

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ROSS COUNTY

WILBERT A. YOUNG,	:	
	:	
Petitioner-Appellee,	:	Case No. 06CA2938
	:	
vs.	:	<b>Released: January 4, 2008</b>
	:	
TIMOTHY BRUNSMAN, Warden,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Respondent-Appellant.	:	

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APPEARANCES:

Marc Dann, Attorney General, and Jerri L. Fosnaught, Assistant Attorney General, Columbus, Ohio, for Respondent-Appellant.

Wilbert A. Young, Chillicothe Correctional Institute, Petitioner-Appellee, pro se.

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McFarland, J.:

{¶1} Respondent-Appellant, Timothy Brunsman, appeals from the decision of the Ross County Court of Common Pleas granting Petitioner-Appellee, Wilbert A. Young's, petition for writ of habeas corpus. Respondent contends the court improperly granted the writ because Petitioner 1) had other remedies available; 2) had not served his maximum sentence, and; 3) failed to comply with statutory requirements in filing the petition. Because Petitioner had adequate remedies in the ordinary course of law to challenge his sentence in case 04CR-05-3317, we agree with

Respondent that his petition for writ of habeas corpus was improperly granted.

### I. Facts

{¶2} In 1998, Petitioner pled guilty to aggravated robbery in the Franklin County Court of Common Pleas, case number 97CR-10-5649. He was sentenced to three years for the robbery and an additional year for a firearm specification, for a total of four years. During the sentencing hearing, the trial court told Petitioner that after completing his prison term he would be subject to a mandatory five years of post-release control. However, the trial court's judgment entry failed to make any mention of post-release control. Petitioner was released from prison in September of 2001 and placed on post-release control.

{¶3} In August of 2005, Petitioner pled guilty to possession of cocaine in Franklin County Commons Pleas case number 04CR-05-3317. The trial court sentenced him to an eight month prison term for possession, terminated his post-release control from the previous case (number 97CR-10-5649) and imposed an additional 784 days as a judicial sanction for violating the terms of that post-release control. 784 days was the balance of time left on Petitioner's post-release control from case 97CR-10-5649.

{¶4} Petitioner did not file a timely appeal. In January of 2006, he filed a motion for leave to file a delayed appeal which the Tenth District Court of Appeals denied.

{¶5} On June 27, 2006, while in the custody of Respondent, who is the warden of the Chillicothe Correctional Institution, Petitioner filed a petition for writ of habeas corpus in the Ross County Court of Common Pleas. In his petition, he argued the trial court, in case 97CR-10-5649, failed to journalize post-release control in it's judgment entry. Accordingly, according to Petitioner, the Ohio Adult Parole Authority lacked the authority to place him on post-release control following his release. His argument continued that, because he was not subject to post-release control for case number 97CR-10-5649, the trial court in case number 04CR-05-3317 had no jurisdiction to impose the 784 day sanction for violating the terms of that control.

{¶6} In response to Petitioner's petition for habeas corpus, Respondent filed a motion for summary judgment on July 26, 2006. On October 17, 2006, the Ross County Court of Common Pleas denied the motion.

{¶7} On October 23, 2006, Respondent filed a return of writ arguing, among other things, that a writ of habeas corpus was unavailable to Petitioner because the trial court's judgment entry in case 04CR-05-3317

could have been challenged on direct appeal. On November 27, 2006, after considering Respondent's return of writ and Petitioner's response, the Ross County Court of Common Pleas granted the petition for habeas corpus and ordered Respondent to release him from confinement.

{¶8} On November 29, 2006, Respondent filed an emergency motion to stay Petitioner's release and a motion to appeal in the Ross County Court of Common Pleas. On Dec 1, Petitioner was released from the Chillicothe Correctional Institution.

{¶9} On December 1 and December 4, Respondent filed motions with this court asking us to grant an emergency stay of the common pleas court's decision. Before we could rule on the motions, Petitioner was released from custody. Accordingly, on December 21, we ordered Respondent to file a memorandum addressing the necessity of an emergency stay, given Petitioner's release. In his memo, Respondent conceded the need for an emergency stay had passed, but argued that his appeal was not moot because if we conclude the writ of habeas corpus was granted in error, we could order the writ withdrawn. We agreed and, thus, now address the merits of Respondent's appeal.

## II.

### III. Assignments of Error

{¶10} 1. THE LOWER COURT ERRED WHEN IT FAILED TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS WHERE YOUNG HAS OR HAD ADEQUATE REMEDIES IN THE ORDINARY COURSE OF LAW, E.G., APPEAL AND POSTCONVICTION RELIEF, FOR REVIEW OF ANY ALLEGED SENTENCING ERROR.

{¶11} 2. THE LOWER COURT ERRED WHEN IT FAILED TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS WHERE YOUNG WAS NOT ENTITLED TO IMMEDIATE RELEASE BECAUSE HIS MAXIMUM SENTENCE HAD NOT EXPIRED.

{¶12} 3. THE LOWER COURT ERRED WHEN IT FAILED TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS WHERE YOUNG FAILED TO VERIFY HIS PETITION AS REQUIRED BY R.C. 2725.04, FAILED TO PROVIDE A DETAILED LIST OF ALL LAWSUITS HE HAS FILED IN THE PREVIOUS FIVE YEARS PURSUANT TO R.C. 2969.25(A), AND FAILED TO COMPLY WITH R.C. 2969.25(C).

### IV. Standard of Review

{¶13} Each of Respondent's three assignments of error contend the Ross County Court of Common Pleas erred in granting Petitioner's petition for writ of habeas corpus. The proceedings upon a writ of habeas corpus may be reviewed on appeal. R.C. 2725.26. "An appellate court reviews a decision in a habeas corpus case in the same way it would review a decision in any other case." *In re Ross* (2003), 154 Ohio App. 3d 1, 2003-Ohio-4419, 796 N.E.2d 6, at ¶19. Our standard of review in such cases is de novo. *State*

*v. Edwards* (Oct. 28, 1996), 4th Dist. No. 96CA2210, at \*1; *Becker v. Bradshaw*, 5th Dist. No. 2003-CA-0117, 2004-Ohio-3712, at ¶9.

#### V. First Assignment of Error

{¶14} In his first assignment of error, Respondent contends the lower court erred in granting Petitioner’s writ of habeas corpus because there were other adequate remedies at law. We agree.

{¶15} “Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01 The purpose of habeas corpus is to determine the legality of the restraint under which a person is held, not to determine guilt or innocence. *In re Lockhart* (1952), 157 Ohio St. 192, 194, 47 O.O. 129, 105 N.E.2d 35.

{¶16} Habeas corpus is an extraordinary writ and is only available “where there is an unlawful restraint of a person's liberty and no adequate remedy at law.” *Rowe v. Brunsman*, 4th Dist. No. 06CA2891, 2006-Ohio-1964, at ¶4, quoting *Pratts v. Hurley*, 102 Ohio St.3d 81, 806 N.E.2d 992, 2004-Ohio-1980.

{¶17} As long as adequate legal remedies for the issues in question are available, through direct appeal and post-conviction relief, the issues may not be addressed in a petition for habeas corpus. *Cornell v. Schotten*

(1994), 69 Ohio St.3d 466, 1994-Ohio-74, 633 N.E.2d 1111, at 467. “If an issue raised in a petition for a writ of habeas corpus could have been raised on direct appeal or in a petition for post-conviction relief, the petition for a writ of habeas corpus will be denied.” *Garrett v. Wilson*, 5th Dist. No. 07-CA-60, 2007-Ohio-4853, at ¶9.

{¶18} “It has long been established that a writ of habeas corpus will not be allowed when a prisoner is held by virtue of the judgment of the court of record that had jurisdiction to render that judgment.” *Wireman v. Ohio Adult Parole Authority* (1988), 38 Ohio St.3d 322, 528 N.E.2d 173. “ \* \* \* If the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order.” R.C. 2725.05.

{¶19} “ \* \* \* Where it is apparent from the allegations that the matter alleged is within the class of cases in which a particular court has been empowered to act, jurisdiction is present. Any subsequent error in proceeding is only error in the ‘exercise of jurisdiction,’ as distinguished from the want of jurisdiction in the first instance.” *Jimison v. Wilson*, 106 Ohio St.3d 342, 835 N.E.2d 34, 2005-Ohio-5143, at ¶11, quoting *State v. Filiaggi* (1999), 86 Ohio St.3d 230, 240, 714 N.E.2d 867. “Errors in the exercise of jurisdiction should be raised on direct appeal instead of in habeas corpus.” *Jimison* at ¶11.

