

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

RONALD BANKS,

Petitioner,

v

File No. 12-29156-AH
HON. PHILIP E. RODGERS, JR.

WARDEN SHIRLEE A. HARRY,

Respondent.

Petitioner Acting in Pro Per

pc: Respondent

DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

A Monroe County jury convicted the Petitioner, Ronald Banks, of one count of Armed Robbery, pursuant to MCL § 750.529, one count of Carrying a Concealed Weapon, pursuant to MCL 750.227 and two counts of Felony Firearms, pursuant to MCL § 750.227b.¹ Subsequently, the Petitioner was sentenced to serve 420 to 840 months with the Michigan Department of Corrections (MDOC), with a release date no earlier than September 1, 2015.

On May 4, 2012, the Petitioner 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 the sentencing court lacked proper jurisdiction and that a legal basis for his detention is lacking.

A prisoner's right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.² The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.³ Habeas corpus is the remedy when a sentence of imprisonment is wholly void for lack of authority to sentence to the institution in question.⁴ If a legal basis for

¹ The Petitioner's two active sentences include one count Armed Robbery and one count Felony Firearms and are being served concurrently. The remaining sentences, for Felony Firearms and Carrying a Concealed Weapon, are inactive.

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

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

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

detention is lacking, a judge must order the release of the detainee from confinement.⁵

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.⁶

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.⁷ 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.⁸ 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.⁹ To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.¹⁰ 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.¹¹ Habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings.¹²

The Code of Criminal Procedure states that a person may be prosecuted for a criminal offense he or she commits while he or she is physically located within this state. MCL § 762.2(1). There is sufficient basis for general personal jurisdiction if an individual is present or domiciled in the state at the time of service, which permits state courts to render judgments against the individual. MCL § 600.701. Further, circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments. MCL § 600.611.

⁵ MCL § 600.4352.

⁶ MCL § 600.4307; § 600.4310.

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

⁸ *Harris v Nelson*, 394 US 286; 89 S Ct 1082; 22 L Ed2d 281 (1969); *Walker v Wainwright*, 390 US 335; 88 S Ct 962; 19 L Ed2d 1215 (1968), rehearing denied, 390 US 1036; 88 S Ct 1420; 20 L Ed2d 299.

⁹ *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.*

¹⁰ *Id.*

¹¹ *Id.* at 671.

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

Prior to his sentencing in Michigan, the Petitioner had received two consecutive, 7-15 year sentences in Ohio for other crimes. The Court, at sentencing, credited the Petitioner with 380 days which he had previously served in the Ohio Prison. Furthermore, the Court directed that the Petitioner be transferred to Ohio to complete service of the two consecutive sentences imposed there, and at upon completing service of those sentences the Petitioner was to be transferred to the State Prison of Michigan to complete service of his Michigan sentences. The Petitioner argues that Michigan did not have jurisdiction to convict and sentence him because he was serving sentences in Ohio at the time he was sentenced, implying that Ohio had complete jurisdiction over him. The Petitioner improperly believes that Michigan does not have authority to sentence him when he is already serving time in another state, nor can a Michigan court direct his re-imprisonment in Ohio. The Petitioner's argument is nonsensical. Pursuant to the MCL sections provided above, a Michigan court clearly has jurisdiction to convict and sentence an individual when that individual commits a crime within the state of Michigan.

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.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____