

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE EX REL., TYRICE HILL,

Petitioner,

v.

CHRISTOPHER LAROSE, WARDEN ET AL.,

Respondents.

OPINION AND JUDGMENT ENTRY

Case No. 19 MA 0025

Writ of Habeas Corpus

BEFORE:

Gene Donofrio, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Dismissed

Tyrice Hill, (PRO SE), #488-329, 2240 Hubbard Road, Youngstown, Ohio 44505, for Relator and

Atty. Dave Yost, Ohio Attorney General, *Atty. George Horvath*, Assistant Attorney General, Criminal Justice Section/Corrections Unit, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215, and *Atty. Timothy Bojanowski*, Struck, Love, Bojanowski & Acedo, P.L.C., 3100 West Ray Road, Suite 300, Chandler, Arizona 85226, for Respondents.

Dated:
December 31, 2019

PER CURIAM.

{¶1} Petitioner Tyrice Hill, proceeding on his own behalf, has filed what he has entitled a complaint for a writ of mandamus against Respondents Christopher LaRose, Warden of the Northeast Ohio Correctional Center, and the Ohio Department of Rehabilitation and Correction. He is seeking to have this Court compel them to bring to the attention of the sentencing court inaccuracies in his commitment papers, which render them without authority to hold him. Both Respondents have filed Civ.R. 12(B)(6) motions to dismiss this original action.

{¶2} Due to the insufficiency of Petitioner's complaint, the salient facts giving rise to his conviction and sentence are drawn from the Sixth District's decision in *State v. Hill*, 6th Dist. Lucas No. L-05-1080, 2006-Ohio-859. While on post release control for robbery in 2004, Petitioner was indicted on six counts of first-degree-felony aggravated robbery in violation of R.C. 2911.01(A)(1), each of which contained a firearm specification. On February 3, 2005, Petitioner was sentenced to seven of the ten potential years on each of the convictions. Petitioner received an additional three year term of incarceration mandated by the accompanying gun specifications. All sentences were ordered to be served consecutively.

{¶3} Markedly, the trial court concluded the shortest prison term would demean the seriousness of the offense, would not adequately protect the public, would not reflect the seriousness of the conduct, and Petitioner posed a danger to the public. In conjunction with those findings, the court emphasized that Petitioner committed his string of aggravated robberies while on post release control following his incarceration on a prior robbery conviction. "In light of adverse statutory findings and a recidivist robbery defendant, the court imposed a total of 30 years incarceration upon [Petitioner]." *Id.* ¶ 10.

{¶4} Petitioner appealed his convictions and sentences to the Sixth District Court of Appeal and it affirmed. *Id.* However, six months later, since Petitioner's appeal to the Ohio Supreme Court was pending during its decision in *State v. Foster*, 109 Ohio St.3d

1, 2006-Ohio-856, 845 N.E.2d 470, the Court reversed Petitioner's sentence and remanded his case to the trial court for resentencing accordingly. *In re Ohio Criminal Sentencing Statutes Cases*, 110 Ohio St.3d 156, 2006-Ohio-4086, 852 N.E.2d 156, ¶ 1, 5. The only insight we get into what resulted from his resentencing appears in a decision issued five and half years later by the Sixth District Court of Appeals affirming the trial court's denial of Petitioner's fifth motion to withdraw his guilty pleas, wherein the Court noted that he had been sentenced to 28 years in prison. *State v. Hill*, 6th Dist. Lucas No. L-10-1263, 2012-Ohio-1103, ¶ 2.

{¶5} Following numerous, unsuccessful collateral attacks upon his conviction and sentence, Petitioner has filed this original action which, as indicated, he has entitled as a complaint for a writ of mandamus. However, the relief he is expressly seeking is immediate release from prison. Habeas corpus, rather than mandamus, is the appropriate action for persons claiming entitlement to immediate release from prison. *State ex rel. Lemmon v. Ohio Adult Parole Auth.*, 78 Ohio St.3d 186, 188, 677 N.E.2d 347 (1997); *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 594, 635 N.E.2d 26 (1994). As the Court noted in *Lemmon*, 78 Ohio St.3d at 188, 677 N.E.2d 347, "[a] contrary holding would permit inmates seeking immediate release from prison to employ mandamus to circumvent the statutory pleading requirements for instituting a habeas corpus action, *i.e.*, attachment of commitment papers and verification." Therefore, we are construing Petitioner's complaint, as amended, as a petition for a writ of habeas corpus. R.C. 2725.04 ("[a]pplication for the writ of habeas corpus shall be by petition * * *.")

{¶6} R.C. 2725.01 provides: "Whoever 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." The writ of habeas corpus is an extraordinary writ and will only be issued in certain circumstances of unlawful restraint of a person's liberty where there is no adequate legal remedy at law, such as a direct appeal or postconviction relief. *In re Pianowski*, 7th Dist. Mahoning No. 03MA16, 2003-Ohio-3881, ¶ 3; *see also State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994). "Absent a patent and unambiguous lack of jurisdiction, a party challenging a court's jurisdiction has an

adequate remedy at law by appeal.” *Smith v. Bradshaw*, 109 Ohio St.3d 50, 2006-Ohio-1829, 845 N.E.2d 516, ¶ 10.

{¶7} If a person is in custody by virtue of a judgment of a court of record and the court had jurisdiction to render the judgment, the writ of habeas corpus will not be allowed. *Tucker v. Collins*, 64 Ohio St.3d 77, 78, 591 N.E.2d 1241 (1992). The burden is on the petitioner to establish a right to release. *Halleck v. Koloski*, 4 Ohio St.2d 76, 77, 212 N.E.2d 601 (1965); *Yarbrough v. Maxwell*, 174 Ohio St. 287, 288, 189 N.E.2d 136 (1963). “Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law.” *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6.

{¶8} Respondents have each filed Civ.R. 12(B)(6) motions to dismiss for failure to state a claim. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 605 N.E.2d 378 (1992).

{¶9} R.C. 2725.04(D) requires the petitioner to file all the pertinent commitment papers along with the petition. Attaching only some of the paperwork is insufficient. If any required commitment papers are not included with the petition, it is defective and will be dismissed. *State ex rel. Johnson v. Ohio Dept. of Rehab. & Corr.*, 95 Ohio St.3d 70, 2002-Ohio-1629, 765 N.E.2d 356. The Ohio Supreme Court has held that:

These commitment papers are necessary for a complete understanding of the petition. Without them, the petition is fatally defective. When a petition is presented to a court that does not comply with R.C. 2725.04(D), there is no showing of how the commitment was procured and there is nothing before the court on which to make a determined judgment except, of course, the bare allegations of petitioner's application.

Bloss v. Rogers, 65 Ohio St.3d 145, 146, 602 N.E.2d 602 (1992).

{¶10} Petitioner has attached copies relating to his February 3, 2005 sentencing; but he has omitted the commitment papers that would have necessarily resulted from his original sentences being reversed and the case remanded for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. *In re Ohio Criminal*

Sentencing Statutes Cases, 110 Ohio St.3d 156, 2006-Ohio-4086, 852 N.E.2d 156, ¶ 1, 5. Petitioner has made no suggestion that he was not subsequently resentenced accordingly. Therefore, his failure to attach all of his commitment papers requires the dismissal of his petition.

{¶11} Likewise, Petitioner’s pleadings fail to comply with the civil litigation history requirement found in section (A) of R.C. 2969.25: “At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.”

{¶12} As Respondent ODRC points out, although Petitioner filed an affidavit containing a description of some of the civil actions that he has filed, it fails to contain “a description of each civil action or appeal of a civil action” that he has filed in the previous five years in any state or federal court, as required by R.C. 2969.25(A). Petitioner has filed a motion to amend his affidavit to include additional cases. However, the Ohio Supreme Court has specifically held that a petitioner’s “belated attempt to file the required affidavit does not excuse his noncompliance.” *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982; R.C. 2969.25(A) (which requires that the affidavit be filed “[a]t the time that an inmate commences a civil action or appeal against a government entity or employee.” Therefore, Petitioner’s failure to include all of the required information in his affidavit mandates the dismissal of his petition. *Robinson v. LaRose*, 147 Ohio St.3d 473, 2016-Ohio-7647, 67 N.E.3d 765, ¶ 11.

{¶13} Even assuming we could reach the merits of Petitioner’s claim, it is not entirely clear what is the basis of his claim. He clearly states the relief he is seeking—immediate release from prison. He alleges “inaccuracies in his commitment papers,” but has failed to provide those commitment papers or identify the inaccuracies. In one of his exhibits, he makes a reference to post release control. But that issue has been fully litigated; as the Sixth District Court of Appeals has observed:

The record reflects that four of [Petitioner’s] total of seven appeals in this matter have stemmed from substantively analogous motions challenging [Petitioner’s] plea and sentence for alleged impropriety in connection to post release control.

This court has repeatedly and clearly determined that [Petitioner] was properly furnished the requisite statutory post release control notification. In conjunction with this, this court has likewise repeatedly determined that [Petitioner] has not been prejudiced in any way whatsoever in connection to claimed issues connected to post release control.

State v. Hill, 6th Dist. Lucas No. L-16-1086, 2016-Ohio-8529, ¶¶ 3-4.

{¶14} These same claims Petitioner repeatedly has made in the trial court and the denial of which have been repeatedly and consistently affirmed by the Sixth District Court of Appeals, Petitioner advanced in a petition for a writ of habeas corpus filed with the Ohio Supreme Court. The Court likewise rejected them, sua sponte dismissing the petition. *State ex rel. Hill v. Coleman*, 143 Ohio St.3d 1475, 2015-Ohio-3958, 38 N.E.3d 898, *reconsideration denied by* 144 Ohio St.3d 1444, 2015-Ohio-5468, 43 N.E.3d 453.

{¶15} For all off the foregoing reasons, Respondents' motions to dismiss are granted and Petitioner's original action for a writ of habeas corpus is dismissed.

{¶16} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. Costs taxed to Petitioner.

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

JUDGE DAVID A. D'APOLITO