

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

LASHAWN R. PETTUS,

Petitioner,

: Case No. 1:20-cv-187

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

WARDEN,
Franklin Medical Center,

:
Respondent.

**DECISION AND ORDER GRANTING MOTION TO DISMISS
GROUND SIX**

This habeas corpus case is before the Court on Petitioner’s Motion to Voluntarily Dismiss Ground Six of his Petition (ECF No. 32). Ground Six reads as follows:

Ground Six: Violation of Due Process and Equal Protection Clauses: R.C. § 2913.61(C)(1) allows aggregation of theft offenses only when the victims are elderly [sic] or disabled or who are in the military or who are spouses of those in the military.

Supporting Facts: Petitioner's misdemeanor charges are aggregated to make felony charges despite the fact that none of the alleged victims are elderly, disabled, or in the military or who are spouses of those in the military; the state never attempted this improper aggregation with other similarly situated persons.

(Petition, ECF No. 1, PageID 7).

On its face, Ground Six raises Fourteenth Amendment constitutional claims, particularly under the Equal Protection Clause. However in the instant Motion Petitioner represents that the claim is dependent on interpretation of the underlying statute, Ohio Revised Code § 2913.61(C)(1),

and that the Supreme Court of Ohio has now interpreted that statute in Petitioner's own case in a manner inconsistent with his claim (Motion, ECF No. 32, PageID 2205). As Pettus correctly points out, federal courts are bound by a state court's interpretation of the State's own statutes, particularly where, as here, the interpretation has been made by the State's highest court in the controversy in suit.

Fed.R.Civ.P. 41(a) speaks of the dismissal of actions, *i.e.*, whole cases. But 28 U.S.C. § 2242 allows amendments of habeas petitions on the same bases as Fed.R.Civ.P. 15. The Court will treat the instant Motion as one to amend the Petition by deleting Ground Six. As thus construed, the Motion to Voluntarily Dismissed Ground Six is GRANTED.

February 4, 2021.

s/ Michael R. Merz
United States Magistrate Judge