

[Cite as *Hughley v. Duffey*, 2009-Ohio-5999.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KEVIN HUGHLEY

Petitioner

-vs-

WARDEN SHERI DUFFEY, ET AL.

Respondents

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09CA00045

OPINION

CHARACTER OF PROCEEDING:

Writ of Habeas Corpus

JUDGMENT:

Petition Denied

DATE OF JUDGMENT ENTRY:

November 9, 2009

APPEARANCES:

For Petitioner

For Respondent

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Farmer, P.J.

{¶1} Petitioner, Kevin Hughley, has filed a Petition for Writ of Habeas Corpus alleging he is entitled to immediate release from imprisonment because Petitioner successfully completed an intensive prison program (“IPP”). Respondent has filed a Motion to Dismiss averring Petitioner was discharged from the program prior to its successful completion. Respondent further suggests Petitioner has failed to state a claim upon which relief may be granted.

{¶2} R.C. 5120.032(B)(1)(b) grants the department the power to reduce a prison term upon successful completion of the IPP. Ohio Adm.Code 5120-11-10(B) confirms this: “The department shall terminate the stated prison term of a prisoner upon the prisoner's successful completion of a ninety-day period in an intensive program prison.” In other words, there is a conditional right to be released. The condition is successful completion of the IPP.

{¶3} The Supreme Court has stated, “There is no constitutional or inherent right * * * to be conditionally released before the expiration of a valid sentence.’ ” *638 *State ex rel. Hattie v. Goldhardt* (1994), 69 Ohio St.3d 123, 125, 630 N.E.2d 696, 698, quoting *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7, 99 S.Ct. 2100, 2104, 60 L.Ed.2d 668, 675.” *State ex rel. Carrion v. Ohio Adult Parole Authority* 80 Ohio St.3d 637, 638, 687 N.E.2d 759, 760).

{¶4} Petitioner has not demonstrated his successful completion of an IPP, therefore, Petitioner’s prison sentence is not required to be terminated pursuant to OAC 5120-11-10(B).

{¶15} Finally, Petitioner remains incarcerated pursuant to a valid sentence which has not yet expired. As the Supreme Court has held, " [H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully. *Morgan v. Ohio Adult Parole Auth.* (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941." *Heddleston v. Mack* 84 Ohio St.3d 213, 213-214, 702 N.E.2d 1198, 1198 (Ohio,1998).

{¶16} Because Petitioner remains incarcerated pursuant to a valid sentence which has not yet expired, habeas corpus will not lie. The Petition is denied.

{¶17} PETITION DENIED.

{¶18} COSTS TO PETITIONER.

{¶19} IT IS SO ORDERED.

By: Farmer, P.J.

Hoffman, J. and

Wise, J. concur

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

