

In the Supreme Court of Georgia

Decided: May 3, 2010

S10A0166. THOMAS v. FREEMAN, SHERIFF.

NAHMIAS, Justice.

Shelton Thomas filed this pre-trial habeas action, raising numerous contentions about his pending prosecution for armed robbery, aggravated assault, and other crimes. The habeas court dismissed the habeas petition, ruling that, because Thomas's conviction was not yet final, his habeas action was premature under the requirements of OCGA § 9-14-41 et seq. These "Article 2" habeas statutes, however, apply only to "persons whose liberty is being restrained by virtue of a sentence imposed against them by a state court of record." OCGA § 9-14-41 (emphasis added). They are therefore inapplicable to Thomas's pre-conviction habeas corpus petition. The statutes that control Thomas's petition are contained in Article 1 of the habeas statutes. See OCGA § 9-14-1 to § 9-14-23.

Although the trial court incorrectly relied on the Article 2 habeas statutes

in ruling on Thomas's petition, the court nevertheless correctly dismissed the petition. Because the claims that Thomas raises in this habeas action may be asserted in his pending prosecution, they may not serve as the basis for pre-trial habeas corpus relief. See Smith v. Brown, 286 Ga. 137, 137 (686 SE2d 760) (2009); Perera v. Miller, 283 Ga. 583, 583 (662 SE2d 544) (2008); Mungin v. St. Lawrence, 281 Ga. 671, 671-672 (641 SE2d 541) (2007).

Judgment affirmed. All the Justices concur.