

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

BRIEN SCOTT MICHELIN,

Petitioner,

v

File No. 12-29350-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

On October 8, 2010 in Mackinac County, the Petitioner plead guilty to one count of possessing a controlled substance, pursuant to MCL § 333.7403(2)(a)(v) and one count of maintaining a drug house, pursuant to MCL § 333.7405(d). Subsequently, the Petitioner was sentenced to serve 46 to 180 months with the Michigan Department of Corrections (MDOC), with a release date no earlier than September 17, 2014.

The Petitioner has now submitted a Petition for Writ of Habeas Corpus challenging the legality of his incarceration at the Pugsley Correctional Facility in Grand Traverse County. The Petition alleges that the trial court lacked proper jurisdiction to sentence the Petitioner because the Examination Waiver/Adult Bind Over, dated October 8, 2010 is invalid.

A prisoner's right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.¹ The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.² Habeas corpus is the remedy when a sentence of imprisonment

¹*Hinton v Parole Bd*, 148 Mich App 235, 244; 383 NW2d 626 (1986).

²*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.³ If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement.⁴

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.⁵

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.⁶ 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.⁷ 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.⁸ To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.⁹ 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.¹⁰ Habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings.¹¹

The Petitioner’s claims that the Examination Waiver/Adult Bind Over was “falsified” and is invalid are incorrect. Procedurally, when a defendant is entitled to a preliminary examination, the defendant may request the exam be held, request the exam be adjourned or

³*Ex parte Allen*, 139 Mich 712; 103 NW 209 (1905).

⁴MCL § 600.4352.

⁵MCL § 600.4307; § 600.4310.

⁶*Cross v Dep’t of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

⁷*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.

⁸*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.*

⁹*Id.*

¹⁰*Id.* at 671.

¹¹*Phillips v Warden, State Prison of Southern Mich*, 153 Mich App 557, 566; 396 NW2d 482 (1986).

waive the exam.¹² If the preliminary examination is waived, the court must bind the defendant over for trial on the charge set forth in the complaint.¹³ A proper bind over, or waiver, is necessary to provide authority for the prosecutor to file an information against defendant in circuit court pursuant to MCL § 767.42, however, this statute is a limitation on the prosecution, not on the general jurisdiction of the circuit court.¹⁴ The prosecutor may not file an information until the defendant has had **or waives** a preliminary exam, after which, judicial proceedings may commence.¹⁵ The circuit court gains jurisdiction over a defendant charged with a criminal offense triable in circuit court upon a showing that the defendant waived his or her preliminary examination.¹⁶

At the hearing held October 8, 2010, Judge Carmody's very first statement on the record indicated that Petitioner's case was a "District Court matter being requested to be waived to the Circuit Court."¹⁷ Judge Carmody then asked Petitioner if he wished to waive his right to a preliminary examination at that time and the Petitioner answered in the affirmative.¹⁸ Subsequently, at approximately 2:08 p.m., the Petitioner was sworn by the Court and Judge Carmody heard and accepted Petitioner's guilty plea. After the hearing concluded, the Examination Waiver/Adult Bind Over form was signed by both the Court and Petitioner.

Petitioner appears to argue that the Examination Waiver/Adult Bind Over form is invalid because it was not signed until *after* the Court accepted his guilty plea. However, Petitioner's prior verbal waiver of the preliminary examination was sufficient to transfer jurisdiction to the Circuit Court.¹⁹ Thus, the Court had jurisdiction when it accepted Petitioner's guilty plea and when it sentenced Petitioner. Furthermore, a judgment of sentence shall not be set aside or reversed for error as to any matter of pleading or procedure, unless it

¹² MCR 6.110. See *People v Dunson*, 139 Mich App 511; 363 NW2d 16 (1984) [Preliminary examination is not absolute prerequisite to courts acquiring jurisdiction in light of statutory provisions permitting defendant to waive his right to a preliminary examination.]

¹³ *Id.*

¹⁴ *People v Dochstader*, 274 Mich 238; 264 NW 356 (1936). Furthermore, a circuit court does not lose jurisdiction because of the filing of a void or improperly filed information. *In re Elliott*, 315 Mich 662; 24 NW2d 528 (1946).

¹⁵ MCR 6.112(B) [emphasis added].

¹⁶ *People v Farmilo*, 137 Mich App 378; 358 NW2d 350 (1984).

¹⁷ Waiver of Preliminary Examination in District Court and Circuit Court Plea hearing transcript, held October 8, 2010; page 3, lines 5-6.

¹⁸ *Id.* at page 5, lines 19-21. When Petitioner waived his right to a preliminary examination on the record, the Circuit Court automatically assumed jurisdiction.

¹⁹ *Supra*, at FN 16.

appears that the error resulted in a miscarriage of justice.²⁰ Based on the transcript, Petitioner knowingly and voluntarily waived the preliminary examination and willing pled guilty before the Court. The Petitioner improperly seeks to challenge legitimacy of his sentence via his habeas corpus petition, which the habeas procedure does not entitle him to do.

In addition, ministerial errors in criminal cases may be corrected.²¹ Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative.²² When signing a court document, indicating an incorrect time does not divest the court of jurisdiction to later determine execute a sentence.²³ Mistakenly dating the Examination Waiver/Adult Bind Over form for October 8, 2010 at 2:00 p.m. is an insufficient basis to support Petitioner's claim that the Court lacked jurisdiction.

For the reasons stated herein, the Court denies the Petitioner's Petition for Writ of Habeas Corpus.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

²⁰ MCL § 769.26.

²¹ *In re Rogers*, 308 Mich 392; 13 NW2d 862 (1944).

²² MCR 6.435(A).

²³ See generally *Ex parte Curtis*, 264 Mich 431; 250 NW 280 (1933) [if a clerk inadvertently omits part of the record at time of sentencing the court may enter an order of *nunc pro tunc* to cure the defect and validate the sentence imposed]; *In re Rogers*, 308 Mich 392; 13 NW2d 862 (1944) [ministerial errors in court commitment papers which should and could be corrected by the court if brought to its attention may be corrected by an order *nunc pro tunc* the record made to speak the judicial determination of the conviction and grounds for sentence imposed]; *In re Elliott*, 315 Mich 662; 24 NW2d 528 (1946) [ministerial errors may be corrected and are not sufficiently defective to result in the release of a defendant on habeas corpus].