

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

Jason C. Thomas

Court of Appeals No. L-13-1175

Appellant

Trial Court No. MS12-1483

v.

Ed Sheldon, Warden

DECISION AND JUDGMENT

Appellee

Decided: March 7, 2014

* * * * *

Gene P. Murray, for appellant.

Mike DeWine, Ohio Attorney General, and Stephanie Watson,
Principal Assistant Attorney General, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jason C. Thomas, appeals from the July 18, 2013 judgment of the Lucas County Court of Common Pleas dismissing appellant's petition for a writ of habeas corpus. For the reasons which follow, we affirm.

{¶ 2} In 2009, appellant entered a no contest plea to charges of murder and felonious assault in exchange for dismissal of the remaining seven counts in his original indictment. He was convicted and sentenced by the Mercer County Court of Common Pleas to a total term of imprisonment of 15 years to life. No appeal was ever taken from the judgment of conviction and sentencing. Appellant has never sought a delayed appeal or other postconviction relief.

{¶ 3} Appellant attempted to withdraw his plea over a year after his sentencing on other grounds. The motion was denied and the decision was affirmed on appeal. *State v. Thomas*, 3d Dist. Mercer No. 10-10-17, 2011-Ohio-4337.

{¶ 4} Appellant is currently incarcerated at the Toledo Correctional Institution. On November 26, 2012, appellant petitioned the common pleas court for a writ of habeas corpus against Keith Smith, Warden of the Toledo Correctional Institution, for release from prison on the ground that his convictions were wrongfully and illegally obtained in violation of his constitutional rights. He asserted that he was denied his right to a jury trial, effective assistance of counsel, and due process because he was forced to enter a plea under the duress caused by the threat of the death penalty being imposed if he was convicted. However, appellant later learned that because no death penalty specification had been included in the indictment, he could not have received the death penalty even if the case had proceeded to trial.

{¶ 5} Appellee opposed the writ and filed a motion to dismiss the petition. Appellee argued that the petition should be dismissed because appellant did not challenge

the jurisdiction of the court to convict and sentence him; appellant had an adequate remedy at law by way of direct appeal, delayed appeal, or a petition to vacate pursuant to R.C. 2953.21; appellant had not yet served his minimum nor maximum sentence; and appellant failed to comply with R.C. 2969.25 and attach a list of all lawsuits he has filed in the prior five years.

{¶ 6} The trial court dismissed the petition on the ground that habeas corpus is not an appropriate remedy for the alleged errors. Instead, appellant had an adequate remedy at law through direct appeal, delayed appeal, or postconviction relief. Appellant appealed the decision and asserts the following single assignment of error:

WHETHER IN AN ABUSE OF ITS DISCRETION, BY GRANTING THE RESPONDENT WARDEN'S MOTION TO DISMISS THE PETITION OF JASON THOMAS FOR A WRIT OF HABEAS CORPUS, THE COMMON PLEAS COURT REVERSIBLY ERRED BY OPINING AND DECIDING THAT THE PETITIONER HAD NOT EXHAUSTED HIS ADEQUATE REMEDIES AT LAW, NAMELY, TO WIT, A DELAYED APPEAL OR POST-CONVICTION RELIEF, WHEN IN REALITY, BOTH AS A PRACTICAL AND A PRAGMATIC MATTER, FOR PETITIONER JASON C. THOMAS, ALL OTHER REMEDIES AT LAW HAVE, DE FACTO, BEEN EXHAUSTED, OR ARE NOT ACTUALLY, NOR CHRONOLOGICALLY AVAILABLE; THEREBY RESULTING IN A VIOLATION OF THE APPELLANT'S

FUNDAMENTAL AND SUBSTANTIAL RIGHTS TO A JURY TRIAL,
TO EFFECTIVE ASSISTANCE OF COUNSEL, AND TO DUE
PROCESS OF LAW, AS GUARANTEED BY THE FIFTH, SIXTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION, AND BY ARTICLE I, SECTIONS 5 AND 10 OF THE
CONSTITUTION OF THE STATE OF OHIO.

{¶ 7} A writ of habeas corpus is an extraordinary remedy and therefore is available only “where there is an unlawful restraint of a person’s liberty and there is no adequate remedy in the ordinary course of law.” *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 616, 757 N.E.2d 1153 (2001), citing *Pegan v. Crawmer*, 76 Ohio St.3d 97, 99, 666 N.E.2d 1091 (1996). It is not intended to be a substitute for direct appeal, postconviction relief, or other legal remedies. *Daniel v. State*, 98 Ohio St.3d 467, 2003-Ohio-1916, 786 N.E.2d 891, ¶ 8. The petitioner must establish that: 1) he “is entitled to immediate release from prison or some other type of physical confinement,” *Daggett v. Bradshaw*, 137 Ohio St.3d 410, 2013-Ohio-4765, 999 N.E.2d 648, ¶ 3; and 2) he has no adequate remedy at law available, *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995), citing *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994). An exception to the second requirement is made in the limited situation where a criminal defendant’s liberty is being restrained by a judgment of conviction issued by a court without proper jurisdiction. *Appenzeller v. Miller*, 136 Ohio St.3d 378, 2013-Ohio-3719, 996 N.E.2d 919, ¶ 9.

{¶ 8} In the case before us, appellant does not allege that the trial court lacked jurisdiction to convict and sentence him. Furthermore, he had the right to appeal his conviction and sentence, but did not do so. He attempted to withdraw his plea on other grounds, but the Third District Court of Appeals held that he was not entitled to withdraw the plea. *Thomas*, 3d Dist. Mercer No. 10-10-17, 2011-Ohio-4337. Appellant had a right to file a postconviction relief petition, but failed to do so before the time limit. For purposes of seeking an extraordinary writ, the fact that the defendant waived his right to appeal or that the time for seeking the alternative remedies has expired does not alter the fact that he had an alternative remedy at law. *Billiter v. Banks*, 135 Ohio St.3d 426, 2013-Ohio-1719, 988 N.E.2d 556, ¶ 9. Appellant argues that the remedies available to him are inadequate. However, failing to avail oneself of a remedy does not make it an inadequate remedy. Furthermore, the exhaustion of remedies does not entitle appellant to extraordinary relief. Therefore, appellant's sole assignment of error is not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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>.