[Cite as *Shuster v. Jenkins*, 2016-Ohio-4676.]

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

MICHAEL SHANE SHUSTER,	:	
Petitioner-Appellant,	:	Case No. 15CA3516
vs.	:	
CHARLOTTE JENKINS, WARDEN,	:	DECISION AND JUDGMENT ENTRY
Respondent-Appellee.	:	

APPEARANCES:

Michael Shane Shuster, Chillicothe, Ohio, Pro Se Appellant.

Michael DeWine, Ohio Attorney General, and Paul Kerridge, Ohio Assistant Attorney General, Columbus, Ohio, for Appellee.

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-20-16
ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment that dismissed the petition for a writ of habeas corpus filed by Michael Shane Shuster, petitioner below and appellant herein. Appellant assigns the following errors for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE HABEAS COURT ERRED AND ABUSED ITS DISCRETION IN DISMISSING PETITION FOR FAILURE TO INCLUDE SIX MONTH INMATE ACCOUNT STATEMENT; WHEN EVIDENCE SHOWS INMATE PETITIONER REQUESTED STATEMENT AND PRISON OFFICIALS FAILED AND REFUSED TO COMPLY, DISMISSAL

VIOLATES DUE PROCESS AND RIGHT TO ACCESS TO COURTS. THE ACT WAS BEYOND INMATE'S SCOPE OF CONTROL AND HE CANNOT BE HELD ACCOUNTABLE FOR FAILURE. AT THE VERY LEAST, HABEAS COURT SHOULD HAVE GIVEN PETITIONER AN OPPORTUNITY TO CURE BY ISSUING A DEFICIENCY NOTICE; WHICH, IN FACT, WAS ISSUED FOR THE PERFECTING OF THIS APPEAL."

SECOND ASSIGNMENT OF ERROR:

"THE HABEAS COURT ERRED AND ABUSED ITS DISCRETION IN DISMISSING THE PETITIONER'S STATE HABEAS; AS HE IS UNLAWFULLY IMPRISONED AND ENTITLED TO IMMEDIATE RELEASE FROM CONFINEMENT PURSUANT TO O.R.C. SECTION 2725.17. SEE STATE EX REL JACKSON V. MCFAUL, 73 OHIO ST.3D 185 (1995). THE COURT'S RELIANCE ON STATE'S POSITION THAT HABEAS CORPUS RELIEF IS ONLY AVAILABLE TO INDIVIDUALS; WHOSE MAXIMUM SENTENCE HAS EXPIRED, IS INCORRECT INTERPRETATION OF LAW. RATHER, HABEAS CORPUS RELIEF IS APPROPRIATE; IF PETITIONER IS ENTITLED TO IMMEDIATE RELEASE UPON THE DETERMINATION THAT HIS CLAIMS URGED IN THE ACTION ARE WELL FOUNDED. SEE ROLLINS V. HASKINS, 176 OHIO ST. 394 (1964); SWIGER V. SEIDER, 74 OHIO ST.3D 685 (1996); STATE EX REL. BETTS V. GANSHEIMER, 2011 OHIO 3753 (2011)."

THIRD ASSIGNMENT OF ERROR:

"THE HABEAS COURT ERRED AND ABUSED ITS DISCRETION BY IGNORING THE TORTUROUS PROCEDURAL HISTORY OF ERRORS DENYING PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF THE PROCEEDINGS; RESULTING IN NO ADEQUATE ALTERNATIVE LEGAL REMEDY FOR HIS CLAIMS; EXCEPT STATE HABEAS RELIEF, WHICH IS A VIABLE REMEDY OF LAST RESORT TO SECURE RELIEF FROM AN ILLEGAL AND VOID SENTENCE. SEE IN RE LOCKHART, 157 OHIO ST. 192 (1952)."

FOURTH ASSIGNMENT OF ERROR:

> "THE HABEAS COURT FAILED TO REVIEW THE SUBSTANCE OF THE WHOLE PETITION; REFUSED TO SEE THE MERITS OF THE PLAIN ERRORS ALLEGED AND SUPPORTED, RATHER ERRING BY FINDING A TECHNICAL DENIAL OR DISMISSAL. HERE, GIVEN THE CUMULATIVE ERRORS PRESENTED; EVEN IF HARMLESS, THE EFFECT DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO A FAIR PROCEEDINGS [SIC] AND DUE PROCESS OF LAW. SEE 5TH AMENDMENT TO U.S. CONSTITUTION; SEE ALSO STATE V. DEMARCO, 31 OHIO ST.3D 181 (1987); STATE V. NEYLAND, 139 OHIO ST.3D 353 (2014. THE HABEAS COURT ERRED AND ABUSED ITS DISCRETION BY FAILING TO APPLY THE DOCTRINE OF CUMULATIVE ERROR IN THIS CASE."

{¶ 2} In 2013, a Morgan County jury found appellant guilty of twenty-nine sex-related offenses, including rape, gross sexual imposition, and sexual battery. Appellant unsuccessfully appealed his convictions and, also unsuccessfully, sought a new trial and postconviction relief. Following the appellate court's decision that affirmed the trial court's judgment of conviction, appellant filed a motion to reopen his appeal. This, too, was unsuccessful.

{¶ 3} On May 26, 2015, appellant filed a writ of habeas corpus and alleged that he is being held "under an illegal conviction and sentence" and that his judgment of conviction and sentence is void. In particular, appellant asserted that he "was tried and convicted, through illegal tactics, procedures and abuses of processes." Appellant raised a litany of errors that he claimed occurred at trial, including ineffective assistance of counsel and prosecutorial misconduct. Appellant further claimed that appellate counsel on direct appeal provided ineffective assistance of counsel.

{¶ 4} On June 22, 2015, appellee filed a Civ.R. 12(B)(6) motion to dismiss. Appellee

alleged that appellant's maximum sentence has not expired and he is not, therefore, entitled to a writ of habeas corpus. Appellee further alleged that (1) appellant's claims are not cognizable in habeas corpus; (2) appellant had an adequate legal remedy by direct appeal and other means; (3) appellant raised or could have raised the claims on direct appeal, in a postconviction relief petition, or in an application to reopen; and (4) appellant did not comply with R.C. 2969.25(C) in that he failed to attach a certified statement from the institutional cashier setting forth the balance of his account.

{¶ 5} On October 20, 2015, the trial court dismissed appellant's petition for a writ of habeas corpus. This appeal followed.

{¶ 6} Appellant's four assignments of error raise the same basic issue–whether the trial court erred by dismissing his petition. For ease of discussion, we first jointly consider appellant's third and fourth assignments of error.

{¶ 7} In his third and fourth assignments of error, appellant asserts that the trial court erred by dismissing his petition for failure to state a claim upon which relief can be granted. In his third assignment of error, appellant asserts that the trial court erred by concluding that his petition failed to state any viable habeas corpus claims. In his fourth assignment of error, appellant asserts that the trial court erred by failing to consider the cumulative effect of errors that allegedly occurred.

A

STANDARD OF REVIEW

{¶ 8} "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. See Boles v. Knab, 130 Ohio St.3d 339, 2011–Ohio–5049, 958 N.E.2d 554, ¶2.

B

HABEAS CORPUS

{¶ 9} R.C. Chapter 2725 governs habeas corpus relief. R.C. 2725.01 provides: "Whoever is unlawfully restrained of his liberty * * * may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." "Despite the breadth of the foregoing statute," R.C. 2725.05 prohibits habeas corpus relief for nonjurisdictional errors. State ex rel. Pirman v. Money, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994) (stating that supreme court has generally limited issuance of writ so as to preclude review of nonjurisdictional issues"), citing Flora v. Rogers, 67 Ohio St.3d 441, 619 N.E.2d 690 (1993), State ex rel. Dotson v. Rogers, 66 Ohio St.3d 25, 607 N.E.2d 453 (1993), and R.C. 2725.05. Specifically, R.C. 2725.05 states: "If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed." Thus,

nonjurisdictional issues ordinarily do not entitle a habeas corpus petitioner to immediate release from confinement. Pirman, 69 Ohio St.3d at 593.

{¶ 10} Moreover, "'[l]ike other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law.'" Smith v. Bradshaw, 109 Ohio St.3d 50, 2006-Ohio-1829, 845 N.E.2d 516, ¶10, quoting In re Complaint for Writ of Habeas Corpus for Goeller, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶6. However, "'when a court's judgment is void because it lacked jurisdiction, habeas is still an appropriate remedy despite the availability of appeal.'" Leyman v. Bradshaw, 2016-Ohio-1093, ¶9, quoting Gaskins v. Shiplevy, 74 Ohio St.3d 149, 151, 656 N.E.2d 1282 (1995).

{¶ 11} In the case at bar, none of the issues that appellant raises in his habeas corpus petition challenge the trial court's jurisdiction to enter the judgment of conviction and sentence. Thus, appellant's claims are not cognizable in habeas corpus, and R.C. 2725.05 prohibits habeas corpus relief. See Keith v. Bobby, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶15 (stating that prosecutorial misconduct not cognizable in habeas corpus); Bozsik v. Hudson, 110 Ohio St.3d 245, 2006-Ohio-4356, 852 N.E.2d 1200, ¶7 (stating that ineffective assistance of counsel not cognizable in habeas corpus). Moreover, the existence of alleged cumulative nonjurisdictional errors do not warrant habeas corpus relief.

{¶ 12} Appellant's assertions that the court acted without jurisdiction because the alleged errors render his conviction unlawful and void are meritless. See State v. Payne, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶27; Pratts v. Hurley, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, syllabus (explaining that a judgment is void ab initio only when a court acts without subject-matter jurisdiction). Instead, the alleged errors, if proven,

would render the court's judgment merely voidable. State v. Simpkins, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶12 ("Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court's judgment is invalid, irregular, or erroneous.").

{¶ 13} Additionally, appellant has not shown that he lacked an adequate legal remedy. Appellant directly appealed his conviction and filed a motion for a new trial, a postconviction relief petition, and an App.R. 26(B) application to reopen. Everett v. Eberlin, 114 Ohio St.3d 199, 2007-Ohio-3832, 870 N.E.2d 1190, ¶6 (explaining that appeal and postconviction relief petition are adequate legal remedies). Simply because he was unsuccessful does not mean that he lacked an adequate legal remedy. State ex rel. O'Neal v. Bunting, 140 Ohio St.3d 339, 2014-Ohio-4037, 18 N.E.3d 430, ¶15, quoting Childers v. Wingard, 83 Ohio St.3d 427, 428, 700 N.E.2d 588 (1998) ("'Where a plain and adequate remedy at law has been unsuccessfully invoked, extraordinary relief is not available to relitigate the same issue.'"); Everett at ¶6 (stating that "[t]he mere fact that [petitioner] has already unsuccessfully invoked some of these alternate remedies does not thereby entitle him to the requested extraordinary relief in habeas corpus"). Thus, despite appellant's belief to the contrary, the alleged errors he claims occurred do not warrant the extraordinary relief of habeas corpus. Consequently, the trial court did not err by determining that appellant's habeas corpus petition failed to set forth a claim upon which to grant relief.

{¶ 14} Accordingly, based upon the foregoing reasons, we overrule appellant's third and fourth assignments of error. Our disposition of appellant's third and fourth assignments of error renders his first and second assignments of error moot. We therefore do not address them. See

App.R. 12(A)(1)(c). We affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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.

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

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

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.