

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

Romulus Louis Nedea,

Petitioner,

V.

B. Cook, Warden,

Respondent.

Case No. 15CA12

DECISION AND JUDGMENT ENTRY

RELEASED: 8/28/2015

APPEARANCES:

Romulus Louis Nedeia, Southeastern Correctional Complex, Nelsonville, Ohio, Pro se.

Michael DeWine, Ohio Attorney General, and Stephanie L. Watson, Principal Assistant Attorney General, Columbus, Ohio, for Respondent.

McFARLAND, A.J.,

{¶1} Romulus Louis Nedeia filed a habeas corpus petition seeking his immediate release from the Southeastern Correctional Complex. His one sentence petition states as its grounds that he is “unlawfully imprisoned and restrained of my liberty. . . without authority.” However, his affidavit filed with the petition alleges that the testimony given by the witnesses at trial did not support the indictment or his conviction and that he “is actually and factually innocent of the charges asserted in the indictment and is wrongfully convicted.” Respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted, arguing that habeas corpus cannot be used to challenge the sufficiency of the evidence presented at trial because an adequate

remedy at law exists by means of a direct appeal. Additionally, respondent argues that Nedeas maximum sentence has not expired because he has an aggregate maximum consecutive sentence of 65 years, which expires in 2034. Respondent also argues the petition has procedural defects sufficient to warrant dismissal for non-compliance with R.C. 2969.25(A)(1)-(4) and R.C. 2725.04(D).

{¶2} Nedeas filed a memorandum in opposition in which he claims that because his legal arguments raise what he believes are constitutional claims, he is entitled to bring his petition. However, all of his legal arguments existed at the time of his original convictions and could have been raised through a direct appeal. Thus, habeas corpus relief is not an available remedy.

{¶3} For the reasons that follow, Respondent's motion to dismiss is **GRANTED**.

I.

{¶4} Nedeas has filed no less than seven habeas corpus petitions in various federal courts and five in the Supreme Court of Ohio. *See Nedeas v. Hocking Correctional Facility, Warden*, S.D. Ohio No.2:12-CV-821, 2012 WL 4088717 (Sept. 17, 2012); *Nedeas v. Jackson*, N.D. Ohio No. 3:07CV2848, 2008 WL 657854, fn. 1 (March 6, 2008) (case citations for four additional federal habeas corpus petitions set forth in footnote); *Nedeas v. Hocking Correctional Facility*, S.D. Ohio No. 2:04CV1005 (Oct. 26, 2004); *see also Nedeas v. Tambi*, Ohio Supreme Court Case No. 2012-0974 (July 25, 2012) (sua sponte dismissal); *Nedeas v. Jackson*, Ohio Supreme Court Case No. 2007-1424 (Sept. 26, 2007) (sua sponte dismissal); *Nedeas v. Jackson*, Ohio Supreme Court Case No. 2007-0463 (May 2, 2007) (sua sponte dismissal); *Nedeas v. Jackson*, Ohio

Supreme Court Case No. 2006-2400 (Feb. 28, 2007) (sua sponte dismissal); *Nedea v. State of Ohio*, Ohio Supreme Court Case No. 2004-2062 (Jan. 26, 2005) (sua sponte dismissal).

{¶15} In 1970, a jury convicted Nedea of felonious assault, sodomy, and kidnapping for acts involving a nine-year-old child. See *Nedea v. Jackson*, N.D. Ohio No. 3:07CV2848, 2008 WL 657854 (March 6, 2008) (court summarized the relevant procedural history). In total, he was sentenced to a maximum consecutive term of 60 years in prison. He escaped and was convicted of escape and given a maximum term of five years to be served consecutive to his previous sentence of 60 years. Thus, Nedea's maximum sentence is 65 years and will expire in 2034. Nedea was paroled in 1986, but was arrested the following year for indecent exposure and returned to prison for parole violations. Nedea was paroled again in 2001, but was again arrested, this time for public indecency. The Ohio Parole Board revoked his parole in 2002. Nedea then began filing numerous habeas corpus petitions. *Id.* at *1.

{¶16} Nedea's current habeas corpus petition alleges that he is being held unlawfully because the testimony of witnesses at his original 1970 trial does not support his conviction. He includes his conviction papers for his 1970 conviction, but does not include the papers related to his conviction for escape, nor does he include the papers for his several parole violations.

{¶17} We find that the petition fails to comply with the procedural requirements of R.C. 2725.04(D) and R.C. 2969.25(A)(1)-(4). And, even if these procedural deficiencies did not exist, Nebeas's petition must be dismissed on substantive grounds.

His claim that his conviction is not supported by sufficient evidence is not cognizable in habeas corpus because he had an adequate remedy at law through a direct appeal. Moreover, because this petition constitutes Nedeas's sixth state habeas corpus petition, any claims which could have been raised in previous petitions are barred by res judicata.

II.

{¶18} Habeas corpus petitions are governed by R.C. 2725. They are available to a person who is "unlawfully restrained of his liberty . . . to inquire into the cause of such imprisonment, restraint, or deprivation." R.C. 2725.01. An individual may petition for a writ of habeas corpus if his maximum sentence has expired and he is being held unlawfully. *State v. Wilburn*, 4th Dist. No. 98CA47, 1999 WL 1281507 (Dec. 22 1999); *Frazier v. Strickrath*, 42 Ohio App.3d 114, 115-116, 536 N.E.2d 1193 (4th Dist. 1988).

{¶19} 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. 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. Because Nedeia failed to include all the relevant commitment papers, his habeas corpus petition is fatally flawed and must be dismissed.

{¶10} Additionally, the failure to comply with the provisions of R.C. 2969.25 requires the dismissal of the action. *Fuqua v. Williams*, 100 Ohio St. 3d 211, 2003-Ohio-5533, 797 N.E.2d 982. R.C. 2969.25(A)(1)-(4) requires that an inmate who files a civil action or appeal against a government entity or employee must file an affidavit that contains a description of each civil action or appeal the inmate has filed in the previous five years. Nedeia filed an affidavit that identified two previously filed habeas corpus actions. Respondent argues that Nedeia failed to include a number of other civil actions, including a suit filed in the Franklin County Court of Common Pleas: *Nedeia v. Ohio Dept. of Rehab. Corr.*, Franklin C.P. No. 13CV6805. Our review of the docket shows that, among others, Nedeia filed a mandamus action in Franklin County Common Pleas Court, *supra*, and failed to disclose this as required by R.C. 2969.25(A)(1)-(4). As a result, his petition is procedurally defective on this ground as well and must be dismissed. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 493, 2006-Ohio-1507, 844 N.E.2d 842.

{¶11} In addition to the procedural defects, Nedeia's petition must be dismissed on several substantive grounds. First, his claim that the evidence at trial was insufficient to support his conviction could have been raised on direct appeal. Because

he had an adequate remedy at law, habeas corpus is not an available remedy. *Lynch v. Wilson*, 114 Ohio St.3d 118, 119, 2007-Ohio-3254, 868 N.E.2d 982, 983, ¶¶ 5-6 (2007) (“Lynch’s claim that there was insufficient evidence to support his conviction and sentence for engaging in a pattern of corrupt activity is not cognizable in habeas corpus.”). “[H]abeas corpus is not available to remedy claims concerning * * * the sufficiency of the evidence.” *State ex rel. Tarr v. Williams*, 112 Ohio St.3d 51, 2006-Ohio-6368, 857 N.E.2d 1225, ¶ 4. See also *Caudill v. Brigano*, 100 Ohio St.3d 37, 2003-Ohio-4777, 795 N.E.2d 674, ¶ 3 (applying general rule to habeas corpus petition challenging convictions and sentence for several crimes, including engaging in a pattern of corrupt activity). Thus, Nedeas’s petition must be dismissed because he is not entitled to seek the extraordinary remedy of a writ of habeas corpus to address what he claims is an insufficiency of evidence at trial.

{¶12} Second, res judicata bars Nedeas from filing a successive habeas corpus petition insofar as he raises claims that he either raised or could have raised in his previous petitions. *State ex rel. Johnson v. Pineda*, 126 Ohio St.3d 480, 2010-Ohio-4387, 935 N.E.2d 38, 39, ¶ 1 (2010); *Keith v. Kelley*, 125 Ohio St.3d 161, 2010-Ohio-1807, 926 N.E.2d 646, ¶ 1; *State ex rel. Johnson v. Hudson*, 118 Ohio St.3d 308, 2008-Ohio-2451, 888 N.E.2d 1090; *Johnson v. Mitchell*, 85 Ohio St.3d 123, 707 N.E.2d 471 (1999). Res judicata “is applicable to successive habeas corpus petitions because habeas corpus petitioners have the right to appeal adverse judgments in habeas corpus cases.” *State ex rel. Childs v. Lazaroff*, 90 Ohio St.3d 519, 520, 739 N.E.2d 802 (2001); see generally *McCleskey v. Zant*, 499 U.S. 467, 479-489, 111 S.Ct. 1454, 113 L.Ed.2d

517 (1991). Nedeas has previously filed five state habeas corpus petitions. Our review of the Supreme Court of Ohio's docket and the electronic copies of Nedeas's petitions contained on it show that in at least two of the previous habeas corpus petitions Nedeas raised the same argument he raises here. See Case Nos. 2012-0974 and 2007-0463, *supra*. Thus, even if an insufficiency of evidence claim was cognizable in habeas corpus, Nedeas's petition is barred by res judicata.

III.

{¶13} Nedeas's habeas corpus petition failed to include an affidavit that contains a description of each civil action or appeal he has filed in the past five years as required by R.C. 2969.25(A)(1)-(4) and he failed to attach all the relevant commitment papers in violation of R.C. 2725.04(D). More importantly, Nedeas's claim that there was insufficient evidence at trial to support his conviction is not cognizable in habeas corpus because he had an adequate remedy at law through a direct appeal of his trial court conviction. And, as this is Nedeas's sixth state court habeas corpus petition, we find that Nedeas's petition is barred by res judicata. Thus, we hereby **GRANT** Respondent's motion to dismiss and **DISMISS** Nedeas's habeas corpus petition under Civ. R. 12(B)(6).

{¶14} The clerk shall serve a copy of this order on all counsel of record at their last known addresses. The clerk shall serve petitioner by certified mail, return receipt requested. If returned unserved, the clerk shall serve petitioner by ordinary mail.

PETITION DISMISSED. COSTS TO PETITIONER. SO ORDERED.

Hoover, P.J. & Harsha, J.: Concur.

FOR THE COURT

Matthew W. McFarland
Administrative 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