

ORIGINAL

IN THE SUPREME COURT OF OHIO 11-0808

STATE EX REL. SHAWN R. BOLES,
INMATE NUMBER A410-417,
Plaintiff-Petitioner,
CHILLICOTHE CORRECTIONAL INST.,
P.O. Box 5500,
CHILLICOTHE, OHIO 45601,
Vs.

CASE No. _____
On Appeal from the Fourth Appellate
District Court of Appeals For Ross
County, Ohio.
Case No. 11CA3201

ROBIN KNAB, Warden-Guardian,
Defendant-Respondent,
CHILLICOTHE CORRECTIONAL INST.,
15802 St. Rt. 104 North; P.O. Box 5500,
CHILLICOTHE, OHIO 45601.

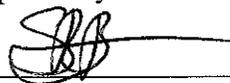
**NOTICE OF APPEAL OF APPELLANT
SHAWN R. BOLES**

Notice of Appeal of Appellant, Shawn R. Boles

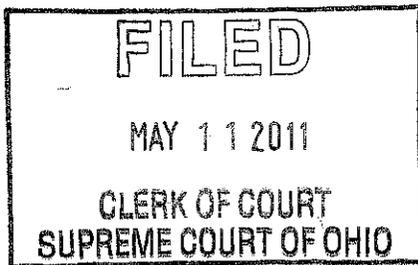
Appellant, Shawn R. Boles hereby, gives notice of appeal to the Supreme Court of Ohio from the judgment of the Fourth Appellate District Court of Appeals, entered in Court of Appeals Case No. 11CA3201 on March 29, 2011.

It is further given notice, that this is an appeal of right from an action in habeas corpus, that originated in the Fourth Appellate District Court of Appeals.

Respectfully Submitted,



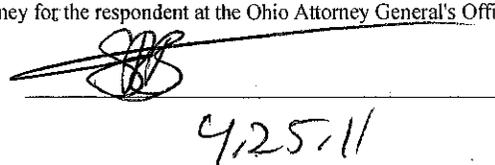
Shawn R. Boles #A410-417
C.C.I.
P.O. Box 5500
Chillicothe, Ohio 45601



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was sent to the Attorney for the respondent at the Ohio Attorney General's Office on the same date of filing by regular U.S. Mail soon thereafter.

Attn: Assistant Attorney General
Elizabeth A. Matone
Criminal Justice Section
42300
150 East Gay Street, 16th Floor
Columbus, Ohio 43215-3130



IN THE COURT OF APPEALS OF OHIO
 FOURTH APPELLATE DISTRICT
 ROSS COUNTY

2011 MAR 29 PM 3:39

Shawn R. Boles,

:

Case No. 11CA320

ROSS COUNTY CLERK OF COURTS
 TY D. HUTTON

Petitioner,

:

DECISION AND
JUDGMENT ENTRY

v.

:

Robin Knab, Warden,

:

Respondent.

:

Petitioner, Shawn R. Boles, has filed a petition for a writ of habeas corpus to compel respondent, Chillicothe Correctional Institution Warden Robin Knab, to release him from prison. Respondent has filed a motion to dismiss, arguing, among other things, that that Boles' claims are not cognizable in habeas corpus. Because we conclude that Boles has not stated a claim upon which relief can be granted, respondent's motion to dismiss is **GRANTED**. The writ of habeas corpus is **DENIED** and the petition is sua sponte **DISMISSED**.

Habeas corpus is the proper remedy when seeking release from prison. *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, at ¶5. As an extraordinary writ, however, habeas corpus is available only "where there is an unlawful restraint of a person's liberty and no adequate remedy at law." *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, at ¶8. Moreover, "[h]abeas corpus is generally appropriate in the criminal context only if the prisoner is entitled to immediate release." *Ridenour v. Randle*, 96 Ohio St.3d 90, 2002-Ohio-360, at ¶7. For example, a writ of habeas corpus will generally lie to compel a defendant's release from prison when he

will be able to prove that the trial court in the underlying criminal case lacked the jurisdiction to enter the conviction. Habeas corpus also will be available if a defendant's maximum sentence has expired and he is being held unlawfully. *Heddleston v. Mack*, 84 Ohio St.3d 213, 214, 1998-Ohio-320.

Although not entirely clear from his petition, Boles appears to argue that his conviction is void and he is entitled to immediate release from prison because he either was subjected to double jeopardy or his right to a speedy trial was violated. Ultimately, however, it does not matter which argument Boles is making because neither claim is cognizable in habeas corpus. See *Elersic v. Wilson*, 101 Ohio St.3d 417, 2004-Ohio-1501, at ¶3 ("speedy-trial and double-jeopardy claims are not cognizable in habeas corpus").

Accordingly, because Boles has not stated a claim upon which relief can be granted, respondent's motion to dismiss is **GRANTED**. The writ of habeas corpus is **DENIED** and the petition is **DISMISSED WITH PREJUDICE**. **ANY PENDING MOTIONS ARE DENIED AS MOOT. COSTS TO PETITIONER. IT IS SO ORDERED.**

Abele, J., Kline, J.: Concur.

FOR THE COURT



William H. Harsha
Presiding Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.