

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

|                        |   |                             |
|------------------------|---|-----------------------------|
| AARON L. JONES,        | : | <b>PER CURIAM OPINION</b>   |
| Petitioner,            | : | <b>CASE NO. 2010-T-0020</b> |
| - vs -                 | : |                             |
| BENNIE KELLEY, WARDEN, | : |                             |
| TRUMBULL CORRECTIONAL  | : |                             |
| INSTITUTION,           | : |                             |
| Respondent.            | : |                             |

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

*Aaron L. Jones*, pro se, PID: 511342, Trumbull Correctional Institution, P.O. Box 901, 5701 Burnett Road, Leavittsburg, OH 44430-0901 (Petitioner).

*Richard Cordray*, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Diane Mallory*, Assistant Attorney General, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This original action in habeas corpus is presently before this court for final disposition of the motion to dismiss of respondent, Warden Bennie Kelly of the Trumbull Correctional Institution. As the sole grounds for his motion, respondent maintains that petitioner, Aaron L. Jones, cannot contest the merits of his underlying conviction in the context of the instant proceeding because he has failed to raise an issue which could

not be properly litigated in a direct appeal. For the following reasons, we conclude that the motion to dismiss is well-taken.

{¶2} A review of the limited materials before this court indicates that petitioner's present incarceration in the correctional institution is based upon a July 2006 conviction in the Mahoning County Court of Common Pleas. Following a jury trial, petitioner was found guilty on one count of aggravated robbery and one count of aggravated burglary. After conducting a separate sentencing proceeding, the trial court ordered him to serve a maximum term of ten years on each offense, with the two terms for both crimes to run consecutively.

{¶3} In bringing the instant original action, petitioner has essentially sought to challenge the legal propriety of the underlying conviction. Specifically, he asserts in his petition that he was denied a fair trial because the following six errors took place: (1) his right to effective assistance of trial counsel was violated; (2) his basic right to a speedy trial was violated; (3) the trial court failed to properly instruct the jury to totally disregard certain testimony; (4) his conviction was not supported by legally sufficient evidence; (5) his conviction was against the manifest weight of the evidence; and (6) the trial court erred in sentencing him to an aggregate term of twenty years when his prior record did not contain any convictions for a serious offense.

{¶4} Even though petitioner's "complaint" in the instant action was captioned as a petition for a writ of habeas corpus, a review of the text of the document readily shows that it did not follow the typical format for setting forth the factual foundation of his claim. Instead, the document was styled in the manner of an appellate brief, with six specific assignments of error. Furthermore, for his final relief, petitioner did not seek his release

from the correctional institution; rather, he merely requested this court to issue an order under which the Mahoning County trial court would be required to hold a new trial.

{¶5} In now moving to dismiss the petition under Civ.R. 12(B)(6), respondent contends that petitioner is not entitled to proceed on the merits because he has failed to assert any issue which is cognizable in habeas corpus. Specifically, respondent argues that the six issues referenced by petitioner cannot be reviewed in a habeas corpus case because they do not raise a challenge to the basic jurisdiction of the Mahoning County trial court. He further argues that a writ of habeas corpus can never lie under the facts of this matter because petitioner had the ability to litigate the substance of the six issues in a direct appeal of his conviction.

{¶6} As this court has discussed on numerous prior occasions, the instances in which a writ of habeas corpus will issue in favor of a prison inmate is somewhat limited. First, we have consistently indicated that, unless a state prisoner has served his entire maximum sentence, the writ will only lie when the prisoner can successfully challenge the jurisdiction of the trial court which imposed his sentence. *State ex rel. Thompson v. Gansheimer*, 11th Dist. No. 2006-A-0086, 2007-Ohio-3477, at ¶12. Based on this, we have expressly stated that “a habeas corpus petition fails to state a viable claim for the writ when it does not allege that the trial court committed an error which deprived it of jurisdiction over the case.” *State ex el. Vinson v. Gansheimer*, 11th Dist. No. 2007-A-0042, 2007-Ohio 5205, at ¶6.

{¶7} Second, the case law of this court has also indicated that the writ cannot be granted when the inmate is able to pursue an alternative legal remedy and obtain the same relief which was requested in the habeas corpus petition. *Id.* “\*\*\* Hence, a viable

claim in habeas corpus has two essential elements: the existence of a jurisdictional error in the underlying proceedings; and the lack of an adequate remedy in the normal course of the law.” *Crites v. Kelley*, 11th Dist. No. 2009-T-0100, 2010-Ohio-1800, at ¶8, quoting *Roby v. Kelley*, 11th Dist. No. 2009-T-0062, 2009-Ohio-5896, at ¶6-7.

{¶8} In light of the foregoing elementary principles, this court has specifically held that a state inmate cannot employ a habeas corpus case as a means of contesting the effectiveness of his counsel at the trial level. *Vinson*, 2007-Ohio-5205, at ¶10. This holding stems from the fact that: (1) any problems in the actions of trial counsel would have no effect upon the trial court’s jurisdiction; and (2) the inmate could fully litigate such an issue in a direct appeal of his conviction. *Id.* For the identical reasons, we have held that allegations of a possible violation of the inmate’s speedy trial rights are insufficient to state a cognizable claim in habeas corpus. *Armstrong v. Altieri*, 11th Dist. No. 2006-T-0011, 2006-Ohio-2390, at ¶13. This court has also followed the foregoing basic logic in regard to alleged errors in the imposition of an inmate’s sentence. *Thompson*, 2007-Ohio-3477, at ¶15.

