

[Cite as *Rucker v. Brunsman*, 2010-Ohio-6078.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

JEREMY RUCKER,	:	
Petitioner-Appellant,	:	CASE NO. CA2010-08-072
- vs -	:	<u>OPINION</u> 12/13/2010
TIMOTHY BRUNSMAN, Warden,	:	
Respondent-Appellee.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 10CV76950

Jeremy Rucker, A458580, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036, petitioner-appellant, pro se

Richard Cordray, Ohio Attorney General, Diane Mallory and M. Scott Criss, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215, for respondent-appellee

YOUNG, P.J.

{¶1} Petitioner-appellant, Jeremy Rucker, appeals pro se a decision of the Warren County Court of Common Pleas (trial court) dismissing his petition for a writ of habeas corpus filed against respondent-appellee, Timothy Brunsman, warden of the correctional facility where Rucker is currently incarcerated and serving a life sentence.

{¶12} On November 10, 2003, in Case No. 03CR08734, Rucker pled guilty to one count of aggravated murder and was sentenced by the Defiance County Court of Common Pleas to "life imprisonment with parole eligibility after serving 20 years of imprisonment." The sentencing court ordered that "the terms of imprisonment imposed this date in State of Ohio v. Jeremy L. Rucker, in Defiance County Common Pleas Court Case Numbers 00 CR 07816 and 02 CR 08215 shall be served consecutively to the life term of imprisonment imposed therein." (Emphasis deleted.)

{¶13} The record indicates that in Cases Nos. 00CR07816 and 02CR08215, Rucker was convicted of attempted gross sexual imposition and theft, was sentenced to 44 months in prison, but placed on community control; on November 10, 2003, the sentencing court revoked Rucker's community control and imposed the 44-month prison term.

{¶14} On April 15, 2010, Rucker filed a petition in the trial court for a writ of habeas corpus to compel his immediate release from prison. Rucker alleged that the sentence imposed by the sentencing court was void because the court failed to impose postrelease control. Rucker subsequently moved for a default judgment on the ground the warden failed to answer or respond to the petition.

{¶15} On July 19, 2010, the trial court dismissed the petition on the ground Rucker was not subject to postrelease control given his conviction for aggravated murder. The trial court also found that a default judgment under Civ.R. 55 was inappropriate.

{¶16} Rucker appeals, raising two assignments of error which will be addressed in reverse order.

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT ERRORED [SIC] IN DISMISSING THE PETITION FOR WRIT OF HABEAS CORPUS."

{¶19} Rucker argues the trial court erred in dismissing his petition for a writ of habeas corpus. Rucker asserts the sentence imposed in 2003 by the sentencing court is void because it did not include mandatory postrelease control in violation of R.C. 2929.19(B) and 2929.191, and *State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434.

{¶10} We find the trial court properly dismissed Rucker's petition for a writ of habeas corpus. "Defendants convicted of certain classified felonies (not including aggravated murder) are subject to a mandatory period of postrelease control. * * * However, an individual sentenced for aggravated murder * * * is not subject to postrelease control, because that crime is an unclassified felony to which the postrelease control statute does not apply. R.C. 2967.28. Instead, such a person is either ineligible for parole or becomes eligible for parole after serving a period of 20, 25, or 30 years in prison." *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶¶35-36; *State v. Baker*, Hamilton App. No. C-050791, 2006-Ohio-4902, ¶¶4-6. Given his conviction for aggravated murder, Rucker was not eligible for postrelease control.

{¶11} If Rucker's petition challenges his incarceration on the ground his sentence is void because it did not include postrelease control for his conviction for attempted gross sexual imposition and theft, the petition is fatally defective and cannot be cured.

{¶12} Rucker did not attach to the petition copies of his commitment papers regarding his sentence for attempted gross sexual imposition and theft as required under R.C. 2725.04(D). The Ohio Supreme Court has repeatedly held that failure to

attach copies of the pertinent commitment papers to a petition for habeas corpus results in the petition being fatally defective. *Cornell v. Schotten*, 69 Ohio St.3d 466, 466-467, 1994-Ohio-74. "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 the 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* (1992), 65 Ohio St.3d 145, 146. Amendments to the petition or the attachment of the commitment papers to a subsequent pleading cannot cure the defect. *Boyd v. Money*, 82 Ohio St.3d 388, 389, 1998-Ohio-221; *Thomas v. Eberlin*, Belmont App. No. 08 BE 14, 2008-Ohio-4663, ¶8; *Rideau v. Russell* (Apr. 23, 2001), Warren App. No. CA2000-07-065.

{¶13} Rucker's second assignment of error is accordingly overruled.

{¶14} Assignment of Error No. 1:

{¶15} "THE TRIAL COURT ERRORED [SIC] IN DISMISSING THE MOTION FOR DEFAULT JUDGMENT."

{¶16} Rucker argues the trial court erred in denying his motion for default judgment given the warden's "nonresponse" to his petition for a writ of habeas corpus "even to this very day."

{¶17} Rucker's first assignment of error is overruled on the basis of *State ex rel. Shimola v. Cleveland*, 70 Ohio St.3d 110, 112, 1994-Ohio-243 (under Civ.R. 55(D), a default judgment may be entered against the state only if the claimant establishes his or her right to relief by evidence satisfactory to the court; therefore, a default judgment against the state is not absolutely prohibited, but the court must

look beyond the simple admissions resulting from a failure to serve a responding pleading); and *State ex rel. Winnick v. Gansheimer*, 112 Ohio St.3d 149, 2006-Ohio-6521, ¶7 (in light of *Shimola*, the mere fact that the warden did not submit a timely response to the petition for a writ of habeas corpus when ordered to do so did not entitle Winnick to a default judgment granting the writ).

{¶18} Because Rucker is not entitled to a writ of habeas corpus, the trial court properly dismissed his motion for default judgment.

{¶19} Judgment affirmed.

BRESSLER and RINGLAND, JJ., concur.