

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SCOTT LEE PATTERSON	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Petitioner	:	Hon. Sheila G. Farmer, J.
-vs-	:	Hon. Julie A. Edwards, J.
	:	
OHIO ADULT PAROLE AUTHORITY	:	
	:	CASE NO. 08-CA-33
Respondent	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Habeas Corpus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: 5-28-2008

APPEARANCES:

For Petitioner – pro se:

SCOTT L. PATTERSON
Community Alternative Center
597 Park Avenue, East
Mansfield, OH 44902

For Respondent:

M. SCOTT CRISS
Assistant Attorney General
Corrections Litigation Section
150 E. Gay Street, 16th Floor
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Edwards, J.:

{¶1} Petitioner, Scott Lee Patterson, has filed a Complaint for Writ of Habeas Corpus requesting the termination of his post-release control pursuant to *State v. Bezak* (2007), 114 Ohio St.3d 92. Respondent has filed a Motion to Dismiss to which Petitioner has not responded. The motion to dismiss is premised upon the inapplicability of habeas corpus in a criminal case to those who are not physically confined.

{¶2} Petitioner was sentenced on April 14, 2003, to a term of incarceration of five years. The trial court's sentencing entry advised Petitioner that a term of post-release control was included in the sentence. Petitioner has not attached a copy of the transcript from his sentencing hearing. Petitioner has attached a copy of the transcript from his sexual offender classification hearing which has no bearing on Petitioner's sentence. Petitioner claims he was not advised in open court of the imposition of post-release control, however, as noted above, Petitioner failed to attach the sentencing transcript.

{¶3} According to his Complaint, Petitioner was advised he was going to be placed on post-release control on October 2, 2007. Petitioner was released from prison on March 25, 2008, and was, in fact, placed on post-release control.

{¶4} "A writ of habeas corpus is warranted in certain extraordinary circumstances where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law." *Johnson v. Timmeman-Cooper* (2001), 93 Ohio St.3d 614, 616, 757 N.E.2d 1153, quoting, *Pegan v. Crawmer* (1996), 76 Ohio St.3d 97, 99, 666 N.E.2d 1091.

{¶5} The Seventh Appellate District addressed the issue of whether post-release control qualifies as confinement thereby making habeas corpus an appropriate avenue to challenge its imposition stating, “In *White v. Wolfe*, 7th Dist. No. 305, 2003-Ohio-3883, at ¶11, we noted: ‘R.C. 2725.04 allows for a Petitioner to file a writ of habeas corpus, seeking relief from unlawful custody or unlawful restraint of liberty. Habeas corpus will lie only to grant release from some type of physical confinement, such as a prison. Mere post-release control is not sufficient to merit a writ of habeas corpus. *Ross v. Kinkela*, 8th Dist. No. 79411, 2001-Ohio-4256, citing *Smirnoff v. Green* (1998) 84 Ohio St.3d 165, 167, 702 N.E.2d 423.’” *Coleman v. Eberlin*, 2007 WL 752157, 1 (Ohio App. 7 Dist.).

{¶6} The *Coleman* Court relies upon the Supreme Court’s holding in *Smirnoff* wherein the Court stated, “[H]abeas corpus in Ohio is generally appropriate in the criminal context only if the petitioner is entitled to immediate release from prison or some other type of physical confinement. See, e.g., *State ex rel. Carrion v. Ohio Adult Parole Auth.* (1998), 80 Ohio St.3d 637, 638, 687 N.E.2d 759, 760; *State ex rel. Jackson v. McFaul* (1995), 73 Ohio St.3d 185, 188, 652 N.E.2d 746, 749.” *Id* at 167.

{¶7} Because Petitioner is not physically confined, habeas corpus is not an available remedy to challenge the imposition of post release control.

{¶8} MOTION TO DISMISS GRANTED.

{¶9} WRIT DENIED.

By: Edwards, J.
Gwin, P.J. and
Farmer, J. concur

HON. JULIE A. EDWARDS

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

