

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

RAYMOND CRITES,	:	OPINION
Petitioner,	:	CASE NO. 2009-T-0100
- vs -	:	
BENNIE KELLEY, WARDEN, TRUMBULL CORRECTIONAL INSTITUTION,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Raymond Crites, pro se, PID: 471-914, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Petitioner).

Richard Cordray, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Hilda Rosenberg*, Assistant Attorney General, 1600 Carew Tower, 441 Vine Street, Cincinnati, OH 45202 (For Respondent).

COLLEEN MARY O'TOOLE, J.

{¶1} This original action in habeas corpus is presently before this court for final disposition of the motion to dismiss of respondent, Warden Bennie Kelly of the Trumbull Correctional Institution. As the primary basis for his motion, respondent contends that the sole claim of petitioner, Raymond Crites, does not set forth a viable cause of action because his own allegations show that there is an alternative remedy he could pursue

to obtain the identical relief. For the following reasons, this court holds that the motion to dismiss is well taken.

{¶2} Petitioner's present incarceration is based upon his criminal conviction in the Mahoning County Court of Common Pleas in August 2004. At the beginning of that proceeding, petitioner was indicted on a single count of murder, with an accompanying firearm specification. Before the case could come to trial, petitioner entered into a plea agreement with the State of Ohio, under which he agreed to enter a plea of guilty to the amended charge of voluntary manslaughter.

{¶3} As part of the plea agreement, the state and the defense submitted a joint recommendation to the trial court that petitioner be sentenced to an aggregate term of twelve years for both the main offense, voluntary manslaughter, and the accompanying firearm specification. However, when the trial court issued its final judgment, it ordered petitioner to serve an aggregate term of thirteen years, consisting of ten years on the main offense and three years on the specification. As the reason for the additional year, the trial court found that the maximum sentence for voluntary manslaughter was justified because petitioner had committed the worst form of the offense.

{¶4} After serving approximately five years of the imposed sentence, petitioner brought the instant action for a writ of habeas corpus. In asserting that he was entitled to be released immediately, petitioner alleged that his conviction should be declared a nullity because the provisions of the plea agreement had been violated. Specifically, he maintained in his petition that the trial court had breached the plea agreement by failing to sentence him in accordance with the joint recommendation.

{¶5} In now moving to dismiss the habeas corpus petition, respondent submits

that petitioner will never be able to satisfy the elements for the writ because his factual allegations can only be construed to indicate that he had an adequate remedy at law. In support of his argument, respondent states that, even if a breach of the plea agreement did occur when the thirteen-year sentence was imposed, petitioner could have raised the issue in a motion to withdraw the guilty plea under Crim.R. 32.1. Respondent further argues that a writ will never lie under petitioner's allegations because he has not challenged the jurisdiction of the trial court to impose the thirteen-year sentence.

{¶6} In prior habeas corpus actions in which the claim for relief has been based upon an alleged breach of a plea agreement, this court has always begun our analysis by discussing the basic requirements for the writ:

{¶7} “In regard to the elements of a proper habeas corpus claim, this court has previously recognized that, unless a prison inmate has served his maximum sentence, the writ can be granted only when the inmate can establish that the sentencing court in his underlying criminal procedure lacked the requisite jurisdiction to proceed. *State ex rel. Vinson v. Gansheimer*, 11th Dist. No. 2007-A-0042, 2007-Ohio-5205, at ¶6. Given the foregoing requirement, we have further recognized that a viable claim for this type of writ cannot be predicated upon an allegation of the trial court's commission of a non-jurisdictional error. *Tillis v. Gansheimer*, 11th Dist. No. 2002-A-0099, 2003-Ohio-1097, at ¶10.

{¶8} “Only one exception to this basic rule exists: a non-jurisdictional error can form the basis of a proper habeas corpus claim when there is no other adequate legal remedy the prison inmate could pursue to obtain his immediate release. *Id.* However, it is also well established under Ohio law that the writ should not be issued if the inmate

can achieve the identical outcome through an alternative legal remedy. *Vinson*, 2007-Ohio-5205, at ¶6. Hence, a viable claim in habeas corpus has two essential elements: the existence of a jurisdictional error in the underlying proceedings; and the lack of an adequate remedy in the normal course of the law.” *Roby v. Kelley*, 11th Dist. No. 2009-T-0062, 2009-Ohio-5896, at ¶6-7.