{¶9} A review of the foregoing case law readily shows that our prior analysis is predicated upon the earlier precedent of the Supreme Court of Ohio. Thus, in *Flora v. Rogers* (1993), 67 Ohio St.3d 441, the Supreme Court concluded that a viable claim in habeas corpus could not be based upon an allegation that an improper instruction had been submitted to the jury at the close of the criminal trial. In reaching this conclusion, the *Flora* court adopted the earlier analysis of the court of appeals, in which it had been held that an alleged error in the jury instructions did not constitute an attack upon the jurisdiction of the trial court and was merely possible grounds for a direct appeal. See,

also, *State ex rel. Beaver v. Konteh* (1998), 83 Ohio St.3d 519.

{¶10} Clearly, the *Flora* and *Beaver* precedent would apply to petitioner's "jury instruction" allegation in the instant matter, just as the *Vinson*, *Armstrong*, and *Thompson* precedent of this court would govern his allegations of ineffective assistance, violation of his speedy trial rights, and sentencing errors.

{¶11} As to petitioner's remaining assertions concerning the sufficiency and manifest weight of the evidence against him, it should be noted that the Supreme Court has expressly held that questions of proof in a criminal trial cannot be reviewed as part of a habeas corpus proceeding because such questions can be adequately litigated in a direct appeal. *Spence v. Sacks* (1962), 173 Ohio St. 419, 420. In light of this general precedent, the Supreme Court has further indicated that an issue of sufficiency is not a viable basis for a habeas corpus claim. *Weber v. Kelly*, 120 Ohio St.3d 440, 2008-Ohio-6695, at ¶8. Given that a "manifest weight" issue also raises a challenge to the basic propriety of the "proof" submitted by the state, logic dictates that the identical analysis would apply; i.e., such an issue cannot be fully litigated in a collateral habeas corpus action because a direct appeal constitutes an adequate legal remedy.

{¶12} Pursuant to the cases cited above, none of the six factual allegations set forth in the present habeas corpus petition are legally sufficient to state a viable claim for the writ. That is, not only do the various allegations fail to assert a proper challenge to the jurisdiction of the Mahoning County trial court, but they also raise issues which could be the subject of a direct appeal from the underlying conviction. Therefore, since none of the allegations can satisfy either element for the writ, petitioner will not be able to prove a set of facts under which he would be entitled to the issuance of the writ.

{¶13} As a final point, this court would again note that the petition before us was presented in the form of an appellate brief, in which petitioner attempted to assert six assignments of error regarding his conviction. In trying to explain in his motion to dismiss the reason why petitioner may have chosen to style his petition in this manner, respondent stated that, following the imposition of his sentence in July 2006, petitioner filed an appeal of his conviction with the Seventh Appellate District. Respondent further stated that this direct appeal was fully litigated and subsequently resulted in a complete affirmance of the conviction. See *State v. Jones*, 7th Dist. No. 06 MA 109, 2008-Ohio-1541.

{¶14} Our review of the Seventh Appellate District's opinion readily shows that the six assignments of error raised in the direct appeal are identical to the six assertions set forth in the habeas corpus petition. Thus, in bringing the instant case, petitioner was essentially requesting this court to reconsider the final merits of his original appeal and order a new trial.

{¶15} As to this point, we would indicate that, since Mahoning County does not lie within our territorial jurisdiction, we do not have the ability to review a final judgment of the Mahoning County Court of Common Pleas. The sole basis for our authority over this matter is that, because petitioner is an inmate at a state prison within our territorial jurisdiction, we have the ability to hear an original action in habeas corpus. However, inasmuch as a proper habeas corpus claim can only be predicated upon an alleged jurisdictional error, the six alleged procedural errors cited by petitioner are legally insufficient to delineate a legitimate cause of action. As a result, the dismissal of this

matter is warranted under Civ.R. 12(B)(6).<sup>1</sup>

{¶16} Consistent with the foregoing discussion, respondent's motion to dismiss is granted. It is the order of this court that petitioner's habeas corpus petition, as filed on June 4, 2010, is hereby dismissed in its entirety.

MARY JANE TRAPP, P.J., COLLEEN MARY O'TOOLE, J., TIMOTHY P. CANNON, J.,  
concur.

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1. As an aside, this court would emphasize that, in his original pleading in this action, petitioner named the "State of Ohio" as the sole respondent. After the state had moved to dismiss, we permitted petitioner to amend his original pleading and file a properly-designated petition for a writ of habeas corpus. In that petition, he raised the identical allegations which had formed the basis of the original pleading; however, the new submission only named Warden Kelly as the respondent. Since Warden Kelly was the proper defending party in a habeas corpus proceeding, we allowed the matter to proceed and amended the caption of the case accordingly. Nevertheless, we would indicate that, in granting Warden Kelly's motion to dismiss and rendering all other submissions moot, we are disposing of all pending matters as to all parties in this litigation.