

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Robert Lee Norris

Court of Appeals No. L-09-1212

Petitioner

v.

Robert Welch, Warden

DECISION AND JUDGMENT

Respondent

Decided: August 31, 2009

* * * * *

Robert Lee Norris, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an original action for a writ of habeas corpus brought by petitioner, Robert Lee Norris. Norris was convicted in jury trials in 1993, of two counts of rape, violations of R.C. 2907.02 (aggravated felonies of the first degree) and of one count of kidnapping, a violation of R.C. 2905.01 (aggravated felony of the second degree) including specifications on each count. The specifications were pursuant to R.C.

2941.142 and provided that Norris had "previously been convicted of or plead guilty to aggravated kidnapping, sexual intercourse without consent, 2 Cts., and knife sexual intercourse without consent."

{¶ 2} The trial court sentenced Norris in a judgment filed on September 10, 1993, to an indeterminate prison term of 15 to 25 years on each count. As to each count, the judgment provided that "a minimum term of 15 years shall be served as actual incarceration." The judgment also imposed fines of \$10,000 on each count and ordered that the sentences were to be served consecutively.

{¶ 3} Three nunc pro tunc judgment entries modifying the sentencing judgment followed -- dated January 4, 1994, October 13, 1995, and July 9, 1998. The legal effect of the nunc pro tunc judgment entries and their validity has been the subject of unending litigation by Norris. These judgment entries were described by the Fifth District Court of Appeals in *State v. Norris* (Mar. 26, 2001), 5th Dist. No. 2000CA00235 in the following terms:

{¶ 4} 1. "[A] Nunc Pro Tunc Judgment Entry was filed on January 4, 1994. The January 4, 1994, entry was issued to order the Stark County Sheriff to calculate appellant's jail time credit. However, the trial court, in its January 4, 1994, Judgment Entry only sentenced appellant with respect to the charge of kidnapping."

{¶ 5} 2. "A second Nunc Pro Tunc Judgment Entry to correct the omissions contained in the first Nunc Pro Tunc Judgment Entry was filed by the trial court on October 13, 1995. The trial court, in such entry, sentenced appellant to 15-25 years

imprisonment for each of the three counts, to be served consecutively, and imposed a \$10,000.00 fine with respect to the kidnapping charge and a \$20,000.00 fine as to each of the two counts of rape." Id.

{¶ 6} 3. "[T]he trial court filed a third Nunc Pro Tunc Judgment Entry on July 9, 1998, clarifying that appellant was to pay an aggregate of \$30,000.00 in fines." Id.

{¶ 7} In his petition, Norris claims that he is entitled to immediate release from incarceration at the Toledo Correctional Institution because he has served the maximum sentence for kidnapping under Ohio law. He claims that under the nunc pro tunc judgment entry of January 4, 1994, his sentence was limited to a term of imprisonment for kidnapping alone. He further argues that although the nunc pro tunc judgment entry imposed a sentence of imprisonment for 15 to 25 years, the maximum term of imprisonment for the offense for which he was convicted is 15 years and that he is entitled to immediate release from custody because he has been imprisoned for more than 15 years.

{¶ 8} This is the third time petitioner has filed a petition for a writ of habeas corpus in Ohio courts with respect to his imprisonment for convictions of one count of kidnapping and two counts of rape in 1993. See *Norris v. Wilson*, 5th Dist. No. 04 CA 33, 2005-Ohio-4594; *Norris v. Konteh* (Apr. 19, 1999), Trumbull App. No. 98-T-0030. The grounds on which petitioner claims he is entitled to immediate release from custody in this petition are identical to those he asserted before the Fifth District Court of Appeals in *Norris v. Wilson*:

{¶ 9} "Essentially, in the five assignments of error presented, appellant contends that he is entitled to immediate release from prison because he has served the maximum sentence for his sole conviction for kidnapping, count I of the indictment. In order to reach this conclusion, appellant argues that the maximum sentence to which appellant could be sentence was 15 years, not 15-25 years and that this court must enforce only the first nunc pro tunc judgment entry issued by the trial court. In the first nunc pro tunc judgment entry, the trial court indicated that count II and count III of the indictment for rapes had been dismissed. We disagree."

{¶ 10} In its opinion in *Norris v. Wilson* the Fifth District Court of Appeals gave a series of independent grounds upon which it affirmed a denial by the Richland County Court of Common Pleas of habeas corpus relief:

{¶ 11} "Generally, the remedy of habeas corpus lies only where the jurisdiction of the court is attacked. Although appellant attempts to frame the issue in terms of jurisdiction, in actuality, appellant's claims concern alleged sentencing errors. Sentencing errors are not jurisdictional and are not cognizable in habeas corpus. *State ex re. Massie v. Rogers* (1997), 77 Ohio St.3d 449, 450, 1997-Ohio-258, 674 N.E.2d 1383. Further, to grant a claim for habeas corpus, a petitioner must have no adequate remedy at law. *Id.* When a sentencing error is raised, the proper avenue for relief is through direct appeal or postconviction relief. *Majoros v. Collins* (1992), 64 Ohio St.3d 442, 443, 596 N.E.2d 1038; *Norris v. Boggins*, 80 Ohio St.3d 296, 297, 1997-Ohio-115, 685 N.E.2d 1250.

{¶ 12} "In this case, we find that appellant could have raised these issues on direct appeal. As such, appellant is not entitled to relief.

{¶ 13} "Further, we note that this is appellant's second petition for habeas corpus filed in a state court. See *Norris v. Konteh* (April 19, 1999), Trumbull App. No. 98-T-0030. Res judicata precludes appellant from filing successive habeas corpus petitions. *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288, 685 N.E.2d 1243.

{¶ 14} "Accordingly, appellant's assignments of error are overruled.

{¶ 15} "The judgment of the Richland County Court of Common Pleas is affirmed." *Norris v. Wilson* at ¶ 23-27

{¶ 16} Petitioner has had his day in court. The judgment of the Fifth District Court of Appeals is a final judgment, binding upon petitioner, and under the doctrine of res judicata precludes further inquiry by this court. *Norris v. Wilson* at ¶ 25. The petition for a writ of habeas corpus is dismissed at petitioner's costs.

WRIT DENIED.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
