

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

James Handcock	:	
	:	
Petitioner,	:	Case No. 18CA3631
	:	
v.	:	
	:	
Charlotte Jenkins, Warden	:	<u>DECISION AND JUDGMENT ENTRY</u>
Chillicothe Correctional Institution,	:	
	:	
Respondent.	:	RELEASED: 05/15/2018
	:	

APPEARANCES:

James Handcock, Chillicothe, Ohio pro se petitioner.

Michael DeWine, Ohio Attorney General, and Jerri L. Fosnaught, Ohio Assistant Attorney General, Columbus, Ohio, for respondent.

HARSHA, J.,

{¶1} James Handcock filed a habeas corpus petition seeking his immediate release from the Chillicothe Correctional Institute. In 2008, a jury found Handcock guilty of one count of felonious assault with a firearm specification, one count of having weapons while under disability, and one count of carrying a concealed weapon. The trial court sentenced Handcock to a total 17 ½ year prison term. Handcock appealed his convictions on the grounds that they were not supported by sufficient evidence and against the manifest weight of the evidence. The appellate court affirmed the judgment. *State v. Handcock*, 2nd Dist. Clark No. 2008CA85, 2009-Ohio-4327 (*Handcock I*).

{¶2} In 2010, Handcock moved to vacate a void sentence. He contended that his sentence was void because: (1) the trial court failed to make statutory findings before imposing consecutive sentences; (2) he was not correctly informed at sentencing regarding post-release control; (3) the charges for having weapons while under

disability and carrying a concealed weapon were allied offenses of similar import; and (4) one of the counts in the indictment failed to allege the requisite mental state. The trial court overruled this motion. Hancock appealed and the appellate court affirmed. *State v. Hancock*, 2nd Dist. Clark No. 2010CA76, 2011-Ohio-2559 (*Hancock II*).

{¶3} In 2012, Hancock filed a second motion to vacate a void sentence. In it he challenged the verdict form and also contended that his trial counsel was ineffective for having failed to raise objections to the verdict form at trial, rendering void his conviction for carrying a concealed weapon. The trial court overruled Hancock's motion and the appellate court affirmed. *State v. Hancock*, 2nd Dist. Clark No. 2012CA87, 2013-Ohio-3275 (*Hancock III*).

{¶4} Hancock also filed a federal habeas corpus petition in 2012. He challenged the sufficiency of the evidence, his consecutive sentences, and the indictment. The federal court denied and dismissed the petition. The court noted that Hancock's sufficiency of the evidence claim was previously adjudicated in *Hancock I* and his challenges to the indictment and his consecutive sentences were adjudicated in *Hancock II*. *Hancock v. Warden, Chillicothe Correctional Inst.*, S.D. Ohio No. 3:12CV96, 2014 WL 223649 (Jan. 21, 2014), *report and recommendation adopted by*, S.D. Ohio No. 3:12CV96, 2014 WL 773443 (Feb. 25, 2014) (*Hancock IV*).

{¶5} In 2016, Hancock filed a motion requesting permission to file a successive petition for postconviction relief to argue that he received ineffective assistance of counsel because his trial counsel did not challenge his competency evaluation or request an independent competency evaluation by an unbiased examiner. The trial court denied the motion and the appellate court affirmed. *State v. Hancock*,

2nd Dist. Clark No. 2016CA3, 2016-Ohio-7096 (*Handcock V*).

{¶16} Here Handcock claims he is entitled to the immediate release from prison because: (1) there was insufficient evidence to convict him for felonious assault; (2) the verdict form does not contain the felony degree or any aggravating elements in order for him to be convicted of a fourth degree felony for carrying a concealed weapon; and (3) the “having weapons while under disability” count and the “carrying a concealed weapon” count are allied offenses that should have merged with his felonious assault count at sentencing.

{¶17} Respondent contends that Handcock’s petition should be dismissed for failure to state a claim upon which relief can be granted. She argues that Handcock’s claims are not cognizable in habeas corpus because he had an adequate legal remedy in which to raise his claims on direct appeal and postconviction relief petitions.¹ Respondent also contends that Handcock did not verify his petition in accordance with R.C. 2754.04. Respondent asks that we tax costs to Handcock and that payment be collected in accordance with statute.

{¶18} We find that Handcock’s petition fails to state a claim upon which relief can be granted. His claims could have been, and were, raised in previous appeals and postconviction relief petitions. Therefore he has an adequate legal remedy; his claims are not cognizable in habeas corpus. We **GRANT** respondent’s motion to dismiss.

I. Standard of Review

{¶19} “A motion to dismiss for failure to state a claim upon which relief can be

¹ Respondent also argues that Handcock’s maximum sentence has not expired, thus he is not unlawfully detained. However, Handcock acknowledges he received a 17 ½ year prison term and does not contend it has expired.

granted tests the sufficiency of the complaint.” *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. In order for a court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought. *Ohio Bur. Of Workers’ Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶ 12; *Rose v. Cochran*, 4th Dist. Ross No. 11CA3243, 2012-Ohio-1729, ¶ 10. This same standard applies in cases involving claims for extraordinary relief, including habeas corpus. *Boles v. Knab*, 130 Ohio St.3d 339, 2011-Ohio-5049, 958 N.E.2d 554, ¶ 2 (“Dismissal under Civ.R. 12(B)(6) for failure to state a claim was warranted because after all factual allegations of Boles’s petition were presumed to be true and all reasonable inferences therefrom were made in his favor, it appeared beyond doubt that he was not entitled to the requested extraordinary relief in habeas corpus”).

