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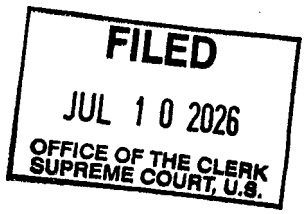

IN THE
SUPREME COURT OF THE UNITED STATES

Jason Gordon — Petitioner

Vs.

State of Ohio — Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

Jason Gordon (828628)
Noble Correctional Inst.
15708 McConnelsville Road
Caldwell, Ohio 43724

Questions Presented

Question One (New Issue Create by Ohio Supreme Court's Declination of Jurisdiction): Where the State's Constitution makes it an appeal of right where an Appeal raises questions arising under the Constitution of the State or United States, it a Violation of Federal Due Process for a State's Highest Court to Decline Jurisdiction and Deprive a Criminal Appellant of a Merit Decision on Claims and Issues that Raise Substantial Constitutional Question and Were Properly Raised Under the Law and Rules of the State and Court?

Question Two (Relevant to Ohio Supreme Court Proposition of Law Five): Is it a violation of due process for a state to impose life under adult criminal law for an offense alleged to have been committed as a juvenile where the life sentence was not available had the accused been charged as a juvenile?

Question Three (Relevant to Ohio Supreme Court Proposition of Law Six): Does a statute violate the *Apprendi* Rule, due process, and jury trial rights where that statute permits, allows, or requires a trial court or judge to determine facts not charged in the indictment and proved to the jury beyond a reasonable doubt in order to authorize that trial court or judge to exceed a lesser statutory maximum to impose a greater sentence than the law allows without such fact, where those facts are made essential for the trial court to exceed a lesser statutory maximum to impose a greater sentence?

Question Four (Relevant to Ohio Supreme Court Proposition of Law Six):: Is it a violation of the *Apprendi* Rule, due process, and jury trial rights for a trial court to determine facts not charged in the indictment and proved to the jury beyond a reasonable doubt, where those facts are made essential for the trial court to exceed a lesser statutory maximum to impose a greater sentence?

Question Five (Relevant to Ohio Supreme Court Proposition of Law Six):: Is it a violation of due process and jury trial rights for a trial court or judge to determine facts not charged in the indictment and proved to the jury beyond a reasonable doubt, where those facts are made essential for the trial court or judge to exceed a lesser statutory maximum to impose a greater sentence than the law allows without such fact, and where the records contains no evidence in support of such facts?

Question Six (Relevant to Ohio Supreme Court Proposition of Law Six): Does it constitute ineffective assistance of Appellate Counsel for Appellate Counsel to raise and argue the issues set out in Questions 3, 4, and 5?

Question Seven (Relevant to State Proposition of Law One & Assignment of Error One: Is it a Violation of Due Process and Jury Trial Rights for a Trial Court to Permit Trial Counsel to Continue to Represent a Defendant when there is a Clear Breakdown in Communication, which allowed Attorney Drake to Deprive (Appellant) of His Intended Defense and Violate (Appellant's) 6th and 14th Amendment Rights?

Question Eight (Relevant to State Proposition of Law Two & Assignment of Error Two: Can the Cumulative Effect of Multiple Errors Committed by Counsel Amount to Ineffective Assistance of Counsel Prejudicing the Accused and Requiring Reversal where Each Individual Error Might or Does Not?

Question Nine (Relevant to State Proposition of Law Three & Assignment of Error Three: Are Gordon's Convictions Supported by Legally Sufficient Evidence, and Does the State Courts' Application or Interpretation of the Stat-Law Issue of Manifest Weight of the Evidence Violate Federal Due Process where Gordon's Convictions are Against the Manifest Weight of the Evidence ?

Question Ten (Relevant to State Proposition of Law Four & Assignment of Error Four: Does it Constitute a Denial of Effective Assistance of Trial and Appellate Counsel Fails to Raise and/or Properly Argue Mental Defect and Actual Age at the Time of the Alleged Offenses Were Alleged to Have Occurred?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

RELATED CASES

Discretionary appeal not allowed by *State v. Gordon*, 2025-Ohio-5078, 2025 Ohio LEXIS 2266 (Nov. 12, 2025); **Appendix 1**

State of Ohio, Plaintiff-Appellee -vs- Jason Gordon, Defendant-Appellant, Tuscarawas County Court of Appeals, Fifth Appellate District of Ohio, No. 2024 AP 06 0021, Decided April 7, 2025; cited at 2025-Ohio-1229; 2025 Ohio App. LEXIS 1190; 2025 LX 273657; **Appendix 2**

State of Ohio, Plaintiff -vs- Jason Gordon, Defendant, Tuscarawas County, Ohio, Court of Common Pleas, Case No. 2022 CR 03 0059; ~~Appendix~~

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Appendix 3 : Motion for Delayed Appeal to the Ohio Supreme Court granted by *State v. Gordon*, 179 Ohio St. 3d 1425, 2025-Ohio-2537, 2025 Ohio LEXIS 1467, 263 N.E.3d 357 (July 22, 2025);

TABLE OF AUTHORITIES CITED

CASE LAW

OHIO CONSTITUTIONAL LAW

STATUTES

MISCELLANEOUS

Supreme Court Deadline: February 10, 2026 B-day 2-22-92

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner Jason Gordon respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The Opinion of the Highest State Court to Review the Merits appears at **Appendix** 2 and is reported at *State of Ohio, Plaintiff-Appellee -vs- Jason Gordon, Defendant-Appellant*, Tuscarawas County Court of Appeals, Fifth Appellate District of Ohio, No. 2024 AP 06 0021, Decided April 7, 2025; reported at 2025-Ohio-1229;

The Opinion of the highest State court which declined jurisdiction and refuse to review the merits of properly presented issues appears at **Appendix** 1 and is reported at *State v. Gordon*, Ohio Supreme Court No. 2025-0733, reported at 2025-Ohio-5078, Nov. 12, 2025.

JURISDICTION

The United States Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) to issue a Writ of Certiorari. The highest state court to rule on the merits was the State Court of Appeals, and the highest State Court, Ohio Supreme Court, rendered its decision on November 12, 2025, declining jurisdiction and refusing to rule on merits of *new and appealed issues properly before it* on; where Ohio statutes are drawn in question as being repugnant to the United States Constitution; and where the Petitioner's rights, privileges and immunities are specially set up or claimed under the United States Constitution or statutes of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U.S.C. § 1257(a):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari

where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Ohio Const., Art. IV, Section (2)(a)(ii):

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases involving questions arising under the constitution of the United States or of this state.

Ohio Revised Code Sections 2151.23(I), and R.C. 2152.12(J) provide:

If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.

