

SUPREME COURT OF OHIO

Orr v. Schweitzer

Orr v. Schweitzer, Orr, 2021 Ohio 1786 (Ohio 2021) · No. No. 2020-1424 · Decided May 27, 2021

SUMMARY

Habeas corpus in Ohio does not permit relief for nonjurisdictional errors, including claims of actual innocence, insufficiency of the evidence, and prosecutorial misconduct, when adequate remedies at law (direct appeal or postconviction relief) were available. The court affirmed dismissal of the petition and denied motions for deposition, investigative funds, judicial notice of disputed facts, and summary judgment, as summary judgment is inapplicable to appeal proceedings.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Connor; Kennedy; Fischer; DeWine; Donnelly; Stewart; Brunner
JURISDICTION	Ohio
DECIDED	May 27, 2021
DOCKET	No. 2020-1424
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Court of Appeals for Madison County, No. CA2020-08-014, which dismissed Orr's habeas corpus petition under Civ.R. 12(B)(6).
STANDARD OF REVIEW	De novo review of dismissal under Civ.R. 12(B)(6); presuming all factual allegations true and making reasonable inferences, dismissal is proper if petitioner can prove no set of facts entitling him to relief.
PRECEDENTIAL VALUE	Published
PARTIES	Darllel Orr v. Thomas Schweitzer, Warden

TOPICS

- habeas corpus
- criminal procedure
- prosecutorial misconduct
- evidence

PRACTICE AREAS

- Habeas Corpus
- Criminal Procedure

QUESTIONS PRESENTED

1. Whether the court of appeals erred in dismissing Orr's habeas corpus petition without an evidentiary hearing on his claim of actual innocence.
2. Whether the court of appeals erred in dismissing Orr's petition without a factual identification inquiry into his guilt.
3. Whether claims of prosecutorial misconduct are cognizable in habeas corpus.
4. Whether Orr's motions for emergency deposition, funds to hire an investigator, judicial notice, and summary judgment should be granted.

HOLDINGS

1. Nonjurisdictional errors, including claims of actual innocence, insufficiency of the evidence, and prosecutorial misconduct, are not cognizable in habeas corpus. Dismissal under Civ.R. 12(B)(6) was proper because Orr had adequate remedies at law (direct appeal or postconviction relief).
2. A claim of actual innocence is not a cognizable basis for habeas relief under Ohio law, and Orr had adequate legal remedies such as postconviction relief to raise it.
3. A claim contesting the sufficiency of the evidence is not a cognizable basis for relief in habeas corpus.
4. Claims of prosecutorial misconduct are not cognizable in habeas corpus.
5. Judicial notice is improper when the facts are disputed or when the court is asked to take notice of legal conclusions. Such motions are denied.
6. Summary judgment is not applicable to proceedings on appeal. The motion is denied.

KEY QUOTATIONS

“Orr did not state a valid claim for habeas corpus, because he had adequate remedies at law, namely direct appeal or a petition for postconviction relief, to address the nonjurisdictional errors of which he complains.” (¶ 5)

*“a claim of actual innocence is not a cognizable basis for habeas relief under Ohio law, and Orr “has or had adequate legal remedies such as a petition for postconviction relief * * * to raise his contentions concerning * * * his innocence.””* (¶ 6)

“Orr's argument contests the sufficiency of the evidence at trial, which is not a cognizable basis for relief in habeas corpus.” (¶ 7)

“claims of prosecutorial misconduct are not cognizable in habeas corpus.” (¶ 8)

“A reviewing court generally may not add matter to the record before it and then decide the appeal on the basis of the new matter.” (¶ 10)

“Judicial notice applies only to facts that are not subject to reasonable dispute.” (¶ 11)

“Summary judgment is not applicable to proceedings on appeal.” (¶ 12)

FACTUAL BACKGROUND

Orr was convicted in 2013 of aggravated murder with firearm specifications and other crimes, sentenced to life without parole. His convictions were affirmed on appeal. In August 2020, he filed a habeas corpus petition alleging numerous constitutional due-process violations in the trial court proceedings, including claims of actual innocence, insufficiency of the evidence, and prosecutorial misconduct.

PROCEDURAL HISTORY

Orr was convicted in 2013 of aggravated murder and other crimes, sentenced to life without parole, and his convictions were affirmed on appeal. In August 2020, he filed a petition for writ of habeas corpus in the court of appeals, which was dismissed. He appealed to the Ohio Supreme Court.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Norris v. Wainwright, 158 Ohio St.3d 20, 2019-Ohio-4138, 139 N.E.3d 867, ¶ 5
- Keith v. Bobby, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 10
- Keith v. Bobby, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 15
- Kneuss v. Sloan, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 6
- Shie v. Leonard, 84 Ohio St.3d 160, 161, 702 N.E.2d 419 (1998)
- Lynch v. Wilson, 114 Ohio St.3d 118, 2007-Ohio-3254, 868 N.E.2d 982, ¶ 5
- State ex rel. Harris v. Turner, 160 Ohio St.3d 506, 2020-Ohio-2901, 159 N.E.3d 1121, ¶ 16
- State ex rel. Harris v. Turner, 160 Ohio St.3d 506, 2020-Ohio-2901, 159 N.E.3d 1121, ¶ 17
- Murphy v. Reynoldsburg, 65 Ohio St.3d 356, 358, 604 N.E.2d 138 (1992)
- State v. Orr, 8th Dist. Cuyahoga No. 1008441, 2014-Ohio-4680

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as Orr v. Schweitzer, Slip Opinion No. 2021-Ohio-1786.] NOTICE This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-1786 ORR, APPELLANT, v. SCHWEITZER, WARDEN, APPELLEE. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as Orr v. Schweitzer, Slip Opinion No. 2021-Ohio-1786.] Habeas corpus—Nonjurisdictional errors, including claims of actual innocence, insufficiency of the evidence, and prosecutorial

misconduct, are not cognizable in habeas corpus—Judicial notice improper when facts are not in dispute—Summary judgment inapplicable to appeal proceedings— Judgment dismissing petition for writ affirmed—Motions denied.

(No. 2020-1424—Submitted March 30, 2021—Decided May 27, 2021.) APPEAL from the Court of Appeals for Madison County, No. CA2020-08-014. _____ Per Curiam. {¶ 1} Appellant, Darlrel Orr, an inmate at the Madison Correctional Institution, appeals the Twelfth District Court of Appeals’ dismissal of his habeas corpus petition. Orr has also filed several motions seeking various orders on appeal.

We affirm the court of appeals’ judgment and deny all of Orr’s motions. SUPREME COURT OF OHIO I. Background {¶ 2} Orr was convicted in 2013 of aggravated murder with firearm specifications and other crimes and sentenced to life in prison without the possibility of parole. Orr’s convictions were affirmed on appeal. *State v. Orr*, 8th Dist. Cuyahoga No. 1008441, 2014-Ohio-4680. {¶ 3} In August 2020, Orr filed a petition for a writ of habeas corpus in the court of appeals naming appellee, Warden Thomas Schweitzer, as the respondent.

Orr alleged that his incarceration is the product of numerous constitutional-due- process violations committed in the trial-court proceedings that resulted in his conviction. Schweitzer filed a motion to dismiss Orr’s petition under Civ.R. 12(B)(6).

The court of appeals granted the motion and dismissed the action. Orr timely appealed to this court as of right. He has also filed a motion for an “emergency deposition hearing order” for the purpose of obtaining sworn testimony from a purported exculpatory witness, a motion for funds to hire an investigator to locate the witness, two motions for judicial notice of facts supporting his constitutional claims, and a motion for summary judgment.

II. Analysis A. Dismissal of Orr’s Petition {¶ 4} This court reviews de novo a lower court’s dismissal of a habeas corpus petition under Civ.R. 12(B)(6). *State ex rel. Norris v. Wainwright*, 158 Ohio St.3d 20, 2019-Ohio-4138, 139 N.E.3d 867, ¶ 5. Dismissal is appropriate if it appears beyond doubt from the petition, after presuming all factual allegations to be true and making reasonable inferences in the petitioner’s favor, that the petitioner can prove no set of facts entitling him to extraordinary relief in habeas corpus.

Keith v. Bobby, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 10. {¶ 5} The court of appeals properly dismissed Orr’s petition. Though Orr complains of constitutional violations underlying his convictions, none of his 2 January Term, 2021 arguments implicate the jurisdiction of the trial court.

Accordingly, Orr did not state a valid claim for habeas corpus, because he had adequate remedies at law, namely direct appeal or a petition for postconviction relief, to address the nonjurisdictional errors of which he complains. *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d

1242, ¶ 6. {¶ 6} In his first proposition of law, Orr argues that the court of appeals erred in dismissing his petition without an evidentiary hearing.

Orr contends that the court of appeals deprived him of his right to demonstrate an actual-innocence defense, which he claims is supported by newly discovered evidence. This argument does not provide a basis for reversal however, because a claim of actual innocence is not a cognizable basis for habeas relief under Ohio law, and Orr “has or had adequate legal remedies such as a petition for postconviction relief * * * to raise his contentions concerning * * * his innocence.” *Shie v. Leonard*, 84 Ohio St.3d 160, 161, 702 N.E.2d 419 (1998). {¶ 7} In his second proposition of law, Orr argues that the court of appeals erred in dismissing his habeas petition without making “a factual identification inquiry” into his guilt.

Orr argues that the evidence implicating him was unreliable and insufficient to support his conviction, thereby depriving him of due process of law. Orr’s argument contests the sufficiency of the evidence at trial, which is not a cognizable basis for relief in habeas corpus. *Lynch v. Wilson*, 114 Ohio St.3d 118, 2007-Ohio-3254, 868 N.E.2d 982, ¶ 5. {¶ 8} Finally, in his third proposition of law, Orr contends that the prosecution violated his constitutional right to a fair trial by fabricating evidence, depriving him of the opportunity to cross-examine an unidentified witness referred to in police reports, and making improper statements during closing argument.

But claims of prosecutorial misconduct are not cognizable in habeas corpus. *Keith*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, at ¶ 15. 3 SUPREME COURT OF OHIO B. Orr’s Motions {¶ 9} Orr has filed motions for (1) an order allowing an “emergency deposition” of a witness whose testimony, Orr contends, supports his claim of actual innocence, (2) “emergency funds” for the purpose of hiring an investigator to locate the witness, (3) judicial notice of facts supporting his constitutional claims, and (4) “summary judgment relief in the interest of justice.” {¶ 10} Orr’s motions for an emergency deposition and for funds to locate the witness to be deposed seek to add evidence to the record to support his claim of actual innocence.

We deny these motions. “A reviewing court generally may not add matter to the record before it and then decide the appeal on the basis of the new matter.” *State ex rel. Harris v. Turner*, 160 Ohio St.3d 506, 2020-Ohio-2901, 159 N.E.3d 1121, ¶ 16.

Moreover, as noted above, claims of actual innocence are not cognizable in habeas corpus. Therefore, the evidence Orr seeks to procure is immaterial to this proceeding. {¶ 11} We also deny Orr’s two motions for judicial notice. Orr asks the court to take judicial notice of “a corrupt pattern of omission tactics that has been criminally utilized” against him to obtain a conviction.

In a second motion for judicial notice, Orr offers additional argument in support of his claims of actual innocence and constitutional violations at trial. Orr asks this court to take judicial notice of

disputed facts and legal conclusions, which is improper. See Harris at ¶ 17. Judicial notice applies only to facts that are not subject to reasonable dispute.

Evid.R. 201(B). {¶ 12} Finally, Orr’s motion for summary judgment is also improper. “Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try.” Murphy v. Reynoldsburg, 65 Ohio St.3d 356, 358, 604 N.E.2d 138 (1992). Summary judgment is not applicable to proceedings on appeal. 4 January Term, 2021 III.

Conclusion {¶ 13} For the foregoing reasons, we affirm the judgment of the court of appeals and deny all of Orr’s motions. Judgment affirmed. O’CONNOR, C.J., and KENNEDY, FISCHER, DEWINE, DONNELLY, STEWART, and BRUNNER, JJ., concur. _____ Darlel Orr, pro se. Dave Yost, Attorney General, and Stephanie L. Watson, Assistant Attorney General, for appellee. _____ 5