

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

AGATHA MARTIN WILLIAMS :
Petitioner-appellant, :
v. : No. 107627
WARDEN BRADENSHAWN HARRIS, :
Respondent-appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: March 21, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-898531

Appearances:

Agatha Martin William, pro se, *for appellant*.

Dave Yost, Ohio Attorney General, and Stephanie L.
Watson, Assistant Attorney General, *for appellee*.

LARRY A. JONES, SR., J.:

{¶ 1} Petitioner-appellant Agatha Martin Williams (“Williams”) appeals from the trial court’s August 14, 2018 judgment granting the unopposed motion of respondent-appellee Warden Bradenshawn Harris (“Harris”) to dismiss Williams’s petition for habeas corpus. For the reasons that follow, we affirm.

{¶ 2} The record before us demonstrates that Williams is incarcerated in the Northeast Reintegration Center located in Cleveland, Cuyahoga County, Ohio; at the time relevant to this appeal, Harris was the warden of the center. Williams's incarceration is the result of a 2012 conviction — that was rendered by way of a plea in the Stark County Court of Common Pleas — to four counts of grand theft, one count of theft, and one count of forgery. Williams had been a licensed Ohio attorney. Her crimes involved theft from her clients, which she maintained were to fuel a gambling addiction she had.

{¶ 3} The trial court sentenced Williams to five years of community control sanctions, one year of which was to be under intensive supervision. The trial court also imposed a fine and restitution order against Williams. Williams was informed at the sentencing hearing that a violation of her community control sanctions would result in a maximum, consecutive prison term being imposed on each offense for a total prison term of 102 months.

{¶ 4} After her conviction, the Ohio Supreme Court Board of Commissioners on Grievances and Discipline conducted hearings to determine what disciplinary action it would take against Williams. Williams testified, and when asked when she had last left the state of Ohio, she responded that she had left approximately one week before the hearing to go to Pittsburgh, Pennsylvania to gamble. Williams's conduct in leaving Ohio to gamble violated the terms and conditions of her community control sanctions and, accordingly, the state filed a motion to revoke the sanctions. The trial court granted the state's motion, revoked

Williams's community control sanctions, and sentenced her to 102 months in prison that included consecutive terms. The trial court again imposed a fine and restitution order against Williams.

{¶ 5} Williams appealed. *State v. Williams*, 5th Dist. Stark No. 2013CA00189, 2013-Ohio-3448. In one of her assignments of error, she contended that the trial court did not make the required findings for the imposition of consecutive sentences; the Fifth Appellate District agreed. *Id.* at ¶ 10. The sentence was reversed and the matter was remanded to the trial court for the limited purpose of resentencing. *Id.* at ¶ 33, 39. The other assignment of error, in which Williams contended that the trial court should not have considered testimony from her disciplinary hearing in deciding the state's motion to revoke her community control sanctions, was overruled. *Id.* at ¶ 34-38.

{¶ 6} Williams attempted to appeal to the Ohio Supreme Court, but the court declined to accept the appeal. *State v. Williams*, 137 Ohio St.3d 1442, 2013-Ohio-5678, 999 N.E.2d 696. Further, the United States Supreme Court denied a petition of writ of certiorari. *State v. Williams*, 527 U.S. 1119, 134 S.Ct. 2294, 189 L.Ed.2d 180 (2014). Williams also filed a petition for habeas corpus in the United States District Court for the Southern District of Ohio, which the court transferred to the United States District Court for the Northern District of Ohio. The Northern District dismissed the petition. *Williams v. Kelly*, N.D. Ohio No. 5:14-CV-1304, 2015 U.S. Dist. LEXIS 177031 (June 19, 2015).

{¶ 7} In 2014, Williams was resentenced to the same 102 months sentence, with credit for time served. The court also reimposed the fine and restitution order on her. Williams appealed again, contending that the trial court (1) erred in sentencing her to consecutive terms, (2) lacked the authority to resentence her on one of the counts, and (3) abused its discretion in ordering her to pay a fine. *State v. Martin-Williams*, 5th Dist. Stark No. 2014CA00086, 2015-Ohio-780. The Fifth Appellate District overruled all of Williams's assignments of error and affirmed the trial court's judgment. *Id.* at ¶ 32, 37, 44-45. The Ohio Supreme Court declined to accept the case. *State v. Williams*, 143 Ohio St.3d 1406, 2015-Ohio-2747, 34 N.E.3d 133.

{¶ 8} Williams attempted to get the Fifth Appellate District to reconsider and review the case en banc; both requests were denied, as well as Williams's attempt to appeal to the Ohio Supreme Court. *State v. Williams*, 150 Ohio St.3d 1432, 2017-Ohio-7567, 81 N.E.3d 1272. Further, Williams unsuccessfully sought to have the Fifth Appellate District certify a conflict to the Ohio Supreme Court. Again, Williams appealed that denial, but the Ohio Supreme Court declined jurisdiction. *State v. Williams*, 151 Ohio St.3d 1427, 2017-Ohio-8371, 84 N.E.3d 1064.

