

[Cite as *In re Caves v. Kelly*, 2016-Ohio-230.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

IN RE: MASON CAVES

LORRI ANDERSON, NEXT OF KIN AND “ATTORNEY IN FACT” POWER OF
ATTORNEY

Petitioner

v.

SHERIFF GENE KELLY

Respondent.

Appellate Case No. 15-CA-0018

[Original Action in Habeas Corpus]

DECISION AND FINAL JUDGMENT ENTRY

January 19, 2016

PER CURIAM:

{¶ 1} On February 26, 2015, Lorri Anderson filed a petition for writ of habeas corpus on behalf of her son, Mason Caves. On August 17, 2015, this court dismissed two respondents: the Honorable Judge Richard J. O’Neill, who presided over Caves’s criminal trial in the underlying case, and Assistant Prosecuting Attorney Amy Smith, the prosecutor on the case. Sheriff Gene Kelly is the sole remaining respondent.

{¶ 2} This court ordered Anderson to show cause why the petition should not be dismissed for raising claims that are not cognizable in habeas corpus, are premature, or

are moot. Anderson was also ordered to show cause why the case should not be dismissed because Caves has an adequate remedy for his claims by way of a timely appeal filed within 30 days of a final appealable order, or by a timely post-conviction petition. *See generally* App.R. 4; R.C. 2953.21.

{¶ 3} In Anderson's response, she again asserts that the trial court was without jurisdiction in Caves's case, at least in part because of constitutional and other errors. She raises issues of speedy trial, ineffective assistance of counsel, error by the trial court in not dismissing the case, and cruel and unusual punishment. Anderson notes that Caves is no longer in Sheriff Kelly's custody, and moves to add Warden Rick Chuvalas of the Correctional Reception Center ("CRC"), in Orient, Ohio, as a party to the case. She does not address whether Caves has an adequate remedy at law, or whether the claims are non-cognizable, premature, or moot.

{¶ 4} Sheriff Kelly argues in response that this court lacks territorial jurisdiction, that the matter is moot, and that the claims are non-cognizable in habeas corpus.

{¶ 5} We first consider whether we have jurisdiction to determine this petition for habeas corpus, in light of Anderson's disclosure that Caves is no longer within the territorial jurisdiction of this court of appeals. The statute provides:

If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in the custody of the officers of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge. Any writ issued by a court or judge of another county to an

officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

R.C. 2725.03. The Supreme Court of Ohio has held that where a petition is filed in the wrong judicial district, the court does “not have jurisdiction to determine the issues in the habeas case on their merits.” *Billiter v. Banks*, 135 Ohio St.3d 426, 2013-Ohio-1719, 988 N.E.2d 556, ¶ 11.

{¶ 6} Here, Caves was within the territorial jurisdiction of this court when the petition was filed, but has since been transferred into the territorial jurisdiction of another judicial district. Anderson states that Caves is now in custody at “CRC located at 11271 St. Rt 762 Orient, Ohio 43146. Inmate #717-656.” Caves is thus an inmate at a state correctional institution. R.C. 2725.03; R.C. 2967.01(A) (defining state correctional institutions). The only courts with territorial jurisdiction to determine his habeas corpus claim at this time are “the courts or judges of the county in which the institution is located.” R.C. 2725.03.

{¶ 7} Sheriff Kelly notes that CRC is in Pickaway County, Ohio, a fact of which we take judicial notice. Evid.R. 201(B); *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 16, 661 N.E.2d 170 (1996). Pickaway County is within the territorial jurisdiction of the Fourth judicial district. R.C. 2501.01(D). Accordingly, this court has no territorial jurisdiction to determine the petition before us and we must dismiss it. See *Bridges v. McMackin*, 44 Ohio St.3d 135, 541 N.E.2d 1035 (1989) (affirming this court’s dismissal of a habeas corpus petition for lack of jurisdiction pursuant to R.C. 2725.03).

{¶ 8} The petition for a writ of habeas corpus is DISMISSED. Anderson’s motion to add Warden Chuvalas as a party is OVERRULED.

SO ORDERED.

MARY E. DONOVAN, Presiding Judge

MICHAEL T. HALL, Administrative Judge

JEFFREY M. WELBAUM, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

MICHAEL T. HALL, Administrative Judge

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