

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

DAVID PEOPLES,

Petitioner,

v.

DAVID BOBBY
WARDEN, NORTHEAST OHIO CORRECTIONAL CENTER,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0096

Writ of Habeas Corpus

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Dismissed.

David Peoples, Pro se, #A576-128, Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, Ohio 44505

Atty. M. Scott Criss, Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, Columbus, Ohio 43215, for Respondent.

Dated: September 13, 2021

PER CURIAM.

{¶1} Petitioner David Peoples, a prison inmate serving a life sentence and representing himself, has filed a petition for a writ of habeas corpus seeking transfer from the Northeast Ohio Correctional Center in Youngstown, Ohio, to the custody of the Franklin County sheriff. The petition names the facility's warden as party respondent. The Tenth District Court of Appeals reversed Petitioner's sentence in 2019 relative to a firearm specification and remanded for resentencing. The sentencing court issued an amended sentencing entry without a hearing. Petitioner argues Respondent's imprisonment of him is "without legal authority" because the sentencing court did not have him returned for a resentencing hearing in person. Respondent has moved to dismiss. Because Petitioner has an adequate remedy at law and his maximum sentence has not expired, the Court grants Respondent's motion and dismisses the petition.

{¶2} A Franklin County jury convicted Petitioner in 2002 of one count of aggravated murder in violation of R.C. 2903.01, with two firearm specifications under R.C. 2941.145 (specification concerning use of a firearm to facilitate the offense) and R.C. 2941.146 (specification concerning discharge of a firearm from a motor vehicle; also known colloquially as a drive-by specification), and one count of having a weapon while under disability. The trial court sentenced Petitioner to 25 years to life imprisonment, an additional six years for discharging a weapon from a motor vehicle, plus three years for the firearm under disability specification, for an aggregate 34-year term of imprisonment. The sentence was ordered to run consecutive to the term Petitioner was then serving in federal prison. The Tenth District Court of Appeals affirmed Petitioner's conviction and sentence on direct appeal. *State v. Peoples*, 10th Dist. Franklin No. 02AP-945, 2003-Ohio-4680.

{¶3} In 2017, Petitioner moved to vacate his sentence. The trial court denied the motion, but on May 30, 2019, the Tenth District reversed because the maximum term for Case No. 20 MA 0096

the drive-by specification was five years, not six, as the trial court imposed. *State v. Peoples*, 10th Dist. Franklin No. 18AP-850, 2019-Ohio-2141, ¶¶ 8, 11-13. The court of appeals remanded the case “with instructions to vacate [Petitioner’s] six-year sentence on the R.C. 2941.146 firearm specification and resentence [Petitioner] to the statutorily mandated five-year term for that specification.” *Id.* at ¶ 15.

{¶4} R.C. 2953.13 provides that when a defendant is incarcerated at a state correctional institution, if the defendant’s case is remanded to the trial court, the clerk of courts must certify the remand to the warden. On receipt of that certification, “the warden shall forthwith cause the defendant to be conveyed to the jail of the county in which the defendant was convicted, and committed to the custody of the sheriff of that county.” *Id.*

{¶5} Here, however, on June 10, 2019, before the clerk of courts certified the Tenth District’s remand order to the warden, the trial court issued an amended judgment entry changing Petitioner’s sentence for the drive-by specification from six years to five years. *State v. Peoples*, Franklin C.P. No. 01CR07-4150 (June 10, 2019).

{¶6} In July of 2019, Petitioner filed an original action in this Court against Franklin County Clerk of Courts Maryellen O’Shaughnessy, NEOCC Warden Christopher LaRose, and Ohio Department of Rehabilitation and Correction Director Annette Chambers-Smith. Petitioner sought writs of mandamus seeking their compliance with R.C. 2953.13. Specifically, he asked this Court to compel O’Shaughnessy to certify the remand order to LaRose and to compel LaRose and Chambers-Smith to transfer him to the custody of the Franklin County sheriff on receipt of O’Shaughnessy’s certification.

{¶7} O’Shaughnessy, LaRose, and Chambers-Smith each filed motions to dismiss Petitioner’s complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted. In response to O’Shaughnessy’s motion, Petitioner agreed that she

had issued the statutory certification in July 2019 and that she should be dismissed from the claim.

{¶8} The Court dismissed Petitioner’s complaint in its entirety as moot. *State ex rel. Peoples v. O’Shaughnessy*, 7th Dist. Mahoning No. 19 MA 0072, 2020-Ohio-4432, ¶ 9, 15, 18-19. First, the Court noted that O’Shaughnessy had fulfilled her statutory duty by sending a certified copy of the Tenth District’s decision to the appropriate parties, thus, there was no further action to compel from her. *Id.* at ¶ 9. Further, the Court observed that (1) the Tenth District’s remand order contained specific instructions to the trial court to amend the judgment entry regarding Petitioner’s sentence, but the order included no reference to a resentencing hearing or any other proceeding that would have required Petitioner’s transfer to the Franklin County jail, and (2) the trial court had entered an amended judgment entry as instructed. *Id.* at ¶ 10-13. The Court concluded that any transfer of Petitioner from NEOCC to the Franklin County jail would amount to a vain act. Petitioner appealed the Court’s decision to the Ohio Supreme Court and it affirmed. *State ex rel. Peoples v. O’Shaughnessy*, ___ Ohio St.3d ___, 2021-Ohio-1572, ___ N.E.3d ___.

{¶9} Petitioner now brings this original action in habeas advancing the same argument as in his mandamus action. Again relying solely on R.C. 2953.13, he contends Respondent is “without legal authority” to imprison him because the trial court resentenced him without first having him transferred to the custody of the Franklin County sheriff for return to the trial court for a resentencing hearing.

{¶10} Initially, we note that Petitioner named as party respondent NEOCC’s former warden, Michael Phillips. After Petitioner filed this action, David Bobby succeeded Phillips as warden and he is automatically substituted as party respondent. Civ.R. 25(D)(1).

{¶11} Respondent requests that the petition be dismissed pursuant to Civ.R. 12(B)(6). A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim may be granted when it appears beyond doubt from the face of the petition, presuming the allegations contained within it are true, that the petitioner can prove no facts warranting the relief sought. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). To withstand a motion to dismiss, a complaint must contain, with sufficient particularity, a statement of the clear legal duty of the respondent to perform the act requested. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Ed.*, 72 Ohio St.3d 94, 95, 647 N.E.2d 788 (1995). The purpose of a Civ.R. 12(B)(6) motion is to test the sufficiency. *Id.* For a case to be dismissed for failure to state a claim, it must appear beyond doubt that, even assuming all factual allegations are true, the nonmoving party can prove no set of facts that would entitle him or her to the relief requested. *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994).

{¶12} If the petition does not meet the requirements of a properly filed petition for writ of habeas corpus or fails to state a facially viable claim, it may be dismissed on motion of the respondent or *sua sponte* by the court. *Flora v. State*, 7th Dist. Belmont No. 04 BE 51, 2005-Ohio-2382, ¶ 5.

{¶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.” Habeas corpus is an extraordinary writ. It 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. 03 MA 16, 2003-Ohio-3881, ¶ 3; see also *State ex rel.*

Pirman v. Money, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994). If a person is in custody based on a judgment of a court of record and the court had jurisdiction to render that judgment, the writ will not be allowed. *Tucker v. Collins*, 64 Ohio St.3d 77, 78, 591 N.E.2d 1241 (1992). “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} Petitioner’s claim fails for two reasons: (1) the availability of an adequate remedy at law by way of direct appeal and (2) the absence of an immediate right to release from custody or transfer to the custody of another.

{¶15} The amended judgment entry changing Petitioner’s sentence for the drive-by specification from six years to five years was issued on June 10, 2019. *State v. Peoples*, Franklin C.P. No. 01CR07-4150 (June 10, 2019). Inasmuch as that entry forms the basis of Petitioner’s current incarceration, the Court notes Petitioner has yet to pursue a direct appeal of that entry. A petition for a writ of habeas corpus will be denied when the petitioner had available an adequate remedy at law, whether or not the petitioner pursued that remedy. *State ex rel. Gibson v. Sloan*, 147 Ohio St.3d 240, 2016-Ohio-3422, 63 N.E.3d 1172, ¶ 7. A direct appeal is an adequate remedy at law. See *Id.* at ¶ 9.

{¶16} An additional basis for dismissing the petition concerns whether Petitioner is entitled to immediate release. That inquiry entails an examination of Petitioner’s sentence and its duration. A writ of habeas corpus is “available only when the petitioner’s maximum sentence has expired and he is being held unlawfully.” *Heddleston v. Mack*, 84 Ohio St.3d 213, 214, 702 N.E.2d 1198 (1998), citing *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 346, 626 N.E.2d 939 (1994). Petitioner does not contend that he has served the maximum term of his sentence. Even assuming Petitioner was never subject

to a drive-by specification, Petitioner has yet to serve the minimum term of his sentence (the mandatory minimum of 25 years for aggravated murder conviction). Again, habeas is only available as a remedy when the petitioner's maximum sentence has expired. Here, Petitioner's maximum sentence is life in prison. That sentence has yet to expire. *State ex rel. Holman v. Collins*, 159 Ohio St.3d 537, 2020-Ohio-874, 152 N.E.3d 238, ¶ 7 (petitioner's "arguments ignore the fact that his maximum sentence is life imprisonment").

{¶17} The Court sustains Respondent's motion to dismiss and dismisses this original action for a writ of habeas corpus.

{¶18} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. Costs waived.

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

JUDGE DAVID A. D'APOLITO