{¶ 9} Further, in March 2017, Williams filed a writ of procedendo in the Ohio Supreme Court, contending that the trial court (1) violated the one document rule, (2) imposed inconsistent sentences, (3) erred in imposing consecutive sentences, (4) failed to merge allied offenses, (5) should have aggregated offenses, (6) should have held a hearing on restitution, (7) unlawfully imposed court costs,

dual penalties of community control and prison, and a fine, and (8) should not have sentenced her for a violation of her community control sanctions. Williams also contended that she received ineffective assistance of counsel. The Supreme Court dismissed Williams's writ. *State ex rel. Williams v. Fifth Dist. Court of Appeals*, 149 Ohio St.3d 1429, 2017-Ohio-4396, 76 N.E.3d 1206.

{¶ 10} In March 2018, Williams filed a motion to vacate and void sentence, i.e., a petition for postconviction relief; the motion was denied in April 2018, and that denial was affirmed on appeal. *State v. Williams*, 5th Dist. Stark No. 2018CA00060, 2018-Ohio-3458.

{¶ 11} In May 2018, Williams filed the instant petition for habeas corpus in the Cuyahoga County Common Pleas Court, raising the same issues she raised in her petition for postconviction relief. On August 3, 2018, the warden filed a Civ.R. 12(B) motion to dismiss. The motion was unopposed and was granted on August 14, 2018. On August 17, 2018, Williams filed a motion to dismiss the petition; the motion was denied as moot. Williams then filed the instant appeal from the trial court's judgment granting the warden's motion to dismiss. She assigns the following three assignments of error for our review:

- I. The trial court erred as a matter of law in dismissing the petition for habeas corpus because the petition stated a good cause of action in habeas corpus, alleging, as it did, that the court of common pleas lacked jurisdiction over appellant on October 4, 2012 when it revoked community control because the court's initial imposition of community control in March 2012 was contrary to law and void. When a court's judgment is void because it lacked jurisdiction, habeas is still an appropriate remedy despite the availability of appeal.

- II. The trial court erred by dismissing, pursuant to Civ.R. 12(B)(6), the petition for habeas corpus because the sentencing errors in appellant's case are cognizable in habeas, even if there is an adequate alternative remedy, as the trial court patently and unambiguously lacked jurisdiction.
- III. The trial court committed reversible error both by granting the Respondent's motion to dismiss the petition for habeas corpus without giving appellant an opportunity to respond and further erred by converting the motion to dismiss into a motion for summary judgment without providing notice and an opportunity to respond for appellant.

{¶ 12} We overrule all of Williams's contentions.

{¶ 13} In general, habeas corpus is not available where another adequate remedy exists.

Habeas corpus is an extraordinary remedy and as with every extraordinary remedy is not available as a means of relief where there is an adequate remedy in the ordinary course of the law. Habeas corpus may not be used as a substitute for appeal nor may it be resorted to where an adequate statutory remedy for review of the questions presented exists.

{¶ 14} *In re Piazza*, 7 Ohio St.2d 102, 103, 218 N.E.2d 459 (1996), citing *In re Burson*, 152 Ohio St. 375, 89 N.E.2d 651 (1949). Thus, it has been held that a habeas corpus claim will lie only when the prisoner can establish: (1) an unlawful restraint of his or her liberty; and (2) the absence of any alternative remedy at law. *State ex rel. Waites v. Gansheimer*, 11th Dist. Ashtabula No. 2006-A-0003, 2006-Ohio- 1702, ¶ 4.

{¶ 15} In her first assignment of error, Williams contends that the trial court erred by imposing a "blanket" sentence of five years of community control, instead of imposing separate terms of community control sanctions for each of her six

offenses. Thus, according to Williams, the trial court's original sentence of community control sanctions was void and its subsequent termination of the sanctions and imposition of a prison term was void.

{¶ 16} “Ohio’s Criminal Rules and statutes provide for the direct review of criminal judgments through appeal, and collateral attacks through postconviction petitions, habeas corpus, and motions to vacate.” *State v. Love*, 7th Dist. Mahoning No. 17 MA 0039, 2018-Ohio-1140, ¶ 17, quoting *Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 44. Thus, the “authority to vacate a void judgment is ‘an inherent power possessed by Ohio courts.’” *Id.* at ¶ 18, quoting *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph four of syllabus, and citing *Lingo* at ¶ 48.

{¶ 17} Here, however, Williams’s original sentence to community control sanctions was not void. “A void sentence is one that a court imposes despite lacking subject-matter jurisdiction or the authority to act.” *State v. Payne*, 14 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306 ¶ 27, citing *State v. Wilson*, 73 Ohio St.3d 40, 44, 652 N.E.2d 196 (1995). “Conversely, a voidable sentence is one that a court has jurisdiction to impose, but was imposed irregularly or erroneously.” *Payne* at *id.*, citing *State v. Filiaggi*, 86 Ohio St.3d 230, 240, 714 N.E.2d 867 (1999). Assuming for the sake of argument that the trial court erred in its original sentence to community control sanctions, that action would have been “irregular” or “erroneous” and thus, voidable; the trial court did not act without subject-matter jurisdiction or authority, however, and as such, the judgment was not void. Indeed,

the Fifth Appellate District recognized this in *Williams*, 5th Dist. Stark No. 2018CA00060, 2018-Ohio-3458:

Here, appellant was advised of the potential penalties for each felony conviction and signed a plea agreement. The trial court indicated that appellant was sentenced to a total of five years of community control. The duration of the community control imposed upon appellant did not exceed the statutory maximum permitted by law, as R.C. 2929.15(A)(1) provides “the duration of the community control sanctions imposed upon an offender under this division shall not exceed five years.” Appellant was on notice that she would serve a specific amount of prison time on each count if she did not comply with the requirements of community control. The trial court specifically informed appellant that if the trial court found prison was the appropriate remedy for a community control violation, the trial court would sentence her to an 18-month prison term on each F-4 count and to a 12-month prison term on the F-5 count, run consecutively, for a total of 102 months.

* * *

* * * [E]ven if the trial court should have imposed five year community control sentences for all six offenses separately, appellant was properly serving a five year term of community control when she violated the terms and conditions of her probation; her entire sentence is not null and void; and any argument that she should have been re-sentenced on the remaining five offenses is res judicata.

Id. at ¶ 19, 24.

{¶ 18} Williams had an alternative remedy in which to litigate her “void sentence” claim; thus, habeas corpus was not the proper avenue for her claim. The first assignment of error is overruled.

{¶ 19} For her second assigned error, Williams contends that the trial court erred in granting the warden’s Civ.R. 12(B) motion to dismiss “because the sentencing errors in [her] case are cognizable in habeas, even if there is an adequate

alternative remedy, as the trial court patently and unambiguously lacked jurisdiction.” We disagree.

{¶ 20} When a petitioner has been convicted and sentenced by a court of competent jurisdiction, a direct appeal or petition for postconviction relief is the proper remedy, and habeas corpus will be denied unless extraordinary circumstances prevent the petitioner from an adequate legal remedy or postconviction relief. *In re Copley*, 29 Ohio St.2d 35, 278 N.E.2d 358 (1972), syllabus; *Luna v. Russell*, 70 Ohio St.3d 561, 639 N.E.2d 1168 (1994), citing *Stahl v. Shoemaker*, 50 Ohio St.2d 351, 364 N.E.2d 286 (1977). Thus, “when an issue has been raised on direct appeal or through postconviction proceedings, it ‘may not later be relitigated by way of habeas corpus.’” *Hudlin v. Alexander*, 63 Ohio St.3d 153, 155, 586 N.E.2d 86 (1992), quoting *Burch v. Morris*, 25 Ohio St.3d 18, 19, 494 N.E.2d 1137 (1986).

{¶ 21} In light of the above, the trial court properly granted the warden’s motion to dismiss Williams’s habeas petition. Williams pursued her claim through state postconviction proceedings. She was unsuccessful; the appellate court held that the trial court did not err by utilizing a “sentence package” when it imposed a lump sum of community control because “both at the sentencing hearing and in the sentencing entry, the trial court listed the offenses that defendant pled guilty to and was convicted of and detailed the conditions of her community control.” *Williams*, 5th Dist. Stark No. 2018CA00060, 2018-Ohio-3458, ¶ 23.

{¶ 22} Williams has already unsuccessfully litigated the same claim she raised in her habeas corpus petition in this case; her petition was therefore properly dismissed under the doctrine of res judicata. The second assignment of error is overruled.

{¶ 23} In her final assignment of error, Williams contends that the trial court erred in granting the warden's motion to dismiss without affording her an opportunity to respond and after converting it to a motion for summary judgment.

{¶ 24} The motion was not treated as a motion for summary judgment as Williams claims. The trial court's entry specifically states that the warden's "motion to dismiss is unopposed and granted." There was no Civ.R. 56 summary judgment analysis.

{¶ 25} Further, as previously outlined, the warden filed the motion to dismiss on August 3, 2018; the motion was unopposed and granted on August 14, 2018. Under Loc.R. 11.0(C) of the Cuyahoga County Common Pleas Court Local Rules, General Division, with the exception of a motion for summary judgment, a party who wishes to oppose a motion has seven days to do so. Williams failed to oppose the motion or request an extension of time to do so. Her contention that the trial court granted the motion without affording her an opportunity to respond is therefore without merit, especially given that on August 17, 2018, Williams filed a motion herself to dismiss her petition.

{¶ 26} On this record, there is no merit to the third assignment of error and it is overruled.

{¶ 27} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MARY EILEEN KILBANE, A.J., and
MARY J. BOYLE, J., CONCUR