

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

State of Ohio

Court of Appeals No. H-13-022

Appellee

Trial Court No. CRI 52168

v.

Keith Fox

**DECISION AND JUDGMENT**

Appellant

Decided: May 23, 2014

\* \* \* \* \*

Dean Holman, Special Prosecuting Attorney, and Matthew A. Kern, Assistant Prosecuting Attorney, for appellee.

Keith Fox, pro se.

\* \* \* \* \*

**JENSEN, J.**

{¶ 1} Appellant pro se, Keith S. Fox, appeals the August 21, 2013 judgment of the Huron County Court of Common Pleas denying his June 3, 2013 postconviction petition seeking correction of his “illegal sentence.” For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} On November 18, 1988, a Huron County Grand Jury issued a three count indictment against Keith S. Fox. Counts I and III charged Fox with rape of a person under thirteen years of age, through the use of force or threat of force, in violation of R.C. 2907.02(A)(1)(b). Count II charged Fox with gross sexual imposition in violation of R.C. 2907.05(A)(3).

{¶ 3} On March 4, 1989, a jury found Fox guilty of two counts of rape of a person under thirteen years of age and further found, as to both counts, that Fox “did purposely compel the victim to submit by force or threat of force.” On March 8, 1989, the trial court sentenced Fox to “imprisonment for life” on both counts. The sentences were ordered to be served concurrently. Fox appealed and this court affirmed his conviction in *State v. Fox*, 66 Ohio App.3d 481, 585 N.E.2d 561 (6th Dist.1990). In 2001, the Huron County Court of Common Pleas adjudicated Fox a sexual predator under Megan’s Law.

{¶ 4} On June 3, 2013, Fox filed a postconviction petition with the trial court to correct what he perceives to be an “illegal sentence.” The trial court denied the motion. Fox appeals, asserting two assignments of errors for our review.

### **First Assignment of Error**

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANTS  
[SIC] MOTION TO CORRECT AN ILLEGAL SENTENCE, AS THE  
APPELLANT DOES NOT HAVE A VALID SENTENCING ENTRY  
THAT WOULD GIVE HIM FINALITY IN HIS SENTENCE,

VIOLATING THE MANDATES OF RC 2929.11(B)(1)(a) AS/IS IN  
EFFECT IN 1989.

{¶ 5} In his first assignment of error, Fox argues that the trial court erred in imposing life sentences. Fox asserts, “[i]n 1989, Ohio Revised Code 2929.11(B)(1)(a), penalties for felony, was the only viable sentencing that Appellant could receive. That section stated ‘minimum term of five, six, seven, eight, nine, or ten years, and the maximum term shall be twenty-five years.’” However, Fox’s argument ignores the plain language of division (B) of R.C. 2929.07 which mandates “imprison[ment] for life” for any offender who violates R.C. 2929.07(A)(1)(b) and “purposely compels the victim to submit by force or threat of force.”

{¶ 6} Here, the jury, in two separate counts, found Fox “Guilty of Rape of a person under thirteen years of age” and further found that Fox “did purposely compel the victim to submit by force or threat of force.” Accordingly, Fox’s first assignment of error is not well-taken.

### **Second Assignment of Error**

THE TRIAL COURTS [SIC] DENIAL OF APPELLANTS [SIC]  
MOTION TO CORRECT AN ILLEGAL SENTENCE DENIED HIM DUE  
PROCESS OF LAW AS PROTECTED UNDER ARTICLE ONE,  
SECTION SIXTEEN OF THE OHIO CONSTITUTION, AND THE  
FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED  
STATES CONSTITUTION; ILLEGAL SENTENCE ALLOWED TO

STAND IS TANTATMOUNT TO CRUEL AND UNUSUAL  
PUNISHMENT, VIOLATING THE EIGHTH AMENDMENT OF THE  
UNITED STATES CONSTITUTION.

{¶ 7} In his second assignment of error, appellant alleges the trial court denied him due process of law when it denied his motion to correct an illegal sentence. For the reasons set forth above, appellant’s life sentence was not “illegal.” Thus, the trial court did not deny Fox due process of law. Appellant’s second assignment of error is not well-taken.

{¶ 8} The judgment of the Huron County Court of Common Pleas is affirmed.  
Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.