

[Cite as *Brown v. Hall*, 2009-Ohio-1349.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FELIX BROWN JR.

Petitioner

-vs-

RICHARD HALL, WARDEN

Respondent

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00034

OPINION

CHARACTER OF PROCEEDING:

Petition for Writ of Habeas Corpus

JUDGMENT:

Denied

DATE OF JUDGMENT ENTRY:

March 23, 2009

APPEARANCES:

For Petitioner

For Respondent

FELIX BROWN, JR.  
Richland Correctional Institute  
1001 Olivesburg Road  
Post Office Box 8107

Wise, J.

{¶1} Petitioner, Felix Brown, Jr., has filed a Petition for Writ of Habeas Corpus alleging unlawful detention based upon the claim his constitutional rights were violated because of his alleged absence from the courtroom when the trial court answered questions submitted by the jury.

{¶2} Petitioner was convicted of one count of murder with a gun specification and one count of having weapons under disability. Following a finding of guilty by a jury, Petitioner was sentenced to a term of incarceration of 15 years to life consecutive to three years for the gun specification for a total sentence of 18 years to life.

{¶3} The Supreme Court has held “habeas corpus is not available when there is an adequate remedy in the ordinary course of law.” *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6. In this case, Petitioner has or had an adequate remedy at law by way of an appeal. As noted above, Petitioner’s only complaint deals with his alleged absence during a critical stage of the proceedings. Numerous appellants have raised the very issue Petitioner now raises in direct appeals. See e.g. *State v. Hale* 119 Ohio St.3d 118, 134, 892 N.E.2d 864, 890 (Ohio, 2008); *State v. Frazier* 115 Ohio St.3d 139, 159, 873 N.E.2d 1263, 1288 (Ohio, 2007) (An accused’s absence, however, does not necessarily result in prejudicial or constitutional error.); and *State v. Nichols* 2007 WL 1840865, 4 (Ohio App. 5 Dist.).

{¶4} Even assuming arguendo habeas corpus would be an available remedy to challenge a petitioner’s alleged absence at a critical stage in the proceedings, Petitioner’s claim lacks merit for the reason the record fails to affirmatively establish

Petitioner's absence. Petitioner actually concedes the record fails to affirmatively establish his absence stating, "Moreover, it has been pronounced by case law that the record must affirmly (sic) show the petitioner's absence in the courtroom. Thereinto, the record does exactly that, indicate the total absence of petitioner from said two referenced instances by its' (sic) silence!"

{¶15} Where a defendant's absence is not affirmatively established, the Supreme Court has held there is no merit to a complaint relative to a defendant's absence. *State v. Frazier* 115 Ohio St.3d 139, 159, 873 N.E.2d 1263, 1289 (Ohio, 2007) citing *State v. Clark* (1988), 38 Ohio St.3d 252, 258, 527 N.E.2d 844 ("the record must affirmatively indicate the absence of a defendant or his counsel during a particular stage of the trial").

{¶16} For these reasons, Petitioner's request for Writ of Habeas Corpus is denied.

By: Wise, J.

Farmer, P. J., and

Gwin, J., concur.

/S/ JOHN W. WISE

/S/ SHEILA G. FARMER

/S/ W. SCOTT GWIN

JUDGES