Ohio Revised Code Section 2929.14(C)(4) provides:

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for

any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

STATEMENT OF THE CASE

This case involves a situation where the Petitioner, Jason Gordon, who is mentally and developmentally disabled and child-like, attempted to maintain his actual and factual innocence until, tricked by counsel to "admit something; nobody will believe you did nothing", after Gordon and counsel had serious disagreements. The record establishes, especially given Drake's closing argument, that Drake's "admit something" "Defense" was a planned sellout to punish Gordon: First, after taking two years (stuck in jail) to convince Gordon to "admit" the lesser offenses", then finish with prejudicial labeling and a "counsel confession" of all the offenses: "[T]his is sick"; and "[R]ather that doing what he should have done () and saying yeah I did it, he decided () the kids helped him do it, or wanted him to do it or something. Inane, totally stupid, and repulsive" (T. Tp. Vol. III, ppg. 331-332); "Soon after today he won't be in our jail anymore, he'll be someplace else." (T. Tp. Vol. III ppg. 331); "Bad people, malignant people, sick people, people who are dangerous to solicit, sex offenders would be all of those things put in one... [B]ut let's face it, he's a pervert. He's a sex offender", and "When this thing is over, I'm not going to see (Gordon) in prison." (T. Tp. Vol. III ppg. 334.) (See § III, *infra*.)

The case began when one of the alleged "victims", J.M., informed her therapist that she had been sexually abused by her cousin, Gordon, when she was under 10 years of age; which led to an investigation that resulted in the "discovery" of two additional alleged "victims", A.G. and P.S. A.G. lived in the same neighborhood as Gordon *when she and Gordon were children*, and Gordon lived with P.S. when *both* she and Gordon were *children*. Police initiated contact with both new alleged

"victims", then adults, who alleged Gordon had sexually assaulted them as children, engaging in both sexual contact and conduct when they were under 10 years of age.

On March 4, 2022, Gordon was indicted by the Tuscarawas County Grand Jury with three counts of rape of pursuant to R.C. 2907.02(A)(1)(b), R.C. 2907.02(B), felonies of the first degree, and three counts of gross sexual imposition pursuant to R.C. 2907.05(A)(4), 2907.05(C)(2), felonies of the third degree.

On July 22, 2022, on the advice of counsel, Gordon pled guilty as charged; but on September 15, 2022, Gordon's pleas were vacated. Gordon's original counsel, Attorney DeLaCruz was permitted to withdraw his representation of Gordon and Attorney Drake, a former Assistant Attorney General, was appointed.

On March 13, 2023, Drake filed a motion for a competency evaluation. On August 30, 2023, following a hearing on the matter, the court found the competency evaluation deemed Gordon capable of understanding the nature and objectives of the proceedings against him and of assisting in his defense. Attorney Drake requested a second competency evaluation and the trial court granted the same. On November 2, 2023, Gordon was again deemed capable of understanding the nature and objectives of the proceedings against him and of assisting in his defense. The trial court therefore found Gordon competent to stand trial.

On November 13, 2023, Drake filed a motion for a sanity evaluation. The trial court ordered a sanity evaluation and reviewed the report on January 11, 2024. The record contains nothing indicating the results of the examination or the trial court's findings, however, the matter was next set for trial.

Gordon does not argue that he does not fit the extremely low threshold of the legal definition of competent, but he does have a diminished mental capacity with a child-like mind, and is easily convinced to follow instructions provided by authority figures, including counsel. Drake, having filed multiple motions challenging Gordon's competency and sanity, obviously recognized Gordon's mental shortcomings.

On April 15, 2024, eight days before trial, Gordon wrote a letter to the court indicating he told Drake about a third interview video with law enforcement and Attorney Drake did not believe the video existed. Drake angrily and loudly accused Gordon of lying to him, and berated Gordon. Gordon further alleged that Drake hardly answered his calls, and hardly saw him in person. Gordon stated he was confused about what was going on and was not ready for trial.

The case proceeded to trial April 23, 2024. Demonstrating the trial court's intent on proceeding to trial while denying Cordon access to counsel he could trust and work with, the trial court addressed Gordon's letter immediately before trial. Minimizing his grossly unprofessional conduct and abuse directed at Gordon, Drake admitted he had not believed Gordon when he said there was a third interview.

The trial court questioned Detective Captain Ty Norris about the interview, who confirmed he had interviewed Gordon on a third occasion, but claimed that interview was about an unrelated case, there had been a recording of the interview that no longer existed, and no new information was obtained in regard to the instant charges. Transcript of trial (T.Tp.) at 7, 17-18, 20. However, the third interview did relate to Gordon's case, and the recording was erased because it demonstrated Gordon denying he had raped and molested the three alleged "victims", which conflicted with counsel's "I did it" defense. The trial court questioned Drake and Gordon regarding Gordon's letter (facts emerged suggesting Captain Norris must have known about Drake's intended trial "strategy"). After the Court and Drake assured Gordon that there would be no further issues, Gordon reluctantly agreed to go forward with Attorney Drake representing him (T.Tp. 23.) although part of the issue Gordon had with his trial counsel was that Gordon, though, was that Drake refused to defend Gordon's actually and factually innocent, and deprived him of *his* defense, compelling the weak minded and child-like Gordon to falsely "confess" to lesser offenses to avoid conviction for the more serious charges.

The state presented testimony from seven witnesses; two police investigators, all three alleged "victims", one alleged "victim's" mother, and a forensic interviewer. Jurors viewed the two recorded interviews conducted by law enforcement with Gordon wherein, per instructions from counsel to "admit" to the lesser offenses of Grose Sexual Imposition because nobody would believe him if he said he did not do anything, Gordon falsely "admitted" to sexual contact with each victim. State's exhibits E and F. The alleged "victims" each testified sexual conduct and contact took place. Gordon testified in his own defense. Per instructions from counsel, he "admitted" to sexual contact with each alleged "victim" but denied sexual conduct. Noting that Gordon sat in the county jail for about two years asserting his innocence while awaiting trial, it took counsel nearly two years to train Gordon to say the right things to assist Drake in convicting him.

During Closing Arguments, Drake, made statements to the jury calling Gordon "sick" and a pervert, and stated that Gordon "did it" and would be going to prison; after which, the jury convicted Gordon as charged, sentenced to an aggregate total of 55 years to life and was classified as a Tier III sex offender.

Gordon, via appellate counsel Donovan Hill, timely appealed to the Tuscarawas County Court of Appeals, Fifth Appellate District of Ohio, in *State of Ohio, Plaintiff-Appellee -vs- Jason Gordon, Defendant-Appellant*, No. 2024 AP 06 0021, Decided April 7, 2025; cited at 2025-Ohio-1229, in which appellate counsel Hill raised four assignments of error:

> 1: The Trial Court Erred and Deprived Appellant of His Sixth Amendment Right to Effective Assistance of Counsel By Permitting Trial Counsel to Continue to Represent Appellant When There Was a Clear Breakdown in Communication. "
>
> 2: Appellant's Sixth Amendment Right to Effective Assistance of Counsel was Violated Because Trial Counsel's Performance Taken as a Whole Was So Deficient and Prejudicial that it Deprived Appellant of a Fair Trial.
>
> 3: Appellant's Convictions of Rape Were Not Supported By Legally Sufficient

Evidence.

4: Appellant's Convictions of Rape Were Against the Manifest Weight of the Evidence.

The Court of Appeals determined these Assignments of Error on State grounds that were neither adequate nor independent of the law of the United States as set by the United States Supreme Court.

Gordon did not receive his decision from the Court of appeals in time to file a timely Memorandum in Support of Jurisdiction. However, having the Memorandum ready, (with assistance from a prison law clerk) he filed his Memorandum without the decision knowing it would be rejected, which served as proof of his reason for delay, and the Ohio Supreme Court granted Gordon leave to file a delayed appeal (2025-Ohio-2537); whereupon, Gordon raised the following Propositions of Law:

1: The Trial Erred and Deprived Appellant of his Sixth Amendment Right to Effective Assistance of Counsel by Permitting Trial Counsel to Continue to Represent Appellant When there was a Clear Breakdown in Communication, which allowed Attorney Drake to Deprive (Appellant) of His Intended Defense and Violate (Appellant's) 6th and 14th Amendment Rights.

2: Appellant's Sixth Amendment Right to Effective Assistance of Counsel was Violated Because Trial Counsel's Performance, Taken as a Whole, was so Deficient and Prejudicial that it Deprived Appellant of a fair Trial.

3: Appellant's Convictions of Rape Were Not Supported by Legally Sufficient Evidence, and are Against the Manifest Weight of the Evidence.

4: Appellant was Deprived of Effective Assistance of Trial and Appellate Counsel for Counsels' Failure to Raise and/or Properly Argue the Appellant's Mental Defect and Actual Age at the Time of the Alleged Offenses Were Alleged to Have Occurred.

5: R.C. 2151.23(I); R.C. 2152.12(J), *State v. Warren*, and Similar Decisions, are Unconstitutional as they Remove Juvenile Offenses from the Jurisdiction of the Juvenile Courts and Allow the State to Bypass Juvenile Due Process.

6: Appellant was Deprived of Effective Assistance of trial and Appellate Counsel for Counsels' Failure to Properly Raise and Argue that the Trial Court Record Does Not Support the R.C. 2929.14(C)(4) Finding(s) necessary to Order Consecutive Service; and that R.C. 2929.14(C)(4) IS Unconstitutional for Violating the *Apprendi* Rule.

All of Gordon's claims and issues were fairly presented to the state's highest court, which declined jurisdiction and did not review the merits.

Although the Court of Appeals marginally addressed the merits of Gordon's ineffective assistance of counsel claim, and mentioned *Strickland v. Washington*, 466 U.S. 668 (1984), and *Jackson v. Virginia*, 443 U.S. 307 (1979), the Court of Appeals determined Gordon's Assignments of Error on State grounds that were neither adequate nor independent of the law of the United States as set by the United States Supreme Court.

Assignments of Error One through Four received a merit decision from the Tuscarawas County Court of Appeals, such decision being contrary to clearly established United States law as set by the United States Supreme Court; while Propositions of Law Five and Six were properly raised before the Ohio Supreme Court for the first time as Proposition Five and Six challenged the constitutionality of Ohio Supreme Court decisions that the Court of Appeals has no power to overrule; and Proposition Six raised Ineffective Assistance of Appellate counsel, which the Ohio Supreme Court held "'...may be raised in an application for reconsideration in the court of appeals or in a direct appeal to the Supreme Court.'" *Haynes v. Humphreys*, 64 Ohio St. 3d 206 (1992), quoting *State v. Murnahan*, 63 Ohio St. 3d 60 (1992).

The Supreme Court of Ohio declined jurisdiction, leaving these critical issues unresolved, and Gordon now seeks certiorari to the Supreme Court of Ohio on Propositions of Law Five and Six; and to the Tuscarawas County Court of Appeals on Assignments of Error One through Four.

REASONS FOR GRANTING THE WRIT

Question One (New Issue Create by Ohio Supreme Court's Declination of Jurisdiction):

Deprivation of Ineffective Assistance of Counsel is a Substantial Constitutional Question, as is the constitutionality of a statute, which is an "appeal() as a matter of right" pursuant to Ohio Const., Art. IV, Section (2)(a)(ii). Thus, where the Ohio Supreme Court declines jurisdiction to determine a *substantial* constitutional question, the Court violates Federal Due Process by failing to adhere and apply the process that is due where the constitutional question arose from the Court of Appeals' decision, was properly raised for the first time in the Ohio Supreme Court, and the declination of jurisdiction deprives the Appellant of any possibility of a Merit Decision. "In rare cases, a litigant can credibly claim that a State's erroneous interpretation of, or refusal to comply with, its own law can amount to a federal due process violation." *Johnson v. Missouri*, 143 S. Ct. 417 (2022), citing *Skinner v. Switzer*, 562 U. S. 521 (2011); and *Bouie v. City of Columbia*, 378 U. S. 347 (1964).

R.C. 2929.14(C)(4), plainly upon its face, restricts and allows judges to increase their own sentencing authority, not only by making findings of facts that violate the *Apprendi* Rule and have nothing to do with prior conviction, but also by allowing such findings with little or no evidence; a claim plainly and unambiguously raises a substantial constitutional question that made Gordon's appeal to the Ohio Supreme Court an Appeal of Right, the denial of which deprived Gordon of Federally protected Due Process, his property right of appeal, and Equal Protection of the Law.

> The hypothesis underlying any requirement of reasonable notice is that the right to appeal is a property interest that cannot be denied without due process of law. While the United States Supreme Court has long held that a "right" to appeal is not found in the Constitution, *McKane v. Durston* (1894), 153 U.S. 684, the court has also held that where a state provides a process of appellate review, the procedures used must comply with constitutional dictates of due process and equal protection. *Griffin v. Illinois* (1956), 351 U.S. 12, 18.

Atkinson v. Grumman Ohio Corp., 37 Ohio St. 3d 80 (1988).

The Ohio Supreme Court's declination of jurisdiction to review Gordon's properly and fairly presented claims, especially those that arose as a matter of the

Court of Appeals' decision and raised for the first time in the Ohio Supreme Court, violate and prejudice Gordon's Due Process and Equal Protection rights.

Question Two (Relevant to Ohio Supreme Court Proposition of Law Five):

Had Gordon been charged as a juvenile, in order to become subject to adult prison terms, he would have had to have been subject to bind over proceedings. However, allowing a state to wait to charge a juvenile offense directly in adult court – whether by design or late discovery of the alleged act(s) – allows the State to bypass bind over procedures and impose adult sentences and the stigma of an adult conviction and criminal record on a "juvenile offender" who is then deprived of the special statutory and Due Process protections which separately set out and applied juvenile law is designed to prevent; especially under the well-established understanding that after years of maturation, the same adult would not act in the same manner as he might have as a juvenile.

R.C. 2151.23(I), and R.C. 2152.12(J) provide:

> If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (A) and (B) of section 2152.12 of the Revised Code do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case that it has in other criminal cases in that court.

State v. Warren, 118 Ohio St. 3d 200, footnote 5 (2008).

This provision violates contemporary notions of Due Process to be afforded persons who are accused of committing acts while they are juveniles that would be offenses if committed by an adult; especially where the law recognizes that behavior changes the further a person is separated in time from his minority and immaturity.

See Justice Stevens's plurality opinion in *Thompson v. Okla.*, 487 U.S. 815, 834-(1988), describing the impulsive, less-disciplined, less mature, minds of adolescents, requiring less legal responsibility be placed on them.

See also, *State v. Warren*, 118 Ohio St. 3d 200, 206-207 (2008), *supra.*

> As a general rule, an individual may be charged as an adult for conduct that *spans* juvenile and adult status, such as a conspiracy. *Id.* See also *United States v. McClaren,* 13 F.4th 386, 408 (5th Cir. 2021) (for prosecution as an adult, a defendant who commits certain acts as part of conspiracy as a juvenile, must ratify involvement in the conspiracy after becoming and adult).

United States v. Echols, 2024 U.S. Dist. LEXIS 172814, *3-4 (Dist. S.D. September 19, 2024) (emphasis added).

While Gordon has been prejudiced, unconstitutionality of a statutory provision does not depend solely upon what has been done with the provision, but what may be done. *Barker v. City of Cincinnati,* 1933 Ohio Misc. LEXIS 1760 ¶ 11 (Ohio C.P. April 20, 1933). *Fisher Co. v. Woods*, 187 N.Y. 90, 95; *Dexter v. Boston*, 176 Massachusetts, 247, 251; *Railroad Com. Cases*, 116 U.S. 307, 331; *Cotting v. Kansas City Stockyards Co.*, 183 U.S. 79, 86; *Van Zandt v. Waddell*, 2 Yerger (Tenn.) 260, 270; *Livestock Assn. v. Crescent City Co.*, 1 Abbott, C.C. 388, 398; *Powell v. Pennsylvania*, 127 U.S. 678, 692; *Lawton v. Steele*, 152 U.S. 133, 137; *Wright v. Hart*, 182 N.Y. 330; *Collins v. New Hampshire*, 171 U.S. 30; *Matter of Jacobs*, 98 N.Y. 98; *Wynehamer v. People*, 13 N.Y. 378, 398; *St. Louis v. Dorr*, 41 S.W. Rep. 1094.

R.C. 2151.23(I) and 2152.12(J) allow the State to wait until an alleged juvenile is an adult the charge him in adult court for activities that the person would not have committed as an adult, bypassing Due Process protections afforded persons who commit offenses as juveniles in order to impose adult penalties, including the mandatory provisions requiring "bind-over" procedures in order to charge a juvenile as an adult; and would even allow States to wait to charge misdemeanors in order to give juvenile offenders adult records for acts committed as juveniles.

Because Gordon was not charged with having caused serious physical harm to

any of the alleged victims, he could not have been bound over to be tried as an adult, but, more importantly, he was not charged as a juvenile then bound over to adult court; and thus, if tried as a juvenile, could not have been imprisoned past his twenty-first birthday, whereas charging him many years later in an adult court as allowed by R.C. 2151.23(I), and R.C. 2152.12(J) permitted the trial court to impose an aggregate term of fifty-five years to life, which was not available under the law for Gordon when the offenses were alleged to have been committed.

Academically, this allows acts that are not considered offenses since they are committed by juveniles, that would be offenses if committed by adults, to be transformed into offenses by the mere passage of time and either lack of diligence or timelier discovery by the State.

Understandably, there are and will be cases where acts committed by juveniles that would be offenses if committed by adults are not discovered until after the juvenile becomes an adult. However, if prosecutors are permitted to seek much greater adult sentences by waiting until juveniles become adults for acts they know about, or to seek much greater adult sentences for acts discovered after the juvenile has become an adult, there could cease to be juvenile charges in most cases since the State could wait until a twelve-year-old turns eighteen for acts whose offenses have a six-year statute of limitations, or until a juvenile of any age becomes an adult for sex offenses whose statute of limitations is twenty-five years; thus bypassing or even ending the usefulness and need for juvenile law and procedures; which demonstrates the need for United States Supreme Court intervention on this issue as "unconstitutionality of a statutory provision does not depend solely upon what has been done (to Gordon and other former juvenile accused) with the provision, but what may be done".

Questions Three & Four (Relevant to Ohio Supreme Court Proposition of Law Six):

Judicial fact-finding required to impose consecutive sentences *still* violates the *Apprendi* Rule in Ohio, notwithstanding *Oregon v. Ice,* 555 U.S. 160 (2009), as shown by recent United States Supreme Court decisions, because Ohio's consecutive sentencing statute requires more than just "the fact of prior conviction"; and, in fact, does not even require "the fact of prior conviction" as the statute requires the finding of three facts that have nothing to do with "the fact of prior conviction".

Apprendi v. New Jersey, 530 U.S. 466 (2000), and its progeny, have made very clear that any fact that the law makes essential to a courts' authority to increase a sentence past the maximum the court may impose based solely on the facts charged in the indictment, and either found by a jury in its verdicts or admitted by a defendant as part of a guilty plea, must first be charged in an indictment, then either found by a jury in its verdicts or admitted by a defendant as part of a guilty plea. *Apprendi's* concurring opinion, as well as the Dissent in *Oregon v. Ice*, 555 U.S. 160 (2009), make it perfectly clear that this rule applies with equal force to consecutive sentences; while other cases, discussed below make it perfectly clear that this rule also applies to the "fact of prior conviction" at least when the law of a particular jurisdiction makes a finding of the "fact of prior conviction" statutorily essential to the Court's authority to impose an increased sentence.

In *Apprendi's* Concurring Opinion, as well as the Dissenting Opinion of *Oregon v. Ice*, 555 U.S. 160 (U.S. January 14, 2009), the United States Supreme Court has stated that the *Apprendi* Rule applies to consecutive sentencing, at least when the State statute(s) make factors essential to the imposition of such.

Since at least 2005, the United States Supreme Court has consistently rejected the "other than the fact of prior conviction" exception to the *Apprendi* Rule. See, e.g., *Shepard v. United States*, 544 U.S. 13, 27-28 (2005), Justice Thomas, concurring in part and concurring in the judgment. In addition to many other decisions touting the need to revisit *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and overrule

the "other than the fact of prior conviction" exception, Justice Thomas repeated this urging in *Erlinger v. United States*, 602 U.S. 821, 850-851, Justice Thomas, concurring (2024).

While *Apprendi*, and these other cases, show that the *Apprendi Rule* applies with equal force to consecutive sentencing statutes *if* the statute makes the additional fact a requirement to an increase of sentencing authority, it is unnecessary to revisit *Almendarez-Torres* or the "other than the fact of prior conviction" exception in this case because the Petitioner has no prior conviction, and the sentencing court imposed the consecutive terms on the other facts set out and required by R.C. 2929.14(C)(4) that are required by the provisions in order to increase sentencing authority which have nothing to do with prior conviction.

Based upon a State law that restricted New Jersey courts from exceeding a certain range of sentences unless the court found certain statutorily enumerated factors that the law required to be found by the court in order to increase its sentencing authority, *Apprendi v. New Jersey*, 530 U.S. 466 (June 26, 2000), determined that regardless of what label a State choses to apply to a factor, if a greater sentence is not statutorily authorized without a finding of that factor, that factor is, in effect, an element of a greater offense. See *Apprendi*, at 461-462 (citing *Jones v. United States*, 526 U.S. 227 (1999)), 476, 490.

In *Blakely v. Washington*, 542 U.S. 296 (June 24, 2004), the United States Supreme Court held that the relevant statutory maximum for *Apprendi* purposes is the maximum a judge may impose based solely on the facts reflected in the jury verdict or admitted by the defendant as part of his guilty plea. In *Blakely*, the judge could not have imposed the 90-month sentence based solely on the facts admitted in the guilty plea, because Washington law requires an exceptional sentence to be based on factors other than those used in computing the standard-range sentence. The Supreme Court determined Blakely's sentence was not analogous to those upheld in

McMillan v. Pennsylvania, 477 U.S. 79, and *Williams v. New York*, 337 U.S. 241, which were not greater than what state law authorized based on the verdict alone. The *Blakely* Court also clarified that regardless of whether the judge's authority to impose the enhanced sentence depends on a judge's finding a specified fact, one of several specified facts, or any aggravating fact, it remains the case that the jury's verdict alone does not authorize the sentence.

Starting eight and a half years before *Oregon v. Ice*, 555 U.S. 160 (2009), was decided, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny precluded the decision in *Oregon* that excepted consecutive sentence from the *Apprendi* Rule. In fact, *Oregon* was the *Apprendi* minority who asserted their position, contrary to *Apprendi*, after a shift in political power occurred in the United States Supreme Court. See *Oregon v. Ice*, 555 U.S. 160, Dissent, at 173-178.

New Jersey's statutory scheme that *Apprendi* invalidated, inter alia, allowed a jury to convict a defendant of a second-degree offense based on its finding beyond a reasonable doubt, then, after a subsequent and separate proceeding, it allowed a judge to impose punishment identical to that which New Jersey provided for crimes of the first degree based upon findings, by the court, of additional facts that were neither charged in the indictment, found by a jury in its verdicts, or admitted by the defendant as part of a guilty plea. Ohio's current scheme allows courts to convict of lesser offenses then impose sentences akin to those of greater offenses, whose aggregates amount to life sentences, and even life without parole, based only upon uncharged facts found by the judge (or court) with little or no additional evidence.

After *Apprendi*, many United States Supreme Court decisions reaffirmed *Apprendi's* holding. *Oregon* is in opposition to all *Apprendi* progeny that specifically hold that every fact that must be found to authorize an increase in sentence beyond the maximum sentence authorized by law based solely upon the facts found by a jury or admitted by the defendant as part of a guilty plea "must be charged in an

indictment, submitted to a jury, and proven beyond a reasonable doubt".

See also, *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 569 (2010):

> Notice, plus an opportunity to challenge the validity of the prior conviction used to enhance the current conviction, §§ 851(b)-(c), are mandatory prerequisites to obtaining a punishment based on the fact of a prior conviction. (Footnote 6) And they are also necessary prerequisites under federal law to "authorize" a felony punishment, 18 U.S.C. § 3559(a), for the type of simple possession offense at issue in this case.
>
> *Carachuri-Rosendo's* Footnote 6: We have previously recognized the mandatory nature of these requirements, as have the Courts of Appeals. See *United States v. LaBonte*, 520 U.S. 751, 754, n. 1, 117 S. Ct. 1673, 137 L. Ed. 2d 1001 (1997) ("We note that imposition of an enhanced penalty [for recidivism] is not automatic. . . . If the Government does not file such notice [under 21 U.S.C. § 851(a)(1)] . . . the lower sentencing range will be applied even though the defendant may otherwise be eligible for the increased penalty"); see also, e.g., *United States v. Beasley*, 495 F.3d 142, 148 (CA4 2007); *United States v. Ceballos*, 302 F.3d 679, 690-692 (CA7 2002); *United States v. Dodson*, 288 F.3d 153, 159 (CA5 2002); *United States v. Mooring*, 287 F.3d 725, 727-728 (CA8 2002). Although § 851's procedural safeguards are not constitutionally compelled, see *Almendarez-Torres*, 523 U.S., at 247, 118 S. Ct. 1219, 140 L. Ed. 2d 350, they are nevertheless a mandatory feature of the Controlled Substances Act and a prerequisite to securing a felony conviction under § 844(a) for a successive simple possession offense.

However, even if *Oregon* is ignored or could be reconciled with the *Apprendi* Rule, the fact remains that the judge, not the jury, made findings essential to the imposition of consecutive sentences per the specific mandates of R.C. 2929.14(C)(4), without those facts having first been charged in the indictment, then found by a jury or admitted by Gordon, which is a direct violation of *Apprendi* and its progeny.

Questions Five (Relevant to Ohio Supreme Court Proposition of Law Six):

Jackson v. Virginia, 443 U.S. 307 (1979), citing *In re Winship*, 397 U.S. 358 (1970) states "[t]he Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt".

> Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312 (1881); *Davis v. United States*, 160 U.S. 469, 488 (1895); *Holt v.*

> *United States*, 218 U.S. 245, 253 (1910); Wilson v. United States, 232 U.S. 563, 569-570 (1914); *Brinegar v. United States*, 338 U.S. 160, 174 (1949); Leland v. Oregon, 343 U.S. 790, 795 (1952); *Holland v. United States*, 348 U.S. 121, 138 (1954); *Speiser v. Randall*, 357 U.S. 513, 525-526 (1958). *Cf. Coffin v. United States*, 156 U.S. 432 (1895). Mr. Justice Frankfurter stated that "it is the duty of the Government to establish . . . guilt beyond a reasonable doubt".

Id, In re Winship, 397 U.S. 358, 362 (1970).

Beginning with *Jones v. United States*, 526 U.S. 227 (1999), and then the more famous *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the United States Supreme Court held that

> under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." 526 U.S. at 243, n. 6. The Fourteenth Amendment commands the same answer in this case involving a state statute.

R.C. 2929.14(C)(4) makes the finding of at least three sets of "fact" in order to increase the sentencing court's authority and allow the court to impose consecutive sentences; only one of which is prior conviction, which is an alternate fact that is not required, relates to "the fact of prior conviction" and is not a fact at issue in this case.

> (4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the

offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

Assuming, arguendo, that Gordon was guilty, which he is not, even if the sentencing court could have assumed the findings that "consecutive service (are) necessary to protect the public from future crime or to punish (Gordon) and that consecutive sentences are not disproportionate to the seriousness of (Gordon's alleged) conduct and to the danger (Gordon) poses to the public", which are "proven" upon a guilty verdict in all cases, the State failed to submit any evidence whatsoever to so much as suggest Gordon either caused "great or unusual" harm; that Gordon had a qualifying criminal history; or that Gordon "committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense".

Nor did the State submit evidence to suggest Gordon had committed any new offenses after he moved away the day he turned eighteen years old, i.e., that the alleged conduct had continued into adulthood so as to demand protection of the public from future crimes. *Apprendi* expressly declares that these sentencing-authority-expanding facts are elements of an enhanced offense. Thus, contemporary notions of Due Process preclude courts from simply making up unsupported findings. Otherwise, there would be no reason to make findings as they could always be made, or even assumed, and it would be absurd to reverse for lack of findings, as Ohio Courts frequently do (see *State v. Bonnell*, 140 Ohio St. 3d 209 (2014) since they could be made or assumed in every case by fact or whim, without any supporting evidence as is done in a lot of cases. In fact, R.C. 2929.14(C)(4) provides little or no guidance as to the meaning or import, or evidentiary requirements, for making the findings, or even

what "great *or* unusual harm" might mean (conceivably, a rape victim getting a paper cut during an offense would qualify as "or unusual"); nor does Ohio law instruct courts of what appellate review of consecutive sentences should entail.

While this leaves R.C. 2929.14(C)(4) unconstitutionally vague *and* unconstitutional under the *Apprendi Rule* for requiring findings other than the fact of prior conviction that are statutorily required and necessary to increase the sentence well beyond the statutory maximum allowed by law without the findings, and for allowing findings without first being charged in the indictment, the fact remains that the trial court made these critical finding that resulted in a significant increase in the sentence without any evidence within the record to support the court's finding of the facts.

Question Six (Relevant to Ohio Supreme Court Proposition of Law Six):

Although it is a daunting task to have a statutory provision declared unconstitutional, especially give Ohio Supreme Court's jurisprudence on the Apprendi Rule, an argument based upon unconstitutionality of R.C. 2929.14(C)(4) based upon the *Apprendi* Rule, Because the *Apprendi* Rule is a well-established law of the land as announced by the United States Supreme Court, *Oregon, supra*, notwithstanding, had appellate counsel raised and argued the *Apprendi* Rule prohibits the trial court's R.C. 2929.14(C)(4) findings not related to the "fact of prior conviction", there is a reasonable likelihood the outcome of the appeal might have been different insofar as deletion of the consecutive order.

However, at the very least, had appellate counsel raised and argued the lack of evidentiary support for the trial court's R.C. 2929.14(C)(4) findings, there is a reasonable likelihood the outcome of the appeal might have been different insofar as deletion of the consecutive order, whether based upon *Apprendi*, or even Ohio law.

In this case, appellate counsel could have saved Gordon many years of unnecessary and illegal incarceration by raising and arguing the issues set out in

Questions three, four and five. At the very least, there is a reasonable likelihood that the Court of Appeals would have avoided the constitutional question and reversed the consecutive sentence for want of evidentiary support, whether under State or Federal law.

Trial Counsel's failure to raise and argue these critical issues resulted in ineffective assistance of appellate counsel that prejudiced Gordon by allowing his grossly inflated aggregate prison term of fifty-five-years-to-life, for act alleged to have been committed by a mentally deficient adolescent juvenile.

Question Seven (Relevant to State Proposition of Law One & Assignment of Error One:

Where trial counsel insists on presenting his own defense, in this case being a false confession of some guilt to avoid conviction of all charges, over the accused's defense of complete innocence, trial counsel's actions violates the accused's right to present his own defense. See, e.g., *Faretta v. California*, 422 U.S. 806, 820-821 (1975).

Although the trial and appellate courts focused on the timing of the trial court's dismissive hearing Gordon's complaint against Attorney drake as being the first day of trial, Gordon wrote the letter and delivered it to the court at least a week prior to that, and it was the trial court who caused the matter to be "heard" on the first day of trial. But even Gordon had waited for the first day of trial to raise his concerns, Gordon, who has the mind of a child, and who was cooped up in jail for about two years by time, wanted to get it over with, lacks mental capacity, and motivation, to perform strategic maneuvers to delay the trial, and, regardless of the timing, it was still unreasonable, arbitrary, and unconscionable, for the trial court to allow Drake to continue.

Appellate counsel accurately argued, as the record reflects, the trial court failed to conduct an adequate inquiry into whether the relationship between Gordon and his counsel had deteriorated to the point that warranted a substitution of

counsel. Despite Gordon having proven his allegations, the Court of Appeals determined that Gordon failed to demonstrate that substitute counsel was warranted. However, the record sufficiently demonstrates such, where Gordon was a juvenile at the time of the alleged offenses, obviously mentally deficient and has the mind of a child, stated his confusion on the record; where Drake admitted some of the allegations; especially after-the-fact, where the non-specific "admissions" offered by counsel during closing arguments seemed to be admissions of all or most of the charges offered as a retaliation for complaining to the court.

However, even if the Court of Appeals determination that Drake presented the damning argument believing it to be in Gordon's best interest was reasonable, it is not Drake's chosen defense that is guaranteed by the Sixth Amendment; it is Gordon's, of which he was fully and completely deprived by Drake:

> The counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant -- not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists. It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas. *Cf. Henry v. Mississippi*, 379 U.S. 443, 451; *Brookhart v. Janis*, 384 U.S. 1, 7-8; *Fay v. Noia*, 372 U.S. 391, 439. This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative. An unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense.

Faretta v. California, 422 U.S. 806, 820-821 (1975).

Citing *Faretta, Osborn v. Shillinger*, 861 F.2d 612 (10th Cir., 1988), stated:

> A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction or death sentence

> suffers from an obvious conflict of interest. Such an attorney, like unwanted counsel, "represents' the defendant only through a tenuous and unacceptable legal fiction."

While *Faretta* more specifically relates to a defendant denied the right of self-representation, it shows the defense guaranteed by the 6th Amendment belongs to the defendant, not to counsel, and thus, where counsel, the assistant, ignores the defendant's defense and asserts his own, he (with the aid of the trial and appellate courts in this case) has violated the Defendant's 6th and 14th Amendment rights and raises substantial constitutional question.

Question Eight (Relevant to State Proposition of Law Two & Assignment of Error Two:

Not only does *Strickland* require consideration of the totality of counsel's performance, but "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington,* 466 U.S. 668 (1984).

I. Trial counsel provided ineffective assistance by failing to properly challenge the alleged "victims" testimony and "knowledge" of criminal case law and statutory elements; and by instructing Gordon to "admit something because nobody will believe you if you say you didn't do anything":

Trial counsel failed to challenge the alleged "victims'" knowledge of criminal law and statutory elements. Having been an Assistant Attorney General, Drake would have been well aware of the terminology ordinary lay-people use to describe sexual acts. For one of several possible examples, when asked "What did his fingers do?", one alleged victim answered "They penetrated" (Tp., Vol. III, at 83), in perfect sync with case law regarding rape elements rather than ordinary language such as "he put them inside me", or the like, demonstrating the alleged "victims" were coached on the elements they needed to establish to convict.

But what also perfectly coincides are Drake's many failures as trial counsel with what can only be described as a purposeful ambush and assassination of his client as demonstrated by his "admit something defense" when looked at in the light of his closing arguments where he stated "but let's face it, he's a pervert"; "He's a sex offender": calling Gordon a "dangerous", "malignant", "bad", "sick" "pervert" who "did it" and "would be all of those things put in one..." These repeated expressions of extreme contempt for Gordon, especially with what could only have been taken as an admission of guilt from counsel, resulted in more than simple ineffective assistance of counsel, but a second prosecutor sitting in the defense chair, as in, for one example, *Rickman v. Bell*, 131 F.3d 1150, 1157 (6th Cir., 1997), which supplemented and stood in place of the want of actual evidence.

Given the jury's propensity for believing women claiming to be child victims, especially without any contradiction except the accused's denials, and especially in today's political environment where it is political suicide to disbelieve a claimed "victim", it is *absurd* to conclude Drake's substitution of his own "admit something" and "say 'I did it'" "defense", in place of Gordon's (as set out in Ohio Supreme Court Proposition of Law 1), especially when Drake, a former Ohio Assistant Attorney General, would have known "admitting" anything could only work to bolster the alleged "victims' testimony; and saying "he did it" would "prove" the State's case.

The State Court of Appeals' declaration that Drakes comments were "sound trial strategy" (*State v. Gordon*, 2025-Ohio-1229, ¶ 33) not only would be an *unreasonable* application of Federal law, had the court analyzed it under Federal law, but it is patently and unambiguously absurd, a proposition which no reasonable jurist could justifiably agree.

The record establishes, especially given Drake's closing argument, that Drake's "admit something" "Defense" was a planned sellout: First, after taking two years (stuck in jail) to convince Gordon to "admit" the lesser offenses", then finish

with prejudicial labeling and a "counsel confession" of all the offenses: "[T]his is sick"; and "[R]ather that doing what he should have done () and saying yeah I did it, he decided () the kids helped him do it, or wanted him to do it or something. Inane, totally stupid, and repulsive" (T. Tp. Vol. III, ppg. 331-332); "Soon after today he won't be in our jail anymore, he'll be someplace else." (T. Tp. Vol. III ppg. 331); "Bad people, malignant people, sick people, people who are dangerous to solicit, sex offenders would be all of those things put in one... [B]ut let's face it, he's a pervert. He's a sex offender", and "When this thing is over, I'm not going to see (Gordon) in prison." (T. Tp. Vol. III ppg. 334.) (See § III, *infra*.)

What was "Inane, totally stupid, and repulsive" was Drake's actions. Even without the name calling directed at his own client, Drake's singular comment - "[R]ather that doing what he should have done () and saying yeah I did it..." - was enough to guarantee conviction as a "confession" by counsel, the one person other than Gordon the Jury would assume knew enough "facts" to "confess". This easily establishes the "benchmark" for ineffective assistance of counsel, as well as prejudice; especially where the alleged "victims'" "memories were more than a decade old, and changed during the course of the trial" as shown in Ohio Supreme Court Proposition of Law 3. See *Faretta v. California*, 422 U.S. 806, (1975), at 820-821, showing the defense guaranteed by the Constitution belongs to the defendant, not his counsel.

II. Trial counsel provided ineffective assistance by failing to investigate potentially exculpatory evidence: See *State v. Johnson,* 24 Ohio St. 3d 87, 89 (1986), holding the failure to investigate evidence and interview witnesses is not a trial strategy; and *State v. Gondor*, 112 Ohio St. 3d 377 (2006), holding trial counsel ineffective for failing to use evidence of an interview that was helpful to the defendant. Drake admitted he incorrectly did not believe Gordon's claim that a third video existed. However, competent counsel would have investigated the evidence to first determine whether it did exist, and, second, to determine whether it contained

exculpatory evidence, which it did, otherwise, the police would not have intentionally destroyed it while proceedings were still pending, as admitted by offices (T. Tp., Vol I, ppg. 11-13), and in violation of Ohio's Public Records Act. That recording contained Gordon's recantation of previous "admissions", wherein Gordon's plainly stated the previous "admissions" were coerced (T. Tp., Vol I, ppg. 13). Had Drake promptly asked police for the video, it is likely his request would have prevented the destruction thereof. Gordon was prejudiced as this prevented the jury from seeing that he had denied guilt from the beginning, and only "conceded" some guilt on the advice of counsel; but, on the other hand, Drake would not have investigated this exculpatory evidence as (1) it would have exposed Drake as having compelled Gordon to falsely "confess"; and (2) it would have been in opposition to and prevented Drake's sabotage of Gordon's actual innocence defense.

III. Trial counsel provided ineffective assistance by making improper, prejudicial, and inflammatory remarks the even the State is prohibited from making: "[T]his is sick"; and "[R]ather that doing what he should have done () and saying yeah I did it, he decided () the kids helped him do it, or wanted him to do it or something. Inane, totally stupid, and repulsive" (T. Tp. Vol. III, ppg. 331-332); "Soon after today he won't be in our jail anymore, he'll be someplace else." (T. Tp. Vol. III ppg. 331); "Bad people, malignant people, sick people, people who are dangerous to solicit, sex offenders would be all of those things put in one... [B]ut let's face it, he's a pervert. He's a sex offender", and "When this thing is over, I'm not going to see (Gordon) in prison." (T. Tp. Vol. III ppg. 334.)

It is rare even for prosecutors to go that far in disparaging defendants. Had trial counsel's actions been a "strategy" to avoid conviction for the greater offenses, he would have avoided inflammatory and prejudicial remarks and labeling as quoted above, in favor of statements designed to make Gordon appear as a confused child who made mistakes that had not been repeated after he became an adult; whereas

counsel's use of the terms and phrases "[T]his is sick"; "... he decided () the kids helped him do it, or wanted him to do it or something. Inane, totally stupid, and repulsive" "Bad", "malignant", "sick", "dangerous", "sex offenders would be all of those things put in one", "...let's face it, he's a pervert", could only be taken as an attempt to make Gordon look like a monster and paint him as someone from whom the jury needed to protect society, and someone who needed to go to prison for a very long time. By doing this, trial counsel – former assistant Ohio Attorney General – Richard Drake acted as an unsworn State's witness who was able to introduce such inflammatory and prejudicial matters as a "character witness" that the State could not have introduced.

Gordon cannot find a single citable instance where trial counsel assassinated his client in closing arguments. However, many cases have been overturned on much less when done by the State; and "Defense counsel's argument to the jury is hedged by the same restrictions that apply to prosecutors." See e.g., 1 CRIMINAL TRIAL ERROR AND MISCONDUCT § 3-2(D) 2025, citing 1 CRIMINAL TRIAL ERROR AND MISCONDUCT, §§ 2-4(d), 2-6(b), 2-8, § 2-4(d)(3) (2025).

These instances, as well as others too lengthy to include herein, cumulatively and severally deprived Gordon of effective assistance of counsel, requiring reversal under the principles set out in *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronic*, 466 U.S. 648 (1984).

Competent or effective counsel for the defense would not label his own client as a "malignant", "sick", "dangerous", "pervert" while "defending" him against rape charges, even under the pretense of "admitting" lesser offenses in hopes of avoiding conviction for the greater offenses. It passes the demesne of incompetence, to the realm of intent, where trial counsel convinces his client to "admit" lesser charges to avoid conviction for greater charges, only to aid in the client's conviction by labelling his own client as a "malignant", "sick", "dangerous", "pervert" to the jury.

If these prejudicial actions, per se, do not demonstrate ineffective assistance of

trial counsel, then the right to effective assistance is merely illusory.

Question Nine (Relevant to State Proposition of Law Three & Assignment of Error Three:

Convictions on testimonial evidence are troubling, especially in cases such as this without any physical evidence, because the same or amended accusations are repeated as the testimonial "evidence", and thus, the accused is, in essences, convicted on the accusation, even when false, so long as the accuser is willing and able to repeat the often false allegation in a "trial" that is essentially a formality to record a repetition of the unsupported allegation. In Gordon's case, the alleged victims lived more than twice as many years after the allegations were said to have occurred than before, giving rise to a need for a higher standard of Due Process to ensure the accuracy of the allegations, where he was provided a lowered standard, to ensure the many-years-old unsupported allegations are not the product of the well-proven phenomenon of memory loss, alteration, adaptation, or false memories implanted by alternative experiences or suggestion by therapists or police.

