

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FELIKS GOLDSHTEIN	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Petitioner	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	CASE NO. 12CA32
MARGARET BRADSHAW, WARDEN	:	
	:	<u>OPINION</u>
Respondent	:	

CHARACTER OF PROCEEDING: Writ of Habeas Corpus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: July 27, 2012

APPEARANCES:

For Petitioner:

Feliks Goldshtein #570541
RICI
P.O. Box 8107
Mansfield, Ohio 44901

For Respondent:

Thelma Thomas Price
Associate Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Delaney, P.J.

{¶1} Petitioner, Feliks Goldshtein, has filed a Petition for Habeas Corpus alleging he is entitled to immediate release from incarceration because the trial court denied his right to a “special bond.” Respondent has filed a motion to dismiss arguing Petitioner has failed to comply with the procedural requirements for filing a petition for writ of habeas corpus, the petition should be dismissed as successive, and the petition fails to state a claim upon which relief may be granted. We agree with Respondent for the following reasons.

{¶2} A writ of habeas corpus will lie in certain extraordinary circumstances where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law. *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 144, 637 N.E.2d 890, 893.

Petitioner has filed at least eight petitions requesting the issuance of a writ of habeas corpus. The Supreme Court has held that a petition should be dismissed as successive where a claim has been or could have been raised in a prior petition. *State ex rel. Harsh v. Sheets*, 2012 WL 1957882, 1 (Ohio, 2012). According to the instant petition, Petitioner made his initial request for a “special bond” at the time of sentencing, which was on October 27, 2010. Subsequent to October 27, 2010, Petitioner admits he filed six of his eight petitions for habeas corpus. We find the claim made in the current petition could have been raised in a prior petition. For this reason, we find the current petition is barred as a successive petition.

{¶3} Further, the Supreme Court has held that dismissal for failure to state a claim upon which relief may be granted is permitted if, after all factual allegations are presumed true and all reasonable inferences are made in petitioner's favor, it appears beyond doubt that he could prove no set of facts entitling him to the requested extraordinary relief in habeas corpus. *Keith v. Bobby*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 10.

{¶4} In his complaint, Petitioner solely relies on a Federal Rule of Civil Procedure as the basis for his entitlement to a "special bond." The Federal Rules of Civil Procedure are inapplicable to a state criminal case. For this reason, Petitioner has failed to state a claim upon which relief may be granted.

{¶5} For these reasons, the Petition is dismissed.

By: Delaney, P.J.
Farmer, J. and
Wise, J. concur

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

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Petitioner	:	
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	:	
MARGARET BRADSHAW, WARDEN	:	
	:	
	:	
Respondent	:	

For the reasons stated in our accompanying Memorandum-Opinion, this cause is dismissed.

Costs taxed to Petitioner.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE