

OHIO COURT OF APPEALS, THIRD APPELLATE DISTRICT, HANCOCK  
COUNTY

In re C.B.

2025-Ohio-5781 · No. 5-25-15 · Decided December 29, 2025

SUMMARY

The Ohio Third District Court of Appeals affirmed the denial of C.B.’s motion to vacate his juvenile delinquency adjudications and related claims. The court held that In re D.B.’s constitutional reasoning concerning statutory rape under R.C. 2907.02(A)(1)(b) did not apply to C.B.’s rape adjudications under R.C. 2907.02(A)(1)(c), and that his ineffective-assistance claim lacked merit. The court also found any error in considering the State’s untimely response harmless and declined to review arguments concerning the Juv.R. 29(D) colloquy because no timely appeal was taken from the earlier order denying withdrawal of admissions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Third Appellate District, Hancock County                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | John R. Willamowski; Juergen A. Waldick; William R. Zimmerman                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Ohio Court of Appeals, Third Appellate District, Hancock County                                                                                                                                                                                                                                                                                                               |
| DECIDED               | December 29, 2025                                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | 5-25-15                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | C.B., an adjudicated delinquent child, appealed the Hancock County Court of Common Pleas, Juvenile Division's denial of his motion to vacate his delinquency adjudication. He challenged the trial court's consideration of the State's untimely response, its refusal to vacate an allegedly void adjudication, and the denial of a prior motion to withdraw his admissions. |
| STANDARD OF REVIEW    | The denial of a petition for postconviction relief after an evidentiary hearing is reviewed for abuse of discretion. A ruling on a motion to strike an untimely filing is also reviewed for abuse of discretion. Jurisdictional questions are reviewed as matters of law and may be raised sua sponte.                                                                        |
| PRECEDENTIAL VALUE    | Published and precedential under the source metadata                                                                                                                                                                                                                                                                                                                          |
|                       |                                                                                                                                                                                                                                                                                                                                                                               |

## TOPICS

post-conviction relief

appellate procedure

preservation of error

constitutional law

criminal procedure

## PRACTICE AREAS

juvenile delinquency

criminal procedure

postconviction relief

appellate procedure

constitutional law

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by considering the State's response filed after the court-ordered deadline.
2. Whether C.B.'s rape adjudications were void under *In re D.B.* because the charges were unconstitutional as applied to a child under thirteen.
3. Whether C.B. established ineffective assistance of counsel or another basis for postconviction relief.
4. Whether the Court of Appeals had jurisdiction to review the challenge to the denial of C.B.'s 2024 motion to withdraw his admissions when no timely appeal was taken from that judgment.

## HOLDINGS

1. The substance of a motion, rather than its caption, determines how it should be treated; a motion to vacate filed after the time for direct appeal, asserting a constitutional violation, seeking to void a voidable judgment, and requesting vacation of the judgment and sentence may be recast as a petition for postconviction relief.
2. *In re D.B.*'s holding that R.C. 2907.02(A)(1)(b) is unconstitutional as applied to a child under thirteen who engages in sexual conduct with another child under thirteen does not extend to C.B.'s convictions under R.C. 2907.02(A)(1)(c).
3. C.B. failed to establish ineffective assistance of counsel because counsel's failure to raise an argument that lacked merit was not deficient performance, and C.B. could not show prejudice.
4. Even assuming the trial court erred by considering the State's response filed after the deadline, any error was harmless because C.B. failed to show prejudice.
5. The Court of Appeals lacked jurisdiction to review issues decided in the trial court's November 25, 2024 judgment denying C.B.'s motion to withdraw because C.B. did not timely appeal that judgment.

## KEY QUOTATIONS

*“Ultimately, “it is the substance of a motion, not the caption, that determines the nature of a motion.””* (¶ 18)

*“These additional elements also forestall the constitutional concerns that *In re D.B.* identified with charging a child under thirteen with statutory rape under R.C. 2907.02(A)(1)(b).”* (¶ 25)

*“The failure to raise meritless arguments does not constitute deficient performance.”* (¶ 33)

## FACTUAL BACKGROUND

In 2018 and early 2019, C.B., who was twelve years old, engaged in sexual conduct with his ten-year-old autistic sister, B. The juvenile court accepted C.B.'s admissions to two counts of rape under R.C. 2907.02(A)(1)(c) and two counts of gross sexual imposition under R.C. 2907.05(A)(5), adjudicating him delinquent in 2020. C.B. later argued that the Ohio Supreme Court's decision in *In re D.B.* rendered the rape adjudications void, but the record showed that B.'s mental impairment and C.B.'s knowledge of it supplied the statutory elements distinguishing victim and offender.

## PROCEDURAL HISTORY

C.B. admitted in 2020 to two counts of rape and two counts of gross sexual imposition, and the juvenile court adjudicated him delinquent and imposed a suspended two-year commitment to the Department of Youth Services. No direct appeal was taken. After the trial court denied a 2024 motion to withdraw his admissions, from which C.B. also did not timely appeal, he filed a February 2025 motion to vacate the adjudication as void based on *In re D.B.* The trial court denied the motion, and C.B. timely appealed that judgment. The Court of Appeals affirmed.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The cause was remanded only for execution of the judgment for costs, and the clerk was directed to certify the judgment and opinion to the trial court as the mandate under App.R. 27 and serve the parties under App.R. 30.

## CASES CITED

- *State v. Keith*, 2008-Ohio-741, ¶ 24 (3d Dist.)
- *State v. Williams*, 2024-Ohio-2676, ¶ 8 (3d Dist.)
- *State v. Perry*, 10 Ohio St.2d 175, ninth paragraph of the syllabus
- *State v. Green*, 2024-Ohio-5254, ¶ 23 (3d Dist.)
- *State v. Hatton*, 2022-Ohio-3991, ¶ 22
- *State v. Hale*, 2024-Ohio-4621, ¶ 10 (12th Dist.)
- *In re J.D.*, 2020-Ohio-3225, ¶ 22 (3d Dist.)
- *State v. Reed*, 2022-Ohio-3461, ¶ 17 (2d Dist.)
- *In re N.G.*, 2014-Ohio-3190, ¶ 7 (3d Dist.)
- *State v. Covington*, 2020-Ohio-390, ¶ 12 (2d Dist.)
- *State v. Alexander*, 2018-Ohio-1198, ¶ 15 (8th Dist.)
- *State v. Becker*, 2006-Ohio-148, ¶ 5 (12th Dist.)
- *State v. Schlee*, 2008-Ohio-545, ¶ 12
- *In re D.B.*, 2011-Ohio-2671

- In re L.S., 2018-Ohio-4758, ¶ 40 (6th Dist.)
- In re D.A., 2022-Ohio-1359, ¶¶ 28, 34-35 (3d Dist.)
- In re K.A., 2013-Ohio-2997, ¶ 12 (8th Dist.)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Dendinger, 2023-Ohio-4255, ¶ 25 (3d Dist.)
- State v. Lewis, 2020-Ohio-6894, ¶ 25 (3d Dist.)
- State ex rel. Charvat v. Frye, 2007-Ohio-2882, ¶ 23
- State v. Dunbar, 2020-Ohio-4568, ¶ 36 (8th Dist.)
- Cromartie v. Goolsby, 2010-Ohio-2604, ¶ 18 (8th Dist.)
- State v. Norman, 2019-Ohio-4020, ¶ 16 (10th Dist.)
- State v. Jackson, 2024-Ohio-2091, ¶ 44 (2d Dist.)
- State v. Wood, 2025-Ohio-2170, ¶ 74 (2d Dist.)
- State v. Campbell, 2014-Ohio-499, ¶ 23 (8th Dist.)
- In re H.F., 2008-Ohio-6810, ¶ 17
- In re B.J.M., 2016-Ohio-7651, ¶ 23 (11th Dist.)
- State ex rel. Pendell v. Adams Cty. Bd. of Elections, 40 Ohio St.3d 58, 60 (1988)
- In re C.B., 2014-Ohio-3784, ¶ 8 (12th Dist.)
- In re W.P.P., 2016-Ohio-345, ¶ 9 (4th Dist.)