

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

ERIC ROBY,	:	PER CURIAM OPINION
Petitioner,	:	CASE NO. 2009-T-0062
- vs -	:	
BENNIE KELLEY, WARDEN, TRUMBULL CORRECTIONAL INSTITUTION,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Eric Roby, pro se, PID: 405-204, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Petitioner).

Richard Cordray, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Jerri L. Fosnaught*, Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This proceeding in habeas corpus is presently before this court for final disposition of the dismissal motion of respondent, Warden Bennie Kelley of the Trumbull Correctional Institution. As the primary basis for his motion, respondent contends that petitioner, Eric Roby, has failed to state a viable claim for such a writ because his own factual allegations indicate that there are alternative remedies he could pursue to obtain

a proper resolution of the underlying dispute. For the following reasons, we hold that the dismissal of this action is justified under Civ.R. 12(B)(6).

{¶2} Petitioner is presently an inmate at the state prison, having been convicted of multiple counts of rape in March 2001. According to petitioner, his convictions were predicated upon a plea agreement which was negotiated with the state prior to the entry of his guilty plea. Upon accepting the new plea, the trial court sentenced petitioner to a mandatory term of twenty-four years. In addition, the trial court found that he should be designated as a sexually oriented offender.

{¶3} In January 2008, while serving his prison term, petitioner received a letter from the Attorney General for the state of Ohio. This letter informed petitioner that he had been reclassified as a Tier III sexual offender, pursuant to the Adam Walsh Child Protection and Safety Act of 2006. Consistent with the statutory procedure under S.B. 10, petitioner immediately filed objections to the reclassification in the Trumbull County Court of Common Pleas. However, in March 2009, that court rendered a judgment in which it expressly found that the new community notification requirements of S.B. 10 were constitutional; thus, the court ordered petitioner to submit to community notification as a Tier III sexual offender.

{¶4} Approximately three months after the release of the foregoing judgment, petitioner instituted the instant action in habeas corpus. As the basis for his sole claim, petitioner argued that his reclassification under the sexual offender system had resulted in a breach of his plea agreement in his underlying criminal case. Based upon this, he further asserted that he was entitled to be released from the state prison because the plea agreement had been rendered invalid.

{¶5} In now moving for the dismissal of this matter, respondent submits that the action should not go forward because petitioner will not be able to satisfy an important element of a habeas corpus claim. Specifically, respondent maintains that the writ will not lie in this instance because petitioner has an adequate legal remedy through which to contest either the “reclassification” decision itself or the effect of that decision upon the plea bargain. In responding to the motion to dismiss, petitioner contends that he has no adequate remedy because his underlying convictions have been nullified due to a lack of subject matter jurisdiction.

{¶6} In regard to the elements of a proper habeas corpus claim, this court has previously recognized that, unless a prison inmate has served his maximum sentence, the writ can be granted only when the inmate can establish that the sentencing court in his underlying criminal proceeding lacked the requisite jurisdiction to proceed. *State ex rel. Vinson v. Gansheimer*, 11th Dist. No. 2007-A-0042, 2007-Ohio-5205, at ¶6. Given the foregoing requirement, we have further recognized that a viable claim for this type of writ generally cannot be predicated upon an allegation of the trial court’s commission of a non-jurisdictional error. *Tillis v. Gansheimer*, 11th Dist. No. 2002-A-0099, 2003-Ohio-1097, at ¶10.

{¶7} Only one exception to this basic rule exists: a non-jurisdictional error can form the basis of a proper habeas corpus claim when there is no other adequate legal remedy the prison inmate could pursue to obtain his immediate release. *Id.* However, it is also well established under Ohio law that the writ should not be issued if the inmate can achieve the identical outcome through an alternative legal remedy. *Vinson*, 2007-Ohio-5205, at ¶6. Hence, a viable claim in habeas corpus has two essential elements:

the existence of a jurisdictional error in the underlying proceedings; and the lack of an adequate remedy in the normal course of the law.

{¶8} In considering these two elements in habeas corpus proceedings in which the inmate has sought to contest the propriety of his plea bargain, one appellate court has held that the dismissal of such claims was warranted. In *McReynolds v. Warden of Be.C.I.*, 7th Dist. No. 04 BE 27, 2004-Ohio-4545, the inmate alleged that his conviction had been nullified because his plea agreement was not properly filed with the clerk of courts. Upon concluding that the inmate was essentially challenging whether his guilty plea had been made knowingly, intelligently, and voluntarily, the appellate court held that his factual allegations were legally insufficient because they did not pertain to the jurisdiction of the trial court. *Id.*, at ¶6. The *McReynolds* court also emphasized that the inmate had an adequate legal remedy because any issue regarding his plea could have been fully litigated in a direct appeal from the conviction. *Id.* See, also, *Taborn v. State*, 7th Dist. No. 04 BE 42, 2004-Ohio-5527.

{¶9} A second appellate district has employed a similar legal analysis when it has been alleged that a subsequent event has resulted in a breach of the plea bargain. In *Rowe v. Brunsman*, 4th Dist. No. 06CA2891, 2006-Ohio-1964, the inmate maintained that he was entitled to a writ of habeas corpus because the terms of his plea agreement had been violated when the trial court had denied his earlier motions for judicial release. Upon discussing the two basic elements for the writ, the appellate court concluded that the inmate would never be able to prove a set of facts under which the issuance of the writ would be justified. As to the “adequate remedy” element, the *Rowe* court noted that if a breach of the plea agreement had actually taken place, any question regarding the

possible effect of that breach could be properly litigated in a motion before the trial court in the criminal proceeding: i.e., either a motion to withdraw the guilty plea under Crim.R. 32.1 or a motion to enforce the plea agreement. *Id.*, at ¶6, citing *State ex rel. Rowe v. McCown*, 108 Ohio St.3d 183, 2006-Ohio-548.

{¶10} Given the allegations in the instant habeas corpus claim, it is evident that petitioner had the same options as the inmate in *Rowe*. That is, even if it is assumed, for the sake of this limited analysis, that petitioner's reclassification under S.B. 10 could have constituted a breach of his plea agreement, he could have asserted the issue in a properly-framed motion before the trial court in his underlying criminal proceeding.¹

{¶11} In other words, even if we were to concede petitioner's argument that his plea agreement was violated, the proper remedy would be to enforce the judgment. In addition, this court would indicate that, even if petitioner prevailed on such a motion, it would not result in his release from prison. It would only result in reversion to his prior classification. This would not impact his prison term in any way.

{¶12} To the foregoing extent, petitioner clearly had an adequate legal remedy that he could have pursued in lieu of this original action. Moreover, since any alleged problem with the agreement would have no effect upon that trial court's subject matter jurisdiction over the criminal proceeding, petitioner has only alleged a possible non-jurisdictional issue which cannot be contested in the context of a habeas corpus proceeding.

1. As an aside, this court would indicate that petitioner's "reclassification" proceeding was not held in the same trial court as his original criminal case; i.e., the reclassification matter went forward in the Trumbull County Court of Common Pleas, while his criminal case was conducted in the Ashtabula County Court of Common Pleas. Any question as to the continuing validity of the plea agreement could only be raised before the latter trial court.

{¶13} In ruling upon the final merits of prior habeas corpus claims, this court has stated that such a claim can be subject to dismissal under Civ.R. 12(B)(6) because this type of action is considered civil in nature. *Vinson*, 2007-Ohio-5205, at ¶13. Under that rule, a habeas corpus petition “can be dismissed for failing to state a viable claim for relief when the inmate’s own allegations show beyond a reasonable doubt that he will not be able to prove a set of facts under which he would be entitled to the writ.” *Id.* In light of the foregoing analysis, this court concludes that, even when petitioner’s factual allegations are construed in a manner most favorable to him, they are legally insufficient to satisfy the Civ.R. 12(B)(6) standard. Petitioner will never be able to establish a lack of an adequate remedy at law, or the existence of a jurisdictional error in the underlying criminal case.

{¶14} Respondent’s motion to dismiss is granted. It is the order of this court that petitioner’s entire habeas corpus petition is hereby dismissed.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,
concur.