

1 Borsick, Appellant, v. The State of Ohio et al., Appellees.

2 [Cite as Borsick v. State (1995), ____ Ohio St. 3d ____.]

3 Criminal procedure -- Habeas corpus does not lie for double-jeopardy claim
4 when appeal after conviction provides an adequate remedy.

5 (No. 95-275--Submitted June 21, 1995--Decided August 23, 1995.)

6 Appeal from the Court of Appeals for Erie County, No. E-94-73.

7 Appellant, David C. Borsick, was convicted of aggravated drug
8 trafficking and possession of a weapon under disability, each with firearm
9 and prior-offense-of-violence specifications, and sentenced, but the court of
10 appeals reversed his conviction and sentence for aggravated drug trafficking
11 and attendant firearm specification because of an insufficient indictment.

12 He was reindicted and jailed pending retrial, during which time he brought
13 this action in habeas corpus, alleging that to retry him would violate his
14 Fifth Amendment right not to be placed twice in jeopardy. The court of
15 appeals held that habeas does not lie for double jeopardy claims because
16 appeal after conviction is an adequate remedy, citing *Wenzel v. Enright*

17 (1993), 68 Ohio St. 3d 63, 623 N.E.2d 69, paragraph two of the syllabus.

18 This appeal followed.

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2 *David G. Borsick, pro se.*

3 *Kevin J. Baxter*, Erie County Prosecuting Attorney, and *Mary Ann*

4 *Barylski*, Assistant Prosecuting Attorney, for appellees.

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6 *Per Curiam.* We affirm the judgment of the court of appeals. We

7 have recognized that “in certain extraordinary circumstances when there is

8 an unlawful restraint of a person’s liberty, habeas corpus will lie

9 notwithstanding the fact that only nonjurisdictional issues are involved, but

10 only where there is no adequate legal remedy, *e.g.*, appeal or postconviction

11 relief.” *State ex. rel. Pirman v. Money* (1994), 69 Ohio St. 3d 591, 593, 635

12 N.E.2d 26, 29. Here, appellant’s remedy is appeal. “[T]he proper remedy

13 for seeking judicial review of the denial of a motion to dismiss on the

14 ground of double jeopardy is a direct appeal to the court of appeals at the

15 conclusion of the trial court proceedings.” *Wenzel v. Enright* (1993), 68

16 Ohio St. 3d 63, 623 N.E.2d 69, paragraph two of the syllabus. Therefore,

17 because there is an adequate remedy at law, habeas corpus does not lie for

1 appellant's double-jeopardy claim. The judgment of the court of appeals is
2 affirmed.

3 *Judgment affirmed.*

4 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER

5 AND COOK, JJ., CONCUR.

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