

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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JOHN D. NIEMIEC,

Petitioner,

v

File No. 12-29102-AH  
HON. PHILIP E. RODGERS, JR.

WARDEN SHIRLEE A. HARRY,

Respondent.

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Petitioner Acting in Pro Per

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pc: Respondent

DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

A Macomb County jury convicted the Petitioner, John D. Niemiec, of four counts of Criminal Sexual Conduct in the First Degree, pursuant to MCL § 750.520b(1)(a) and two counts of Criminal Sexual Conduct in the Second Degree, pursuant to MCL § 750.520c(1)(b). Subsequently, the Petitioner was sentenced to serve 120 to 480 months with the Michigan Department of Corrections (MDOC), with a release date no earlier than December 12, 2016.

The Michigan Court of Appeals affirmed the Petitioner's conviction on December 23, 2008.<sup>1</sup> On June 10, 2009, the Supreme Court of Michigan denied the Petitioner's application for leave to appeal. Now the Petitioner has submitted a Petition for Writ of Habeas Corpus challenging the legality of his incarceration at the Pugsley Correctional Facility in Grand Traverse County. The Petitioner alleges that ineffective assistance of defense counsel caused him irreversible prejudice and violated his constitutional rights.

A prisoner's right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.<sup>2</sup> The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.<sup>3</sup> Habeas corpus is the remedy when a sentence of imprisonment

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<sup>1</sup>The Petitioner/Defendant had two cases which were consolidated by the Court. See *People v Niemiec*, unpublished order of the Court of Appeals, entered September 17, 2008 (Docket Nos. 277212 & 277237).

<sup>2</sup>*Hinton v Parole Bd*, 148 Mich App 235, 244; 383 NW2d 626 (1986).

<sup>3</sup>*Moses v Dep't of Corrections*, 274 Mich App 481; 736 NW2d 269 (2006).

is wholly void for lack of authority to sentence to the institution in question.<sup>4</sup> If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement.<sup>5</sup>

Pursuant to MCL § 600.4301 *et seq*:

[A]n action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state under any pretense whatsoever, except...persons convicted, or in execution, upon legal process, civil or criminal [and] persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.<sup>6</sup>

Thus, habeas corpus cannot serve as a substitute for an appeal or writ of error and cannot be used to review the merits of a criminal conviction.<sup>7</sup> MCL § 600.4310(3) prohibits a habeas action by or on behalf of “persons convicted, or in execution, upon legal process, civil or criminal,” and is not a means of testing the conditions of admittedly lawful custody.<sup>8</sup> Furthermore, under MCL § 600.4310, habeas relief is open to a convicted person only where the convicting court was without jurisdiction to try the defendant for the crime in question.<sup>9</sup> To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.<sup>10</sup> A radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission.<sup>11</sup> Habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings.<sup>12</sup>

In this case, the Petitioner plainly and improperly seeks to challenge through his habeas corpus petition the merits of his conviction and sentence, which the habeas procedure does not

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<sup>4</sup>*Ex parte Allen*, 139 Mich 712; 103 NW 209 (1905).

<sup>5</sup>MCL § 600.4352.

<sup>6</sup>MCL § 600.4307; § 600.4310.

<sup>7</sup>*Cross v Dep’t of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

<sup>8</sup>*Harris v Nelson*, 394 US 286; 89 S Ct 1082; 22 L Ed 2d 281 (1969); *Walker v Wainwright*, 390 US 335; 88 S Ct 962; 19 L Ed 2d 1215 (1968), rehearing denied, 390 US 1036; 88 S Ct 1420; 20 L Ed 2d 299.

<sup>9</sup>*People v Price*, 23 Mich App 663, 669-670; 179 NW2d 177 (1970). A radical defect in jurisdiction so as to permit review of conviction by habeas corpus contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission. *Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 671.

<sup>12</sup>*Phillips v Warden, State Prison of Southern Mich*, 153 Mich App 557, 566; 396 NW2d 482 (1986).

entitle him to do.<sup>13</sup> Furthermore, this Court is not the proper venue for the Petitioner to seek a review of his claims.

For the reasons stated herein, the Court denies the Petitioner's Petition for Writ of Habeas Corpus. The Petitioner may re-file his Petition with the jurisdictionally appropriate court.

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: \_\_\_\_\_

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<sup>13</sup>*Woods v Dep't Corrections*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2011 (Docket No. 296609).