

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

JIMMY STALLWORTH,

Petitioner,

- vs -

MISTY MACKEY, WARDEN,

Respondent.

CASE NO. 2024-A-0055

Original Action for Writ of Habeas Corpus

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**PER CURIAM  
OPINION**

Decided: September 9, 2024  
Judgment: Petition granted

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*Jimmy Stallworth*, pro se, PID# A242-203, Lake Erie Correctional Institution, 501 Thompson Road, P.O. Box 8000, Conneaut, OH 44030 (Petitioner).

*Dave Yost*, Ohio Attorney General, State Office Tower, 30 East Broad Street, 16th Floor, Columbus, OH 43215, and *Katherine Mullin*, Senior Assistant Attorney General, Criminal Justice Section, 30 East Broad Street, 23rd Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} Pending before this Court are the following: petitioner, Jimmy Stallworth's, Petition for Writ of Habeas Corpus filed on June 18, 2024; respondent, Warden Misty Mackey's, Motion to Dismiss/Motion for Summary Judgment, filed on August 5, 2024; and Warden Mackey's Motion to Withdraw Motion to Dismiss/Motion for Summary Judgment, filed on September 5, 2024.

{¶2} The premise of the action is that, in *State v. Stallworth*, Cuyahoga C.P. Case No. CR-91-267251-ZA, Stallworth pled guilty to Aggravated Murder and Aggravated Robbery with firearm specifications. On October 25, 1991, Stallworth was sentenced, according to the sentencing entry, “for a term of thirty (30) years without parole on count one (1) [Aggravated Murder] plus three (3) years for the firearm specifications (sentence in this count is to run consecutive); for a term of ten (10) years to twenty-five (25) years on count three (3) [Aggravated Robbery] to run concurrent with sentence in count one ... for an aggregate sentence of thirty-three (33) years without parole.”

{¶3} Stallworth contends that he completed his sentence in April 2024 and that “he is now being unlawfully restrained of his liberty under R.C. 2725.01 and that he is entitled to immediate release from his imprisonment, and having no adequate remedy in the ordinary course of the law, ... respectfully requests the Court to issue forthwith the Great Writ of Habeas upon Respondent ... compelling his immediate release.” Petition at ¶ 7.

{¶4} In the Motion to Withdraw Motion to Dismiss/Motion for Summary Judgment, Warden Mackey recognizes the applicability of the Supreme Court of Ohio’s decision in *State v. Henderson*, 2020-Ohio-4784. In *Henderson*, as in Stallworth’s case, the trial court sentenced the defendant to a definite term of imprisonment for murder without including “the life-tail portion of the sentence,” i.e., without indicating that the sentence was indefinite in length pending release on parole. *Id.* at ¶ 2, fn. 1 (“[a] sentence with a ‘life tail’ is a sentence that is indefinite in length, beginning with the mandatory minimum term the trial court imposes and extending up to a maximum term of life in

prison”). Since the time for appeal had passed, Henderson’s sentence could no longer be corrected or modified:

Here, the trial court stated that it was sentencing Henderson to “15 years” during the sentencing hearing. It did not say that it was sentencing him to an indefinite sentence that included a life tail. Likewise, in its sentencing entry, the court indicated only that it sentenced Henderson to a 15-year sentence. A trial court speaks through its journal entry. *State v. Hampton*, 134 Ohio St.3d 447, 2012-Ohio-5688, 983 N.E.2d 324, ¶ 15. And here, that entry indicated that Henderson was sentenced to a definite 15-year term.

There is no dispute that the trial court’s sentence was unlawful. Former R.C. 2929.02(B), Am.Sub.S.B. No. 107, 157 Ohio Laws, Part IV, 7435, required that Henderson receive an indefinite sentence of 15 years to life, and the court failed to impose that sentence. The state had a full and fair opportunity to object to or challenge the trial court’s sentence. It did not. In fact, it did not seek to correct the error for almost 12 years, and it then waited 6 more years before filing the motion at issue in this appeal. Because the sentencing error rendered the sentence voidable, the state’s attempt to correct the error in a postconviction motion for resentencing was improper.

*Id.* at ¶ 39-40.<sup>1</sup> Warden Mackey concedes that, while “[t]he inartful wording of the sentencing entry likely does not reflect the understanding of all involved in the proceedings, ... the sentence was not timely challenged as required by *Henderson*.”

{¶5} Given the foregoing, Warden Mackey “believes the proper course of action is to withdraw her previously filed Motion to Dismiss/Motion for Summary Judgment and allow this matter to proceed to judgment.” We agree. Warden Mackey’s Motion to Withdraw Motion to Dismiss/Motion for Summary Judgment is granted.

{¶6} “Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of

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1. We note that in the present case there is no transcript of the sentencing hearing.

habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. “Generally, a prisoner is entitled to a writ of habeas corpus only when his maximum sentence has expired and he is being held unlawfully.” *Davis v. Hill*, 2022-Ohio-485, ¶ 6.

{¶7} Stallworth began serving his definite thirty-three-year sentence on October 24, 1991, with 157 days of jail time credit. Accordingly, he completed his sentence on May 20, 2024. No justification for his continued detention has been proffered. Therefore, we hold that Stallworth has served his maximum sentence and is entitled to immediate release.

{¶8} Petition granted.

EUGENE A. LUCCI, P.J., MATT LYNCH, J., ROBERT J. PATTON, J., concur.