

STATE OF MICHIGAN

IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

HUGO J. MACK,

Plaintiff,

v

Case No. 02-22038-AH
HON. PHILIP E. RODGERS, JR.

RAY WOLFE, WARDEN,
PUGSLEY CORRECTIONAL FACILITY,

Defendant.

Hugo J. Mack #232506
Plaintiff in Pro Per

Chester S. Sugierski, Jr. (P21129)
Assistant Attorney General
Corrections Division
Attorney for Respondent

DECISION AND ORDER

Following a 1992 trial by jury in Monroe County Circuit Court, Petitioner Hugo J. Mack was acquitted on one count of criminal sexual conduct, 1st degree - use of a weapon, and one count of assault and battery. He was convicted on one count of criminal sexual conduct, 1st degree - use of force or coercion and personal injury, and one count of assault with a dangerous weapon. On August 5, 1993, Petitioner was sentenced to 12 to 30 years for criminal sexual conduct, 1st degree, and 2 to 4 years for felonious assault. On July 12, 1994, Petitioner was re-sentenced on both offenses and received the same sentences.

Petitioner previously appealed his conviction to the Court of Appeals and the Supreme Court. He later sought relief from judgment pursuant to MCR 6.502 and appealed the decision to the Supreme Court. On February 22, 2002, he filed a complaint for a writ habeas corpus. He does not say whether he raised the issues raised in this writ in any of the previous post-conviction proceedings.

In response to the Petitioner's complaint for a writ, the Attorney General's Office promptly entered an appearance on behalf of the Respondent and filed a response and proposed order.

The Court has reviewed the application, response, the Petitioner's reply and proposed order. The Court dispenses with oral argument as provided in MCR 2.119(E)(3) and issues this decision and order. For the reasons stated herein, the relief requested by the Petitioner is denied.

The Court agrees with the Attorney General that a writ of habeas corpus is not the proper vehicle for challenging a criminal conviction. MCL 600.4310. The Petitioner is clearly asking this Court to review his conviction and sentence and to set them aside. The Petitioner had and exercised his appellate rights and sought relief from judgment pursuant to MCR 6.502. The Petitioner may not seek a writ of habeas corpus to attack his conviction and sentence.

It is unclear whether the Petitioner raised his claim regarding *People v Johnson*, 406 Mich 320; 279 NW2d 534 (1979) in any of his post-conviction proceedings. Even if this Court were to address this claim, no relief would be available to the Petitioner.

In *People v Johnson*, the Michigan Supreme Court decided that 1974 P.A. 266, which created the criminal sexual conduct statutes, MCL § 750.250a et seq., MSA § 28.788(1) et seq., does not support multiple convictions for the same sexual conduct based on varying aggravating circumstances. A defendant's constitutional protection against double jeopardy is violated when he is convicted on two separate counts of criminal sexual conduct where there is only one act. *Id.* The remedy is to reverse the conviction on one count and vacate the sentence imposed for that charge while leaving in tact the conviction and sentence on the other count. *People v Ashford*, 91 Mich App 693; 283 NW2d 830 (1979). See also, *People v Bigelow*, 225 Mich App 806; 571 NW2d 520 (1997).

In the instant case, the Petitioner was only convicted on one count of criminal sexual conduct. Therefore, his constitutional protection against double jeopardy was not violated.

The Petitioner's complaint is DISMISSED with prejudice. Respondent may tax costs.

This decision and order resolves the last pending claim and closes the case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 3/22/02