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LINDA H. FRARY  
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**IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO**

RICHLAND COUNTY PROSECUTOR

Case No. 22-CV-452

Plaintiff,

v.

**ORDER RESOLVING  
ALL PENDING MOTIONS**

WENDELL R. LINDSAY, II,

Defendant.

This complaint to have the Defendant found to be a vexatious litigator is before the Court on several motions. On September 28, 2022 and again on October 24, 2022, the Defendant filed a document entitled "Defendant's response to the Plaintiff's Complaint Designating Defendant a 'vexations litigator pursuant to R.C. § 2323.52(A)(3). These motions are not proper answers but instead appear to be requests that the complaint be dismissed for failure to state a claim. On November 3, 2022, the Defendant filed a document entitled "settlement proposal to the Court." On December 6, 2022, the Plaintiff filed a motion for summary judgment. The Defendant filed a response to the motion for summary judgment on December 22, 2022. In evaluating these motions, the Court has considered the all of the motions filed and the file as a whole. The court has also considered the relevant Ohio statutory and case law.

The Defendant does not deny the facts as laid out by the Plaintiff. In his response to the complaint, he admits that reasonable grounds exist to be classified as a vexatious litigator. He does not deny filing the motions and

appeals at issue in this case. The Defendant merely argues that he did not have vexatious intent. He claims his intent has been to merely bring to the Court's attention the "manifest miscarriage of justice" that has occurred in his case. Therefore, the facts presented by the Plaintiff in support of Summary Judgment have not been contested.

#### Factual Discussion:

Based upon the record in this matter, the following facts are not in dispute:<sup>1</sup>

1. On July 9, 2010, the Defendant was indicted in case number 2010-CR-419 with five counts of Rape in violation of R.C. § 2907.02(A)(1)(b), five counts of Sexual Battery in violation of R.C. § 2907.03(A)(5), and five counts of Gross Sexual Imposition in violation of R.C. § 2907.05(A)(4). Each count in the indictment specified that the victim of these offenses was under the age of thirteen (13). The fact that the victim was under the age of thirteen raised the Gross Sexual Imposition from a felony of the fourth degree to a felony of the third degree and the Unlawful Sexual Conduct from a felony of the third degree to a felony of the second degree. The fact that the victim was under the age of thirteen (13) also meant that the Rape charges required a mandatory sentence of ten year up to life in prison.<sup>2</sup> The age of the victim was an element of the offense

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<sup>1</sup> The State failed to include two civil cases that were filed in Franklin County. As the Court was a party to those cases, the Court includes them and takes judicial notice of their existence.

<sup>2</sup> "An offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code." R.C. § 2907.02(B). "[I]f a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, if division (A) of this section does not apply regarding the person, and if the court does not impose a sentence of life without parole when authorized pursuant to division (B)

and not an additional aggravating factor. The Defendant was arraigned on July 27, 2010 and Attorney R. Joshua Brown was appointed to represent the Defendant.

2. On October 26, 2010, after three days of jury trial, the jury found the Defendant guilty of one count of rape of a child less than thirteen years old, one count of sexual battery of a child less than thirteen years old, and one count of gross sexual imposition of a child less than thirteen years old. The jury found the Defendant not guilty of the other counts. Each jury verdict form indicated that the victim was a child less than thirteen years old. The indictment and the bill of information both specified that three counts that the Defendant was convicted of, 5, 10, and 15, occurred on March 4, 2010. On this date, the victim reported the sexual abuse, was taken to the hospital for a sexual assault examination, and DNA collected from the panties that the victim was wearing at the time and from her vaginal area was consistent with the Defendant's DNA.

a. During the trial, while there was evidence the panties that the victim was wearing did belong to the victim's mother,<sup>3</sup> the victim's mother testified that she seldom wore panties, that the Defendant rarely

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of section 2907.02 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of one of the following: (a) Except as otherwise required in division (B)(1)(b) or (c) of this section, a minimum term of ten years and a maximum term of life imprisonment. (b) If the victim was less than ten years of age, a minimum term of fifteen years and a maximum of life imprisonment.

(c) If the offender purposely compels the victim to submit by force or threat of force, or if the offender previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of section 2907.02 of the Revised Code or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of that section, or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, a minimum term of twenty-five years and a maximum of life imprisonment.

<sup>3</sup> The Plaintiff's most recent motions to this Court and to the Ohio Supreme Court allege that the panties belonged to the victim's grandmother, which was not what was established during the trial, which he acknowledged in his earlier motions.

performed oral sex on her, and that they had not had sexual intercourse for at least two days prior to the victim coming forward. The DNA expert testified that the DNA traces of the victim's mother's DNA from the panties were faded and not fresh, a result of the panties having been laundered. The Defendant testified at trial. He claimed that he engaged in oral sex with the victim's mother on the night prior to the victim reporting. They were interrupted by the children and the victim's mother put the panties on. She later discarded them when she went to bed. The Defendant testified that he was the one who gathered the clothes that the victim was wearing that day and he just happened to give the victim dirty panties with his DNA on them on the day that she reported that he was sexually abusing her.

- b. During the Jury Trial, the Defendant objected to Judge DeWeese presiding over the trial and requested that the judge recuse himself. His first request arose in the form of a change of venue. He alleged that the judge treated him unfairly because the Defendant was sentenced to prison rather than community control in case 09-CR-727. He further argued that the Judge should recuse himself from the trial due to a relationship with the victim's grandmother, Charlene Thomas, who had been a bailiff for the court but not for at least three years prior to the Defendant's trial.

3. A separate sentencing hearing was held on October 27, 2010. The Defendant was present in court with his attorney. The Defendant was sentenced to ten (10) years to life in prison on the rape charge. The sexual battery and gross sexual imposition charges were deemed to be allied offenses and merged into the rape conviction. At that time, the Defendant was sentenced to five years of mandatory post release control. He was informed that a violation of post-release control could result in additional prison time up to 50% of his sentence and if the violation was a new felony, he could receive a new prison term in this case of the greater of one year or the time remaining on post-release control. This sentence was ordered to run consecutively to case number 2009-CR-727.<sup>4</sup>
4. On November 1, 2010, the Defendant, pro se, filed a document entitled "Sentencing objection to ten years to life without proper cause or provisions." In this motion, he argues that he could not be sentenced to ten year to life without being indicted and convicted for a specification that the Defendant was either a repeat violent offender, a sexually violent predator, or that the offense was sexually motivated. The motion also objects to "not having a sentencing hearing." In the motion, he claimed that the court violated every pretrial and trial right of the Defendant. This motion was not ruled upon because a notice of appeal was filed in the Fifth District Court of Appeals on November 18, 2010, removing

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<sup>4</sup> The Defendant was sentenced to a 1.25 year prison sentence after pleading guilty to trademark counterfeiting, a felony of the third degree, trademark counterfeiting, a felony of the fifth degree, criminal simulation, a felony of the fourth degree, trademark counterfeiting, a felony of the fourth degree, and two counts of receiving stolen property, fourth and fifth degree felonies.

jurisdiction from this Court. The Fifth District's later decision affirming the Defendant's conviction and sentence made this motion moot. However, the Defendant was present at the sentencing hearing and he was properly sentenced to a term of 10 years to life in prison due solely to the fact that the victim was under the age of thirteen and he was convicted of a violation of R.C. § 2907.02(A)(1)(b). No other specification or finding was required.

5. A timely notice of appeal was filed on November 18, 2010 in case number 10-CA-134. Attorney Charles Brown was appointed to represent the Defendant on appeal. The transcript was filed on March 7, 2011. Counsel for the Defendant filed the brief on behalf of the Defendant on April 15, 2011, raising six assignments of error. The State filed a response on June 1, 2011 and the matter was set for an oral hearing on July 28, 2011.

- a. The following assignments of error were raised by counsel:

- i. The Trial Court Committed Prejudicial Error and Deprived the Appellant his Equal Protection Rights by Rejecting Appellant's Batson Challenges.
- ii. The Trial Court Committed Prejudicial Error Depriving the Appellant of his Due Process Rights by Denying the Appellant a Change of Counsel During the Trial and the Judge Erred in Failing to Recuse Himself.

- iii. The Trial Court Erred and Violated the Appellant's Due Process Rights in Failing to Continue the Trial Based Upon the Request of the Appellant's Attorney.
  - iv. The Appellant was Denied Due Process by the Admission of Evidence Regarding Domestic Violence and Adultery Committed by Appellant.
  - v. The Trial Court Erred in Allowing Out-of-Court Statements Made by the Victim and Introduced Through the Testimony of Other Witnesses.
  - vi. Appellant was Denied the Effective Assistance of Counsel
- b. On June 13, 2011, the Defendant, pro se, filed an "Amendment to Court of Appeals Appellant Brief." In this document, the Defendant raised six assignments of error: (1) The Conviction is Against the Propound (Sic) Preponderance of the Evidence and is Against the Manifest Weight of the Evidence Presented Against the Defendant in this Case; (2) The Trial Court Committed (Sic) Prejudicial Error by Failing to Exclude Hearsay Testimony of the States witnesses Regarding the Defendant's Past Sexual Conduct, by the Defendant in Unrelated Matters; Evid. R. 403(A)(B) Violation. Counsel was Ineffective for Not Objecting; (3) Ineffective Assistance of Trial Counsel for Not Bringing Forth Witnesses for the Appellant-Defendant at Trial in his Defense, and not Presenting an Affirmative Defense, his Absence of a Defense was Below the Standard of

Effesiance (sic) the Attorneys Must Provide for Their Clients Violating the Defendant's Sixth Amendment Rights of the United States Constitution, Article I, Section 10 of the Ohio Constitution and in Violation of the Due Process Clause Under the Fourteenth Amendment, Article I, Section 16 of the Ohio Constitution; (4) The Sentence is Contrary to Law and Violates the Defendant's Due Process Rights Under the 14th and 5th Amendment to the Constitution of the United States and Ohio Constitution Article 1, Section 10 and Article I, section 16 of the U.S. Constitution; (5) The Trial Court Errored (Sic) in Not Challenging Juror During the Voir Dire And Allowing A Colleag (Sic) of the Court to Serve Persuading or Contaminating this Case with Accordance to 2313.42(B)(C)(E)(H)(J) and 2313.43. Counsel Neglect in this Matter Arrirms (Sic) his Ineffective Performance; (6) Prosecutor Misconduct: Court Erred on Allowing the Indictment to be Amended Making Count V, X, and XV one in the same, a Violation of Equal Protection, Evid.R. 404. Several of his arguments were addressed in the brief filed by his attorney.

- c. On September 19, 2011, the Fifth District Court of Appeals affirmed the Defendant's Conviction and Sentence. With regards to the Defendant's argument that Judge DeWeese was bias as a result of the fact that the victim's grandmother had once been a bailiff for the Court, the Appellate Court found that the Defendant failed to utilize



the proper procedure for disqualification of a judge that is required by R.C. § 2701.03 and, as a result, the claim was not properly before the Appellate court or supported by the record.

- d. On December 14, 2011, the Defendant, pro se, filed a motion to reopen the appeal. The Fifth District summarized the arguments raised by the Defendant in this motion as follows: the trial court erred by allowing evidence as to the credibility of the victim's allegations against the defendant; that trial counsel was ineffective for failing to object to court and prosecutorial misconduct in allowing the "true DNA facts" to be hidden from expert witnesses; that the verdict was against the manifest weight and sufficiency of the evidence; that the trial court erred by allowing improper character evidence to be admitted; that the appellant's post-Miranda and Due Process rights were violated by not filing suppression motions concerning the DNA evidence; that the trial court erred in failing to exclude prior bad acts evidence; that the trial court failed to exclude opinion evidence as to the credibility of the State's witnesses; that trial counsel was ineffective for allowing testimony from "friends of the court;" that the appellant's right of confrontation, Equal Protection and Due Process were violated; that the prosecutor committed misconduct; and that the charges should have been broken down into five trial to prevent evidence from one act from contaminating the jury regarding other acts. The Fifth District

denied the motion to reopen on January 26, 2012. As the Fifth District Court of Appeals pointed out, several of the Defendant's arguments were raised by appellate counsel and were addressed by the Fifth District in its opinion. These issues included: admission of improper character evidence and evidence of prior bad acts; issues of witness credibility and bolstering; bias by the Court based on the fact that the victim's grandmother was a past bailiff and based on the Court's prior interaction with the Defendant. Those issues were barred by res judicata. The Court overruled the motion with regard to the other issues. The Court found that the jury heard testimony from both sides about their theory as to how the Defendant's DNA ended up on the victim and, after reviewing the evidence, the jury made the decision not to believe the Defendant's theory.

