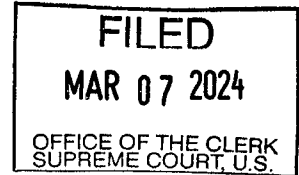


ORIGINAL

23-7671



NO _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES E. CHAMBLIN, SR., PETITIONER

Vs.

STATE OF OHIO-RESPONDENT.

ON PETITION FOR PETITION FOR WRIT OF CERTIORARI

THE OHIO COURT OF APPEALS
FIRST APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

James E. Chamblin, Sr.
Inmate No. 626947
P.O. BOX 5500
Chillicothe, Ohio 45601

QUESTIONS PRESENTED FOR REVIEW

Does a State Appellate Court violate a Petitioner's right to Due Process under the United States Constitution, when a court recast a litigant's pleading that was already properly casted when it was filed?

Has a State Appellate Court violated or disregarded the purpose of recasting a pleading, if the Courts recasting, prejudices a litigant thereby removing the right to redress grievances?

Does a State Appellate Court's recasting of a pleading without providing an opportunity for a Petitioner to address a court's recasting deny a litigant's right under due process and equal protection under the U.S. Constitution?

Is a count in an indictment void by Federal Law or by the Ohio Supreme Court's definition outline in *State v. Henderson* 161 Ohio St. 3d 285 (defining void), if an indictment was amended to change the identity of an offense or if the identity of the offense is changed without properly amending an indictment prior to trial?

Does the protection of the Fourteenth Amendment of the United States Constitution concerning Due Process and Equal Protection? when so violating a defendant's right to an indictment, if a state requires an indictment as in the case at bar.

LISTED PARTIES

[X] All parties to this proceeding are listed in the caption of this case.

RELATED CASES

- State v. Chamblin, Court of Common Pleas, (Trial Court Hamilton County, Ohio Case No. B0903691. Judgement entered on March 30, 2010.
- State v. Chamblin, 2023-Ohio-3129, 2023 Ohio App. LEXIS 3095 (Ohio First Appellate District Case No. C-220488. Entered on September 6, 2023.
- State v. Chamblin, 2023 Ohio LEXIS 2422 (Ohio Supreme Court Case No. 2023-1316. Entered on Dec. 12, 2023.

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**IN THE SUPREME COURT OF
THE UNITED STATES FOR
WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of Certiorari issues, to address the proposed questions for the country and review the judgment below.

OPINIONS BELOW

[X] For cases from State courts:

The Opinion of the Highest state court to review the merits appears at Appendix [E] and is reported at State v. Chamblin, 2023-Ohio-3129. the opinion was rendered on September 6, 2023, in the First District Court of Appeals for Ohio.

[X] A timely appeal was filed to the Supreme Court of Ohio. That court Declined jurisdiction, the entry appears at Appendix [F] to the petition and is reported At State v. Chamblin, 172 Ohio St. 3d 1426 entered on December 12, 2023.

JURISDICTION

☒ for cases from state courts:

The date on which the State decided my case was December 12, 2023.

A copy of that decision appears at Appendix [F].

The jurisdiction of this court is respectfully invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

UNITED STATES CONSTITUTION:

The Sixth Amendment of the United States Constitution and the Fourteenth Amendment
U.S. Const. Amend. XIV, § 1 (Equal Protection Clause).

STATUTE AND RULES

Ohio Criminal Rule 7(D); Ohio Crim.R.32.1 and Ohio Criminal Rule 33.

OHIO REVISED CODE SECTIONS

2907.02(A)(1)(b);2907.05(A)(4);2923.02(A);2945.79;2945.80;2953.21;2953.23 and 28

U.S.C. §1257(a).

STATEMENT OF THE CASE

On June 19, 2009 the Hamilton County Grand Jury indicted Petitioner on seven counts which included: Count 1, Rape pursuant to Ohio Revised Code § 2907.02(A)(1)(b); Count 2, Rape Ohio Revised Code § 2907.02(A)(1)(b); Count 3 Attempted Rape Ohio Revised Code § 2923.02(A); Count 4, Gross Sexual Imposition Ohio Revised Code § 2907.05(A)(4); Count Five Gross Sexual Imposition Ohio Revised Code § 2907.05(A)(4); Count 6 Gross Sexual Imposition Ohio Revised Code § 2907.05(A)(4) and Count 7 Gross Sexual Imposition Ohio Revised Code § 2907.05(A)(4).

In February 2022, Petitioner James E. Chamblin Sr. (hereinafter “Petitioner”) through counsel filed a motion for new trial to the Hamilton County Common Pleas Court requesting the vacation of his convictions for attempted rape. Petitioner argued that his indictment was ambiguous as to the identity of the victim in count three of his prior indictment for an attempted rape. Petitioner highlighted to the State courts that each count contained the initials of an alleged victim except for Count 3. He also pointed out that during trial he was made to believe Count 3 went to the alleged victim (K.C.).

