

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

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BRIAN C. WARE,

Petitioner,

v

File No. 2014030238AH  
HON. PHILIP E. RODGERS, JR.

WARDEN SHIRLEE HARRY,

Respondent.

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Petitioner Acting in Pro Per

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pc: Shirlee Harry

**DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**

Brian C. Ware (hereinafter “Petitioner”) was charged in Wayne County with one count of Armed Robbery, pursuant to MCL § 750.529. After pleading guilty, Petitioner was sentenced on March 13, 2012, to serve 72 to 240 months with the Michigan Department of Corrections (hereinafter “MDOC”). Subsequently, on or about January 21, 2014, the Petitioner filed a Petition for Writ of Habeas Corpus.

A prisoner’s right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.<sup>1</sup> The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.<sup>2</sup> Habeas corpus is the remedy when a sentence of imprisonment is wholly void for lack of authority to sentence to the institution in question.<sup>3</sup> If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement.<sup>4</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

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

<sup>2</sup>*Moses v Dep’t of Corrections*, 274 Mich App 481; 736 NW2d 269 (2006).

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

<sup>4</sup>MCL § 600.4352.

action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.<sup>5</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>6</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>7</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>8</sup> To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.<sup>9</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>10</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>11</sup>

Here, the Petitioner argues that habeas corpus should be granted for a multitude of reasons, including, in part: (1) the preliminary examination was improperly waived; (2) court appointed counsel was ineffective; (3) the prosecution withheld and/or destroyed exculpatory evidence; and (4) Petitioner was unable to present evidence of a defense. However, Petitioner has not alleged or provided any evidence to support a claim that the Wayne County Circuit Court lacked jurisdiction either to accept his guilty plea or to sentence him.

Procedurally, when a defendant is entitled to a preliminary examination, the defendant may request the exam be held, request the exam be adjourned or waive the exam.<sup>12</sup> If the preliminary examination is waived, the court must bind the defendant over for trial on the charge

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<sup>5</sup>MCL § 600.4307; § 600.4310.

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

<sup>7</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>8</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>9</sup>*Id.*

<sup>10</sup>*Id.* at 671.

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

<sup>12</sup> 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.]

set forth in the complaint.<sup>13</sup> 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.<sup>14</sup> The prosecutor may not file an information until the defendant has had or waives a preliminary exam, after which, judicial proceedings may commence.<sup>15</sup> 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.<sup>16</sup> Here, the record indicates that the preliminary examination was waived on October 18, 2011, and the Petitioner was bound over to the Circuit Court.<sup>17</sup> Thus, the Court had jurisdiction when it accepted Petitioner's guilty plea on February 23, 2012 and when it sentenced Petitioner on March 13, 2012.

Further, Petitioner waived the preliminary examination and willingly pled guilty before the Court which directly contradicts his claim that he was denied the right to present evidence of a defense. The Petitioner now improperly seeks to challenge legitimacy of his plea and sentence via his habeas corpus petition, which the habeas procedure does not entitle him to do.<sup>18</sup> For the reasons stated herein, the Court denies the Petitioner's Petition for Writ of Habeas Corpus.

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

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<sup>13</sup> *Id.*

<sup>14</sup> *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).

<sup>15</sup> MCR 6.112(B) [emphasis added].

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

<sup>17</sup> The Petition states, "Petitioner Ware did not understand that the waiving of the pre-trial was an admission of guilt and this waived the rights on evidence and defenses [sic]." For clarity, the Register of Actions shows the circuit court pre-trial was held on November 1, 2011 (and an Order for a Competency Evaluation was subsequently issued by the court.) Furthermore, waiver of the preliminary examination in district court is not the equivalent of an admission of guilt. A defendant may stand mute, plead not guilty or plead guilty. With the proper consents, a defendant may alternatively plead nolo contendere, guilty but mentally ill or guilty by reason of insanity. In order to be legally "guilty" of committing a crime, a defendant must either plead guilty **or** be found guilty by trial, and Michigan Court Rule 6.302 prohibits the court from accepting a guilty plea unless the plea is understanding, voluntary and accurate. Therefore, Petitioner's argument that he was unwittingly induced to waive the preliminary examination and/or to plead guilty is disingenuous.

<sup>18</sup> Claims of prosecutorial misconduct and ineffective assistance of counsel are properly raised on appeal, not in a petition for habeas corpus.