

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONALD F. LEYMAN

Petitioner

-vs-

MARGARET BRADSHAW, WARDEN

Respondent

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 14 CA 93

O P I N I O N

CHARACTER OF PROCEEDING:

Habeas Corpus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

February 27, 2015

APPEARANCES:

For Petitioner

For Respondent

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Wise, J.

{¶1}. Petitioner, Donald Leyman, has filed a petition for writ of habeas corpus wherein he argues he is entitled to immediate release from prison because the court which convicted him lacked subject matter jurisdiction over his case. Respondent has filed a responsive brief and motion to dismiss based upon the argument that Petitioner has failed to state a claim upon which relief may be granted.

{¶2}. “Dismissal under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted is appropriate if, after all factual allegations are presumed true and all reasonable inferences are made in [petitioner’s] favor, it appears beyond doubt that he could prove no set of facts entitling him to the requested extraordinary relief in habeas corpus. *State ex rel. Turner v. Houk*, 112 Ohio St.3d 561, 2007-Ohio-814, 862 N.E.2d 104, ¶ 5.” *Keith v. Bobby*, 2008-Ohio-1443, ¶ 10, 117 Ohio St. 3d 470, 472, 884 N.E.2d 1067, 1069.

{¶3}. Petitioner was convicted in the Medina County Court of Common Pleas of raping his stepson. The indictment alleged the incident(s) occurred during the fall of 1993 through 1995. Because the testimony revealed Petitioner and his stepson lived in New York during part of this time period and because Petitioner claims the victim did not testify the rape occurred in Medina, Petitioner argues the Medina Court of Common Pleas lacked subject matter jurisdiction over his case.

{¶4}. Petitioner challenged his conviction in the Ninth District Court of Appeals arguing the Medina County Court of Common Pleas was not the proper venue because of the alleged lack of evidence that the rape occurred in Ohio. The Ninth District

addressed the venue claim and affirmed the conviction.¹ *State v. Leyman*, No. 2970-M, 2000 WL 1471062, at *3 (Ohio Ct. App. Oct. 4, 2000).

{¶5}. Appellant appealed his conviction to the Ohio Supreme Court, however, that Court refused to hear the appeal. *State v. Leyman*, 91 Ohio St. 3d 1433, 741 N.E.2d 895 (2001).

{¶6}. Petitioner primarily relies on the Supreme Court's holding in *State v. Yarbrough*, 104 Ohio St.3d 1, 2004-Ohio-6087 in support of his claim.

{¶7}. In *Yarbrough*, the Supreme Court reversed a murder conviction wherein it was undisputed that the murder occurred in Pennsylvania and not in Ohio. Here, Petitioner disputes the findings of the jury and the Ninth District Court of Appeals. The jury and the Ninth District concluded the evidence was sufficient to establish the rape occurred in Medina County.

{¶8}. Respondent points out that *Yarbrough* was not a habeas corpus action. Rather, it was an appeal, and this fact alone demonstrates Petitioner has or had an adequate remedy at law to raise his claim by way of an appeal.

{¶9}. “[H]abeas corpus, like other extraordinary writ actions, is not available when there is an adequate remedy at law.” *In re Coleman*, 95 Ohio St.3d 284, 2002-Ohio-1804, 767 N.E.2d 677, at ¶ 4, quoting *Gaskins v. Shiplevy* (1996), 76 Ohio St.3d 380, 383, 667 N.E.2d 1194.

¹ We note that although the Ninth District did not evaluate the issue in terms of subject matter jurisdiction, the Ninth District's opinion must necessarily have found subject matter jurisdiction prior to addressing the issue of venue. See e.g. *State ex rel. Frinzi v. Ohio Dep't of Transp.*, No. 75347, 1999 WL 84073, at *2 (Ohio Ct. App. Feb. 11, 1999) (“[V]enue presumes jurisdiction.”).

{¶10}. “In the absence of a *patent and unambiguous lack of jurisdiction*, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal.’ ” (Emphasis added.) **1129 *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, 786 N.E.2d 39, ¶ 8, quoting *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, ¶ 18. This rule applies to habeas corpus cases. *Agee v. Russell* (2001), 92 Ohio St.3d 540, 544, 751 N.E.2d 1043; *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 145, 637 N.E.2d 890.” *Ross v. Saros*, 2003-Ohio-4128, ¶ 14, 99 Ohio St. 3d 412, 414, 792 N.E.2d 1126, 1128-29.

{¶11}. Petitioner has not provided this Court with the entire transcript of proceedings. The Ninth District Court of Appeals found sufficient evidence was presented to support the jury’s verdict which necessarily includes their finding that the rape occurred in Ohio. The Ninth District Court of Appeals was able to review the entire transcript and all of the evidence presented at trial. Petitioner wants this Court, without the benefit of the complete trial transcript, to find there was not sufficient evidence to establish subject matter jurisdiction. We cannot say Petitioner has established a lack of subject matter jurisdiction based upon the evidence presented to this Court.

{¶12}. “Pursuant to R.C. 2931.03, the court of common pleas has subject matter jurisdiction of criminal cases. *State v. Mitchell*, 5th Dist. Guernsey No. 07–CA–17, 2008–Ohio–101, ¶ 32. A common pleas court has original jurisdiction in felony cases and its jurisdiction is invoked by the return of an indictment. *Click v. Eckle*, 174 Ohio St. 88, 89, 186 N.E.2d 731 (1962).” *State v. Wilson*, 2014-Ohio-3286, ¶¶ 14-15 *appeal not allowed*, 2014-Ohio-5251, ¶¶ 14-15, 140 Ohio St. 3d 1522.

{¶13}. In this case, Petitioner was charged by a felony indictment filed in the Medina County Court of Common Pleas. The Medina County Court of Common Pleas does have subject matter jurisdiction over criminal, felony cases. Based upon the evidence before us, or lack thereof, and the holding of the Ninth District Court of Appeals, we cannot and do not find the Medina County Common Pleas Court patently and unambiguously lacked jurisdiction over Petitioner's case. For this reason, the motion to dismiss the petition is granted.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

JWW/d 0205