(3) (a) Except as otherwise provided in division (A)(3)(b), (c), (d), or (e) or (A)(4) of this section, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or rape and other than an offense for which a term of life imprisonment may be imposed, it shall impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.

(b) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the first degree, it shall impose an indefinite prison term as follows:

(i) If the kidnapping is committed on or after January 1, 2008, and the victim of the offense is less than thirteen years of age, except as otherwise provided in this division, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment. If the kidnapping is committed on or after January 1, 2008, the victim of the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(ii) If the kidnapping is committed prior to January 1, 2008, or division (A)(3)(b)(i) of this section does not apply, it shall impose an indefinite term consisting of a minimum term fixed by the court that is not less than ten years and a maximum term of life imprisonment.

(Exhibit-(M))

2020 Ohio SB 260

(A)

- (1) Upon receipt of a request pursuant to section 121.08, 3301.32, 3301.541, or 3319.39 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:
  - (a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04,

PreviousNext

ORC Ann. 2929.14, Part 1 of 3

Copy Citation

Current through File 47 (except File 30 which only includes the immediately effective Revised Code sections) of the 134th (2021-2022) General Assembly; acts signed as of July 14, 2021.

- **Page's Ohio Revised Code Annotated**
- **Title 29: Crimes — Procedure (Chs. 2901 — 2981)**
- **Chapter 2929: Penalties and Sentencing (§§ 2929.01 — 2929.72)**
- **Penalties for Felony (§§ 2929.11 — 2929.201)**

§ 2929.14 Basic prison terms.

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)

(a) For a felony of the first degree committed on or after the effective date of this amendment, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to the effective date of this amendment, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

Exhibit-(N)

§ 2941.148 Specification that offender is a sexually violent predator.

(A)
(1) The application of Chapter 2971. of the Revised Code to an offender is precluded unless one of the following applies:
(a) The offender is charged with a violent sex offense, and the indictment, count in the indictment, or information charging the violent sex offense also includes a specification that the offender is a sexually violent predator, or the offender is charged with a designated homicide, assault, or kidnapping offense, and the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense also includes both a specification of the type described in section 2941.147 of the Revised Code and a specification that the offender is a sexually violent predator.
(b) The offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and division (B) of section 2907.02 of the Revised Code does not prohibit the court from sentencing the offender pursuant to section 2971.03 of the Revised Code.
(c) The offender is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and to a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.
(d) The offender is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code and to a specification of the type described in section 2941.147 of the Revised Code, and section 2905.01 of the Revised Code requires a court to sentence the offender pursuant to section 2971.03 of the Revised Code.
(e) The offender is convicted of or pleads guilty to aggravated murder and to a specification of the type described in section 2941.147 of the Revised Code, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(a)(iv) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires a court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.
(f) The offender is convicted of or pleads guilty to murder and to a specification of the type described in section 2941.147 of the Revised Code, and division (B)(2) of section 2929.02 of the Revised Code requires a court to sentence the offender pursuant to section 2971.03 of the Revised Code.
(2) A specification required under division (A)(1)(a) of this section that an offender is a sexually violent predator shall be stated at the end of the body of the indictment, count, or information and shall be stated in substantially the following form:
"Specification (or, specification to the first count). The grand jury (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that the offender is a sexually violent predator."
(B) In determining for purposes of this section whether a person is a sexually violent predator, all of the factors set forth in divisions (H)(1) to (6) of section 2971.01 of the Revised Code that apply regarding the person may be considered as evidence tending to indicate that it is likely that the person will engage in the future in one or more sexually violent offenses.
(C) As used in this section, "designated homicide, assault, or kidnapping offense," "violent sex offense," and "sexually violent predator" have the same meanings as in section 2971.01 of the Revised Code.

Jurisdiction

Trial court had jurisdiction to classify an inmate as a sexual predator under Megan's Law, even if it had not received a notice under former R.C. 2950.09 from the Ohio Department of Rehabilitation and Correction (ODRC) stating that he had been convicted of a violent sex offense, as a 1997 letter indicated that ODRC wished the inmate to be designated a sexual predator or that a hearing be held and identified his offenses, which included 11 counts of rape, a violent sex offense. State v. Kimble, 2016-Ohio-981, 2016 Ohio App. LEXIS 887 (Ohio Ct. App., Lorain County 2016).

From : Melikia Sylvester, CustomerID: 15579717
To : WENDELL LINDSAY II, ID: A591512
Date : 6/22/2021 3:44:58 AM EST, Letter ID: 1195266373
Location : NCCI
Housing : MAD0023

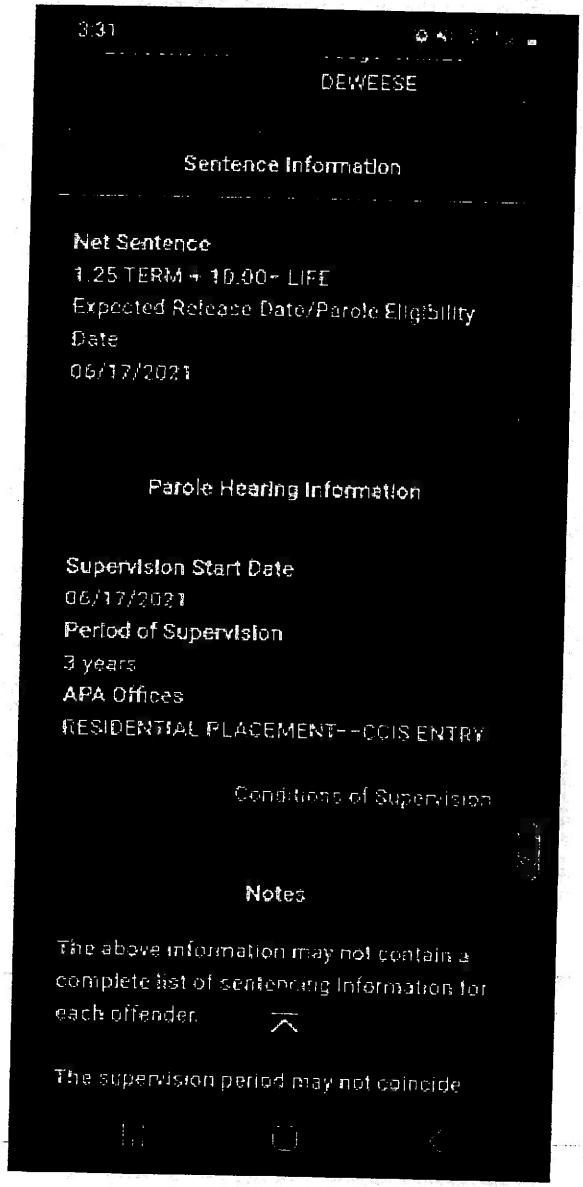

EXHIBIT-(2) 2 page

Exhibit-B
(3)

RICHLAND COUNTY
CLERK OF COURTS
FILED
2010 OCT 28 PM 2:22
LINDA H. FRARY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF RICHLAND COUNTY, OHIO

STATE OF OHIO, : Case No. 10-CR-418

Plaintiff, :

vs. :

WENDELL R. LINDSAY, : **JUDGMENT ENTRY**

Defendant. :

This matter comes before the Court upon the Motion of the State of Ohio to amend Count IV of the Indictment as to the date of the alleged offense. This Court finds that the date a crime allegedly occurred is not an element of the offense which the State is required to prove. The defendant has previously been advised and made aware of the allegations regarding multiple offenses occurring between the 1st day of October, 2009 and the 4th day of March, 2010. Further, granting the State of Ohio's Motion makes no change to the nature or identity of Count IV.

Therefore, this Court ORDERS Count IV amended to strike the language **"on or about the 4th day of March, 2010"** and insert **"between on or about the ~~1st~~ 18th day of October, 2009 and on or about the ~~4th~~ 3rd day of March, 2010"** in its place.

IT IS SO ORDERED.

JUDGE JAMES DEWEESE

SCANNED

cc: Prosecuting Attorney

Atty. R. Joshua Brown

SERVED BY Deputy Clerk: 10-28-10

Exhibit-5

(C)

(5)

IN THE COURT OF COMMON PLEAS OF RICHLAND COUNTY, OHIO

STATE OF OHIO,	:	Case No. 10-CR-419D
Plaintiff,	:	
vs.	:	
WENDELL R. LINDSAY,	:	**MOTION TO AMEND INDICTMENT**
Defendant.	:	

Now comes the State of Ohio, by and through the Richland County Prosecuting Attorney, and respectfully submits a request to amend Count IV of the Indictment to correct the date of the alleged offense. Specifically, the State of Ohio requests that Count IV read in pertinent part **"between on or about the 1st day of October, 2009 and on or about the 4th day of March, 2010,"** replacing **"on or about the 4th day of March, 2010."**

Crim.R. 7(D) allows an Indictment to be amended at any time "before, during or after a trial 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." The State of Ohio does not seek to change the nature or identity of the crime charged, that being Rape, but merely wishes to correct the time period alleged within the count.

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EXHIBIT-(A-1)

Exhibit-15; (5Pgs.)

RICHLAND COUNTY
CLERK OF COURTS
FILED
2010 OCT 27 AM 10:21
LINDA
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

State of Ohio, Plaintiff

vs.

Wendell Lindsay, Defendant

Case no. 10CR419

JURY VERDICTS

I.

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a rape of Nseya James, a child less than 13 years old.

If we do find Mr. Lindsay guilty of this crime of rape, we further find:

___ The prosecutor did prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

___ The prosecutor failed to prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

II.

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a second count of rape of Nseya James, a child less than 13 years old.

JVI.lindsay, Wendell 10-22-10

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If we do find Mr. Lindsay guilty of this crime of rape, we further find:

___ The prosecutor did prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

___ The prosecutor failed to prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

III

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a third count of rape of Nseya James, a child less than 13 years old.

If we do find Mr. Lindsay guilty of this crime of rape, we further find:

___ The prosecutor did prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

___ The prosecutor failed to prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

IV

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a fourth count of rape of Nseya James, a child less than 13 years old, between October 18, 2009 and March 3, 2010.

If we do find Mr. Lindsay guilty of this crime of rape, we further find:

___ The prosecutor did prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

___ The prosecutor failed to prove beyond a reasonable doubt that Nseya James was less than 10 years old when this crime was committed.

Verdict Page 3 10CR419

V

We the jury find the defendant Wendell Lindsay:

X guilty

__ not guilty

of rape fifth count of rape of Nseya James, a child less than 13 years old on March 4, 2010.

VI

We the jury find the defendant Wendell Lindsay:

__ guilty

X not guilty

of sexual battery against Nseya James, a child less than 13 years old.

VII

We the jury find the defendant Wendell Lindsay:

__ guilty

X not guilty

of a second count of sexual battery against Nseya James, a child less than 13 years old.

VIII

We the jury find the defendant Wendell Lindsay:

__ guilty

X not guilty

of third count of sexual battery against Nseya James, a child less than 13 years old.

JVLindsay, Wendell 10-22-10

IX

We the jury find the defendant Wendell Lindsay:

guilty

X not guilty

of a fourth count of sexual battery against Nseya James, a child less than 13 years old.

X

We the jury find the defendant Wendell Lindsay:

X guilty

not guilty

of a fifth count of sexual battery against Nseya James, a child less than 13 years old.

XI

We the jury find the defendant Wendell Lindsay:

guilty

X not guilty

of gross sexual imposition on Nseya James, a child less than 13 years old.

XII

We the jury find the defendant Wendell Lindsay:

guilty

X not guilty

of a second count of gross sexual imposition on Nseya James, a child less than 13 years old.

Verdict Page 5 10CR419

XIII

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a third count of gross sexual imposition on Nseya James, a child less than 13 years old.

XIV

We the jury find the defendant Wendell Lindsay:

___ guilty

X not guilty

of a fourth count of gross sexual imposition on Nseya James, a child less than 13 years old.

XV

We the jury find the defendant Wendell Lindsay:

X guilty

___ not guilty

of a fifth count of gross sexual imposition on Nseya James, a child less than 13 years old.

All we jurors who agree with every decision marked on this verdict form sign our names below in ink on October 26, 2010.

1 [signature] 2 [signature]

3 [signature] 4 [signature]

5 [signature] 6 [signature]

7 [signature] 8 [signature]

9 [signature] 10 [signature]

11 [signature] 12 [signature]

JVLindsay, Wendell 10-23-10

Exhibit 18

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

STATE OF OHIO, EX. REL., WENDELL R. LINDSAY, II,

RELATOR,

CASE NO. 9-21-43

v.

DEPARTMENT OF REHABILITATION & CORRECTIONS ADULT PAROLE AUTHORITY/ADULT PAROLE BOARD, ET AL.,

JUDGMENT ENTRY

RESPONDENTS.

This cause comes on for determination of Relator's motion for reconsideration of this Court's March 10, 2022 judgment dismissing his petition for writ of habeas corpus.

Upon consideration, the Court finds that App.R. 26(A), the rule authorizing a motion for reconsideration, does not apply to an original action filed directly with this Court. *See State ex rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58 (1988). This rule applies only to appeals taken from final judgments issued by a trial court. *See* App.R. 1(A); *see also State ex rel. White v. Richard*, 153 Ohio St. 3d 277, 279, 2018-Ohio-2696, ¶ 7 (finding the application for reconsideration a nullity). Accordingly, the Court lacks jurisdiction to reconsider the final judgment dismissing this original, habeas corpus action and the motion is not well taken.

This notwithstanding, Relator's motion for reconsideration brings to light a clerical error, not relevant to the findings of the Court nor consequential to the merits of the matter, in the Court's March 10, 2022 judgment, which shall be addressed separately in a nunc pro tunc judgment entry.

It is therefore **ORDERED** that Relator's motion for reconsideration be, and the same hereby is, denied.

JUDGE

JUDGE

JUDGE

DATED: APR 05 2022

/jlr

I hereby certify this to be a true copy of the original on file in this office on: 4/6/2022

Jessica Wallace, Clerk of Courts
Marion County, Ohio
By _____ Deputy Clerk

COMMON PLEAS COURT MARION COUNTY, OHIO

Exhibit 19

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

STATE OF OHIO, EX. REL.,
WENDELL R. LINDSAY, II,

RELATOR,

v.

DEPARTMENT OF REHABILITATION & CORRECTIONS ADULT PAROLE AUTHORITY/ADULT PAROLE BOARD, ET AL.,

RESPONDENTS.

CASE NO. 9-21-43

JUDGMENT ENTRY NUNC PRO TUNC

It appearing to the Court that the last sentence in paragraph one of page 2 contains a clerical error, it is thereby **ORDERED** that said sentence be, and the same hereby is, amended *nunc pro tunc* so that so much of the sentence reading "Realtor was notified that he was subject to a mandatory five years of postrelease control and classified as a Tier III sex offender" shall now read "Realtor was notified that he was subject to a mandatory five years of postrelease control and classified as a Tier I sex offender."

JUDGE

JUDGE

Case No. 9-21-43

DATED:
TO THE CLERK:

Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

PRESIDING/ADMINISTRATIVE JUDGE
(Signed pursuant to App. R. 15(c))

DATED: APR 05 2022
/jlr

I hereby certify this to be a true copy of the original on file in this office on: 4/6/2022
Jessica Wallace, Clerk of Courts
Marion County, Ohio
By _____ Deputy Clerk

COMMON PLEAS COURT MARION COUNTY, OHIO