

[Cite as *Lopez v. Russell*, 2002-Ohio-5513.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

MIGUEL STEVEN VIRRUELLA LOPEZ,	:	
Petitioner-Appellant,	:	CASE NO. CA2002-04-042
	:	
- vs -	:	<u>O P I N I O N</u>
	:	10/14/2002
	:	
HARRY K. RUSSELL, Warden,	:	
Respondent-Appellee.	:	

CIVIL APPEAL FROM COMMON PLEAS COURT

Miguel Steven Virruella Lopez, Inmate #383-748, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036, pro se

Betty D. Montgomery, Ohio Attorney General, Mark J. Zemba, State Office Bldg., 11th Fl., 615 W. Superior Avenue, Cleveland, Ohio 44113-1899, for respondent-appellee

VALEN, J.

{¶1} Petitioner-appellant, Miguel Steven Virruella Lopez, appeals the dismissal of his petition for a writ of habeas corpus. In a single assignment of error, appellant claims the trial court abused its discretion in dismissing his petition.

{¶2} Appellant essentially argues that the trial court lacked jurisdiction to sentence him on a conspiracy charge because the indictment failed to include an allegation that

appellant committed an overt act in support of the conspiracy.

{¶3} Appellant's assignment is without merit. A claim that challenges the validity or sufficiency of an indictment is nonjurisdictional in nature and should have been raised on direct appeal, not in a habeas corpus action. See State ex rel. Raglin v. Brigano, 82 Ohio St.3d 410, 1998-Ohio-222. Habeas corpus is not available to challenge either the validity or sufficiency of an indictment. Luna v. Russell, 70 Ohio St.3d 561, 1994-Ohio-264, certiorari denied (1995), 513 U.S. 1094, 115 S.Ct. 759.

{¶4} Since the validity or sufficiency of the indictment could have been raised on direct appeal, the trial court correctly denied appellant's petition for habeas corpus.¹ Appellant's assignment of error is overruled and the judgment of the trial court is hereby affirmed.

POWELL, P.J., and YOUNG, J., concur.

1. Appellant did not challenge the validity or sufficiency of the indictment on direct appeal. See State v. Lopez (Oct. 13, 2000), Greene App. No. 99-CA-120.