{¶20} In the case sub judice, a writ of habeas corpus should not have been available to Petitioner because the trial court in case number 04CR-05-3317 had proper jurisdiction to sentence him. The trial court in that case sentenced Petitioner for possession of cocaine, terminated his post-release control from the previous case, number 97CR-10-5649, and added 784 days to the sentence for violating the terms of that post-release control. Whether the trial court in case 04CR-05-3317 properly sentenced Petitioner is not determinative in deciding the availability of a writ of habeas corpus.

“Although Petitioner claims that the court lacked jurisdiction to sentence him to a prison term, he has mistaken the alleged impropriety of the trial court's judgment for lack of jurisdiction. Furthermore, direct appeal or post-conviction relief are the proper avenues to address such alleged errors in sentencing.” *Womack v. Warden*, 7th Dist. No. 04 BE 58, 2005-Ohio-1344, at ¶4.

{¶21} Petitioner should have directly appealed his sentence in case 04CR-05-3317. He failed to do so and the Tenth District Court of Appeals denied his delayed appeal. This does not change the fact that such remedies, along with post-conviction relief, were available. In such an instance, when a petitioner had adequate legal remedies, a petition for habeas corpus should be dismissed. *Id.* at ¶5. As stated in *Womack*: “Petitioner was never denied the chance to directly appeal his sentence or to petition for post-conviction



relief. Thus, the challenge to his sentence by way of habeas corpus is improper and must be denied.” Id.

{¶22} Recently, the Supreme Court of Ohio, in *North v. Beightler*, 112 Ohio St.3d 122, 2006-Ohio-6515, 858 N.E.2d 386, addressed a fact pattern very similar to the case at bar. In *North*, the petitioner was sentenced in 1997 for aggravated robbery. He was released in 2001 and placed on post-release control. In 2005, the common pleas court convicted him of escaping the Parole Authority’s detention and sentenced him to one year in prison. In 2006, he filed a petition for a writ of habeas corpus, claiming that, because post-release control was not properly made part of his 1997 sentence, his incarceration was unlawful.

{¶23} In ruling that the petitioner’s habeas corpus petition was properly dismissed, the *North* Court stated: “[The petitioner] further asserts that the court of appeals erred in dismissing his petition because his current incarceration resulted from his April 2, 1997 sentence, which did not include any term for postrelease control. However, at the time he filed his habeas corpus petition and the court of appeals dismissed it, he was incarcerated in part because of his August 29, 2005 sentence for escape. He thus had an adequate remedy at law by appeal from that sentence to raise his claim that his escape conviction was invalid.”

{¶24} As in *North*, part of Petitioner’s sentence in case 04CR-05-3317, the additional 784 days, was imposed due to perceived violations of post-release control resulting from case 97CR-10-5649. Regardless of the propriety of the sentence, the court in case 04CR-05-3317 had proper jurisdiction to sentence Petitioner. “Any subsequent error in proceeding is only error in the ‘exercise of jurisdiction,’ as distinguished from the want of jurisdiction in the first instance.” *Jimison* at ¶11. Because the court in 04CR-05-3317 had proper jurisdiction, the alleged sentencing defect “is not cognizable in habeas corpus.” *Id.* Accordingly, we sustain Respondent’s first assignment of error. In light of our disposition of his first assignment of error, his second and third assignments of error are rendered moot.

## VI. Conclusion

{¶25} Because Petitioner had adequate remedies in the ordinary course of law to challenge his sentence in case 04CR-05-3317, the court below improperly granted his petition for writ of habeas corpus. Accordingly, we reverse the judgment of the Ross County Court of Common Pleas and order it to withdraw Petitioner’s writ. As such, this court orders the Petitioner, Wilbert A. Young, to report to the Ross County Court of Common Pleas for return to the Ohio Department of Rehabilitation and Corrections to complete the remainder of his sentence. If Petitioner Young

fails to report within 30 days of this opinion, the trial court is instructed to issue a warrant for his failure to appear.

**JUDGMENT REVERSED AND THE  
CAUSE REMANDED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE REVERSED AND THE CAUSE REMANDED and that the Appellant recover of Appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.  
Exceptions.

Abele, P.J. and Harsha, J.: Concur in Judgment Only.

For the Court,

BY: \_\_\_\_\_  
Judge Matthew W. McFarland

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**