

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

April 16, 2020

[Cite as *04/16/2020 Case Announcements #4*, 2020-Ohio-1465.]

MISCELLANEOUS DISMISSALS

2020-0401. State ex rel. Lichtenwalter v. DeWine.

In Mandamus. On motion for leave to file amicus brief on behalf of relator filed by amicus curiae, American Civil Liberties Union of Ohio Foundation, Inc. Motion granted. Respondents' motion to dismiss granted. Cause dismissed for failure to state a claim in habeas corpus or mandamus.

Donnelly, J., concurs, with an opinion.

DONNELLY, J., concurring.

{¶ 1} I agree with the court's decisions to grant the motion filed by the ACLU of Ohio Foundation, Inc., for leave to file an amicus curiae brief; to dismiss petitioner Derek Lichtenwalter's petition for a writ of mandamus or, in the alternative, a writ of habeas corpus; and to dismiss as moot the motion to strike filed by respondents Governor Mike DeWine, Ohio Department of Rehabilitation and Correction Director Annette Chambers-Smith, and Belmont Correctional Institution Warden David Gray.

{¶ 2} Because Lichtenwalter does not seek immediate release from state custody but instead seeks a temporary reprieve from the environment of prison, habeas corpus is not the appropriate remedy. *See Waites v. Gansheimer*, 110 Ohio St.3d 250, 2006-Ohio-4358, 852 N.E.2d 1204, ¶ 6 (a civil-rights action under 42 U.S.C. 1983, rather than habeas corpus, is the appropriate avenue for prisoners to challenge the conditions of their confinement). And although the executive branch does have power to grant clemency and to liberally execute remedial statutes, such as

R.C. 2967.18 (reduction of prison populations in the face of overcrowding emergencies) and 2967.05 (conditional release of prisoners who are severely ill or at risk of imminent death), this court does not have the authority to control the executive branch's discretion to exercise these powers through mandamus. *See State ex rel. Sheppard v. Koblentz*, 174 Ohio St. 120, 122-123, 187 N.E.2d 40 (1962) (mandamus will not issue to control discretionary decisions).

{¶ 3} I hope that petitioner and others in Ohio do not see today's decision as the judiciary's throwing up its hands and claiming that there is nothing that it can do. The whole of Ohio's government needs to take serious, unprecedented steps to prevent the catastrophe of unmitigated spread of COVID-19 to the tens of thousands of prisoners in Ohio as well as to the tens of thousands of people who are prison employees along with those living in the households of prison employees. Ohio's executive branch, including the governor, the Department of Rehabilitation and Correction, the Adult Parole Authority, and the Correctional Institution Inspection Committee collectively have broad authority to take an assortment of steps to prevent such a catastrophe. Ohio's trial courts have the power to liberally and expeditiously grant appropriate requests for judicial release. And with the stroke of a pen, the General Assembly could remove various arbitrary statutory restrictions¹ on judicial release that currently fetter the judiciary's discretion.

{¶ 4} Many of the foregoing powers have already been exercised to some extent, but the danger of the virus spreading has not yet been fully solved. It would take broad action to release an adequate number of prisoners to make a difference in the overall prison population and protect those who are medically fragile. It would also require painstaking, individualized action to ensure that proper consideration is given to each inmate's detention history, health status, and risk of recidivism, as well as to victims' rights and general concerns for public safety and welfare, before releases or furloughs can occur. If each branch of our state government does its part, we have an opportunity, collectively, to be proactive and to protect Ohio's vulnerable prison population from COVID-19.

1. For example, the General Assembly could allow prisoners like petitioner who are serving nonmandatory prison terms of two to five years to file a motion for judicial release prior to the expiration of the 180-day period set forth in R.C. 2929.20(C)(2).