

[Cite as *State ex rel. Ali v. Smith*, 2010-Ohio-386.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL. OSIRIS ALI

Petitioner

-vs-

KEITH SMITH, WARDEN

Respondent

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 09 CA 151

OPINION

CHARACTER OF PROCEEDING:

Writ Of Habeas Corpus

JUDGMENT:

Petition Dismissed

DATE OF JUDGMENT ENTRY:

February 4, 2010

APPEARANCES:

Petitioner

Respondent

OSIRIS ALI, PRO SE
Mansfield Correction Institution
#503-171
1150 North Main Street
Mansfield, Ohio 44901

KEITH SMITH, WARDEN
1150 North Main Street
Mansfield, Ohio 44901

Hoffman, J.

{¶1} Petitioner, Osiris Ali, has filed a Petition for Writ of Habeas Corpus wherein Petitioner challenges the trial court's jurisdiction to impose sentences for seven counts of unlawful sexual conduct with a minor. Petitioner was indicted on nineteen counts of rape but was not indicted for unlawful sexual conduct with a minor.

{¶2} A bench trial was conducted on all nineteen counts. The trial court reduced seven of the rape counts to unlawful sexual conduct with a minor. The trial court also found Petitioner guilty of five counts of rape with life sentence specifications. Petitioner was sentenced to five life sentences for the rape convictions ordered served concurrent to one another.

{¶3} Petitioner does not challenge the rape convictions or sentences except to argue he should not have been convicted and sentenced to both rape and kidnapping because they are allied offenses of similar import. Petitioner's primary challenge is whether the trial court had jurisdiction to convict Petitioner of crimes for which he was not indicted. Petitioner remains incarcerated pursuant to valid life sentences for his rape convictions.

{¶4} First, we will address Petitioner's claim relative to allied offenses. The Supreme Court has held habeas corpus does not lie to raise claims regarding allied offenses, "[A]llied-offense claims are nonjurisdictional and are not cognizable in habeas corpus. *Mosely v. Echols* (1991), 62 Ohio St.3d 75, 578 N.E.2d 454." *Smith v. Voorhies* 119 Ohio St.3d 345, 347, 894 N.E.2d 44, 46 (Ohio,2008). Therefore, we decline to issue the requested writ as it relates to Petitioner's allied offenses claim.

{¶5} Next, we turn to Petitioner’s claim relating to his lesser included offenses convictions. Again petitioner does not challenge his rape convictions. “Where a petitioner is incarcerated for several crimes, the fact that the sentencing court may have lacked jurisdiction to sentence him on one of the crimes does not warrant his release in habeas corpus.” *Swiger v. Seidner* (1996), 74 Ohio St.3d 685, 687, 660 N.E.2d 1214; see also *Haynes v. Voorhies*, 110 Ohio St.3d 243, 2006-Ohio-4355, 852 N.E.2d 1198, ¶ 7.” *Keith v. Bobby*, 117 Ohio St.3d 470, 472, 884 N.E.2d 1067, 1069 (Ohio,2008).

{¶6} Because Petitioner is sentenced pursuant to multiple valid, unexpired rape sentences, he is not entitled to habeas corpus relief. For this reason, the instant Petition is dismissed.

{¶7} PETITION DISMISSED.

{¶8} COSTS TO PETITIONER.

{¶9} IT IS SO ORDERED.

By: Hoffman, J.

Farmer, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL. OSIRIS ALI	:	
	:	
Petitioner	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
KEITH SMITH, WARDEN	:	
	:	
Respondent	:	Case No. 09 CA 151

For the reasons stated in our accompanying Opinion, the Petition for Writ of Habeas Corpus is dismissed.

PETITION DISMISSED.

COSTS TO PETITIONER.

IT IS SO ORDERED.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY