

Third District Court of Appeal

State of Florida

Opinion filed November 6, 2019.

No. 3D18-2264
Lower Tribunal No. 18-14610

Frank Owens,
Appellant,

vs.

Department of Corrections,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Spencer J. Multack, Judge.

Eugene F. Zenobi, Criminal Conflict and Civil Regional Counsel, Third Region, and Philip L. Reizenstein, Assistant Regional Counsel, for appellant.

Ashley Moody, Attorney General, and Leslie A. Healer (Tallahassee), Assistant Attorney General, for appellee.

Before SCALES, HENDON, and MILLER, JJ.

MILLER, J.

UPON PARTIAL CONFESSION OF ERROR

Appellant, Frank Owens, a prisoner housed in Bradford County, Florida, appeals the summary denial of his petition for habeas corpus. In his petition, Owens challenged his placement and continued “Close Management” residential status assignment, which segregates him from the general prison population. Under well-established jurisprudence, the proper vehicle for raising the claim was filing the petition in the county in which he was incarcerated. See Banks v. Jones, 232 So. 3d 963, 966 (Fla. 2017) (“Because we find that an inmate may have a limited liberty interest in being housed with the general population as compared to [close management] depending on the duration of reassignment, we hold that a petition for a writ of habeas corpus remains the correct mechanism by which to challenge a reassignment.”); Johnson v. State, 947 So. 2d 1192, 1992-93 (Fla. 3d DCA 2007) (“[A] defendant is required to file a petition for writ of habeas corpus in the circuit where the defendant is incarcerated when the petition involves an issue regarding the prisoner’s incarceration.”).

Here, although the petition was properly initially transferred to the assigned judge, as the State properly and commendably concedes, at the time the lower tribunal rendered its ruling, Owens was no longer housed in Miami-Dade County. Hence, the Circuit Court of Miami-Dade County “lacked territorial jurisdiction over” this action. Genovese v. Tucker, 103 So. 3d 255 (Fla. 1st DCA 2012).

Accordingly, we reverse the order below, and remand with instructions to immediately transfer the action to the circuit court that has jurisdiction over the correctional facility in which Owens is currently incarcerated. Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.”).

Reversed and remanded.