

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

DARNELL SMITH,	:	PER CURIAM OPINION
Petitioner,	:	CASE NO. 2009-A-0019
- vs -	:	
STATE OF OHIO, LAKE ERIE CORRECTIONAL INSTITUTION, RICHARD GANSHEIMER,	:	
Respondent.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition dismissed.

Darnell Smith, pro se, PID: 463-783, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Petitioner).

Richard Cordray, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Elizabeth A. Matune*, Assistant Attorney General, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This action in habeas corpus is presently before this court for disposition of the motion to dismiss of respondent, Warden Richard Gansheimer of the Lake Erie Correctional Institution. As the primary basis for his motion, respondent contends that the factual allegations of petitioner, Darnell Smith, are insufficient to state a viable claim for the writ because those allegations indicate that petitioner had an adequate remedy

at law. For the following reasons, we conclude that the dismissal of the petition is warranted.

{¶2} Petitioner's present incarceration in the state prison is predicated upon his 2004 convictions in three separate criminal actions before the Cuyahoga County Court of Common Pleas. Prior to December 2003, petitioner had been charged under three distinct indictments, each of which alleged at least one drug offense. Initially, he pled not guilty to all pending charges in the three indictments. However, on December 16, 2003, the Cuyahoga County trial court conducted a new plea hearing regarding all three cases. At that time, petitioner chose to enter a guilty plea as to one pending charge in each action. The remaining charges were then "nolled" by the county prosecutor.

{¶3} After the Cuyahoga County court had accepted the guilty pleas, petitioner was convicted of the following: (1) drug trafficking with a schoolyard specification, a first-degree felony under R.C. 2925.03; (2) drug trafficking with a schoolyard specification, a second-degree felony pursuant to R.C. 2925.03; and (3) drug possession, a fifth-degree felony under R.C. 2925.11. In April 2004, the trial court sentenced petitioner to terms of six years, three years, and six months on the respective offenses. As part of its written judgments in the three actions, the trial court further ordered that the three terms would be served concurrently; thus, the aggregate term for all three convictions was six years.

{¶4} In the present proceeding before this court, petitioner maintained that he is entitled to be released immediately from respondent's custody because his convictions in all three Cuyahoga County cases must be declared void. In his habeas corpus claim, he asserted that the Cuyahoga County trial court did not have the requisite jurisdiction to impose the convictions because the court did not fully comply with the requirements

for accepting a guilty plea under Crim.R. 11(C)(2). Specifically, petitioner alleged that, in attempting to explain the ramifications of pleading guilty, the trial court failed to inform him that he was waiving his rights to confront all witnesses against him and to have his guilt proven by the state beyond a reasonable doubt.

{¶5} In now challenging the legal sufficiency of petitioner's factual assertions, respondent submits that a viable habeas corpus claim can never be predicated upon an alleged violation of the procedure set forth in Crim.R. 11(C). According to respondent, even if it is assumed that petitioner's guilty pleas in the underlying criminal cases were not made knowingly or intelligently, a habeas corpus action cannot be employed as a means of contesting the pleas' validity because there were other adequate remedies he could have pursued. In response, petitioner argues that the existence of other remedies should not act as a bar to the instant proceeding because the failure to properly satisfy the requirements of Crim.R. 11(C) rendered his convictions completely void and subject to challenge at any time.

{¶6} As a basic proposition, a writ of habeas corpus will only lie to compel the release of an inmate when it can be proven that the underlying conviction was imposed by a trial court which lacked jurisdiction to render the final judgment. *Harman v. Konteh* (Mar. 13, 1998), 11th Dist. No. 98-T-0021, 1998 Ohio App. LEXIS 992, at *3, citing R.C. 2725.05. In light of this premise, this court has consistently stated that an allegation of a trial court's commission of a nonjurisdictional error cannot form the grounds of a viable claim for such a writ. See, e.g., *State ex rel. Griffin v. Wilson* (Jan. 19, 2001), 11th Dist. No. 2001-T-0001, 2001 Ohio App. LEXIS 161, at *2-3. In relation to the "jurisdictional" element, only one exception has been recognized; i.e., notwithstanding the assertion of

a nonjurisdictional error, a writ of habeas corpus will still lie if an inmate can show the absence of any other adequate remedy by which he could contest his unlawful restraint. *Hassink v. Gansheimer*, 11th Dist. No. 2003-A-0029, 2004-Ohio-1434, at ¶7, quoting *State ex rel. Jackson v. McFaul* (1995), 73 Ohio St.3d 185, 186.

{¶7} While the lack of an alternative legal remedy can support the issuance of a writ under limited circumstances, it is equally true that the existence of such a remedy can act as a bar to the writ. The Supreme Court of Ohio has indicated that a writ of habeas corpus will not lie when the underlying dispute as to the validity of an inmate's conviction could be adequately resolved by an alternative means. *Gaskins v. Shiplevy* (1995), 74 Ohio St.3d 149, 151. In light of this, the courts of this state have consistently held that a habeas corpus action cannot be employed as a substitute for a direct appeal because the latter proceeding constitutes an adequate remedy at law. See, e.g., *State ex rel. Beaver v. Konteh* (May 29, 1998), 11th Dist. No. 98-T-0073, 1998 Ohio App. LEXIS 2343, at *3.

