

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

MARCUS A. BRANCH, :
 :
 Petitioner, :
 : No. 111911
 v. :
 :
 CHARMANE BRACY, :
 :
 Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: PETITION DISMISSED
DATED: September 12, 2022

Writ of Habeas Corpus
Order No. 557873

Appearances:

Marcus A. Branch, *pro se*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Petitioner, Marcus A. Branch, seeks a writ of habeas corpus directing respondent, Warden Charmane Bracy of the Trumbull Correctional Institution, to remove a certain period of incarceration from his prison sentences he is currently serving. Branch claims that his double-jeopardy rights are being violated by

sentences that were imposed across two criminal cases. Because Branch’s petition is fatally defective, it is sua sponte dismissed.

I. Background

{¶ 2} Branch filed a petition for writ of habeas corpus on September 6, 2022. The petition indicates that in *State v. Branch*, Cuyahoga C.P. No. CR-18-632204 (the “2018 case”), Branch was released after a period of incarceration and was on postrelease control for a period of five years commencing on July 29, 2019. In early 2020, he was indicted on new charges in *State v. Branch*, Cuyahoga C.P. No. CR-20-647543-A (the “2020 case”). Branch claims that in the 2018 case, the “Parole Board” found Branch violated his postrelease control and administratively imposed a prison term of five-and-one-half months, which he served from October 2, 2019, to February 17, 2020.¹ Branch was subsequently convicted of charges in the 2020 case. At sentencing in the 2020 case, the trial court imposed a three-year prison term for the underlying offenses. The court also found that branch violated the terms of his postrelease control and, pursuant to R.C. 2929.141,² imposed a consecutive prison sentence consisting of the time Branch had

¹ This amounts to 138 days or four-and-one-half months.

² R.C. 2929.141(A)(1) allows a court to impose “[i]n addition to any prison term for the new felony, * * * a prison term for the post-release control violation. The maximum prison term for the violation shall be the greater of twelve months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. In all cases, any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the parole board as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. The imposition of a prison term for the post-

remaining on his period of postrelease control in the 2019 case. Branch claims that the sentence imposed by the parole board and the trial court constitute repeated punishment for the same crime. This, he argues, violates his Fifth Amendment rights.

II. Law and Analysis

A. Standards Applicable to the Action

¶ 3 R.C. 2725.01 provides that “[w]hoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” Therefore, to be entitled to a writ of habeas corpus, a petitioner must show “that he is being unlawfully restrained of his liberty and that he is entitled to immediate release from prison or confinement.” *McIntyre v. Hooks*, 162 Ohio St.3d 213, 2020-Ohio-3529, 165 N.E.3d 229, ¶ 9, citing R.C. 2725.01. R.C. 2725.04 governs the method that one may use to petition the court for a writ of habeas corpus. This statute provides that an application for writ of habeas corpus shall be by petition and include all of a petitioner’s commitment papers. Further, an inmate housed in a state correctional institution that seeks a writ of habeas corpus must file the petition in the jurisdiction in which the inmate is housed. R.C. 2725.03 states,

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

release control violation shall terminate the period of post-release control for the earlier felony.”

the time is in the 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. Any writ issued by a court or judge of another county to an officer or person in charge at the state institution to compel the production or discharge of an inmate thereof is void.

{¶ 4} Finally, a complaint or petition in an original action before a court of appeals is subject to sua sponte dismissal without notice where, after presuming the truth of facts in the complaint and making all reasonable inferences in favor of the claimant, a court finds that the complaint or petition “is frivolous or the claimant obviously cannot prevail on the facts alleged” therein. *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14, citing *State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, 831 N.E.2d 430, ¶ 7.

B. Fatal Procedural Defects

{¶ 5} Branch obviously cannot prevail based on the allegations in his petition for writ of habeas corpus.

{¶ 6} First, Branch has filed the petition in the wrong jurisdiction. R.C. 2725.03 indicates that any relief this court attempted to afford him would be void. Branch’s petition indicates that he is incarcerated in a state correctional institution in Trumbull County, Ohio. Branch must file his petition in the jurisdiction where he is housed, and the failure to do so is fatal. *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787, 894 N.E.2d 692, ¶ 17; *Orr v. Harris*, 8th Dist. Cuyahoga No. 107658, 2018-Ohio-4798, ¶ 8. This alone precludes relief in

habeas corpus. This court is without jurisdiction to order respondent warden to release Branch or afford Branch any other meaningful remedy in this action.

{¶ 7} Branch’s petition also does not seek immediate release from prison. He asks this court to order the removal of a four-year prison sentence. However, this would leave in place the three-year prison term imposed in 2020, which Branch does not allege that he has fully served. If the allegations in Branch’s complaint were entirely correct and it was not procedurally deficient, relief in habeas would still be unavailable because “in general, ‘habeas corpus is proper in the criminal context only if the petitioner is entitled to immediate release from prison or some other physical confinement.’” *Perotti v. Stine*, 113 Ohio St.3d 312, 2007-Ohio-1957, 865 N.E.2d 50, ¶ 6, quoting *Scanlon v. Brunzman*, 112 Ohio St.3d 151, 2006-Ohio-6522, 858 N.E.2d 411, ¶ 4.

{¶ 8} Branch obviously cannot prevail given the facts and claims advanced in his petition for habeas corpus. Therefore, the petition is sua sponte dismissed. Costs assessed against relator.³ The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

³ Branch has also not included a statement of his inmate account from the institutional cashier as required by R.C. 2969.25(C) to waive the filing fee. This is sufficient grounds to dismiss the complaint and impose costs. *State ex rel. Anthony Ford v. State*, 8th Dist. Cuyahoga No. 108692, 2019-Ohio-3385, ¶ 6, citing *State ex rel. Powe v. Lanzinger*, 156 Ohio St.3d 358, 2019-Ohio-954, 126 N.E.3d 1127, ¶ 5.

{¶ 9} Petition dismissed.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
EILEEN T. GALLAGHER, J., CONCUR