

ORIGINAL

IN THE SUPREME COURT OF OHIO

On Appeal from the Sixth Appellate District Court
for Lucas County, Ohio
Case No. L 09 1212

ROBERT LEE NORRIS,
Petitioner/Appellant,

Supreme Court No. 09-1821
COA No. L 09 1212

- vs -
FILED
OCT 08 2009
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL (in an appeal as of right)
[p]ursuant to: S. Ct. Prac. R. II § 1.
[an original action in habeas corpus]

ROBERT WELCH, Warden,
Respondent/Appellee.

[N]OTICE IS HEREBY GIVEN, that 'ROBERT LEE NORRIS,' [p]etitioner/appellant ('pro se') hereby appeals from the: 'August 31, 2009-judgment of the Ohio Sixth District Court of Appeals, Case No. L 09 1212, therein dismissing (sua sponte) the underlying original action in habeas corpus.

This case originated in the Sixth Appellate District Court as an original action in habeas corpus, see attached "Decision and Judgment," dated: 'August 31, 2009.' see: State v. Day, 2009-Ohio-3755 (Ohio App. 4 Dist.); State v. Baker, 119 Ohio St. 3d ___; State v. Carter, 2009-Ohio-4161; and, State v. Pelfrey, 112 Ohio St. 3d 422. see also: State v. Stimpkins, 117 Ohio St. 3d 420; and, State v. Bealsey (1984), 14 Ohio St. 3d 74.

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OCT 08 2009
CLERK OF COURT
SUPREME COURT OF OHIO

[E]xecuted this 30th day of September, 2009.

Robert L. Norris

Robert Lee Norris, #281-431

ToCC

2001 East Central Avenue

Toledo, Ohio

43608

CERTIFICATE OF SERVICE:

This is to certify that the foregoing was duly served (along with the other accompanying initiating appellate papers) by: Institutional Mail Service on: 'ROBERT WELCH, Warden,' at: Toledo Correctional Institution, 2001 East Central Avenue, Toledo, Ohio, 43608, on this 30th day of September, 2009.

Robert L. Norris

Robert Lee Norris, #281-431

ToCC

2001 East Central Avenue

Toledo, Ohio

43608

[]

FILED
COURT OF APPEALS

2009 AUG 31 P 2:11

COMMON PLEAS COURT
SERNE GUILTER
CLERK OF COURTS

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: AUG 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.

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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

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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*:

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{¶ 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.

Mark L. Pietrykowski, J.

Arlene Singer, J.
CONCUR.

Peter M. Handwork
JUDGE
Mark L. Pietrykowski
JUDGE
Arlene Singer
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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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