

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dennis Turner,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

October 2, 2023

Court of Appeals Case No.
23A-MI-90

Appeal from the Putnam Superior
Court

The Honorable Charles D. Bridges,
Judge

The Honorable Melinda K.
Jackman-Hanlin, Magistrate

Trial Court Cause No.
67D01-2210-MI-540

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Dennis Turner, pro se, appeals the trial court's denial of his petition for habeas corpus relief. He argues that the trial court abused its discretion in denying his petition.

[2] We affirm.

Facts & Procedural History

[3] On June 21, 2010, in Boone County, Turner was sentenced under Cause No. 06D01-1002-FB-46 (Cause No. 46) to nineteen years. He was released from prison on November 28, 2019, to serve twenty-four months on parole. Thus, his parole termination date was November 28, 2021.

[4] While on parole, Turner was arrested on August 5, 2021, in Marion County and charged with several criminal offenses under Cause No. 49D17-2108-F6-24696 (Cause No. 24696). Turner was held in custody under Cause No. 24696 until his release on August 12. On or about August 19, 2021, Turner was arrested in Johnson County and charged with new criminal offenses under Cause No. 41D02-2108-F6-490 (Cause No. 490).

[5] On September 3, 2021, a parole violation warrant (PV Warrant) was issued in Cause No. 46 for Turner, alleging a violation of Rule 7 (criminal conduct) and specifically referencing Turner's new Marion County charges under Cause No. 24696. Before the PV Warrant was served, Turner pled guilty in Johnson

County under Cause No. 490 and was sentenced to four years executed on October 13, 2021. Six days later, on October 19, the PV Warrant was served on Turner.

[6] On a form titled “Transmittal - Parole Board Action” (PBA) dated November 3, 2021, it was noted that Turner was not “Available” and that he was “In custody” with a projected release date of August 5, 2025. *Appellant’s Appendix* at 17. Under “Special Remarks,” it was noted that Turner “is currently being held on a Parole Warrant for Violation of Rule 7’s New Criminal Charges,” and further specifying the new charges as those under Cause No. 24696. *Id.* Under “Recommendations” it was noted: “Return, When Available” and “No Action Now, Await Local Dispositions.” *Id.*

[7] A jury trial in Cause No. 24696 was held on August 4, 2022, following which Turner was convicted of Level 6 felony resisting law enforcement and Class B misdemeanor criminal mischief. He was subsequently sentenced to an aggregate term of 265 days to be served consecutively to Cause No. 490.

[8] Following his conviction in Cause No. 24696, the parole board set a revocation hearing on the alleged parole violation for September 20, 2022. At that hearing, Turner pled guilty to the alleged parole violation. On September 30, 2022, the parole board issued its disposition. In its findings of fact, the parole board found that a “[p]reliminary hearing [was] not necessary due to finding of probable cause by the court. [Turner] became available upon sentencing on

8/7/2022.” *Appellant’s Appendix* at 20. The parole board directed Turner to serve the balance of his sentence for the paroled charge.

[9] On October 17, 2022, Turner filed a pro se Petition for Writ of Habeas Corpus (the Petition), claiming he was entitled to discharge because the parole board failed to hold a preliminary hearing on the alleged parole violation, which he claims was required by Ind. Code § 11-13-3-9.¹ The next day, the trial court set a hearing for November 21. Turner filed an amendment to the Petition on October 31, 2022, and attached thereto the PBA dated November 3, 2021. The State requested two separate extensions of time to file a response. The court eventually held an evidentiary hearing on the Petition on December 19, 2022. That same day, the State filed its response to the Petition and Turner filed a motion for summary judgment. On December 20, 2022, the trial court denied Turner’s summary judgment motion. On December 27, the trial court issued an order denying Turner’s request for habeas relief. In so deciding, the trial court took judicial notice of trial court records in Cause Nos. 24696 and 490.² Turner now appeals. Additional facts will be provided as necessary.

¹ “Upon the arrest and confinement of a parolee for an alleged violation of a condition to remaining on parole, an employee of the department . . . shall hold a preliminary hearing to determine whether there is probable cause to believe a violation of a condition has occurred. The hearing shall be held without unnecessary delay.” I.C. § 11-13-3-9(a).

² A trial court may take judicial notice of the records of another court. *See, e.g., Christie v. State*, 939 N.E.2d 691, 693-94 (Ind. Ct. App. 2011) (probation revocation proceedings).

Discussion & Decision

[10] Turner filed a petition for writ of habeas corpus and, on appeal, maintains that he is unlawfully incarcerated and “entitled to immediate release.” *Appellant’s Brief* at 30. Indiana’s habeas corpus statute, Ind. Code § 34-25.5-1-1, provides:

Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal.

The purpose of a writ of habeas corpus is to determine the lawfulness of custody or detention of the defendant and may not be used to determine collateral matters not affecting the custody process. *Hardley v. State*, 893 N.E.2d 740, 742 (Ind. Ct. App. 2008). A petitioner is entitled to habeas corpus only if he is entitled to immediate release from unlawful custody. *Hawkins v. Jenkins*, 268 Ind. 137, 139, 374 N.E.2d 496, 498 (1978).

[11] Here, the record (including records of which judicial notice was exercised) reveals that Turner is not entitled to immediate release. Regardless of the issue raised by Turner about the revocation of his parole, it remains that Turner is currently incarcerated, serving a four-year executed term in Cause No. 490 that

is to be followed by a consecutive one-year sentence imposed in Cause No. 24696.³ Habeas relief is not available for Turner.

[12] That said, the trial court addressed Turner’s argument that his parole violation is unlawful because the parole board did not conduct a preliminary hearing.⁴ Indeed, I.C. § 11-13-3-9(a) requires that a preliminary hearing be held “without unnecessary delay.” Turner maintains that the issue of an unnecessary delay is established because no preliminary hearing was ever held. He thus argues that the parole revocation charge must be dismissed. *See* I.C. § 11-13-3-9(e) (“Unless good cause for the delay is established in the record of proceedings, the parole revocation charge shall be dismissed if the preliminary hearing is not held within ten (10) days after the arrest.”)

[13] In rejecting Turner’s argument, the trial court, citing I.C. § 11-13-3-9(d),⁵ concluded that Turner was not entitled to a preliminary hearing because he was convicted of new crimes in both Cause No. 24696 and Cause No. 490. Turner

³ The abstract of judgment in Cause No. 24696 sets out Turner’s sentence as 365 days, with 265 days executed and 100 days suspended, to be served consecutive to the sentence in “Cause No. 49D02-2108-F6-00490.” Although technically not correct, we find this to be a reference to Cause No. 490.

⁴ Our Supreme Court has found that “a trial court does not have jurisdiction to entertain a petition for a writ of habeas corpus inasmuch as petitioner [is] serving time under a proper commitment, his sentence [has] not expired and he [has] not been denied good time or credit time . . . [and h]e is not seeking a correction of the beginning or end of his sentence.” *Hardley*, 893 N.E.2d at 742-43 (quoting *Partlow v. Superintendent*, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001), *rev’d on other grounds*). In such case, the petitioner must file a petition for post-conviction relief in the court of conviction. In such cases, Courts will frequently and properly treat an erroneously captioned petition for a writ of habeas corpus as one for post-conviction relief. *Id.*

⁵ Subsection (d) provides: “If the alleged violation of parole is the parolee’s conviction of a crime while on parole, the preliminary hearing required by this section need not be held.”

challenges the trial court's finding in this regard, pointing out that the alleged parole violation specified his commission of new crimes under Cause No. 24696 and that he had not been convicted of any crimes under that cause when the PV Warrant was served. Indeed, Turner was not convicted and sentenced under Cause No. 24696 until nearly one year later.

[14] We will not put form over substance. The alleged parole violation was that Turner violated Rule 7 by committing new crimes. Although only the charges under Cause No. 24696 were specified in the PV Warrant, it remains that Turner was also charged under Cause No. 490 within one week of charges under Cause No. 24696. Before the PV Warrant was served, Turner had pled guilty and was sentenced to a four-year executed term under Cause No. 490.

[15] Seemingly in recognition of this, in the PBA form filed by the parole board, it was noted that Turner was in custody and had a projected release date of August 2025, which coincides with the four-year sentence imposed in Cause No. 490. The PBA also indicated that the parole board would take no action and await local disposition. It further directed that Turner be returned "when available." *Appellant's Appendix* at 17. After Turner was convicted and sentenced in Cause No. 24696, he was provided with a parole revocation hearing within the statutory timeframe. After a hearing, at which Turner pled guilty to violating his parole, the parole board decided to revoke Turner's parole based on his commission of additional criminal acts while on parole.

[16] In short, when the PV Warrant was served, Turner was serving a four-year sentence for committing a crime while on parole, a violation of Rule 7. He was also facing additional criminal charges in Cause No. 24696. Although Cause No. 24696 was specified in the PV Warrant, it remains that the basis thereof was the commission of new criminal offenses while on parole. Under the circumstances of this case, a preliminary hearing was not required.

[17] Judgment affirmed.

May, J. and Foley, J., concur.