

[Cite as *Humphries v. Pinkney*, 2017-Ohio-978.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105308

DWIGHT A. HUMPHRIES

PETITIONER

vs.

SHERIFF CLIFFORD PINKNEY

RESPONDENT

JUDGMENT:
PETITION DENIED

Writ of Habeas Corpus
Motion No. 503740
Order No. 504840

RELEASE DATE: March 8, 2017

FOR PETITIONER

Dwight A. Humphries, pro se
Inmate No. 0184729
Cuyahoga County Correctional Center
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Mary M. Dyczek
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Petitioner Dwight Humphries seeks a writ of habeas corpus on the basis that the trial court improperly imposed a jail sentence “well-beyond the statutory limit for a misdemeanor.” Humphries maintains that the Lakewood Municipal Court exceeded its authority in imposing a one-year jail sentence on his conviction for violation of R.C. 4511.19 for operating a vehicle under the influence in *State v. Humphries*, Lakewood M.C. No. 2016TRC01177. He requests his immediate release from jail and has named Clifford Pinkney, Cuyahoga County Sheriff, as respondent. Respondent Pinkney has moved for summary judgment on the grounds that the habeas petition is fatally defective and an appeal is an adequate remedy at law. We agree and therefore grant respondent’s motion for summary judgment and deny the petition for habeas corpus.

{¶2} “Habeas corpus will lie only to challenge the jurisdiction of the sentencing court.” *Appenzeller v. Miller*, 136 Ohio St.3d 378, 2013-Ohio-3719, 996 N.E.2d 919, ¶ 9, citing R.C. 2725.05. Sentencing errors, however, are not jurisdictional and therefore not cognizable in habeas corpus. *State ex rel. O’Neal v. Bunting*, 140 Ohio St.3d 339, 2014-Ohio-4037, 18 N.E.3d 430, ¶ 13. With respect to criminal matters, municipal courts have subject-matter jurisdiction over misdemeanors occurring within their territorial jurisdiction. R.C. 1901.20(A)(1). Humphries’s petition does not raise a valid challenge to the trial court’s jurisdiction to sentence him; it merely attacks the length of the sentence imposed. Thus, habeas corpus relief is not available. *O’Neal* at

id.; see also *Dunkle v. Dept. of Rehab. & Corr.*, Slip Opinion No. 2017-Ohio-551, ¶ 8 (affirming the dismissal of petition for writ of habeas corpus where the petitioner challenged the validity of the sentencing entry and failed to present a valid challenge to the jurisdiction of the trial court to sentence him); *Majoros v. Collins*, 64 Ohio St.3d 442, 443, 596 N.E.2d 1038 (1992); *May-Dillard v. State*, 8th Dist. Cuyahoga No. 105064, 2017-Ohio-194, ¶ 4 (recognizing that a claim of excessive sentence does not allow for relief in habeas corpus because sentencing errors are not jurisdictional).

{¶3} Further, where there is an adequate remedy in the ordinary course of the law, the extraordinary writ of habeas corpus is not available. *Brown v. Bradshaw*, 126 Ohio St.3d 265, 2010-Ohio-3758, 933 N.E.2d 259, ¶ 1. Here, Humphries has an adequate remedy at law to challenge the legality of his sentence by way of direct appeal. See *Dunkle* at ¶ 9, citing *O’Neal* at ¶ 14-15. (“The availability of adequate remedies in the ordinary course of the law, even if those remedies were not sought or were unsuccessful, precludes the issuance of a writ of habeas corpus.”); see also *Norris v. Boggins*, 80 Ohio St.3d 296, 685 N.E.2d 1250 (1997) (recognizing that the proper avenue for addressing a sentencing error is through direct appeal).

{¶4} Finally, Humphries’s petition is also defective because it is not properly verified as required under R.C. 2725.04, which is grounds for dismissal of the petition. *Pointer v. Russo*, 144 Ohio St.3d 13, 2015-Ohio-2078, 40 N.E.3d 1071, ¶ 4. Humphries’s purported verification is ineffective because it was not notarized. *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527, ¶ 4; *Chari v. Vore*, 91

Ohio St.3d 323, 327, 744 N.E.2d 763 (2001). Moreover, Humphries has failed to comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from the institutional cashier setting forth the balance in the petitioner's private account for each of the preceding six months. This also is sufficient reason to deny the petition, deny indigency status, and assess costs against him. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ¶ 1; *State ex rel. Tauwab v. Pinkney*, 8th Dist. Cuyahoga No. 104845, 2016-Ohio-7619, ¶ 4.

{¶5} Accordingly, this court grants respondent's motion for summary judgment and denies the petition for habeas corpus. Costs assessed against the petitioner. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Petition denied.

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and
LARRY A. JONES, SR., J., CONCUR