

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Rico Isaih Hairston

Court of Appeals No. L-19-1131

Relator

v.

Warden Sean Bowerman, et al.

**DECISION AND JUDGMENT**

Respondent

Decided: September 27, 2019

\* \* \* \* \*

Rico Isaih Hairston, pro se.

Dave Yost, Ohio Attorney General, and Stephanie L. Watson,  
Principal Assistant Attorney General, for respondent.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} This matter is before the court upon the June 26, 2019 petition for a writ of habeas corpus filed by petitioner, Rico Isaih Hairston, against respondent, Sean Bowerman, warden of the Toledo Correctional Institution. Petitioner is serving a prison sentence of 30 years to life, following his convictions for attempted rape, gross sexual

imposition and two counts of rape. *See State v. R.I.H.*, 10th Dist. Franklin No. 18AP-93, 2019-Ohio-2189.

{¶ 2} On July 24, 2019, respondent, Warden Sean Bowerman, filed a motion to dismiss, asserting petitioner failed to state a claim upon which relief could be granted under Civ.R. 12(B)(6). On August 6, 2019, petitioner filed a motion to strike the motion to dismiss.

{¶ 3} For the reasons that follow, we deny petitioner's motion to strike and dismiss the petition for a writ of habeas corpus.

{¶ 4} We will first address petitioner's motion to strike the motion to dismiss. Petitioner argues he had not received respondent's motion to dismiss, so respondent's motion should be dismissed for being in violation of Civ.R. 5.

{¶ 5} Civ.R. 5(B)(2)(c) states a motion may be served on a party by "mailing it to the person's last known address by United States mail, in which event service is complete upon mailing." Further, "[w]here a party follows the Ohio Civil Rules of Procedure, courts presume proper service unless the presumption is rebutted with sufficient evidence." *Paasewe v. Wendy Thomas 5 Ltd.*, 10th Dist. Franklin No. 09AP-510, 2009-Ohio-6852, ¶ 22.

{¶ 6} Here, the record reveals respondent mailed a copy of the motion to dismiss, via U.S. mail, to petitioner at his respective address, the Toledo Correctional Institution, on July 22, 2019. Petitioner failed to produce any evidence which shows he did not

receive a copy of the motion. Consequently, we presume petitioner was properly served, and we deny petitioner's motion to strike.

{¶ 7} Turning to the petition, a writ of habeas corpus is an extraordinary remedy which is only available “where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law.” *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 616, 757 N.E.2d 1153 (2001), quoting *Pegan v. Crawmer*, 76 Ohio St.3d 97, 99, 666 N.E.2d 1091 (1996). *See also* R.C. 2725.01. A writ of habeas corpus is not intended to be a substitute for a direct appeal, postconviction relief or other legal remedies. *Daniel v. State*, 98 Ohio St.3d 467, 2003-Ohio-1916, 786 N.E.2d 891, ¶ 8. Rather, a writ of habeas corpus must either challenge the jurisdiction of the sentencing court, or raise nonjurisdictional errors for which there is no adequate remedy at law. *See* R.C. 2725.05 and *Pence v. Bunting*, 143 Ohio St.3d 532, 2015-Ohio-2026, 40 N.E.3d 1058, ¶ 9, respectively.

{¶ 8} Here, in his petition for a writ of habeas corpus, petitioner argues the trial court lacked subject-matter jurisdiction because petitioner was not present for his arraignment, and he did not consent to the arraignment without his presence.

{¶ 9} In the motion to dismiss, respondent contends petitioner's claim is not cognizable in a habeas proceeding, as it should have been raised in his direct appeal. Respondent further asserts petitioner is not entitled to release because his aggregate maximum prison sentence of 30 years to life will not expire. Respondent also argues petitioner failed to adhere to all of the mandatory filing requirements, and the petition

must be dismissed. In addition, respondent requests that petitioner be declared a vexatious litigator.<sup>1</sup>

{¶ 10} Upon review, petitioner does not state the allegations in his petition in numbered paragraphs, as required by Civ.R. 10(B). However, the failure to comply with this requirement does not permit dismissal of the petition. *See Wright v. Ghee*, 74 Ohio St.3d 465, 466, 659 N.E.2d 1261 (1996).

{¶ 11} Next, petitioner filed “Commitment Paper’s [sic] in Compliance with R.C. 2725.04(D)[,] Attached Exhibit’s [sic].” The exhibits include two unsigned and unverified printouts from websites, one apparently from DOTS-Portal and the other from Departmental Offender Tracking System Portal. Neither of these documents constitutes proper commitment papers. *See Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 10. *See also Hairston v. Seidner*, 88 Ohio St.3d 57, 58, 723 N.E.2d 575 (2000).

{¶ 12} Further, we find petitioner did not comply with R.C. 2969.25(A), which requires that, at the time of petitioning for habeas corpus relief, an inmate “file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.”

Petitioner filed an affidavit which included 22 actions, but did not include all of his prior

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<sup>1</sup> We do not have the authority to grant such a request. *See* R.C. 2323.52(B), which provides the remedy for a party who has suffered from persistent vexatious conduct at the hands of a litigant.

actions, as he omitted *Hairston v. Bowerman*, Franklin C. P. No. 19AP-328 (May 20, 2019).

{¶ 13} Last, we find petitioner had an adequate remedy in the ordinary course of the law and should have raised this issue in his direct appeal. After petitioner was tried and convicted, he could have argued in his subsequent appeal that he was not present at his arraignment, and therefore, the trial court lacked jurisdiction.

{¶ 14} Accordingly, based upon the foregoing grounds, petitioner is not entitled to the requested writ of habeas corpus. We dismiss petitioner's habeas corpus action at his costs.

{¶ 15} It is so ordered.

**{¶ 16} To the Clerk: Manner of Service.**

{¶ 17} Serve upon all parties in a manner prescribed by Civ.R. 5(B) notice of the judgment and its date of entry upon the journal.

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Christine E. Mayle, P.J.  
CONCUR.

JUDGE

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