UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0173

September Term, 2015

CLEVELAND HUGHES

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 30, 2017

On October 17, 1980, the appellant, Cleveland Hughes, a/k/a William Taylor, was incarcerated in Menard, Illinois. At that time, he had been charged with various crimes five separate indictments filed in the Circuit Court for Montgomery County, Maryland. Appellant exercised his rights under the Interstate Agreement on Detainers Act ("IADA"), and requested that the State's Attorney for Montgomery County make a final disposition of all untried indictments then pending in Montgomery County.

Illinois authorities transferred appellant pursuant to the IADA to Montgomery County on April 27, 1981, which was 193 days after the date that appellant exercised his rights under the IADA. Because appellant had not been tried within 180 days of his IADA request, all the charges set forth in the five indictments were dismissed. Montgomery County authorities, however, did not return appellant to Illinois. Instead, on May 14, 1981, appellant was indicted by the grand jury for Montgomery County, Maryland and charged with additional crimes, i.e., first-degree rape, robbery and daylight housebreaking. On November 12, 1981 appellant was convicted by a jury on all three charges. He was sentenced on January 14, 1982 to an aggregate sentence of life plus 20 years. Appellant filed an appeal to this Court, but the convictions were affirmed. *Hughes v. State*, Sept. Term 1982, No. 861, unreported (filed February 10, 1983). Appellant's application for a *writ of certiorari* was denied. *See Hughes v. State*, 297 Md. 338 (1983).

Between the date of the denial of the *writ of certiorari* and December 2014, appellant filed numerous requests for relief including three petitions for post-conviction relief, four motions to correct an illegal sentence and a petition for a *writ of habeas corpus*.

Additionally, appellant filed, on February 18, 2011, a motion in which he asked the Circuit Court for Montgomery County to enforce federal laws, and in particular the IADA, pursuant to the Supremacy Cause of the United States Constitution. Also in 2011, appellant filed a motion to dismiss indictment for lack of jurisdiction. All of the aforementioned motions and petitions were denied.

On December 4, 2014, appellant filed the petition for a *writ of habeas corpus* that is the subject of this appeal. The gist of appellant's claim, as set forth in his petition, is that the circuit court did not have jurisdiction to try him for the crimes of which he was convicted because the State had not complied with the IADA. More specifically, he claims that the State of Maryland should have sent him back to Illinois once the first five indictments were dismissed rather than try him on a new sixth indictment, which was the indictment under which he was convicted.

Maryland Rule 15-303(e)(3)(B) deals with petitions for *writs of habeas corpus* and reads as follows:

> (3) *Compliance With Rule 15-302*. If the petition complies with the provisions of Rule 15-302, the judge shall grant the writ unless:
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> * * *
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> (B) the petition is made by or on behalf of an individual confined as a result of a sentence for a criminal offense, of an order in a juvenile proceeding, or of a judgment of contempt of court, the legality of the confinement was determined in a prior habeas corpus or other post-conviction proceeding, and no new ground is shown sufficient to warrant issuance of the writ.

(Emphasis added.)

The circuit court denied appellant's petition on January 28, 2015. The court's dismissal order reads:

> This matter is before the Court on the Defendant's Petition for a Writ of Habeas Corpus (DE# 244). Defendant claims that his detention is unlawful because it is in violation of the Interstate Agreement on Detainers Act (IADA). However, Defendant's appeal of his conviction on this very argument was denied by the Maryland Court of Special Appeals and his conviction was affirmed on March 16, 1983. Defendants numerous other petitions, including petitions for writs of habeas corpus on grounds of violation of the IADA, have been denied. *See* DE# 173, denying Motion to Correct an Illegal Sentence, DE# 183, 185, and 186, all denying Petitions for Writ of Habeas Corpus on the same grounds, and DE# 224, denying Defendant's Motion to Enforce the Interstate Agreement on Detainers Act, by the undersigned judge.

Appellant filed, within thirty days of the denial of his petition for *habeas corpus* relief, a motion for leave to appeal. That motion was never granted, but the clerk's office of this Court treated the motion as a notice of appeal.

STATE'S MOTION TO DISMISS APPEAL

As part of its brief, the State filed a motion to dismiss this appeal on the grounds that, with exceptions not here applicable, an appeal, or an application for leave to appeal, of the denial of a petition for *writ of habeas* corpus is not allowed. *See Chavis v. Smith*, 834 F.Supp. 153, 157 (D.Md. 1993).

In *Green v. Hutchinson*, 158 Md. App. 168, 173-74 (2004), we said:

> As we have indicated, Green has been committed to the custody of the Commissioner of Correction since 1990. The issues he raised in his petition for a writ of *habeas corpus* concerned alleged improprieties in the conduct of his murder trial. The issues were of the type that could have been raised in a petition for postconviction relief had Green been entitled to file such a petition. *See* Code (2001), §§ 7-102 (establishing proper subjects of

postconviction petitions) and 7-103 (setting forth limitations on filing postconviction petitions) of the Crim. Pro. Art.

As the Court of Appeals has explained:

> In 1958 the General Assembly enacted the Post Conviction Procedure Act. . . . That enactment, for the first time, created a statutory remedy under which a prisoner could collaterally challenge the conviction and sentence . . . which led to his incarceration. The purpose of the Post Conviction Procedure Act was to create a simple statutory procedure, in place of the common law habeas corpus and coram nobis remedies, for collateral attacks upon criminal convictions and sentences. . . . Although for constitutional reasons the General Assembly did not restrict the authority of judges to issue writs of habeas corpus, *it did in the Post Conviction Procedure Act legislate with regard to appeals in habeas corpus cases*. *Gluckstern*, 319 Md. at 658, 574 A.2d at 909-10 (emphasis added) (citations omitted) (footnote omitted). Section 7-107(b) of the Uniform Postconviction Procedure Act specifically provides:
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> (1) In a case in which a person challenges the validity of confinement under a sentence of death or imprisonment by seeking the writ of habeas corpus or the writ of corum nobis or by invoking a common law or statutory remedy other than this title, *a person may not appeal to the Court of Appeals or the Court of Special Appeals*.
> (2) This subtitle does not bar an appeal to the Court of Special Appeals:
> (i) in a habeas corpus proceeding begun under § 9-110 of this article; or
> (ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of death or imprisonment for the conviction of the crime, including confinement as a result of a proceeding under title 4 of the Correctional Services Article. Code (2001), § 7-107(b) of the Crim. Pro. Art. (emphasis added).

In this case, none of the listed exceptions would permit an appeal, or an application for leave to appeal, from the dismissal of a petition for *writ of habeas corpus.* This case does not involve extradition proceedings as contemplated by § 9-110 of the Criminal Procedure Article. Section 9-110 governs cases where a criminal defendant in Maryland

files a *habeas corpus* petition to prevent extradition back to the state that issued the extradition warrant. *See, e.g., Statchuk v. Warden*, 53 Md. App. 680, 684-86 (1983). Here, appellant waived extradition in 1980 and voluntarily came to Maryland in order to assert his rights under the IADA. Nor does the *habeas corpus* petition in this case involve confinement under title 4 of the Correctional Services Article, which deals with confinement at the Patuxent Institution. Lastly, we note that in his petition for issuance of a *writ of habeas* corpus, appellant claimed that the Circuit Court for Montgomery County had no jurisdiction to try him because prior to issuing the indictment in this case, he should have been sent back to Illinois. Therefore, he clearly seeks to challenge the legality of his convictions.

For the above reasons, we shall grant the State's motion to dismiss this appeal.[1]

MOTION TO DISMISS APPEAL GRANTED; COSTS TO BE PAID BY APPELLANT.

[1] If we had reached the merits of this case, we would have affirmed the trial judge's dismissal of the petition for a *writ of habeas corpus*. As the circuit court pointed out in its dismissal order, the arguments raised by appellant in his petition for *habeas corpus* relief had already been considered and rejected in prior instances. For instance, on February 1, 2011, appellant filed a motion to enforce the IADA, in which his arguments are almost verbatim the same in his most recent petition for *habeas corpus* relief. That motion was denied by the circuit court in May, 2011. That prior adverse determination constituted a valid ground, under Md. Rule 15-303(e)(3)(B), to dismiss appellant's petition for a *writ of habeas corpus*.