[Cite as *State ex rel. Wilson v. Karnes,* 2009-Ohio-5118.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Pearly L. Wilson,	:	
Plaintiff-Appellant,	:	No. 08AP-203 (C.P.C. No. 05CR05-3439)
v.	:	(REGULAR CALENDAR)
Jim Karnes, Sheriff,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 29, 2009

Pearly L. Wilson, pro se.

Ron O'Brien, Prosecuting Attorney, and *Paul Thies*, for appellee.

APPEAL from the Franklin County Common Pleas Court

CONNOR, J.

{¶1} Plaintiff-appellant, Pearly L. Wilson ("appellant"), proceeding pro se, appeals the judgment of the Franklin County Common Pleas Court, which denied his petition for habeas corpus relief. For the following reasons, we affirm.

{¶2} In 1976, appellant was indicted under a five-count indictment involving three separate incidents and was charged with two counts of rape, two counts of felonious assault, and one count of aggravated robbery. All three victims were students at the University of Cincinnati. Pursuant to appellant's motion, separate trials were granted. In the first trial, a jury found appellant guilty of one count of rape and one count of felonious

assault. Following the second trial, the jury found him guilty of an additional count of felonious assault. The court imposed sentences of seven to 25 years, five to 15 years, and five to 15 years, respectively, to be served consecutively. See *State v. Wilson* (1978), 57 Ohio App.2d 11.

{¶3} Appellant was paroled in April 1992. He then violated parole in 1993. Appellant's parole was subsequently revoked and he returned to prison in June 1993 to serve the remainder of the original sentence for his rape conviction. Appellant was again released from incarceration in 2000.

{¶4} Although Ohio has had a sex offender registration statute since 1963, appellant was not subject to registration and notification requirements at the time of his 1976 conviction. During the period of appellant's second term of incarceration, between 1993 and 2000, the General Assembly re-wrote R.C. Chapter 2950 as part of Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2601.[1] Some provisions of that legislation took effect on January 1, 1997, such as former R.C. 2950.09, which governed classification for persons convicted of sexual offenses, while other provisions took effect on July 1, 1997, such as former R.C. 2950.04, 2950.05, and 2950.06, which governed registration and address notification and verification requirements. See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291; see also Section 3 of H.B. No. 180, 146 Ohio Laws, Part II, 2668, and Section 5 of H.B. No. 180, 146 Ohio Laws, Part II, 2669. Additional

[1] R.C. Chapter 2950 has been amended multiple times since the H.B. No. 180 amendments were made in 1996. Many of the statutes at issue in this appeal have since been amended, revised, or repealed. R.C. Chapter 2950 now includes a new classification system, as well as new registration and notification requirements. Those new amendments, which were enacted pursuant to S.B. No. 10 and in response to the federal Adam Walsh Act, were not in effect at the time appellant filed his petitions with the trial court, as they became effective January 1, 2008. Therefore, we shall concentrate on the provisions that were applicable to appellant at the time of his 2005 arrest and conviction, as those are the applicable provisions upon which he focuses his appeal.

significant amendments were made pursuant to S.B. No. 5 and became effective July 31, 2003. See former R.C. Chapter 2950. As a result of this legislation, appellant was classified as a sexually oriented offender and was required, inter alia, to periodically register and verify his current address and to notify the sheriff of the county in which he was residing of any change of address.

{¶5} On May 27, 2005, appellant was indicted for one count of failure to provide notice of change of address. On July 19, 2005, appellant pled guilty to a stipulated lesser included offense and received a six-month sentence. Upon his release from prison, the parole board imposed a one-year period of post-release control, which has since expired.

{¶6} Following this conviction, appellant filed various consolidated postconviction motions, as well as the instant petition for a writ of habeas corpus. The trial court denied appellant's consolidated postconviction motions and his petition for habeas corpus relief. We affirmed the denial of appellant's requests for postconviction relief on February 5, 2009. See *State v. Wilson*, 10th Dist. No. 08AP-615, 2009-Ohio-470. We now turn to the remaining issue of the denial of appellant's petition for habeas corpus relief.

{¶7} In the instant appeal, appellant advances the following thirteen assignments of error for our review:

> 1: CIRCUMSTANCES EXIST THAT RENDER THE FRANKLIN COUNTY, OHIO COMMON PLEAS COURT'S PROCESS INEFFECTIVE TO PROTECT PETITIONER'S RIGHTS.
>
> 2: CLEARLY THERE IS AN ABSENCE OF AVAILABLE CORRECTIVE PROCESS IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO.
>
> 3: THE TRIAL COURT LACKED JURISDICTION OVER PETITIONER'S PERSON.

4: THE TRIAL COURT LACKED JURISDICTION OVER THE SUBJECT MATTER AND ALL PROCEEDINGS WERE/ARE VOID (AB INITIO).

5: THERE IS NO AVAILABLE, SWIFT, IMPERATIVE REMEDY FOR PETITIONER BEING THAT THERE IS NO APPEAL FROM THE DEFENDANT-APPELLEE'S TO CONTROL PLAINTIFF-APPELLANT'S FREEDOM OF BODILY MOVEMENT UNDER COLOR OF LAW AND/OR AUTHORITY, THOUGH HE HAD/HAS NO SUCH.

6: FRAUD HAS BEEN COMMITTED BY THE DEFENDANT-APPELLEE IN HIS EFFORTS TO DEFY THE OHIO SUPREME COURT'S DECISIONS; NAMELY STATE v. HANRAHAN, (Case No. 97APA-03-394), Tenth District, Franklin County, Ohio); STATE v. BELLMAN (1999), 86 Ohio St.3d 208, 714 N.E.2d 381; STATE v. TAYLOR (2003), 100 Ohio St.3d 172, 797 N.E.2d 504; STATE v. CHAMPION (2005), 106 Ohio St.3d 120, 832 N.E.2d 718.

7: IT IS I[N]CUMBENT UPON THE STATE TO DEMONSTRATE REAL OR CONSTRUCTIVE AUTHORITY TO MAKE THE ARREST, AND CAUSE IMPRISONMENT OF PLAINTIFF-APPELLANT, AND THEREAFTER RESTRAIN HIM FOR TEN (10) YEARS.

8: PARTIES TO AN ACTION CANNOT, PURELY BY THEIR AGREEMENT, INVEST THE COURT WITH JURISDICTION OR DEPRIVE THE COURT OF JURISDICTION THAT BY LAW IT HAS. THE PLEA OF GUILTY ENTERED DID NOT INVEST THE COURT WITH JURISDICTION WHEN IT HAD NO SUCH AT THE OUTSET.

9: DUE PROCESS LIBERTY INTEREST, FREEDOM OF BODILY MOVEMENT, IS THE CORE OF "LIBERTY"; IT SURVIVES CRIMINAL CONVICTION AND INVOLUNTARY COMMITMENT.

10: WHEN FRAUD UPON THE COURT IS RAISED, A COURT IS DUTY-BOUND TO HEAR AND DETERMINE THE ISSUES; ESPECIALLY WHEN LACK O[F] JURISDICTION IS CONNECTED TO THE ISSUES.

11: THE CRITICAL QUESTION IS WHAT CONSTITUTED JURISDICTION OVER THE PLAINTIFF-APPELLANT IN THIS INSTANCE BY THE RES[P]ONDENT SHERIFF?

> 12: A VOID JUDGMENT IS AS NO JUDGMENT AT ALL AND HABEAS CORPUS WILL LIE WHEN A JUDGMENT IS VOID DUE TO LACK OF JURISDICTION.
>
> 13: THE COURT BELOW SERIOUSLY ERRED TO PLAINTIFF-APPELLANT'S PREJUDICE WHEN IT DENIED HIS PETITION FOR A WRIT OF HABEAS CORPUS BY FAILING TO HEAR AND DETERMINE A SINGLE GROUND OR CLAIM AND ISSUES INVOLVED.

{¶8} Appellant asserts a multitude of assignments of error, many of which are simply statements made by appellant which do not assign a particular error by the trial court. Additionally, some of these are irrelevant and make assertions which are indecipherable. Therefore, for ease of analysis, we shall address his assignments of error collectively, as they are all summarizable as one general error for review.

{¶9} The essence of appellant's appeal appears to be his assertion that the trial court erred in denying his petition for habeas corpus relief because he is under confinement and lacks an adequate remedy at law, due to the trial court's lack of jurisdiction over the subject matter.

{¶10} Appellant asserts that because he was not subject to a registration or notification requirement when he was convicted in 1976, he was not required to register as a sexual offender or to notify the sheriff of any new residential addresses upon his release from prison in 2000. Therefore, appellant contends the sheriff was without authority to require him to register or to arrest him for the offense of failure to notify of change of address in 2005. Additionally, appellant argues the trial court lacked jurisdiction to convict him of that same offense and to incarcerate him. Furthermore, appellant submits he was not properly subjected to post-release control, due to his alleged improper conviction and incarceration.

{¶11} We begin by noting, as we previously stated, that appellant's previous requests for postconviction relief were denied by this court in February 2009. See *State v. Wilson*, 10th Dist. No. 08AP-615, 2009-Ohio-470. In that case, we held the trial court's denial of appellant's postconviction petitions was proper and that appellant was subject to the reporting and notification requirements set forth under former R.C. Chapter 2950. Id. at ¶10. Citing to *Cook*, we further found that the notification and registration requirements at issue did not violate ex post facto principles. Id. at ¶12.

{¶12} Appellant argues his writ of habeas corpus was improperly denied. A writ of habeas corpus is an extraordinary writ, which is not available when there is an adequate remedy at law. *Moore v. Goeller (In re Goeller)*, 103 Ohio St.3d 427, 2004-Ohio-5579, ¶6. Absent a patent and unambiguous lack of jurisdiction, a party challenging the court's jurisdiction typically has an adequate remedy at law through appeal. *State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 2005-Ohio-5124, ¶19.

{¶13} Under Ohio law, habeas corpus is generally appropriate in a criminal context only where the petitioner is entitled to immediate release from prison or some type of physical confinement. *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, ¶13; *Crase v. Bradshaw*, 108 Ohio St.3d 212, 2006-Ohio-663, ¶5; *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 1995-Ohio-228. The purpose behind a habeas corpus proceeding is for the court to inquire into whether or not the petitioner is being unlawfully restrained of his liberty at the present time. *Totten v. Collins*, 10th Dist. No. 08AP-257, 2008-Ohio-4185, ¶13, citing *Ball v. Maxwell, Warden* (1965), 1 Ohio St.2d 77, 78. If the petitioner is subsequently released, the habeas corpus claim is typically rendered moot. *Larsen v. State*, 92 Ohio St.3d 69, 69-70, 2001-Ohio-133; *Crase* at ¶5.

{¶14} We note that, at the time of the filing of the appeal, appellant was not incarcerated for the offense at issue. In fact, he provided a residential address of 842 Taylor Avenue, Columbus, Ohio 43219. Thus, he is not presently physically confined in the context of being incarcerated.

{¶15} Additionally, courts have held that post-release control does not sufficiently restrain a person's liberty and therefore does not typically give rise to habeas corpus relief because the petitioner is not physically confined under anyone's custody. See *Totten* at ¶16, citing *Miller v. Walton*, 163 Ohio App.3d 703, 2005-Ohio-4855; see also *Ross v. Kinkela*, 8th Dist. No. 79411, 2001-Ohio-4256. While we note that habeas corpus may lie to contest post-release control in some situations where conditions are sufficiently severe or restrictive of liberty (see *Patterson v. Ohio Adult Parole Auth*., 120 Ohio St.3d 311, 2008-Ohio-6147, ¶7), we also point out that appellant's post-release control sanctions expired over two years ago. Therefore, appellant's claim that he is confined by a post-release control sanction is without merit.

{¶16} Moreover, with respect to appellant's apparent claim that he is entitled to habeas corpus relief because he is improperly confined by the requirement that he annually register his residential address and notify the sheriff of any change of address, this argument is also without merit.

{¶17} In *State v. Weist*, 2nd Dist. No. 2007-CA-16, 2008-Ohio-4006, ¶7, the court determined that, because Weist was challenging his duty to register as a sex offender, rather than challenging his incarceration, an action in habeas corpus would not provide him with a meaningful remedy. The court further found that Weist did have other means

by which he could challenge the duty to register, such as a declaratory judgment action against the parole authority.

