

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

James R. Phillips, Jr.

Court of Appeals No. L-13-1159

Petitioner

v.

Edward T. Sheldon, Warden

**DECISION AND JUDGMENT**

Respondent

Decided: August 15, 2013

\* \* \* \* \*

James R. Phillips, Jr., pro se.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This matter is before the court on “Petition for Writ of Habeas Corpus” filed by petitioner, James R. Phillips, Jr., acting pro se. For the reasons that follow, the petition for a writ of habeas corpus is denied.

{¶ 2} On April 29, 2009, petitioner was convicted by a jury of one count of rape of a child under age 13, in violation of R.C. 2907.02(A)(1)(b) and (B). On May 20, 2009, the trial court sentenced petitioner to serve a prison term of 15 years to life. Petitioner

filed a direct appeal to this court on June 1, 2009. On December 3, 2009, petitioner filed a motion to have his sentence reduced and for a new trial pursuant to Crim.R. 33 in the trial court. We affirmed the trial court's judgment on June 4, 2010. *See State v. Phillips*, 6th Dist. Lucas No. L-09-1149, 2010-Ohio-2577. On August 5, 2010, petitioner filed a "Motion for New Trial Due to Newly Discovered Evidence" in the trial court. On June 21, 2011, the trial court denied all of petitioner's outstanding motions. Petitioner then filed a notice of delayed appeal to the Supreme Court of Ohio on November 28, 2011, which was denied on January 8, 2012. The instant petition was filed on July 19, 2013.

{¶ 3} A writ of habeas corpus is an extraordinary remedy that is 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. Richland No. 07-CA-60, 2007-Ohio-4853, ¶ 9.

{¶ 4} In addition, "[a] party detained pursuant to a judgment of a court is entitled to a writ of habeas corpus if that court lacked jurisdiction to enter the judgment." *Burton v. Russell*, 12th Dist. Warren No. CA95-01-004, 1995 WL 222164 (Apr. 17, 1995), citing *Pollock v. Morris*, 35 Ohio St.3d 117, 118, 518 N.E.2d 1205 (1998). Accordingly, habeas corpus relief is inappropriate in cases "where the petitioner is confined pursuant to

a judgment or order of a court of competent jurisdiction or where the petition fails to challenge the jurisdiction of the sentencing court.” *Id.*, citing *Stahl v. Shoemaker*, 50 Ohio St.2d 351, 354-55, 364 N.E.2d 286 (1977).

{¶ 5} In support of his petition, petitioner states that he should be immediately released from prison because:

- (1) evidence of force or threat of force was not presented at trial,
- (2) the trial court failed to instruct the jury on the element of force as provided in the indictment, (3) the finding of guilt does not include a force specification or a use-of-controlled-substance specification,
- (4) the trial court did not find on the record that the shortest prison term will demean the seriousness of the alleged conduct or will not adequately protect the public, (5) Phillips never previously served a prison term, and (6) his life sentence is not consistent with sentences imposed on similar offenders.

{¶ 6} As set forth above, appellant was convicted pursuant to R.C. 2907.02(A)(1)(b), which states that:

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

\* \* \*

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person. \* \* \*

{¶ 7} In support of his petition, petitioner argues that he should be released from prison because the prosecution did not meet its burden to prove the element of force required by R.C. 2907.02(B), therefore, he could not be sentenced to life in prison for raping a child. Appellant further argues that the trial court erred by not making proper findings to support a life sentence as required by R.C. 2929.14. Finally, appellant cites several Ohio cases that appear to require a finding of force, however slight, to support a life sentence when an offender is convicted of child rape pursuant to R.C. 2907.02(A)(1)(b). Appellant's arguments are not well-taken.

{¶ 8} Each of the cases relied upon by appellant, i.e., *State v. Payton*, 119 Ohio App.3d 694, 696 N.E.2d 240 (11th Dist.1997), *State v. Millow*, 1st Dist. Hamilton Nos. C-000524, C-000510, 2001 WL 693918 (June 15, 2001), *State v. Henry*, 3d Dist. Seneca No. 13-08-10, 2009-Ohio-3535, *State v. Lucas*, 2d Dist. Montgomery No. 18644, 2001 WL 1103288, *State v. Mitcham*, 11th Dist. Ashtabula No. 90-A-1494, 1991 WL 98711 (June 7, 1991), *State v. Kuhn*, 6th Dist. Lucas No. L-01-1274, 2002-Ohio-379, and *State v. Stull*, 6th Dist. Sandusky No. S-01-039, 2002-Ohio-5917, involved charges of child rape that were brought under the prior version of R.C. 2907.02(B) which stated, in relevant part, that:

If the offender under division (A)(1)(b) of this section purposely compels the victim to submit by force or threat of force or if the victim under

division (A)(1)(b) of this section is less than ten years of age, whoever violates division (A)(1)(b) of this section shall be imprisoned for life.

{¶ 9} However, the version of R.C. 2907.02(B) that became effective on January 1, 2008, before petitioner committed the crime of which he was convicted states, in relevant part, that:

Except as otherwise provided in this division, notwithstanding section 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code.

{¶ 10} R.C. 2971.03(A)(2) authorizes a life sentence in cases where the offender is convicted of rape pursuant to R.C. 2907.02(A)(1)(b) and the victim is under 10 years of age, regardless of whether the rape involved the use of force.

{¶ 11} In addition to the above, even though a challenge to his sentence on appeal would likely have been fruitless, petitioner nevertheless did have the opportunity to raise this issue at an earlier time. Finally, although petitioner challenges the trial court's actual sentencing decision, he does not challenge the court's jurisdiction to impose a sentence in the first place.

{¶ 12} On full consideration of petitioner's petition for a writ of habeas corpus, for the foregoing reasons, the petition is hereby dismissed. Costs are assessed to petitioner.

**{¶ 13} To the clerk: Manner of service.**

**{¶ 14}** 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.

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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