ORIGINAL

IN THE SUPREME COURT OF OHIO

LEOTIS M. DAGGETT,	:	Case No. 2013-0562
[Petitioner] Appellant,	:	On Appeal from the Richland County Court of Appeals, Fifth Appellate District
vs.	:	
MARGARET BRADSHAW, WARDEN,	:	Court of Appeals Case No. 12CA99
[Respondent] Appellee.	:	

MERIT BRIEF OF APPELLEE WARDEN BRADSHAW

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INTRODUCTION

The Fifth District Court of Appeals, Richland County, in an original action in habeas corpus, dismissed Daggett's habeas corpus petition against Warden Margaret Bradshaw for the reason that he failed to state a claim upon which relief could be granted. Daggett asserted one claim in his petition but the Court of Appeals agreed with the Warden that his claim was not subject to review in habeas corpus. *Daggett v. Bradshaw,* 2013 Ohio 713. (Attached to Appellant's Brief.)

Daggett filed this timely appeal on April 8, 2013.

STATEMENT OF CASE AND FACTS

Petitioner-Appellant Leotis M. Daggett filed a petition for a writ of habeas corpus in the Fifth District Court of Appeals on October 5, 2012, challenging the warden's custody of him based on his 2011 conviction for Robbery.

Daggett was indicted and pled guilty in the Summit County Court of Common Pleas, to one count of Robbery, in violation of Ohio Revised Code §2911.02(A)(2), a felony of the Second Degree. Pursuant to a negotiated plea agreement, Daggett was sentenced to six-years incarceration on June 20, 2011. (Respondent's Motion to Dismiss, Exhibit 1, Sentencing Entry.) The trial court issued a nunc pro tunc entry on June 27, 2011 to add that Daggett was subject to a 3-year period of post release control. (Id., Exhibit 2, nunc pro tunc Entry of 6-27-11.) Again, on July 8, 2011, the trial court issued a second nunc pro tunc sentencing entry correcting the entry to reflect that Robbery is a Felony of the 2nd Degree, rather than a felony of the 4th degree. (Id., Exhibit 3, Nunc Pro Tunc Sentencing of 7-8-11.)

Daggett filed his petition for a writ of habeas corpus and argued that the trial court's nunc pro tunc sentencing entries were void because the trial court lacked the authority to issue the

entries. He argued that he was being illegally restrained of his liberty because, due to an error, his original sentencing entry listed the degree of his felony conviction as a fourth degree felony and he had already served the maximum sentence for a fourth degree felony. Daggett argued that the trial court could not cure the degree of felony error by issuing a nunc pro tunc entry and that the nunc pro tunc entry did not also repeat the other details of his conviction. Daggett cited *State v. Baker*, 119 Ohio St.3d 197, 2008 Ohio 3330, to support his assertion.[1] Thus he said that, having served the 18-month term appropriate for a fourth degree felony, he was being wrongfully imprisoned. (Petition Attachment, pp. 1-3.)

Respondent-Appellee filed a response to the petition below, on November 8, 2012, arguing that the claims presented in Daggett's petition were not appropriate for review in habeas corpus. (CA, Respondent's Motion to Dismiss.)

The Fifth District Court of Appeals, on February 27, 2013, granted the Warden's Motion to Dismiss the petition and denied relief.

ARGUMENT I

Appellee State of Ohio's Proposition of Law I:

Daggett's claim that his sentencing entries are invalid, thus his sentence has expired, is a claim not appropriate for review in habeas corpus under R.C. 2725.01 et. seq. because Daggett had an adequate remedy at law to challenge the entries.

Daggett argues in his brief that the Court of Appeals committed error when it denied his petition for a writ of habeas corpus without considering the substance of his claims. Daggett is

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[1] In *State v. Baker*, the Ohio Supreme Court held that only one document constituted a final appealable order, which was to include the manner of conviction and the sentence. *State v. Baker* was, however, overruled in part to the extent it so held. In *State v. Lester*, 130 Ohio St.3d 303, 2011 Ohio 5204, the Ohio Supreme Court held instead that a judgment of conviction is a final order subject to appeal under R.C. 2505.02 when the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk.

wrong because his petition claims did not withstand a review for sufficiency to warrant a merits review.

Pursuant to Civ. R. 12(B)(6), "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: ... (6) failure to state a claim upon which relief can be granted... ." The standard of review on a Civ.R. 12(B)(6) motion to dismiss is de novo. *See Viceroy v. Ohio Dept. Rehab. & Corr.,* 2003 Ohio 5586, 2003 Ohio App. LEXIS 4981(5th Dist.). A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *Id.*, citing *State ex rel. Hanson v. Guernsey County Board of Commissioners,* 65 Ohio St.3d 545, 1992 Ohio 73. Upon review, a habeas corpus court need only consider whether a petition presents issues that could entitle the petitioner to habeas corpus relief. In order to withstand dismissal, a petition for a writ of habeas corpus must conform to R.C. §2725.04 and state with particularity the extraordinary circumstances entitling the petitioner to the writ. *McBroom v. Russell*, 77 Ohio St. 3d 47, 48 (1996). A petition that sets forth a complaint not cognizable in habeas corpus may be dismissed. *Id.* For the following reasons, the Court of Appeals properly held that Daggett's claim was insufficient to withstand dismissal.

