

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Matthew Fortner

Court of Appeals No. L-12-1175

Petitioner

v.

Paul Sigsworth, Erie County Sheriff

DECISION AND JUDGMENT

Respondent

Decided: August 8, 2012

* * * * *

Robert Zelvy and John W. Gold, for petitioner.

* * * * *

OSOWIK, J.

{¶ 1} This matter is before the court on a “Petition for Writ of Habeas Corpus” filed on July 2, 2012, by petitioner, Matthew Fortner, pursuant to R.C. Chapter 2725. The facts, taken from the petition and attached copies of the trial court's journal entries, are as follows.

{¶ 2} On June 14, 2012, petitioner was indicted by the Erie County Grand Jury on six counts of complicity to commit burglary, in violation of R.C. 2911.12(A)(2) and 2923.03(A)(2), second degree felonies, two counts of complicity to commit theft in violation of R.C. 2913.02 and 2923.03(A)(2), fifth degree felonies, and complicity to commit grand theft in violation of R.C. 2913.02 and 2923.03(A)(2), a fourth degree felony. On April 5, 2012, a bond hearing was held, after which the trial court imposed a personal recognizance bond in the amount of \$50,000, along with the special condition that petitioner would be under house arrest and wear an electronic monitoring device, among other requirements.

{¶ 3} On April 30, 2012, petitioner filed a motion to suppress, and a hearing was set for June 18, 2012. Thereafter, petitioner filed a motion to continue the June 18 suppression hearing, which the trial court granted. The suppression hearing was reset for June 27, 2012. However, on June 14, 2012, the trial court revoked petitioner's bond, after finding that "he is not complying with the conditions of electronic monitoring (GTS) and House Arrest." The trial court ordered petitioner taken into custody by respondent, Erie County Sheriff Paul Sigsworth.

{¶ 4} On June 25, 2012, petitioner filed a motion in the trial court in which he asked to have his suppression hearing converted to a bond hearing. On June 26, 2012, the trial court filed a judgment entry, in which it found that, while petitioner was being electronically monitored, he was "involved in activities that were not pre-approved by the monitoring agency. Specifically, [petitioner's] 'whereabouts' were unknown at times to

the monitoring agency due to his various travels around the area.” Due to its concerns about petitioner’s unauthorized travels, the trial court found petitioner’s request to convert the suppression hearing to a bond hearing was not well-taken, and it was denied.

{¶ 5} In support of his habeas petition, petitioner states that the trial court should have granted his request for an evidentiary hearing on the issue of whether he violated the conditions of his bond. Petitioner further states that, on June 14, the trial court revoked the bond of 11 other individuals on grounds that they failed to comply with the terms of electronic monitoring. Petitioner alleges that his electronic monitoring device, an ankle bracelet, malfunctioned on more than one occasion. Petitioner further alleges that he was allowed to work while on bond, however, he was unable to report his work schedule to the trial court despite numerous attempts to leave telephone messages with the probation department.

{¶ 6} Generally, “[w]hoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. “The purpose of habeas corpus is to determine the legality of the restraint under which a person is held, not to determine guilt or innocence.” *Young v. Brunsman*, 4th Dist. No. 06CA2938, 2008-Ohio-64, ¶ 15, citing *In re Lockhart*, 157 Ohio St. 192, 194, 105 N.E.2d 35 (1952).

{¶ 7} Specifically, habeas corpus is an extraordinary writ which is only available in cases ““where there is an unlawful restraint of a person's liberty and no adequate

remedy at law.” *Rowe v. Brunsman*, 4th Dist. No. 06CA2891, 2006-Ohio-1964, ¶ 4, quoting *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 8. Moreover, “[h]abeas corpus is generally appropriate in the criminal context only if the prisoner is entitled to immediate release from prison.” *Ridenour v. Randle*, 96 Ohio St.3d 90, 2002-Ohio-3606, 771 N.E.2d 859, ¶ 7. “For example, a writ of habeas corpus will generally lie to compel a defendant's release from prison when he will be able to prove that the trial court in the underlying criminal case lacked the jurisdiction to enter the conviction.” *Rowe, supra*, citing *Heddleston v. Mack*, 84 Ohio St.3d 213, 702 N.E.2d 1198 (1998). However, “[i]t has long been established that a writ of habeas corpus will not be allowed when a prisoner is held by virtue of the judgment of the court of record that had jurisdiction to render that judgment.” *Wireman v. Ohio Adult Parole Auth.*, 38 Ohio St.3d 322, 528 N.E.2d 173 (1988).

{¶ 8} In cases where “it is apparent from the allegations that the matter alleged is within the class of cases in which a particular court has been empowered to act, jurisdiction is present. Any subsequent error in proceeding is only error in the “exercise of jurisdiction,” as distinguished from the want of jurisdiction in the first instance.” *Young, supra*, at ¶ 19, quoting *Jimison v. Wilson*, 106 Ohio St.3d 342, 835 N.E.2d 34, 2005-Ohio-5143, ¶ 11, quoting *State v. Filiaggi*, 86 Ohio St.3d 230, 240, 714 N.E.2d 867 (1999). “Errors in the exercise of jurisdiction should be raised on direct appeal instead of in habeas corpus.” *Id.*

{¶ 9} Pursuant to Crim.R. 46(B), the trial court is empowered to impose conditions on bail that are necessary to insure his or her appearance at trial. Pursuant to Crim.R. 46(I), the trial court may amend bail “[i]f there is a breach of condition of bail * * *.”

{¶ 10} This court has held that, in cases where the trial court determines that an accused has violated the conditions of his bail, “the accused is subject to the court’s sanctioning authority for violation of the conditions, including revocation of bail.” *State v. Wright*, 6th Dist. No. S-09-023, 2010-Ohio-2620, ¶ 32, quoting *In re Mason*, 116 Ohio App.3d 451, 453, 2010-Ohio-2620, 688 N.E.2d 552 (7th Dist.). On appeal, the trial court’s decision will be upheld absent a finding of abuse of discretion. *Id.*

{¶ 11} R.C. 2725.05 states that a writ of habeas corpus shall not be allowed where “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 * * *.” In this case, having established that the trial court had both jurisdiction and authority to find that appellant violated the conditions of his bond and to revoke the bond, we find that petitioner is not entitled to a writ of habeas corpus.

{¶ 12} Writ dismissed at petitioner’s costs.

{¶ 13} The Sheriff of Lucas County shall immediately **serve upon the respondent** by personal service a copy of this order and a copy of the Habeas Corpus Petition filed on July 2, 2012, pursuant to R.C. 2725.11.

{¶ 14} The Clerk of Court is hereby directed to immediately **serve upon all other parties** a copy of this order in a manner prescribed by Civ.R. 5(B).

{¶ 15} It is so ordered.

{¶ 16} The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
