

[Cite as *In re Writ of Habeas Corpus of Harris*, 2022-Ohio-3718.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE WRIT OF HABEAS CORPUS :  
(KERMIT HARRIS, PETITIONER) :  
: No. 111727

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** PETITION DISMISSED

**DATED:** September 30, 2022

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Writ of Habeas Corpus  
Motion Nos. 557259 and 557940  
Order No. 558270

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***Appearances:***

Kermit Harris, *pro se*.

David Yost, Ohio Attorney General, and Stephanie L. Watson, Principal Assistant Attorney General, *for respondent*.

SEAN C. GALLAGHER, A.J.:

{¶ 1} On July 12, 2022, the petitioner, Kermit Harris, commenced this habeas corpus action to compel his immediate release.<sup>1</sup> He alleges that he has

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<sup>1</sup> Harris did not identify a respondent in the case caption. However, in the body of his petition he identified Jennifer Gillece-Black as the warden of the Lorain Correctional

served his entire sentence, that he is now being held pursuant to a void postrelease control sanction, and that he is entitled to release. On August 11, 2022, the respondent moved to dismiss for lack of territorial jurisdiction. Harris filed a brief in opposition on August 31, 2022, and moved to file an amended petition on September 6, 2022. For the following reasons, this court grants the motion to dismiss, denies the motion to amend, and dismisses the petition for a writ of habeas corpus.

{¶ 2} In May 1997, a jury found Harris guilty of aggravated robbery, receiving stolen property, attempted murder with firearm and peace officer specification, and felonious assault with firearm and peace officer specification. The trial judge sentenced him to an aggregate sentence of 24 years. However, the sentencing entry said nothing about postrelease control. Harris appealed arguing improper admission of other acts evidence and ineffective assistance of trial counsel. This court affirmed in *State v. Harris*, 8th Dist. Cuyahoga No. 72687, 1998 Ohio App. LEXIS 2788 (June 18, 1998) (“*Harris I*”).

{¶ 3} In February 2009, the trial court resentenced Harris to correct the omission of postrelease control. The journal entry in accordance with R.C. 2929.191 advised Harris of his responsibilities under R.C. 2967.28, postrelease control. Thus, the court nunc pro tunc added, “Defendant subject to five years

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Institution in which he was being held. In a subsequent filing, he identified David Bobby as the warden of the Northeast Ohio Correctional Center in which he is being held.

mandatory post release control.” This February 2009 entry did not reiterate the original convictions and sentences.

{¶ 4} Harris appealed. In a February 4, 2010 opinion, this court noted that in *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, the Supreme Court of Ohio concluded that while R.C. 2929.191 allows a trial court to hold a hearing only to advise the defendant of postrelease control, the statute applies only to cases in which the defendant was sentenced after the statute’s July 11, 2006 enactment. Because Harris was originally sentenced in 1997, the current version of R.C. 2929.191 did not apply. Therefore, the whole sentence was void, and a de novo hearing was required to impose a proper sentence. This court reversed and remanded to the trial court for a de novo sentencing hearing. *State v. Harris*, 8th Dist. Cuyahoga No. 92892, 2010-Ohio-362 (“*Harris II*”).<sup>2</sup>

{¶ 5} On December 23, 2010, the Supreme Court of Ohio decided *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, which held that if a trial court improperly imposed postrelease control, only that part of the sentence is void. The new sentencing hearing is limited to the proper imposition of postrelease control. The entire sentence is not void, and a de novo sentencing hearing is not required.

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<sup>2</sup> Harris appealed this decision to the Supreme Court of Ohio, which dismissed the appeal as not involving any substantial constitutional question on July 23, 2010.

{¶ 6} On May 12, 2011, the trial court held Harris’s resentencing. In its journal entry, it noted that although this court had ordered a de novo sentencing, the *Fischer* decision eliminated the need for such a hearing. Accordingly, the trial court did not conduct a de novo sentencing but confirmed its prior imposition of postrelease control.

{¶ 7} Harris appealed again. In affirming the trial court, this court held that under *Nolan v. Nolan*, 11 Ohio St.3d 1, 462 N.E.2d 410 (1984), *Fischer* was an intervening decision of the Supreme Court of Ohio that took this case out of the “law of the case” principles. Thus, it was unnecessary for the trial court to conduct a de novo resentencing, and it properly limited the resentencing to the imposition of postrelease control. *State v Harris*, 8th Dist. Cuyahoga No. 96887, 2011-Ohio-6762 (“*Harris III*”).

{¶ 8} Harris was released in November 2020, after serving his sentence. However, he was on five years of postrelease control. In May 2022, he was arrested during a traffic stop because a firearm was found in the car. The Adult Parole Authority found that he had violated postrelease control and returned him to prison until February 2023.

{¶ 9} Harris now brings this habeas corpus action arguing that because the trial court did not follow this court’s mandate in *Harris II* for a de novo resentencing, the imposition of postrelease control is void. Thus, he is being illegally held and entitled to immediate release.

{¶ 10} However, as this court explained in *Harris III*, the intervening decision of *Fischer* eliminated the need for a de novo hearing. The trial court’s reimposition of postrelease control in May 2011 was proper, and Harris’s argument is ill-founded.

{¶ 11} Moreover, Harris’s petition is fatally defective. R.C. 2725.04(D) requires attaching copies of the commitment or cause of detention orders. The Supreme Court of Ohio in *State ex rel. Davis v. Sheldon*, Slip Opinion No. 2022-Ohio-2789, held that all commitment papers are necessary for a complete understanding of the petition and that sentencing entries and parole-revocation decisions are commitment papers. Harris has attached papers, including a copy of his initial sentencing and parole regulations and disclosures, but has not included the parole revocation or the reimpositions of postrelease control.

{¶ 12} R.C. 2725.04 further requires the petition to be verified. In *Chari v. Vore*, 91 Ohio St.3d 323, 744 N.E.2d 763 (2001), the Supreme Court of Ohio ruled: “‘Verification’ means a ‘formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statement in the document.’ Garner, Black’s Law Dictionary (7 Ed.1999) 1556 \* \* \*.” *Id.* at 327. The Supreme Court of Ohio then reversed the decision of the court of appeals granting the writ and awarding relief and held that the cause should have been summarily dismissed because the petition was procedurally defective. Harris’s original petition is not verified.

{¶ 13} Finally, Harris filed his petition in a county in which he was not incarcerated. “If a person restrained of his liberty is an inmate of a state benevolent or correctional institution, the location of which is fixed by statute and at the time is in custody of the officers of the institution, no court or judge other than the courts or judges of the county in which the institution is located has jurisdiction to issue or determine a writ of habeas corpus for his production or discharge.” R.C. 2725.03. When Harris commenced this habeas action, he was in the Lorain Correctional Institution. Subsequent filings indicate that he is now in the Northeast Ohio Correctional Center, neither of which are in Cuyahoga County. Thus, this court lacks territorial jurisdiction to consider this matter.

{¶ 14} In his motion to amend the petition, Harris reiterated his claim that the postrelease-control sentence was void for failure to follow the mandate of *Harris II*. He also added claims that the improper transfer to the Northeast Ohio Correctional Center defrauded the United States for financial gain, that the trial court violated separation of powers by designating that he be sentenced to the Lorain Correctional Institution in 1997, and that the clerk altered journal entries. These are not authentic habeas corpus claims. The court denies the motion to amend.

{¶ 15} Accordingly, this court grants the respondent’s motion to dismiss and dismisses the petition for habeas corpus. Petitioner to pay costs. This court

directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

**{¶ 16}** Petition dismissed.

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SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

FRANK DANIEL CELEBREZZE, III, J., and  
MARY EILEEN KILBANE, J., CONCUR