

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KEVIN HUGHLEY	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Petitioner	:	Hon. Julie A. Edwards, J.
-vs-	:	Hon. Patricia A. Delaney, J.
	:	
WARDEN MARC SAUNDERS	:	
SOUTHEASTERN CORRECTIONAL INST.	:	CASE NO. 09-CA-18
	:	
Respondent	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Habeas Corpus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY June 26, 2009

APPEARANCES:

For Petitioner – Pro se:

KEVIN HUGHLEY - #532-743
5900 B.I.S. Road
Lancaster, OH 43130

Delaney, J.,

{¶1} This matter came before the Court upon review of the petition for habeas corpus filed by Inmate Kevin Hughley (“Petitioner”).

I. PENDING MOTIONS

{¶2} As an initial matter, Petitioner has filed three motions to amend the original Petition, as well as a motion to have this Court review a Supreme Court decision. The first motion filed on April 22, 2009, requests leave to attach a document from the Ohio Department of Rehabilitation and Correction, which Petitioner classifies as “Commiment (sic) Papers of Case 481899” and a “Statement of Facts.” The Court permits the Petition to be amended with these documents; however, the Court finds the document from the Ohio Department of Rehabilitation is not a commitment paper.

{¶3} Next, Petitioner moves this Court to grant leave to add an additional claim. The Court grants the motion.

{¶4} Further, Petitioner moves this Court to Amend the Petition with three sentencing entries from Case Numbers CR-462014 (filed December 24, 2008), CR-473878 (filed August 16, 2007), and CR-481899 (filed August 3, 2007). The Court also grants Petitioner’s motion to amend the Petition with these three entries.

{¶5} Finally, Petitioner has also filed a motion to have this Court review the Supreme Court’s decision in *State ex rel. Hughley v. McMonagle*, 2009-Ohio-1703. The Court grants this motion as well.

II. CLAIMS

{¶6} In the original Petition, Hughley argues he should be released from prison because the trial court failed to grant him jail-time credit toward any of his felony sentences. The Eighth District Court of Appeals, in *State v. Hughley*, Cuyahoga App. No. 90323¹, 2008-Ohio-6146 affirmed Hughley's conviction for seven counts of forgery, six counts of uttering, and four counts of tampering with records in Case No. CR-462014, but reversed for resentencing with regard to the four counts of tampering with records. The Eighth District ruled that due to the lack of specificity in the verdict forms, Hughley could only be found guilty of tampering with records, a misdemeanor of the first degree, as opposed to a felony of the third degree. *Id.* at ¶ 40.

{¶7} Upon remand, the trial court, by an entry dated December 24, 2008, convicted Petitioner of misdemeanors sentencing Petitioner to an aggregate jail term of eighteen (18) months in Case Number CR-462014. The trial court issued a subsequent entry clarifying the distribution of jail time credit. In its entry of March 9, 2009, the trial court ordered, "Jail time credit shall be applied first to this case, as this is the oldest case Defendant had pending for sentencing. Defendant's 304 days of jail time credit from the Cuyahoga County Jail shall be applied to the misdemeanor sentence in this case."

{¶8} On December 24, 2008 Hughley appealed Judge McMonagle's resentencing to the Eighth District Court of Appeals, which remains pending. See *State v. Hughley*, Cuyahoga App. No. 92588.

{¶9} In the petition, Hughley argues the trial court erred in applying the jail-time credit solely to the misdemeanor sentence. Further, he avers if the trial court had

¹ This appeal involved three separate lower court cases, CR-462014, CR-473878 and CR-481899.

applied the jail-time credit to the felony sentences, Petitioner's release date would have been sometime in January 2009.

{¶10} The Supreme Court has held "habeas corpus is not available when there is an adequate remedy in the ordinary course of law." *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶6.

{¶11} In *Heddleston v. Mack*, 84 Ohio St.3d 213, 213, 702 N.E.2d 1198, 1198 (Ohio,1998), the Appellant argued he was entitled to release from prison because the trial court should have granted jail-time credit. The Supreme Court rejected this argument stating, "Heddleston had adequate remedies by appeal or post-conviction relief to review his claims of sentencing error, because these claims are not jurisdictional. *Smith v. Walker* (1998), 83 Ohio St.3d 431, 432, 700 N.E.2d 592, 592." *Id.* Pursuant to the Supreme Court's holding in *Heddleston*, a challenge for jail-time credit must be made by way of appeal or petition for post-conviction relief. Therefore, Petitioner has or had an adequate remedy at law, and Petitioner's first claim is denied.

{¶12} In Petitioner's second claim, he argues the sentence imposed in Case Number CR-481899 is void because the sentence is not within the range provided by R.C. 4505.19(B). In this case, the trial court found Hughley guilty of one count of a title offense pursuant to R.C. 4504.19. The trial court imposed a nine-month term.

{¶13} At this juncture, this Court notes Petitioner's conviction and sentence in Case Number CR-481899 was affirmed by the Eighth District Court of Appeals. *State v. Hughley*, Cuyahoga App. No. 90323, 2008-Ohio-6146, ¶ 70. Petitioner did not raise this issue in his previous unsuccessful appeal in Case Number CR-481899.

{¶14} The Supreme Court has explained the difference between a void and a voidable sentence, “In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, ¶103, we cited *509 *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, ¶23, and stated, ‘When a sentence is *deemed void*, the ordinary course is to vacate that sentence and remand to the trial court for a new sentencing hearing.’ (Emphasis added.) Instead, in referring to a sentence that could be annulled for improper exercise of the trial court’s authority, we should have more clearly stated that a *voidable* sentence is, on appeal, subject to being vacated and remanded for resentencing. Sentences that are “void ab initio,” meaning imposed without subject-matter jurisdiction, may be attacked on direct appeal or collaterally by means of habeas corpus. *State v. Wilson* (1995), 73 Ohio St.3d 40, 44, 652 N.E.2d 196; *Gaskins v. Shiplevy* (1995), 74 Ohio St.3d 149, 151, 656 N.E.2d 1282. In a successful challenge to a void sentence, ‘a court lacks the authority to do anything but announce its lack of jurisdiction and dismiss.’ *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 21.” *State v. Payne*, 114 Ohio St.3d 502, 508-509, 2007-Ohio-4642, 873 N.E.2d 306.

{¶15} The first question presented is whether the trial court lacked subject matter jurisdiction to impose the sentence. We find the trial court did have subject matter jurisdiction pursuant to R.C. 2931.03 which provides, “The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.” Because the trial court had subject matter jurisdiction, the sentence

imposed is voidable rather than void. Only a void sentence may be raised by way of a Petition for Writ of Habeas Corpus. See *Wilson*, supra.

{¶16} R.C. 4505.19 provides,

{¶17} (B) Whoever violates this section shall be fined not more than five thousand dollars or imprisoned in the county jail or workhouse not less than six months nor more than one year, or both, or in a state correctional institution not less than one year nor more than five years.

{¶18} Petitioner was sentenced to a term of nine months in prison in the Cuyahoga County Court of Common Pleas. Petitioner argues because he received a sentence of less than one year, the sentence should have been ordered to be served in jail rather than in prison.

{¶19} Petitioner had an adequate remedy at law by way of appeal to raise this issue. Therefore, the issue is not one which is cognizable in habeas corpus because it relates to a voidable as opposed to a void sentence. Finally, even assuming the trial court lacked jurisdiction, he is not entitled to the writ because he is also incarcerated on convictions for forgery and uttering. “Where a petitioner is incarcerated for several crimes, the fact that the sentencing court may have lacked jurisdiction to sentence him on one of the crimes does not warrant his release in habeas corpus.” *Marshall v. Lazaroff* (1997), 77 Ohio St.3d 443, 444, 674 N.E.2d 1378, quoting *Swiger v. Seidner* (1996), 74 Ohio St.3d 685, 687, 660 N.E.2d 1214.

{¶20} For these reasons, the Court denies the Petition and declines to issue the writ of habeas corpus.

{¶21} MOTIONS TO AMEND GRANTED.

{¶22} PETITION FOR WRIT DENIED.

{¶23} COSTS TO PETITIONER.

By: Delaney, .J.

Farmer, P.J. and

Edwards, J. concur

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

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For the reasons stated in the Memorandum-Opinion on file, Petitioner's Writ of Habeas Corpus is hereby Denied. Costs taxed to Petitioner.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS