

Technicality upsets mother

Sallie, the mother of a 4-year-old girl who was allegedly raped, speaks at a press conference yesterday after a federal judge dismissed the case against the suspect.

LEW STAMP/Beacon Journal

• 'There's no justice in this case,' 4-year-old's mom says after man goes free despite confession in sex case

BY ROBERT HOILES

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The mother of a 4-year-old girl who was allegedly raped says her family feels victimized by a criminal justice system she had hoped was there to protect them after the suspect was allowed to go free because of an apparent judicial miscue.

"The criminals are protected more than the victims are," the girl's mother told reporters yester-

day at a press conference to respond to a federal judge's order dismissing all charges against Donald Ray Harpster.

"There's no justice in this case," said Sallie, who asked that her last name not be used in order to protect the identity of her daughter, who was 3 years old at the time she allegedly was molested.

U.S. District Judge Sam Bell earlier this week dismissed a felony

sexual penetration charge against Harpster, 24 — despite his admission to police that he had digitally penetrated the girl.

Bell indicated in his ruling that he had little choice under the law, saying that Summit County Common Pleas Judge Beth Whitmore erred in granting prosecutors a mistrial during Harpster's trial last month while their last witness was on the stand.

Bell said that there was "very little reason" for Whitmore to declare the mistrial, that "there is no indication in this case" that such a

remedy was necessary and that the decision amounted to trying to force Harpster to stand trial twice for the same offense, which is prohibited by the U.S. Constitution.

Whitmore had granted the mistrial after Harpster's attorney, Kirk Migdal, violated her order barring all references before the jury to the life-in-prison sentence facing Harpster — an order that Bell ruled was itself unconstitutional.

Whitmore declined yesterday to discuss Bell's ruling, saying she is

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TRIAL

• Mother of 4-year-old says justice was not done

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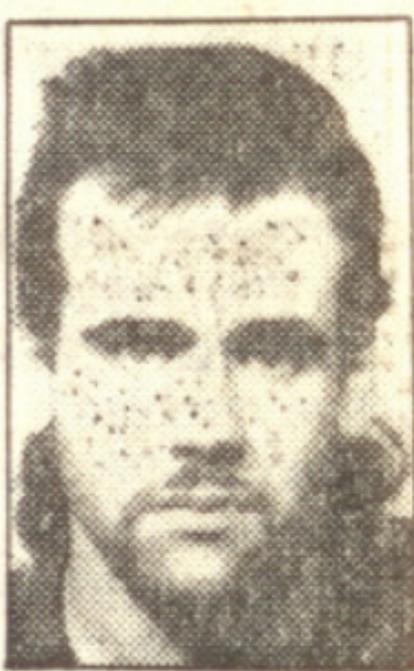
prohibited from commenting on pending cases.

"I have a great deal of respect for Judge Bell, as I'm sure he does for me," Whitmore said. "We each have a job to do, and we won't always agree."

The effect of Bell's decision is that Harpster, who has been free on bond since December, is officially a free man.

"Mr. Harpster can't be tried again," Migdal said. "He is free."

Harpster could not be reached for comment at his



Harpster

parents' home in Indianapolis. A woman who identified herself as his sister said he was not available.

Meanwhile, Summit County Prosecutor Maureen O'Connor, who attended the press conference called by the girl's mother, said yesterday that she will ask Bell to reconsider the matter. "We're asking the judge for the chance to present additional legal arguments and case law," O'Connor said.

Harpster, at one time the fiance of the girl's mother, was arrested Oct. 25 and was accused of having molested the little girl on June 1, 1995.

"I never suspected the person she called Daddy was molesting her," Sallie said yesterday. But after the girl made disclosures to family members, Sallie said she confronted Harpster and saw what she described as guilt in his eyes.

Detectives began their investigation after Sallie filed an official complaint with police.

In addition to confessing, Harpster flunked lie detector tests in which he was asked about the incident, investigators said.

But attorney Migdal said yesterday that Harpster confessed "not because he did it, but because he was trying to avoid a harsh punishment."

He said a detective had told Harpster that he might receive a lighter sentence involving counseling and probation if he confessed and that he would be sentenced to life in prison if he was convicted. "I wanted the jury (in Harpster's first trial last month) to hear the circumstances surrounding his state-