

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-L-104
JOSEPH A. SANDS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 06 CR 000401.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Joseph A. Sands, pro se, PID: A664-601, Marion Correctional Institution, P.O. Box 57, 940 Marion-Williamsport Rd., Marion, OH 43302 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Joseph A. Sands appeals from the judgment of the Lake County Court of Common Pleas, denying his “motion to vacate Mr. Sands (sic) conviction and sentence based on no complaint was ever filed in the municipal court/bindover to the common pleas court. [F]or said jurisdiction. [O]n Case No. 06-CR-00041.” Mr. Sands contends the trial court lacked subject matter of his case. Finding no reversible error, we affirm.

{¶2} In *State v. Sands*, 11th Dist. Lake No. 2015-L-134, 2016-Ohio-7150, ¶2-4, we wrote:

{¶3} “In November 2006, Mr. Sands was found guilty, following jury trial, of one count of engaging in a pattern of corrupt activity, a felony of the first degree; three counts of conspiracy to commit aggravated murder, felonies of the first degree; and two counts of conspiracy to commit aggravated arson, felonies of the first degree. See *State v. Sands*, 11th Dist. Lake No.2007–L–003, 2008–Ohio–6981, ¶23 (“*Sands I*”). For sentencing purposes, the trial court merged the conspiracy counts, and sentenced Mr. Sands to ten years imprisonment on the count of engaging in a pattern of corrupt activity, and ten years for conspiracy, the counts to be served consecutively, for a total term of imprisonment of 20 years. *Id.* The convictions arose from Mr. Sands’ plot to murder Painesville Municipal Court Judge Michael Cicconetti, North Perry Police Chief Denise Mercsak, North Perry Mayor Tom Williams, and North Perry Prosecutor Joseph Gurley. *Id.* at ¶ 6.

{¶4} “Mr. Sands appealed, and this court affirmed. *Sands I* at ¶195. The Supreme Court of Ohio denied a motion for delayed appeal. *State v. Sands*, 127 Ohio St.3d 1443, 2010–Ohio–5762.

{¶5} “Mr. Sands was also tried and convicted on federal charges stemming from his plot. He was sentenced on those charges to ten years of imprisonment.”

{¶6} Since his conviction, Mr. Sands has filed numerous actions in both state and federal courts, generally without success.

{¶7} Mr. Sands filed the motion subject of this appeal July 14, 2017. The trial court denied the motion August 8, 2017, and Mr. Sands timely noticed this appeal, assigning three errors:

{¶8} “[1.] The trial court lacked subject matter jurisdiction over said case. Because the charging instruments were never properly filed. And without a properly filed ‘criminal complaint’ the trial court was divested of subject matter jurisdiction. Which makes the judgment/conviction void and illegal and should be dismissed.

{¶10} “[2.] The trial court abused its discretion by failing to dismiss appellant’s case with prejudice, based on the fact that no ‘criminal complaint’ had ever been filed in said case. So there could never have been a bindover from the municipal court level and by this not taking place as in this case its (sic) a violation of the Constitution of the United States. Amendments 4, 5, 6, 14. Which makes the judgment/conviction. Void and illegal and should be dismissed.

{¶11} “[3.] The trial court abused its discretion by litigating a matter with which the trial court/appellee’s had presumed knowledge that no ‘criminal complaint’ had ever been filed in said case at all? But proceeded (sic) forward knowing the court/State of Ohio was violating the Constitution to the United States. Appellant’s due process and Amendments, 4, 5, 6, 14. See the trial court/state knew that no bindover took place because there was no “criminal complaint” filed per Rule 3. [O]f the Rules and Procedures of the State of Ohio. But didn’t care that they were in violation to the Constitutional laws of the United States. But still proceeded (sic) forward if this don’t (sic) raise ethical questions to the

conduct of these public officials whats (sic) next?. For all the reasons stated above the judgment/conviction is void and should be dismissed.”¹

{¶12} The substance of all three assignments of error is that the trial court lacked subject matter jurisdiction over Mr. Sands’ case, since no criminal complaint was ever filed in the municipal court. Rather, the state proceeded by way of a secret indictment filed June 6, 2006. As the assignments of error are interrelated, we deal with them together.

{¶13} *State v. Gaitor*, 7th Dist. Mahoning No. 13 MA 189, 2014-Ohio-4010 speaks to the issue raised by Mr. Sands. Mr. Gaitor pleaded guilty to aggravated murder, kidnapping, and tampering with evidence in the trial court. *Id.* at ¶2. On appeal, he argued that the trial court lacked subject matter of his case, since he claimed the state had proceeded by way of indictment, without ever filing a criminal complaint in the municipal court. *Id.* at ¶9-10. In relevant part, the Seventh District held, at ¶16:

{¶14} “In *Burns*, the defendant argued to this court that the officer failed to file a complaint. *State v. Burns*, 7th Dist. No. 09MA193, 2012–Ohio–2698, ¶72. We concluded that any error in failing to file a complaint was rendered harmless by the issuing of the indictment. *Id.* at ¶73–74, citing *State v. Thacker*, 4th Dist. No. 04–CA5, 2004–Ohio–3978, ¶12 (where defendant argued no subject matter jurisdiction due to failure to file Crim.R. 3 complaint, Fourth District held that defendant was tried upon indictment), citing *State v. Martin*, 4th Dist. No. 01CA24, 2002–Ohio–6140, ¶21–25 (where the defendant was convicted upon an indictment, issues with the complaint are irrelevant). See also *State v. Holland*, 5th Dist. No. 13CA53, 2012–Ohio–4136, ¶13, * * * (‘Upon appellant’s

1. We note that there are minor typographical and linguistic discrepancies between the assignments of error as set for in the index and body of Mr. Sands’ brief. We have used those from the index.

indictment by the grand jury, he was properly within the subject matter jurisdiction of the court of common pleas’); *State v. Christian*, 7th Dist. No. 02CA170, 2005–Ohio–2381, ¶14 (defendant was not tried upon initial charging document where indictment was thereafter filed).”

{¶15} We conclude, along with the Fourth, Fifth, and Seventh Districts that error, if any, in failing to file a criminal complaint is rendered harmless when an indictment is filed.

{¶16} The assignments of error lack merit.

{¶17} The judgment of the Lake County Court of Common Pleas is affirmed.

{¶18} All pending motions are hereby overruled.

THOMAS R. WRIGHT, P.J., concurs,

DIANE V. GRENDALL, J., concurs in judgment only.

[Cite as *State v. Sands*, 2018-Ohio-2457.]