

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

BARNARD M. JACKSON,

Petitioner,

v.

DAVID W. GRAY, WARDEN,

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 23 BE 0014

Petition for Writ of Habeas Corpus

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Dismissed.

Barnard M. Jackson, Petitioner

Atty. Dave Yost, Ohio Attorney General, *Atty. William H. Lamb*, Assistant Attorney General, 3874 Paxton Avenue, #9205, Cincinnati, Ohio 45209-9205, for Respondent.

Dated: December 20, 2023

PER CURIAM.

{¶1} Petitioner Barnard M. Jackson has filed this original action for a writ of habeas corpus seeking his immediate release from the Belmont Correctional Institution (BECI). BECI is one of the Ohio Department of Rehabilitation and Correction's prison facilities. Jackson is a self-represented prison inmate whose petition names the BECI's warden, David Gray, as Respondent. Jackson argues that a defect in his indictment and ineffective assistance of counsel render his conviction and sentence void. The warden filed a motion to dismiss under Civ.R. 12(B)(6) and Jackson responded with a memorandum in opposition. We hereby grant the warden's motion and dismiss the petition because Jackson's claims are not cognizable in a habeas corpus proceeding.

{¶2} A Montgomery County grand jury indicted Jackson for felonious assault in violation of R.C. 2903.11(A)(2), a second-degree felony; having weapons while under disability in violation of R.C. 2923.13(A)(2), a third-degree felony; discharging a firearm on or near a prohibited premises in violation of R.C. 2923.162(A)(3), a third-degree felony; tampering with evidence in violation of R.C. 2921.12(A)(1), a third-degree felony; and one count of improperly handling firearms in a motor vehicle in violation of R.C. 2923.16(A), a fourth-degree felony. The felonious assault count included a five-year firearm specification.

{¶3} Jackson pleaded not guilty, and his appointed counsel filed a motion to suppress statements that Jackson made to law enforcement while he was arrested and in jail. Meanwhile, Jackson filed a *pro se* motion asking the trial court to remove his counsel from the case so that he could represent himself. In response, counsel filed a motion to withdraw, citing a breakdown of communication. At the hearing on their respective motions, the court granted Jackson's request to remove counsel and appointed him new counsel.

{¶4} Jackson's new counsel sought further discovery, but Jackson became dissatisfied with this counsel's representation and filed another *pro se* motion asking the trial court to remove his counsel so that he could self-represent. After Jackson's oral and written waiver of counsel, the court ordered Jackson's counsel to remain in the case solely as standby counsel.

{¶15} Jackson then filed a *pro se* appeal arguing that the trial court had violated his right to a speedy trial. He raised the same argument in a motion to dismiss before the trial court prior to voluntarily dismissing his appeal. The trial court overruled Jackson's motion to dismiss and then overruled the pending motion to suppress.

{¶16} On the day of trial, Jackson inquired of the trial court whether his speedy trial argument would be preserved for appeal if he entered a no-contest plea. After receiving confirmation that it would be preserved, Jackson advised the court that he wanted to accept a plea agreement offered by the state and have standby counsel reinstated as full counsel. The plea agreement required Jackson to plead no contest to felonious assault with a reduced three-year firearm specification, having weapons while under disability, discharging a firearm on or near a prohibited premises, and improperly handling firearms in a motor vehicle. In exchange for Jackson's no-contest plea, the state agreed to dismiss the charge of tampering with evidence. The parties also agreed Jackson should receive an aggregate, indefinite sentence of five to six years in prison.

{¶17} After reinstating Jackson's counsel and allowing Jackson to confer with counsel, the trial court conducted a Crim.R. 11 plea colloquy. The court then accepted Jackson's no-contest plea and found him guilty. The court also ordered a presentence investigation report and scheduled the matter for sentencing.

{¶18} After Jackson's *pro se* motion to withdraw his no-contest pleas was unsuccessful, the case proceeded to sentencing. The trial court imposed an indefinite prison term of two to three years for felonious assault and a mandatory three-year prison term for the attendant firearm specification. The trial court ordered the three-year prison term for the firearm specification to run prior and consecutively to the indefinite two-to-three-year prison term for felonious assault. The court also imposed 24 months in prison for having weapons while under disability, 24 months in prison for discharging a firearm on or near a prohibited premises, and 18 months in prison for improperly handling firearms in a motor vehicle. The trial court ordered those three sentences to run concurrently with each other and with the sentences imposed for felonious assault and the firearm specification. Therefore, the trial court ultimately imposed the agreed indefinite sentence of five to six years in prison.

