

[Cite as *Klann v. Sargent*, 2009-Ohio-3062.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93233

IN RE: JEREMIAH KLANN

RELATOR

vs.

JOHN SARGENT, JAIL ADMIN., N. ROYALTON

RESPONDENT

**JUDGMENT:
PETITION DISMISSED**

WRIT OF HABEAS CORPUS
MOTION NO. 422374
ORDER NO. 422898

RELEASE DATE: June 24, 2009

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James J. Sweeney, J.:

{¶ 1} Petitioner, Jeremiah Klann, is the defendant in *N.Royalton v. Klann*, Parma Mun. Court Case No. 08 TRC 04412. Klann pled no contest to operating a vehicle under the influence and failure to maintain an assured clear distance under North Royalton Codified Ordinances 434.01(A)(1)(a) and 434.03(A)(2), respectively.

On October 21, 2008, the municipal court imposed Klann's sentence which included: 180 days jail time, with 30 days suspended; community control sanctions for 24 months, of which 18 months required reporting; and other conditions.

{¶ 2} In his petition, Klann avers that the court of common pleas remanded him to jail after a hearing on August 5, 2008 in *State v. Klann*, Cuyahoga County Court of Common Pleas Case No. CR-443208, pending the outcome of the

municipal court case. By entry dated October 30, 2008, the court of common pleas determined that Klann had violated community control sanctions and sentenced him to two years in prison with credit for time served, which Klann avers required him to serve an additional 135 days. He also avers that he served his sentence in Case No. 08 TRC 04412 concurrently with that in Case No. CR-443208 because the sentencing entry in the municipal court case did not require him to serve it consecutively. See R.C. 2929.41(B)(1).

{¶ 3} On April 2, 2009, the Parma Municipal Court issued a “jail order” requiring Klann to report to the North Royalton Jail to serve the 150 days imposed in Case No. 08 TRC 04412. By entry received for filing on May 4, 2009, the Parma Municipal Court acknowledged that Klann had been incarcerated since April 2 and ordered him released. Klann was released on May 4. He filed this action on April 30, 2009.

{¶ 4} Respondent, John Sargent, Jail Administrator of the City of North Royalton, has filed a motion to dismiss. Sargent argues that, because Klann has been released from physical custody, Klann is not entitled to relief in habeas corpus. Klann opposes the motion to dismiss, however, and argues that his remaining under community control sanctions is an unlawful restraint on his liberty.

{¶ 5} In *Ross v. Kinkela*, Cuyahoga App. No. 79411, 2001-Ohio-4256, appeal not accepted for review, 94 Ohio St.3d 1507, 2002-Ohio-5738, 764 N.E.2d 1037, appellant Ross filed a petition for writ of habeas corpus with the court of common

pleas and “argued that being subjected to post-release control unlawfully restrained his freedom because the trial court had not sentenced him to post-release control.” *Id.* at 2. The court of common pleas dismissed the habeas action.

{¶ 6} On appeal, this court affirmed the trial court’s judgment and held that “post-release control does not sufficiently restrain liberty to give rise to habeas relief. A writ of habeas corpus is an extraordinary remedy which is appropriate only if the petitioner is entitled to immediate release from prison or some other type of physical confinement.¹ Ross is not physically confined and is not under anyone’s present custody. While we do not deny that post-release control necessarily carries some restraints, these circumstantial and non-custodial restraints do not give rise to habeas relief. To argue that the effects of post-release control equates to confinement applicable to habeas corpus evidences a severe misinterpretation of precedential authority and the historical reasons for habeas relief.” *Ross*, *supra* at 3-4.

{¶ 7} In light of our holding in *Ross* regarding post-release control, we must hold that community control does not sufficiently restrain liberty to require relief in habeas corpus. Cf. R.C. 2967.01(N), (O) and (P) as well as R.C. 2929.01(E). Rather, as a result of Klann’s release from physical confinement, this action is moot.

¹ *State ex rel. Smirnoff v. Greene*, (1998), 84 Ohio St.3d 165, 167, 702 N.E.2d 423, 425.” *Id.* at 3-4.

{¶ 8} Additionally, if Klann wishes to challenge the propriety of the imposition of community control, he had an adequate remedy by way of appeal. See, e.g., *Jimison v. Wilson*, 106 Ohio St.3d 342, 2005-Ohio-5143, 835 N.E.2d 34. Indeed, Klann filed an appeal. See *State v. Klann*, Cuyahoga App. No. 93165, Entry Nos. 422158 and 422505 dated May 18 and 27, 2009, respectively (appeal dismissed as untimely).

{¶ 9} Accordingly, respondent's motion to dismiss is granted. Petitioner to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Petition dismissed.

JAMES J. SWEENEY, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
ANN DYKE, J., CONCUR