

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D22-3234

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CHRISTOPHER HOGG,

Petitioner,

v.

MICHELLE COOK,

Respondent.

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Petition for Writ of Habeas Corpus—Original Jurisdiction.

December 20, 2022

PER CURIAM.

The petitioner seeks to enforce a rule of procedure. *See* Fla. R. Crim. P. 3.134. That is, he does not claim that there is a substantive right that could render his continued detention by the respondent illegal. *Cf. Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993) (“While the Florida Constitution grants this Court exclusive rule-making authority, this power is limited to rules governing procedural matters and does not extend to substantive rights”); *Benyard v. Wainwright*, 322 So. 2d 473, 475 (Fla. 1975) (explaining that “[s]ubstantive law prescribes the duties and rights under our system of government,” which the Legislature has the exclusive authority to enact “within the limits of the state and federal constitutions,” whereas procedural rules “concern[s] the means and method to apply and enforce those duties and rights,” which the

judicial branch has the authority to adopt, “subject to repeal by the legislature in accordance with our constitutional provisions”); *see Hines v. State*, 931 So. 2d 148, 150 (Fla. 1st DCA 2006) (noting that “a rule of procedure cannot enact substantive law” and that “when a rule of procedure attempts to create a substantive right, it violates the Legislature’s authority under article III of the Florida Constitution to enact substantive law”).

The petitioner, then, seeks the wrong remedy. *Cf. Jones v. Florida Parole Comm’n*, 48 So. 3d 704, 710 (Fla. 2010) (“The purpose of a habeas petition is not to challenge the judicial action that places a petitioner in jail; rather, it challenges the detention itself.”); *Sneed v. Mayo*, 66 So. 2d 865, 869 (Fla. 1953) (noting that the writ of habeas corpus “is designed to test solely the legality of the petitioner’s imprisonment”); *State v. Logan*, 100 So. 173, 173 (Fla. 1924) (explaining that the function of a writ of habeas corpus is to allow a court to “inquire into the cause of [the petitioner’s] detention, and, if found to be illegal,” to restore to liberty); *see generally Shelton v. Coleman*, 187 So. 266 (Fla. 1939). Accordingly, we recharacterize the petition as one for mandamus directed to the trial court. *See Fla. R. App. P. 9.040(c)*. Because the petitioner now has been charged, there is no clear procedural entitlement under the rule to some non-discretionary action by the trial court. *Cf. Bowens v. Tyson*, 578 So. 2d 696 (Fla. 1991).

DISMISSED.

OSTERHAUS, TANENBAUM, and LONG, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Charlie Cofer, Public Defender, and Richard Rippeon, Assistant Public Defender, Green Cove Springs, for Petitioner.

Ashley Moody, Attorney General, and Trisha Meggs Pate, Bureau Chief, Tallahassee, for Respondent.