

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

State ex rel., John C. Lockhart, Jr.

Court of Appeals No. L-15-1018

Petitioner

v.

Edward Shelton, Warden, et al.

DECISION AND JUDGMENT

Respondents

Decided: April 21, 2015

* * * * *

John C. Lockhart, Jr., pro se.

Mike DeWine, Ohio Attorney General, and Maura O’Neill Jaite,
Senior Assistant Attorney General, for respondents.

* * * * *

OSOWIK, J.

{¶ 1} Petitioner, John C. Lockhart, Jr., had filed a “Petition for Writ of Habeas Corpus” seeking his immediate release from the Toledo Correctional Institution.¹ In

¹ Respondent, Warden Edward Shelton, filed a “Civ.R. 12(B)(6) Motion to Dismiss and/or Summary Judgment Motion” on February 23, 2015. That same day respondents,

support of his petition, petitioner argues that the OPB and the BOSC improperly calculated that he is eligible for parole in August 2024, after serving 18 years in prison. The following facts are pertinent to our determination of the petition.

{¶ 2} In 2006, petitioner was convicted by the Delaware County Court of Common Pleas of one count of rape involving a victim less than ten years of age, in violation of R.C. 2907.02(A)(1)(b), and three counts of gross sexual imposition involving a victim less than 13 years of age, in violation of R.C. 2907.05(A)(4). The victim in all four instances was the nine-year-old daughter of petitioner's girlfriend. Petitioner was ordered to serve a life sentence for the rape and four years for each conviction of gross sexual imposition. One of the four-year sentences was made concurrent to the life sentence for rape. The other two four-year sentences were to be served consecutive to each other and to the sentence for rape.

{¶ 3} Petitioner filed a direct appeal of his conviction and sentence, but he did not raise the issue of the life sentence for rape at that time. His convictions and sentence were affirmed on January 9, 2008, in *State v. Lockhart*, 5th Dist. Delaware No. 06CAA100080, 2008-Ohio-57. On December 17, 2009, the trial court, acting sua sponte, issued a nunc pro tunc judgment entry and included case history pursuant to *State v.*

the Bureau of Sentencing Computation (“BOSC”) and the Ohio Parole Board (“OPB”) filed a joint motion to dismiss. On March 4, 2015, petitioner filed two motions in which he asked this court for additional time in which to respond to BOSC’s and OPB’s motions to dismiss. However, for the reasons stated herein, these filings are moot.

Baker, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. Petitioner filed a “Motion to Correct Status of Void Sentence Entry” on October 19, 2010, which the trial court denied.

{¶ 4} On March 1, 2011, petitioner appealed the nunc pro tunc judgment entry and filed a motion for leave to file a delayed appeal in the Fifth District Court of Appeals, which were denied on April 22, 2011. On December 10, 2012, petitioner again attempted to correct his sentence, arguing that he should have been given a prison term of “three (3) to ten (10) years [for rape] as mandated and set forth in R.C. 2929.14(A)(1) * * *.” The trial court denied the motion on January 8, 2013. Petitioner appealed that decision and, on July 29, 2013, the Fifth District Court of Appeals upheld the conviction, finding that the version of R.C. 2907.02(B) that was in effect at the time the crime was committed required that a defendant convicted of raping a victim under the age of ten be sentenced to life in prison. *State v. Lockhart*, 5th Dist. Delaware No. 13 CAA 001 0007, 2013-Ohio-3441. The instant petition for a writ of habeas corpus was filed on January 28, 2015.

{¶ 5} A petition for habeas corpus is available to any person who is “unlawfully restrained of his liberty * * * to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. Pursuant to R.C. 2725.04, the petition must be signed and verified, and must specify:

(A) That the person in whose behalf the application is made is
imprisoned, or restrained of his liberty;

(B) The officer, or name of the person by whom the prisoner is so confined or restrained; * * *

(C) The place where the prisoner is so imprisoned or restrained, if known;

(D) A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy * * *.

{¶ 6} In addition to the above, a petitioner who is an inmate acting pro se must comply with R.C. 2969.25, which requires the filing of an affidavit describing the petitioner’s “previous civil actions and appeals of civil actions against government entities within the preceding five years.” *Washington v. Morgan*, 4th Dist. Scioto No. 14CA3664, 2014-Ohio-5834, ¶ 9. If an inmate/petitioner seeks a waiver of the filing fees, he or she must also file an affidavit asking for such a waiver, along with an affidavit of indigency and a statement “that sets forth the balance in the inmate account of the inmate for *each* of the *preceding six months*, as certified by the institutional cashier.” *Id.*, citing *Boles v. Knab*, 129 Ohio St.3d 222, 2011-Ohio-2859, 951 N.E.2d 389. (Emphasis original.)

{¶ 7} Petitioner has complied with the above requirements. Accordingly, we will now address the merits of the petition.

{¶ 8} In support of his petition, Lockhart states that the trial court gave him a “single life sentence” for rape, pursuant former R.C. 2907.02(B), making him eligible for

parole after serving eight years in prison for gross sexual imposition. However, according to petitioner, the OPB and BOSC mistakenly found that he was sentenced to “10 years to life” for rape which, combined with eight years for gross sexual imposition, require him to serve 18 years in prison before he is eligible for parole in 2024. As set forth above, although petitioner has challenged the scope of his sentence many times through postconviction relief and on appeal, he has not challenged the trial court’s jurisdiction.

{¶ 9} Habeas corpus is not the proper remedy to address every concern a prisoner has about his legal rights or status.” *Rodgers v. Capots*, 67 Ohio St.3d 435, 619 N.E.2d 685 (1993). It is an extraordinary writ which is only available in cases where the petitioner can “demonstrate a jurisdictional error or the unlawful restraint of a person’s liberty and the lack of any adequate remedy in the ordinary course of the law.” *Harris v. Larose*, 11th Dist. Trumbull No. 2014-T-0089, 2015-Ohio-963, ¶ 5. For example, a writ of habeas corpus is not appropriate where the petitioner claims that his parole was improperly calculated, unless he is also entitled to immediate release. *Johnson v. Crutchfield*, 140 Ohio St.3d 485, 2014-Ohio-3653, 20 N.E.3d 676, ¶ 6-7. *See also State v. Wilburn*, 4th Dist. Lawrence No. 98CA47, 1999 WL 1281507 (Dec. 22, 1999); *Ridenour v. Randle*, 96 Ohio St.3d 90, 2002-Ohio-3606, 77 N.E.2d 859, ¶ 7.

{¶ 10} On consideration, this court finds that neither a “single life sentence,” nor a sentence of ten years to life for rape is encompassed within the eight-year sentence that

petitioner received for gross sexual imposition. Accordingly, petitioner is not immediately entitled to release from prison, and habeas relief is not appropriate in this instance. Accordingly, petitioner will not be released.

{¶ 11} The petition for a writ of habeas corpus is dismissed at petitioner’s costs.

{¶ 12} **To the Clerk of Court:**

{¶ 13} The Sheriff of Lucas County shall immediately **serve upon the respondents** by personal service a copy of this decision dismissing the petition for a writ of habeas corpus filed on January 28, 2015, pursuant to R.C. 2725.11.

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

{¶ 15} It is so ordered.

Writ denied.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.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>.