- e. On February 15, 2012, the Defendant, pro se, filed a document entitled "Rit (sic) to File Reconsideration 26(A) after the Time Required for Reasons Here in this Request and for Good Cause." On March 6, 2012, the Fifth District denied the motion. "Upon a complete review of the application of the appellant's Motion, this court finds that the issues had been thoroughly considered by this court."
- f. On March 12, 2012, the Defendant, pro se, filed an appeal to the Ohio Supreme Court of the Fifth District Court of Appeal's January

26, 2012 judgment entry denying his motion to reopen, a Murnahan Appeal, in case 2012-0424. He did not file a Supreme Court appeal of his direct appeal. The Ohio Supreme Court dismissed the appeal on May 23, 2012 as not involving any substantial constitutional questions.

6. On September 26, 2012, the Defendant filed a motion in this Court entitled "Motion: Amendment to Defendant's Criminal Rule 29; Made in Open Court, and Within the Time Frame Allowing him this right, and due to said motion has not been answered as of this time; also in accordance with the rules governing the final judgment of a criminal matter."

a. An oral Rule 29 Motion was made in open court during trial and was denied on the record. Under Rule 29, a motion for acquittal may be made or renewed within fourteen days of the jury being discharged.

b. On February 4, 2013, the Defendant filed a Writ of Procedendo in the Fifth District Court of Appeals in case number 13-CA-0008. In the Writ, the Defendant alleged that the trial court had not yet answered a motion of acquittal made on October 28, 2010 "in open court two (2) days after the verdict was rendered." The Defendant was in Court on October 27, 2010 for sentencing. The trial transcripts indicate that the Defendant, through counsel, made a Rule 29 motion in open court during trial and that defendant, pro se, filed a written motion during his sentencing hearing. The Court

addressed the arguments in the Defendant's written motion on the record during the sentencing hearing. These arguments included an allied offense argument and an argument with regards to the mens rea element of the sexual battery charge. The written motion was returned to the Defendant's counsel for filing. The motion was never filed and is not on the docket. The Fifth District Dismissed the Defendant's Writ on July 9, 2013.

- c. The Court determined that the Defendant's September 26, 2012 motion was a petition for post-conviction relief. Petitions for post-conviction relief, at the time, were required to be filed within 180 days of the date which the trial transcript was filed. The Court informed the Defendant that the Court does not have the jurisdiction to consider a late or successive post-conviction relief petition unless the petitioner shows that he was unavoidably prevented from the discovery of the facts upon which he was relying on for his claim for relief or the United States Supreme Court recognized some new federal or state right that would apply retroactively to the petitioner. The Court found that the motion was untimely filed and failed to fall under either of the conditions required for the Court to accept a late petition. The Court also found the Defendant's arguments to be barred by res judicata, stating that they were available to argue on direct appeal. The arguments were the same and/or similar to the ones he had

previously raised in his application to reopen. On March 18, 2013, the Court denied the September 26, 2012 motion.

7. On March 28, 2013, the Defendant filed a notice of appeal in case number 13-CA-28 from the denial of the Defendant's Rule 29 motion removing jurisdiction from this Court to rule upon motion filed by the Defendant on February 26, 2013. The Fifth District Court of Appeals affirmed the decision of this Court on July 24, 2013. The Fifth District found that the Defendant's motion was an untimely petition for post-conviction relief, that it failed to establish the conditions set forth in the statute that would permit and untimely filing, and that the issues raised by the Defendant were barred by res judicata. The Defendant did not appeal this decision.
8. At this point in time, the Defendant's appellant rights had been exhausted. A Defendant has ONE appeal of right. From that appeal, the Defendant can file an application to reopen and a motion to reconsider. The Defendant can appeal to the Ohio Supreme Court the original appeal and a denial of a motion to reconsider. The Defendant has ONE chance to file a motion for new trial. The Defendant has ONE chance to file a motion for post-conviction relief which is based solely on what occurred outside of court and cannot be based on anything that could have and should have been raised on appeal. As the courts have constantly and consistently informed the Defendant, any issue that is based on what happened on the record in court MUST be have raised on his first direct appeal otherwise those issue become barred by res judicata. The courts have also

informed the Defendant over and over again that this Court does not have the power to vacate a judgment that has been affirmed by the appellate court, nor does this Court have the authority to reconsider its own valid judgment in criminal cases. Without NEW evidence that he can prove he was unavoidably prevented from obtaining during trial or a new claim of relief established by the United States Supreme Court that applies retroactively, the Defendant does not have a right to request review of his conviction or sentence.

9. This has not stopped the Defendant from inundating the Plaintiff, this Court, the Fifth District Court of Appeals, the Ohio Supreme Court, and other courts in the State of Ohio with motions, appeals, and other civil actions stemming from his conviction. At no time has the Defendant presented new evidence and he has continued to make the same arguments over and over again without any legal basis.
10. On February 12, 2013, the Defendant filed a petition for a Writ of Habeas Corpus in the U.S. Northern District Court of Ohio in case 1:13-cv-00309. On February 29, 2016, the Court dismissed the petition with prejudice. In that judgment entry, the Court noted that the Court was certifying that the Defendant could not appeal the decision in good faith and that there was no basis upon which to issue a certificate of appealability. The Defendant filed an appeal on March 28, 2016. The Sixth Federal District Court of Appeals denied his certificate of appealability on July 18, 2017.

11. On February 26, 2013, the Defendant filed a motion for new trial under Criminal Rule 33(A)(2) in this Court. Due to the fact that the Defendant filed the appeal in case number 13-CA-28, removing the case from this Court's jurisdiction until July 24, 2013, the Court did not rule on the motion right away. The Defendant's motion alleged that Magistrate Phillip Naumoff, who signed a search warrant involved in the 2009 case, was later a juror during the trial in this case. On April 1, 2013, the Defendant filed a document entitled "Affidavit of Fact and Authenticity; Exhibit 7, for Defendant's Crim. R. 33." The State filed a response on April 22, 2013, indicating first, that the motion for new trial was untimely and without leave, and second, that Magistrate Phillip Naumoff did not serve as a juror, but William Naumoff did. The Defendant filed a motion in rebuttal on May 3, 2013 changing his arguments to reflect the information from the State's motion. On December 13, 2013, the Defendant filed a motion to proceed to judgment. The State filed a response on December 18, 2013. On January 17, 2014, this Court overruled the motion for new trial. The Court determined that the Defendant failed to demonstrate the grounds for a new trial.

12. On February 4, 2014, the Defendant filed document entitled "motion; Civil Rule 60(A); (B), Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; Etc...". In the motion, he alleged that the Court had the power to correct clerical errors in the record. He argued that the Court erred in turning his Criminal Rule 29 motion to a petition for

post-conviction relief, something which the Fifth District Court of Appeals upheld in 13-CA-28. The Court denied the motion on February 4, 2014.

13. On February 10, 2014, the Defendant filed a notice of appeal of this Court's January 17, 2014 judgment entry denying his motion for new trial in case number 14-CA-10. The appeal was dismissed on May 12, 2014 due to the failure of the Defendant to file a brief.

14. On the same date, the Defendant filed a document entitled "Writ to file a delayed motion for reconsideration; Crim.R. 26(A), from a Criminal Rule 33 Ruling; Lindsay's motion for new trial, due to a failure to file a proper notice." He also filed a motion for reconsideration of his new trial motion. The Court did not rule on these motions due to the pending appeal of the entry denying the Defendant's motion for new trial. Not only is a motion to reconsider a legal nullity with regards to motions that are final appealable orders, but this Court cannot rule in any way that would affect the jurisdiction of the Court of Appeals.

15. On April 5, 2016, the Defendant filed a "motion for resentencing, sentencing reduction." In his motion for resentencing, the Defendant raised arguments involving the jury verdict forms, alleging that the verdict forms did not contain the aggravating element or the felony level. However, each count on the jury form did contain a finding that the victim was under the age of thirteen. The State filed a response to the motion for resentencing on May 6, 2016. The Defendant filed reply on May 20, 2016. On May 24, 2016, the Court overruled the Defendant's motion, finding that



it was an untimely petition for post-conviction relief. This was evidence that was available during his original appeal. Further, the Court found that the fact that the victim was under the age of thirteen was not an aggravating factor but an element of the crimes for which the Defendant was charged and convicted. The Defendant attempted to get around the late filing of his motion by arguing "structural error" and a "void sentence."

16. On the same date, the Defendant filed an application for DNA testing. In his application for DNA testing, he wanted an expert to testify as to how the DNA was transferred to the victim. The State filed a response to the request for DNA testing on May 9, 2016. The Defendant filed reply on May 20, 2016. The Court overruled the application for DNA testing on May 24, 2016, finding that prior definitive DNA testing had been conducted involving the same biological evidence that the Defendant was seeking to have tested. The Defendant was able to present his theory as to how the DNA was located in the panties and on the victim's vaginal area. A DNA expert can only testify where DNA was located and what DNA was found, not how the DNA came to be present at the location.

17. On June 3, 2016, the Defendant filed a motion to reconsider the motion for resentencing and a "clarification" (sic) of the application for DNA retesting. The Court overruled these motions on June 13, 2016.

18. On June 13, 2016, the Defendant filed a notice of appeal in case number 16-CA-38 regarding the denial of his application for DNA testing. He filed a brief on August 10, 2016. The State filed its brief on August 18, 2016.

The Defendant filed a reply brief on September 1, 2016. On January 30, 2017, the Fifth District Court of Appeals affirmed the decision of this Court. The Fifth District found that the Defendant could have raised issues regarding the expert testimony during his direct appeal. The Appellate Court found that he had raised the issue in several post-conviction filings and, therefore, his claims were barred by res judicata. The Defendant filed a motion to reconsider on February 16, 2017. The State filed a response on March 2, 2017. The Fifth District overruled the motion on April 17, 2017 indicating that the purpose of a motion to reconsider is to call the Court's attention to an obvious error in the decision or raise an issue which was not fully considered by the Court and was not designed for use in instances where a party simply disagrees with the conclusion of the court.

19. Also on June 13, 2016, the Defendant filed a notice of appeal in 16-CA-39 regarding the denial of his motion for resentencing. The Defendant filed his brief on August 10, 2016. The State filed a response on August 19, 2016 and the Defendant filed a reply on September 1, 2016. The Fifth District Court of Appeals affirmed the decision of this Court on February 6, 2017. The Appellate Court agreed that the Defendant's sentence was not void and that his arguments were barred by res judicata. On February 27, 2017, the Defendant filed a motion to reconsider. The Fifth District overruled the motion on April 17, 2017.

20. On June 26, 2017, in case 17-CA-57, the Defendant filed a motion to file a delayed appeal of his sentence. In his motion, he alleged that the Appellate Court inappropriately turned the Amended Appeal Brief that he filed during his direct appeal into a petition for post-conviction relief. He also again raised arguments that were raised by counsel during the direct appeal regarding a conflict of interest with the Court regarding the victim's grandmother. The State filed a memorandum in opposition on July 10, 2017 and the Defendant filed a response on July 27, 2017. The Fifth District Court of Appeals denied the motion to reopen on August 4, 2017 for failing to attach a copy of the entry he wanted to appeal. On September 1, 2017, the Defendant filed an appeal of this decision with the Ohio Supreme Court in case 2017-1226. The State filed a memorandum in response on September 28, 2017. The Ohio Supreme Court declined jurisdiction on December 20, 2017.

21. On June 18, 2018, the Defendant filed a motion entitled "Subjectmatter-jurisdiction [sic] violations of Defendant's constitutional rights under the United States, and Ohio Constitution: Plain Error." At the end of this twenty-four (24) page motion, the Defendant acknowledges that he has already brought these arguments before the Court. "This defendant has made countless motions and petitions to attempt to bring these prejudices to the attention of this court...". The Defendant's basic argument involved the amendment of a charge that he was ultimately found not guilty of. The State filed a response on June 22, 2018. The Defendant filed a response

on July 2, 2018. The Court overruled the motion on August 2, 2018 finding that the Defendant's arguments were about what happened on the record and that they were the same and/or similar to arguments previously raised.

22. On August 20, 2018, the Defendant filed a motion for change of venue. He once more alleged that the Court was bias and engaging in misconduct due to a relationship with the victim's grandmother. He again admitted to filing several motions to bring issues to the Court's attention and that these errors were brought to the attention of the Court at the time that the alleged errors were committed. The Court overruled the motion on August 30, 2018 pointing out that the rules with regard to a change of venue all involve the ability to hold a fair and impartial TRIAL and do not apply to post-conviction proceedings.
23. On August 27, 2018, the Defendant filed a document entitled "Illegal Sentence; void due to the trial court lost standing or subjectmatter [sic] jurisdiction." The Defendant once more argued the amendment of Count Four. The State filed a memorandum in response on August 29, 2018. This Court denied the motion on September 4, 2018.
24. The Defendant filed an appeal of this Court's September 4, 2018 judgment entry denying the August 27, 2018 motion. The State filed a brief on October 18, 2018 and the Defendant filed a reply on November 2, 2018. The Fifth District Court of Appeals affirmed this Court's ruling on January 18, 2019 finding that an amendment to the dates in a count in the

indictment did not affect the subject matter jurisdiction of the trial court and, therefore, the Defendant's arguments were barred by res judicata. On February 7, 2019, the Defendant filed a motion to reconsider and on February 19, 2019, he filed a notice of appeal to the Ohio Supreme Court in case number 2019-0263. On March 25, 2019, the Fifth District Court of Appeals denied the motion to reconsider. On May 1, 2019, the Ohio Supreme Court declined jurisdiction.

25. On May 3, 2019, the Defendant filed a motion for leave to file a motion for new trial based on newly discovered evidence. The State filed a memorandum in response on May 6, 2019. The Defendant filed a reply on May 20, 2019 and an amendment to his leave to file on May 24, 2019. In his motion, he argued the statute of limitations for the civil tort of fraud should apply to when he discovered the evidence. He again argued the amendment of the indictment and other events that occurred during the course of the trial. The evidence that he attached to the motion was the bill of particulars filed in this case on October 20, 2010. Attached to his amendment was the docket for this case. This Court denied the motion for new trial on June 10, 2019 finding that the Defendant failed to present any "new evidence." The Court emphasized that the Defendant's case had been fully appealed and that any new arguments that he might find and desire to raise are all arguments that could have and should have been raised previously. On June 17, 2019, he filed a second amendment for new trial. The Court overruled this motion on July 15, 2019.

26. On May 13, 2019, the Defendant filed a Writ of Habeas Corpus in the Marion County Court in case number 19-CV-322. It was dismissed with prejudice on July 15, 2019. On August 1, 2019, the Defendant filed a motion to reconsider. This motion was denied on August 12, 2019. He filed a notice of appeal on August 9, 2019. The Third District Court of Appeals affirmed the trial court's decision on January 22, 2020 in case 09-19-045. The Defendant once again raised arguments involving amendments to the indictment. The Third District found that the claims were not cognizable in habeas corpus and should have been raised on direct appeal. The Defendant filed a notice of appeal to the Ohio Supreme Court on March 4, 2020 in case number 2020-0319. On July 7, 2020, the Ohio Supreme Court declined jurisdiction.

27. The Defendant filed a notice of appeal in case number 19-CA-59 on June 25, 2019 of this Court's June 10, 2019 judgment entry denying his motion for new trial. He filed a brief on September 20, 2019. The State filed a motion to dismiss on September 23, 2019 and a brief on September 24, 2019. The Fifth District overruled the motion to dismiss on September 24, 2019. On December 19, 2019, the Fifth District Court of Appeals affirmed the decision of this Court again finding the Defendant's arguments barred by res judicata. The Defendant filed a motion to reconsider on January 7, 2020. The Fifth District denied the motion on January 21, 2020.

28. On July 26, 2019, in Franklin County Court of Common Pleas case 19-CV-5751, the Defendant filed complaint for a declaratory judgment against the

Common Pleas Court of Richland County, Judge DeWeese, Judge Naumoff, the Prosecuting Attorney, the Ohio Attorney General, and the Ohio Department of Corrections. He filed a similar complaint in case number 19-CV-6051. Those cases were consolidated. This Court, Judge Naumoff, Judge DeWeese, and the Richland County Prosecutor filed a motion to dismiss on August 2, 2019. The Franklin County Court of Common Pleas dismissed the Defendant's complaint with prejudice on January 30, 2020, finding that he failed to state a claim. The court found that a declaratory judgment does not allow an individual to collaterally attack decisions made in their criminal cases. The court specifically found both of these cases to be frivolous. The Defendant filed a motion for delayed appeal on April 13, 2020. The motion for delayed appeal was denied on April 14, 2020 as App.R.5(A) expressly applies only to criminal and delinquency appeals.

29. On September 30, 2019, the Defendant filed a motion to vacate a void sentence in this Court. This Court overruled the motion on December 26, 2019. He again argued "structural errors," "plain error," and alleged his sentence was "void ab initio." Again his argument was based on the indictment, the bill of information, and an amendment made to the indictment on a charge that he was not convicted of. The Court overruled the motion on December 26, 2019. The Court informed the Defendant that reframing the same argument under different terms would not change the fact that he had already raised these arguments previously. On

January 6, 2020, the Defendant filed what he called a “response to judgment entry overruling Defendant’s motion to vacate sentence that was void ab initio, and pursuant to Criminal Rule 52(B); Plain Error.” The Court considered this a motion to reconsider and denied the same on January 23, 2020 as the trial court does not have the authority to reconsider its own valid judgment entry in a criminal case.

30. On October 28, 2020, the Defendant filed a petition for a Writ of Habeas Corpus in the Ohio Supreme Court. The Defendant named this Court as a Defendant. The Defendant raised arguments about the indictment and double jeopardy. On November 9, 2020, he filed a motion to amend his petition. On December 25, 2020, the Ohio Supreme Court sua sponte dismissed the case. The Defendant then filed a “Schedual (sic) of presentation of facts” on January 21, 2021, an “Amendment: Defined in R.C. § 2731.01 in conjunction with R.C. § 2725.17” on February 25, 2021, and a “second amendment: defined in R.C. § 2731.01 in conjunction with R.C. § 2725.17” on March 8, 2021. On March 11, 2021, the Clerk’s office sent the Defendant a letter indicating that the Ohio Supreme Court had dismissed the case on December 15, 2021 and that the case was closed. This did not stop the Defendant from filing a final “Amendment” on April 27, 2021.

31. On December 29, 2020 in this Court, the Defendant filed a motion for sentence modification again raising arguments with regard to the jury verdict forms. The State filed a response on December 22, 2020 as



apparently it received a copy of the motion before the Court. The Defendant filed a reply on January 11, 2021. On January 22, 2021, the Court overruled the motion. The Defendant filed a notice of appeal on February 24, 2021. The Fifth District Court of Appeals filed a judgment entry on March 11, 2021 indicating an intent to dismiss the Defendant's appeal as the notice was not timely filed. The Defendant filed a brief on March 12, 2021 and the State filed a response on March 18, 2021. On March 24, 2021, the Defendant filed a document entitled "compelling arguments in support of this court's jurisdiction." On May 5, 2021, the Fifth District determined that it would treat the Defendant's appeal as motion to file a late appeal. On July 6, 2021, the Fifth District denied the Defendant's motion to appeal untimely. On July 15, 2021, the Defendant filed a motion to reconsider. The Appellate Court denied the motion on September 1, 2021.

32. The Defendant filed a Writ of Mandamus in the Fifth District Court of Appeals on May 4, 2021 in case number 21-CA-36. This Court was named as a Defendant. This motion was the same document filed in the Ohio Supreme Court case 2020-1306. It was dismissed by the Fifth District sua sponte on May 10, 2021.

33. On July 26, 2021 in this Court, the Defendant filed a motion entitled "Motion: resentencing/sentencing modification verdict form not in compliance pursuant to R.C. § 2645.75 the sentence is void, plain error occurred, and this argument can be brought up at any time." Once more

the Defendant argued that the jury verdict forms were insufficient. The State filed a response on July 27, 2021. On August 5, 2021, the Defendant filed a document entitled "Modification & Reduction of this illegal sentence/or void due to jury verdict form error; Reply to Prosecution's Memorandum & too again, bring judicial notice of Defendant's void sentence." On August 10, 2021, this Court overruled the Defendant's motions, finding that the Defendant had previously raised the issue and it was, therefore, moot. The Defendant filed a notice of appeal on August 30, 2021 in case number 21-CA-68. The Fifth District Court of Appeals affirmed the trial court's decision on December 22, 2021 finding the argument barred by res judicata. The Defendant filed a notice of appeal to the Ohio Supreme Court in case number 2022-0116 on January 31, 2022. The State filed a response on March 1, 2022 and the Ohio Supreme Court declined jurisdiction on April 12, 2022.

34. On December 3, 2021, the Defendant filed a petition for a Writ of Habeas Corpus in the Third District Court of Appeals case number 09-21-043. This Court was named as a Defendant. This Court filed a motion to dismiss on December 12, 2021. On March 10, 2022, the Third District dismissed the case finding that the Defendant had alternative remedies at law. On March 24, 2022, he filed a motion for reconsideration. The Third District denied the motion on April 6, 2022, finding that App.R. 26(A) does not apply to original actions filed in the appellate court. On April 15, 2022,

the Defendant filed a notice of appeal to the Ohio Supreme Court in case number 2022-0402. This case is still pending.

35. On August 1, 2022, the Defendant filed a document entitled: "Motion: Voiding 'all' judgments pertaining to Defendant's case, and adjudication process, due to a 'manifest miscarriage of justice,' inwhere [sic] the presiding judge harbored a 'fiduciary [sic] bias,' which should have disqualified him because of a clear 'appearance of impropriety,' requiring a 'new trial,' where the judge allowed an associate's/or colleague's influence his decision-making throughout the trial, and allowing the trial to continue knowing of several 'conflict of interests' were obvious between the prosecutor, a juror, and the defense attorney for the Defendant, violating 28 U.S.C.S. § 455(a); all judgments are contrary to law." The Defendant once more argued about an alleged conflict of interest involving the victim's grandmother and Juror Naumoff. These issues had been previously and exhaustively reviewed by the courts. The State filed a response on August 11, 2022. This Court overruled the motion on August 9, 2022. The Court indicated once more that the Defendant's appeal and post-conviction process were completed, that all issues had already been argued previously, and that repackaging arguments under different labels would not change the fact that the arguments were barred by res judicata. Finally, the Court warned the Defendant that continued filing of these types of motions could lead to the State filing to have the Defendant found to be a vexatious litigator. The Defendant filed a notice of appeal on

September 6, 2022 in case number 22-CA-61. The Fifth District Court of Appeals affirmed this Court's decision on December 14, 2022, finding that the argument had been raised and/or could have been raised on direct appeal. The Defendant filed a motion to reconsider on January 5, 2023 and the Fifth District overruled the motion on January 11, 2023.

36. On August 19, 2022, the Defendant filed a request for resentencing. On August 25, 2022, the Defendant filed a document entitled: "Motion: Reconsideration of Defendant's request for disqualification of both judges, James DeWeese and Phillip Naumoff; also, change of venue as noted." The State filed a response on August 30, 2022. The Court did not rule on this motion because the Defendant filed a notice of appeal on September 6, 2022, making a motion to reconsider moot.
37. This case was filed on August 26, 2022. On August 30, 2022, the Defendant filed a Petition with the Ohio Supreme Court to disqualify Judge James DeWeese and Judge Naumoff from his case. On September 1, 2022, the Ohio Supreme Court denied the petition.
38. On October 6, 2022, in Franklin County Court of Common Pleas case number 22-CV-6995, the Defendant filed a complaint against the Department of Corrections and the Adult Parole Authority for wrongful imprisonment. On October 28, 2022, a motion to dismiss was filed on the behalf of State defendants. The court granted the motion to dismiss on January 17, 2023 due to the Defendant's failure to comply with R.C. § 2969.25.

39. After the Defendant's appeal and post-conviction process had been complete, he continued to file motions and appeals that failed to present any new evidence and continue to raise the same arguments that had been previously ruled upon. These motions had an average length of twenty pages a piece. In total after his post-conviction process had been completed, the Defendant filed: at least twenty-one (21) motions and/or motions to reconsider; ten (10) appeals to the Fifth District; one (1) appeal to the Third District; six (6) motions to reconsider in the appellate court; five (5) petitions for writs of habeas corpus despite being informed in his initial filing that he is ineligible as he is serving a life sentence; six (6) Ohio Supreme Court Appeals; one Federal petition for writ of habeas corpus, and two (2) civil actions. The Defendant has constantly had motions pending before the various courts over the last twelve years. The various courts in their judgment entries have informed the Defendant on multiple occasions that his criminal case is over, that he cannot continue to pursue the same arguments over and over again, and that any arguments that are based on what happened in court on the record were required to be argued during direct appeal. The Defendant's argument is that he has just been trying to "bring these matters to the court's attention" and then he continues to raise arguments that have already exhaustively been brought to the attention of this Court, the Fifth District Court of Appeals, and the Ohio Supreme Court.

## Findings of Law

A trial court may not grant summary judgment unless the evidentiary materials demonstrate that: (1) no genuine issue as to any material fact remains to be litigated; (2) after the evidence is construed most strongly in the nonmoving party's favor, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party; and (3) the moving party is entitled to judgment as a matter of law.<sup>5</sup> Even when a summary judgment motion is unopposed, the movant must still meet his evidentiary burden under Civil Rule 56 of showing the absence of disputed material facts and that he is entitled to judgment as a matter of law.<sup>6</sup>

1. The Plaintiff alleges that the Defendant is a vexatious litigator and requests that this Court find him to be the same. The Fifth District Court of Appeals has recently upheld a finding that motions and appeals filed after conviction and direct appeal in criminal cases are considered actions of a civil nature that fall under the umbrella of the vexatious litigator statute.<sup>7</sup> As stated above, since completing his appellate and post-conviction process, the Defendant has filed over twenty motions in this Court, ten appeals, five petitions for writs of habeas corpus, six motions to

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<sup>5</sup> *Brown v. Balnius*, 5th Dist. Richland No. 08 CA 47, 2009-Ohio-2671, ¶ 15-16.

