[Cite as *Callahan v. May*, 2019-Ohio-4428.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ADELBERT CALLAHAN	:	JUDGES:
	:	
Petitioner	:	Hon., John W. Wise, PJ.
	:	Hon., Patricia A. Delaney, J.
	:	Hon., Craig R. Baldwin., J.
-vs-	:	
	:	
HAROLD MAY, WARDEN	:	Case No. 2019 CA 0071
	:	
	:	
Respondent	:	O P I N I O N

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: October 23, 2019

APPEARANCES:

For Petitioner:

Adelbert Callahan #343-590
Richland Correctional Institution
P.O. Box 8107
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For Respondent:

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Ohio Attorney General
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Delaney,J.

{¶1} On July 30, 2019, Adelbert Callahan filed a petition for writ of habeas corpus on the basis that the Mahoning County Common Pleas Court lacked subject matter jurisdiction over him because of an improper bindover proceeding. Mr. Callahan challenges his bindover on the basis that the Mahoning County Juvenile Court failed to comply with the notice requirements of R.C. 2152.12(G). He asserts the juvenile court did not provide the required notice to his legal guardian/custodian which, at the time, was his biological father. Mr. Callahan further asserts that the alleged signature of his grandmother, Fannie Hasley, was forged on the waiver submitted to the juvenile court. Finally, Mr. Callahan maintains he also did not receive the required statutory notice.

{¶2} The Ohio Attorney General moved to dismiss Mr. Callahan's writ under Civ.R. 12(B)(6). The Court finds the motion well-taken. The purpose of a Civ.R. 12(B)(6) motion is to test the sufficiency of the complaint. *State ex rel. Boggs v. Springfield Loc. School Dist. Bd. of Edn.*, 72 Ohio St.3d 94, 95, 647 N.E.2d 788 (1995). In order for a cause to be dismissed for failure to state a claim, it must appear beyond doubt that, even assuming all factual allegations in the complaint are true, the nonmoving party can prove no set of facts that would entitle that party to the relief requested. *Keith v. Bobby*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶10. If a petition does not satisfy the requirements for a properly filed petition for writ of habeas corpus or does not present a facially viable claim, it may be dismissed on motion by the respondent or sua sponte by the Court. *Flora v. State*, 7th Dist. Belmont No. 04 BE 51, 2005-Ohio-2383, ¶5.

{¶3} In *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, the Ohio Supreme Court addressed the habeas

corpus principles relevant to a challenge to an improper bindover. In doing so, the Court stated: " 'Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law.' " *Id*. at ¶6. Absent a patent and unambiguous lack of jurisdiction, a party challenging a court's jurisdiction has an adequate remedy at law by appeal. *See State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 2005-Ohio-5124, 835 N.E.2d 1232, ¶19. This principle has been applied to habeas corpus cases alleging a claim of an improper bindover. *Agee v. Russell*, 92 Ohio St.3d 540, 544, 751 N.E.2d 1043 (2001).

{¶4} Here, Mr. Callahan was charged with three counts of aggravated murder, two counts of felonious assault, and one count of aggravated robbery. On May 10, 1996, the Mahoning County Juvenile Court conducted a hearing on the pending charges. The then-existing notice requirements under R.C. 2151.26(D) stated: "The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (B) or (C) of this section to the child's parents, guardian, or other custodian, and to the child's counsel at least three days prior to the hearing."

{¶5} Mr. Callahan maintains neither his parent(s) nor any other appropriate guardian was served with notice prior to the mandatory bindover hearing. However, this claim is refuted by the fact that the May 10, 1996 bindover Judgment Entry specifically states: "notice requirements have been met and that all necessary parties were present in Court." The juvenile court further found that Mr. Callahan was "represented by counsel and after conversing with counsel waive[d] the right to a probable cause or evidentiary hearing and stipulate[d] to a finding of probable cause to each of the six counts as alleged in the complaint." The juvenile court thereafter transferred Mr. Callahan's case to the

Mahoning County Common Pleas Court. The Judgment Entry also indicates Mr. Callahan's grandmother and guardian were present during these proceedings, in addition to his counsel.

