

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

Jamie D. Clay	:	
	:	
Petitioner,	:	Case No. 15CA3476
	:	
v.	:	
	:	
Mark Hooks, Warden	:	<u>DECISION AND JUDGMENT ENTRY</u>
	:	
Respondent.	:	
	:	RELEASED: 04/02/2015

HOOVER, P.J.,

{¶1} Jamie Clay filed a habeas corpus petition seeking his immediate release from the Ross Correctional Institute. In November 2010 Clay was indicted on one count each of robbery in violation of R.C. 2911.02(A)(3), possession of criminal tools in violation of R.C. 2923.24(A), and vandalism in violation of R.C. 2909.05(B)(2). The state alleged that on November 9, 2010, appellant went into the Merchant's National Bank in London, Ohio, handed a bank teller a handwritten note that stated he would kill everyone if his demands were not met, received an unspecified amount of money from the teller, grabbed the note and the money, and fled from the bank. Clay was apprehended shortly thereafter along with his girlfriend. After being arrested and placed in a police cruiser and upon believing police officers were handling his girlfriend roughly, appellant kicked out the window of the cruiser. This act led to the vandalism charge.

{¶2} Clay pleaded guilty to all three counts. On February 2, 2011, the trial court sentenced him to six years in prison—five years for the robbery conviction and one year

each for the possession-of-criminal-tools conviction and vandalism conviction, to be served concurrently with one other but consecutively to the robbery charge. Clay was sentenced to the maximum prison term on all three counts.

{¶3} Clay appealed, raising alleged errors with his sentencing and arguing that the trial court should not have sentenced him to consecutive terms and that the maximum sentence was an abuse of discretion. The Court of Appeals for the Twelfth District affirmed in part and reversed in part, finding that the trial court's failure to merge robbery and possession of criminal tools at the sentencing and its imposition of individual sentence for both offenses constituted plain error. *State v. Clay*, 196 Ohio App.3d 305, 2011-Ohio-5086, 963 N.E.2d 220 (12th Dist.) (“*Clay I*”). Clay was resentenced. At the resentencing hearing the state informed the trial court that 2011 Am Sub. H.B. No. 86 (H.B. 86) was applicable and required Clay's sentence on his robbery conviction to be reduced to 36 months. The trial court resentenced Clay and he appealed again.

{¶4} In his second appeal, Clay again raised sentencing errors and also contended that the trial court erred in failing to properly instruct him of all post-sentencing rights and that he received ineffective assistance of counsel. The Court of Appeals again affirmed in part and reversed in part, on the grounds that the trial court erroneously applied H.B. 86 and as a result, improperly reduced Clay's sentence on his robbery conviction to 36 months. *State v. Clay*, 12th Dist. Madison App. No. CA2011-12-016, 2012-Ohio-5011 (“*Clay II*”). Clay was resentenced and his robbery sentence was made in accordance with the pre-H.B. 86 sentencing law in effect at the time Clay

committed his offenses. The trial court sentenced Clay to a five-year prison term for the robbery conviction to be served consecutively to a one-year prison term for vandalism. Clay appealed, arguing the same errors that were rejected by the appellate court in *Clay II*. The appellate court rejected Clay's arguments and affirmed the trial court's judgment. *State v. Clay*, 12th Dist. Madison App. No. CA2013-04-013, 2013-Ohio-4984 ("*Clay III*").

{¶5} Now Clay claims he is entitled to the immediate release from prison because the trial court improperly imposed maximum consecutive sentences on him and improperly sentenced him for vandalism. Respondent filed a motion to dismiss pursuant to Civ.R. 12(B)(6) on the grounds that habeas corpus is not available where there was an adequate remedy of appeal and because Clay failed to attach a complete copy of all of his commitment papers. Clay has not filed a response to Respondent's motion.

{¶6} For the reasons that follow, pursuant to Civ.R. 12(B)(6), Respondent's motion to dismiss is **GRANTED**.

I. Standard of Review

{¶7} "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. In order for a court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought. *Ohio Bur. Of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶

12; *Rose v. Cochran*, 4th Dist. Ross No. 11CA3243, 2012-Ohio-1729, ¶ 10. This same standard applies in cases involving claims for extraordinary relief, including habeas corpus. *Boles v. Knab*, 130 Ohio St.3d 339, 2011-Ohio-5049, 958 N.E.2d 554, ¶ 2 (“Dismissal under Civ.R. 12(B)(6) for failure to state a claim was warranted because after all factual allegations of Boles’s petition were presumed to be true and all reasonable inferences therefrom were made in his favor, it appeared beyond doubt that he was not entitled to the requested extraordinary relief in habeas corpus”).

II. Law and Analysis

{¶8} Habeas corpus petitions are governed by R.C. 2725. In order to be entitled to a writ of habeas corpus, the petitioner must be able to establish that his present incarceration is illegal because the trial court that rendered the conviction lacked jurisdiction over the criminal case. R.C. 2725.05. Where the petitioner asserts that the trial court committed non-jurisdictional errors in the underlying case, the errors can be adequately reviewed in a direct appeal of the conviction and the habeas corpus petition should be dismissed. *State ex rel. Harsh v. Sheets*, 132 Ohio St.3d 198, 2012-Ohio-2368, 970 N.E.2d 926; *State ex rel. Shackleford v. Moore*, 116 Ohio St. 3d 310, 2007-Ohio-6462, 878 N.E.2d 1035. A petitioner is only entitled to habeas corpus if he can show he has no adequate remedy at law. *Agee v. Russell*, 92 Ohio St.3d 540, 544, 751 N.E.2d 1043 (2001). There is a narrow exception to the adequate-remedy-at-law element required for habeas relief: the situation in which the trial court patently and unambiguously lacked jurisdiction. *Smith v. Bradshaw*, 109 Ohio St.3d 50, 2006–Ohio–1829, 845 N.E.2d 516, ¶ 10; *State ex rel. Steele v. Robinson*, 4th Dist. App. No.

12CA3359, 2013-Ohio-3541. Thus, even if the petitioner could have raised the errors on appeal, the petitioner may nevertheless raise the claims by a petition for habeas corpus.

{¶9} A habeas corpus petition must conform to certain statutory requirements. It must be signed and verified, and it must specify: (A) that the petitioner is imprisoned or restrained of his liberty; (B) the name of the person restraining the petitioner, if known; (C) the place the petitioner is imprisoned or restrained, if known; and (D) it must include a copy of the commitment papers, if the commitment papers can be obtained without impairing the efficiency of the remedy. R.C. 2725.04.

{¶10} Here, Clay does not contest the trial court's jurisdiction, but instead raises arguments concerning the length and consecutive nature of his sentence, which were previously raised in his prior appeals. None of the errors Clay raises are cognizable in habeas corpus. Errors in the sentencing entry are not jurisdictional and are not cognizable in habeas corpus. *Majoros v. Collins*, 64 Ohio St.3d 442, 596 N.E.2d 1038 (1992) ("We have consistently held that sentencing errors are not jurisdictional and are not cognizable in habeas corpus."). Habeas corpus cannot be used to attempt to obtain successive appellate review. *Roberts v. Knab*, 131 Ohio St.3d 60, 2102-Ohio-56, 960 N.E.2d 457. Thus, we find that Clay's habeas corpus petition fails to state a claim for which relief can be granted and grant Respondent's motion to dismiss on these substantive grounds.

{¶11} Additionally, Clay has failed to include the entire commitment papers from the March 27, 2013 sentencing. He appears to have attached only the first two pages of this entry. Thus we must dismiss his petition on this procedural ground.

{¶12} A petitioner's failure to attach all pertinent commitment papers renders the petition fatally defective. See *Tucker v. McAninch*, 82 Ohio St.3d 423, 1998-Ohio-220, 696 N.E.2d 595 (affirming this court's dismissal of a habeas corpus petition where petitioner did not attach all the relevant commitment papers); *Workman v. Shiplevy*, 80 Ohio St.3d 174, 1997-Ohio-128, 685 N.E.2d 231; *Bloss v. Rogers*, 65 Ohio St. 3d 145, 146, 602 N.E.2d 602 (1992). A petitioner's failure to file all the pertinent commitment papers cannot be cured by filing them at some later point in the habeas proceedings. *Boyd v. Money*, 82 Ohio St.3d 388, 389, 1998-Ohio-221, 696 N.E.2d 568.

{¶13} Here, without all the pages of the commitment papers for the March 27, 2013 sentencing entry, Clay's habeas corpus petition is fatally flawed must be dismissed on this procedural ground as well.

III. Conclusion

{¶14} We find that Clay's habeas corpus petition must be dismissed because he had other adequate legal remedies he could have pursued, and did, to protect his rights. Additionally, we find that Clay's petition is defective for failing to comply with R.C. 2725.04 because he did not attach the entire commitment papers from his March 27, 2013 resentencing entry. Thus, we hereby grant the state's motion to dismiss and **DISMISS** Clay's habeas corpus petition. All other pending motions are **DENIED** as **MOOT**.

{¶15} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail.

MOTION GRANTED. PETITION DISMISSED. COSTS TO PETITIONER.

IT IS SO ORDERED.

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

Marie Hoover
Presiding Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket