

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

STATE OF OHIO ex rel. JOEL BETTS,	:	<b>PER CURIAM OPINION</b>
	:	
Petitioner,	:	<b>CASE NO. 2011-A-0018</b>
	:	
- vs -	:	
	:	
RICHARD GANSHEIMER, et al.,	:	
	:	
Respondents.		

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

*Joel Betts*, pro se, PID# 141-318, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Petitioner).

*Mike DeWine*, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Thelma Thomas Price*, Associate Assistant Attorney General, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondents).

PER CURIAM

{¶1} Before this court is Relator, Joel Betts', Petition for Writ of Habeas Corpus pursuant to R.C. 2725, Ohio and United States Constitutions. The respondents<sup>1</sup> have filed a Motion to Dismiss, pursuant to Ohio Civil Rule 12(B)(6), claiming that the Relator has "failed to state a claim upon which relief can be granted." For the following reasons,

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1. Richard Gansheimer, Warden, Lake Erie Correctional Institution; Ernie Moore, Director, Ohio Department of Rehabilitation and Corrections; and Gary Croft, Director, Ohio Adult Parole Authority.

the Respondents' Motion has merit and, accordingly, Relator's Petition is dismissed for failure to state a claim upon which relief can be granted.

{¶2} On March 21, 2011, the Relator filed his Petition for Writ of Habeas Corpus. The Petition contains the following pertinent allegations:

10. Betts was convicted and sentenced to 15 years to life, upon serving his prison sentence, the Adult Parole Board \*\*\* issued it's [sic] guideline concerning Betts['] terms and condition of eligibility set to be 240-300 months, i.e. twenty to thirty (20-30) years. \*\*\*

11. Betts ha[s] served more than the maximum guideline set by the Parole Board, a whopping thirty six (36) years in prison on a second degree murder. \*\*\*

12. Betts['] Co-Defendants Hawkins and Pope considered to be the ring leader were granted parole on their **first degree aggravated murder and aggravated robbery** upon serving twenty eight years on November 2003 and May of 2004.

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14. On May 2004 for the very first [sic], the board granted Betts Parole and set a release date. Almost, eight days to Betts['] release, Parole Authority terminated Betts['] parole without any reason. There is not a whisper of any suggestion of anything that occurred or may have occurred between the time the Parole Board revoked Betts['] parole. \*\*\*

15. On [October] 5, 2007, Betts was again granted parole, but twenty-five (25) days to actual release date, Betts['] parole was revoked.

16. In January 2008 a open full board meeting was held and Betts was given an additional ten (10) years. Betts has at all times maintained his innocence and refuse[d] to accept the offer that he admits to the crime in order to be freed. Betts maintained that he did not commit the murder as charged.

Based on these allegations, the Relator requests this court to order the re-instatement of the parole granted him on October 5, 2007.

{¶3} On May 23, 2011, the Respondents filed their Motion to Dismiss, pursuant to Civil Rule 12(B)(6) (“failure to state a claim upon which relief can be granted”). The Respondents argue that Relator, based on the allegations in his Petition, cannot demonstrate that he is entitled to immediate release from confinement, a prerequisite to the issuance of the Writ. *Scanlon v. Brunsman*, 112 Ohio St.3d 151, 2006-Ohio-6522, at ¶4 (“[i]n general, habeas corpus is proper in the criminal context only if the petitioner is entitled to immediate release from prison or some other physical confinement”); *Rollins v. Haskins* (1964), 176 Ohio St. 394, 395 (“[h]abeas corpus lies only if the petitioner is entitled to immediate release upon the determination that the claim urged in the action is well founded”). Since the Relator has not finished serving his maximum sentence, i.e. life, and fails to allege an impermissible reason for the denial of his parole, he is not entitled to immediate release as a matter of law and the Petition must be dismissed. *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 346, 1994-Ohio-380 (“habeas corpus is available where an individual’s maximum sentence has expired and he is being held unlawfully”).

{¶4} The Relator counters that a claim for habeas corpus lies where the Adult Parole Authority impermissibly revokes parole already granted. *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 186, 1995-Ohio-228, citing *Morrissey v. Brewer* (1972), 408 U.S. 471, 480 (“[t]he revocation of parole implicates a liberty interest which cannot be denied without certain procedural protections”). The Relator has alleged that he has been granted parole, which was subsequently revoked without explanation. The Relator further alleges that he is being denied parole as a penalty for maintaining his actual innocence, the Parole Authority improperly imposed a ten-year period until his

next parole hearing, and his continued imprisonment, while his co-defendants have been released, constitutes an equal protection violation under *McCleskey v. Kemp* (1987), 481 U.S. 279.

{¶5} None of the Relator's arguments state a recognizable claim for habeas corpus.

{¶6} With respect to Relator's argument that his parole was revoked without due process, we note that, in both instances, parole was revoked prior to his actual release from prison. It is well-established that, under Ohio law, a prisoner's liberty interest in parole does not attach until they are actually released from prison. Stated otherwise, the Adult Parole Authority has full discretion to revoke an unexecuted order of parole. *Hattie v. Anderson*, 68 Ohio St.3d 232, 233, 1994-Ohio-517, ("the APA possesses discretion to rescind an unexecuted order for a prisoner to receive parole at a future date without providing a hearing"); *State ex rel. Van Curen v. Ohio Adult Parole Auth.* (1976), 45 Ohio St.2d 298, 299 ("[t]he Adult Parole Authority has no regulation requiring a hearing prior to rescinding the grant of a parole before release"); *Jago v. Van Curen* (1981), 454 U.S. 14, 20-21; *State ex rel. Newman v. Lowery* (1952), 157 Ohio St. 463, 464.

{¶7} With respect to Relator's other arguments, it is well-established that parole is a discretionary matter, and a prisoner has "no constitutional or inherent right \*\*\* to be conditionally released before the expiration of a valid sentence." *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125, 1994-Ohio-81, quoting *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7. Although "habeas corpus will \*\*\* lie to challenge the decision of the APA in extraordinary cases involving

parole revocation,” the Relator in the present case was never released on parole and has not served his maximum sentence. *Jackson*, 73 Ohio St.3d at 187. Accordingly, the actions of the Adult Parole Authority in denying the Relator conditional release are not reviewable under the writ of habeas corpus. *State ex rel. Bray v. Brigano*, 93 Ohio St.3d 458, 459, 2001-Ohio-1587 (relator sought to challenge the Parole Authority’s decision to continue his next parole hearing for ten years); *Barnhart v. Maxwell* (1965), 2 Ohio St.2d 308, 310 (“[t]he action of the Pardon and Parole Commission in refusing a prisoner a parole and continuing his case for hearing to a future date is a matter within the sound discretion of the commission and is not reviewable in habeas corpus”).

{¶8} For the foregoing reasons, the Respondents’ Motion to Dismiss is granted. It is the order of this court that Relator’s Petition for Writ of Habeas Corpus is dismissed.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., THOMAS R. WRIGHT, J.,  
concur.