

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL OWENS	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Petitioner	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
KEITH SMITH, WARDEN,	:	Case No. 09CA135
Mansfield Correctional Institution	:	
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: On Appeal from Richland County Court of
Common Pleas, Case Nos. 2002CR0090
and 2002CR0212,

JUDGMENT: Petition for Writ of Habeas Corpus Denied

DATE OF JUDGMENT ENTRY: March 1, 2010

APPEARANCES:

For Petitioner

MICHAEL OWENS #424-016
Mansfield Correctional Facility
P. O. Box 788
Mansfield, OH 44901

For Respondent

RICHARD CORDRAY
Ohio Attorney General
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Delaney, J.

{¶1} Petitioner, Michael Owens, has filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon the allegation he is being held beyond the sentence imposed by the trial court.

{¶2} Respondent has filed a Motion to Dismiss to which Petitioner has not responded.

{¶3} Petitioner suggests in his complaint he was sentenced to a total term of seven years. According to Petitioner, the Ohio Department of Corrections, without reason, recalculated his sentence as nine years. Respondent argues Petitioner's sentence has never changed and was always a total term of nine years.

{¶4} Petitioner is currently incarcerated pursuant to sentences imposed in two cases.¹ Petitioner received a sentence in Case Number 2002CR0090 for aggravated robbery of four years plus three years consecutive for a gun specification. Petitioner argues his sentence was a total of seven years; however, the trial court also issued a six-year sentence in Case Number 2002CR0212 for aiding and abetting an aggravated robbery. This sentence was ordered served concurrent to the four-year portion of Case Number 2002CR0090. The trial court issued a Judgment Entry on August 7, 2007 explaining the trial court's intention in sentencing Petitioner. This entry states in part, "Six years [from Case Number 2002CR0212] plus a consecutive three years [imposed in Case Number 2002CR0090] for the gun specification gives a total sentence of nine years."

¹ Petitioner also received sentences in two other cases which have expired and are not relevant to our analysis.

{¶5} The trial court indicated Petitioner was sentenced to a three year firearm specification sentence pursuant to R.C. 2929.14(D)(1). R.C. 2929.14(E) provides in relevant part, “[I]f a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (D)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (D)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (D)(2), or (D)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.”

{¶6} This section requires any firearm specification to be served consecutive to all other terms of imprisonment either previously or subsequently imposed. For Petitioner's argument to prevail, a portion of his six year sentence would have to be served concurrently with a firearm specification which is prohibited by R.C. 2929.14.

{¶7} With the understanding that no sentence may be served concurrently with a firearm specification, we examine the sentences imposed by the trial court. The longest non-mandatory term imposed upon Petitioner is six years. When added to the three year firearm specification, Petitioner was sentenced to a total prison sentence of nine years which has not yet expired. Petitioner remains incarcerated pursuant to a

valid sentence which has not yet expired. As the Supreme Court has held, “[H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully. *Morgan v. Ohio Adult Parole Auth.* (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941.” *Heddleston v. Mack* 84 Ohio St.3d 213, 213-214, 702 N.E.2d 1198, 1198 (Ohio,1998); *Hughley v. Duffey*, 2009 WL 3790667, 1 (Ohio App. 5 Dist.).

{¶8} Because Petitioner remains incarcerated pursuant to a valid, unexpired sentence, habeas corpus does not lie.

{¶9} PETITION DENIED.

{¶10} COSTS TO PETITIONER.

{¶11} IT IS SO ORDERED.

By Delaney, J.

Farmer, P.J. and

Wise, J. concur

JUDGES

