

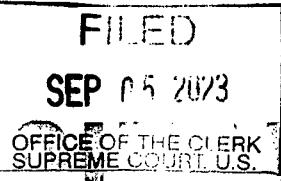
CASE NO.

**23-5708**

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: MICHAEL STANSELL,

Petitioner. : (Original Action)



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ON PETITION FOR WRIT OF HABEAS CORPUS

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PETITION FOR WRIT OF HABEAS CORPUS

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FOR PETITIONER:

Michael Stansell  
Reg. No. A355-967  
Grafton Corr. Inst.  
2500 S. Avon-Belden Rd.  
Grafton, Ohio 44044

Petitioner, in pro se

FOR RESPONDENT:

Dave Yost (0056290)  
Ohio Attorney General  
30 E. Broad St.  
Columbus, Ohio 43215  
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Counsel for Respondent

QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER THE INFILCTION OF A LIFE SENTENCE UPON A PRISONER WHERE THE LIFE TAIL IS NOT APPLICABLE TO HIS OFFENSE OF CONVICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT?
- II. WHETHER A CLAIM OF RES JUDICATA STEMMING FROM AN INTERVENING COURT DECISION CHANGING PROCEDURAL REQUIREMENTS RELATING TO PRESENTATION OF CLAIMS REGARDING VOID SENTENCES CAN LIE TO PREVENT CORRECTION OF A VOID SENTENCE WITHOUT VIOLATION DUE PROCESS AND EQUAL PROTECTION OF THE LAW?

GROUND PRESENTED FOR ISSUANCE OF THE WRIT

- I. THE REFUSAL TO VACATE A LIFE SENTENCE THAT ALL PARTIES AND THE COURT AGREE IS INAPPLICABLE BASED UPON PROCEDURAL NICETIES AND SUBSEQUENT REVISIONS TO THE LAW VIOLATES THE PRISONER'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW, AND CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

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- A. Trial Court order denying Motion to Vacate (1 p.)
- B. Opinion, Eighth Dist. No. 109023 (7/9/2020) (10 pp.)
- C. Opinion, Eighth Dist. No. 109023 (1/28/2021) (14 pp.)
- D. Opinion, Eighth Dist. No. 109023 (6/17/2021) (16 pp.)
- E. Order, Ohio Supreme Court, No. 2021-0948 (10/20/2021) (1 p.)
- F. Order, Ohio Supreme Court, No. 2021-0948 (5/4/2022) (1 p.)
- G. Order, Sixth Circuit No. 23-3056 (4/10/2023) (5 pp.)

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### LIST OF PARTIES

All parties do not appear in the Caption of this case on the cover page. The list of all parties to the proceeding whose judgment is the subject of this proceeding is as follows:

#### Petitioner:

Michael Stansell  
Prison ID No. A355-967  
Grafton Corr. Inst.  
2500 S. Avon-Belden Rd.  
Grafton, Ohio 44044

#### Respondent:

Keith Foley, Warden  
Grafton Corr. Inst.  
2500 S. Avon-Belden Rd.  
Grafton, Ohio 44044

### RELATED CASES

There are no related cases to this case before this Court.

### OPINIONS BELOW

The Decision by the Cuyahoga County Common Pleas Court denying Petitioner's Motion to Vacate Specification in case No. CR-97-356129-A, issued on 08/23/2019 is attached hereto as Appendix A.

The Opinion of the Eighth District Court of Appeals of Ohio reversing and Remanding the denial of the Motion to Vacate, issued in Case No. 109023 on July 9, 2020 is attached hereto as Appendix B.

The Opinion of the Eighth District Court of Appeals of Ohio reaffirming their July 9, 2020 judgment in the same case number on reconsideration, issued on January 28, 2021, is attached hereto as Appendix C.

The Opinion of the Eighth District Court of Appeals of Ohio, reversing their previous decision granting relief, on second reconsideration, in the same case number, issued on June 17, 2021, is attached hereto as Appendix D.

The Decision of the Ohio Supreme Court accepting jurisdiction over the case, Case No. 2021-0948, 165 Ohio St. 3d 1403, is attached hereto as Exhibit E.

The Decision of the Ohio Supreme Court dismissing the appeal as having been improvidently accepted, issued in the same case number on June 21, 2022, 167 Ohio St. 3d 565, is attached hereto as Appendix F.

OPINIONS BELOW, CONT'D

The Order from the Sixth Circuit U.S. Court of Appeals denying the Application for an Order authorizing a second or successive Petition for Writ of Habeas Corpus, issued in case No. 23-3056 on April 10, 2023, is attached hereto as Appendix G.

