

APPENDIX

Order

Michigan Supreme Court
Lansing, Michigan

August 3, 2021

Bridget M. McCormack,
Chief Justice

162910

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

EARVIN R. DAVIS,
Plaintiff-Appellant,

v

SC: 162910
COA: 355546
Chippewa CC: 20-010636-AH

CHIPPEWA CORRECTIONAL FACILITY
WARDEN,
Defendant-Appellee.

/

On order of the Court, the application for leave to appeal the March 25, 2021 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.

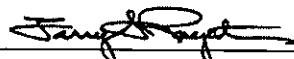
[501]

APPENDIX C



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.

August 3, 2021



b0726

Clerk

Court of Appeals, State of Michigan

ORDER

Earvin R Davis v Chippewa Correctional Facility Warden

Michael F. Gadola
Presiding Judge

Docket No. 355546

Stephen L. Borrello

LC No. 20-010636-AH

Michelle M. Rick
Judges

The motion for immediate consideration is GRANTED.

The motion to seal the record is DENIED.

The motions for entry of a default judgment are DENIED.

The complaint for habeas corpus is DENIED.



Presiding Judge



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

March 25, 2021

Date


Chief Clerk

STATE OF MICHIGAN
IN THE 50TH CIRCUIT COURT FOR THE COUNTY OF CHIPPEWA

EARVIN R. DAVIS, 227488

Petitioner,

v

File No: 20-16036-AH

CONNIE HORTON, Warden,

Respondent,

OPINION AND ORDER DISMISSING
WRIT OF HABEAS CORPUS

At a session of said Court held
in the City of Sault Ste. Marie,
on the 12TH day of October, 2020.

PRESENT: HONORABLE JAMES P. LAMBROS
Chief 50th Circuit Judge

Earvin R. Davis is currently incarcerated at the Chippewa Correction Facility, located in Kincheloe, Michigan. He is serving a life sentence and has no maximum discharge date.

The Judgement of Sentence lists docket numbers for both the District and Circuit Recorder's Court. Recently, the Michigan Supreme Court denied Davis' motion for relief from judgment, and the designation on the case is listed as "FC".

Davis asserts that his court file number was given a court designation representing a civil filing. His theory is that he cannot be imprisoned because his case is actually a civil case. Respondent asserts that the claim is frivolous and should be given a strike for Michigan Prison Litigation Reform Act purposes.

APPENDIX B

The question posed by the Respondent is whether a writ of habeas corpus may be used to appeal a criminal conviction. This is a question of law. Questions of law are reviewed *de novo*. *Cardinal Mooney High School v Michigan High School Athletic Association*, 437 Mich 75, 80; 467 NW2d21 (1991).

MCL 600.4310 provides:

An action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons:

(3) Persons convicted, or in execution, upon legal process, civil or criminal;

A writ of habeas corpus deals only with radical defects which render a judgment, or a proceeding absolutely void. *In re Stone*, 295 Mich 207; 294 NW2d 156 (1940); *Walls v Director of Institutional Services*, 84 Mich App 355; 269 NW2d 599 (1978).

Habeas corpus does not function as a writ of error. *Kenney v Booker*, 494 Mich 852; 830 NW2d 382 (2013).

Habeas corpus does not operate retroactively. In other words, 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. *Hinton v Parole Board*, 148 Mich App 235; 383 NW2d 626 (1986), quoting from *People v Price*, 23 Mich App 663, 671; 179 NW2d 177 (1970).

As a matter of clarity, another portion of *People v Price*, supra, is helpful in determining just what is meant by a radical defect in jurisdiction:

Despite the general prohibition, habeas corpus is open to a convicted person in one narrow instance, one that concerns us here, and that is where the convicting court was without jurisdiction to try the defendant for the crime in question. This exception, it must be added is qualified by the requirement that the jurisdictional defect be radical. It must render the conviction absolutely void. *In re Palm* (1931), 255 Mich 632; *In re Gardner* (1932) 260 Mich 122; *In re Stone* (1940), 295 Mich 207.

The pivotal question thus becomes whether the error asserted by defendant—the denial of an alleged right to counsel at a juvenile waiver hearing—was such that for the purposes of habeas review the recorders court can be said to have been without jurisdiction to enter a conviction. *People v Price*, 23 Mich App at 669-670.

To summarize *Price* in a nutshell you must have: 1. A radical defect in jurisdiction; and 2. That defect must contravene an express legal requirement in existence at the time of the act or omission.

A popular argument is that an express legal requirement was unfulfilled. However, that an express legal requirement was not followed in the criminal proceedings does not by itself make a radical defect in jurisdiction. In fact, there was no radical defect in jurisdiction found in the *Price* case, and the error that was asserted should have been counsel at the juvenile waiver hearing, based upon the U.S. Supreme Court's decision in *re Gault* 387 us 1 (1967). Because the *Gault* decision was not in effect when the waiver hearing took place, it was determined that it did not prevent the Recorder's Court from obtaining jurisdiction.

In *Cross v Department of Corrections*, the Court pointed out that a writ of habeas corpus is not a substitute for an appeal of a criminal conviction. *Cross v Department of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

The Petitioner is clearly asking this Court to review his criminal conviction that took place before the Recorders Court and make an appellate style ruling finding him incompetent and setting aside his sentence.

There is no argument that the Court in Wayne County or the Recorder's Court is not empowered to hear a felony case after a bindover. Moreover the Prosecutor in that county has the duty to represent the People of the State of Michigan in criminal appeals in the proper appellate forum. Neither the warden of the prison where the Petitioner is incarcerated or the Director of the Department of Corrections, nor the Department of Corrections, is the proper party to an appeal of a criminal conviction nor do they stand in the place of the county prosecutor.

Petitioner's claim that he was prosecuted as a civil proceeding is without merit. Judge Drain was the presiding Judge. Judge Drain is a very experienced

judge and knows the difference between civil and criminal process. Further, there would be no need for a prosecutor in a civil case. That it was a criminal case is further verified in that the Michigan Supreme Court listed the case as having an FC designation when recently denying Davis' motion for relief from judgment.

Finally, in the exercise of circuit court jurisdiction over adult offenders, there is a presumption against divesting a court of its jurisdiction once it has properly attached, and any doubt is resolved in favor of retaining jurisdiction. *People v Veling*, 433 Mich 23. 32 (1993). If there was an error in the preliminary hearing, errors in a preliminary examination are considered harmless once a valid conviction is obtained. See *People v Hall*, 435 Mich 559, 610-612 (1990). "Once a preliminary examination is held and the defendant is bound over on any charge, the circuit court obtains jurisdiction over the defendant." *People v Unger*, 278 Mich App 210, 221 (2008). See also *People v Goecke*, 457 Mich 442, 458-459 (1998). It follows that there was no radical defect in jurisdiction here. Additionally, there is a presumption of regularity, that presumes that public officers discharge their official duties properly.

Accordingly, Petitioner's complaint for writ of habeas corpus is Denied.

IT IS SO ORDERED.

DATE: October 12, 2020


HONORABLE JAMES P. LAMBROS, P62099
CHIEF 50TH CIRCUIT COURT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**