Case No. 2021-104

VERMONT SUPREME COURT 109 State Street Montpelier VT 05609-0801 802-828-4774 www.vermontjudiciary.org



Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

## **ENTRY ORDER**

OCTOBER TERM, 2021

Austin Burnett\* v. Matthew Christian

- APPEALED FROM:
- Superior Court, Windsor Unit, Civil Division
- CASE NO. 20-CV-00697

Trial Judge: Robert P. Gerety, Jr.

In the above-entitled cause, the Clerk will enter:

Petitioner appeals pro se from the trial court's dismissal of his petition for habeas corpus for lack of jurisdiction. We affirm.

Petitioner filed a habeas petition in November 2020. At that time, he was being held without bail pending a probation violation hearing pursuant to 28 V.S.A. § 301(4). He asserted that he had not been afforded a timely violation-of-probation (VOP) merits hearing and that he was entitled to immediate release. In January 2021, while the habeas petition was under advisement, the criminal division held a VOP merits hearing. It found that petitioner violated several probation conditions and it imposed petitioner's deferred sentence of three-years-to-life. Petitioner's appeal of that decision is pending in State v. Burnett, Supreme Court Docket Number 2021-031. The State then moved to dismiss petitioner's habeas petition as moot and the trial court granted its request. The court found that petitioner was in custody serving a lawful sentence imposed by the criminal division based on a finding that petitioner violated the terms of his probation. Petitioner was not entitled to immediate release and the court had no jurisdiction to grant the only relief available in a habeas matter, which was an order for release from custody. It thus dismissed the petition. This appeal followed.

Petitioner argues that his VOP hearing was unreasonably delayed. He also appears to argue that the court should not have considered the revocation of his probation and the imposition of the underlying sentence because it post-dated the hearing in this case. He contends that, even though he may now be serving a lawful sentence, his claim remains that he was not provided a timely hearing on the VOP complaints.

A petition for a writ of habeas corpus is "intended to be a quick and summary proceeding for relief from illegal imprisonment." Shuttle v. Patrissi, 158 Vt. 127, 131 (1992); see also 12 V.S.A. § 3952 ("A person imprisoned in a common jail, or the liberties thereof, or otherwise restrained of his or her liberty by an officer or other person, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and obtain relief therefrom if it is unlawful."). "A habeas writ...does not generally provide a substitute for appellate

review," and "[t]he instances in which the writ is granted where there are remedies by appeal . . . are rare and of exceptional nature." <u>Patrissi</u>, 158 Vt. at 131 (citation omitted).

The court did not err in dismissing the habeas petition. The court has authority only to decide "actual, live controversies between adverse litigants." <u>Sullivan v. Menard</u>, 2019 VT 76, ¶ 5, 211 Vt. 138 (citation omitted). "Even though there was once an actual controversy, a change in the facts can render an issue or entire case moot." <u>In re Moriarty</u>, 156 Vt. 160, 163 (1991). Petitioner alleged in his habeas petition that he was being unlawfully held as no timely VOP merits hearing had been held. The VOP hearing was then held, and petitioner was in custody serving a lawful sentence imposed by the criminal division based on its probation-violation finding when the petition was dismissed. There is no basis for habeas relief. See <u>Paige v. State</u>, 2017 VT 54, ¶ 7, 205 Vt. 287 (recognizing that a case becomes moot when court "can no longer grant effective relief") (citation omitted)). Any challenges to the timing of the VOP merits hearing can be raised in petitioner's appeal from the criminal division's decision.

Affirmed.

BY THE COURT:
Beth Robinson, Associate Justice
Karen R. Carroll, Associate Justice
William D. Cohen, Associate Justice