{¶18} In *Mosley v. Eberlin*, *Warden*, 7th Dist. No. 08 BE 7, 2008-Ohio-6593, Mosley was convicted of multiple offenses, including the sexual offense of rape, and sentenced to incarceration in 1983. He received concurrent and consecutive sentences. The consecutive sentences were five to 25 years on the rape and four to 15 years on the kidnapping. He was paroled in 1990 after serving only seven years. Within one year of his release, he was arrested for burglary. He subsequently pled guilty and was sentenced to a new period of incarceration in 1991. His parole was revoked and he was incarcerated on those offenses as well, which presumably included the rape offense. Prior to his release from incarceration on December 1, 1998, Am.Sub.H.B. No. 180 went into effect. Following a hearing, Mosley was classified as a sexual predator on October 20, 1998. Thus, he was subject to the various registration, address verification, and notification requirements that were in effect as a result of Am.Sub.H.B. No. 180.

{¶19} Like the appellant in the instant case, Mosley, after being incarcerated for failing to comply with the applicable sexual offender requirements, filed a petition for a writ of habeas corpus. Mosley alleged he was improperly subjected to registration requirements and the accompanying offenses for violation of those requirements. At the time the court heard his appeal, he was no longer incarcerated.

{¶20} The *Mosley* court found that if the petitioner has or had an adequate remedy in the ordinary course of the law, such as an appeal, a delayed appeal, a petition for postconviction relief, a motion for relief from a civil judgment, or a motion to withdraw a guilty plea, then habeas is inappropriate. *Mosley* at ¶27-28.

{¶21} We find the appellant in the case at bar has or had many of these alternative avenues to pursue. We also note that our previous findings in *State v. Wilson*, 10th Dist. No. 08AP-615, 2009-Ohio-470 are significant as well. We note that appellant did exercise at least one of those alternative means by filing his postconviction petitions, which were denied. The fact that he has already unsuccessfully invoked some of his alternate remedies does not entitle him to the requested extraordinary relief. *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, ¶7-8.

{¶22} While the *Mosley* court also conceded that an adequate remedy at law was irrelevant in circumstances where the court of confinement lacked jurisdiction, that court noted that such a claimed lack of jurisdiction must be patent and unambiguous, which it declined to find. The court determined Mosley's claim revolved around an alleged regular legal error, based upon factual questions that disputed the existence of an element of the offense of failure to register. The court found that a claim of insufficient evidence or ineffective assistance of counsel could not be raised in habeas because those claims were not jurisdictional and could have been remedied by an appeal or another adequate remedy at law. *Mosley* at ¶32, citing *Cornell v. Schotten* (1994), 69 Ohio St.3d 466, 1994-Ohio-74.

{¶23} The circumstances in *Mosley* are similar to the instant case and we find that court's analysis and reasoning to be applicable here as well. Therefore, habeas corpus relief is not appropriate.

{¶24} To the extent that appellant may be attempting to challenge the new classification, notification, and registration requirements imposed pursuant to S.B. No. 10, which would, inter alia, convert appellant's classification to that of a Tier III sex offender

and require lifetime registration every 90 days, we also find that appellant has or had alternative avenues to challenge that classification and its accompanying requirements as well.[2] See R.C. 2950.031(E); see also appellant's Exhibits A and B (letter from Ohio Bureau of Criminal Identification and Investigation dated November 26, 2007, regarding changes to Ohio's Sex Offender Registration and Notification Act). As a result, habeas corpus relief is not appropriate under those circumstances either.

{¶25} Based upon the foregoing, we find that appellant is not entitled to habeas corpus relief and that his petition for such relief was properly denied by the trial court. Therefore, we overrule appellant's consolidated assignments of error, which include his first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth assignments of error, and affirm the judgment of the trial court.

Judgment affirmed.

FRENCH, P.J., and SADLER, J., concur.

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[2] Appellant's petition filed in the trial court did not request habeas relief based upon the current sexual offender classification, registration, and notification provisions set forth in R.C. Chapter 2950, which became effective January 1, 2008. Appellant's petition was filed prior to the date when this new legislation went into effect. However, in his reply brief filed with this court, he makes a passing reference to the new requirements, so we have briefly addressed this here.