

[Cite as *Brown v. Reid*, 2010-Ohio-527.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94384**

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**BRUCE ANDREW BROWN**

PETITIONER

vs.

**BOB REID, SHERIFF**

RESPONDENT

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**JUDGMENT:  
PETITION DENIED**

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Writ of Habeas Corpus  
Motion Nos. 429870 and 430516  
Order No. 430804

**RELEASE DATE:** February 16, 2010

**FOR PETITIONER**

Bruce Andrew Brown, pro se  
Cuyahoga County Jail  
P.O. Box 5600  
Cleveland, Ohio 44101

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

By: Katherine Mullin  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} On December 16, 2009, the petitioner, Bruce Andrew Brown, commenced this habeas corpus action against the respondent, Cuyahoga County Sheriff Bob Reid, to compel his immediate release from jail. Brown claims that under R.C. 2929.41(B)(1) and the explicit wording of the sentencing entries, the trial court could not sentence him to serve a felony sentence consecutive to a misdemeanor sentence. He also claims that the Sheriff is without authority to incarcerate him for the misdemeanor sentence after he had served the felony sentence, because the sentencing entries specified that the misdemeanor sentence was to be served first. On January 5, 2010, the respondent, through

the Cuyahoga County Prosecutor, moved for summary judgment. Brown filed a brief in opposition on January 12, 2010, as well as a supplement to his affidavit on January 26, 2010. For the following reasons, this court grants the Sheriff's motion for summary judgment and denies the petition for a writ of habeas corpus.

{¶ 2} On January 21, 2009, in *State v. Brown*, Cuyahoga County Common Pleas Court Case No. CR-514997 (hereinafter the "misdemeanor case"), the trial court, after noting that Brown had pleaded guilty to attempted receiving stolen property, a first degree misdemeanor, sentenced him to six months in the county jail. This entry does not specify whether this sentence is to be served consecutively to any other sentence.

{¶ 3} In June 2007, in *State v. Brown*, Case No. CR-493521, Brown had pleaded guilty to passing bad checks, a fifth degree felony (hereinafter the "felony case"), and the trial court sentenced him to five years of community control. On the same day as the sentencing in the misdemeanor case, the same judge held a community control violation hearing in the felony case. The judge ruled that Brown had violated the terms of his community control sanctions. He then terminated the sanctions and sentenced Brown to an eleven-month sentence to run consecutive to the misdemeanor sentence.

{¶ 4} Brown alleges in his complaint that he advised the Sheriff in January 2009, that he was to serve his sentence for the misdemeanor case in the county jail first, and then serve his sentence for the felony case at Lorain Correctional

Institution. Brown further asserts that a jail correction officer telephoned the judge's chambers for clarification, and that the judge's bailiff informed the correction officer that Brown was to serve the felony sentence first at Lorain Correctional Institution and then be transferred back to the Cuyahoga County Jail to serve his misdemeanor sentence. Accordingly, the Sheriff transferred Brown to the Lorain Correctional Institution. Brown has served the felony sentence and is now in the Cuyahoga County Jail serving the misdemeanor sentence.

{¶ 5} R.C. 2929.41(B)(1) provides in pertinent part as follows: "A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively \* \* \*." Brown interprets this statute to mean that a misdemeanor sentence of imprisonment may be consecutive only when the trial judge specifies in the misdemeanor sentencing entry that it may be served consecutive to some other sentence. Because the trial judge failed to so specify in the misdemeanor case sentencing entry, Brown asserts the misdemeanor term must be considered concurrent to the felony sentence. Thus, Brown concludes that he has completely served his sentences and is now entitled to immediate release.

{¶ 6} However, this argument is not well-founded. In *State v. Bates*,<sup>1</sup> the Supreme Court of Ohio ruled that a “trial court has the authority to order a prison sentence to be served consecutively to a prison sentence previously imposed on the same offender by another Ohio court.” These cases establish that a court has the authority to impose sentences consecutive to those already imposed. This court further notes that the trial judge complied with the rigors of R.C. 2929.41(B)(1) by specifying that the sentence for the felony case was to be served consecutive to the sentence for the misdemeanor case. Additionally, this court has reviewed the cases Brown cited, and none of them stand for the proposition that R.C. 2929.41(B)(1) requires that the language for consecutive sentences must be in the sentencing entry for the misdemeanor case.

{¶ 7} Alternatively, Brown argues that reading the sentencing entries of the two cases in *pari materia*, they required that the sentence for the felony case be served consecutive to the sentence in the misdemeanor case. In other words, he claims the six-month sentence for the misdemeanor had to be served first. Thus, the Sheriff’s transferring him to the Lorain Correctional Institution thwarted the trial court’s intent and rendered the subsequent serving of the misdemeanor sentence void. This argument is unpersuasive because it elevates form over substance. Furthermore, Brown cites no authority to support this argument.

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<sup>1</sup> 118 Ohio St.3d 174, 2008-Ohio-1983, 887 N.E.2d 328, syllabus. See, also, *State v. Fete*, Holmes App. No. 06-CA-12, 2007-Ohio-1958.

{¶ 8} Moreover, as with all extraordinary writs, habeas corpus is not available when the petitioner has or had an adequate remedy at law.<sup>2</sup> Generally, habeas corpus is not available to contest any error in the sentencing entries.<sup>3</sup> *Bates* and *Fete* show that the issue of imposing a consecutive sentence upon a previously imposed sentence may be addressed on appeal. Furthermore, the issue of which of two consecutive sentences is to be served first is properly addressed through an appropriate motion in the trial court and then on appeal.<sup>4</sup> Thus, the availability of an adequate remedy at law precludes habeas corpus.

{¶ 9} Additionally, Brown failed to support his complaint with an affidavit “specifying the details of the claim” as required by Loc.R. 45(B)(1)(a).<sup>5</sup> In *Leon* the Supreme Court of Ohio upheld this court’s ruling that merely stating in an affidavit that the complaint was true and correct was insufficient to comply with the local rule. Also, Brown’s R.C. 2969.25(A) prior lawsuit affidavit is not in compliance. It was executed more than three months before the filing of this

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<sup>2</sup> *State ex rel. R.W. v. Sweeney*, Slip Opinion No. 2010-Ohio-223.

<sup>3</sup> *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, and *Griffin v. McFaul*, Cuyahoga App. No. 89648, 2007-Ohio-5506.

<sup>4</sup> Cf. *State v. Arnold*, Montgomery App. No. 22856, 2009-Ohio-3636.

<sup>5</sup> *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

habeas action and omits a lawsuit that he filed in the Supreme Court of Ohio and which raised many of the issues presented in the case sub judice.

{¶ 10} Accordingly, the court grants the respondent's motion for summary judgment and denies the petition for a writ of habeas corpus. Costs assessed against the petitioner. The court further orders the Clerk of the Eighth District

{¶ 11} Court of Appeals to serve notice of this judgment upon all parties as required by Civ.R. 58(B).

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PATRICIA A. BLACKMON, JUDGE

COLLEEN CONWAY COONEY, P.J., and  
KENNETH A. ROCCO, J., CONCUR