

Final Copy

284 Ga. 780

S08A1468. MASSEY v. ST. LAWRENCE.

Benham, Justice.

Appellant is incarcerated in the Chatham County Detention Center awaiting trial on a 2007 indictment for burglary and obstruction. The pending charges are also the basis of a petition to revoke appellant's probation for a 1999 burglary conviction. A hearing was held on the petition to revoke probation, but the trial court did not issue a ruling. More than a month later, appellant, proceeding pro se, filed a pre-trial petition for habeas relief, contending his attorney was ineffective for failing to object to the revocation hearing being held prior to his completion of a forensic evaluation. At the habeas hearing, the court received evidence that appellant refused to undergo the forensic evaluation and determined that appellant's probation revocation proceeding was still pending. Based on this information, the trial court denied habeas relief. Appellant now appeals.

1. As a prisoner awaiting trial and in custody in lieu of bond, appellant is entitled to a direct appeal from the denial of his petition seeking habeas relief. OCGA § 9-14-22; Smith v. Nichols, 270 Ga. 550 (1) (512 SE2d 279) (1999).

2. When the underlying criminal matter is still pending, an allegation of ineffective assistance of counsel cannot form the basis of a pre-trial petition for habeas corpus. Perera v. Miller, 283 Ga. 583 (662 SE2d 544) (2008) (habeas

court did not err in dismissing, without hearing, a pre-trial habeas petition in which petitioner asserted trial counsel was ineffective). “Where the proceedings under which the petitioner is detained are still pending undisposed of, and the ordinary established procedure is still available to him, the orderly procedure by trial and appeal should not be interfered with by a writ of habeas corpus. . . .” Mungin v. St. Lawrence, 281 Ga. 671 (641 SE2d 541) (2007). Because appellant did not show he was unlawfully confined, but instead asserted ineffective assistance of counsel in a matter that was still pending, the trial court did not err in denying him pre-trial habeas relief. *Id.*

Judgment affirmed. All the Justices concur.

Decided January 12, 2009.

Habeas corpus. Chatham Superior Court. Before Judge Karpf.

Dwight D. Massey, pro se.

Spencer Lawton, Jr., District Attorney, Lisa G. Colbert, R. Jonathan Hart, Ann M. Elmore, Assistant District Attorneys, for appellee.