

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BOBBY DALE KEYES,

Petitioner,

v

File No. 12-29105-AH
HON. PHILIP E. RODGERS, JR.

WARDEN SHIRLEE A. HARRY,

Respondent.

Petitioner Acting in Pro Per

pc: Respondent

**DECISION AND ORDER DENYING PETITION
FOR THE GREAT WRIT OF HABEAS CORPUS**

The Petitioner, Bobby Dale Keyes, pled guilty in Muskegon County to one count of failure to pay child support, pursuant to MCL § 750.165. Subsequently, the Petitioner was sentenced to serve 16 to 72 months with the Michigan Department of Corrections (MDOC).

The Petitioner has now submitted a Petition for the Great Writ of Habeas Corpus challenging the legality of his incarceration at the Pugsley Correctional Facility in Grand Traverse County.

A prisoner's right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.¹ The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.² Habeas corpus is the remedy when a sentence of imprisonment is wholly void for lack of authority to sentence to the institution in question.³ If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement.⁴

Pursuant to MCL § 600.4301 *et seq*:

[A]n action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state

¹ *Hinton v Parole Bd*, 148 Mich App 235, 244; 383 NW2d 626 (1986).

² *Moses v Dep't of Corrections*, 274 Mich App 481; 736 NW2d 269 (2006).

³ *Ex parte Allen*, 139 Mich 712; 103 NW 209 (1905).

⁴ MCL § 600.4352.

under any pretense whatsoever, except...persons convicted, or in execution, upon legal process, civil or criminal [and] persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.⁵

Thus, habeas corpus cannot serve as a substitute for an appeal or writ of error and cannot be used to review the merits of a criminal conviction.⁶ MCL § 600.4310(3) prohibits a habeas action by or on behalf of “persons convicted, or in execution, upon legal process, civil or criminal,” and is not a means of testing the conditions of admittedly lawful custody.⁷ Furthermore, under MCL § 600.4310, habeas relief is open to a convicted person only where the convicting court was without jurisdiction to try the defendant for the crime in question.⁸ To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.⁹ A radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission.¹⁰ Habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings.¹¹

In this case, the Petitioner plainly and improperly seeks to challenge through his habeas corpus petition the merits of his conviction and sentence, which the habeas procedure does not entitle him to do.¹² Furthermore, a Judgment of Sentence, issued by Muskegon County and dated October 12, 2011, reflects that the Petitioner pled guilty to the crimes of failure to pay child support and of violating his probation. A review of the Offender Tracking Information System (OTIS) on the MDOC website reflects this conviction and sentence and indicates the Petitioner’s earliest release date is December 25, 2012. The Petitioner is being held by the MDOC pursuant to court order and a Writ of Habeas Corpus is therefore not appropriate.

⁵ MCL § 600.4307; § 600.4310.

⁶ *Cross v Dep’t of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

⁷ *Harris v Nelson*, 394 US 286; 89 S Ct 1082; 22 L Ed 2d 281 (1969); *Walker v Wainwright*, 390 US 335; 88 S Ct 962; 19 L Ed 2d 1215 (1968), rehearing denied, 390 US 1036; 88 S Ct 1420; 20 L Ed 2d 299.

⁸ *People v Price*, 23 Mich App 663, 669-670; 179 NW2d 177 (1970). A radical defect in jurisdiction so as to permit review of conviction by habeas corpus contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission. *Id.*

⁹ *Id.*

¹⁰ *Id.* at 671.

¹¹ *Phillips v Warden, State Prison of Southern Mich*, 153 Mich App 557, 566; 396 NW2d 482 (1986).

¹² *Woods v Dep’t Corrections*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2011 (Docket No. 296609).

For the reasons stated herein, the Court denies the Petitioner's Petition for the Great Writ of Habeas Corpus.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____