Further reading: the Indictment related to two alleged victims K.C. (Female) and J.C. (male) which were grouped together by the grand jury based on victim, where counts one through five relate to the alleged female victim (K.C.) and counts six through seven related to the alleged male victim, where additionally each count contained either K.C. or J.C. initials.

However, count three did not contain any initials and was grouped with counts one through five which related to K.C., during trial the Petitioner defended count three as to the female victim as it was grouped with her counts by the grand jury. At the conclusion of the trial after the parties rested defense counsel moved for a dismissal of count three of the indictment because no testimony was presented by K.C. of an attempt rape. The State during that time

indicated that count three goes to J.C. and the trial court admitted that she was confused believing that the count went to K.C. but added the initials of J.C. in her jury instructions related to count three. Where the State failed to present testimony from the female victim of attempted rape which prejudiced the Petitioner.

Petitioner argued that the count should be dismissed because it prejudiced Appellant and that the State could not pursue a count to fit toward both victims without identifying to whom it is to fit, violating his constitutional right to due process, equal protection and a right to a fundamental fair trial. The State nor the trial court ever properly moved to amend the indictment in the Petitioner's case. No motions have ever been filed by the State and Petitioner argued that the State lost jurisdiction to amend the indictment prior to the case being given to the jury, making the indictment Count 3 void. Petitioner raised a Federal Due Process and Equal Protection violation where his right to an indictment was violated without a proper amendment believing that the United States Constitution requires protection to the right to an indictment in a State, even if the right to an indictment its self is not protected federally, if a state of its self requires an indictment that right should be additionally federally protected. Which otherwise would have prohibited the count to be applied toward J.C., due to the lack of timely amendment. Petitioner stressed to the Ohio Courts that he suffered a fundamental violation of his right to trial under the Sixth and Fourteenth Amendments of the United States Constitution.

Further Petitioner's indictment Count 3, was constitutionally insufficient as it did not name a victim for the offense of attempted rape and therefore, Petitioner did not have adequate notice of the charge as to whom to defend it against. After Petitioner filed a motion under Criminal rule 33, the court held a hearing indicating that Petitioner was not prejudiced by the lack of initials on the indictment and overruled the motion claiming res judicata.

On September 6, 2023 after briefing the Ohio First Appellate District in *State v. Chamblin*, 2023-Ohio-3129, modified the trial court's decision, recasting Petitioner's pleading as a Post-Conviction Petition referencing Ohio Revised Code § 2953.21. Ohio law has strict time limitations for litigants to file post-conviction petitions, which is within 365 days depending on if one appeals their conviction. If someone appeals the time to file a Post-Conviction Petition does not start until the record on appeal is filed. If a litigant does not appeal they have 395 days, providing an additional 30 days representing the time Ohio law requires to file a notice of appeal. Ohio law practices that a court does not have jurisdiction to entertain an untimely Post-Conviction Petition.

Petitioner timely filed a jurisdictional appeal to the Ohio Supreme Court raising the above issues. On December 12, 2023 the Ohio Supreme Court declined jurisdiction in *State v. Chamblin*, 172 Ohio St. 3d 1426.

REASON FOR GRANTING THE PETITION

This case addresses issues that are important to the citizens of this nation, pertaining to criminal Defendants constitutional rights to redress, within criminal proceedings. This case involves a felony and presents issues that raise substantial constitutional questions and pose issues of public and great general interest involving Ohio's free style practice of recasting pleading filed by criminal defendants. The term recasting as used indicates a court changing the manner in which it reviews a subject. When a court changes the manner in which it reviews a filing, it does not allow a litigant to defend it under that analysis, prior to it making a decision.

This case internally presents issues relating to amendments of indictments which amount to structural error. This Court has found constitutional due process violations vary dramatically in significance; harmless trial errors are at one end of a broad spectrum, and what the Court has characterized as "structural" defects -- those that make a trial fundamentally unfair even if they do not affect the outcome of the proceeding -- are at "the other end of the spectrum. Citing *Brecht v. Abrahamson*, 507 U.S. 619 at 640. In Ohio a court "may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged. *State v. Schlee*, 117 Ohio St. 3d 153 at ¶ 12.

In Ohio if a court recast a pleading into a Post-Conviction Petition it may then may bar a claim based on time limitations, under the statute of limitations set out in Ohio Revised Code § 2953.21. In the case at bar the Ohio First District Appellate Court after recasting Petitioner's motion into a Post-Conviction Petition, modified the trial courts entry into a dismissal of the motion, indicating that the trial court lacked jurisdiction to consider it. Petitioner filed a motion for reconsideration indicating that the Appellate Court overlooked serious points within the record as to Petitioner's litigation history where he attempted to timely raise the issues of which

he then relied and that his Attorney filed a "Motion for New Trial" Ohio Revised Code § 2945.79 and 2945.80, as well as Ohio Criminal Rule 33. Demonstrating that recasting was inappropriate where its only purpose was to prejudice Petitioner.

CONCERNING PROPOSITION OF LAW NO. ONE:

Recasting a pleading can be both beneficial to a party in litigation as well to a court to better resolve an issue before it. The Ohio Supreme Court has held that courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged. See *State v. Bush*, 96 Ohio St.3d 235, 2002 Ohio 3993, 773 N.E.2d 522, citing *State v. Reynolds* (1999), 79 Ohio st.3d 158, 1997 Ohio 304, 679 N.E.2d 1131.that court has additionally struck down recasting, as in *State v. Bush*, 96 Ohio St.3d at 236, 773 N.E.2d 522 where a trial court treated a defendant's Crim.R.32.1 motion to withdraw his guilty plea as a petition for post-conviction relief and denied it. In that case the court of appeals affirmed, but the Ohio Supreme Court reversed, holding that "HN7 R.C. 2953.21 and 2953.23 do not govern a Crim.R. 32.1 post-sentence motion to withdraw a guilty plea, as a prime example.

Ohio has not considered what should occur if a recasting of a pleading is used to prejudice a litigant. In *State v. Bethel*, 167 Ohio St.3d 362 the court rejected the State's argument that suggest that a Petitioner (Bethel's) motion constituted a collateral challenge simply because it was filed many years after his conviction and sentence. Finding permissible that he could file a motion for leave to file a motion for new trial.

In the case at bar Petitioner filed a motion under Ohio Criminal Rule 33 which governs motions for new trial. Within his motion his counsel requested that Count 3 Attempted Rape of the indictment be dismissed for ambiguity as it could not be charged to fit toward two victims, did not identify a victim as the other counts lacking notice and prejudice to Petitioner thereof

indicating that the count is void for the mentioned reasons. Afterwards the Hamilton County Common pleas court held a hearing. During the hearing the state argued that the motions should be denied and dismissed and treated as an untimely petition for post- conviction relief.

The state argued even if the motion had been untimely, it was barred by res judicata as any defect in the indictment could have been raised and determined at trial or on direct appeal. At the conclusion of the hearing, the trial court orally denied the motion, stating that Petitioner had been aware at trial that his son was purportedly the alleged victim of the attempted-rape offense, and found no fault in the indictment ruling that his claims was barred by res judicata. Petitioner timely appealed to the Ohio First Appellate District the trial court's decision and entry. The District Court after briefing the issues recasted Petitioner's motion into an untimely post-conviction petition and recasted the trial courts denial of the motion into a dismissal for lack of jurisdiction.

Petitioner was prejudiced by the appellant court recasting for two reasons, 1) his motion was properly pleaded as a motion for a new trial under Ohio Criminal Rule 33. Titled and requested. And 2) because he was not provided an opportunity to defend the pleading under O.R.C. 2953.23 if the recasting would be considered appropriate. Which resulted in the First District Court of Appeals stripping Petitioner of such opportunity to present an exception under O.R.C. 2953.23 which is a kin section O.R.C. 2953.21 forcibly shutting the door on proper consideration of his argument without allowing the trial court to make a proper determination, where O.R.C. 2953.23 was not considered by the trial court and effectively infringes on Petitioner's due process under both Ohio and United States Constitution.

Petitioner urges this court to accept jurisdiction to address the posed questions:

Does a State Appellate Court violate a Petitioner's right to Due Process under the United States Constitution, when a court recast a litigant's pleading that was already properly casted when it was filed?

Has a State Appellate Court violated or disregarded the purpose of recasting a pleading, if the Courts recasting, prejudices a litigant thereby removing the right to redress grievances?

Does a State Appellate Court's recasting of a pleading without providing an opportunity for a Petitioner to address a court's recasting deny a litigant's right under due process and equal protection under the U.S. Constitution?

Is a count in an indictment void by Federal Law or by the Ohio Supreme Court's definition outline in *State v. Henderson* 161 Ohio St. 3d 285 (defining void), if an indictment was amended to change the identity of an offense or if the identity of the offense is changed without properly amending an indictment prior to trial?

Does the protection of the Fourteenth Amendment of the United States Constitution concerning Due Process and Equal Protection? when so violating a defendant's right to an indictment, if a state requires an indictment as in the case at bar.

This Court should accept jurisdiction to consider the substantial constitutional questions and issues of public and great general interest posed in this case for the country; set new current standards courts restrictions on recasting pleading holding that if a pleading is recasted it should be mandatory that a litigant have a right to defend under that recasting, thereby protecting a criminal litigant's right to due process and equal protection, prior to being blocked or stripped of a right to defend.

Ohio has acknowledged the result of an abuse of recasting a pleading in criminal cases where a pleading was properly plead, in most cases the result is prejudice to a criminal defendant, foreclosing review of the subject matter it relates. As acknowledged in *State v. Bush*, supra. Where a defendant was denied an opportunity to pursue a motion to withdraw his guilty plea, because of the recasting into a post-conviction petition and was denied without review by the lower courts until corrected by the Ohio Supreme Court. This problem is very real and occurs in cases hundreds of times a year amounting to thousands of pleadings being denied without

proper recourse and that is in Ohio alone not factoring in other States that may operate to recast pleading.

This Court should accept this case to correct and address this issue by requiring that both trial and Appellate courts allow re-briefing when a pleading is re-casted if necessary allowing discretion to ensure that proper review and consideration is given to the litigant, by allowing re-briefing it allows the litigant to properly defend the action and allows a court to fully review the merits under the recasting after it has been defended. For all of the above reasons it is urged that this court accept jurisdiction concerning proposition of law number one.

CONCERNING PROPOSITION OF LAW NO. TWO:

An amendment of indictment is permissible under Ohio Criminal Rule 7(D) which reads:

“(D) Amendment of indictment, information, or complaint. The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, 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. If any amendment is made to the substance of the indictment, information, or complaint, or to cure a variance between the indictment, information, or complaint and the proof, the defendant is entitled to a discharge of the jury on the defendant's motion, if a jury has been impaneled, and to a reasonable continuance, unless it clearly appears from the whole proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which the amendment is made, or that the defendant's rights will be fully protected by proceeding with the trial, or by a postponement thereof to a later day with the same or another jury. Where a jury is discharged under this division, jeopardy shall not attach to the offense charged in the amended indictment, information, or complaint. No action of the court in refusing a continuance or postponement under this division is reviewable except after motion to grant a new trial therefor is refused by the trial court, and no appeal based upon such action of the court shall be sustained nor reversal had unless, from consideration of the whole proceedings, the reviewing court finds that a failure of justice resulted.”

Ohio Criminal Rule 7 (D) clearly allows amendments of indictment before during or after a trial however the amendment is only permissible when the identity of the offense is not impacted, when the identity is at issue Rule 7 (D) provides a process generally a continuance.

However, the Ohio Supreme Court nor Ohio law identifies a process for litigants who

have been impacted by trial courts that have changed the identity of a count, without first amending it (a court) or filing a motion to amend (Prosecutor) prior to presenting a case to a jury for deliberation, leaving a Defendant with no option to correct the injustice, except requesting for a dismissal based on a void count within the indictment. Where any amendment would be prejudicial to Petitioner, where it was not properly amended by the State or the Court, prior to the courts providing jury instructions related to improper or unindicted acts. Which otherwise would have prohibited the count being applied toward the alleged victim J.C. making Petitioners verdict as stated void, where he suffered a fundamental violation of his right to trial under the Sixth and Fourteenth Amendments of the United States Constitution concerning his due process rights to be given fair notice.

Petitioner urges this court to accept jurisdiction to address the posed questions:

Is a count in an indictment void by Federal Law or by the Ohio Supreme Courts definition outline in *State v. Henderson* 161 Ohio St. 3d 285 (defining void), if an indictment was amended to change the identity of an offense or if the identity of the offense is changed without properly amending an indictment prior to trial?

The Ohio Supreme Court has provided a limited basis for determining if a case is void or voidable citing *State v. Henderson* 161 Ohio St. 3d 285, which outlines that a judgment or sentence is void only if it is rendered by a court that lacks subject-matter jurisdiction over the case or personal jurisdiction over the Petitioner in this case the trial court lacked subject matter jurisdiction over Petitioner relating to count three due to its voidness. As to date Federal law does not extend to indictments concerning the States. However, does the protection of the Fourteenth Amendment concerning Due Process and Equal Protection apply to states even if the right to an indictment is not present? when so violating a defendant's right to an indictment if a

state requires an indictment as in the case at bar and has failed to amend. If the State amends the indictment in such a late stage it would change the identity of the offense.

For the above reasons it is urged that this court accept jurisdiction concerning proposition of law number two and request that this court dismiss count three of the indictment.

CONCLUSION

The petition for a writ of certiorari should be respectfully granted.

James E. Chamblin

James E. Chamblin, Sr.

Inmate No. 626947

P.O. BOX 5500

Chillicothe, Ohio 45601

Date MARCH, 7, 24