JURISDICTION

This Court has original jurisdiction to hear and determine this case and to issue the requested Writ of Habeas Corpus in the instant Original Action pursuant to Article III, §2, Cl. 2 of the United States Constitution, **Felker v. Turpin** (1996) 518 U.S. 651, and to the All Writs Act, 28 U.S.C. §§1251, 1651. This Court also has original jurisdiction to issue a Writ of Habeas Corpus under 28 U.S.C. §2241 (**ex Parte: Watkins** (1830) 28 U.S. 193; (1833) 32 U.S. 568).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, §9, Cl. 2, United States Constitution:

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in case of Rebellion or Invasion the public Safety may require it."

Fifth Amendment, United States Constitution:

"No person shall [...] be deprived of life, liberty or property without due process of law."

Fourteenth Amendment, United States Constitution:

"[...] nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Eighth Amendment, United States Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

28 U.S.C. §1651:

"The Supreme Court and all courts established by Acts of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

28 U.S.C. §2241(a):

"Writs of Habeas Corpus may be granted by the Supreme Court, any Justice thereof..."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED, CONT'D.

Ohio Revised Code §2971.01(H) [1997]

Ohio Revised Code §2971.03 [1997]

WRIT WILL BE IN AID OF COURT'S APPELLATE JURISDICITON

The issuance of the requested Writ of Habeas Corpus will be in aid of this Court's appellate jurisdiction in order to maintain the determination of the constitutionality of the AEDPA revisions to 28 U.S.C. §2254, as set forth in *Felker v Turpin* (1996) 518 U.S. 651 to avoid the suspension of the Writ.

EXCEPTIONAL CIRCUMSTANCES WARRANTING THE  
EXERCISE OF THIS COURT'S DISCRETIONARY POWERS

Petitioner is being forced to serve a life "tail" sentence despite the fact that all parties, and the state court, acknowledge and agree that the life tail is not attached to his offense of conviction, and solely due to an intervening case decision altering procedural requirements under which to present the issue. To inflict a life sentence upon a prisoner to whom it does not apply constitutes cruel and unusual punishment, and there is no other available remedy at law under which to seek correction thereof.

WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR COURT

Petitioner sought leave to proceed with a second Habeas Corpus Petition under 28 U.S.C. §2254 by following the procedural requirements created under the AEDPA revisions to the statute, in the United States Court of Appeals for the Sixth Circuit (No. 23-3056), and was summarily rejected (Appendix G, 4/10/2023). There remains no remedy available whatsoever from any forum other than seeking the Extraordinary Writ sought herein, which is necessary to issue in aid of this Court's appellate jurisdiction as noted above, as well as to maintain the constitutionality of the AEDPA to avoid the suspension of the Writ prohibited by Article I, §9, Cl.2 of the United States Constitution.

REASONS FOR NOT MAKING APPLICATION IN THE DISTRICT COURT

Petitioner sought leave to proceed with a successive §2254 Habeas Corpus Petition in the Sixth Circuit, No. 23-3056, and was summarily rejected on April 10, 2023. Thus, he is prohibited by law under the AEDPA revisions, from presenting this Application to the District Court.

STATEMENT OF THE CASE

On February 12, 1998, Petitioner Michael Stansell, hereinafter "Stansell", entered into a plea of guilty to 2 counts of rape, in violation of Ohio Revised Code §2907.02 [Counts 1&2], 1 count of rape with an "SVP" spec. and with the "force" element deleted by amendment [Count 6], 2 counts of corruption of a minor, in violation of O.R.C. §2907.04 [Counts 11 & 12], 1 count of Gross Sexual Imposition with the Sexually Violent Predator ("SVP") Specification attached to the charge, in violation of O.R.C. §2907.05 [Count 21] and 1 count each of Illegal Use of Minor in Nudity-Oriented Material or Performance (O.R.C. §2907.323) and Pandering Sexually oriented Material Involving a Minor (O.R.C. §2907.322) and he was sentenced to a cumulative sentence of twenty years to life.

Subsequent to a Motion to Withdraw Guilty Plea being denied, upheld on appeal and jurisdiction being declined by the Ohio Supreme Court, Stansell filed a Motion to Vacate the SVP Specification which was attached to the first rape count, based upon the then-new ruling in **State v Smith** (2004) 104 Ohio St. 3d 106 in which the Court held that where, as here, there has been no previous sex offense convictions, the court lacks jurisdiction to charge, convict or sentence a defendant for an SVP Specification (id) on March 6, 2013, which motion was summarily denied on October 4, 2013. Following a Motion to Reconsider and for the trial court to state the reasons for the denial, timely direct appeal was taken to the Eighth District Court of Appeals, which affirmed the denial, but remanded the case for resentencing on a post-release control issue on April 17, 2014.

At the May 19, 2014 resentencing, Petitioner formally objected to being sentenced on the SVP Specification on the basis of the lack of jurisdiction of the Court to do so as he had no prior sex offenses. The Trial Court overlooked the objection and imposed the same sentence, including the life tail for the SVP Specification.

On July 23, 2019, with the assistance of a law clerk, Stansell filed a renewed Motion to vacate the SVP Specification and accompanying life tail, based upon the then-new decision from the Eighth District Court of Appeals in *State v Frierson* (No. 106842) 2019-Ohio-317, in which the Court specifically held that the absence of a prior sex offense precludes the charge, conviction and sentencing of a defendant to a life sentence on an SVP specification, and that the Court lacked subject matter jurisdiction to do so, rendering the life sentence void, ab initio, and subject to vacation upon request. (id).

The trial court issued a one-line entry denying the Motion. Timely appeal was taken to the Eighth District Court of Appeals and, on July 9, 2020, the Court, acknowledging the lack of jurisdiction to impose a life sentence upon Stansell, vacated the life sentence and remanded for resentencing, 154 NE3d 1179.

On January 28, 2021, the Court, upon reconsideration requested by the prosecutor, re-affirmed its decision that there is no jurisdiction under which to impose a life sentence upon Stansell and maintained its decision to vacate the life sentence and remand for resentencing 2021-Ohio-203.

On June 17, 2021, the Court, on second reconsideration at the behest of the prosecutor, maintained that there was no basis for

imposing a life sentence upon Stansell. However, based upon the then-brand new rulings by the Ohio Supreme Court in **State v Harper** (05/14/2020) 60 Ohio St. 3d 480, and **State v Henderson** (10/07/2020) 161 Ohio St. 3d 281, in which the Court reversed almost a hundred years of jurisprudence regarding void sentences in Ohio, and changed the law to hold that, so long as a court had "jurisdiction over the case and the person", any void sentences would now be classified as merely "voidable" and if not presented in a timely direct appeal, would be thus waived (*id*), the Court reversed its grant of relief to Stansell, 2021-Ohio-2036.

On October 20, 2021, the Ohio Supreme Court accepted jurisdiction over the case, (175 Ohio St. 3d 1403) and following full briefing, including Amicus briefing by the Ohio Public Defender's Office and the Ohio Attorney General, the Ohio Supreme Court, on June 21, 2022, dismissed the appeal as having been "improvidently accepted" (167 Ohio St. 3d 565, Exhibit F).

Stansell then sought leave to file a second or successive Habeas Corpus Petition in the United States Court of Appeals for the Sixth Circuit, in Case No. 23-3056, which, on April 10, 2023, denied the Application. (Exhibit G).

Absent the inapplicable and statutorily unavailable life tail, Stansell's maximum potential prison term is 20-45 years, rendering him statutorily eligible for parole six years ago. Stansell has not yet had a parole hearing, and has served 26 years, well beyond the 20 year minimum term lawfully imposed.

The inapplicable life sentence imposed upon Stansell as a result of the inapplicable SVP Specification deprives Stansell of any parole hearings under ODRC practices.

PRIOR HABEAS CORPUS PROCEEDINGS

Petitioner has previously sought Habeas Corpus relief under 28 U.S.C. §2254 as follows:

1. Stansell v Wilson, N.D. Ohio No. 1:02-cv-821

Dismissed on AEDPA technicalities over objections on 6/27/02  
2002 U.S. Dist. LEXIS 29513

2. Stansell v Eppinger

Leave to file second or successive Petition sought in Sixth Circuit U.S. Court of Appeals, which held that, since Stansell was resentenced, it created a new judgment, rendering the new petition as not "second or successive".  
In re: Stansell, (6th Cir., 2016) 828 F3d 412.

N.D. Ohio No. 1:15-cv-01303

Dismissed on AEDPA technicalities over objections on 8/30/17  
2017 U.S. Dist. LEXIS 139898

Sixth Circuit denied COA on 1/23/18, 2018 U.S. App. LEXIS 38072

Rehearing en banc denied on 3/13/18, 2018 U.S. App. LEXIS 6306.