Although the Court of Appeals marginally addressed the merits and mentioned *Strickland v. Washington*, 466 U.S. 668 (1984), and *Jackson v. Virginia*, 443 U.S. 307 (1979), the Court of Appeals determined these Assignments of Error (1&2) on State grounds that were neither adequate nor independent of the law of the United States as set by the United States Supreme Court.

It is an established medical fact that young, prepubescent girls, cannot tell the difference between external and internal stimulation of their vaginas. It is also an established scientific fact that memories are fluid and change every time they are revisited; and the more the memory is revisited, the more the memory is corrupted. When true victims testify that they had been "penetrated" at a very young age, not being able to tell the difference between external and internal stimulation, it is usually the result of having decided it was true if it was only external, then

reinforcing that belief through the years if revisiting the ever-fluid memories, or by coaching of police or prosecutors. When the alleged "victims" testified Gordon "penetrated" their vaginas, it was the result of police and prosecutorial influence as shown by the *unnatural* answer to "What did his fingers do?": "They penetrated." (Tp., Vol. III pg. 83.) Without legal training and knowledge, people simply do not speak in technical legal terms that perfectly mimic case law regarding statutory elements.

The record shows the allegations were from memories about or so 15 years old, initially made by very young children who admit "playing doctor" (Tp. Vol. III ppg. 280, 282-283) with Gordon, who was then also a child; and the memories evolved over the years from that to rape.

Appellate counsel hit on the issue of age and fallibility of memories, as well as the fact "Grove and Snyder never made allegations until several years later, and not until they were contacted out of the blue and asked (about the allegations)" (Tp. Vol. II ppg. 232-33, 241-42, 246; Tp. Vol. III ppg. 279, 285, 288), showing the allegations were initiated by suggestion; and "Even Murphy waited a few before making allegations... (Tp. Vol. III, 260, 273) and added new allegations never before mentioned mere weeks before the trial" (Tp. Vol. III ppg. 269, 173-75). (Merit Brief at 19); the more they thought about it, the more allegations evolved and were made.

As stated by appellate counsel, the State failed to prove sexual conduct occurred, and "At best, the allegations behind the rape charges 'might have' happened, but rape was certainly not proven beyond a reasonable doubt".

In rare cases, a litigant can credibly claim that a State's erroneous interpretation of, or refusal to comply with, its own law can amount to a federal due process violation." *Johnson v. Missouri*, 143 S. Ct. 417 (2022), citing *Skinner v. Switzer*, 562 U. S. 521 (2011); and *Bouie v. City of Columbia*, 378 U. S. 347 (1964).

Question Ten (Relevant to State Proposition of Law Four & Assignment of Error Four:

> In my view, evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse. This emphasis on culpability in sentencing decisions has long been reflected in Anglo-American jurisprudence. As this Court observed in *Eddings*, the common law has struggled with the problem of developing a capital punishment system that is "sensible to the uniqueness of the individual." 455 U.S., at 110. *Lockett* and *Eddings* reflect the belief that punishment should be directly related to the personal culpability of the criminal defendant. Thus, the sentence imposed at the penalty stage should reflect a reasoned moral response to the defendant's background, character, and crime rather than mere sympathy or emotion.

California v. Brown, 479 U.S. 538, 545 (1987).

> Because Lawson was 23 years old when he committed the four aggravated murders in this case, he had at least some "time to distance himself from his childhood and allow other factors to assert themselves in his personality and his behavior," *State v. Campbell*, 95 Ohio St.3d 48, 53, 2002-Ohio-1626, 765 N.E.2d 334 (2002); compare *Johnson*, 144 Ohio St.3d 518, 2015-Ohio-4903, 45 N.E.3d 208, at ¶ 138 (19-year-old offender was "not far removed" from his upbringing).

State v. Lawson, 165 Ohio St. 3d 445 (2021).

> [H]istory and background are entitled to some weight, "but only to the extent his 'criminal * * * acts are attributable to' it," Campbell at 53, quoting California v. Brown, 479 U.S. 538, 545, 107 S. Ct. 837, 93 L. Ed. 2d 934 (1987) (O'Connor, J., concurring).

Id., Lawson, at 481.

Gordon, if guilty, would have committed the acts as a juvenile, which, without more, as pointed out by appellate counsel, would be more like children "playing doctor" rather than an adult criminal committing acts against a victim; but there is more to this case than mere juvenile immaturity: trial counsel repeatedly asked the Detective if he noticed Gordon was "slow". In fact, as mentioned above, Gordon has substantial learning disabilities which caused him to be placed into special classes in school; and anyone of ordinary intelligence attempting to engage in a conversation with Gordon would recognize that they are speaking with someone who is mentally still a child. If the acts had actually occurred, they would have been committed by a

physical teenager who was mentally much younger, even then, than his birth certificate would suggest. He would have been mentally a much younger child going through puberty that he would have been way too young, mentally, to understand; especially without proper supervision and treatment for his mental issues while living with relative (not his parents) and in foster care.

"[H]istory and background are entitles to some weight". *Id.*, *Lawson*, Citing *California v. Brown*. Thus, had the acts actually occurred, not only would Gordon have been an *actual* child when the acts were alleged to have occurred, giving Gordon no "time to distance himself from his childhood", but this would also relate to "other factors () assert(ing) themselves in his personality and his behavior" (prior to having become, physically at least, an adult) that would mitigate his criminal liability in such acts.

See also, *Thompson v. Oklahoma*, 487 U.S. 815, 834-835 and fnt 41 (1988), citing *Eddings v. Oklahoma*, 455 U.S. 104 (1982), stating "Justice Powell quoted (a) passage from the 1978 Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders", showing "the (United States Supreme) Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult"

> "[T]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." The *Roper* court also remarked: "Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Id.* (Roper v. Simmons, 543 U.S.,) at 571, 125 S.Ct. 1183, 161 L.Ed.2d 1.

State v. Warren, 118 Ohio St. 3d 200 (2008).

See also, *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551, 569-575, at 570 (2005), United States Supreme Court cases cited; *Johnson v.*

Texas, 509 U.S. 350, 368 (1993), *Thompson v. Oklahoma*, 487 U.S. 815 (1988), which, although relating to the death penalty, show the diminished capacity of juveniles of ordinary intelligence (even without regard to additional mental deficiency).

Had counsel properly raised and argued these important issues, there is a reasonable likelihood that the outcome of trial, and the appeal (if necessary), would have been different, and would have resulted in a lesser sentence (if the Petitioner had been convicted at all).

CONCLUSION

Wherefore, the Supreme Court of the United States should GRANT Certiorari and accept jurisdiction over this case, and issue an Opinion that declares the law of the land as it relates to the very important Questions and Issues presented herein.

Respectfully submitted,

Jason Gordon
Petitioner