Supreme Court of Ohio Clerk of Court - Filed April 29, 2015 - Case No. 2015-0567

In the Supreme Court of Ohio

ARTIE GRISSOM,	:	
	:	**CASE NO. 2015-0567**
Petitioner,	:	
	:	**ORIGINAL ACTION IN**
v.	:	**HABEAS CORPUS, MANDAMUS, &**
	:	**PROHIBITION**
OHIO ADULT PAROLE	:	
AUTHORITY,	:	
	:	
Respondent.		

RESPONDENT'S MOTION TO DISMISS

GEOFFREY L. OGLESBY (0023949)
Oglesby & Oglesby, Attorneys at Law
618 West Washington Street
Sandusky, Ohio 44870
(419) 625-9500
LawOffice@RBOglesby.com

Counsel for Petitioner

MICHAEL DeWINE (0009181)
Ohio Attorney General

PETER L. JAMISON (0086539)
Assistant Attorney General
Counsel of Record
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-0735
Fax: (877) 381-1737 fax
peter.jamison@ohioattorneygeneral.gov

Counsel for Respondent

In the Supreme Court of Ohio

ARTIE GRISSOM,	:	
	:	**CASE NO. 2015-0567**
Petitioner,	:	
	:	**ORIGINAL ACTION IN**
v.	:	**HABEAS CORPUS, MANDAMUS, &**
	:	**PROHIBITION**
OHIO ADULT PAROLE AUTHORITY,	:	
	:	
	:	
Respondent.		

RESPONDENT'S
MOTION TO DISMISS

Respondent the Ohio Adult Parole Authority ("OAPA") moves the Court to dismiss Petitioner Artie Grissom's ("Grissom") petition for failure to state a claim pursuant to Civ.R. 12(B)(6) and S.Ct.Prac.R. 12.04. A memorandum in support is attached.

Respectfully submitted,

MICHAEL DeWINE(0009181)
Ohio Attorney General

s/Peter L. Jamison
PETER L. JAMISON (0086539)
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-0735
Fax: (877) 381-1737
peter.jamison@ohioattorneygeneral.gov

Counsel for Respondent

MEMORANDUM

I. INTRODUCTION

Grissom's petition seeking various extraordinary writs should be dismissed for failure to state a claim. Grissom asks the Court to order Respondent OAPA to terminate the post-release control portion of his February 1999 conviction. (Petition at ¶1). Grissom argues that post-release control was not properly imposed when he was resentenced in March 2010. *Id*. at ¶¶ 2 – 6.

Grissom fails to state a claim because none of the extraordinary writs he asks the Court to issue can provide the relief he seeks. Courts have repeatedly held that writs of mandamus cannot be used as an alternative to a criminal appeal and that the OAPA is not a quasi-judical body for the purposes of a writ of prohibition. Additionally, this Court has consistently rejected habeas petitions from former inmates because they have alternative legal remedies available through direct appeals and petitions for post-conviction relief to challenge the post-release control portions of their sentences.

II. LAW AND ARGUMENT

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. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs*., 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). In order for a trial court to grant a motion to dismiss for failure to state a claim upon which relief may be granted, "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. In construing the complaint upon a Civ.R. 12(B)(6) motion, a court must presume all factual allegations contained in the complaint to be true and make all reasonable

inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). In addressing a Civ.R. 12(B)(6) motion, a trial court may only consider the statements and facts contained in the complaint and may not consider or rely on evidence outside the complaint. *Estate of Sherman v. Millhon*, 104 Ohio App.3d 614, 617, 662 N.E.2d 1098 (10th Dist. 1995)

A. Grissom cannot use a writ of mandamus to prohibit the enforcement of the post-release control portion of his criminal sentence.

In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law. *State ex rel. Evans v. Indus. Comm. of Ohio*, 64 Ohio St.3d 236, 238, 594 N.E.2d 609 (1992); *State ex rel. Fant v. Clerk of Courts*, 62 Ohio St.3d 530, 531, 584 N.E.2d 721 (1992); *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29, 451 N.E.2d 225 (1983). A failure to show any one of these prerequisites requires the court to deny the petition or complaint. *State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 614 N.E.2d 827 (4th Dist. 1992).

Ohio courts regularly deny mandamus relief to parties asking the court to prohibit or enforce some aspect of their criminal conviction. *See, e.g., State v. Atkinson v. Ohio Adult Parole Auth.*, 8th Dist. Cuyahoga No. 93518, 2009-Ohio-6654, ¶¶ 5 – 6 (denying petition for writ of mandamus, holding that direct appeal is an adequate remedy at law to challenge the imposition of post-release control); *see also, State ex rel. Billings v. Friedland*, 88 Ohio St.3d 237, 238, 724 N.E.2d 1151 (2000) (holding that mandamus actions may not be used to re-litigate unsuccessful criminal appeals).[1] Because Grissom's direct appeal provided an adequate remedy

[1] After his 2010 resentencing, Grissom raised essentially the same argument that he makes in this case, i.e., that he was improperly sentenced to post-release control. *See State v. Grissom*, 6th Dist. Nos. E-10-017 & E-10-037, 2011-Ohio-153. The appellate court rejected Grissom's argument and affirmed his

at law, a writ of mandamus cannot be issued to prohibit OAPA from enforcing his post-release control.

B. A writ of prohibition may not issue because this Court has explicitly held that the OAPA does not exercise quasi-judicial authority.

To obtain a writ of prohibition, a petitioner must establish that (1) respondents are about to exercise 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. Sellers v. Gerken*, 72 Ohio St.3d 115, 116, 647 N.E.2d 807 (1995). Grissom's Petition asserts that the OAPA is "practicing quasi-judicial" authority in its administration of his post-release control. (Petition at ¶15). This Court has affirmatively held that the OAPA does not exercise such authority: "[N]either the APA nor its parole officers exercised judicial or quasi-judicial authority in imposing post-release control." *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St. 3d 72, 2003-Ohio-5062 ¶7, citing *State ex rel. Potts v. Comm. on Continuing Legal Edn.*, 93 Ohio St.3d 452, 455, 755 N.E.2d 886 (2001); *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 186, 718 N.E.2d 908 (1990). Because the OAPA does not exercise judicial or quasi-judicial power, a writ of prohibition is not an appropriate remedy for Grissom, and his request for such a writ should be denied.

C. A writ of habeas corpus may not issue for Grissom because his direct criminal appeal provided an adequate legal remedy to address his post-release control argument.

Habeas relief is available only when the petitioner is entitled to immediate release from confinement. *Pewitt v. Superintendent, Lorain Correctional Inst.*, 64 Ohio St.3d 470, 597 N.E.2d 92 (1992); R.C. 2725.01, et seq.; R.C. 2725.17. Habeas corpus is an extraordinary remedy and normally is appropriate only when there is no alternative legal remedy. *State ex rel.*

---

sentencing court's decision. *Id*. at ¶¶ 12, 17. This Court declined to accept jurisdiction over his appeal. *State v. Grisom*, 129 Ohio St.3d 1454, 2011-Ohio-4217, 951 N.E.2d 1049.

Jackson v. McFaul, 73 Ohio St.3d 185, 186, 652 N.E.2d 746 (1995). Habeas corpus may not be used as a substitute for other forms of action, such as direct appeals or petitions for post-conviction relief. *Adams v. Humphreys*, 27 Ohio St.3d 43, 500 N.E.2d 1373 (1986).

In *Patterson v. Ohio Adult Parole Auth.*, this Court explicitly held that a former inmate may not challenge the imposition of post-release control through a habeas petition. 120 Ohio St.3d 311, 2008-Ohio-6147. Following his release from prison, Patterson filed a habeas petition with the Fifth District Court of Appeals and asked that his post-release control be terminated. *Id*. at ¶4. Patterson argued that his sentencing court had failed to properly notify him that he might be subject to post-release control. *Id*. The Fifth District dismissed Patterson's petition, holding that habeas corpus is not an available remedy to challenge the imposition of post-release control and because he was no longer physically incarcerated. *Id*. at ¶5. On appeal, this Court affirmed the appellate court's decision, holding that even if habeas corpus was a viable option to challenge post-release control, it is still not available when there is an adequate remedy in the ordinary course of law. *Id*. at ¶8 "Patterson had an adequate remedy by way of direct appeal from his sentence to raise his claim that he did not receive proper notification about post-release control at his sentencing hearing." *Id*., citing *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, ¶45.

Grissom, like the petitioner in *Patterson*, challenges his post-release control based on the manner in which his sentencing court imposed that portion of his sentence. (Petition at ¶¶ 2 – 6). However, these arguments could have been raised in a direct appeal or a post-conviction relief petition. *See* R.C. 2953.21. In fact, Grissom did raise these arguments in a direct appeal. *See State v. Grissom*, 6th Dist. Erie Nos. E-10-017 & E-10-037, 2011-Ohio-153. The appellate court rejected Grissom's argument and affirmed the sentencing court's decision. *Id*. at ¶¶ 12, 17.

Grissom then asked this Court to accept jurisdiction over his appeal and his request was declined. *State v. Grisom*, 129 Ohio St.3d 1454, 2011-Ohio-4217, 951 N.E.2d 1049. Because Grissom had an adequate remedy at law to raise the issue of his resentencing, his argument is not cognizable in habeas corpus. Moreover because he could, and did, raise this argument on direct appeal, "*res judicata* bars him from using habeas corpus to obtain a successive appellate review." *Shie v. Smith*, 123 Ohio St. 3d 89, 914 N.E.2d 369, 2009-Ohio-4079, ¶2.

Grissom fails to state a cognizable habeas corpus claim, and therefore his petition should be dismissed.

III. CONCLUSION

For the foregoing reasons, Respondents move the Court to dismiss Grissom's petition for failure to state a claim upon which relief can be granted.

Respectfully submitted,

MICHAEL DeWINE (0009181)
Ohio Attorney General

s/Peter L. Jamison
PETER L. JAMISON (0086539)
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-0735
Fax: (877) 381-1737
peter.jamison@ohioattorneygeneral.gov

Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on April 29, 2015, a copy of the foregoing *Respondent's Motion to Dismiss* was filed with the Court through its electronic filing system and a copy was sent via regular U.S. mail to:

Geoffrey L. Oglesby
Oglesby & Oglesby, Attorneys at Law
618 West Washington Street
Sandusky, Ohio 44870

s/Peter L. Jamison
PETER L. JAMISON
Assistant Attorney General