

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE EX REL KEITH JACKSON,

Relator,

v.

CHRISTOPHER LAROSE, WARDEN et al.,

Respondents.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0129

Writ of Habeas Corpus

BEFORE:

Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Dismissed.

Keith Jackson, Inmate No. A382-839, Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, Ohio 44505 *Atty. Barry W. Wilford*, Kura, Wilford & Schregardus Co., L.P.A., 492 City Park Avenue, Columbus, Ohio 43215 for Relator and

Atty. David Yost, Ohio Attorney General, 30 E. Broad Street, 14th floor, Columbus, Ohio 43215, *Atty. Jerri L. Forsnaught*, Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16th floor, Columbus, Ohio 43215; *Christopher Larose*, Warden,

Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, Ohio 44505; *Stuart Hudson*, Interim Director, Ohio Department of Rehabilitation & Correction, 660 West Broad Street, Columbus, Ohio 43220 for Respondents.

Dated: December 30, 2019

PER CURIAM.

{¶1} This matter comes before the Court upon consideration and determination of Relator’s motion to dismiss, pursuant to Civ.R. 41(A)(2), his successive petition for a writ of habeas corpus. Relator, through counsel, filed his first petition against Respondents Christopher LaRose, Warden of the Northeast Ohio Correctional Center, and Gary Mohr, Director of the Ohio Department of Rehabilitation and Correction (ODRC), with the Court on September 10, 2018. *State ex rel. Jackson v. LaRose*, 7th Dist. Mahoning No. 18 MA 0099. Relator ultimately filed a notice of voluntary dismissal pursuant to Civ.R. 41(A)(1)(a). The Court acknowledged and accepted the notice and dismissed the case without prejudice. *State ex rel. Jackson v. LaRose*, 7th Dist. Mahoning No. 18 MA 0099 (Jan. 9, 2019).

{¶2} Meanwhile, Relator refiled his petition with the Court, which is the subject of this original action. *State ex rel. Jackson v. LaRose*, 7th Dist. Mahoning No. 18 MA 0129. He has named Warden LaRose as Respondent, but has substituted Stuart Hudson, Interim Director of the ODRC for former Director Mohr. This case highlights Petitioner’s somewhat complicated, lengthy, and increasingly violent criminal history spanning over 17 years; with all of his convictions and sentences emanating from the Franklin County Common Pleas Court. Because Petitioner’s criminal history is so lengthy and he is seeking release from prison, the claim alleged in his petition necessarily implicates Ohio’s statute governing multiple sentences, R.C. 2929.41, and the historical revisions that have been made to that statute over the years by the General Assembly.

{¶3} In both petitions, Relator focuses on one of his particular cases alleging he has served the maximum term of 25 years imprisonment imposed in 1990 in Franklin County Common Pleas Court Case No. 89CR-12-5841. The sentence is a pre-Senate Bill 2 indefinite sentence (5-25 years). Relator also has two other pre-Senate Bill 2

indefinite sentences (1-5 and 4-15 years) and one Senate Bill 2 sentence (18 years). With the exception of his first pre-Senate Bill 2 indefinite sentence (1-5 years), each of Petitioner's subsequent sentences were imposed for new offenses, each of which he committed while on parole. His petitions overlook the fact that his three pre-Senate Bill 2 indefinite sentences (1-5, 4-15, and 5-25 years) were mandated to be aggregated and served consecutively by operation of statute (because he was on parole each time he reoffended), under former R.C. 2929.41(B) in effect during the time of those convictions and sentences.

{¶4} Meanwhile, while this action was pending, Relator was administratively transferred to another correctional facility located in a county not within this Court's jurisdiction. R.C. 2725.02 grants to a court of appeals the ability to authorize writs of habeas corpus. However, R.C. 2725.03 sets forth a territorial jurisdictional limit:

If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in the custody of the officers of the institution, no court or judge other than the courts or judges of *the county in which the institution is located* has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge. Any writ issued by a court or judge of another county to an officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

(Emphasis added.)

{¶5} Therefore, even if Relator's petition had some substantive merit, this Court would lack jurisdiction to issue a writ because he is not an inmate of any of the state correctional institutions located within the eight counties over which this Court has jurisdiction. Relator was transferred to the Southern Ohio Correctional Facility which is located in Scioto County and falls within the jurisdiction of the Fourth District Court of Appeals where Relator states he intends on refiling the petition.

{¶6} Consequently, Relator is seeking to have his petition dismissed pursuant to Civ.R. 41(A)(2) which states:

By Order of Court. Except as provided in division (A)(1) of this rule, a claim shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon that defendant of the plaintiff's motion to dismiss, a claim shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under division (A)(2) of this rule is without prejudice.

{¶7} Relator contends “his action was properly commenced and in a court with jurisdiction wherein venue was proper, and Relator is *blameless* in causing the loss of jurisdiction.” (Emphasis added.) He implicitly acknowledges he wants to avoid the effect the filing of another notice of voluntary dismissal pursuant to Civ.R. 41(A)(1) would have upon his claim. More specifically, he wants to avoid application of what is commonly referred to as the “double-dismissal” rule, which is contained in the last sentence of Civ.R. 41(A)(1). The sentence setting forth the double-dismissal rule provides that a dismissal under Civ.R. 41(A) is generally without prejudice, but then states an exception to that rule—“a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.”

{¶8} Relator's statement that he is “blameless” in this Court's losing jurisdiction over his case is disingenuous at best. Respondent has submitted evidence that Relator had to be transferred to another facility because his security level had increased due to repeated instances of his sexual-predator related behavior towards correctional officers. Respondent suggests that a transfer of venue to the Fourth District is the proper mechanism to resolve the jurisdictional issue.

{¶9} Under the facts and circumstances of this case, we find that Civ.R. 41(B)(4)(a) is more on point in this instance—a dismissal for lack of jurisdiction over the person or the subject matter shall operate as a failure otherwise than on the merits. Accordingly, Relator's petition is dismissed without prejudice to refiling pursuant to Civ.R. 41(B)(4)(a).

{¶10} Costs taxed against Relator. Final order. Clerk to serve copies of this decision and judgment entry pursuant to the civil rules.

JUDGE CAROL ANN ROBB

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE