

ORIGINAL

THE SUPREME COURT OF OHIO

11-1943

JESSE L. GOODEN)
)
 Appellant)
)
 vs.)
)
 MARGARET BRADSHAW, Warden)
)
 Appellee)

Case No. _____

On Appeal From the Ohio Fifth
District Court of Appeals,
Richland County, Ohio

Case No. 11CA55

APPELLANT'S MERIT BRIEF

For the Appellant:

Jesse L. Gooden 571-717
Richland Correctional Institution
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

For the Appellee:

Mr. Gene Park
Assistant Attorney General
150 E. Gay Street, 16th Floor
Columbus, Ohio 43215

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JAN 03 2012
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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

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MEMORANDUM IN SUPPORT

STATEMENT OF THE CASE

Petitioner, Jesse Gooden, ("Gooden") filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon the sentence imposed by the Summit County Court of Common Pleas had expired and Gooden was entitled to immediate release.

STATEMENT OF THE FACTS

Jesse Gooden was indicted on four counts by the Summit County Grand Jury. Count One of the indictment was a charge of Felonious Assault which the State moved to dismiss prior to trial. A jury trial was held on the three remaining counts: Count Two was a charge of Failure to Comply with an Order of a Police Officer, Count Three was a charge of Vandalism, and Count Four was a charge of Felonious Assault. The jury found the Petitioner guilty against count one, (which was dismissed), count two and count three. No jury verdict form was signed or filed in the trial court for count four. The record with this Court fails to mention the trial court changing the counts in the indictment.

The Respondent moved the trial court to dismiss the petition pursuant to Civ.R. 12(B)(3). Mr. Gooden opposed the motion and the court of appeals denied the petition on October 12, 2011 bringing forth this appeal of right. See, Gooden v. Bradshaw, 2011 WL 4865286 (Ohio App. 5 Dist.), 2011-Ohio-5300 and Exhibit B.

ARGUMENT

Proposition of Law I: The court of appeals erred when it denied the writ with evidence outside the record.

Proposition of Law II: The court of appeals erred when it denied the writ after Gooden completed his sentence.

Proposition of Law III: The court of appeals erred when it concluded Gooden had an adequate remedy of law prohibiting the writ from being issued.

All three propositions of law are interrelated and will be addressed together for the convenience of this Court.

Standard of Review:

It is well settled, habeas corpus, like other extraordinary writ actions, is not available where there is an adequate remedy at law. In re Complaint for Writ of Habeas Corpus for Goeller, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6. In other words, a writ of habeas corpus lies in extraordinary circumstances where there is unlawful restraint of person's liberty and there is no adequate remedy in an ordinary course of law. Pegan v. Crawmer (1996) 76 Ohio St.3d 97, 666 N.E.2d 1091, 1996-Ohio-419. For example, habeas corpus is available when a prisoner's maximum sentence has expired and he is being held unlawfully. Pryor v. Lazaroff (Ohio App. 4 Dist. 1999), 131 Ohio App.3d 617, 723 N.E.2d 178.

In the case at bar, the first error committed by the court of appeals concerns the

evidence reviewed outside the record. See, Exhibit B. There is no dispute, the court of appeals surmised the trial court renumbered the counts in the indictment without any evidence in the record to support this statement. Since the Appellant is not permitted to add matter to the record that was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter, the court of appeals erred when it surmised the trial court renumbered the counts in the indictment. State v. Hooks, 92 Ohio St.3d 83. Accordingly, this case must be reversed to address the petition with a complete record in the trial court to assure Gooden is not prejudiced in this case. This Court can not determine if the court of appeals erred without a complete record.

The second error by the court of appeals concerns Gooden's complaint alleging his sentence is void. See, Exhibit B. When Gooden filed his complaint, he addressed his sentence imposed, was completed and not void. See, Complaint at paragraph 12. Accordingly, the court of appeals erred when it addressed the petition under a void sentence review and not as a completed sentence.

The third and final error by the court of appeals concerns Gooden had an adequate remedy of law to address his sentencing error. See, Exhibit B. This statement is not supported by the Ohio Constitution and authority by this Court.

The Ohio Constitution restricts an appellate court's jurisdiction over trial court decisions to the review of final orders. Section 3(B)(2), Article IV, Ohio Constitution. "[I]n order to decide whether an order issued by a trial court in a criminal proceeding is a

reviewable final order, appellate courts should apply the definitions of 'final order' contained in R.C. 2505.02." State v. Muncie (2001), 91 Ohio St.3d 440, 444, 746 N.E.2d 1092. "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, [if] it is * * * [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." R.C. 2505.02(B)(1). State v. Baker, 118 Ohio St.3d 197, 2008-Ohio-3330.

There is no dispute, Gooden filed an appeal with the Ohio Ninth District Court of Appeals. State v. Gooden, 2010 WL 1781597 (Ohio App. 9 Dist.), 2010-Ohio-1961. However, the court of appeals lacked subject matter jurisdiction to entertain the merits and this appeal must be considered a nullity since count four of the indictment remains pending after the jury verdict form addresses count one, that was dismissed without prejudice. See, Baker, *supra*. Furthermore, there is nothing in the record of this case that can be considered proper to surmise the trial court renumbered the counts in the indictment. Assuming, the counts were renumbered, it follows count three would apply to count for in the indictment and NOT count one.

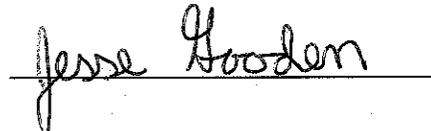
The current sentence imposed by the trial court has been satisfied and this Court must reverse the court of appeals decision to deny the petition. If the State chooses to try Gooden on count four they can proceed in the trial court; however, his current sentence has been completed and he must be release since he is being held against his liberty without a valid judgment of confinement. Cf. State ex rel Jackson v. Dallman, 70 Ohio

St.3d 261, 638 N.E.2d 563, 1994-Ohio-235 (granting the writ and discharging Jackson from prison does not preclude the common pleas court from trying Jackson again).

Conclusion

For the foregoing reasons, this Court should reverse the judgment by the court of appeals, or, in the alternative, issue the writ.

Respectfully submitted,



Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

CERTIFICATE OF SERVICE

A copy of the foregoing motion has been mailed to counsel for the Warden, Mr. Gene Park, Assistant Attorney General, 150 S. Gay Street, Columbus, Ohio 43215 on this 29 day of December, 2011.



Jesse L. Gooden

THE SUPREME COURT OF OHIO

JESSE L. GOODEN)

Appellant)

vs.)

MARGARET BRADSHAW, Warden)

Appellee)

Case No. 11-1943

On Appeal From the Fifth
District Court of Appeals

Case No. 11CA55

NOTICE OF APPEAL

For the Appellant:

Jesse L. Gooden 571-717
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1001 Olivesburg Rd.
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For the Appellee:

Mr. Gene Park
Assistant Attorney General
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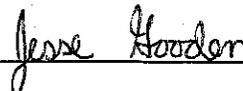
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CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellant Jesse L. Gooden

Appellant Jesse L. Gooden hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Richland County Court of Appeals, Fifth Appellate District, entered in Court of Appeals case No. 11CA55 on October 12, 2011.

This case originated in the court of appeals with an original action for habeas corpus relief.

Respectfully submitted,



Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. Mail to counsel for Appellee, Mr. Gene Park at 150 East Gay Street, 16th Floor, Columbus, Ohio 43215 on this 1st day of November, 2011.



Jesse L. Gooden

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2011 OCT 12 AM 11:10

LINDA H. FRARY
CLERK

JESSE L. GOODEN

Petitioner

-vs-

MARGARET BRADSHAW, Warden

Respondent

JUDGES:

William B. Hoffman, P.J.

John W. Wise, J.

Julie A. Edwards, J.

Case No. 11CA55

OPINION

CHARACTER OF PROCEEDING:

Writ of Habeas Corpus

JUDGMENT:

Denied

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Petitioner

For Respondent

CC: JESSE L. GOODEN
Richland Correctional Institute
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

GENE D. PARK
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Atty General

B-1

SCANNED

Hoffman, P.J.

{¶1} Petitioner, Jesse Gooden, filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon an alleged void sentence. Petitioner claims the sentence is void because the trial court sentenced Petitioner on Count One despite the fact Count One was dismissed prior to trial.

{¶2} Petitioner was indicted on four counts. Count One of the indictment was a charge of Felonious Assault which the State moved to dismiss prior to trial. A jury trial was held on the three remaining counts: Count Two was a charge of Failure to Comply with an Order of a Police Officer, Count Three was a charge of Vandalism, and Count Four was a charge of Felonious Assault. The jury found the Petitioner guilty of all three counts. The trial court essentially renumbered the jury verdict forms in a way which did not correspond to the same numbers listed on the indictment. It is undisputed Petitioner was convicted on three counts and sentenced on three counts. Petitioner argues his sentence was void because the count numbers assigned in the sentencing entry do not exactly correspond to the numbers contained in the indictment.

{¶3} The Ninth District Court of Appeals approved the use of verdict forms which were labeled with numbers that did not correspond with the numbering on the indictment, "To avoid confusion, the crimes pertaining to Defendant in the jury verdict forms were simply labeled beginning on "Count One" rather than on "Count Three." It is clear that Defendant was convicted for the crimes with which he was charged in the indictment. The different numbering of the counts in the indictment and verdict forms was neither error nor prejudicial to Defendant. See *Crim.R. 52(A)*." *State v. Washington* 1997 WL 775666, 7 (Ohio App. 9 Dist.).

B-2

{¶14} We find Petitioner has or had an adequate remedy at law by way of direct appeal to challenge any defect in his sentence. "Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law." *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6:

{¶15} Finally, as the Supreme Court has held, "[H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully. *Morgan v. Ohio Adult Parole Auth.* (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941." *Heddleston v. Mack* 84 Ohio St.3d 213, 213-214, 702 N.E.2d 1198, 1198 (Ohio,1998); *Hughley v. Duffey*, 2009 WL 3790667, 1 (Ohio App. 5 Dist.).

{¶16} Here Petitioner was sentenced on July 24, 2009 to a term of nine years in prison which has not expired. Because Petitioner remains incarcerated pursuant to a valid, unexpired sentence, habeas corpus does not lie.

{17} PETITION DENIED.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

William B. Hoffman
John D. Wise
John A. Edwards

JUDGES

WBH/as0906

COURT OF APPEALS
RICHLAND COUNTY OHIO

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

2011 OCT 12 AM 11:11

LINDA H. FRARY
CLERK

JESSE L. GOODEN
Petitioner

-vs-

MARGARET BRADSHAW, Warden
Respondent

JUDGMENT ENTRY

CASE NO. 11CA55

For the reasons stated in our accompanying Opinion on file, Petitioner's Petition for a Writ of Habeas Corpus is denied. Costs assessed to Petitioner.

William B. Hoffman
John W. Smith
John A. Edwards

JUDGES

B-5

Civ. R. Rule 12

Baldwin's Ohio Revised Code Annotated Currentness

Rules of Civil Procedure (Refs & Annos)

Title III. Pleadings and Motions

Civ R 12 Defenses and objections--when and how presented--by pleading or motion--motion for judgment on the pleadings

(A) When answer presented

(I) Generally. The defendant shall serve his answer within twenty-eight days after service of the summons and complaint upon him; if service of notice has been made by publication, he shall serve his answer within twenty-eight days after the completion of service by publication.

(II) Other responses and motions. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty-eight days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty-eight days after service of the answer or, if a reply is ordered by the court, within twenty-eight days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (a) if the court denies the motion, a responsive pleading, delayed because of service of the motion, shall be served within fourteen days after notice of the court's action; (b) if the court grants a motion, a responsive pleading, delayed because of service of the motion, shall be served within fourteen days after service of the pleading which complies with the court's order.

(B) How presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

(C) Motion for judgment on the pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.

(D) Preliminary hearings

The defenses specifically enumerated (1) to (7) in subdivision (B) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (C) of this rule shall be heard and determined before trial on application of any party.

(E) Motion for definite statement

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within fourteen days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(F) Motion to strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.

(G) Consolidation of defenses and objections

A party who makes a motion under this rule must join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter assert by motion or responsive pleading, any of the defenses or objections so omitted, except as provided in subdivision (H) of this rule.

(H) Waiver of defenses and objections

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (a) if omitted from a motion in the circumstances described in subdivision (G), or (b) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(A) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(A), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action.

R.C. § 2505.02
Baldwin's Ohio Revised Code Annotated Currentness
Title XXV. Courts--Appellate
Chapter 2505. Procedure on Appeal (Refs & Annos)
Final Order
2505.02 Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A) (3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

CREDIT(S)

(2007 S 7, eff. 10-10-07; 2004 H 516, eff. 12-30-04; 2004 S 80, eff. 4-7-05; 2004 S 187, eff. 9-13-04; 2004 H 292, eff. 9-2-04; 2004 H 342, eff. 9-1-04; 1998 H 394, eff. 7-22-98; 1986 H 412, eff. 3-17-87; 1953 H 1; GC 12223-2)

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Article IV. Judicial (Refs & Annos)

O Const IV Sec. 3 Organization and jurisdiction of courts of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2 (B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for

review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

CREDIT(S)

(1994 HJR 15, am. eff. 1-1-95; 132 v HJR 42, adopted eff. 5-7-68)