

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GARY SANDERS	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Petitioner-Appellant	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2008-CA-0105
STUART HUDSON, WARDEN	:	
	:	
Respondent-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 08CV1347D

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: June 17, 2009

APPEARANCES:

For Petitioner-Appellant

For Respondent-Appellee

GARY SANDERS #512-022
Mansfield Correctional Institution
Box 788
Mansfield, OH 44901

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Gwin, P.J.

{¶1} Petitioner Gary Sanders appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which denied his petition for a writ of Habeas Corpus and an immediate release from incarceration.

{¶2} Habeas Corpus is an extraordinary remedy available only if the petitioner is entitled to the immediate release from confinement, *State ex rel. Jackson v. McFaul*, 73 Ohio St. 3d 185, 1995-Ohio-228, 652 N.E.2d 746 ; R.C. 2725.01 et seq.

{¶3} In general, an appellate court can only consider evidence that was before the trial court, but if a later event causes the case to become moot the court may consider extrinsic evidence outside the record. *State ex rel. Cincinnati Inquirer v. Dupuis*, 98 Ohio St. 3d 126, 2002-Ohio-7041, 781 N.E.2d 163 at paragraph 8, citations deleted. In *Cruse v. Bradshaw*, 108 Ohio St. 3d 212, 2006-Ohio-663, 842 N.E.2d 513, the Ohio Supreme Court found an appeal from the denial of a habeas corpus appeal was moot after the petitioner was released, even though the evidence had occurred subsequent to the filing of the notice of appeal and thus was not in the record. *Id.* at paragraph 5.

{¶4} Appellant appeared at oral argument on the merits, and because he is no longer incarcerated, we find the appeal is now moot.

{¶5} The appeal is dismissed.

By Gwin, P.J.,
Hoffman, J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

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