STATE OF MICHIGAN

COURT OF APPEALS

FELTON WOODS, Plaintiff-Appellant,	UNPUBLISHED June 14, 2011
v	No. 296609 Muskegon Circuit Court
DEPARTMENT OF CORRECTIONS, Defendant-Appellee.	LC No. 09-046978-AH

Before: GLEICHER, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

In 1986, the Saginaw Circuit Court convicted plaintiff Felton Woods of breaking and entering an occupied dwelling, and sentenced Woods as a fourth habitual offender, MCL 769.12, to an enhanced term of life imprisonment. (Lower court #85-006602-FH). Woods appealed his conviction and sentence to this Court, which affirmed. *People v Woods*, unpublished opinion per curiam of the Court of Appeals (Docket No. 91026), issued March 31, 1987.[1] Between 1987 and 2008, Woods sought various forms of relief from this Court on 10 occasions.[2] In 2009, Woods, who resides in the Muskegon Correctional Facility, filed a petition for a writ of habeas corpus in the Muskegon Circuit Court, which denied the petition. Woods yet again resorted to this Court, and the Court "order[ed] that the parties shall proceed to a full hearing on the merits in the same manner as an appeal as of right." *Woods v Dep't of Corrections*, unpublished order of the Court of Appeals, entered June 30, 2010 (Docket No. 296609).

Woods petitioned for habeas corpus on the grounds that (1) the trial court erroneously instructed the jury that, in passing on whether Woods qualified as a fourth habitual offender, it could take judicial notice of the date of Woods's breaking and entering conviction, and (2) the trial court neglected to fully examine the extent of Woods's displeasure with his trial counsel in the course of his breaking and entering bench trial. Both of the complaints in Woods's habeas

[1] The Michigan Supreme Court denied Woods's application for leave to appeal. *People v Woods*, 428 Mich 907 (1987).

[2] See Docket Nos. 123517, 124660, 130207, 154461, 187664, 216554, 217200, 232912, 263604, and 287863.

petition derive from his breaking and entering conviction and sentence in lower court #85-006602-FH.

The current Michigan statute embodying a prisoner's right to habeas corpus, MCL 600.4310, recognizes that "[a]n action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons[,]" including "[p]ersons convicted, or in execution, upon legal process, civil or criminal." MCL 600.4310(3). Michigan courts have consistently interpreted subsection 4310(3) as "'generally consonant with often-repeated judicial declarations that habeas corpus cannot serve as a substitute for an appeal and cannot be used to review the merits of a criminal conviction.'" *Cross v Dep't of Corrections*, 103 Mich App 409, 415; 303 NW2d 218 (1981), quoting *People v Price*, 23 Mich App 663, 669; 179 NW2d 177 (1970).

The Michigan Supreme Court reiterated this proposition in *In re Lamanna*, 263 Mich 62; 248 NW 550 (1933), when confronted with a petition for habeas relief by a prisoner convicted of kidnapping in 1931. *Id*. at 63. Our Supreme Court instructively addressed the petition in pertinent part as follows:

> Without quoting further from the record, it may be said petitioner's application for the writ of habeas corpus is based solely upon a claim that "there is positively and absolutely no evidence to support (his) conviction." In other words, he here seeks a review of the merits of the case and raises only questions which could have been reviewed on appeal.
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> "Questions decided in review on writ of error may not be reviewed in habeas corpus proceeding, nor may further review of alleged errors . . . .
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> "Writ of habeas corpus cannot function as writ of error." *In re Palm* (syllabi), 255 Mich 632[; 238 NW 732 (1931)].

"Questions reviewable by writ of error may not be reviewed in *habeas corpus* proceeding." *In re Garnder* (syllabus), 260 Mich 122[; 244 NW 253 (1932)].

> In petitioner's brief it is asserted that the undisputed testimony in the trial court was to the effect that petitioner had nothing to do with and knew nothing about the commission of the crime until several days after it was committed. He was a witness in his own behalf, and this phase of the record was urged in his defense. However, there was testimony which disclosed that, subsequent to the kidnapping, defendant acted as a go-between in negotiating and securing the payment of a ransom incident to the release of the victim. The jury evidently found petitioner guilty as an accessory, if not as principal, in the commission of the offense charged. It was petitioner's claim that whatever he did as a go-between in negotiating the ransom was done involuntarily and under compulsion of threats of those who actually committed the offense. All this went to the jury on the factual aspect of the case, and is not now reviewable on habeas corpus. Petitioner was duly convicted in a court of competent jurisdiction, the sentence imposed was within the statute . . . , and the commitment under which he is

> imprisoned is regular upon its face. Nothing reviewable upon habeas corpus is presented in this record. Petitioner is not entitled to be discharged, the relief prayed for is denied, and the writ dismissed. [*Id*. at 63-65.]

In this case, Woods's plainly and improperly seeks to challenge through his habeas corpus petition the merits of his conviction and sentence in lower court #85-006602-FH, which the habeas procedure does not entitle him to do. *In re Lamanna*, 263 Mich at 64-65; *Cross*, 103 Mich App at 414-415. Notably, petitioner in his original appeal of right to this Court of his conviction in lower court #85-006602-FH raised the same complaint he resurrects in his current habeas petition concerning the validity of judicial notice in the course of his habitual offender trial.[3] And records of this Court reflect that Woods already has unsuccessfully raised in this Court on two occasions the second issue he presents in his current habeas petition: whether "the trial court violated the right to counsel by falling [sic] to permit petitioner to discharge an attorney he was not satisfied with, by not inquiring of petitioner as to the reason, and by requiring him to bring his problems with the attorney to the attorney rather than to the court?" Woods presented this identical issue to the Court in the context of a 1995 application for leave to appeal the Saginaw Circuit Court's denial of a motion for "postappeal relief" in Docket No. 187664) and a 1999 application for leave to appeal a Saginaw Circuit Court order denying Woods's motion for relief from judgment in Docket No. 217200.

Woods's current "habeas corpus" petition in reality amounts to another motion for postjudgment relief, subject to appellate review under subchapter 6.500 of the Michigan Court Rules. As MCR 6.502(G)(1) instructs, "one and only one motion for relief from judgment may be filed with regard to a conviction. The court shall return without filing any successive motions for relief from judgment." In summary, because Woods cannot challenge the merits of his

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[3] This Court rejected Woods's argument as follows:

> Defendant also argues on appeal that reversible error occurred at his habitual offender trial. At that trial, the trial court took judicial notice of the fact that defendant had been convicted earlier that day for a breaking and entering that occurred on July 13, 1985. The court then instructed the jury that in determining defendant's guilt they were not required to accept as true any judicially noticed fact. Defendant argues that because the prosecutor was required to prove that he was convicted of prior offenses before the date of the commission of the principal offense, it was improper of the court to take judicial notice of the date of his most recent conviction. We disagree. If the court had not taken judicial notice of the conviction which occurred earlier in the day, the prosecutor would have simply been required to produce the record of that conviction. Defendant certainly cannot argue that he was not convicted of that offense and thus the accuracy of the judicially noticed fact is undisputed. See MRE 201(b). Therefore, we find that the defendant was properly convicted as an habitual offender. [*People v Woods*, unpublished opinion per curiam of the Court of Appeals, issued March 31, 1987 (Docket No. 91026), slip op at 2-3.]

conviction in lower court #85-006602-FH, either via a habeas petition, MCL 600.4310(3), or in a successive motion for relief from judgment, MCR 6.502(G)(1), we decline to consider the merits of his petition.

We dismiss Woods's petition for habeas corpus.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Jane E. Markey