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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-671

Filed 5 November 2024

Mecklenburg County, No. 18 CRS 238306

LARRY JOSEPH WILLIAMS, Petitioner,

v.

ERIK A. HOOKS, Secretary Department of Public Safety, and MICHAEL ROACH, Superintendent of Dan River Work Farm, Respondents.

Appeal by the State by writ of certiorari from order entered 23 November 2021 by Judge Donnie Hoover in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 February 2023.

*Tin Fulton Walker & Owen, PLLC, by Noell P. Tin, for petitioner-appellee.*

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Heidi M. Williams, for the State.*

ZACHARY, Judge.

The State appeals from an order granting Defendant Larry Joseph Williams's petition for writ of habeas corpus. After careful review, we reverse and remand.

**I. Background**

On 29 April 2019, Defendant pleaded guilty to trafficking in cocaine, and the

trial court sentenced him to a term of 70 to 93 months in the custody of the North Carolina Division of Adult Correction. On 15 March 2021, Defendant filed a petition for issuance of a writ of habeas corpus in Mecklenburg County Superior Court seeking his immediate release from the Dan River Work Farm.

In his petition, Defendant alleged that his confinement was “unlawful and his liberty . . . restrained due to a combination of his health conditions, the spread of COVID-19, and the conditions of his confinement.” Defendant contended that he was at an elevated risk if he were to contract COVID-19, noting that he has a history of asthma and diabetes and that he “had to make numerous visits to the medical facility due to difficulty breathing.” As of the filing of his petition, there had “been 118 confirmed cases of COVID-19 at Dan River”; therefore, according to Defendant, “Dan River [could not] protect [him] from severe illness or potential death.”

Defendant supported his petition with various articles concerning the COVID-19 pandemic, together with a copy of an affidavit by Dr. Jaimie Meyer, a professor at the Yale School of Medicine, that had been filed in a federal habeas case. *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 231 (S.D.N.Y. 2020).

This matter came on for hearing on 21 October 2021 in Mecklenburg County Superior Court. The trial court issued the writ of habeas corpus, vacated Defendant’s prison sentence, ordered Defendant’s release, and ordered that Defendant serve 36 months of probation, with special conditions. On 27 October 2021, the State filed a motion requesting that the trial court stay its order pending appellate review, which

the trial court denied on 22 November 2021. On 23 November 2021, the trial court entered an order memorializing its ruling.

On 22 December 2021, the State petitioned this Court to issue a writ of certiorari to review the trial court's order. *See Chavez v. McFadden*, 374 N.C. 458, 470, 843 S.E.2d 139, 148 (2020) ("Although no appeal as of right lies from an order entered in a habeas corpus proceeding, appellate review of such orders is available by petition for certiorari addressed to the sound discretion of the appropriate appellate court." (cleaned up)). On 18 March 2022, this Court allowed the State's petition. On 19 January 2023, this Court entered an order *ex mero motu* holding this matter in abeyance pending the resolution of *State v. Daw*, which our Supreme Court resolved by opinion filed on 23 August 2024. \_\_\_ N.C. \_\_\_, 904 S.E.2d 765 (2024).

## II. Discussion

On appeal, the State argues that "[t]he trial court erred by ordering [D]efendant discharged upon his petition for [writ of] habeas corpus." Pursuant to our Supreme Court's opinion in *Daw*, we agree.

As the Court in *Daw* explained, our General Statutes provide "a general rule and an exception" for determining whether an individual may apply for the writ of habeas corpus. *Id.* at \_\_\_, 904 S.E.2d at 771. N.C. Gen. Stat. § 17-3 provides the general rule:

Every person imprisoned or restrained of his liberty within this State, for any criminal or supposed criminal matter, or on any pretense whatsoever, except in cases specified in

[N.C. Gen. Stat. §] 17-4, may prosecute a writ of habeas corpus, according to the provisions of this Chapter, to inquire into the cause of such imprisonment or restraint, and, if illegal, to be delivered therefrom.

N.C. Gen. Stat. § 17-3 (2023). Concomitantly, N.C. Gen. Stat. § 17-4 provides the multi-pronged exception:

Application to prosecute the writ [of habeas corpus] shall be denied in the following cases:

- (1) Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts.
- (2) Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.
- (3) Where any person has willfully neglected, for the space of two whole sessions after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.
- (4) Where no probable ground for relief is shown in the application.

*Id.* § 17-4.

Upon review of these provisions, our Supreme Court explained that while the general rule is that “[e]very person imprisoned in this State, regardless of whether such imprisonment stems from a criminal or civil matter, may apply for the writ of

habeas corpus[.]” one exception to that general rule is that “the writ of habeas corpus is expressly not available in this State to persons detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction.” *Daw*, \_\_\_ N.C. at \_\_\_, 904 S.E.2d at 772 (cleaned up). Pertinent to the present appeal, the Court specifically held that § 17-4(2) “mandates summary denial of an application to prosecute the writ when the applicant is, among other things, imprisoned due to a final judgment or order of a court possessing jurisdiction over the matter, regardless of whether the matter is criminal or civil in nature.” *Id.*

At the hearing on Defendant’s petition for writ of habeas corpus, the trial court considered § 17-4 in conjunction with § 17-33(2), which provides, in pertinent part:

[I]f it appears . . . that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

. . . .

(2) Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

N.C. Gen. Stat. § 17-33(2).

The trial court determined “that [§] 17-33(2) provides an exception that is applicable to [Defendant] in this case.” However, as our Supreme Court has now clarified: “This was error.” *Daw*, \_\_\_ N.C. at \_\_\_, 904 S.E.2d at 772.

Accordingly, because Defendant was “detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction,” N.C. Gen. Stat. § 17-4(2), he was not “in custody by virtue of civil process[.]” *id.* § 17-33. Thus, per our Supreme Court’s instruction in *Daw*, § 17-33 “is inapplicable in this matter.” \_\_\_ N.C. at \_\_\_, 904 S.E.2d at 773. The trial court erred as a matter of law in concluding otherwise.

“When an applicant for a writ of habeas corpus is ‘detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction,’ the habeas court *must* summarily deny the application.” *Id.* at \_\_\_, 904 S.E.2d at 775 (quoting N.C. Gen. Stat. § 17-4(2)). Accordingly, we reverse the trial court’s order granting Defendant’s petition for writ of habeas corpus and remand for the entry of a summary denial of the same.

### **III. Conclusion**

The trial court’s order is reversed and remanded for the entry of a summary denial of Defendant’s petition for writ of habeas corpus.

REVERSED AND REMANDED.

Judges TYSON and GORE concur.

Report per Rule 30(e).