U.S. Supreme Court denied Certiorari on 6/18/2018  
2018 U.S. LEXIS 3812.

GROUND TO ISSUE THE WRIT

- I. THE REFUSAL TO VACATE A LIFE SENTENCE THAT ALL PARTIES AND THE COURT AGREE IS INAPPLICABLE BASED UPON PROCEDURAL NICETIES AND SUBSEQUENT REVISIONS TO THE LAW VIOLATES THE PRISONER'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS OF LAW, AND CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

LAW AND ARGUMENT

In this case, it is undisputed that the conditions precedent for the imposition of a Sexually Violent Predator (SVP) Specification pursuant to Ohio Revised Code §2971.01, et. seq. were not present in this case. Specifically, Stansell had not, at the time of conviction and sentencing, previously been charged with or convicted of any prior sex offense. The specification was included in a plea agreement; however the requirement for a prior conviction was not present, thus, the specification is completely inapplicable to Stansell, and the sentencing Court lacked subject matter jurisdiction to impose a life sentence upon him. See, e.g. **State v Smith** (2004) 104 Ohio St. 3d 106 (interpreting the Constitutionality of the imposition of a life sentence upon a prisoner not previously convicted of a sex offense and finding the sentence void).

Subsequent to the issuance of the **Smith** decision, Stansell, (who did not have a direct appeal, but whose counsel had filed a Motion to Withdraw Plea on other grounds which was denied and affirmed on appeal 2000-Ohio App. LEXIS 1726) sought the vacation of the SVP specification on the grounds that, as held in **Smith**, the accompanying life sentence was, thus, void. This request was denied, and upheld on appeal on the grounds that the Court of

Appeals believed that **Smith** was "not retroactive" (2014-Ohio-1633).

In **State v Frierson** 2019-Ohio-317, the same Eighth District Court of Appeals held that the **Smith** decision is, in fact, retroactive and that life sentences for SVP specifications which are not applicable due to the absence of prior convictions under the version of the statute existing when Stansell was charged, convicted and sentenced (since revised, not applicable herein) are, in fact, void ab initio and subject to correction at any time. The Eighth District Court of Appeals followed their holding in **State v Townsend**, 2019-Ohio-1134, and **State v Clipps**, 2019-Ohio-3569. Additionally, the First District Court of Appeals had held that such an inapplicable life sentence is void, ab initio and subject to correction at any time, in **State v Ingels** 2018-Ohio-724. Thus, in 2019, the state of the law in Ohio mandated the correction of a life sentence imposed for an SVP Specification where, as here, the defendant had not previously been convicted of a sex offense.

Stansell filed a renewed Motion to Vacate the SVP Specification and resultant life sentence, in July of 2019, which was summarily denied on August 23, 2019. On direct appeal, the Eighth District followed precedent and vacated the SVP Specification and attendant life sentence, and remanded for resentencing, on July 9, 2020 (Appendix B).

On May 14, 2020, the Ohio Supreme Court, tired of all of the "post-release control" litigation filed under the "void sentence law" which had been clogging Ohio Courts since 1996, issued a decision in **State v Harper**, 160 Ohio St. 3d 480, in which the

Court, overturning almost one hundred years of precedent, held that, merely because part of the sentence imposing Post Release Control was void, the fact that the sentencing court had jurisdiction over the case would not change the "void" to merely "voidable", and now subject to res judicata. The **Harper** decision was initially limited to Post-Release Control issues; however on October 7, 2020, the Supreme Court applied **Harper** to a case in which the sentencing Court, in a case where the defendant had been convicted of murder, while imposing the sole sentence of 15-life, had inadvertently omitted the "to life" portion of the sentence, thus sentencing the prisoner to 15 years definite. After that sentence had expired, the prosecutor frantically sought to have the prisoner's sentence corrected and the Ohio Supreme Court, in applying **Harper**, noting that the prosecutor had waited until the prisoner had been released before seeking correction, held that, because the sentence was not challenged in an initial timely direct appeal, it was thus voidable, and not void.

Based upon these holdings, the prosecutor in Stansell's case sought reconsideration of the decision vacating the void life sentence associated with the void SVP Specification and the Eighth District Court of Appeals maintained that vacation of the SVP Specification and attendant life sentence remained appropriate, on January 28, 2021, (2021-Ohio-203).

The prosecutor, frantic to keep Stansell's life sentence intact, sought a second reconsideration and, after the changed judges, managed to convince the court to reverse the vacation of the SVP Specification and the life sentence, on June 17, 2021 (2021-Ohio-2036).