The general rule is that habeas corpus relief is not available where there is an adequate remedy at law. *Luna v. Russell,* 70 Ohio St.3d 561, 562 (1994); *State ex rel. Fryerson v. Tate*, 84 Ohio St.3d 481, 1999 Ohio 465. When an adequate remedy in the ordinary course of law exists, habeas corpus may not be used as a substitute for appeal or post-conviction relief. *Id.* If an issue raised in a petition for a writ of habeas corpus could have been raised on direct appeal or in a

petition for post-conviction relief, the petition will be denied. *Heddleston v. Mack,* 84 Ohio St.3d 213, 1998 Ohio 320. Sentencing errors may not be corrected in a habeas corpus proceeding. Such an issue can only be considered on direct appeal or through post-conviction relief. *See Howard v. Randle,* 95 Ohio St. 3d 281, 2002 Ohio 2122. In *Howard,* this Court also held that there exists an adequate remedy at law to pursue the following non-exhaustive list of claims, (1) an unconstitutional amendment of an indictment, (2), a defective indictment, (3) sentencing errors, including a violation of the prohibition against ex post facto laws, and several others.

In the instant case, Daggett's claim could have been presented on direct appeal. Daggett did not, however, file an appeal of his conviction or sentence to the Summit County Court of Appeals.

Though a habeas petitioner may appropriately challenge the jurisdiction of the sentencing court in habeas corpus, per *Wireman v. Ohio Adult Parole Authority*, 38 Ohio St.3d 322 (1988), or use habeas corpus to argue that his sentence has expired, per *Frazier v. Stickrath,* 42 Ohio App. 3d 114, 115-116 (1988), Daggett has not properly made such a claim; he argues that his sentencing entries are invalid and require correction in such a way that his sentence will be found to have expired. However, his argument is not cogent since a habeas corpus court may not correct a sentencing entry.

In *Pratts v. Hurley,* 2004 Ohio 1980, this Court held that habeas corpus will lie when a judgment is void due to lack of jurisdiction; however, habeas is not the proper remedy for reviewing errors by a court that properly had subject-matter jurisdiction. *Id.* at ¶10. "Jurisdiction," this Court said, means the courts' statutory or constitutional power to adjudicate the case; the term encompasses jurisdiction over the subject matter and over the person. *Id.* at

¶11. Once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, the right to hear and determine is perfect; and the decision of every question thereafter arising is but the exercise of the jurisdiction thus conferred. Responding to the particular challenge made by petitioner Pratts, this Court said first that the court of common pleas has original jurisdiction over crimes and offenses committed by an adult, with certain exceptions not relevant here. Ohio R.C. §2931.03; Ohio Const. art. IV, §4(B). Additionally, the common pleas court had jurisdiction over his person since he committed a crime within the state. R.C. §2901.11.

The Fifth District Court of Appeals was thus correct in holding that Daggett's claim was not reviewable in habeas corpus, rather upon direct appeal. *See Daggett v. Bradshaw*, *Id.* at P5. *See also , e.g., Bellman v. Jago*, 38 Ohio St.3d 55, 55-56 (1988) (due process violations); *Shroyer v. Banks,* 123 Ohio St.3d 88, 2009 Ohio 4080, at ¶1 (validity of an indictment); *Tucker v. Collins*, 64 Ohio St.3d 77, 78 (1992)(waiver of counsel); *Cammon v. Brigano*, 101 Ohio St.3d 133, 2004 Ohio 316, at ¶4 (errors in the admission of evidence); *Smith v. Mitchell*, 80 Ohio St.3d 624, 625, 1999 Ohio 177 (jury instructions); *Junius v. Eberlin*, 122 Ohio St.3d 23, 2009 Ohio 2383, ¶1 (ineffective assistance of counsel); *Dunn v. Smith,* 119 Ohio St.3d 364, 2008 Ohio 4565, at ¶7-9 (Crim. R. 32(C) sentencing errors); *State ex. rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005 Ohio 2591 (sentencing errors); and *Wilson v. Hudson*, 127 Ohio St.3d 31, 2010 Ohio 4990 (sentencing errors and others).

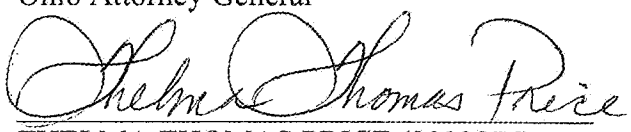
Because Daggett had the right to present his above claim on direct appeal, he had an adequate alternative legal remedy. Therefore, his Petition for writ of habeas corpus was properly dismissed and the decision of the Court of Appeals must be affirmed.

CONCLUSION

Based upon Proposition of Law I, this Court should affirm the decision of the Fifth District Court of Appeals dismissing Daggett's petition for failure to state a claim upon which relief can be granted.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Brief of Appellee Warden Bradshaw* was served by regular U.S. mail, postage prepaid, on this 24th day of June, 2013 upon the following parties: Petitioner-Appellant, Leotis M. Daggett, #602-994, Richland Correctional Institution, P.O. Box 8107, Mansfield, Ohio 44901.

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§ 2725.01. Persons entitled to writ of habeas corpus
Citation: **OHIO REV. CODE ANN. 2725.05**
Section: **ORC Ann. 2725.01**

ORC Ann. 2725.01

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ORC Ann. 2725.01 (2013)

§ 2725.01. Persons entitled to writ of habeas corpus

Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.

History:

RS § 5726; S&C 681; 29 v 164; GC § 12161; Bureau of Code Revision. Eff 10-1-53.

Related Statutes & Rules:

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Extradition proceedings, RC § 2963.09.

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ORC Ann. 2725.04 (2013)

§ 2725.04. Application for writ

Application for the writ of habeas corpus shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify:

(A) That the person in whose behalf the application is made is imprisoned, or restrained of his liberty;

(B) The officer, or name of the person by whom the prisoner is so confined or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation and the person who is served with the writ is deemed the person intended;

(C) The place where the prisoner is so imprisoned or restrained, if known;

(D) A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without legal authority, such fact must appear.

History: