

[Cite as *Crockett v. Schlicher*, 2001-Ohio-2664.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

Marc A. Crockett, :
 :
 Plaintiff-Appellee, :
 : Case No. 00CA23
vs. :
 : DECISION AND JUDGMENT ENTRY
 Sheriff Robert Schlicher, :
 :
 Defendant-Appellant. : Released: 3/15/01

APPEARANCES

Alison L. Cauthorn, Marietta, Ohio, for Appellant.

Kathleen A. McGarry, Athens, Ohio, for Appellee.

Kline, J.:

Washington County Sheriff Robert Schlicher appeals the decision of the Washington County Court of Common Pleas finding R.C. 2967.28 unconstitutional and issuing a writ of habeas corpus to him ordering the discharge of Marc A. Crockett. He argues that R.C. 2967.28 does not violate the due process clauses of the Ohio or United States Constitutions or violate the separation of powers doctrine. Because the Ohio Supreme Court has determined that the statute does not violate the due

process clauses of the Ohio or United States Constitutions or violate the separation of powers doctrine, we agree.

Accordingly we reverse the judgment of the trial court.

I.

In 1997, Crockett pled guilty to burglary and attempted escape. The court sentenced him to confinement. Crockett was released in February 2000 under three years of post-release control. After he violated the conditions of his post release control, the Adult Parole Authority ordered him confined in the Washington County Jail. In May 2000, Crockett filed a complaint in habeas corpus seeking his release and alleging that R.C. 2967.28 is unconstitutional because it violates the separation of powers doctrine. On May 16, 2000, the trial court held a hearing¹ on Crockett's complaint. At the hearing, Crockett argued that R.C. 2967.28 is unconstitutional because it violates the separation of powers doctrine and the due process clause of the Ohio and United States Constitution. He did not assert that the statute was void for vagueness.

On May 19, 2000, the trial court found the statute unconstitutional and granted the writ.

Schlicher appeals and asserts the following assignment of error:

¹ The trial court consolidated this case with another habeas corpus complaint against Schlicher, which also alleged that R.C. 2967.28 is unconstitutional.

I. The trial court erred in finding O.R.C. 2967.28 unconstitutional.

II.

Schlicher argues in his only assignment of error that the trial court erred by finding R.C. 2967.28 unconstitutional. He asserts that the Ohio Supreme Court has held that the statute does not violate the constitutional separation of powers doctrine or the Due Process Clause. We agree. "R.C. 2967.28 does not violate the separation of powers doctrine or the Due Process Clauses of the United States or Ohio Constitution." *Woods v. Telb* (2000), 89 Ohio St.3d 504, paragraph one of the syllabus. See, also, *State ex rel. Mosley v. Nichols* (2001), 90 Ohio St.3d 517, 518.

We decline to address Crockett's argument that R.C. 2967.28 is void for vagueness because he failed to raise this argument in the trial court. *Stores Realty Co. v. Cleveland* (1975), 41 Ohio St.3d 41, 43; *In re Estate of Counts* (Sept. 18, 2000), Ross App. No. 99CA2507, unreported.

Accordingly, we sustain Schlicher's assignment of error and reverse the judgment of the trial court. We remand this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Washington No. 00CA23

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and the cause remanded to the trial court for further proceedings consistent with this opinion and that costs herein be taxed to appellee.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as the date of this Entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, P.J. and Harsha, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.