

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO EX REL. : NO. 2014 - 2223
TRACIE M. HUNTER :

Petitioner :

vs. :

THE HON. CUNNINGHAM,
JUDGE, FIRST DISTRICT COURT
OF APPEALS, :

THIS IS AN ORIGINAL ACTION

AND :

THE FIRST DISTRICT COURT OF
APPEALS, :

AND :

HON. JIM NEIL, SHERIFF,
HAMILTON COUNTY, OHIO :

Respondents :

BRIEF OF RELATOR, SHERIFF JIM NEIL
FILED PURSUANT TO ORDER DATED DECEMBER 24, 2014

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IN THE
SUPREME COURT OF OHIO

STATE OF OHIO EX REL. TRACIE M. HUNTER : NO. 2013-1694
Petitioner : This Is An Original Action
vs. : **BRIEF OF RESPONDENT**
 : **SHERIFF JIM NEIL FILED**
 : **PURSUANT TO ORDER DATED**
 : **DECEMBER 24, 2014**
THE HONORABLE, PENELOPE CUNNINGHAM, JUDGE, FIRST DISTRICT COURT OF APPEALS,
ET AL.
Respondent

MEMORANDUM

A. Statement of the Case

Tracie M. Hunter was convicted of the Fourth Degree Felony of Having an Unlawful Interest in a Public Contract in violation of *R.C. 2921.42* in case number B-1400110 by the Hamilton County Court of Common Pleas. She was sentenced to the Hamilton County Justice Center for six months and one year community control. (Petition Exhibit 1) The Court of Common Pleas denied a stay pending appeal and ordered her to begin serving the six month jail sentence on Monday, December 29, 2014. (Petition Exhibit 4). The Court of Appeals denied a stay pending appeal as well in cases C-140684, C-140704, and C-140717 on December 22, 2014. (Petition Exhibit 8).

Relator Hunter filed an original action in Habeas, Mandamus, and Prohibition in this Court on December 24, 2014. Respondent Neil has no role to play in determining whether a person convicted of a Felony is granted a stay pending appeal and can only speculate that

perhaps Relator Hunter's two failures to obey Court Orders played a role in the determination not to grant a stay pending appeal¹.

The only portion of the Petition that concerns Respondent Sheriff Neil appears to be a request for a restraining order under the guise of a Writ of Prohibition to prevent him from admitting Relator Hunter to the Hamilton County Justice Center. (Petition paragraph 41). Attached to the Relator Hunter's Petition is Exhibit 4-C. It discusses the Hamilton County Justice Center Population on December 12, 2014, not December 29, 2014. It also does not discuss the Medical condition of Relator Hunter set out in The Exhibit 4-B to Relator Hunter's Petition. Based upon this Exhibit, Judge Hunter may have to be placed in the medical unit. If anything at all, Exhibit 4-C to the Petition confirms that Respondent Sheriff Neil and his staff have administrative tools available to manage the jail population in Hamilton County, Ohio when Relator Hunter reports to begin serving her sentence. The Petition itself, does not appear to make any allegations pertaining to Respondent Sheriff Neil based upon Exhibits 4-B or 4-C to the Relator Hunter's Petition.

¹ See *State ex rel. Cincinnati Enquirer v. Hunter* (2013) 138 Ohio St. 3d 51; and *In re Tracie M. Hunter* Supreme Court Case No. 2014-1805.

B. Argument

There are three Counts in the Relator Hunter's Petition. Only one, Count III applies to Respondent Sheriff Neil. The remaining counts, Count I and Count II apply to the First District Court of Appeals which is represented by the Ohio Attorney General. To any extent that Counts I and Counts II are construed as applying to Respondent Sheriff Neil, the responses of the Ohio Attorney General are incorporated by reference.

Proposition of Law 1

The Supreme Court of Ohio Does not Have Jurisdiction to Grant Injunctive Relief.

This Court's original jurisdiction is outlined in Article IV, Section 2(B) of the Ohio Constitution. In her Petition, Relator seeks an order of this Court to restrain the Hamilton County Sheriff from admitting Respondent Hunter in compliance with the Orders of the Court of Appeals and Court of Common Pleas. (See Relator Hunter's Petition, paragraph 41, Exhibits 4 and 8). The injunctive relief sought by Relator is outside of this Court's original jurisdiction.

Where a petition filed in the Supreme Court or in the Court of Appeals is in the form of a proceeding in mandamus but the substance of the allegations makes it manifest that the real object of the relator is for an injunction, * * * the action must be dismissed for want of jurisdiction. [W]here a petition is labelled an 'action in mandamus' but its allegations, in effect, seek an injunctive remedy to restrain and enjoin the respondents rather than to compel respondents to perform a clear legal duty, such a petition does not state a cause of action in mandamus but states a cause of action in injunction, and since this court does not have original jurisdiction in injunction, such a petition must be dismissed on the ground that it does not state a cause of action in mandamus.

State ex rel. Governor v. Taft (1994), 71 Ohio St. 3d 1, 3, 640 N.E.2d 1136, 1137-38 (1994) (quoting *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141, 40 O.O.2d 141, 228 N.E.2d 631).

Proposition of Law 2

The Respondent Sheriff Neil has a mandatory duty to accept Relator Tracie M. Hunter when she arrives to begin serving her sentence on December 29, 2014 as ordered by the Hamilton County Court of Common Pleas.

In the case involving Relator Hunter, the Hamilton County Court of Common Pleas ordered her to turn herself into the Sheriff on December 29, 2014. (Relator's Petition, Exhibit 4).

R.C.2949.08 specifically provides:

(A) When a person who is convicted of or pleads guilty to a felony is sentenced to a community residential sanction in a community-based correctional facility pursuant to section 2929.16 of the Revised Code or **when a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person's conviction to the jailer, administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.**

Under this statute, the Respondent Sheriff Neil has a mandatory duty to take and keep custody of Relator Tracie M. Hunter based upon the order of the Court of Common Pleas.

Exhibit 4-C to the Petition complains about potential overcrowding at the Hamilton County Justice Center on December 12, 2014. This Court has specifically dealt with a case involving a sheriff that has more prisoners than space in a county jail. In *State ex rel. Wellington v. Koby*, (2006) 112 Ohio St. 3d 195, this court considered an original action in prohibition filed by a sheriff to prevent a municipal court from finding him in contempt because there was inadequate space in a county jail. This Court held citing *R.C. 341.02* and *Kohler v. Powell* (1926), 115 Ohio St. 418, 154 N.E. 340:

{¶ 18} Under R.C. 341.01, “[t]he sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.”

{¶ 19} Pursuant to R.C. 341.02, the sheriff or jail administrator prepares policies and procedures for the jail, which are adopted upon approval by the court of common pleas:

{¶ 20} “The sheriff or jail administrator shall prepare written operational policies and procedures and prisoner rules of conduct, and maintain the records prescribed by these policies and procedures in accordance with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.

{¶ 21} “The court of common pleas shall review the jail's operational policies and procedures and prisoner rules of conduct. If the court approves the policies, procedures, and rules of conduct, they shall be adopted.”

{¶ 22} R.C. 341.02 does not vest any exclusive jurisdiction in the court of common pleas to promulgate jail policies and procedures. Instead, R.C. 341.02 merely permits the common pleas court to approve the policies prepared by the sheriff and jail administrator. That did not **802 occur here. In this case, the common pleas court prepared and issued the prisoner-release policy instead of approving a policy prepared by the sheriff.

{¶ 23} Moreover, R.C. 341.02 states nothing about suspending the execution of sentence and releasing prisoners before they have served their sentences. R.C. 341.02 thus does not provide the requisite statutory specificity to permit the sheriff to suspend the execution of a sentence ordered by a court. *State v. Smith* (1989), 42 Ohio St.3d 60, 61, 537 N.E.2d 198.

{¶ 24} In fact, the jail policies and rules of conduct for prisoners must be prepared “in accordance with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.” R.C. 341.02. These minimum standards are set forth in Ohio Adm.Code 5120:1-8-01 to 5120:1-12-19 and do not authorize a sheriff to release inmates before their sentences have expired. Ohio Adm.Code 5120:1-7-01(D); see, also, 2005 Ohio Atty.Gen.Ops. No. 2005-026 (county sheriff may not release from county jail a person who has not served entire term of imprisonment based on concerns of overcrowding and budget shortfalls unless the early release had been ordered by a court or the Governor).

{¶ 25} Furthermore, R.C. 341.12 specifies, “In a county not having sufficient jail or staff, the sheriff shall convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail * * * to a jail in any county which the sheriff considers most convenient and secure.” Under R.C. 341.12, Sheriff Wellington has a duty to convey persons sentenced to imprisonment in the county jail to a jail in another county if Mahoning County has insufficient jail space or staff. Insofar as R.C. 341.02 could be construed to conflict with the manifest mandate of R.C. 341.12, R.C. 341.12 controls. See *Allan Nott Ents., Inc. v. Nicholas Starr Auto., L.L.C.*, 110 Ohio St.3d 112, 2006-Ohio-3819, 851 N.E.2d 479, ¶ 40, citing R.C. 1.51 (“Where statutes conflict, the more specific provision controls over the more general provision”).

Based upon *R. C. 2949.08* and *State ex rel. Wellington v. Kolby*, supra, Respondent

Sheriff Judge Neil has a mandatory duty to accept Relator Hunter as ordered by the Court of

Common Pleas of Hamilton County, Ohio

Proposition of Law 3

Prohibition does not lie against a sheriff with a mandatory duty to accept a prisoner to begin serving a sentence pursuant to an order by the court of common pleas.

To be entitled to the requested writ of prohibition, Relator Hunter must establish that (1) Respondent Sheriff Neil is about to or has exercised judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18; *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12. “Where jurisdiction is patently and unambiguously lacking, relators need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial.” *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15

In *Harris v. Cuyahoga County Sheriff's Department* (8th Dist. 2003) 2003 -Ohio- 564, 2003 WL 253757 explained:

{¶ 5} First, prohibition will not lie because the action of the sheriff in trying to execute the remainder of the sentence is not the exercise of judicial or quasi-judicial power. The effort to execute the order of the court is the exercise of executive or administrative power. Indeed, the sheriff's office is part of the executive branch, and in trying to fulfill the order of the court, it is merely effecting its usual executive duties.

Since the act of accepting a person to begin serving a sentence is not a judicial or quasi-judicial act, a writ of prohibition cannot be issued. See also *State ex rel. Greenwood v. Baals* (1940), 66 Ohio App. 255, 31 N.E.2d 244; *Bank One, Cincinnati v. Wait* (1996), 110 Ohio App.3d 460, 674 N.E.2d 759.

Additionally, Relator Hunter has or had adequate remedies at law through appeal and motions for stay. These preclude the issuance of a writ of prohibition. Compare *State ex rel Sullivan v. McFaul* (8th Dist, 2000), unreported decision 77570; 2000 WL 1006559; *State ex rel Sunderman v. Barber* (1941), 139 Ohio St. 84, 38 N.E.2d 318.

CONCLUSION

The Petition for Writs of Habeas Corpus, Mandamus, and Prohibition should be denied as they pertain to Respondent Sheriff Neil.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon each party of record in this case by U.S. mail on the December 26, 2014 addressed to:

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