

[Cite as *State ex rel. Atkinson v. Reid*, 2009-Ohio-6653.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93517

**STATE OF OHIO EX REL.,
LASHAWN ATKINSON**

RELATOR

VS.

BOB REID, SHERIFF

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion No. 423855
Order No. 428909

RELEASE DATE: December 11, 2009

FOR RELATOR

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ATTORNEYS FOR RESPONDENT

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BY: Thorin Freeman
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ANN DYKE, J.:

{¶ 1} Petitioner, Lashawn Atkinson, is the defendant in *State v. Atkinson*, Cuyahoga County Court of Common Pleas Case No. CR-456940. Atkinson was sentenced to three years. When he was released from prison in January 2008, the Ohio Adult Parole Authority (“APA”) placed Atkinson on postrelease control for five years.¹

¹ A review of the docket in Case No. CR-456940 reflects that the trial court issued a resentencing entry on July 31, 2009. Atkinson’s appeal of that judgment is pending as *State v. Atkinson*, Case No. 93855.

{¶ 2} At the time he filed this action, Atkinson averred that he was in the custody of respondent sheriff because APA issued a postrelease control detainer arising from Case No. CR-456940. Atkinson argues that APA did not have the authority to place him on postrelease control because he was not informed of postrelease control at his sentencing hearing. That is, Atkinson contends that his sentence is void. As a consequence, he requests that this court grant relief in habeas corpus and order respondent to release him from custody.

{¶ 3} Respondent has filed a motion for summary judgment. For the reasons stated below, we grant the motion for summary judgment and enter judgment for respondent.

{¶ 4} In support of the motion for summary judgment, respondent cites to *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950.

{¶ 5} “*Patterson* is particularly instructive * * *. In that case, Patterson commenced a habeas corpus to contest his post-release control sanctions. He claimed that the trial judge failed to notify him of post-release control during the sentencing hearing, although the judge included it in the sentencing entry. The Supreme Court of Ohio upheld the dismissal of the habeas corpus action on the grounds of adequate remedy at law. ‘Patterson had an adequate remedy by way of direct appeal from his sentence to raise his claim that he did not receive proper notification about postrelease control at his sentencing hearing. E.g., *Watkins v.*

Collins, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶ 45 (“The remedy for improper notification about postrelease control at the sentencing hearing is resentencing-not release from prison” and ¶ 53 (“habeas corpus is not available to contest any error in the sentencing entries, and petitioners have or had an adequate remedy by way of appeal to challenge the imposition of postrelease control”).’ *Patterson* at ¶ 8.” *Jackson v. Phillips*, Cuyahoga App. No. 91963, 2009-Ohio-125, at ¶10 (denying an application for habeas corpus).

{¶ 6} Obviously, this case presents the same issue as *Patterson*: whether relief lies in habeas corpus if, as Atkinson avers in the complaint, a defendant was not informed at sentencing that he was subject to postrelease control, but the sentencing entry did include the imposition of postrelease control. In light of the holding in *Patterson*, therefore, we must conclude that appeal is the remedy that Atkinson should pursue or should have pursued, not habeas corpus.

{¶ 7} Accordingly, respondent’s motion for summary judgment is granted. Petitioner to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

ANN DYKE, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR