

IN THE SUPREME COURT OF OHIO

07 - 1811

MICHAEL MANNS,

Case NO. _____

Petitioner-Appellant,

On Appeal from the
Cuyahoga County Court
of Appeals, Eleventh
Appellate District

-vs-

RICH GANSHEIMER, WARDEN, et al.,

Court of Appeals
Case No. 2007-A-0017

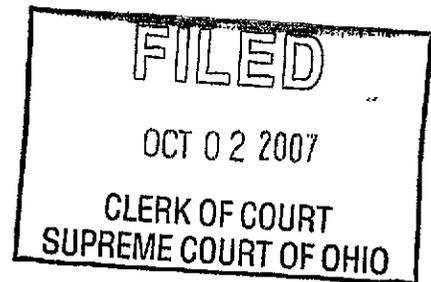
Respondents-Appellees,

NOTICE OF APPEAL OF APPELLANT
MICHAEL MANNS

MICHAEL MANNS
149-337
LAKE ERIE CORRECTIONAL INST.
P.O. Box 8000
CONNEAUT, OH 44030-8000

Petitioner-Appellant in pro se

MARC E. DANN, OHIO ATTORNEY GENERAL
JERRI L. FOSNAUGHT, ASST. OAG
CORRECTIONS LITIGATION SECTION
150 GAY STREET
16TH FLR
COLUMBUS, OHIO 43215



Attorney for Respondents-Appellee

NOTICE OF APPEAL OF APPELLANT MICHAEL MANNNS

Appellant MICHAEL MANNNS, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Eleventh Appellate District Court of Appeals Journal Entry, Michael Manns v. Rich Gansheimer, Warden et al, (August 20, 2007) Unreported Case No. 2007-A-007. See Judgment Entry Appendix A and Opinion Appendix B, Attached hereto.

This case is an appeal as of right as it stems from an original action.

Respectfully submitted,



MICHAEL MANNNS
149-337
LAKE ERIE CORRECTIONAL INST.
P.O. Box 8000
CONNEAUT, OH 44030-8000

Defendant-Appellant in pro se

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent on September 28th, 2007 by ordinary U.S. mail to counsel for Appellee:

MARC E. DANN, OAG
JERRI L. FOSNAUGHT, ASST. OAG
CORRECTIONS LITIGATION SECTION
150 GAY STREET
16TH FLR
COLUMBUS, OHIO 43215

Attorney for Plaintiff-Appellee



MICHAEL MANNNS

APPENDIX A

COURT OF APPEALS

STATE OF OHIO
COUNTY OF ASHTABULA

FILED

SS.

2007 AUG 20 P 3:36

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

MICHAEL MANN,
Petitioner,

CAROL A. MEAD
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO., OH

JUDGMENT ENTRY

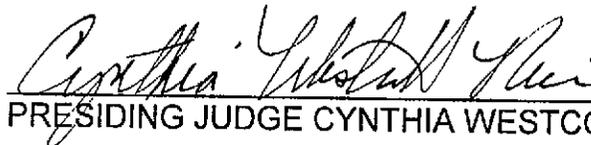
- vs -

CASE NO. 2007-A-0017

RICH GANSHEIMER, WARDEN,
et al.,

Respondents.

For the reasons state in the Per Curiam Opinion of this Court, respondents' motion for summary judgment is granted. It is the order of this court that final judgment is hereby granted in favor of respondent as to petitioner's entire claim in habeas corpus.


PRESIDING JUDGE CYNTHIA WESTCOTT RICE


JUDGE DIANE V. GRENDELL


JUDGE COLLEEN MARY O'TOOLE

APPENDIX B

FILED

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

2007 AUG 20 P 3:31

CAROL A. MEAD
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO. OH

MICHAEL MANNNS, : PER CURIUM OPINION

Petitioner, :

CASE NO. 2007-A-0017

- vs - :

RICH GANSHEIMER, WARDEN, et al., :

Respondents. :

Original Action for Writ of Habeas Corpus.

Judgment: Writ Denied.

Michael Manns, pro se, PID: 149-337, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Petitioner).

Marc E. Dann, Attorney General, and *Jerri L. Fosnaught*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondents).

PER CURIAM.

{¶1} This action is currently before this court for consideration of a petition for writ of habeas corpus filed by petitioner, Michael Manns. Respondents, Rich Gansheimer, Warden of the Lake Erie Correctional Institution, and Terry Collins, Director of the Lake Erie Correctional Institution, have filed a motion for summary judgment.

{¶2} In 1977, petitioner was convicted of ten counts of aggravated robbery, ten counts of kidnapping, and one count of aggravated murder. The convictions related to crimes committed during a paint store robbery in Cuyahoga County. Petitioner received prison sentences of seven to 25 years on each of the aggravated robbery and kidnapping convictions, to be served concurrently to each other. In addition, the Cuyahoga County Court of Common Pleas sentenced petitioner to death for the aggravated murder conviction.

