

1 Thomas, Appellant, v. Collins, Appellee.

2 [Cite as *Thomas v. Collins* (1996), _____ Ohio St.3d _____.]

3 *Criminal law -- Issues involving relationship of the indictment to the*
4 *evidence may be appealed -- Habeas corpus not available*
5 *when petitioner has adequate remedy at law by way of appeal.*

6 (No. 95-1275--Submitted December 5, 1995--Decided January 31,
7 1996.)

8 Appeal from the Court of Appeals for Scioto County, No.
9 94CA002275.

10 In 1988, appellant, Lewis Thomas III, was convicted of aggravated
11 murder, aggravated robbery with specifications, and three counts of felonious
12 assault with specifications. He was sentenced to life imprisonment with
13 possibility of parole after twenty years for the aggravated murder and to
14 indefinite terms of imprisonment on the other convictions. The court of
15 appeals affirmed the convictions, but remanded for resentencing. *State v.*
16 *Thomas* (Apr. 4, 1990), Hamilton App. No. C-880637, unreported. On
17 September 2, 1994, he filed a complaint for a writ of habeas corpus in the
18 Court of Appeals for Scioto County, alleging that the trial court that
19 convicted him lacked jurisdiction to do so because he was convicted of

1 complicity under R.C. 2923.03 (A)(2) without being so charged in the
2 indictment.

3 The state filed a return of the writ. The court of appeals held that
4 habeas corpus is not available when the court has jurisdiction to convict and
5 sentence the defendant and that the trial court had such jurisdiction in this
6 case.

7 Appellant appeals as of right. Appellee has not filed a brief, but has
8 filed a motion to strike appellant's brief or dismiss because appellant failed to
9 file a copy of his brief with appellee.

10 *Lewis Thomas III, pro se.*

11 *Betty D. Montgomery, Attorney General, and Stuart A. Cole, Assistant*
12 *Attorney General, for appellee.*

13 *Per Curiam.* Whether the evidence conforms to the indictment is not a
14 jurisdictional issue as contended by petitioner-appellant. However, habeas
15 corpus relief may be granted for nonjurisdictional claims, if the petitioner has
16 no adequate remedy at law. *State ex rel. Pirman v. Money* (1993), 69 Ohio
17 St. 3d 591, 593, 635 N.E.2d 26. Issues involving the relationship of the
18 indictment to the evidence may clearly be appealed. See *State v. O'Brien*

1 (1987), 30 Ohio St. 3d 122, 30 OBR 436, 508 N.E.2d 144. Thus, petitioner
2 in this case had an adequate remedy at law.

3 Accordingly, we overrule the motion to strike or dismiss and affirm the
4 judgment of the court of appeals.

5 *Judgment affirmed.*

6 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER and

7 COOK, JJ., concur.

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