[Cite as *Arnett v. Sheets*, 2010-Ohio-3985.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

DEAN A. ARNETT,		
Petitioner-Appellant,	:	Case No. 10CA3156
vs.	:	
MICHAEL SHEETS, WARDEN, ROSS CORRECTIONAL INSTITUTION,	:	DECISION AND JUDGMENT ENTRY
Respondent-Appellee.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Dean M. Arnett, No. 156-045, Ross Correctional Institution, P.O. Box 7010, Chillicothe, Ohio 45601, Pro Se

COUNSEL FOR APPELLEE: Richard Cordray, Ohio Attorney General, and M. Scott Criss, Ohio Assistant Attorney General, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-20-10

ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment that dismissed a petition for habeas corpus filed by Dean A. Arnett, petitioner below and appellant herein. Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED AND DEPRIVED PETITIONER-APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE FIFTH OHIO CONSTITUTION,

ARTICLE ONE BILL OF RIGHTS BY RULING AGAINST HIS PETITION FOR HABEAS CORPUS BECAUSE APPELLANT SOUGHT ENFORCEMENT OF PLEA-AGREEMENT AND NO OTHER REMEDY AVAILABLE."

SECOND ASSIGNMENT OF ERROR:

"THE COMMON PLEAS COURT ERRED IN DISMISSING PETITIONER-APPELLANT'S PETITION FOR HABEAS CORPUS BASED ON THE EXPIRATION OF SENTENCE ARGUMENT BY APPELLEE WHEN THE ISSUE WAS 'ENFORCEMENT' OF THE PLEA-AGREEMENT."

THIRD ASSIGNMENT OF ERROR:

"THE COMMON PLEAS COURT ERRED BY DISMISSING PETITION FOR HABEAS CORPUS BECAUSE OF ASSERTIONS BY APPELLEE CONCERNING PAROLE AUTHORITIES, PAROLE AND EXPIRATION OF MAXIMUM SENTENCE BASED ON A PAROLE AUTHORITY OR PAROLE."

FOURTH ASSIGNMENT OF ERROR:

"THE COMMON PLEAS COURT ERRED BY NOT APPOINTING COUNSEL BASED UPON REASONS STATED BY APPELLANT FOR REQUEST BECAUSE HE IS ENTITLED TO EQUAL PROTECTION OF LAW AND FOR SUCH TO OCCUR, HE SHOULD HAVE BEEN ABLE TO HAVE EVIDENCE GATHERED AND PRESENTED TO THE COURT TO SHOW CONSTITUTIONAL VIOLATIONS, TRUE INTENT OF PLEAS-AGREEMENT AND ANY OTHER RELEVANT MATTERS."

{¶ 2} In 1979, appellant pled no contest to two amended counts of murder in violation of R.C. 2903.01(A). The Miami County Common Pleas Court accepted those pleas, found him guilty and sentenced him to serve consecutive sentences of fifteen years to life.

{¶ 3} Appellant is currently incarcerated at the Ross Correctional Institute (RCI).

He commenced the instant action on November 24, 2009, and asked for a writ of habeas corpus to issue against Michael Sheets, the RCI Warden, respondent below and appellee herein, to order him to explain why appellant is still being held at the prison. The gist of appellant's argument is that he entered into a plea agreement with the State in 1979 to the effect that if he pled no contest, he would receive the consecutive fifteen year to life sentences. However, after serving thirty years he would be released and not serve any additional prison time. The thirty years has now run, appellant states, and he is being held unlawfully.

{¶ 4} Appellee responded with what amounted to a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim. In a nutshell, appellee argued that habeas corpus is not the proper mechanism by which to seek relief under these circumstances and can only be used once appellant serves the maximum sentence (life) imposed. The trial court agreed and, on March 9, 2009, issued a judgment that granted appellee's motion and dismissed the petition. This appeal follows.

I

{¶ 5} We jointly consider appellant's first, second and third assignments of error because they all address the same issue - whether the trial court erred by dismissing the petition. For the following reasons, we find dismissal to be appropriate.

{¶ 6} As a general proposition of law, the extraordinary writ of habeas corpus is the proper vehicle by which to seek release from prison. See State ex rel. Nelson v. Griffin, 103 Ohio St.3d 167, 814 N.E.2d 866, 2004-Ohio-4754, at ¶5; State ex rel. Akbar-El v. Cuyahoga Cty. Court of Common Pleas (2002), 94 Ohio St.3d 210, 210-211, 761 N.E.2d 624; State ex rel. Key v. Spicer (2001), 91 Ohio St.3d 469, 470,

746 N.E.2d 1119. However, as with any other extraordinary writ, appellant is only entitled to habeas corpus if he can show, inter alia, he has no "adequate remedy at law." Agee v. Russell (2001), 92 Ohio St.3d 540, 544, 751 N.E.2d 1043; Gaskins v. Shiplevy (1996), 76 Ohio St.3d 380, 383, 667 N.E.2d 1194.

{¶ 7} The Ohio Supreme Court held that prisoners who believe that their prior plea agreements have been breached have "an adequate legal remedy" to rectify the matter "by filing a motion with the sentencing court to either withdraw the previous guilty plea pursuant to Crim.R. 32.1 or [to] specifically enforce the agreement." State ex rel. Rowe v. McCown, 108 Ohio St.3d 183, 842 N.E.2d 51, 2006-Ohio-548, at ¶5.[1] Because such remedies are available at law, a petition for habeas corpus based on the alleged breach of a plea agreement fails to state a claim upon which relief can be granted and dismissal is appropriate. See Roby v. Kelley, Trumbull App. No. 2009-T-0062, 2009-Ohio-5896; Rowe v. Brunsman, Ross App. No. 06CA2891, 2006-Ohio-1964. Thus, in the case sub judice, appellant has an adequate remedy at law to pursue the alleged breach of plea agreement and, therefore, is not entitled to habeas corpus. Accordingly, appellant's first, second and third assignments of error are without merit and are hereby overruled.

II

{¶ 8} Appellant asserts in his fourth assignment of error that the trial court committed reversible error by not appointing counsel to argue his case. We disagree.

[1] This also makes intuitive sense. Appellant's argument is based on a plea agreement entered in Miami County. That county, rather than Ross County, will have the records involved in appellant's trial court proceeding.

Assuming, arguendo, that appellant is even entitled to counsel, the trial court's failure to appoint counsel is harmless beyond a reasonable doubt because "[t]here is no assistance which appointed counsel could provide which would overcome the extensive and controlling authority . . . that appellant is not entitled to habeas corpus relief under the facts of this case." Laws v. Morris (Jan. 23, 1990), Scioto App. No. CA 1767.

{¶ 9} Because appellant is not entitled to habeas corpus under the facts of this case, any alleged error that occurred by not appointing counsel is harmless. Accordingly, appellant's fourth assignment of error is without merit and is hereby overruled.

{¶ 10} Having considered all of the appellant's assignments of error, and having found no merit in any, the trial court's judgment is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Kline, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.