[Cite as *Grinnell v. Bowen*, 2018-Ohio-2791.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

TIMOTHY GRINNELL,

Petitioner,

v.

RICHARD A. BOWEN JR.,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0007.

Writ of Habeas Corpus

BEFORE:
Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Dismissed.

Timothy Grinnell, Pro Se, #218-140, 878 Coitsville-Hubbard Road, Youngstown, Ohio 44505, for Petitioner, and

Atty. *Stephanie Watson*, *Principal Assistant Attorney General*, Corrections Litigation Section, 150 East Gay Street, 16th floor, Columbus, Ohio 43215, for Respondent.

Dated:
June 28, 2018

PER CURIAM.

{¶1} Petitioner Timothy Grinnell, proceeding on his own behalf, has filed a petition for a writ of habeas corpus against Respondent Richard A. Bowen Jr. Petitioner is currently an inmate at the Ohio State Penitentiary in Youngstown, Ohio. Respondent is the warden at the Ohio State Penitentiary where petitioner resides and has filed a motion to dismiss the petition.

{¶2} On September 12, 1995, a Franklin County jury convicted Petitioner of two counts of aggravated murder stemming from the beating death of two inmates during the 1993 Lucasville prison riot. The trial court sentenced him to two concurrent terms of life in prison, with eligibility for parole after twenty years.

{¶3} Petitioner has filed many unsuccessful challenges stemming from his 1995 conviction and sentencing. Almost a year after the guilty verdict, his conviction and sentence were both affirmed on appeal by the Tenth District Court of Appeals. *State v. Grinnell*, 112 Ohio App. 3d 124 (10th Dist. 1996). Subsequently, Petitioner filed twelve actions with various courts, eight of which were in the past three years, and all of which were denied.

{¶4} Petitioner now alleges that his conviction and sentence run contrary to Crim.R. 32(B), now Crim.R. 32(C), which states in relevant part:

> (C) Judgment.
>
> A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

{¶5} Petitioner claims that his conviction and sentence were not journalized. He therefore argues that the court lost subject-matter jurisdiction, which in turn would render his conviction and sentence void.

{¶6} In his motion to dismiss, Respondent counters that Petitioner's complaint is not a cognizable habeas action because he had alternative remedies in the ordinary course of law. Respondent also argues that res judicata bars Petitioner's complaint.

{¶7} Habeas corpus is only available in extraordinary circumstances where there is no adequate alternative legal remedy. *Kemp v. Ishee*, 7th Dist. No. 03 MA 182, 2004-Ohio-390, ¶ 4, citing *State ex rel. Jackson v. McFaul*, 72 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995). Habeas corpus is not available when the issue could have been raised on direct appeal. *Ishee*, 7th Dist. No. 03 MA 182 at ¶ 4, citing *Luna v. Russell*, 70 Ohio St.3d 561, 639 N.E.2d 1168 (1994). Further, "where a Petitioner possessed the adequate legal remedies of appeal and post-conviction to challenge his sentencing, a petition for habeas corpus may properly be dismissed." *Womack v. Warden of Belmont Correctional Inst.*, 7th Dist. No. 04 BE 58, 2005-Ohio-1344, ¶ 5, citing *State ex rel. Massie v. Rogers*, 77 Ohio St.3d 449, 450, 674 N.E.2d 1383 (1997).

{¶8} Petitioner argues that the claims he made in previous appeals were distinctly different than the claim he raises now. But, in *In re Pianowski*, this court held:

> Regardless of whether they were ever actually raised, where claims are based on the same nucleus of facts, res judicata prevents the petitioner from raising alternative legal theories overlooked in the previous proceeding. See *Grava, supra*. As Petitioner could have raised the issue in the previous petitions but simply chose not to, this petition is barred by res judicata.

In re Pianowski, 7th Dist. No. 03 MA 16, 2003-Ohio-3881, ¶ 7.

{¶9} Petitioner had the opportunity to raise the alleged Crim.R. 32(C) deficiencies on direct appeal. As Respondent notes, Petitioner did in fact argue the sufficiency of the journalizing of his conviction, with minor differences, to the Ohio Supreme Court. *See State ex rel. Grinnell v. Reece*, 135 Ohio St.3d 255, 2013-Ohio-733, 985 N.E.2d 1269.

{¶10} Regardless, even if the claim were not barred by res judicata, the record reflects that Petitioner's judgment entry and sentence were journalized, despite his allegation that "At no other date DOES THE DOCKET SHOW ANY ENTRY OF CONVICTION OF DEFENDANT-PETITIONER" (Emphasis sic.) As Respondent points out, entry 150 and 151 reflect his conviction by jury and sentence. (Ex. B). In addition, Petitioner attached the judgment entry, which properly listed both his conviction and sentence. (Ex. A). Although faint, the judgment entry was stamped on October 2, 1995, which is the same date reflected in the corresponding docket entries. (Ex. A).

{¶11} In response, Petitioner argues that the violation of Crim.R. 32(C) occurred when the docket reflected two entries instead of a single entry. The final judgment entry of conviction and sentence was entered into the record as a single document. Petitioner attempts to correlate his assertion that the docket should contain but a single entry for his conviction and sentence with *Baker*, in which the court held that the judgment of conviction must be a single document. *See State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 19. Whether the judgment entry of conviction and sentence is a final order and whether the defendant's conviction and sentence were entered on the docket in one or more entries are separate and unrelated issues. Petitioner's judgment entry of conviction and sentence complies with Crim.R. 32(C). And the fact that his conviction and sentence were entered on the docket separately is irrelevant as Petitioner has not identified any legal requirement that they be entered on a single entry of the docket.

{¶12} Assuming the docket or judgment entry of conviction and sentence were incorrectly filed, the issue would still not be jurisdictional. So long as the judgment entry of conviction and sentence meets the substantive provisions of Crim.R. 32(C), any non-substantive deviation does not nullify the final order. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 12. Again, the judgment entry of conviction and sentence did in fact meet the substantive requirements of Crim.R. 32(C), and Petitioner's equation of the requirements for a final order with the requirements of the docket is misguided.

{¶13} For the above stated reasons, the petition for habeas corpus is denied, and the motion to dismiss is granted.

{¶14} Final order. Clerk to service notice as provide by the Rules of Civil Procedure. Costs taxed to Petitioner.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB