

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL THEODORE JACKSON : CASE NO. 2015-1477

Petitioner-Appellant : HABEAS CORPUS

v. : Court of Appeals, Ashtabula
County, Eleventh App. Dist.

BRIGHAM SLOAN, WARDEN : Case no. 2015-A-0028

Respondent-Appellee :

MERIT BRIEF OF RESPONDENT-APPELLEE

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Statement of facts

The petitioner (hereafter “Jackson”) filed two prior proceedings related to his present habeas petition that are reflected in this Court’s online docket in docket numbers 2013-0288 and 2012-0282.

Case number 2012-0282

As it appears on this Court’s online docket for case number 2012-0282, Jackson filed an appeal of the denial of his first habeas petition by the Court of Common Pleas to the Third Appellate District for Marion County in case number 9-11-37. This Court’s online docket contains a copy of the Third Appellate District’s decision affirming the denial of Jackson’s habeas petition in the Court of Common Pleas. *State ex rel. Theodore Jackson v. Warden*, 3rd Dist. Marion No. 9-11-37 (January 17, 2012). The decision by the Third Appellate District is exhaustive and directly on point on the merits of the present habeas petition that Jackson is appealing to this Court. This Court declined jurisdiction on May 9, 2012, and denied Jackson’s motion for reconsideration.

Jackson’s prior habeas petition and its appeal to this Court in case number 2012-0282 render Jackson’s present habeas petition and its appeal successive to the prior habeas petition and appeal.

Case number 2013-0288

As it appears on this Court’s online docket for case number 2013-0288, Jackson filed an appeal in the Eighth Appellate District for Cuyahoga County in case number 98157 from a denial of a motion to withdraw his guilty plea that pertains to a factual issue surrounding Jackson’s guilty plea to attempted escape that is common to both Jackson’s present appeal and his prior appeal of the dismissal of his prior habeas petition. *State v. Jackson*, 8th Dist. Cuyahoga No.

98157, 2012 WL 6512968 (December 13, 2012). The factual issue that was litigated below and before this Court in the prior appeal is that when Jackson was released from prison in 2005, he was not placed on post-release control but on parole supervision because of his release from an indefinite prison sentence. *Id* at ¶13. Jackson continues to contest this factual issue.

This Court declined jurisdiction in case number 2013-0288 and likewise denied Jackson's motion for reconsideration.

Case number 2015-1477

The present pending appeal is from the decision of the Eleventh Appellate District set forth at *State ex rel. Jackson v. Sloan*, 11th Dist. Ashtabula No. 2015-A-0028, 2015 WL 4751384 (August 10, 2015).

Other proceedings

Jackson has filed numerous proceedings in this Court that are related to his present perceived predicament.

Most recently Jackson has appealed to this Court for a writ of mandamus in case number 2015-1609 directed to the judges of the Eleventh Appellate District who decided against Jackson's appeal in the present pending proceeding. That case is pending decision in this Court.

In case number 2015-1010, Jackson again appealed to this Court for a writ of mandamus that appears to relate to the same merits as the present habeas petition presently before this Court. The last pleading in case number 2015-1010 is Jackson's reply to a motion to dismiss an amendment to his petition that apparently has to do with the same disputed fact in this case regarding an unsigned order that was ruled on by the Eleventh Appellate District in this case. *State of Ohio ex rel. Theodore Jackson v. Brigham Sloan, Warden*, 11th Dist. Ashtabula No. 2015-A-0028, 2015 WL 4751384 (August 10, 2015) at ¶15.

In case number 2013-0306, Jackson again appealed to this Court regarding an issue related to Jackson's guilty plea to attempted escape that is factually involved to the present case before this Court. This Court declined jurisdiction and denied a reconsideration motion.

In case number 2013-0082, Jackson yet again sought a mandamus writ on issues factually related to the present appeal. This Court declined jurisdiction and denied a reconsideration motion.

Yet again in case number 2012-2159 Jackson sought redress from an asserted invalid sentence that brought in train Jackson's present predicament. This Court again denied Jackson's appeal and denied Jackson's motion for reconsideration.

Jackson presented an appeal to this Court in case number 2012-1024 that yet again involves Jackson's arrest in 2009 and conviction for attempted escape. This Court declined jurisdiction of that case as well.

In short, Jackson has been a prolific litigator on all the issues surrounding his last conviction and his current sentence. This Court has yet to find merit in any of Jackson's numerous appeals.

Argument

Proposition of law No. 1: The Court of Appeals for the Eleventh District correctly determined that because the petitioner failed to attach a copy of his commitment papers his habeas petition must be dismissed, and the petitioner does not contest that he failed to attach the necessary papers.

Jackson's *pro se* argument in this Court presents a challenge of interpretation, but the following appears to be uncontested.

The Court of Appeals for the Eleventh District held as follows:

{¶14} Jackson's Petition is subject to dismissal for his failure to attach all commitment papers as required by R.C. 2725.04(D) ("[a] copy of the commitment or cause of detention of such person shall be exhibited * * * ; or, if the imprisonment or detention is without legal authority, such fact must appear"). *Al'Shahid v. Cook*, __ Ohio St. 3d __, 2015-Ohio-2079, __ N.E.2d __, ¶8 (cases cited). For this reason, we dismiss the Petition. *Pence v. Bunting*, __ Ohio St.3d __, 2015-Ohio-2026, __ N.E.2d __, ¶6 (cases cited).

* * *

{¶16} As Jackson's Petition is fatally defective due to his failure to attach all relevant commitment papers, it is, accordingly, dismissed.

State of Ohio ex rel. Theodore Jackson v. Brigham Sloan, Warden, 11th Dist. Ashtabula No. 2015-A-0028, 2015 WL 4751384 (August 10, 2015) at ¶¶14; 16.

In Jackson's brief before this Court in his first proposition of law Jackson argues that habeas corpus is the proper remedy when all journalized sentences have expired, citing Ohio and United States constitutional authority. The warden does not concede that the journalized sentences have expired, but in any event Jackson's argument in this Court—as best the respondent can determine what Jackson's argument is—does not contest the Eleventh District's decision that Jackson failed to attach his commitment papers. For this reason alone, Jackson's appeal of the dismissal of Jackson's habeas petition must be affirmed.

Proposition of law No. 2: The petitioner fails to demonstrate that he is entitled to release from incarceration under the provisions of Ohio Revised Code 2725.05.

Ohio Revised Code §2725.05 provides as follows:

If it appears that a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ of habeas corpus shall not be allowed. If the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order.

The Eleventh District Court of Appeals, in deciding the sole disputed issue, correctly determined that under Ohio Revised Code §2725.05, the respondent is entitled to judgment as a matter of law. The Eleventh District held as follows:

{¶15} Were this court inclined to consider the merits of Jackson's Petition, Sloan has demonstrated that he is entitled to judgment as a matter of law. The sole disputed issue with respect to Jackson's incarceration is the validity of the June 18, 1981 Journal Entry in Case No. CR-81-162099-ZA. Contrary to Jackson's contention, the sentencing Entry is duly journalized in the trial court's docket. Jackson cites no authority, nor is this court aware of any, for the proposition that a judgment is "void on its face" for not being signed by a judge. On the contrary, the Ohio Supreme Court has held that "such errors are not of the nature which are cognizable in a habeas corpus proceeding." *Dean v. Maxwell*, 174 Ohio St. 193, 198, 187 N.E.2d 884 (1963).

State of Ohio ex rel. Theodore Jackson v. Brigham Sloan, Warden, 11th Dist. Ashtabula No. 2015-A-0028, 2015 WL 4751384 (August 10, 2015) at ¶15.

The Eleventh District Court of Appeals is correct in its interpretation of Ohio law that the proposition Jackson asserts is not cognizable in a habeas corpus proceeding in light of the holding in *Dean v. Maxwell*. Jackson's argument to the contrary in his second proposition of law is unavailing. Jackson fails to demonstrate that he is entitled to release in light of the provisions of Ohio Revised Code §2725.05.

Proposition of Law No. 3: In the alternative, the petitioner is not entitled to release in habeas corpus because his present habeas petition is barred by res judicata and is successive.

The Eleventh District Court of Appeals noted but did not apply respondent's argument regarding res judicata and a successive habeas petition.

{¶10} Sloan raised additional arguments in his Motion to Dismiss based on res judicata/successive habeas petitions and the availability of an adequate remedy in the ordinary course of law.

State of Ohio ex rel. Theodore Jackson v. Brigham Sloan, Warden, 11th Dist. Ashtabula No. 2015-A-0028, 2015 WL 4751384 (August 10, 2015) at ¶10.

It is well settled that res judicata bars a defendant from raising a defense that could have been raised on direct appeal in a proceeding other than an appeal of the conviction. This is the so-called "Perry Rule." *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E. 2d 104 (1967); *see also, State ex rel. Johnson v. Pineda*, 126 Ohio St.3d 480, 2010 Ohio 4387, 935 N.E.2d 38 at ¶1 (Holding that res judicata is applicable to habeas petitioners because habeas petitioners have the right to appeal adverse judgments in habeas cases). Jackson's defenses in his present habeas proceeding are of the sort that could have been raised either on direct appeal or on appeal of his prior habeas petition.

Even if some of Jackson's defenses are not clearly of a sort that could have been raised on appeal—and it is not always easy to see what Jackson means in his pleadings—nonetheless, Jackson's present habeas petition is successive to his prior habeas petition. Jackson's present habeas petition is barred for that reason alone. *See, e.g., State ex rel. Harsh v. Sheets*, 132 Ohio St.3d 198, 2012 Ohio 2368, 970 N.E.2d 926 at ¶2.

For these additional reasons, the decision of the Eleventh Appellate District dismissing Jackson's habeas petition should be affirmed.

Conclusion

For any one of the three reasons stated herein, the decision of the Eleventh Appellate District dismissing Jackson's habeas petition should be affirmed.

Respectfully submitted,

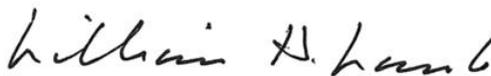
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Certificate of Service

I hereby certify that on the 28th day of October, 2015, a copy of the foregoing was mailed by regular first-class mail to the petitioner, Mr. Theodore Jackson, #A590-406, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, Ohio 44030.



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