{¶19} Jackson appealed his conviction and sentence to the Second District Court of Appeals in *State v. Jackson*, 2d Dist. Montgomery No. 29226, 2022-Ohio-1522, appeal

not allowed, 167 Ohio St.3d 1473, 2022-Ohio-2633, 191 N.E.3d 461. Jackson's appellate counsel filed an *Anders* no-merit brief asserting the absence of any issues having arguable merit for appeal. Jackson, however, filed a *pro se* brief raising seven assignments of error for review. He devoted six of his assignments to his claim that the trial court violated his right to a speedy trial. The remaining assignment addressed his claim that the trial court erred in overruling his motion to withdraw his no-contest pleas. After determining that each of Jackson's assigned errors lacked arguable merit, the court conducted an independent review of the record, revealing there were no meritorious issues for Jackson to advance on appeal, and affirmed the trial court's judgment.

{¶10} Turning to the claims Jackson raised in his petition for a writ of habeas corpus before this Court, 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." Generally, a writ of habeas corpus is available only when a petitioner's maximum sentence has expired, and he is being held unlawfully, *Leyman v. Bradshaw*, 146 Ohio St.3d 522, 2016-Ohio-1093, 59 N.E.3d 1236, ¶ 8, or when the sentencing court patently and unambiguously lacked subject-matter jurisdiction, see *Stever v. Wainwright*, 160 Ohio St.3d 139, 2020-Ohio-1452, 154 N.E.3d 55, ¶ 8. The writ is unavailable when the petitioner has an adequate remedy in the ordinary course of law unless the trial court's judgment is void for lack of jurisdiction. *State ex rel. Davis v. Turner*, 164 Ohio St.3d 395, 2021-Ohio-1771, 172 N.E.3d 1026, ¶ 8.

{¶11} Pursuant to Civ.R. 12(B)(6), we must presume all of the factual allegations in the petition are true and make all reasonable inferences in favor of the nonmoving party. *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994). A petition may only be dismissed when it appears beyond doubt that the relator can prove no set of facts that would entitle him to the relief requested. *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787, 894 N.E.2d 692, ¶ 7.

{¶12} Jackson maintains that the language of the firearm specification included with the felonious assault count in the indictment does not conform to the language in the firearm specification statute, and that it refers to the incorrect Revised Code section. As a result, Jackson argues, his indictment was defective rendering the trial court without jurisdiction to impose a mandatory three-year prison sentence for that specification.

Aside from the alleged error itself, Jackson argues that his trial counsel rendered ineffective assistance for failing to raise the error to the trial court.

{¶13} Even presuming the truthfulness of Jackson’s claims as we must, a petition for a writ of habeas corpus is not the appropriate mechanism to challenge the validity of an indictment; that may be done only on direct appeal. *Robinson v. LaRose*, 147 Ohio St.3d 473, 2016-Ohio-7647, 67 N.E.3d 765, ¶ 7; *State ex rel. Hadlock v. McMackin*, 61 Ohio St.3d 433, 434, 575 N.E.2d 184 (1991) (“A defendant may challenge the sufficiency of the indictment only by a direct appeal, and not through habeas corpus”). Moreover, a writ of habeas corpus will not issue when the petitioner had available an adequate remedy at law, regardless of whether 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. *Id.* at ¶ 9.

{¶14} This record shows that a Montgomery County grand jury issued an indictment charging Jackson, and he pleaded no contest and was ultimately sentenced on the charges contained in that indictment. *State v. Jackson*, 2d Dist. Montgomery No. 29226, 2022-Ohio-1522, ¶ 3, 14. Therefore, the trial court possessed the requisite jurisdiction to accept his plea, enter a finding of guilt, and sentence him to prison. R.C. 2931.03 (“The court of common pleas has original jurisdiction of all crimes and offenses * * *.”).

{¶15} Accordingly, the Court hereby GRANTS the warden’s motion to dismiss and dismisses Jackson’s petition for a writ of habeas corpus. Costs assessed to Jackson. Final order. The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. Civ.R. 58.

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI