

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

Jerone McDougald

Court of Appeals No. L-19-1209

Petitioner

v.

Shawn Bowerman, Warden

DECISION AND JUDGMENT

Respondent

Decided: November 8, 2019

* * * * *

Jerone McDougald, pro se.

* * * * *

OSOWIK, J.

{¶ 1} In this original action, Jerone McDougald, acting pro se, petitions the court for a writ of habeas corpus. The petition alleges that McDougald is being imprisoned and restrained of his liberty by the respondent, Sean Bowerman, warden of the Toledo Correctional Institution. Also pending before the court are McDougald’s “motion to

amend writ of habeas corpus” and “motion for leave to amend writ of habeas corpus.”

As set forth below, we dismiss McDougald’s petition.

Procedural History

{¶ 2} McDougald is imprisoned pursuant to a 2007 conviction in the Scioto County Court of Common Pleas for possession of drugs, in violation of R.C. 2925.11(C)(4)(e), a felony of the first degree (Count 1); trafficking in drugs, in violation of R.C. 2925.03(A)(1) and (C)(4)(f), a felony of the first degree (Count 2); possession of criminal tools, in violation of R.C. 2923.24(A) and (C), a felony of the fifth degree (Count 3); and having a weapon while under disability, in violation of R.C. 2923.13(A)(3), a felony of the third degree (Count 4). The trial court sentenced McDougald to an aggregate term of 20 years in prison, and his conviction and sentence were upheld on appeal. *State v. McDougald*, 4th Dist. Scioto No. 07CA3147, 2008-Ohio-1398.

{¶ 3} In his petition, McDougald presents his legal arguments in the form of “assignments of error,” notwithstanding that this case presents an original action in habeas corpus, not an appeal of any adverse lower court judgment. McDougald argues that the trial court lacked jurisdiction over his criminal trial because the indictment was not signed by the grand jury foreman. Attached to his petition is a copy of his January 3, 2007 indictment. It does not include a signature line for, or signature by, the grand jury foreman. *See* Crim.R. 6(F) (“[T]he foreperson or deputy foreperson shall sign the indictment * * *.”). The indictment was signed by the county prosecutor.

{¶ 4} In his first motion to amend, McDougald requested leave to file a copy of his commitment papers. *See* R.C. 2725.04(D) (“A copy of the commitment or cause of detention of such person shall be exhibited.”).

{¶ 5} In his second motion to amend, McDougald argues that the indictment is defective for the additional reasons that (1) it “failed to list [an] essential element of [the] criminal offense, [i.e.] cocaine for count one and count two of the indictment” and (2) because “[t]here is no where [sic] in the indictment * * * specifying forfeiture for any counts * * * in violation of R.C. 2941.1417(A).” (“Property is not subject to forfeiture in a criminal case unless the indictment, * * * specifies, to the extent it is reasonably known at the time of filing, the nature and extent of the alleged offender’s interest in the property * * *.”). We note that the indictment does, in fact, include a “forfeiture specification” with respect to “the \$485.00 in US Currency; the \$440.00 in US Currency; and the Bryco Arms .380.”

Law and Argument

{¶ 6} Habeas corpus relief is an available remedy only in “certain extraordinary circumstances where there is an unlawful restraint of a person’s liberty, notwithstanding the fact that only nonjurisdictional issues are involved, but only where there is no adequate legal remedy, *e.g.*, appeal or post-conviction relief.” *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995), citing *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 593, 635 N.E.2d 26 (1994).

{¶ 7} Res judicata bars a petitioner from filing successive habeas corpus petitions. *Bevins v. Richard*, 144 Ohio St.3d 54, 2015-Ohio-2832, 40 N.E.3d 1108, ¶ 4 (“Bevins could have argued any cognizable claim that he had in [his previous] habeas action; therefore, res judicata bars his successive habeas corpus petition.”). McDougald previously pursued habeas relief in state court. In *McDougald v. Brunzman*, 130 Ohio St.3d 22, 2011-Ohio-4607, 955 N.E.2d 377, the Ohio Supreme Court affirmed the dismissal of McDougald’s petition, in part, because “[h]is claims are not cognizable in habeas corpus.” *Id.* at ¶ 1, citing *Pishok v. Kelly*, 122 Ohio St.3d 292, 2009-Ohio-3452, 910 N.E.2d 1033. McDougald could have raised any cognizable claim in his previous habeas action, and indeed, the instant petition attacks the validity of the indictment, as it did in his previous petition. For that reason, res judicata bars the instant action.

{¶ 8} Second, habeas corpus is not available when there is an adequate remedy at law. Adequate remedies include a motion for postconviction relief and a direct appeal. “[C]laims [that] merely attack[] the validity and sufficiency of their indictments * * * should [be] raised by direct appeal rather than habeas corpus.” *VanBuskirk v. Wingard*, 80 Ohio St.3d 659, 660, 687 N.E.2d 776 (1998), citing *State ex rel. Beaucamp v. Lazaroff*, 77 Ohio St.3d 237, 238, 673 N.E.2d 1273 (1997). In *VanBuskirk*, the same issue—an unsigned affidavit—was the basis for an inmate’s petition for a writ of habeas corpus. The court held that, “a grand jury foreperson’s failure to sign an indictment does not deprive the trial court of jurisdiction or otherwise entitle a criminal defendant convicted and sentenced on the indictment to a writ of habeas corpus.” *Id.*, citing *State*

ex rel. Justice v. McMackin, 53 Ohio St.3d 72, 73, 558 N.E.2d 1183 (1990).

McDougald’s argument—that the unsigned indictment deprived the trial court of jurisdiction over his case—has been expressly rejected by the Ohio Supreme Court and is not well-taken.

{¶ 9} Likewise, the remaining arguments raised in McDougald’s motion, i.e., the indictment’s failure to include an “essential element” of the offense(s) and/or failure to include a forfeiture specification, also attack the validity of the indictment and therefore do not present cognizable claims in habeas corpus. “Habeas corpus is also not available to challenge the validity or sufficiency of an indictment, as such a claim is ‘nonjurisdictional in nature, and should [be] raised in an appeal of [a] criminal conviction rather than in habeas corpus.’” *State ex rel. Rackley v. Sloan*, 150 Ohio St.3d 11, 2016-Ohio-3416, 78 N.E.3d 819, ¶ 9, quoting *State ex rel. Raglin v. Brigano*, 82 Ohio St.3d 410, 696 N.E.2d 585 (1998). Because McDougald had an adequate remedy at law as to each claim set forth in his petition and amendment thereto, he has failed to assert a claim upon which relief may be granted. Therefore, McDougald is not entitled to the extraordinary and extreme form of relief requested, i.e., immediate release from the custody of the state.

{¶ 10} Finally, we note that McDougald failed to file an affidavit containing “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). McDougald’s failure to do so also mandates the dismissal of his petition. *Robinson v.*

LaRose, 147 Ohio St.3d 473, 2016-Ohio-7647, 67 N.E.3d 765, ¶ 11 (Incomplete affidavit necessitates dismissal), citing *Boles v. Knab*, 129 Ohio St.3d 222, 2011-Ohio-2859, 951 N.E.2d 389, ¶ 1 (“The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate’s action to dismissal.”).

{¶ 11} Based on the face of the petition, we find McDougald has not stated a claim entitling him to habeas corpus relief. Therefore, the petition is ordered dismissed. McDougald’s pending motions are rendered moot and are denied. The costs of this action are assessed to petitioner.

{¶ 12} The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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:
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