

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

State of Ohio, ex rel. Lamont A. Mason

Court of Appeals No. L-12-1247

Petitioner

v.

Edward Sheldon, Warden

DECISION AND JUDGMENT

Respondent

Decided: October 17, 2012

* * * * *

Lamont A. Mason, pro se.

Mike DeWine, Ohio Attorney General, and M. Scott Criss,
Assistant Attorney General, for respondent.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court on a pro se petition for writ of habeas corpus filed by petitioner, Lamont A. Mason, against respondent, Edward Sheldon, Warden of the Toledo Correctional Institution. Petitioner claims that he is being unlawfully restrained at the Toledo Correctional Institution and seeks a writ of habeas corpus

ordering that he be removed from respondent's custody "and delivered to * * * the Franklin County Jail until an order reflecting his competency [to stand trial] is made."

The following facts are derived solely from the petition and attached exhibits.

{¶ 2} On April 17, 1996, petitioner was indicted by the Franklin County Grand Jury on charges of aggravated robbery, robbery, receiving stolen property, three counts of felonious assault on a peace officer, and related firearm specifications. On August 28, 1996, the trial court found that the issue of petitioner's competence to stand trial had been raised under R.C. 2945.37, ordered a psychiatric examination and evaluation of petitioner's mental condition pursuant to R.C. 2945.371, and continued the trial date pending receipt of the examiner's report. On October 3, 1996, the trial court filed a "Criminal Case Processing Sheet" directing that the case be set for trial on October 15, 1996, with special instructions to the clerk that a "Psych Stip." had occurred in the case. A jury found petitioner guilty of all charges on October 21, 1996, and the trial court imposed sentence on October 28, 1996. The trial court never journalized a finding that petitioner was competent to stand trial.

{¶ 3} Petitioner appealed his conviction to the Tenth District Court of Appeals through newly appointed appellate counsel. In his assignments of error, petitioner asserted that the trial court erred by joining separate indictments for trial and that his right to effective assistance of counsel was violated when his trial counsel failed to move for the suppression of allegedly tainted evidence. The appellate court affirmed the trial

court's judgment in *State v. Mason*, 10th Dist. No. 96APA11-1602, 1997 WL 284691 (May 29, 1997).

{¶ 4} In support of his petition for habeas relief, petitioner now contends that the trial court “lacked jurisdiction to order [a] judgment of conviction prior to issuing an order finding [him] competent to stand trial when the trial court found good cause to postpone trial for determination of competency.” In other words, petitioner states:

If the petitioner was competent following the evaluation an order or finding was required expressing such. Being that the petitioner was never found competent, the trial court had no jurisdiction to continue with criminal proceedings and no jurisdiction to enter judgment of conviction.

{¶ 5} A writ of habeas corpus is an extraordinary remedy available only in cases “where there is an unlawful restraint of a person's liberty and no adequate remedy at law.” *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 8. “If an issue raised in a petition for a writ of habeas corpus could have been raised on direct appeal or in a petition for post-conviction relief, the petition for a writ of habeas corpus will be denied.” *Garrett v. Wilson*, 5th Dist. No. 07-CA-60, 2007-Ohio-4853, ¶ 9.

{¶ 6} Petitioner could have raised the issue of his right to an explicit finding of competency in his direct appeal, but failed to do so. This failure, however, does not change the fact that such remedy was available. *See Young v. Brunsman*, 4th Dist. No. 06CA2938, 2008-Ohio-64, ¶ 21. Moreover, petitioner discloses that he filed two petitions for postconviction relief, one in 2008, and the other on August 2, 2011. The

latter petition was accompanied by a motion for “Retroactive Competency hearing and determination.” “Thus, adequate legal relief was not only available to Petitioner, but was utilized as well.” *Sevayega v. Bobby*, 7th Dist. No. 03 MA 48, 2003-Ohio-6395, ¶ 9. *See also State ex rel. Neguse v. McIntosh*, 115 Ohio St.3d 216, 2007-Ohio-4788, 874 N.E.2d 772, ¶ 6-7 (the availability of an appeal or discretionary appeal from the denial of postconviction relief constitutes an adequate remedy at law that will preclude extraordinary relief); *State ex rel. Atkins v. Hoover*, 97 Ohio St.3d 76, 2002-Ohio-5313, 776 N.E.2d 99, ¶ 5 (the fact that a legal remedy may no longer be available does not render the remedy inadequate).

{¶ 7} Although petitioner maintains that the trial court lacked jurisdiction to enter a judgment of conviction, he has mistaken an alleged impropriety in rendering judgment for lack of jurisdiction. It is only when a court lacks subject-matter jurisdiction that its judgment is void and subject to collateral attack in habeas corpus. *Pratts, supra*, at ¶ 8 and 12. Thus, when it appears 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.” *Jimison v. Wilson*, 106 Ohio St.3d 342, 2005-Ohio-5143, 835 N.E.2d 34, ¶ 11, quoting *State v. Filaggi*, 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.* at ¶ 11.

{¶ 8} Here, the Franklin County Court of Common Pleas had subject-matter jurisdiction over petitioner's criminal case pursuant to R.C. 2931.03. The court's subsequent failure to journalize a finding that petitioner was competent to stand trial may (or may not) have resulted in reversible error under the circumstances. But such error involves only the improper exercise of jurisdiction; it does not deprive the court of its subject-matter jurisdiction. Ohio courts have long held that the alleged incompetence of an accused during criminal proceedings does not void a conviction and is not cognizable in state habeas corpus proceedings. *Howard v. Randle*, 95 Ohio St.3d 281, 2002-Ohio-2122, 767 N.E.2d 268, ¶ 6; *Pollock v. Morris*, 35 Ohio St.3d 117, 518 N.E.2d 1205 (1988); *Krauter v. Maxwell*, 3 Ohio St.2d 142, 146, 209 N.E.2d 571 (1965); *Hurt v. Konteh*, 11th Dist. No. 98-T-0101, 1999 WL 535735, *2 (July 16, 1999).

{¶ 9} Having determined that the trial court possessed subject-matter jurisdiction over petitioner's criminal case, and that petitioner has or had an adequate remedy at law to litigate the matter at issue, we sua sponte dismiss the petition for writ of habeas corpus.

{¶ 10} Writ dismissed at petitioner's costs.

{¶ 11} In light of our current disposition, all other pending motions and requests are rendered moot.

{¶ 12} The Clerk of Courts is hereby directed to immediately serve upon all parties a copy of this dismissal in a manner prescribed by Civ.R. 5(B).

Writ denied.

State ex rel. Mason
v. Sheldon
C.A. No. L-12-1247

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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