

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JESSE L. GOODEN

Petitioner

-vs-

MARGARET BRADSHAW, Warden

Respondent

: JUDGES:
: William B. Hoffman, P.J.
: John W. Wise, J.
: Julie A. Edwards, J.
:
: Case No. 11CA55
:
:: OPINION

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Denied

DATE OF JUDGMENT ENTRY: October 12, 2011

APPEARANCES:

For Petitioner

For Respondent

JESSE L. GOODEN
Richland Correctional Institute
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

GENE D. PARK
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Hoffman, P.J.

{¶1} Petitioner, Jesse Gooden, filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon an alleged void sentence.

Petitioner claims the sentence is void because the trial court sentenced Petitioner on Count One despite the fact Count One was dismissed prior to trial.

{¶2} Petitioner was indicted on four counts. Count One of the indictment was a charge of Felonious Assault which the State moved to dismiss prior to trial. A jury trial was held on the three remaining counts: Count Two was a charge of Failure to Comply with an Order of a Police Officer, Count Three was a charge of Vandalism, and Count Four was a charge of Felonious Assault. The jury found the Petitioner guilty of all three counts. The trial court essentially renumbered the jury verdict forms in a way which did not correspond to the same numbers listed on the indictment. It is undisputed Petitioner was convicted on three counts and sentenced on three counts. Petitioner argues his sentence was void because the count numbers assigned in the sentencing entry do not exactly correspond to the numbers contained in the indictment.

{¶3} The Ninth District Court of Appeals approved the use of verdict forms which were labeled with numbers that did not correspond with the numbering on the indictment, “To avoid confusion, the crimes pertaining to Defendant in the jury verdict forms were simply labeled beginning on “Count One” rather than on “Count Three.” It is clear that Defendant was convicted for the crimes with which he was charged in the indictment. The different numbering of the counts in the indictment and verdict forms was neither error nor prejudicial to Defendant. See Crim.R. 52(A).” *State v. Washington* 1997 WL 775666, 7 (Ohio App. 9 Dist.).

{¶4} We find Petitioner has or had an adequate remedy at law by way of direct appeal to challenge any defect in his sentence. “Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary

course of law.” *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6.

{¶5} Finally, 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); *Hughley v. Duffey*, 2009 WL 3790667, 1 (Ohio App. 5 Dist.).

{¶6} Here Petitioner was sentenced on July 24, 2009 to a term of nine years in prison which has not expired. Because Petitioner remains incarcerated pursuant to a valid, unexpired sentence, habeas corpus does not lie.

{¶7} PETITION DENIED.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman

s/ John W. Wise

s/ Julie A. Edwards

JUDGES

WBH/as0906

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JESSE L. GOODEN	:	
	:	
Petitioner	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
MARGARET BRADSHAW, Warden	:	
	:	
Respondent	:	CASE NO. 11CA55

For the reasons stated in our accompanying Opinion on file, Petitioner’s Petition for a Writ of Habeas Corpus is denied. Costs assessed to Petitioner.

s/ William B. Hoffman

s/ John W. Wise

s/ Julie A. Edwards

JUDGES