

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

Maxwell Muff,	:	Case No. 09CA3102
Petitioner-Appellant,	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
Robin Knab, Warden,	:	Released 10/20/09
Respondent-Appellee.	:	

APPEARANCES:

Maxwell Muff, Chillicothe Correctional Institution, pro se.

Richard Cordray, Ohio Attorney General, Thelma Thomas Price, Assistant Ohio Attorney General, Columbus, Ohio, for appellee.

Harsha, J.:

{¶1} Maxwell Muff is appealing a decision of the Ross County Court of Common Pleas dismissing his petition for a writ of habeas corpus. Muff argues that res judicata was not applicable because his first petition was dismissed for procedural reasons rather than as a result of a review on the merits. Because we conclude that habeas corpus is not available to challenge the state’s failure to turn over evidence purportedly favorable to the defendant or to assert claims of actual innocence, we do not need to address whether Muff was barred by res judicata from filing his second petition for a writ of habeas corpus.

{¶2} In 2001, a Perry County jury found Muff guilty of rape. Six years later, Muff filed a petition for a writ of habeas corpus to compel appellee’s predecessor to

release him from prison. Muff alleged that he was actually innocent and that the state withheld evidence that would have exonerated him if presented to the jury. The trial court dismissed Muff's petition because he had an adequate remedy at law to raise these claims, and because his petition did not comply with R.C. 2969.25. In October 2008, Muff filed a second petition for a writ of habeas corpus in which he raised the same claims. Appellee filed a motion to dismiss, which the trial court granted based on res judicata.

{¶3} We affirm the trial court's judgment. Even if res judicata did not apply here, a point we need not decide, habeas corpus is not an appropriate remedy to raise Muff's claims. Muff had an adequate legal remedy by either a direct appeal or a petition for post conviction relief to raise any issues involving the state's withholding of evidence or his actual innocence. See *Shie v. Leonard*, 84 Ohio St.3d 160, 161, 1998-Ohio-318 (post conviction relief is an adequate legal remedy to raise a claim of actual innocence); *Ellis v. McMackin* (1992), 65 Ohio St.3d 161, 162 (questions of evidence must be raised by appeal). See, also, *State v. Harrington*, 172 Ohio App.3d 595, 2007-Ohio-3796, at ¶18. Accordingly, the trial court properly dismissed Muff's petition.

{¶4} Muff's sole assignment of error is meritless.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.