

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

TYRICE HILL,

Petitioner,

v.

WARDEN MICHAEL PHILLIPS, ET AL.,

Respondents.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0016

Writ of Habeas Corpus

BEFORE:

David A. D'Apolito, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Respondents' motion for summary judgment sustained. Respondents' motion to declare Petitioner a vexatious litigator overruled. Petitioner's writ of habeas corpus dismissed.

Tyrice Hill, *Pro Se*, #488-329, Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, Ohio 44505, for Petitioner and

Atty. Stephanie Watson, Principal Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215, for Respondents.

Dated: December 23, 2020

PER CURIAM.

{¶1} Petitioner Tyrice Hill, a prison inmate proceeding on his own behalf, has filed a complaint for a writ of habeas corpus seeking immediate release from the Northeast Ohio Correctional Center (NEOCC), where he is presently incarcerated. Petitioner's complaint names two respondents. The first is Michael Phillips, Warden of the NEOCC. The NEOCC is one of the Ohio Department of Rehabilitation and Correction's (ODRC) prison institutions. The second respondent is Annette Chambers-Smith, Director of the ODRC. Respondents have filed a joint motion for summary judgment and motion to declare Petitioner a vexatious litigator.

{¶2} The basis of Petitioner's current incarceration stems from two criminal cases in the Lucas County Common Pleas Court. In number CR 200001572, the Petitioner was found guilty of robbery in violation of R.C. 2911.02(A)(3), a third-degree felony. At the sentencing hearing, the trial court judge advised Petitioner he would be subject to a period of five (5) years of post-release control, following completion of his stated prison term. Petitioner served his stated prison term and was released in February of 2004. At the time of his release, the ODRC placed Petitioner on a post-release control term of three (3) years, and within four (4) months of being placed on post-release control, Petitioner reoffended.

{¶3} During the summer of 2004, the Petitioner "engaged in a crime spree throughout the city of Toledo. Between June 25, 2004 and August 19, 2004, [Petitioner] committed six armed robberies, [Petitioner] targeted restaurants, retail shops, and pedestrians. In the course of these robberies, [Petitioner] possessed, displayed and brandished a firearm to his victims. [Petitioner's] targets were primarily small and unsophisticated neighborhood businesses." *State v. Hill*, 6th Dist. Lucas No. L-05-1080, 2006-Ohio-859, ¶ 6.

{¶4} On August 30, 2004, Petitioner was indicted on six (6) first-degree felony counts of aggravated robbery, in violation of R. C. 2911.01(A)(1) and attached firearm specifications in Lucas County Common Pleas Court case number CR 200402741. On

September 2, 2004, the Petitioner was appointed counsel and arraigned on the charges and specifications.

{¶5} While Petitioner was under Indictment, and awaiting trial, counsel for Petitioner filed a motion for a competency evaluation of Petitioner. The court then referred Petitioner to the Court Diagnostic and Treatment Center for an evaluation of the Petitioner's competency to stand trial. "On December 15, 2004, the Court Diagnostic and Treatment Center, evaluated [Petitioner] and found him to be malingering in an attempt to appear legally incompetent. [Petitioner's] attempt failed and he was determined to be legally competent." *State v. Hill*, 6th Dist. Lucas No. L-14-1088, 2014-Ohio-4865, ¶ 4.

{¶6} Subsequently, on January 10, 2005, Petitioner entered into a plea agreement with the state, in which Petitioner agreed to plead guilty to Count One, Count Five, and Count Six of the indictment, which charged Petitioner with three (3) separate aggravated robberies. Petitioner further agreed to plead guilty to the firearm specifications in Count Five, and Count Six, which each carried three (3) years of mandatory incarceration. Petitioner also agreed to plead guilty to the amended firearm specification in Count One, which carried a mandatory one (1) year of incarceration. At the conclusion of the plea proceeding, the Court referred the matter to the Lucas County Adult Probation Department for a pre-sentence report and the matter was continued for sentencing.

{¶7} On February 3, 2005, Petitioner was sentenced to seven (7) of the potential ten (10) years of incarceration on each of the three separate aggravated robberies. Counts One, Five, and Six were ordered to be served consecutively to one another. Petitioner was also sentenced to additional 3-year terms of incarceration as to the firearm specifications in Count Five, and Count Six, and an additional 1-year term of incarceration as to the firearm specification in Count One. The three firearm specifications, by law, were ordered served consecutively to their underlying charge. Petitioner's aggregate sentence for case number CR 200402741 was 28 years in prison.

{¶8} After imposing the sentences in CR 200402741, the trial court proceeded to find Petitioner had violated the terms of his postrelease control in case number CR 20001572, and ordered Petitioner to serve 874 days in prison on that case, consecutive to his sentence in CR 20042471. The Sixth District Court of Appeals affirmed Petitioner's

convictions and sentence in CR 20042471 in *State v. Hill*, 6th Dist. Lucas No. L-05-1080, 2006-Ohio-859. The Ohio Supreme Court thereafter reversed and remanded the case for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. See *In re Ohio Crim. Sentencing Statutes Cases*, 110 Ohio St.3d 156, 2006-Ohio-4086, 852 N.E.2d 156.

{¶9} Petitioner was returned to the Lucas County Common Pleas Court for resentencing. Prior to the resentencing, Petitioner filed his first motion to withdraw guilty pleas and a motion to dismiss. On November 2, 2006, a hearing was held on the motions.

{¶10} Subsequently, the trial court found Petitioner's first motion to withdraw guilty pleas and his motion to dismiss were not well taken and denied the motions at Petitioner's resentencing hearing on November 9, 2006. The court then proceeded with the resentencing hearing. Petitioner received the same sentences which had been previously imposed on February 3, 2005, including the 874-day post-release control sanction in CR200001572.

{¶11} On May 9, 2017, the trial court judge in case number CR 20001572 determined that the imposition of postrelease control in that case was void. Consequently, on October 13, 2017, the trial court entered a nunc pro tunc judgment in case number CR 20042471, vacating the postrelease control sanction of 874 days in prison that was imposed in case No. CR 20001572.

{¶12} Following numerous, unsuccessful collateral attacks upon his conviction and sentence, Petitioner has filed this original action for a writ of habeas corpus.

{¶13} R.C. 2725.01 provides: "Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation." The writ of habeas corpus is an extraordinary writ and will only be issued in certain circumstances of unlawful restraint of a person's liberty where there is no adequate legal remedy at law, such as a direct appeal or postconviction relief. *In re Pianowski*, 7th Dist. Mahoning No. 03MA16, 2003-Ohio-3881, ¶ 3; see also *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994). "Absent a patent and unambiguous lack of jurisdiction, a party challenging a court's jurisdiction has an

adequate remedy at law by appeal.” *Smith v. Bradshaw*, 109 Ohio St.3d 50, 2006-Ohio-1829, 845 N.E.2d 516, ¶ 10.

{¶14} If a person is in custody by virtue of a judgment of a court of record and the court had jurisdiction to render the judgment, the writ of habeas corpus will not be allowed. *Tucker v. Collins*, 64 Ohio St.3d 77, 78, 591 N.E.2d 1241 (1992). The burden is on the petitioner to establish a right to release. *Halleck v. Koloski*, 4 Ohio St.2d 76, 77, 212 N.E.2d 601 (1965); *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288, 189 N.E.2d 136 (1963). “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.

{¶15} Petitioner’s complaint fails to comply with the civil litigation history requirement found in section (A) of R.C. 2969.25: “At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.”

{¶16} As Respondents points out, although Petitioner filed an affidavit containing a description of some of the civil actions that he has filed, it fails to contain “a description of each civil action or appeal of a civil action” that he has filed in the previous five years in any state or federal court, as required by R.C. 2969.25(A). Therefore, Petitioner’s failure to include all of the required information in his affidavit mandates the dismissal of his complaint. *Robinson v. LaRose*, 147 Ohio St.3d 473, 2016-Ohio-7647, 67 N.E.3d 765, ¶ 11.

{¶17} Even assuming for the sake of argument that we could reach the merits of Petitioner’s claim, it would not survive summary judgment. Petitioner argues the nunc pro tunc judgment entry used to vacate the post-release control sanction of 874 days exceeded what a nunc pro tunc entry is authorized to correct, voiding his sentence in CR 20042471 and necessitating a sentencing hearing anew.

{¶18} But, as this Court noted in Petitioner’s previous, and now this original action before it, the issues raised in his complaint in this regard have been fully litigated. *State ex rel. Hill v. Larose*, 7th Dist. Mahoning No. 19 MA 0025, 2019-Ohio-5444. More specifically, the Sixth District Court of Appeals stated:

The record reflects that four of [Petitioner's] total of seven appeals in this matter have stemmed from substantively analogous motions challenging [Petitioner's] plea and sentence for alleged impropriety in connection to post release control.

This court has repeatedly and clearly determined that [Petitioner] was properly furnished the requisite statutory post release control notification. In conjunction with this, this court has likewise repeatedly determined that [Petitioner] has not been prejudiced in any way whatsoever in connection to claimed issues connected to post release control.

State v. Hill, 6th Dist. Lucas No. L-16-1086, 2016-Ohio-8529, ¶¶ 3-4.

{¶19} These same claims Petitioner repeatedly has made in the trial court and the denial of which have been repeatedly and consistently affirmed by the Sixth District Court of Appeals, Petitioner advanced in a complaint for a writ of habeas corpus filed with the Ohio Supreme Court. The Supreme Court likewise rejected them, sua sponte dismissing the complaint. *State ex rel. Hill v. Coleman*, 143 Ohio St.3d 1475, 2015-Ohio-3958, 38 N.E.3d 898, reconsideration denied by 144 Ohio St.3d 1444, 2015-Ohio-5468, 43 N.E.3d 453.

{¶20} For all of the foregoing reasons, Respondents' joint motion for summary judgment is sustained and Petitioner's original action for a writ of habeas corpus is dismissed. Respondents' motion to declare Petitioner a vexatious litigator as well as any and all motions filed by Petitioner that remain pending are overruled.

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

JUDGE DAVID A. D'APOLITO

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

