

[Cite as *Baird v. Greene*, 2015-Ohio-1366.]  
STATE OF OHIO, MAHONING COUNTY

[Cite as *Baird v. Greene*, 2015-Ohio-1366.]  
STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

## SEVENTH DISTRICT

STATE OF OHIO, ex rel. JOSHUA )  
BAIRD, )

PETITIONER, )

V. )

SHERIFF JERRY GREENE AND  
THE ADULT PAROLE AUTHORITY AND  
JOHN DOES, JANE DOES, AND ENTITY  
DOES, ONE THROUGH TEN  
INCLUSIVE,

RESPONDENTS. )

CASE NO. 14 MA 158

OPINION  
AND  
JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

# Petition for Writ of Habeas Corpus

**JUDGMENT:**

Dismissed

APPEARANCES:

For Petitioner

Attorney Rhys Brendan Cartwright Jones  
42 North Phelps St.  
Youngstown, Ohio 44503-1130

For Respondent

Jerri L. Fosnaught  
 Assistant Attorney General  
 Criminal Justice Section  
 150 East Gay Street, 16<sup>th</sup> Floor  
 Columbus, Ohio 43215

**JUDGES:**

Hon. Gene Donofrio  
Hon. Cheryl L. Waite  
Hon. Mary DeGenaro

Dated: April 2, 2015

[Cite as *Baird v. Greene*, 2015-Ohio-1366.]  
PER CURIAM.

Relator Joshua Baird has filed a petition for a writ of habeas corpus alleging that he is being unlawfully held in the Mahoning County Justice Center for an alleged violation of post-release control which he contends was not lawfully imposed. Respondent Adult Parole Authority has responded with a motion to dismiss and Respondent Sheriff Jerry Greene has joined in that motion.

Petitioner's incarceration stems from his convictions and sentences arising from two criminal cases, one originating in Columbiana County and the other in Mahoning County. In 2003, Petitioner pleaded guilty in Columbiana County Common Pleas Court to one count of rape in violation of R.C. 2907.02(A)(1), a first-degree felony, and one count of gross sexual imposition in violation of R.C. 2907.05(A)(4), a third-degree felony. *State v. Baird*, Columbiana C.P. No. 2002-CR-190. The trial court sentenced Petitioner to consecutive eight- and three-year terms of imprisonment respectively for the rape the gross sexual imposition convictions.

In 2004, Petitioner pleaded guilty in Mahoning County Common Pleas Court to one count of rape in violation of R.C. 2907.02(A)(2)(B), a first-degree felony. *State v. Baird*, Mahoning C.P. No. 02-CR-1180. The trial court sentenced Petitioner to a ten-year term of imprisonment and ordered the sentence to be served concurrently with the sentence stemming from the Columbiana County case.

On August 8, 2014, Petitioner was released from prison and placed on a post-release control for a mandatory term of five years. On November 14, 2014, Petitioner filed the present petition alleging that he is in the custody of the Mahoning County Justice Center on a purported violation of post-release control. Petitioner contends that the sentencing courts in the aforementioned cases never validly sentenced him to post-release control since they did not provide him the proper advisements about post-release control. He contends that the APA could not lawfully subject him to post-release control upon his release from prison because he had effectively completed his term upon release.

Respondents correctly argue that habeas relief is not available where there is an adequate remedy available at law. *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 383, 667 N.E.2d 1194 (1996). Habeas relief is not a substitute for other forms of action,

such as a direct appeal. *Adams v. Humphreys*, 27 Ohio St.3d 43, 500 N.E.2d 1373 (1986). The existence of an alternative legal remedy is sufficient to remove a petitioner's allegations from habeas consideration, whether the remedy continues to be available or not, as long as the petitioner could have availed themselves of the remedy. *Luna v. Russell*, 70 Ohio St.3d 561, 639 N.E.2d 1168 (1994).

The Ohio Supreme Court has previously explained that petitioners claiming that they did not receive proper notification about post-release control at the sentencing hearing have an adequate remedy by way of a direct appeal from the sentence. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950, ¶ 8. Moreover, when a petitioner has been advised that they would be subject to some term of post-release control, habeas is not an available remedy. *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78. *Watkins* involved 12 prisoners who sought writs of habeas corpus for their release from prison. They were all serving time for violating the terms of their post-release control. All of the prisoners had completed their original sentences, were placed on post-release control, and were found to have violated the terms of their post-release control by the APA. The prisoners argued they were entitled to writs of habeas corpus because they failed to receive adequate notice of post-release control and their sentencing entries failed to incorporate adequate notice of post-release control. Each of the prisoners was subject to a mandatory term of post-release control. However, each of their sentencing entries erroneously contained language that post-release control could be discretionary. The Court denied the writs, finding that the prisoners had an adequate remedy by way of appeal to challenge the imposition of post-release control. *Id.* ¶ 53. It found that while the sentencing entries mistakenly included language that post-release control could be discretionary, the language was sufficient to allow the APA to exercise post-release control. *Id.*

In this instance, the sentencing courts in both cases advised Petitioner at the sentencing hearings that he would be subject to a period of post-release control by the APA upon his release from prison. While Petitioner challenges the adequacy of those advisements, the advisements were nonetheless sufficient to allow the APA to

exercise post-release control. Additionally, Petitioner had an adequate remedy by way of appeal to challenge the adequacy of those advisements through direct appeal.

Petition dismissed. Costs taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

---

Judge Gene Donofrio

---

Judge Cheryl L. Waite

---

Judge Mary DeGenaro