{¶8} Given the foregoing discussion, it can generally be said that a viable claim in habeas corpus has not been stated when: (1) the petition's factual assertions only refer to an alleged nonjurisdictional error by the trial court; and (2) the assertions support the conclusion that the petitioner had an adequate legal remedy. In applying these two requirements in actions in which an inmate has sought to challenge the validity of his prior guilty plea, the courts of this state have concluded that the dismissal of the habeas corpus claim is justified under Civ.R. 12(B)(6).

{¶9} For example, in *Pollock v. Morris* (1988), 35 Ohio St.3d 117, the prisoner based his habeas corpus claim on the assertion that his guilty plea had not been made

voluntarily because he had been incompetent when the trial court accepted the plea. In upholding the appellate court's dismissal of the claim, the Supreme Court first noted that the prisoner had failed to raise an issue which directly pertained to the jurisdiction of the trial court. Second, the *Pollock* court emphasized that any issue regarding the validity of the prisoner's plea could have been litigated in a direct appeal or a postconviction proceeding.

{¶10} Even though the *Pollock* decision was rendered over twenty years ago, its basic logic is still followed. In *Taborn v. State*, 7th Dist. No. 04 BE 42, 2004-Ohio-5527, the prisoner maintained that his criminal conviction should be declared void because his plea agreement and waiver of his constitutional rights had never been filed with the clerk of courts following the acceptance of his plea. In concluding that a viable claim in habeas corpus had not been stated, the *Taborn* court specifically held that, even if an error had occurred under CrimR. 11(C), such a mistake would not have affected the trial court's jurisdiction over the underlying case. *Id.* at ¶5. In addition, the appellate court held that the prisoner had an adequate legal remedy because any question concerning whether the plea agreement had been made intelligently and voluntarily could have been asserted in a postconviction petition or a motion to withdraw the guilty plea. *Id.* at ¶7. See, also, *McReynolds v. Warden*, 7th Dist. No. 04 BE 27, 2004-Ohio-4545.

{¶11} This court has also followed the *Pollock* logic. In *Harmon*, 1998 Ohio App. LEXIS 992, the habeas corpus claim was predicated on the allegation that, by failing to fully explain the nature of the pending charges, the trial court had not complied with the procedure under Crim.R. 11(C) for accepting a guilty plea. After reviewing the relevant precedent, the *Harmon* opinion stated:

{¶12} “In the instant case, petitioner has failed to raise any issue which would challenge the jurisdiction of the Mahoning County Court of Common Pleas to render its judgment against him. Instead, pursuant to *Pollock*, petitioner’s arguments concerning the propriety of the procedure followed during the plea hearing merely raise issues which can only be asserted in a direct appeal from his conviction; i.e., petitioner’s arguments do not state a proper basis warranting his immediate release from prison.”
Id. at *4.

{¶13} As was previously noted, in opposing the motion to dismiss in the present action, petitioner has argued that the Cuyahoga County trial court exceeded the scope of its jurisdiction by failing to inform him of every constitutional right he would waive by entering a guilty plea. However, after reviewing the foregoing case law, this court holds that the nature of the supposed error in petitioner’s criminal case is no different than the alleged errors in *Pollock* and *Harman*. Therefore, to the extent that petitioner has only asserted that the Cuyahoga County trial court failed to fully satisfy the requirements of Crim.R. 11(C), he has not alleged an error which would have affected the trial court’s jurisdiction over the subject matter or his person. Instead, he has only referenced a possible procedural error which would have no relevancy to the question of jurisdiction. As a result, we reject petitioner’s contention that the failure to refer to the waiver of the two constitutional rights rendered his subsequent conviction void as a matter of law.

{¶14} Furthermore, given the procedural nature of the alleged error, it follows that petitioner had an adequate remedy at law. That is, petitioner could have contested the propriety of the procedure during the plea hearing in a direct appeal or in a motion to withdraw his guilty plea. As to this point, this court would emphasize that the existence

of an alternative remedy will still bar a habeas corpus claim even if the inmate can no longer invoke the remedy. *Jordan v. State*, 11th Dist. No. 2006-T-0103, 2007-Ohio-341, at ¶2.

{¶15} In prior habeas corpus proceedings, we have indicated that such a claim can be dismissed under Civ.R. 12(B)(6) when a review of the petition shows that, even when the allegations are considered in a light most favorable to the petitioner, there is still no doubt that he will be unable to establish a set of facts under which he would be entitled to the writ. *Hassink*, 2004-Ohio-1434, at ¶8. Consistent with the foregoing analysis, this court ultimately holds that respondent has demonstrated that the factual allegations in the instant petition are legally insufficient to state a viable claim for a writ of habeas corpus. Even if an error did take place during the plea hearing in petitioner's three criminal cases, the nature of that error is such that it cannot be challenged in the context of a habeas corpus proceeding.

{¶16} Pursuant to our discussion, respondent's motion to dismiss is granted. It is the order of this court that petitioner's habeas corpus petition is hereby dismissed in its entirety.

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