[Cite as *State v. Turner*, 2009-Ohio-6278.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

GENE E. TURNER, JR.

Defendant-Appellant

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 09 CA 16

O P I N I O N

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 07CR120181

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 25, 2009

APPEARANCES:

For Plaintiff-Appellee

JOHN C. THATCHER
PROSECUTING ATTORNEY
CHARLES T. MCCONVILLE
ASSISTANT PROSECUTOR
117 East High Street, Suite 234
Mount Vernon, Ohio 43050

For Defendant-Appellant

BRUCE J. MALEK
PUBLIC DEFENDER
MARK A. ZANGHI
ASSISTANT PUBLIC DEFENDER
One Public Square
Mount Vernon, Ohio 43050

Wise, J.

{¶1} Appellant Gene E. Turner, Jr., appeals from his conviction, in the Knox County Court of Common Pleas, on one count of felony non-support of his son. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} Anita F. Stewart is the biological mother of M. A. S., a minor born in 1996. On May 25, 2006, Anita, with the assistance of the Knox County Department of Job and Family Services, filed an action in the Knox County Juvenile Court seeking to establish paternity and support regarding M. A. S. Appellant herein was named as the defendant in that case.

{¶3} The paternity/support complaint came before the juvenile court on July 13, 2006. Appellant failed to appear at that time. On August 11, 2006, the juvenile court magistrate issued a decision finding that appellant had been properly served by certified mail and designating appellant as the father of M. A. S. The magistrate also recommended child support to be paid by appellant in the amount of $568.66 per month. Via an amended decision filed on August 24, 2006, the amount of child support was set at $458.54. The magistrate's decisions were approved and adopted by the juvenile court.

{¶4} On February 7, 2007, appellant, with the assistance of counsel, filed a motion to set aside the above paternity/support orders, alleging that he had not been properly served with the summons and complaint. A status conference was held in juvenile court on July 19, 2007. Appellant did not appear, but his attorney was present on his behalf. At that time, the court ordered genetic paternity testing, with the proviso

that if appellant were scientifically shown to be the father of M. A. S., the prior orders would be confirmed. The motion to set aside was further reset for October 16, 2007.

{¶5} On September 27, 2007, appellant's counsel in the juvenile case filed a motion to withdraw from the case. Said motion to withdraw was granted on October 3, 2007.

{¶6} The issue of the motion to set aside thus came on for a hearing on October 16, 2007. Appellant failed to appear, and no attorney appeared in court to represent him. On October 31, 2007, the juvenile court dismissed with prejudice appellant's motion to vacate the paternity and support orders.

{¶7} On December 4, 2007, the Knox County Grand Jury indicted appellant on one count of felony non-support of a child, under R.C. 2919.21(A), a felony of the fifth degree. The matter proceeded to a jury trial in the Knox County Court of Common Pleas on March 3, 2009. The jury heard, inter alia, prosecution testimony from a CSEA investigator concerning her verification of appellant's address, specifically, 7263 Simmons Church Road, Mount Liberty, Ohio. The jury also heard defense testimony on the issue of the validity of that address from appellant himself and appellant's niece. The jury ultimately returned a verdict of guilty. The trial court thereupon sentenced appellant to eleven months in prison and ordered restitution of $12,735.81.

{¶8} Appellant filed a notice of appeal on April 3, 2009, and herein raises the following sole Assignment of Error:

{¶9} "I. THE DEFENDANT-APPELLANT WAS NEVER PROPERLY SERVED WITH THE SUMMONS AND COMPLAINT IN THE PATERNITY/SUPPORT ACTION SO THEREFORE THE INDICTMENT FOR FAILURE TO PROVIDE ADEQUATE

SUPPORT FOR HIS CHILD IN VIOLATION OF R.C. 2919.21(A) IS VOID *AB INITIO* AND HIS SUBSEQUENT CONVICTION FOR THAT OFFENSE IS UNCONSTITUTIONAL."

I.

{¶10} In his sole Assignment of Error, appellant contends his conviction is unconstitutional on the basis of an allegedly void indictment. We disagree.

{¶11} Section 10, Article I, of the Ohio Constitution provides that "no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury." Crim.R. 7(B) provides in pertinent part that an indictment must include a statement that "the defendant has committed a public offense specified in the indictment. * * *."

{¶12} Appellant herein was indicted under R.C. 2919.21(A), which reads in pertinent part:

{¶13} "No person shall abandon, or fail to provide adequate support to:

{¶14} " ***

{¶15} "(2) The person's child who is under age eighteen ***."

{¶16} Pursuant to R.C. 2919.21(G)(1), " *** [i]f the offender has failed to provide support under division (A)(2) or (B) of this section for a total accumulated period of twenty-six weeks out of one hundred four consecutive weeks, whether or not the twenty-six weeks were consecutive, then a violation of division (A)(2) or (B) of this section is a felony of the fifth degree. ***."

{¶17} We emphasize that appellant herein challenges the validity of the felony non-support indictment on the basis that he was allegedly never properly served with

the original summons and complaint in the 2006 juvenile court action for paternity and support. Appellant is thus arguing that there was never a binding underlying order for child support. However, appellant had once presented the "lack of service" argument to the juvenile court via a motion to vacate, but failed to appear at the October 16, 2007 hearing in that court to pursue it, subsequent to the withdrawal of his attorney. The juvenile court thus dismissed his motion to vacate and thereby upheld the paternity and support order.

{¶18} "Generally, the requirements of an indictment may be met by reciting the language of the criminal statute." *State v. Childs* (2000), 88 Ohio St.3d 194, 199, citing *State v. Murphy* (1992), 65 Ohio St.3d 554, 583. The indictment in the case sub judice alleges that appellant failed to provide "adequate support" for his son, under the language of R.C. 2919.21(A)(2). The indictment is not invalid on its face; moreover, the proper forum for challenging service of the original support complaint, which is not mentioned in the indictment, was the juvenile court. Accordingly, we find no merit in the specific assigned error that the alleged lack of service in the juvenile case rendered the felony non-support indictment herein void ab initio under the circumstances of this case.

{¶19} Appellant's sole Assignment of Error is therefore overruled.

{¶20} For the reasons stated in the foregoing opinion, the judgment of the Knox County Court of Common Pleas is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE

/S/ SHEILA G. FARMER

/S/ PATRICIA A. DELANEY

JUDGES

JWW/d 1102

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
GENE E. TURNER, JR.	:	
Defendant-Appellant	:	Case No. 09 CA 16

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Knox County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE

/S/ SHEILA G. FARMER

/S/ PATRICIA A. DELANEY

JUDGES