{¶6} In support of the writ, Mr. Callahan cites *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 757 N.E.2d 1153 (2001). In *Johnson*, the Ohio Supreme Court found a viable habeas corpus claim to exist where defendant alleged she was erroneously bound over for trial as an adult, even though she did not personally possess a firearm. Here, Mr. Callahan is not challenging the facts upon which his criminal charges and bindover were based. Instead, Mr. Callahan's writ is based on an alleged non-compliance with the bindover statute (*i.e.* notice requirement).

{¶7} The Ohio Supreme Court has previously determined habeas corpus is not available under these circumstances. For example, in *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 667 N.E.2d 1194 (1996), the Court refused to grant extraordinary relief under a writ of habeas corpus where the juvenile bindover entry "directly controverted" the petitioner's claim that his bindover was improper. *Id*. at 382. The Court referenced the well-established maxim that "[a] court of record speaks only through its journal entries [ ]" and the Court found that "[t]he juvenile court entry establishes full compliance with the bindover procedure required by the applicable version of R.C. 2151.26." *Id*.

{¶8} Likewise, in *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787, 894 N.E.2d 692, the Supreme Court held habeas corpus relief is not available to challenge a claimed failure to conduct the required mental and physical examinations where the state represented that the exams were conducted, the juvenile failed to object, and the juvenile court's bindover entries reflected that the proper procedures were followed. *Id*. at

¶16. Thus, the Court concluded petitioner "had an adequate remedy in the ordinary course of law by appeal to raise his claims because the sentencing court did not patently and unambiguously lack jurisdiction." (Citations omitted.) *Id*.

{¶9} Finally, this Court previously addressed a similar argument in *Smith v. Marquis*, 5th Dist. Richland No. 17 CA 37, 2018-Ohio-300, where petitioner claimed he was entitled to the issuance of a writ of habeas corpus because his father was not properly notified of the bindover hearing. *Id*. at ¶7. This Court found the judgment entries indicated otherwise and that petitioner's father did receive proper notice. *Id*. at ¶8. On this basis, we denied petitioner's writ. *Id*. at ¶11.

{¶10} Here the bindover Judgment Entry indicates all proper statutory notifications occurred, including notice and the presence of his grandmother and guardian. Therefore, Mr. Callahan is not entitled to the extraordinary writ of habeas corpus. Further, Mr. Callahan had an adequate remedy at law by way of a direct appeal.

{¶11} Finally, it should be noted that in 2013, Mr. Callahan filed an untimely post-conviction petition in which he challenged his bindover on the basis that he did not receive a physical or mental examination. *See State v. Callahan*, 7th Dist. Mahoning No. 12 MA 173, 2013-Ohio-5864. The court of appeals found Mr. Callahan's petition untimely, and further pointed out that his claims were barred by res judicata because his challenge should have been raised in the common pleas court or his direct appeal. *Id*. at ¶10. Under this same analysis, we find the doctrine of res judicata applies here. Mr. Callahan had an adequate remedy at law to challenge his bindover, which he challenged in 2013. "Where a plain and adequate remedy at law has been unsuccessfully invoked, extraordinary relief

is not available to relitigate the same issue." (Citation omitted.) *Childers v. Wingard*, 83 Ohio St.3d 427, 428, 700 N.E.2d 588 (1998).

{¶12} For the reasons set forth above, we grant the attorney general's Motion to Dismiss under Civ.R. 12(B)(6).

{¶13} The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. *See* Civ.R. 58(B).

MOTION GRANTED.

WRIT DISMISSED.

COSTS TO PETITIONER.

IT IS SO ORDERED.

By, Wise, P.J.

Delaney, J. and

Baldwin, J. concur.