

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

JAMES TABOR,	:	<b>PER CURIAM OPINION</b>
Petitioner,	:	
- vs -	:	<b>CASE NO. 2011-A-0075</b>
WARDEN BARRY GOODRICH,	:	
LAKE ERIE CORRECTIONAL INSTITUTION,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

*James Tabor*, pro se, PID: A601212, 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 *Maura O'Neill Jaite*, Senior Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} James Tabor petitions this court for a writ of habeas corpus, pursuant to R.C. 2725 and Article IV, §3(B)(1) of the Ohio Constitution, asserting that he is entitled to an immediate release from incarceration. Mr. Tabor argues that he is entitled to release because the trial court committed an error at sentencing, which has rendered

his sentence void. We find that Mr. Tabor's petition lacks merit and therefore we dismiss the petition.

### **Substantive Facts and Procedural History**

{¶2} On February 10, 2011, Mr. Tabor, with the assistance of counsel, knowingly and voluntarily pled guilty to and was found guilty of one count of OVI, with a repeat offender specification pursuant to R.C. 2941.1413, a felony of the third degree. Upon consideration of the record, a pre-sentence report, oral statements, and the principles of felony sentencing, the trial court sentenced Mr. Tabor to three years of incarceration for the OVI and two years for the repeat offender specification, to be served consecutively, for a total of five years. At the time of sentencing, the trial court informed Mr. Tabor that post-release control may be imposed upon him for up to three years, and what the consequences were for violating a post-release control condition.

{¶3} At no time did Mr. Tabor challenge his conviction or sentence via a direct appeal or post-conviction motion for relief. Instead, he filed this petition for a writ of habeas corpus. We issued an alternative writ, and the state filed a motion to dismiss pursuant to Civ.R. 12(B)(6).

### **The Habeas Petition Has No Merit**

{¶4} Pursuant to Civ.R. 12(B)(6), a complaint may be dismissed for failure to state a claim when it appears “beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *Cleveland Elec. Illum. Co. v. PUC*, 76 Ohio St.3d 521, 524 (1996), citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). “As long as there is a set of facts consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a

defendant's motion to dismiss.” *Huffman v. City of Willoughby*, 11th Dist. No. 2007-L-040, 2007-Ohio-7120, ¶18, citing *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶5.

{¶5} “[W]hen a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the non-moving party.” *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991). Our review of a trial court’s ruling on a Civ.R. 12(B) motion is de novo. *Perrysburg Twp. v. City of Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362.

{¶6} Habeas corpus is an available remedy only in “certain extraordinary circumstances where there is an unlawful restraint of a person’s liberty, notwithstanding the fact that only nonjurisdictional issues are involved, but only where there is no adequate legal remedy, e.g., appeal or postconviction relief.” *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 186 (1995), citing *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593 (1994). “Additionally, habeas corpus lies only if the petitioner is entitled to immediate release from confinement.” *Jackson* at 188, citing *Pewitt v. Lorain Corr. Inst.*, 64 Ohio St.3d 470, 472 (1992); R.C. 2725.17.

{¶7} Mr. Tabor’s petition is based on a claimed sentencing irregularity. Specifically, he claims that he was not informed at the sentencing hearing of the 16 conditions imposed upon parolees. The Supreme Court of Ohio has repeatedly held that sentencing errors and plea irregularities are not jurisdictional in nature, and thus are not cognizable claims under habeas corpus. See, e.g., *Manns v. Gansheimer*, 117 Ohio St.3d 251, 2008-Ohio-851; *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454. Furthermore, Mr. Tabor has or had an adequate remedy at law in the

form of a direct appeal and/or post-conviction motion for relief. He could have challenged this alleged error by the sentencing court in a direct appeal; however, he did not. We can find no reason that he is entitled to the extraordinary and extreme form of relief requested, i.e. immediate release from the custody of the state. Therefore, viewing the facts in the light most favorable to Mr. Tabor, we find that he has failed to state a claim upon which relief can be granted.

{¶8} Additionally, pursuant to Civ.R. 10(A), a petitioner must include the addresses of all parties, including his own, in the case caption. Failure to do so renders a habeas petition deficient and is cause for dismissal. See, e.g., *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133 (2001); *State ex rel. Keener v. Village of Amberley*, 80 Ohio St.3d 292 (1997). Mr. Tabor failed to include the required addresses, and improperly captioned the petition.

{¶9} Consistent with the foregoing discussion, it is the order of this court that Mr. Tabor's habeas corpus petition, as filed on December 30, 2011, is hereby dismissed in its entirety.

TIMOTHY P. CANNON, P.J., CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J.,  
concur.