{¶9} In *Roby*, the prison inmate’s sexual predator classification was altered as a result of the passage of the Adam Walsh Child Protection and Safety Act of 2006. In his separate habeas corpus action before this court, the prison inmate asserted that he was entitled to have his incarceration terminated because his reclassification under the new statute had caused a breach of the plea agreement upon which his conviction had been based. In holding that the inmate’s “breach” allegation was not sufficient to state a viable claim for the writ, this court concluded that he would never be able to establish a set of facts under which he could satisfy either element. First, we stated that the inmate had only asserted a possible non-jurisdictional issue because “any alleged problem with the [plea] agreement would have no effect upon [the] trial court’s subject matter jurisdiction over the criminal proceeding ***.” *Id.* at ¶12. Second, we indicated that the inmate had an adequate legal remedy because, even if the plea agreement had been violated, he could still have protected his rights through the filing of a motion to enforce the plea agreement before the trial court. *Id.* at ¶10-11.

{¶10} Other courts of this state have also concluded that a habeas corpus action cannot be employed as a means of requiring compliance with a plea agreement. For example, in *Alexander v. Eberlin*, 7th Dist. No. 06 BE 38, 2007-Ohio-5000, the prisoner brought the action before the common pleas court of the county in which he was being

held. In his habeas corpus claim, the prisoner contended that, in calculating the amount of his jail-time credit, the trial court in the separate criminal proceeding had not complied with the terms of an alleged plea agreement. In holding that the dismissal of the habeas corpus action had been warranted, the appellate court emphasized that a writ would not lie under the circumstances because the prisoner could fully litigate the “breach” issue before the original trial court through either a motion to withdraw the prior guilty plea or a motion to enforce the agreement. *Id.* at ¶12. The *Alexander* court also indicated that the prisoner had a separate adequate remedy through a direct appeal of the judgment in which the credit calculation had been made. *Id.*

{¶11} See, also, *Ridenour v. Randle*, 96 Ohio St.3d 90, 2002-Ohio-3606, where the Supreme Court of Ohio held that the alleged breach of a plea bargain by the parole board could not be challenged in a habeas corpus proceeding because there were other legal remedies the inmate could pursue to obtain requested relief.

{¶12} The foregoing precedent is clearly controlling in the instant case. As was noted above, petitioner’s entire habeas corpus claim was predicated upon the assertion that the trial court in his criminal proceeding had breached his plea agreement by failing to sentence him in accordance with the joint recommendation. Pursuant to *Roby*, such an assertion cannot form the grounds of a viable claim for the writ because it is not the type of alleged error which would deprive the trial court of jurisdiction over the subject matter of the underlying action. Furthermore, pursuant to both *Alexander* and *Roby*, a habeas corpus proceeding cannot be used to challenge the propriety of the trial court’s sentencing order because there are other remedies petitioner could have pursued to obtain the same relief; i.e., if a breach of the plea agreement truly did occur, the

question could have been properly litigated before the trial court through a motion to enforce the plea agreement or a motion to withdraw the prior guilty plea. As to the latter point, it must be noted that if petitioner is dissatisfied with the trial court's disposition of either motion, he would then have an additional remedy through the filing of a direct appeal.

{¶13} As an aside, this court would indicate that petitioner further asserted that the trial court had breached the plea agreement by ordering that he would be subject to "community control." In reviewing the copy of the sentencing judgment attached to the instant petition, we have found that the trial court never made such an order. Yet, even if the sentencing judgment had contained that order, the outcome of this action would not have been affected because the foregoing analysis would have been dispositive of that aspect of the petition, too.

{¶14} In applying Civ.R. 12(B)(6) in the context of a habeas corpus action, this court has held that a petition for a writ can be dismissed for failing to state a viable claim when the nature of the petition's allegations are such that it is beyond reasonable doubt that the petitioner will never be able to demonstrate a set of fact under which he would be entitled to the requested relief. *Roby*, 2009-Ohio-5896, at ¶13. Consistent with the foregoing legal discussion, we conclude that, even when the allegations before us are construed in a manner most favorable to petitioner, they are not sufficient to satisfy the applicable standard. That is, petitioner's own factual allegations show that he will never

be able to satisfy the two elements for the writ.

{¶15} Respondent's motion to dismiss the instant case is granted. It is the order of this court that petitioner's entire habeas corpus petition is hereby dismissed.

TIMOTHY P. CANNON, J., concurs,

DIANE V. GRENDALL, J., concurs in judgment only.