

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

STATE OF OHIO ex rel. MICHAEL ANGELO WALKER,	:	PER CURIAM OPINION
Petitioner,	:	
- VS -	:	CASE NO. 2015-A-0058
BRIGHAM SLOAN, WARDEN,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Michael Angelo Walker, pro se, PID: A176-280, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Petitioner).

Mike DeWine, Ohio Attorney General, and *Stephanie L. Watson*, Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215-6001 (For Respondent).

PER CURIAM.

{¶1} Michael Angelo Walker petitions this court for a writ of habeas corpus, pursuant to R.C. Chapter 2725 and Article IV, §3(B)(1) of the Ohio Constitution. Mr. Walker asserts he is being held involuntarily and illegally by Brigham J. Sloan, warden of the Lake Erie Correctional Institution, and is entitled to immediate release. For the following reasons, Mr. Walker’s petition lacks merit and is dismissed.

{¶2} In September 1983, a jury found Mr. Walker guilty of six counts: one count of aggravated murder with specifications, two counts of aggravated robbery, one count of aggravated burglary, and two counts of felonious assault. Mr. Walker attached the sentencing entry to his petition, which indicates he was sentenced by the Cuyahoga County Court of Common Pleas to an aggregate prison term of 64 years to 105 years and/or life imprisonment. His conviction and sentence were affirmed on direct appeal. *State v. Walker*, 8th Dist. Cuyahoga No. 47616, unreported (May 31, 1984).

{¶3} Over the past 30 years, Mr. Walker has filed several petitions and motions seeking to overturn his conviction and sentence. Most recently, the Ohio Supreme Court affirmed the Eighth District Court of Appeals' dismissal of his petition for a writ of mandamus. *State ex rel. Walker v. State*, 142 Ohio St.3d 365, 2015-Ohio-1481. Mr. Walker is now before this court on his petition for a writ of habeas corpus. We issued an alternative writ, and the respondent filed a motion to dismiss, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted.

{¶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." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. "[A]ll the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party." *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991), citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). "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. Willoughby*, 11th Dist.

Lake 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} 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.” *Id.* at 188, citing *Pewitt v. Lorain Corr. Inst.*, 64 Ohio St.3d 470, 472 (1992); R.C. 2725.17.

{¶6} Mr. Walker’s petition is based on a claim that the court lacked jurisdiction to convict and sentence him because there are no records of a jury rendering verdicts against him on September 10, 1983, in Cuyahoga County Court of Common Pleas case no. CR-83-180834-D. We note initially that a “court of record speaks only through its journal entries.” *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 382 (1996). Mr. Walker attached a copy of his sentencing entry to his petition, which states: “The defendant herein, having on a former day of Court been found guilty by a Jury * * *.” He has not made any showing to contradict the presumption of regularity accorded all judicial proceedings. See *id.* at 382, citing *State v. Hawkins*, 74 Ohio St.3d 530, 531 (1996); see also *State v. Sweet*, 72 Ohio St.3d 375, 376 (1995).

{¶7} Further, Mr. Walker had an adequate remedy at law in the form of a direct appeal or a post-conviction motion for relief from judgment, both of which he utilized. Whether he raised his present argument in those proceedings is irrelevant for these

purposes, and we need not delve into the specifics of those proceedings at this time. What is determinative here is that he could have raised this argument in either a direct appeal or post-conviction motion for relief, neither of which he was precluded from utilizing. Therefore, viewing the alleged facts in the light most favorable to Mr. Walker, we find he has failed to state a claim upon which a writ of habeas corpus can be granted because he was not deprived of adequate legal remedies.

{¶8} Consistent with the foregoing discussion, it is the order of this court that respondent's motion to dismiss is granted, and Mr. Walker's habeas corpus petition is hereby dismissed in its entirety.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., COLLEEN MARY O'TOOLE, J., concur.