

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
NOBLE COUNTY

ELGIN Z. HAYNIE,

Petitioner,

v.

JAY FORSHEY, WARDEN,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 20 NO 0480

Writ of Habeas Corpus

BEFORE:

Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Dismissed.

Elgin Z. Haynie, pro se, Inst. No, A729-362, Noble Correctional Institute, 1578 McConnelsville Road, Caldwell, Ohio 43724, Petitioner and

Atty. Dave Yost, Ohio Attorney General, Criminal Justice Section, *Atty. Daniel J. Benoit*, Assistant Attorney General, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, for Respondent.

Dated: December 17, 2021

PER CURIAM.

{¶1} Petitioner Elgin Z. Haynie filed a petition seeking a writ of habeas corpus. Petitioner is an inmate at the Noble Correctional Institution under the custody of Warden Jay Forshey, Respondent herein. Petitioner asserts he is currently in custody pursuant to a void judgment due to a lack of jurisdiction.

{¶2} On August 24, 2016, in the Muskingum County Court of Common Pleas, Case No. CR2016-0078, Petitioner was convicted of the following offenses upon entering a plea of guilty to the same: Count 1: Trafficking in Drugs (Methamphetamine) in violation of R.C. 2925.03(A)(2); Count 2: Engaging in a Pattern of Corrupt Activity in violation of R.C. 2923.32(A)(1); Count 3: Money Laundering (with a forfeiture specification) in violation of R.C. 1315.55(A)(1) and 2941.1417; and Count 4: Money Laundering in violation of R.C. 1315.55(A)(2). On October 3, 2016, Petitioner was sentenced to an aggregate term of 16 years imprisonment. Petitioner did not file a direct appeal from this sentence. Petitioner later filed an appeal from the denial of a petition seeking post-conviction relief. *State v. Haynie*, 5th Dist. Muskingum No. CT2017-0046, 2017-Ohio-8829.

{¶3} Petitioner asserts the Muskingum Court of Common Pleas lacked jurisdiction to enter the sentence. Respondent seeks to dismiss the petition for failure to state a claim pursuant to Civ.R. 12(B)(6). A dismissal pursuant to Civ.R. 12(B)(6) for petitions seeking a writ of habeas corpus is appropriate if, after presuming the factual allegations are true and resolving reasonable inferences in favor of the Petitioner, it appears there are no sets of facts entitling a petitioner to such extraordinary relief. *Keith v. Bobby*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 10.

{¶4} R.C. 2725.01 provides: "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." This is an extraordinary writ compelled to be issued in limited

circumstances. *State ex rel. Samoth-El v. Miller*, 7th Dist. Belmont No. 12 BE 23, 2012-Ohio-5611, ¶ 4.

{¶5} R.C. 2725.05 further provides: “If it appears that a person in custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed.” Accordingly, habeas corpus may be utilized to challenge the jurisdiction of a sentencing court. However, “in the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal.” *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, ¶ 18.

{¶6} In a petition for a writ of habeas corpus, the burden of proof is on the Petitioner to establish the right to release. Petitioner asserts his circumstances are akin to those in *State v. Literal*, 4th Dist. Scioto No. 07CA3207, 2009-Ohio-199. In *Literal*, the Appellate Court found “[b]ecause no element of R.C. 2925.03(A)(2) was committed in the State of Ohio, we conclude the trial court improperly exercised jurisdiction over that crime and that Appellant’s conviction and sentence for that crime must be vacated.” *Id.* at ¶ 14.

{¶7} Like *Literal*, Petitioner herein was convicted, in part, of a trafficking offense as set forth in R.C. 2925.03(A)(2). However, that is where the similarity between the two cases ends.

{¶8} R.C. 2925.03(A)(2) provides:

(A) No person shall knowingly do any of the following: *** (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance of a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

{¶9} Unlike the factual scenario in *Literal*, Petitioner actually shipped methamphetamine and other narcotics by mail to Ohio from California. The Fourth District set out the following history:

Appellant (Petitioner herein) lived in Burbank, California and would send large quantities of methamphetamine by mail to Walter Coffee, Appellant's co-defendant, who lived in Muskingum County, Ohio. Packages were tracked and delivered to Coffee's residence when members of the Central Ohio Drug Enforcement Task Force executed a search warrant and arrested Coffee.

Coffee disclosed to detectives that Appellant (Petitioner herein) would send him large quantities of drugs – methamphetamine, cocaine, and marijuana once – by mail. He would sell it here in Ohio and deposit money into an account with Bank of America for Appellant. Coffee would even travel out of state to the nearest Bank of America to deposit large sums of money.

Haynie, supra at ¶8-9.

{¶10} Following his arrest in California on the underlying charges, Petitioner admitted to his involvement by proffer with his legal counsel. *Id.* at ¶ 12.

{¶11} In *Literal*, the conduct for the basis of the trafficking offense took place in Kentucky. *Literal* arranged to meet Ashley Underwood, a drug dealer, in Kentucky. At the time of the telephone discussion, Underwood was located in Ohio. This was the extent of the Ohio connection to the trafficking offense. "In fact, the evidence reveals, with respect to the requirements of (A)(2), that Appellant individually prepared or packaged, transported and attempted to deliver the controlled substances at issue all in the State of Kentucky, not Ohio. The only action linking the drug trafficking charge to Ohio was the fact that the phone call with Underwood took place while Underwood was in Ohio." *Id.* at ¶ 13.

{¶12} R.C. 2901.11 provides:

(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

(2) ***

(3) While out of this state, the person conspires or attempt to commit, or is guilty of complicity in the commission of, an offense in this state.

{¶13} Petitioner's conduct and connection to Ohio is vastly different than the factual scenario in *Literal*. Petitioner prepared and shipped the methamphetamine from California to Ohio with the knowledge and intention that Coffee would sell and distribute the contraband in Ohio. Further, Petitioner accepted funds from the sale of the drugs in Ohio. This operation was a continuous course of conduct originating in California and carried out in Ohio. "A person is subject to criminal prosecution in Ohio if any element of the charged offense took place in this state." *State v. Campa*, 1st Dist. Hamilton No. C-010254, 2002-Ohio-1932, *2 (March 29, 2002).

{¶14} For the aforementioned reasons, there is nothing to support a patent and unambiguous lack of jurisdiction by the sentencing court. Accordingly, the motion to dismiss for failure to state a claim pursuant to Civ.R. 12(B)(6) is well taken.

{¶15} The petition for a writ of habeas corpus is hereby dismissed.

{¶16} Costs waived. Final order. Clerk to serve copies of this decision and judgment entry pursuant to the civil rules.

JUDGE CAROL ANN ROBB

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE