

SUPREME COURT OF OHIO

Waters v. Wolfe

114 Ohio St. 3d 151 (Ohio 2007) · Decided August 8, 2007

SUMMARY

The Supreme Court of Ohio affirmed the dismissal of Kirk Waters's habeas corpus petition. The court held that, regardless of whether Waters should have been permitted to amend filing deficiencies, his petition failed to state a viable claim because Ohio law authorized his prosecution for Butler County offenses after his extradition from Kentucky on Clermont County charges.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Pfeifer; Lundberg Stratton; O’Connor; O’Donnell; Lanzinger; Cupp
JURISDICTION	Ohio
DECIDED	August 8, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a petition for a writ of habeas corpus by the Court of Appeals for Noble County.
STANDARD OF REVIEW	Whether the petition stated a viable claim for habeas corpus relief; dismissal was reviewed based on the legal sufficiency of the petition.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Ohio.
PARTIES	Kirk Waters v. Jeffrey A. Wolfe, Warden, Noble Correctional Institution

TOPICS

- habeas corpus
- post-conviction relief
- pleadings
- motion to amend
- criminal procedure

PRACTICE AREAS

- habeas corpus
- state post-conviction relief
- criminal procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether Waters's petition stated a viable habeas corpus claim when he was tried in Ohio for offenses not specified in the extradition proceedings.
2. Whether the court of appeals was required to permit Waters to amend his habeas petition to comply with the verification and affidavit requirements of R.C. 2725.04 and R.C. 2969.25(A).

HOLDINGS

1. A person returned to Ohio by, or after waiver of, extradition proceedings may be tried in Ohio for other crimes committed in Ohio in addition to the offense specified in the extradition requisition. Because Waters waived extradition to Ohio, R.C. 2963.26 authorized the Butler County Common Pleas Court to try him for the Butler County offenses.
2. The court did not need to resolve whether amendment was permissible because, regardless of the amendment issue, the petition failed to state a viable habeas corpus claim.

KEY QUOTATIONS

“A person returned to this state by, or after waiver of, extradition proceedings, may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.” (¶ 5; 114 Ohio St. 3d at 153)

FACTUAL BACKGROUND

Waters was convicted in Butler County, Ohio, and received an aggregate prison sentence after being extradited from Kentucky on Clermont County charges. He contended that the Butler County court lacked jurisdiction because the Butler County offenses were not included in the extradition. His habeas petition was not properly verified and lacked the required affidavit describing civil actions filed during the preceding five years.

PROCEDURAL HISTORY

Waters filed a habeas corpus petition seeking release from prison, arguing that the Butler County trial court lacked jurisdiction to try him for offenses not specified in his Kentucky extradition. The petition was improperly verified and omitted the affidavit required by R.C. 2969.25(A). After the warden moved to dismiss, Waters moved to amend the petition to add the required verification and affidavit. The court of appeals granted the motion to dismiss, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- Gaskins v. Shiplevy, 74 Ohio St. 3d 149, 150, 656 N.E.2d 1282 (1995)
- Snitzky v. Wilson, Trumbull App. No. 2003-T-0095, 2004-Ohio-7229, 2004 WL 3090238, ¶ 37
- State ex rel. Childs v. Wingard, 83 Ohio St. 3d 346, 348, 699 N.E.2d 1278 (1998)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} This is an appeal from a judgment dismissing a petition for a writ of habeas corpus. Because the petition fails to state a viable habeas corpus claim, we affirm. {¶ 2} In September 2006, appellant, Kirk Waters, filed a petition in the Court of Appeals for Noble County for a writ of habeas corpus to compel appellee, Noble Correctional Institution Warden Jeffrey A. Wolfe, to release him from prison.

Waters claimed that his Butler County, Ohio convictions and aggregate sentence were invalid because his trial court lacked jurisdiction to try him on charges that were not the subject of his extradition from Kentucky. Waters asserted that he had waived extradition only to face charges in Clermont County, Ohio. Waters's petition was not properly verified in accordance with R.C.

2725.04, and Waters did not file with his petition an affidavit describing the civil actions filed by him in the previous five years as required by R.C. 2969.25(A). {¶ 3} After the warden filed a motion to dismiss, Waters filed motions to amend his petition to include a verification and an affidavit describing his previously filed civil actions.

The court of appeals granted the warden's motion and dismissed the petition. {¶ 4} We affirm the judgment of the court of appeals. Waters asserts that the court of appeals should have permitted Waters to amend his petition to comply with R.C. 2725.04 and 2969.25(A). See, e.g., *Gaskins v. Shiplevy* (1995), 74 Ohio St.3d 149, 150, 656 N.E.2d 1282 (Civ.R. 15(A), regarding the amendment of pleadings in a civil action, is not clearly inapplicable to habeas corpus proceedings); *Snitzky v. Wilson*, Trumbull App.

No. 2003-T-0095, 2004-Ohio-7229, 2004 WL 3090238, ¶ 37 (habeas corpus petitioner not barred from amending petition for writ of habeas corpus pursuant to Civ.R. 15(A) to comply with filing requirements of R.C. 2969.25(A)). {¶ 5} Nevertheless, regardless of whether Waters is correct on this point, his petition still failed to state a viable habeas corpus claim.

The Butler County trial court possessed the requisite jurisdiction to try Waters on the offenses in Butler County even though he had been extradited from Kentucky on the Clermont County offenses, because R.C. 2963.26 provides that "[a] person returned to this state by, or after waiver of, extradition proceedings, may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition." State ex rel.

*Childs v. *153Wingard* (1998), 83 Ohio St.3d 346, 348, 699 N.E.2d 1278. Therefore, once Waters waived extradition to Ohio on the Clermont County charges, R.C. 2963.26 authorized the Butler County Common Pleas Court to try him for other crimes committed in Ohio. Kirk Waters, pro se. Marc Dann, Attorney General, and Thelma Thomas Price, Assistant Attorney General, for

appellee. {¶ 6} Therefore, the court of appeals correctly denied Waters's petition, and we affirm the judgment of the court of appeals.

Judgment affirmed. Moyer, C.J., Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger and Cupp, JJ., concur.