

## **APPENDIX**

COURT OF APPEALS		IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
STATE OF OHIO COUNTY OF LORAIN MICHAEL FULLER Petitioner	FILED LORAIN COUNTY 2017 SEP 15 A 11:22 COURT OF COMMON PLEAS TOM ORLANDO 8TH APPELLATE DISTRICT v. LASHANN EPPINGER, WARDEN Respondent	

JOURNAL ENTRY

Michael Fuller petitioned this Court for a writ of habeas corpus alleging that he is entitled to immediate release from prison because he has served the minimum sentence required for parole eligibility. The Warden moved to dismiss, and Mr. Fuller did not file a response. For the reasons that follow, the Warden's motion is granted.

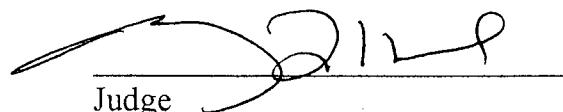
To dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond doubt from the complaint, after all factual allegations are presumed true and all reasonable inferences are made in favor of Mr. Fuller, that he can prove no set of facts warranting relief. *State ex rel. Dehler v. Sutula*, Judge, 74 Ohio St.3d 33, 34 (1995). "A writ of habeas corpus is warranted in certain extraordinary circumstances 'where there is an unlawful restraint of a person's liberty and there is no adequate remedy in the ordinary course of law.'" *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 616 (2001), quoting *Pegan v. Crawmer*, 76 Ohio St.3d 97, 99 (1996). "[H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully." *Heddelston v. Mack*, 84 Ohio St.3d 213, 214 (1998), citing

*Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 346 (1994). A writ of habeas corpus will not issue when the petitioner has served only the minimum term required for parole eligibility. *State ex rel. Lockhart v. Sheldon*, 146 Ohio St.3d 468, 2016-Ohio-627, ¶ 5.

Mr. Fuller's petition alleges that he is entitled to a writ of habeas corpus because he has served the first 15 years of his prison sentence. His petition acknowledges, however, that the maximum prison term he could serve is 75 years. Because Mr. Fuller has served only the minimum term required for parole eligibility, a writ of habeas corpus will not issue. *Id. Compare State ex rel. Keith v. Ohio Adult Parole Auth.*, 141 Ohio St.3d 375, 2014-Ohio-4270, ¶ 19 (concluding that because parole is discretionary, a prisoner is not deprived of liberty upon denial of parole.)

Having presumed all of the factual allegations in Mr. Fuller's complaint to be true, this Court concludes that he can prove no set of facts warranting relief. The Warden's motion to dismiss is, therefore, granted.

Mr. Fuller's petition is dismissed. Costs are taxed to Mr. Fuller. The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal.



A handwritten signature in black ink, appearing to read "D. J. Schaefer".

Judge

Concur:

Schafer, J.  
Callahan, J.

# The Supreme Court of Ohio

FILED

JUL 10 2018

CLERK OF COURT  
SUPREME COURT OF OHIO

Michael Fuller

Case No. 2017-1386

v.

JUDGMENT ENTRY

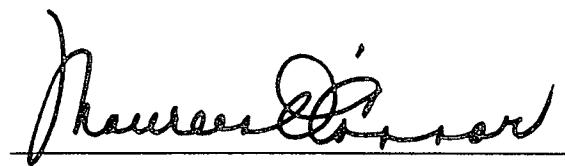
LaShann Eppinger, Warden

APPEAL FROM THE  
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Lorain County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed, consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to and filed with the clerk of the Court of Appeals for Lorain County.

(Lorain County Court of Appeals; No. 16CA010939)



Maureen O'Connor  
Chief Justice

EDITED

No. 2017-1386  
June 20, 2018  
Per Curiam (Epstein, M.C.)  
File No. 7513

1 THE STATE EX REL. FULLER, APPELLANT, v. EPPINGER, WARDEN, APPELLEE.

[Cite as *State ex rel. Fuller v. Eppinger*, \_\_\_ Ohio St.3d \_\_\_, 2018-Ohio-

3 \_\_\_\_\_.

<sup>4</sup> *Mandamus—Statute corrects minimum sentence imposed in excess of the statutory*

5 limit by operation of law—Court of appeals' dismissal of complaint

6 *affirmed.*

7 (No. 2017-1386—Submitted January 23, 2018—Decided \_\_\_, 2018.)

## 8 APPEAL from the Court of Appeals for

9 Lorain County, No. 16CA010939.

10

11 Per Curiam.

Appellant, Michael Fuller, appeals the dismissal of his petition for a writ of

<sup>2</sup> habeas corpus that he filed against appellee, LaShann Eppinger, warden of the

<sup>3</sup> Grafton Correctional Institution, where Fuller is incarcerated. We affirm.

## *Background*

In December 1990, Fuller was convicted of one count of robbery and two

6 counts of aggravated burglary. The Cuyahoga County Court of Common Pleas

<sup>7</sup> sentenced Fuller to 3 to 15 years' imprisonment for the robbery and 5 to 25 years'

8 imprisonment for the aggravated burglaries, all to be served concurrently. In

<sup>9</sup> October 1991, the trial court suspended Fuller's sentences and placed him on

10 probation. While on probation, Fuller committed additional crimes. The trial court

11 revoked his probation in 1992 and ordered the original sentence into execution.

12 On June 8, 1992, Fuller was convicted of rape, aggravated burglary, felonious

13 assault, and attempted felonious assault in Cuyahoga County Common Pleas Court.

14 The court sentenced him to an indefinite aggregate prison sentence of 25 to 75 years.

1       At the time of Fuller's convictions, the Ohio Revised Code placed a limit on  
2       consecutive indefinite terms of imprisonment:

3

4       Consecutive terms of imprisonment imposed shall not exceed:

5       \* \* \*

6       (2) An aggregate minimum term of fifteen years \* \* \* when the  
7       consecutive terms imposed are for felonies other than aggravated  
8       murder or murder.

9

10      Former R.C. 2929.41(E), Am.Sub.S.B. No. 258, 143 Ohio Laws, Part I, 1308, 1440.

11      In *State v. White*, 18 Ohio St.3d 340, 341, 481 N.E.2d 596 (1985), we held that the  
12      statute was self-executing and that therefore a minimum sentence imposed in excess  
13      of the statutory limit was not reversible error.

1       On direct appeal from his 1992 convictions, Fuller challenged his 25-year  
2       minimum sentence as a violation of former R.C. 2929.41(E). The court of appeals  
3       agreed, but citing *White*, held that there was no reversible error because “R.C.  
4       2929.41(E)(3) [sic] is a self-executing statute which automatically limits the  
5       aggravated minimum term to fifteen years.” *State v. Fuller*, 8th Dist. Cuyahoga.  
6       Nos. 63987 and 63988, 1993 WL 437596, \*10 (Oct. 28, 1993).

7       On April 8, 2016, Fuller filed a petition for a writ of habeas corpus in the  
8       Ninth District Court of Appeals, arguing that he was entitled to immediate release  
9       because his aggregate minimum sentence for his 1992 convictions exceeded the  
10      allowable limit under former R.C. 2929.41(E). Fuller and Eppinger both filed  
11      motions for summary judgment, and Eppinger filed a motion to dismiss. Eppinger’s  
12      summary-judgment motion included a letter from the Department of Rehabilitation  
13      and Correction’s Bureau of Sentence Computation, dated July 16, 2015, indicating  
14      that it had properly capped Fuller’s aggregate minimum sentence at 15 years.

1 On September 15, 2017, the Ninth District Court of Appeals granted  
2 Eppinger's motion to dismiss the complaint for failure to state a claim. Fuller  
3 appealed.

4 *Analysis*

5 Habeas corpus is generally available only when the petitioner's *maximum*  
6 sentence has expired and he is being held unlawfully. *Heddleston v. Mack*, 84 Ohio  
7 St.3d 213, 214, 702 N.E.2d 1198 (1998). An inmate is not entitled to a writ of habeas  
8 corpus upon completion of his *minimum* sentence. *State ex rel. Lockhart v. Sheldon*,  
9 146 Ohio St.3d 468, 2016-Ohio-627, 58 N.E.3d 1124, ¶ 5. Fuller's entire argument  
10 appears to be based on a misunderstanding of the difference between an aggregate  
11 *minimum* sentence and an aggregate *maximum* sentence.

12 Given that Fuller has not completed his aggregate maximum sentence, the  
13 court of appeals correctly dismissed his petition for failure to state a claim.

14 Judgment affirmed.

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2 Michael Fuller, pro se.

3 Michael DeWine, Attorney General, and Maura O'Neill Jaite, Assistant

4 Attorney General, for appellee.

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6 Please click here to access the docket for this matter.

7 Please click here to access the CDMS for this matter.