<sup>6</sup> *Id.* at ¶ 18.

<sup>7</sup> *Ferrero v. Staats*, 5th Dist. Stark No. 2018CA00016, 2018-Ohio-3235, ¶ 13. See also, *Watkins v. Pough*, 11th Dist. Trumbull No. 2016-T-0100, 2017-Ohio-7026 *appeal not allowed*, 151 Ohio St.3d 1476, 2017-Ohio-9111, 87 N.E.3d 1273 (in finding a criminal defendant's post-conviction filings to be vexatious the court noted "Pough's repeated attempts to raise the same issues, his lack of compliance with procedural rules, and the amount of time expended on resolving these matters is of importance."); *State v. West*, 2nd Dist. Greene No. 2021-CA-17, 2022-Ohio-2060 (finding that, while there were only three civil filings in the criminal case, that the defendant repeatedly raised the same or similar arguments in these filings that had already been rejected or overruled by the trial court and appellate court and this was sufficient for a vexatious litigator finding).

reconsider, six Ohio Supreme Court Appeals, one petition for writ of habeas corpus in the Federal Courts, and two civil actions. These motions, appeals, and actions have all stemmed from his criminal conviction in case number 10-CR-419. None of them have been supported by new evidence outside of the record. All of them have been without legal basis.

2. In order to declare a person to be a vexatious litigator, a court must find that a person “engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, a court of common pleas, municipal court or county court” and in order to bring a vexatious litigator action, a person had to have “defended against habitual and persistent vexatious conduct in the court of claims or in a court of common pleas, municipal court or county court.”<sup>8</sup> That language does not include lawsuits or vexatious conduct in federal courts or in the Ohio Supreme Court. However, although civil actions filed in a federal court or the Ohio Supreme Court cannot be the predicate actions for declaring a person a vexatious litigator under R.C. 2323.52, they may have evidentiary relevance for determining vexatious conduct as defined in R.C. 2953.52(A)(2)(a), or to identify a vexatious litigator as defined in R.C. 2953.52(A)(3).<sup>9</sup> The Defendant’s federal filing was dismissed with prejudice and contained a note that an appeal of the decision could not be had with good faith. The Defendant attempted to file an appeal anyway

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<sup>8</sup> R.C. § 2323.52(A)(3) & (B).

<sup>9</sup> *Ferrero*, supra at ¶ 7 citing *Borger v. McErlane*, 1st Dist. Hamilton No. C-010262, 2001-Ohio-4030, ¶ 4.

which was denied. In the petition for Writ of Habeas Corpus that he filed in the Ohio Supreme Court in case 2020-1306, the Defendant filed three motions after the Supreme Court had dismissed the case. The Court sent him a letter indicating that the case was closed and he continued to file a fourth motion after this date. Both of these instances are evidence of the Defendant's habit of ignoring the judgments of the courts and continuing to file documents without legal basis.

3. A Vexatious Litigator includes "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions."<sup>10</sup> Every single motion and appeal discussed above has been denied because the arguments presented have been barred by res judicata. These motions have presented no new evidence and have had no legal basis. The Defendant has been informed on multiple occasions that he does not have reasonable grounds for his arguments.
4. "Given the purpose and design of the vexatious-litigator statute, it makes sense that 'the consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute

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<sup>10</sup> R.C. § 2323.52(A)(3).



vexatious litigation.”<sup>11</sup> Therefore, the “assessment of a litigant's vexatiousness is not based solely on the number of cases he has filed but also on the repetitiveness of the arguments raised.”<sup>12</sup> The Defendant raised the issue of the victim’s grandmother having served as a bailiff for Judge DeWeese in his direct appeal. The Fifth District Court of Appeals determined that the Defendant failed to appropriately address the issue with the Ohio Supreme Court while the case was pending. The issue at that point was resolved. The Defendant has continued to raise this argument over and over again for the last twelve years up to his response in this case to the Plaintiff’s motion for summary judgment. In multiple motions he raised issues with Juror Naumoff. He also, on multiple occasions, raised issues with the amendment of Count IV of his indictment. It is not that these arguments have not been fully addressed in prior judgment entries, but that the Defendant does not like the outcome.

5. Any person who has defended against habitual and persistent vexatious conduct “may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator.”<sup>13</sup> The State of Ohio has had to respond to all of these motions

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<sup>11</sup> *Easterling v. Union Sav. Bank*, 2d Dist. Greene No. 2012-CA-52, 2013-Ohio-1068, ¶ 16, quoting *Lasson v. Coleman*, 2d Dist. Montgomery No. 21983, 2008-Ohio-4140, ¶ 36, citing *Farley v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, ¶ 46. See also *State v. Jordan*, 8th Dist. Cuyahoga No. 100686, 2014-Ohio-2408, ¶ 7, fn. 1 (continued attempts to relitigate an issue that has been decided against the defendant multiple times can warrant a determination that the defendant is a vexatious litigator).

<sup>12</sup> *State ex rel. Johnson v. Bur. of Sentence Computation*, 159 Ohio St.3d 552, 2020-Ohio-999, 152 N.E.3d 251, ¶ 21 (concerning vexatious litigator finding under S.Ct.Prac.R. 4.03(B)).

<sup>13</sup> R.C. § 2323.52(B).

and appeals and has been forced to continuously defend against the Defendant's baseless and repetitive claims.

6. An action to have a person declared a vexatious litigator may be commenced while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.<sup>14</sup> This complaint was filed on August 26, 2022. The Defendant had filed a motion on August 1, 2022, August 19, 2022, and August 25, 2022. The State has been continuously defending against motions by the Defendant since the date the Defendant was sentenced in 2010.
7. Vexatious conduct includes conduct that serves merely to harass or maliciously injury another party to a civil action, the conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law or the conduct is imposed solely for delay.<sup>15</sup> The Defendant has been continuously informed that his criminal appeals and post-conviction process is over. There are no arguments that he can raise and yet he continues to raise the same arguments over and over again that have already been reviewed and denied. These motions have not been warranted under existing law and cannot be supported by a good faith argument for an extension, medication, or reversal of existing law. The

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<sup>14</sup> *Id.*

<sup>15</sup> R.C. § 2323.52(A)(2).