Notably, the Court, in its decision reversing its grant of relief, following the new "Henderson/Harper doctrine", pointed out that Stansell could obtain relief by seeking the reopening of his direct appeal (fn. 2).

Stansell filed an Application to Reopen his Direct Appeal which was filed subsequent to his resentencing in 2014 in which his sentence was reversed and remanded for proper Post Release Control imposition (2014-Ohio-1633), and the Court of Appeals refused to hear it, on the basis that it was not his "original direct appeal" and despite the fact that no initial direct appeal had been filed (2022-Ohio-4079, 11/15/2022), thus foreclosing the remedy they themselves prescribed for Stansell to seek removal of the life sentence that the Court itself has held is improper.

#### Void or Voidable

Stansell submits that the question as to whether a sentence is void or merely voidable is not merely a "question of state law", but rather is a central tenet of law that is universally applicable in all jurisdictions. Notably, this Court, in **Sanders v United States** (1963) 373 U.S. 1, held that res judicata is not applicable to bar review and relief in cases where "life or liberty is at stake" (id, 8). Thus, the fact that Ohio has elected to change its law on how it handles void sentences is not binding on this Court, nor does it preclude review or granting of relief.

A sentence is void where, as here, the sentencing court lacks statutory authority to impose it, that is, where the sentence is not authorized by statute. See, e.g. **Colegrove v Burns** (1964) 175 Ohio St. 437. Where, as here, the sentencing Court "transcends

its powers" by passing a sentence that is not authorized by law and, thus, outside its jurisdiction to do so, such sentence is void and subject to correction via Habeas Corpus. See, e.g. **Ex parte Lange**, 18 Wall, 163, 176; **Ex Parte Parks**, 93 U.S. 18, 23; **Ex Parte Virginia**, 100 U.S. 339, 343; **Ex Parte Rowland**, 104 U.S. 604, 612; **In re: Coy**, 127 U.S. 731, 738 and **In re: Neilson**, 131 U.S. 176, 182; cited by this Court in **In re: Bonner** (1894) 151 U.S. 242. Thus, the question as to whether an action by a state court, including the imposition of a sentence that is not authorized by law, is not merely a "question of state law", but a matter subject to federal review and, upon finding that such a sentence is unauthorized, a finding that it is void, not merely "voidable" is within the perview of this Court, notwithstanding contrary findings by a state court.

#### Habeas Corpus as Appropriate Remedy

In each of the cases cited immediately above, this Court reaffirmed its jurisdiction to issue a Writ of Habeas Corpus in a case where a state court imposes a void sentence. As this Court has previously stated, by and through the Honorable and learned Justice Fortas:

"The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonishment in the Constitution that "The privilege of the Writ of Habeas Corpus shall not be suspended..." U.S. CONST. ART. I, §9, CL. 2. The scope and flexibility of the writ - its capacity to reach all manner of illegal detention - its ability to cut through barriers of form and procedural mazes - have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected". **Harris v. Nelson** (1969) 394 U.S. 286.

See also **Jones v Cunningham** (1963), 371 U.S. 236, 243; **Hensley v Municipal Court** (1973), 411 U.S. 345, 349-350.

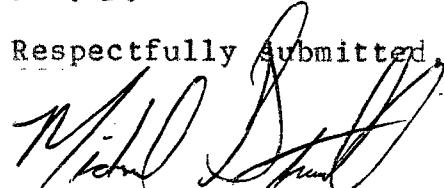
Notwithstanding the advent of the AEDPA, this Court has consistently held, over the majority of its 240 years of jurisprudence, that Habeas Corpus may and will lie to correct a void sentence imposed upon a prisoner by a state court, regardless of the state court's assertions or defenses.

Perhaps the most important fact herein is that, in this case, the state court agrees that the SVP Specification and attendant life sentence is not applicable to Stansell and but for a recent change in interpreting procedural niceties that serve to penalize Stansell for the fact that his attorney never filed a direct appeal, the life sentence would have been corrected.

#### CONSTITUTIONAL DIMENSION

Stansell submits that by forcing him to endure serving a life sentence despite the acknowledged fact that such a life sentence is not authorized by law for his conduct, not only violates every element of due process of law under the Fifth and Fourteenth Amendments, but also deprives him of equal protection of the law under the Fourteenth Amendment, and constitutes cruel and unusual punishment under the Eighth Amendment. Thus the requested Writ should issue, and he so prays.

Respectfully submitted,



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