

Order

Michigan Supreme Court
Lansing, Michigan

October 27, 2020

Bridget M. McCormack,
Chief Justice

160965(23)

David F. Viviano,
Chief Justice Pro Tem

TOD HOUTHOOFD,
Petitioner-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 160965
COA: 351654

OAKS CORRECTIONAL FACILITY WARDEN,
Respondent-Appellee.

On order of the Court, the motion for reconsideration of this Court's July 28, 2020 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



b1019

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 27, 2020

Clerk

Order

Michigan Supreme Court
Lansing, Michigan

July 28, 2020

Bridget M. McCormack,
Chief Justice

160965

David F. Viviano,
Chief Justice Pro Tem

TOD HOUTHOOFD,
Petitioner-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 160965
COA: 351654

OAKS CORRECTIONAL FACILITY WARDEN,
Respondent-Appellee.

_____/

On order of the Court, the application for leave to appeal the January 17, 2020 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



s0720

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 28, 2020

Clerk

App. C

Court of Appeals, State of Michigan

ORDER

Tod Houthoofd v Oaks Correctional Facility Warden

Docket No. 351654

LC No. 19-016841-AH

Michael J. Kelly
Presiding Judge

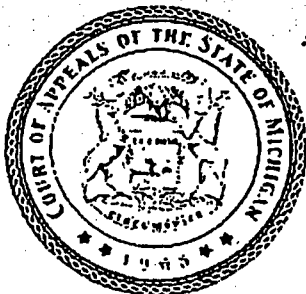
Michael F. Gadola

Brock A. Swartzle
Judges

The Court orders that the complaint for habeas corpus is DENIED.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 17 2020

Date



Chief Clerk

App. B.

STATE OF MICHIGAN

IN THE 19TH CIRCUIT COURT FOR THE COUNTY OF MANISTEE

TOD HOUTHOOFD, #596112,

Petitioner,

File No. 19-16841-AH

TRUE COPY
JILL M. NOWAK
Manistee County Clerk

-v-

Honorable David A. Thompson

LES PARISH, Warden,
Oaks Correctional Facility,

Respondent.

Tod Houthoofd, #596112
Oaks Correctional Facility
1500 Caberfae Hwy
Manistee, MI 49660

Les Parish, Warden
Oaks Correctional Facility
1500 Caberfae Hwy
Manistee, MI 49660

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MANISTEE COUNTY CLERK
JILL M. NOWAK

ORDER TO SHOW CAUSE WHY A WRIT
OF HABEAS CORPUS SHOULD NOT ENTER

Petitioner, Tod Houthoofd, #596112, is a prisoner in the custody of the Michigan Department of Corrections and is confined at the Oaks Correctional Facility in Manistee County, Michigan. Petitioner brings the instant writ of *habeas corpus* asserting that he is being unlawfully restrained of his freedom.

On October 1, 2019, this Court received Respondent's response containing a copy of Petitioner's Judgment of Sentence entered on July 11, 2019. Respondent argues that Petitioner is attempting to use an action for *habeas corpus* as a substitute for an appeal of a criminal conviction, contrary to MCL 600.4310. Respondent points out that for a writ of *habeas corpus* to enter, there would have to be a jurisdictional defect so radical as to render the criminal proceedings absolutely void. *In re Stone*, 295 Mich. 207; 294 NW2d 156 (1940). Petitioner argues that venue was improper where he was convicted in

Saginaw County and that lack of venue is a radical defect of jurisdiction sufficient to warrant *habeas corpus* relief.

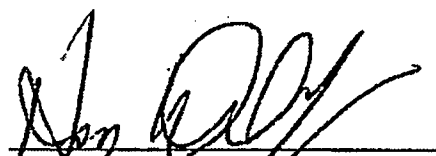
This Court is satisfied that Petitioner is being held by the Michigan Department of Corrections pursuant to a facially valid Judgment of Sentence. Petitioner's argument regarding venue has already been resolved by the Michigan Supreme Court in *People v Houthoofd*, 487 Mich 568; 790 NW2d 315 (2010), where the Court found that, although venue was improper in Saginaw County, "because a venue error is not a constitutional structural error, this matter is subject to a harmless error analysis under MCL 769.26. In this case, defendant was not deprived of his due process right to a fair trial before an impartial jury and there has been no miscarriage of justice." *Id.* at 593. Further, this Court notes MCL 600.1645 provides that "[n]o order, judgment, or decree shall be void or voidable solely on the ground that there was improper venue."

NOW THEREFORE;

IT IS ORDERED that Petitioner's application for a writ of *habeas corpus* be DENIED.

IT IS FURTHER ORDERED pursuant to MCR 2.602(A)(3), that this Order resolves the last pending claim and closes the case.

10/21/19
Date


Hon. David A. Thompson
Chief Judge, 19th Circuit

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties or attorneys of record to the above cause herein at their respective addresses disclosed on the pleadings on October 21, 2019.

By ☒ U.S. First Class Mail ☐ Fax
☐ Hand Delivered ☐ Email
☐ Dept. mailbox ☐ Other

Signature [Signature]

STATE OF MICHIGAN

IN THE 19TH CIRCUIT COURT FOR THE COUNTY OF MANISTEE

TOD HOUTHOOFD, #596112,

Petitioner,

File No. 19-16841-AH

-v-

Honorable David A. Thompson

LES PARISH, Warden,
Oaks Correctional Facility,

Respondent.

Tod Houthoofd, #596112
Oaks Correctional Facility
1500 Caberfae Hwy
Manistee, MI 49660

Les Parish, Warden
Oaks Correctional Facility
1500 Caberfae Hwy
Manistee, MI 49660

ORDER DENYING MOTION FOR RECONSIDERATION

Petitioner, Tod Houthoofd, #596112, is a prisoner in the custody of the Michigan Department of Corrections and is confined at the Oaks Correctional Facility in Manistee County, Michigan. On October 25, 2019, Petitioner filed a motion for reconsideration with objections to the accuracy and completeness of the judgment on denial for *habeas corpus*. Motions for reconsideration are governed by MCR 2.119(F)(3), which states:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Petitioner cites to *Pyle v Kansas*, 317 US 213, 216; 63 S Ct 177; 87 L Ed 214 (1942). Petitioner explains that in this case, “[t]he United States Supreme Court reversed a conviction when the State knowingly used perjury and suppressed a favorable witness to get a conviction.” While Petitioner’s reading of *Pyle* is reasonably accurate, the facts are distinguishable from Petitioner’s case in significant ways. First, in the case at bar, there is no evidence that the prosecution knowingly used perjury. Second, there is no evidence or allegations that the prosecution suppressed any witnesses. Therefore, Petitioner is left with a claim that venue was not proper, which – as the Court noted in its opinion denying Petitioner’s writ of *habeas corpus* – is not grounds for the relief he is seeking. This is because MCL 600.1645 provides that “[n]o order, judgment, or decree shall be void or voidable solely on the ground that there was improper venue.”


The Court finds that Petitioner has failed to demonstrate a palpable error by which the Court and the parties have been misled and that Petitioner has merely presented the same issues already ruled on by the Court.

NOW THEREFORE;

IT IS ORDERED that Petitioner’s motion for reconsideration be DENIED.

IT IS FURTHER ORDERED pursuant to MCR 2.602(A)(3), that this Order resolves the last pending claim and closes the case.

11/7/19
Date


Hon. David A. Thompson
Chief Judge, 19th Circuit

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties or attorneys of record to the above cause herein at their respective addresses disclosed on the pleadings on

November 7th 2019
By ☒ U.S. First Class Mail ☐ Fax
☐ Hand Delivered ☐ Email
☐ Dept. mailbox ☐ Other
Signature Hon. Felizak