II. Law and Analysis

{¶10} Habeas corpus petitions are governed by R.C. 2725. In order to be entitled to a writ of habeas corpus, the petitioner must be able to establish that his present incarceration is illegal because the trial court that rendered the conviction lacked jurisdiction over the criminal case. R.C. 2725.05. Where the petitioner asserts that the trial court committed non-jurisdictional errors in the underlying case, the errors can be adequately reviewed in a direct appeal of the conviction and the habeas corpus petition should be dismissed. *State ex rel. Harsh v. Sheets*, 132 Ohio St.3d 198, 2012-Ohio-2368, 970 N.E.2d 926; *State ex rel. Shackelford v. Moore*, 116 Ohio St. 3d 310, 2007-Ohio-6462, 878 N.E.2d 1035. A petitioner is only entitled to habeas corpus if he

can show he has no adequate remedy at law. *Agee v. Russell*, 92 Ohio St.3d 540, 544, 751 N.E.2d 1043 (2001).

A. Verification under R.C. 2725.04

{¶11} A petitioner must verify a habeas corpus petition under R.C. 2725.04.

“‘Verification’ means a ‘formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.’” *Chari v. Vore*, 91 Ohio St.3d 323, 327, 744 N.E.2d 763, 769 (2001) quoting Garner, *Black's Law Dictionary* (7 Ed.1999) 1556. A habeas corpus petition is “fatally defective and subject to dismissal” where the petitioner fails to comply with the verification requirement of R.C. 2725.04. *State ex rel. Winnick v. Gansheimer*, 112 Ohio St.3d 149, 2006-Ohio-6521, 858 N.E.2d 409, ¶ 5–6.

{¶12} Respondent contends that Handcock did not verify his petition as required by R.C. 2725.04. She argues that “[a]lthough Handcock’s petition contains a notarized ‘Notice of Legal Instructions,’ there is no notarized statement in which he expressly swears to the truth of the allegations listed in his petition.” For his reply, Handcock contends that he has complied with the verification requirement.

{¶13} The record shows that when Handcock filed his petition he also filed a notarized “Certificate of Verification/Affidavit of Verification” in which he swears that he has personal knowledge of the facts stated in the habeas corpus petition and that they are true and correct to the best of his knowledge. He also filed with his petition a notarized “James Handcock’s Affidavit or Declaration under Penalty of Perjury” in which he makes approximately three pages of statements to support his petition and swears

or affirms that the facts and information are true, accurate and complete.² Thus, we find that Hancock verified his petition in accordance with R.C. 2725.04. It is not fatally defective on procedural grounds.

B. Hancock's Adequate Remedy at Law

{¶14} However, because he has an adequate remedy at law for his claims, we must dismiss Hancock's habeas corpus petition. His claim that there was insufficient evidence to convict him of felonious assault could have been and was made in his direct appeal. See *Hardwick I* at ¶ 21 ("the State successfully presented a prima facie case, the court properly allowed the jury to decide Hancock's case"); see *Bradley v. Hooks*, 4th Dist. Ross No. 16CA3576, 2017-Ohio-4105, ¶ 14 (" '[H]abeas corpus is not available to remedy claims concerning * * * the sufficiency of the evidence.' *State ex rel. Tarr v. Williams*, 112 Ohio St.3d 51, 2006–Ohio–6368, 857 N.E.2d 1225, ¶ 4.").

{¶15} Hancock's claim that the verdict form was flawed could have been raised in his direct appeal, and was raised and addressed in a prior postconviction relief petition. See *Hardwick III* at ¶ 14 ("The error in the verdict form of which Hancock complains could, and should, have been raised in his direct appeal. It was not; therefore, this claim is barred by res judicata."); see also *Smith v. Smith*, 123 Ohio St.3d 145, 2009-Ohio-4691, 914 N.E.2d 1036, ¶ 1 (challenges to jury verdict forms are not cognizable in habeas corpus).

{¶16} Finally, Hancock's allied-offense claim could have been raised in his direct appeal, and was raised and addressed in a prior postconviction relief petition. See

² Both documents have certificates of service indicating regular U.S. mail service on the Attorney General's Office and the Warden.

Handcock II at ¶ 10 (“Handcock argued that his sentences for having weapons while under disability and carrying a concealed weapon were void because the two charges were allied offenses of similar import and should have merged for the purposes of sentencing. * * * the trial court overruled Handcock’s motion to vacate.”); see also *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 10 (“allied-offense claims are nonjurisdictional and are not cognizable in habeas corpus”).

{¶17} Habeas corpus is not an appropriate remedy because Handcock had other adequate legal remedies. Thus, we **GRANT** respondent’s motion to dismiss and **DISMISS** petitioner’s habeas corpus petition under Civ. R. 12(B)(6). Costs shall be assessed against petitioner and payment collected in accordance with R.C. 2969.22.

{¶18} The clerk shall serve a copy of this order on all counsel of record at their last known addresses. The clerk shall serve petitioner by certified mail, return receipt requested. If returned unserved, the clerk shall serve petitioner by ordinary mail.

PETITION DISMISSED. COSTS TO PETITIONER. SO ORDERED.

Abele, J. & McFarland, J.: Concur.

FOR THE COURT

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.