

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY, OHIO**

STATE OF OHIO ex rel. MAURICE FREEMAN,	:	<b>O P I N I O N</b>
	:	
Petitioner,	:	
	:	<b>CASE NO. 2014-A-0077</b>
- VS -	:	
	:	
BRIGHAM SLOAN, WARDEN,	:	
	:	
Respondent.		

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

*Maurice Freeman*, pro se, PID: A431-957, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Petitioner).

*Mike DeWine*, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215 (For Respondent).

THOMAS R. WRIGHT, J.

{¶1} This case is a habeas corpus action in which petitioner, Maurice Freeman, seeks his immediate release from the Lake Erie Correctional Institution in Ashtabula County Ohio. Respondent, Warden Brigham Sloan, has moved this court to dismiss the habeas corpus petition on the basis that petitioner's factual allegations are insufficient to establish that he is entitled to be released. For the following reasons, the dismissal of the habeas corpus petition is justified.

{¶2} Petitioner's present incarceration is predicated upon his convictions in two separate criminal cases on one count of aggravated murder, two counts of murder, and two counts of having a weapon while under a disability. After serving over twelve years of his multiple prison terms at the Lorain Correctional Institution, he was transferred to the Lake Erie Correctional Institution. According to petitioner, the Lake Erie prison is owned and operated by a private company, the Corrections Corporations of America.

{¶3} Under his habeas corpus claim, petitioner asserts that his incarceration at the Lake Erie prison is illegal because he is being held by a private entity, as compared to the State of Ohio. In support, he notes that the two trial courts in the underlying cases expressly ordered him to serve his prison term at a state institution. In contending that petitioner's allegations are insufficient to state a viable claim, respondent argues that a writ of habeas corpus will only lie when the prisoner has served his maximum sentence or the sentencing judgments must be declared void for lack of jurisdiction.

{¶4} As a general proposition, a writ of habeas corpus can be issued only when the petitioner has demonstrated that he is entitled to be released immediately. *Keith v. Kelley*, 11th Dist. Trumbull No. 2009-T-0056, 2009-Ohio-6711, ¶26. In considering this requirement in a prior habeas corpus action in which a prisoner contested the propriety of his confinement at the Lake Erie prison, this court has expressly held that this type of action cannot be used to challenge the legality of a privately operated penitentiary. In *Lacy v. Sloan*, 11th Dist. Ashtabula No. 2013-A-0064, 2014-Ohio-1348, the petitioner alleged that his incarceration at the Lake Erie prison was illegal because the institution

was operated by “persons” who were not “governmental.” He further asserted that he was entitled to be released because the statutes governing the private ownership and operation of Ohio prisons had been declared valid. Without addressing the merits of the “privatization” issue, the *Lacy* court concluded that the petitioner’s allegations were not sufficient to state a viable claim for the writ:

{¶5} “Petitioner’s [issues] essentially challenge the locus of his confinement, not the validity of his confinement. The ‘issues’ fail to allege, let alone establish, that petitioner is entitled to immediate release from confinement.” *Id.* at ¶17.

{¶6} The *Lacy* holding is controlling in this case. Unless a prisoner can prove that he has completed his maximum sentence, his entitlement to immediate release can only be established by showing that the sentencing court in the criminal action lacked the jurisdiction to try and convict him. *Crites v. Kelley*, 11th Dist. Trumbull No. 2009-T-0100, 2010-Ohio-1800, ¶7. Here, the trial court in the first criminal proceeding against petitioner sentenced him to twenty years to life on the aggravated murder count; hence, he has not served the maximum sentence on the most serious charge. Moreover, his habeas corpus petition does not contain any allegation that either of the trial courts in the underlying actions lacked jurisdiction to proceed. Accordingly, petitioner has failed to allege sufficient facts to establish the basic requirement for the writ, i.e., the right to be released immediately.

{¶7} As the *Lacy* court indicated, challenges to the use of privately operated prisons merely raise issues as to the place or conditions of a prisoner’s incarceration. Even if it is presumed for the sake of argument that petitioner can only be held in a state-operated prison, he would only be entitled to a transfer, not immediate release

from confinement.

{¶8} In a habeas corpus action, “a petition for a writ can be dismissed for failing to state a viable claim when the nature of the petitioner’s allegations are such that it is beyond reasonable doubt that the petitioner will never be able to demonstrate a set of facts under which he would be entitled to the requested relief.” *Crites*, 2010-Ohio-1800, at ¶14. In this case, petitioner’s factual allegations are not sufficient to state a plausible reason for ordering his release from the Lake Erie Correctional Institution. Pursuant to Civ.R. 12(B)(6), the dismissal of his sole habeas corpus claim is warranted.

{¶9} Respondent’s motion to dismiss is granted. It is the judgment and order of this court that petitioner’s habeas corpus claim is hereby dismissed in its entirety.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O’TOOLE, J., concurs in judgment only.