Defendant argues that he has not purposefully submitted to any Court frivolous or meaningless motions with the intent to be vexatious. However, he continues to make the same arguments that have already been denied. He claims that issues have never been addressed, such as the issue with the victim's grandmother. However, it was addressed in his direct appeal. Other issues that were not addressed in the direct appeal were waived and cannot be addressed once his post-conviction process has ended. This is simply the way that the criminal process works. It is not that these issues have not been addressed by the Courts on multiple occasions; it is that they have not been addressed in the way and with an outcome that the Defendant likes. He continues to make the same arguments under different legal theories in the attempt to get the outcome that he desires. This is not how the legal process works. The doctrine of res judicata exists because there must be finality to a case at some point. The parties deserve finality.

8. In upholding the constitutionality of the vexatious litigator statute, the Supreme Court laid out what to consider when making a determination that a person is a vexatious litigator.

The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources -- resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by

such baseless litigation prevents the speedy consideration of proper litigation.<sup>16</sup>

In addition, vexatious litigators oftentimes use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow upon the administration of justice. Thus, the people, through their representatives, have a legitimate, indeed compelling, interest in curbing the illegitimate activities of vexatious litigators.<sup>17</sup>

At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings. It provides authority to the court of common pleas to require, as a condition precedent to taking further legal action in certain enumerated Ohio trial courts, that the vexatious litigator make a satisfactory demonstration that the proposed legal action is neither groundless nor abusive.<sup>18</sup>

9. A finding of vexatious conduct is not dependent upon whether the Defendant intended his conduct to be harassing. The Court does not look to his subjective aim but instead examines the effect of his conduct upon the opposing parties and the judicial system. The Defendant cannot be labeled a vexatious litigator simply for being a prolific filer of lawsuits, but case law does characterize vexatious conduct as "the consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times."<sup>19</sup>

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<sup>16</sup> *Mayer v. Bristow*, 91 Ohio St.3d 3, 13 citing *Central State Transit Auth. v. Timson*, 132 Ohio App. 3d 41, 50, 724 N.E.2d 458 (10th Dist.1998)

<sup>17</sup> *Id.* (internal citations removed).

<sup>18</sup> *Id.*

<sup>19</sup> *Easterling supra* at ¶ 16.

10. The Defendant does not dispute that he has filed all of these motions and appeals. He has not prevailed on any of those motions or appeals. The State of Ohio has had to spend time and resources to respond to these motions. The Court has had to spend time better spent on active cases on resolving these motions. This continued litigation is also costing the Defendant. He has added an additional \$782 in court costs to his original criminal case based on his continued frivolous filing. He has incurred an additional \$1,354.15 in costs in the Fifth District Court of Appeals.
11. The court finds that, based upon clear and convincing evidence, the Defendant, Wendell R. Lindsay, II, has engaged in vexatious conduct as defined by R. C. 2323.52(A)(2)(a) and, therefore, he is a vexatious litigator under R.C. 2323.52(A)(3). Accordingly, the Plaintiff's motion for summary judgment is well taken and granted with costs to be paid by the Defendant.
12. The Defendant's motions to dismiss and motion for settlement are denied.

### **Judgment Entry**

It is therefore ordered:

1. The Defendant's September 28, 2022 and October 24, 2024 responses to the Plaintiff's complaint/motions to dismiss are denied. The Defendant's November 30, 2022 settlement proposal is also overruled.
2. The Plaintiff's Motion for Summary Judgment is granted.
3. The Defendant in this case is found to be a Vexatious Litigator.
4. Wendell R. Lindsay, II, without first obtaining leave of this court, shall not institute any legal proceeding, nor make any application, other than an

- application to this Court for leave to proceed under division (F) of R.C. 2323.52, in the Ohio Court of Claims, or in any county court of common pleas, municipal court, or other county court of Ohio.
5. Wendell R. Lindsay, II shall not, without first obtaining leave of this Court, continue in any legal proceeding that he has instituted in the Ohio Court of Claims or in any court of common pleas, municipal court, or other county court of Ohio prior to the date of the entry of this order.
  6. Pursuant to R.C. 2323.54(E), this order shall remain in force indefinitely.
  7. Pursuant to R.C. 2323.52(F), only this Court may grant Wendell R. Lindsay, II leave for institution or continuance of, or making of an application in, legal proceedings in the Ohio Court of Claims, or in any court of common pleas, municipal court, or any county court in Ohio. This Court will only grant such leave if it is satisfied that the proceedings or application are not an abuse of process of the court in question, and that there are reasonable legal grounds for the proceeding or application. If leave is granted, it will be in the form of a written order by this Court.
  8. Pursuant to R.C. 2323.52(D)(3), only the relevant court of appeals may grant Wendell R. Lindsay, II leave to institute or continue an action in the relevant court of appeals.
  9. Within 30 days of the filing of this judgment entry, Wendell R. Lindsay, II shall file his request, if any, for leave to continue the assertion of any pending claim he has in an Ohio Court of Common Pleas, municipal court, or county court in which he is a party.

10. Additionally, if Wendell R. Lindsay, II requests this court to grant him leave to proceed as described in R.C. 2323.52(F), the period of time commencing with the filing with this Court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.
11. Pursuant to R.C. 2323.52(G), no appeal by Wendell R. Lindsay, II shall lie from a decision of this Court if this Court denies Wendell R. Lindsay, II, under R.C. 2323.52(F), leave for the institution or continuance of, or the making of an application in, legal proceedings in the Ohio Court of Claims or in any court of common pleas, municipal court, or county court in Ohio.
12. Pursuant to R.C. 2323.52(H), the Richland County Common Pleas Clerk of Courts shall immediately send a certified copy of this order to the Ohio Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerk of the Court of Claims and clerks of all courts of common pleas, municipal courts, or any county courts in Ohio in refusing to accept pleadings or other papers submitted for filing by Wendell R. Lindsay, II if he has failed to obtain leave under R.C. 2323.52(F) to proceed.
13. Pursuant to R.C. 2323.52(I), whenever it appears by suggestion of parties or otherwise that Wendell R. Lindsay, II has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed

from this court, the court in which legal proceedings are pending shall immediately dismiss the proceeding or application of Wendell R. Lindsay,

II.

14. Costs are taxed to the Defendant.

  
Judge

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment Entry was served according to local rules and sent by regular U.S. Mail this 21 day of January, 2023 to the following:

Richland County Prosecutor  
Wendell R. Lindsay, II

  
Clerk of Courts