

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

TAMAR EVANS,	:	<b>PER CURIAM OPINION</b>
Petitioner,	:	
- vs -	:	<b>CASE NO. 2012-A-0033</b>
BARRY GOODRICH, WARDEN,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

*Tamar Evans*, pro se, PID: A470327, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Petitioner).

*Mike DeWine*, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Thelma Thomas Price*, Associate Assistant Attorney General, 150 East Gay Street, 16th Floor, Columbus, OH 43215-6001 (For Respondent).

PER CURIAM.

{¶1} This habeas corpus action is before this court for final consideration of the motion to dismiss of respondent, Warden Barry Goodrich of the Lake Erie Correctional Institution. As the primary basis for his motion, respondent maintains that the petition of petitioner, Tamar Evans, fails to state a viable claim for the writ because his own factual assertions support the conclusion that he has an adequate remedy in which to contest the propriety of his criminal sentence.

{¶2} Petitioner is presently a prisoner at the Lake Erie Correctional Institution, serving an aggregate term of 35 years based upon two separate convictions issued by the Cuyahoga County Court of Common Pleas in June 2004. Under each of the two sentencing judgments setting forth the convictions, the trial court did not state the specific number of years petitioner would be subject to post-release control under R.C. 2967.28; instead, the court only indicated that post-release control “is part of this prison sentence for the maximum period allowed” for the felony offenses. Furthermore, in delineating the term of imprisonment for each individual offense, the two judgments did not state the range of possible years which could be given for the offense under the governing statute, but only indicated the exact number of years petitioner would have to serve for that specific offense.

{¶3} In bringing this action in habeas corpus, petitioner sought the issuance of a writ to compel his immediate release from the state prison. According to petitioner, in imposing the jail terms under each of the sentencing judgments, the trial court made two errors which had the effect of rendering both judgments void and unenforceable. First, he alleged that the trial court erred in not providing him proper notification of the extent of his potential post-release control. Second, he contended that the trial court failed to include in the two judgments “the mandatory minimum sentence for the offenses he is imprisoned on.”

{¶4} In regard to the “post-release control” prong of petitioner’s claim, this court would note that it is not necessary for us to determine whether the language in the two sentencing judgments were sufficient to satisfy the notification requirement under R.C. 2967.28. This is because any alleged error concerning post-release control would not

have had the effect of making all aspects of the sentencing judgments void: “\* \* \* when the ‘post-release control’ part of a criminal judgment is rendered void due to improper notification under the statute, only that part of the judgment is affected; i.e., the remaining aspects of the judgment are still valid.” *State v. Howard*, 11th Dist. No. 2010-L-048, 2011-Ohio-2840, ¶20, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238. See also, *State v. Cline*, 11th Dist. Nos. 2010-G-2981 and 2010-G-3000, 2010-Ohio-3890, ¶14.

{¶5} Pursuant to the foregoing case law, the “sentencing” orders in both of the Cuyahoga County court’s judgments would still be valid even if an error did occur as to the notification of post-release control. Therefore, given that petitioner has only served approximately eight years of his 35 year sentence, he is not entitled to be released from the state prison at this time. Moreover, petitioner had other legal means for challenging the substance of the Cuyahoga County court’s “post-release control” notification, either by direct appeals from the two sentencing judgments at the time they were entered, or by direct appeals from separate decisions on post-judgment motions for resentencing. See *State ex rel. Gregley v. Friedman*, 8th Dist. No. 96255, 2011-Ohio-2293, ¶6.

{¶6} Under the “minimum sentence” aspect of habeas corpus claim, petitioner does not provide in his petition a full explanation as to why the sentencing judgments in the two Cuyahoga County cases should be declared void. However, his petition refers to the decision of the Ohio Supreme Court in *State v. Beasley*, 14 Ohio St.3d 74 (1984). In that decision, the Supreme Court concluded that a sentencing determination shall be deemed a nullity when the imposed prison term does not fall within the statutory range of permissible sentences for a particular offense. *Id.* at 75.

{¶7} A review of both sentencing judgments in the underlying cases shows that petitioner was convicted of two first-degree felonies, three second-degree felonies, and one third-degree felony. Our review further shows that each individual term imposed by the trial court for a specific offense fell within the range of permissible sentences, as set forth in R.C. 2929.14.

{¶8} Given that the Cuyahoga County court did not impose any sentence which exceeded the scope of its authority under the governing statute, petitioner's allegations are insufficient to establish that either of the two sentencing judgments is void for lack of jurisdiction.

{¶9} "A writ of habeas corpus is necessary in certain exceptional circumstances where there is an unlawful restraint of an individual's liberty and there is no adequate remedy in the ordinary course of law. *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 616, 2001 Ohio 1803, \* \* \*. 'As a general proposition, in order for a prisoner to be entitled to a writ of habeas corpus, he must be able to prove that his conviction was rendered by a trial court which acted beyond the scope of its jurisdiction.' *Novak v. Gansheimer*, 11th Dist. No. 2003 A 0023, 2003 Ohio 5428, at ¶5, citing R.C. 2725.05. Accordingly, if a prisoner fails to present a jurisdictional error committed by the trial court in the underlying action, his habeas corpus claim will be subject to dismissal for failure to raise a viable claim for relief. *Id.*" *Snitzky v. Wilson*, 11th Dist. No. 2003-T-0095, 2004-Ohio-7229, ¶12.

{¶10} Even when the factual allegations in the instant habeas corpus claim are construed in a manner most favorable to petitioner, they are legally insufficient to show that the Cuyahoga County court committed a jurisdictional error in imposing the prison

terms in the two criminal actions. In addition, in regard to any other potential errors in the sentencing judgments, his own allegations support the conclusion that there were other adequate legal remedies he could pursue to protect his rights. Therefore, since petitioner will not be able to prove a set of facts under which he would be entitled to a writ of habeas corpus, the dismissal of his petition is warranted under Civ.R. 12(B)(6).

{¶11} Pursuant to the foregoing analysis, respondent's motion to dismiss is granted. It is the order and judgment of this court that petitioner's sole claim for a writ of habeas corpus is hereby dismissed in its entirety.

DIANE V. GRENDALL, J., MARY JANE TRAPP, J., THOMAS R. WRIGHT, J., concur.