{¶3} Petitioner appealed his convictions and death sentence to the Eighth District Court of Appeals. The Eighth District affirmed petitioner's convictions. *State v. Manns*, 8th Dist. No. 38526, 1979 Ohio App. LEXIS 9377. However, based upon the United States Supreme Court's decisions in *Lockett v. Ohio* (1978), 438 U.S. 586 and *Bell v. Ohio* (1978), 438 U.S. 637, the Eighth District modified petitioner's death sentence to a term of life imprisonment for his aggravated murder conviction. *Id.* at *11. There is no evidence in the record suggesting that petitioner appealed the Eighth District's decision to the Supreme Court of Ohio.

{¶4} In February 2007, Petitioner filed his original action for a writ of habeas corpus in this court. In March 2007, this court issued an alternative writ. Thereafter, respondents filed their motion for summary judgment. Petitioner has not responded to respondents' motion for summary judgment.

{¶5} Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. In addition, it must

appear from the evidence and stipulations that reasonable minds can come to only one conclusion, which is adverse to the nonmoving party. Civ.R. 56(C)

{¶6} In another habeas corpus case, this court recently held that “although a question as to the sufficiency of the [petitioner’s] allegations should usually be raised in a Civ.R. 12(B)(6) motion, a sufficiency argument can form the basis of a proper motion for summary judgment.” (Citation omitted.) *Thompson v. Gansheimer*, 11th Dist. No. 2006-A-0086, 2007-Ohio-3477, at ¶16. This approach is consistent with the directive articulated by the Supreme Court of Ohio – “if the petition states a claim for which habeas corpus relief cannot be granted, the court should not allow the writ and should dismiss the petition.” *Pegan v. Crawmer* (1995), 73 Ohio St.3d 607, 609.

{¶7} Most commonly, a petition for a writ of habeas corpus attacks the jurisdiction of the sentencing court. *State ex rel. Jackson v. McFaul* (1995), 73 Ohio St.3d 185, 187. In addition, in extraordinary circumstances, the petition may attack nonjurisdictional issues, but only if there is no other “adequate legal remedy, e.g., appeal or postconviction relief.” *Id.* at 186.

{¶8} In this matter, petitioner claims he is being held in prison without a valid sentencing entry. He claims the trial court had a duty to conduct a new sentencing hearing following the vacation of his death sentence by the Eighth District. We disagree. The Eighth District’s judgment was “modified and affirmed as modified.” *State v. Manns*, 1979 Ohio App. LEXIS 9377. Modification of a trial court’s judgment entry is well within the authority of an appellate court. See App.R. 12(A)(1)(a).

{¶9} Moreover, we note the Twelfth Appellate District has reached a similar conclusion. In *Cotton v. Houk*, the prisoner claimed the Supreme Court of Ohio could

not impose a life sentence after vacating his death sentence. *Cotton v. Houk*, 12th Dist. No. CA2003-12-041, 2004-Ohio-5823. The Twelfth District disagreed, holding:

{¶10} "In modifying appellant's sentence, the Ohio Supreme Court simply followed the mandate issued by the United States Supreme Court in *Lockett and Bell*. In *Lockett and Bell*, the United States Supreme Court *** reversed the Ohio Supreme Court's decisions upholding the imposition of the death penalty and remanded those decisions to the Ohio Supreme Court for further proceedings according to law. This was precisely the very same action taken by the Ohio Supreme Court in 1978 when, fully aware of the *Lockett and Bell* decisions, it modified appellant's sentence to life imprisonment." *Id.* at ¶7.

{¶11} Petitioner's life sentence was appropriately imposed by the Eighth District's modification of the trial court's judgment entry. Thus, there is no error regarding the jurisdiction of the sentencing court.

{¶12} Finally, petitioner has not demonstrated that this is an extraordinary circumstance in which his life sentence should be challenged. Even if petitioner had met this burden, his claim would still fail, because he had another adequate remedy at law, to wit – a direct appeal to the Supreme Court of Ohio, to challenge the Eighth District's imposition of a life sentence. *State ex rel. Jackson v. McFaul*, 73 Ohio St.3d at 186. See, also, *Cotton v. Houk*, at ¶8. Petitioner did not appeal the Eighth District's decision to the Supreme Court of Ohio.

{¶13} Respondents' motion for summary judgment is granted. It is the order of this court that final judgment is entered in favor of respondents as to petitioner's entire

habeas corpus claim.

CYNTHIA WESTCOTT RICE, P.J., DIANE V. GREDELL, J., COLLEEN MARY O'TOOLE, J., concur.