

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

Charles M. Steele	:	Case No. 18CA3630
Petitioner-Appellant,	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
Charlotte Jenkins, Warden	:	
Respondent-Appellee.	:	RELEASED: 10/03/2018

APPEARANCES:

Charles M. Steele, Chillicothe, Ohio pro se appellant.

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

HARSHA, J.,

{¶1} Charles M. Steele appeals a decision from the Ross County Common Pleas Court that dismissed his petition for writ of habeas corpus. Steele sought the immediate release from the Chillicothe Correctional Institution contending that the Cuyahoga County trial court violated Crim.R. 43(A) because he was not present at his resentencing.

{¶2} Steele contends the portion of the record that states that he was present with counsel is fraudulent. In essence he re-argues the alleged sentencing error raised in his habeas corpus petition. Steele's assertion that the trial court failed to comply with Crim.R. 43(A), and incorrectly or improperly noted his presence on the record, raises purported sentencing errors that should have been raised on direct appeal, not by habeas corpus. We overrule Steele's assignment of error and affirm the judgment of the trial court.

I. FACTS

{¶3} Steele was convicted of multiple counts of rape and kidnapping, with accompanying firearm specifications for multiple rapes committed in both Hamilton and Cuyahoga counties. The facts are set forth in *State v. Steele*, 155 Ohio App.3d 659, 2003-Ohio-7103, 802 N.E.2d 1127 (1st Dist.) and *State v. Steele*, 8th Dist. Cuyahoga Nos. 101139, 101140, 2014-Ohio-5431. His cumulative prison term is 175 years and is set to expire in 2198.

{¶4} Steele is currently incarcerated at the Chillicothe Correctional Institution. He has filed multiple unsuccessful petitions for habeas corpus in both the federal and state courts. See *Steele v. Jenkins*, N.D. Ohio No. 1:15CV1374, 2016 WL 9753764, *report and recommendation adopted*, N.D. Ohio No. 1:15-CV-13742017 WL 4390690, *certificate of appealability denied*, 2018 WL 2144073 (Mar. 5, 2018); *State ex rel. Steele v. Robinson*, 4th Dist. Ross No. 12CA3359, 2013-Ohio-3541.

{¶5} Steele's most recent habeas corpus petition contended that he was not present for the resentencing hearing ordered by the court in *State v. Steele*, 8th Dist. Cuyahoga Nos. 101139, 101140, 2014-Ohio-5431. He argued that the sentencing court's journal entry incorrectly and fraudulently stated that Steele was present in court with his attorney. He argued that the sentencing court failed to comply with Crim.R. 43(A), which requires that he must be physically present at every stage of the criminal proceeding. Steele also contended that he did not file certain appellate papers with the Cuyahoga Clerk of Courts and that those papers were fabricated and constituted further fraud upon the court. Respondent Jenkins filed a motion to dismiss arguing, among other issues, that Steele's petition raised sentencing errors and fraud claims that could have been raised in a direct appeal or post-conviction relief and are not cognizable in habeas corpus. The trial

court granted respondent's motion to dismiss on the ground that Steele's assertion of a violation of Crim.R. 43(A) and fraud are not cognizable in habeas corpus and had to be raised by direct appeal.

{¶16} On appeal Steele contends that Crim.R. 43(A) provides that a defendant must be present when the court imposes a sentence, but he was not present; the journal entry that states he was present is a fraud. Steele argues that he is being held illegally because of this alleged fraud.

II. ASSIGNMENT OF ERROR

{¶17} Steele assigns the following error for our review:

- I. CRIM.R. 43(A) PROVIDES THAT, "THE DEFENDANT SHALL BE PRESENT AT THE ARRAIGNMENT AND EVERY STAGE OF THE TRIAL, INCLUDING * * * THE IMPOSITION OF SENTENCE." A DEFENDANT THUS HAS A DUE-PROCESS RIGHT, EMBODIED IN CRIM.R. 43(A), TO BE PRESENT WHEN THE COURT IMPOSES SENTENCE AND A TRIAL COURT CANNOT ABROGATE A DEFENDANT'S DUE-PROCESS RIGHTS BY SENTENCING THE DEFENDANT IN HIS ABSENCE.

III. Standard of Review

{¶18} "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”). *Lloyd v. Robinson*, 4th Dist. Ross No. 14CA3462, 2015-Ohio-1331, ¶ 11. We conduct a de novo review of a trial court’s dismissal for failure to state a claim. *Johnson v. Robinson*, 4th Dist. Ross No. 14CA3460, 2016-Ohio-3366, ¶ 15.

IV. Habeas Corpus

{¶9} 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 is subject to dismissal. *State ex rel. Harsh v. Sheets*, 132 Ohio St.3d 198, 2012-Ohio-2368, 970 N.E.2d 926; *State ex rel. Shackelford v. Moore*, 116 Ohio St. 3d 310, 2007-Ohio-6462, 878 N.E.2d 1035. Moreover, 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).

{¶10} Under Supreme Court of Ohio precedent the proper remedy for alleged sentencing errors is by appeal in the criminal case itself. *Billiter v. Banks*, 135 Ohio St.3d 426, 2013–Ohio–1719, 988 N.E.2d 556, ¶ 8. Moreover, the Court in *Billiter* held that the

“appeal constituted an adequate remedy that now bars [petitioner's] habeas petition.” *Id.* The fact that a direct appeal may no longer be available to Steele does not render the legal remedy inadequate or thereby entitle Steele to the extraordinary writ of habeas corpus. See *Jackson v. Wilson*, 100 Ohio St.3d 315, 2003–Ohio–6112, 798 N.E.2d 1086, ¶ 9 (“even if these other remedies are no longer available to [the habeas petitioner], he is not thereby entitled to an extraordinary writ”); *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 579, 757 N.E.2d 357 (2001) (“the fact that either or both of these alternative remedies may no longer be available because of [relator's] failure to timely pursue them does not render them inadequate”). Claims of sentencing error are not jurisdictional. *State ex rel Massie v. Rogers*, 77 Ohio St.3d 449, 449–450, 674 N.E.2d 1383 (1997); *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008–Ohio–4479, 894 N.E.2d 44, ¶ 10.

{¶11} Likewise, Steele's claim of fraud is not cognizable in habeas corpus. See *Lloyd v. Robinson*, 4th Dist. Ross No. 14CA3462, 2015-Ohio-1331, ¶ 19 citing *State ex. rel. Harsh v. Sheets*, 132 Ohio St.3d. 198, 2012-Ohio-2368, ¶ 3.

{¶12} Based on the foregoing, the common pleas court correctly concluded that Steele had an adequate remedy at law in the form of a direct appeal from the original judgment; therefore, he is not entitled to habeas corpus. Furthermore, alleged sentencing errors such as those asserted by Steele are not jurisdictional, and thus, are not cognizable grounds for habeas relief. Accordingly, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

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 Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.